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ORIGINAL

OFFICIAL TRANSCRIPT
PROCEEDINGS BEFORE

**THE SUPREME COURT
OF THE
UNITED STATES**

CAPTION: GENERAL MOTORS CORPORATION, Petitioner v.
UNITED STATES

CASE NO: 89-369

PLACE: Washington, D.C.

DATE: March 21, 1990

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1 IN THE SUPREME COURT OF THE UNITED STATES

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3 GENERAL MOTORS CORPORATION, :

4 Petitioner :

5 v. : No. 89-369

6 UNITED STATES :

7 - - - - -x

8 Washington, D.C.

9 Wednesday, March 21, 1990

10 The above-entitled matter came on for oral
11 argument before the Supreme Court of the United States at
12 10:03 a.m.

13 APPEARANCES:

14 THEODORE L. GARRETT, ESQ., Washington, D.C.; on behalf of
15 the Petitioner.

16 LAWRENCE G. WALLACE, ESQ., Deputy Solicitor General,
17 Department of Justice, Washington, D.C.; on behalf of
18 the Respondent.

C O N T E N T S

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ORAL ARGUMENT OF

PAGE

THEODORE L. GARRETT, ESQ.

On behalf of the Petitioner

3

LAWRENCE G. WALLACE, ESQ.

On behalf of the Respondent

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REBUTTAL ARGUMENT OF

THEODORE L. GARRETT, ESQ.

On behalf of the Petitioner

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1 Now, I want to clarify at the outset that our
2 point is not simply that EPA took too long in acting on
3 the revision in question here. Our point is a more
4 fundamental one than that.

5 We submit that Congress established a very
6 careful sequence in the statute, first, for the state
7 promulgation of state implementation plans and revisions
8 to those plans, secondly, for limited and timely EPA
9 review of those plans and, only after that, for
10 enforcement. We submit that by skipping that second step,
11 the limited and timely review, EPA has put the cart before
12 the horse, if you will.

13 Now, in this case, the Commonwealth of
14 Massachusetts gave General Motors an extension of time,
15 from 1985 to 1987, 1987 being the attainment deadline in
16 the Clean Air Act that's relevant here and, indeed, it was
17 the deadline for all of Massachusetts, as granted by EPA.

18 The purpose of the extension was to allow
19 General Motors to replace an older painting facility that
20 it had in Framingham, Massachusetts and instead to build a
21 new more modern facility with substantially lower
22 emissions.

23 EPA had previously approved similar extensions
24 of time through state plan revisions for other companies
25 in 1984 and 1985, and the Agency did so pursuant to a

1 policy that it had announced in 1981.

2 In this particular case, EPA waited while
3 General Motors built its plant. It completed the new
4 facility at great expense in July of 1987, and then when
5 the new facility was built and the old facility was shut
6 down, EPA filed a lawsuit in August of 1987 to collect
7 penalties for the period of time during which the company
8 had operated the old paint shop. It did so without taking
9 any action -- any final action on a revision.

10 Now, we submit that General Motors should have
11 been entitled to comply with the Commonwealth's revision
12 and should have not been penalized for doing so until EPA
13 took action on the revision.

14 QUESTION: Well, Mr. Garrett, the statute, does
15 it not, makes the terms of the original plan enforceable
16 until a revision is approved, as I understand it.

17 MR. GARRETT: Are you referring to Section
18 110(d) of the statute, Your Honor?

19 QUESTION: Uh-huh.

20 MR. GARRETT: Your Honor, it seems to us that
21 the government's argument with respect to that section
22 proves a little bit too much, and it's somewhat a
23 mechanical and artificial reading of the statute. And the
24 reason we say that is because it does not deal with EPA's
25 corresponding duty under the statute to comply with its

1 obligations to review a plan in a timely way.

2 We submit that the Congress --

3 QUESTION: Well, of course, the SG takes the
4 position that there is no four-month deadline requirement
5 for action on proposed revisions. And I suppose you would
6 be first to acknowledge that the language of the statutory
7 provisions could be interpreted as the Solicitor General
8 suggests, as not requiring revisions to be approved within
9 four months.

10 MR. GARRETT: We disagree on that point, Your
11 Honor. But there's a more fundamental point that I would
12 like to emphasize. I think that there can be no doubt
13 under the statute, because it uses the word "shall," that
14 EPA has a duty to act on the plan and plan revisions. And
15 we're saying that EPA has breached that duty act. Whether
16 it's four months or a reasonable time --

17 QUESTION: Well --

18 MR. GARRETT: -- they should be acting before
19 they bring lawsuits.

20 QUESTION: But the -- the language of the
21 statute dealing with the four months says the
22 administrator shall within four months after the date
23 required for submission of a plan under Paragraph 1. Now,
24 that doesn't appear to refer to any revisions.

25 MR. GARRETT: The -- if you're referring to

1 Subsection (a)(3), that section deals entirely with
2 revisions, and we believe --

3 QUESTION: But (a)(3) says that the
4 administrator will approve any revision if he determines
5 that it meets the requirements of Paragraph 2. Not that
6 he meets the requirements by acting, but that the plan
7 meets the requirements.

8 MR. GARRETT: The language of the statute, I
9 think, Your Honor, we have to be careful not to try to
10 parse it a little bit too fine but to look to the overall
11 intent of it. In our reply brief we pointed out one
12 example where EPA does not interpret the language to refer
13 only to the requirements of the plan. And in particular
14 the first sentence of Section (a)(2) states that the
15 administrator may approve or disapprove a plan or a
16 portion of a plan.

17 There is no reference to a portion of a plan in
18 Section (3)(a). But yet the administrator in the public
19 service case has said Congress basically intended these
20 two provisions to work the same way and the administrator
21 has the same obligations and responsibilities under (a)(2)
22 as it does under (a)(3).

23 QUESTION: Well, I -- I guess my question is
24 specifically whether you would acknowledge that the
25 language of the statute could be read as the Solicitor

1 General says it should be read.

2 MR. GARRETT: Our view, Your Honor, is that the
3 language is intended to be a provision of incorporation,
4 and it's plain, to us anyway, that Congress intended to
5 incorporate all of (a)(2) into (a)(3).

6 QUESTION: But it could be read otherwise?

7 MR. GARRETT: I don't think so, Your Honor.

8 QUESTION: No?

9 MR. GARRETT: I really don't. I think it's a
10 very strained reading for the government to say that every
11 provision of (a)(2) is incorporated in (a)(3) with the
12 exception of the four-month rule. And if you go word by
13 word almost to see what provisions the government believes
14 are incorporated and which are not, they believe that
15 everything is incorporated except the four-month rule.

16 I don't think that there's any indication in the
17 statute that Congress intended to carve out that one
18 provision. And we think that all of the lower courts and
19 all of the amici that have filed briefs with this Court
20 are correct in assuming that Congress intended that.

21 And we think that the proof of the pudding is
22 Section 110(g) of the Act, which we've pointed out in our
23 brief requires EPA to comply with the plan revisions -- to
24 act on certain plan revisions, quote, "within the required
25 four-month period," we think clearly referring back to the

1 basic provision for revisions, which is (a)(3). But
2 again --

3 QUESTION: It says -- it says the required
4 (inaudible) what four-month period has been required.

5 MR. GARRETT: Our position, Your Honor, is that
6 the only reference that's logical is the required period
7 for EPA to act on the revisions under Section (a)(3).

8 QUESTION: But that's -- that's a required
9 period after the -- the SIPs must be submitted. That was
10 four months after the Act was originally passed -- after
11 the date that the Act required states to submit plans.
12 And as the Act originally passed, it said four months
13 after that date the administrator must have acted on those
14 plans.

15 MR. GARRETT: That's correct, Your Honor, and
16 the statute does --

17 QUESTION: That is the only required four-month
18 period. Four months -- not after the plans were filed.
19 The plans could have been filed before that -- that
20 period, couldn't they? They could have been filed right
21 after the Act was passed. So the four-month period might
22 indeed have been -- I don't know when the Act was passed,
23 it might have been an eight-month period.

24 It was four months after the plans were required
25 to be filed, not four months after they were filed.

1 MR. GARRETT: Again, Your Honor, there's some
2 distinctions that could be made. I think that the
3 government argues that plans are never required after the
4 original plans and, therefore, that can't apply. I
5 think --

6 QUESTION: It makes sense to me. Why isn't that
7 true?

8 MR. GARRETT: It assumes that Congress really
9 didn't intend that there be prompt action on revisions and
10 that revisions somehow were less important than the
11 original plans.

12 QUESTION: No. It just assumes that Congress --
13 that Congress for prompt action relied upon the
14 Administrative Procedure Act which -- which assures prompt
15 action in all other areas.

16 MR. GARRETT: Let's assume --

17 QUESTION: And the four-month provision was just
18 to get this Act off and running really fast. That's all.

19 MR. GARRETT: Let's assume for the moment that
20 the four-month provision is not applicable and that EPA's
21 duty is to act within a reasonable time.

22 QUESTION: Good. I was going to ask you what --
23 what you think that leads to.

24 MR. GARRETT: What that leads to is this, Your
25 Honor, and this is the point I was trying to make a moment

1 ago. Under the Court's decision in the Train v. NRDC
2 case, EPA must approve a revision if it satisfies the
3 basic requirements of the statute.

4 And what EPA has done here is that they've
5 invented a new option. What they do is they exercise a
6 pocket veto by ignoring a revision while bringing a suit
7 to enforce the old plan. This, in effect, disapproves the
8 revision without any of the restrictions on EPA authority
9 that are in the statute. And indeed, it provides
10 incentives for EPA to delay further in order to advance
11 its enforcement action.

12 Now, by proceeding in this way, it seems to us,
13 that EPA is leaving the states and industry in a
14 regulatory limbo. It undercuts state efforts to develop
15 and enforce revised plans for improved control strategies.
16 It removes any incentives that industry would have to
17 accept and implement revisions that would make progress.
18 And we submit that these consequences are totally
19 inconsistent with the goals of the Act, and they are
20 inconsistent with the basic obligation that EPA has in the
21 statute where it says the administrator shall approve any
22 revision.

23 And even if it's not four months, even if it's a
24 reasonable time, he's obligated to approve that revision
25 if it meets the basic requirements of the Act because the

1 states have the primarily role in establishing a mission
2 limitations. And by exercising this pocket veto what the
3 Agency is doing is writing the states out of the statute
4 and saying we're going to ignore what you do and we're
5 going to bring enforcement action to enforce our choices
6 and not yours.

7 QUESTION: Well, in circumstances as in this
8 case, who should have the burden of proving that the
9 revision meets the requirements and therefore has to be
10 approved? Could that be established as a matter of
11 defense by your client if an enforcement action is brought
12 based on the original plan?

13 MR. GARRETT: That was the remedy that the court
14 of appeals suggested -- or, at least one of the two
15 remedies that the court of appeals suggested, Your Honor.
16 And we respectfully suggest that that's not very
17 meaningful.

18 Let's think about what would be involved in
19 doing that. Under the government's approach, the district
20 court would be required to consider whether the revised
21 plan was, quote, "clearly approvable or clearly not
22 approvable," and it would be doing so well before the
23 Agency itself had acted.

24 For example, in the Cyanamid case which we rely
25 on heavily in our briefs, that was a 1982 plan revision.

1 The court of appeals handed down its decision in 1987
2 after a full round of administrative proceedings
3 concerning the amount of the penalty. To this day there's
4 been no final decision by EPA on that SIP revision.

5 It seems to us that this approach of requiring a
6 district court judge to make a decision as to whether a
7 plan was clearly approvable or not really turns notions of
8 primary jurisdiction on their head. The Agency should be
9 making that determination first. And that's the basic
10 problem that we've got.

11 QUESTION: The problem, Mr. Garrett, is once you
12 abandon the form -- well, you haven't abandoned it. But
13 once you assume I don't agree with -- with your four-
14 month clear line, industry isn't helped very much by
15 simply adopting a reasonable time rule and say that after
16 a reasonable time for approval has elapsed the industry is
17 thereafter excused from -- from complying with the
18 original SIP and -- and can act as though the revised SIP
19 has been approved.

20 MR. GARRETT: That --

21 QUESTION: Reasonable time will vary enormously
22 from -- from one case to another. The Agency says it goes
23 from something like three months to -- what, 18 at the
24 outside? Something like --

25 MR. GARRETT: That's quite right, Your Honor.

1 And that's not our position, by the way. And let me try
2 to make it clear if I haven't.

3 QUESTION: No, I know it's not your primary
4 position. But -- but you-- you -- but you offered it as a
5 fallback position. That even if -- even if we don't agree
6 with your four-month clear line, still in all, the Agency
7 had an obligation to act within a reasonable time. And at
8 least after that reasonable time elapses, the same
9 consequences should ensue. That is, that the company
10 should be able to comply with the revised plan rather than
11 the original plan.

12 MR. GARRETT: No, Your Honor, we go a step
13 further than that. Our position is that EPA has a
14 fundamental duty under the statute to first act on the
15 revision, up or down, before it brings an enforcement
16 action. And we're not going to ask the district courts to
17 look at whether there was a reasonable time on the four-
18 month rule. We think that the four-month rule is very
19 important because it underscores the urgency of EPA to
20 act, but there can be no question to us that the statute
21 imposes a mandatory duty on EPA to act on those plans and
22 that they should be prohibited from bringing an
23 enforcement action.

24 QUESTION: Even before the four months expires?

25 MR. GARRETT: Yes, Your Honor. During that

1 period of time EPA should be making a neutral, unbiased
2 decision on whether that plan --

3 QUESTION: I see. I see what you're saying.

4 MR. GARRETT: -- was approvable or not. It
5 shouldn't be -- they shouldn't be rushing to court to
6 enforce a regulation when there hasn't been a --
7 determination made under the statute as to what regulation
8 ought to be enforced.

9 QUESTION: Well, Mr. Garrett, what language in
10 the statute would you point to to support that view that
11 that's a requirement and that the EPA may not resort to
12 enforcement actions? Is there any particular provision?

13 MR. GARRETT: Your Honor, there is not a
14 particular provision in the sense of language saying that
15 EPA may not bring an enforcement action. However, we
16 suggest that -- several things. That the mandatory in the
17 language in the statute saying that they are obligated to
18 approve, the language in the statute saying in several
19 places -- in the preamble to the case and to the statute
20 in the declaration of findings and purpose -- that the
21 prevention and control of pollution at its source is the
22 primarily responsibility of the state and local
23 governments, and in Section 7407(a) which says that each
24 state shall have the primary responsibility for assuring
25 air quality within its entire geographic area.

1 The states don't have that authority if EPA is
2 allowed to just ignore state plans, pick and choose among
3 revisions and original plans, and if it prefers the
4 original plan rather than the revision for any reason or
5 no reason at all, without following the statutory
6 procedures, to just go ahead and enforce the original
7 plan. We submit that that is so contrary to the
8 fundamental workings of the statute that this Court should
9 devise a remedy to deal with that situation.

10 QUESTION: Well, they -- they can enforce
11 neither the original plan, because there's a revision
12 pending, nor the revised plan, because that hasn't yet
13 been approved. So it's -- it's just a free-for-all during
14 -- during the period while the revision is pending. You
15 can't enforce anything. All the rules are gone.

16 Is that -- is that the regime that -- that would
17 follow?

18 MR. GARRETT: The -- to some extent, Your Honor,
19 the revision certainly would be enforceable in state
20 court.

21 QUESTION: Oh, it would? It would?

22 MR. GARRETT: We believe so, Your Honor. In
23 fact --

24 QUESTION: You know, all -- all these revisions
25 are not going to be in your client's favor. What if a

1 state adopts -- proposes a revised plan that tightens the
2 environmental restrictions? The regime you're arguing for
3 is that the state can impose upon -- upon industry those
4 -- those additional restrictions even though they haven't
5 been approved by EPA?

6 MR. GARRETT: Yes, Your Honor. As a matter of
7 fact --

8 QUESTION: Wow, that's -- that's high risk.

9 MR. GARRETT: The Clean Air Act -- the way it's
10 structured, Your Honor, requires that before a state
11 submits a plan to EPA that it be adopted as a matter of
12 state law and they be able to show EPA at the time that
13 it's submitted that it's been promulgated and enforced.
14 And the states go through substantial procedures of their
15 own to establish these revisions. They're required by
16 statute to have public hearings.

17 And in this case Massachusetts did have
18 hearings. The public was invited; the American Lung
19 Association appeared and did not object to the revision.
20 EPA had advance notice of this. These revisions aren't a
21 surprise. EPA had been talking to the Commonwealth about
22 this; they appeared at the hearings. They had some
23 technical comments, but they did not object.

24 Massachusetts believed that it satisfied all of
25 its concerns, and after considering all of the concerns of

1 interested parties and the public, the state decided that
2 it was in the best interest of the citizens of the state
3 to go ahead with this revision, to allow General Motors to
4 build a more modern, lower emission facility and extend
5 the deadline to the statutory deadline that EPA had
6 already approved.

7 We submit that --

8 QUESTION: On the other hand, Massachusetts,
9 your Commonwealth, is opposing you here, isn't it?

10 MR. GARRETT: Yes, and that's very puzzling,
11 Your Honor. We would urge the Court to look at the brief
12 filed by the National Governors' Association. We think
13 that it's much more representative of the views of state
14 and local officials concerning these issues.

15 The Massachusetts brief is frankly puzzling and
16 incomprehensible to us. The -- I can elaborate some more,
17 if you'd like.

18 (Laughter.)

19 QUESTION: I'd like to some elaboration on one
20 point, Mr. --

21 QUESTION: I'm only pointing out that your own
22 -- the state involved is on the other side.

23 MR. GARRETT: The -- Massachusetts certainly
24 believed, and still believes that the plan revision
25 involved was in the public interest, and I would on that

1 point urge the Court to look at the 1987 comments by the
2 State of Massachusetts that we've lodged with the Clerk of
3 the Court.

4 When EPA had eventually proposed to disapprove
5 the plan, the State of Massachusetts filed very vigorous
6 comments with EPA saying that this is a good revision and
7 your concerns are unwarranted. We want this approved.

8 QUESTION: May I ask this question about the
9 interplay between the state and the Federal authority? If
10 you focus on Section 110(g), which provides -- gives the
11 governor the power to suspend enforcement if he makes the
12 finding that it's necessary to prevent the closing of a
13 plant and so forth.

14 It seems to me that extra precaution there would
15 be totally unnecessary in view -- if your view of the
16 basic statutory scheme is correct, that the state could
17 accomplish it without that planning.

18 I'd like you to comment on that portion.

19 MR. GARRETT: Certainly, Your Honor. We have
20 two responses to that. One is that we and the government
21 disagree on the interpretation of that language of 110(g).
22 We believe that that was an emergency provision that was
23 designed to deal with imminent plant closings and in a
24 situation where the state really couldn't even afford to
25 wait the four months.

1 So what Congress did was allow the states the
2 authority to, in those situations, suspend immediately
3 without waiting for the four-month period to -- to --

4 QUESTION: No, but they would then have to at
5 least make -- make the finding that they approved the
6 revision, just as they do in an ordinary revision
7 situation.

8 MR. GARRETT: Well, eventually EPA would, but
9 during the --

10 QUESTION: No, not the EPA. I'm talking that
11 the governor would, the state would.

12 MR. GARRETT: Oh, yes.

13 QUESTION: So why couldn't -- but if they've
14 done that, and then your basic view of the state authority
15 prevailed, why would they need to make any other finding
16 because that in itself would become the law until EPA
17 acted?

18 MR. GARRETT: We would urge the Court to not
19 read Section 110(g) as an exclusive remedy, basically,
20 which is our second provision. There are a number of
21 provisions in the statute, 110(g), 110(f), that provide
22 for special relief.

23 In fact, the Train case, which we rely very
24 heavily on, involved just that kind of an issue. There
25 was a provision for certain kinds of variances in the

1 statute that the State of Georgia wanted to provide. But
2 the State of Georgia wanted to do it by a SIP revision
3 rather than using 110(f). And they said that that was the
4 exclusive provision in the statute. If you could do it by
5 a SIP revision, why have a SIP revision?

6 And this Court held no, that the SIP revisions
7 are the basic mechanism under the Act for states to make
8 these kinds of choices. And the fact that Congress may
9 have provided some particular remedies doesn't make them
10 exclusive.

11 So we would say that the fact that Section
12 110(g) of the statute is there doesn't at all conflict
13 with the remedy that we're urging. In fact, in some way
14 we think that since Congress never thought about this
15 problem, it supports it.

16 QUESTION: Mr. Garrett, what is the -- what
17 happens when an original plan is submitted and the EPA
18 doesn't comply with the express four-month requirement for
19 approval or disapproval?

20 MR. GARRETT: The very first plans under the
21 Clean Air Act? I think, quite frankly, Your Honor,
22 that --

23 QUESTION: Does the plan then become
24 effective --

25 MR. GARRETT: No.

1 QUESTION: -- just -- just by default?

2 MR. GARRETT: I think that the -- my impression
3 is that when we're talking about the original '70 Clean
4 Air Act, that the states were trying to get the plans into
5 EPA in a hurry, that EPA tried to act in four months. I
6 don't believe they acted in four months in every case.
7 And eventually EPA ended up approving and disapproving the
8 various plans.

9 QUESTION: But the plan doesn't automatically go
10 into effect after four months?

11 MR. GARRETT: That's correct.

12 QUESTION: Well, I don't think your -- I take it
13 your position is that -- that when the revision is
14 submitted and it is -- it is -- say, it isn't approved or
15 disapproved within four months but finally it is
16 disapproved, then, I take it, the company has to comply
17 with the original plan from there on.

18 MR. GARRETT: That's correct.

19 QUESTION: From there on?

20 MR. GARRETT: That's correct.

21 QUESTION: But you say that they -- until then
22 they may not be fined --

23 MR. GARRETT: That's right.

24 QUESTION: -- for their noncompliance?

25 MR. GARRETT: And the reason is --

1 QUESTION: Meanwhile.

2 MR. GARRETT: That's correct, Your Honor.

3 QUESTION: And that's true even if they act
4 within four months? Suppose they act within four months
5 and disapprove, and you say they nevertheless may not be
6 fined for the -- for their noncompliance with the original
7 plan up till then?

8 MR. GARRETT: That's right, although as a
9 practical matter that situation would virtually never
10 arise.

11 QUESTION: Well, that's your position anyway.

12 MR. GARRETT: Yes. Under the statute they're
13 required to give 30 days' notice.

14 QUESTION: Uh-huh.

15 MR. GARRETT: And then they can bring an
16 enforcement action if violations occur beyond the 30th
17 day. So the likelihood of that hypothetical would ever
18 arise and a suit would be filed within the four months is
19 quite remote.

20 QUESTION: Well, it is -- well, it's not
21 unlikely that they -- that they'll take longer than four
22 months, obviously. And once they -- once -- even though
23 they disapprove and then you have to comply from then on
24 with the original plan, you say they may not fine you for
25 the -- for the period up until disapproval?

1 MR. GARRETT: That's right. What we're saying,
2 Your Honor, is that the company needs someplace to look as
3 to its compliance obligations. And in a situation where
4 the state --

5 QUESTION: Well, but that's not -- that's not
6 very hard, I wouldn't think, until the plan -- until the
7 revision is approved --

8 MR. GARRETT: Well, if it's --

9 QUESTION: -- you've been under an obligation.

10 MR. GARRETT: It's hard in two respects. If you
11 believe that state choices are really supposed to have
12 primacy under the statute, and indeed the state can go
13 into state court and enforce the revision against the
14 company, we think that it's fundamentally unfair to put a
15 company in that position of being subject to conflicting
16 obligations --

17 QUESTION: Well, I know, but your position is
18 that -- let's assume there was an express four months
19 limit for a revision and let's say that EPA had never
20 exceeded four months, you say that -- that the company
21 should be able to assume that the revision will be
22 approved at least within that four-month period, because
23 you -- you say you're -- you just don't have -- you're
24 excused from compliance with the original plan for -- for
25 up till four months.

1 MR. GARRETT: What we're saying -- now, the
2 Cyanamid court actually adopted a slightly different
3 approach. They said you could start the clock running
4 after the four months.

5 QUESTION: Well, I know, but your position is --

6 MR. GARRETT: Our position is that the company
7 should look to state law and be expected to follow what
8 the state adopted after public hearings until EPA makes a
9 decision one way or the other, because EPA is in a state
10 of neutrality at that point and the company ought to be
11 able to assume --

12 QUESTION: But the statute requires before --
13 before a state plan goes into effect originally, or a
14 revision, the statute requires approval.

15 MR. GARRETT: That's correct, Your Honor. And
16 what we're saying is that the other alternative which
17 would allow EPA in effect to veto state plans that are
18 very well considered plans adopted after public hearings
19 and by the entity of government that Congress really
20 entrusted to make these decisions, would basically switch
21 the presumption -- it would be -- you'd have a situation
22 where all state plans are presumed disapproved under the
23 statute even though EPA had not made any showing that
24 there were any grounds for such disapproval.

25 QUESTION: So you -- you say the -- the court of

1 appeals didn't -- didn't go far enough?

2 MR. GARRETT: Yes, Your Honor.

3 QUESTION: Yeah. You think another court of
4 appeals has got the best of it? What is it, the Fifth
5 Circuit or --

6 MR. GARRETT: The Fifth Circuit approach is the
7 approach that comes closest to our position, yes.

8 I'd like to reserve my time --

9 QUESTION: It is -- it is the consequence of
10 your position, if I understand it, that during the period
11 that -- that a revision is pending the Federal Government
12 cannot enforce anything? It can neither enforce the old
13 plan nor the revised plan. It must rely entirely upon the
14 states for -- upon the state for enforcement?

15 MR. GARRETT: With -- with one small
16 qualification. If there are common elements of the two --
17 in other --

18 QUESTION: Right.

19 MR. GARRETT: -- words, if the original plan
20 says A plus B and they've been revised --

21 QUESTION: Right.

22 MR. GARRETT: -- and the plan says A plus C and
23 it's intended that there is some separate element, yes,
24 certainly the Agency can enforce under that circumstance.
25 But basically where there's -- to the extent that there's

1 a revision, what we're saying is that the states can
2 enforce the revision and EPA should be barred from
3 enforcement.

4 And that bar serves as a salutary purpose. It
5 serves to encourage the Agency to act promptly so that
6 there can be a consensus between the Federal and state
7 governments as to what should be enforced.

8 If I may, I'd like to reserve my remaining time
9 for rebuttal.

10 QUESTION: Thank you, Mr. Garrett.

11 Mr. Wallace.

12 ORAL ARGUMENT OF LAWRENCE G. WALLACE

13 ON BEHALF OF THE PETITIONER

14 MR. WALLACE: Thank you, Mr. Chief Justice, and
15 may it please the Court:

16 I would like to preface my remarks by pointing
17 out that the time limitations that were specified in the
18 Act in 1970 in order to get the states to make prompt
19 submissions and EPA to move on them within four months
20 were designed to get into place protections of the public
21 health which were not yet in place under the previous
22 versions of the Clean Air Act. And enforcement authority
23 was included in the 1970 Act so that these protections of
24 the public health of the breathing public would be in
25 place and enforceable.

1 The enforcement authority was given both to the
2 EPA and to citizen suits, and citizen suits could also be
3 brought by the states under the definition of who is a
4 person in the Act who can bring a citizens' suit. But the
5 primary enforcement authority was in the EPA. In order to
6 bring a citizens' suit, the EPA first must be notified and
7 the citizen suit can proceed only if the EPA has not
8 brought a suit and is not diligently prosecuting it.

9 So that Petitioner's submission at oral argument
10 would turn around the explicit priorities of the
11 enforcement provisions as well as undermine the basic
12 purpose of what after all was entitled the Clean Air Act,
13 which was to get protections for the breathing public in
14 place.

15 QUESTION: Mr. Wallace, would you agree that the
16 EPA is required to act within a reasonable time on
17 proposed revisions?

18 MR. WALLACE: Absolutely. That is part of our
19 submission, that it is a duty imposed by the
20 Administrative Procedure Act in --

21 QUESTION: Well, what is a company to do if the
22 EPA does not act on a proposed revision and when the facts
23 show that the revision clearly meets the standards of the
24 Act and must be approved ultimately? Now, that's --
25 that's the alleged position that the Petitioner is in.

1 And whether or not it's true, let's assume that's true.
2 Then should the EPA be able to, under those circumstances,
3 continue to enforce the older plan?

4 MR. WALLACE: I think the court of appeals
5 reached the correct answer, which is, yes, with two
6 qualifications. One is that in determining what
7 penalties, if any, are appropriate, all of these questions
8 of the equities of the particular case will be taken into
9 account in the penalty proceeding. And the other is that
10 mandamus actions do lie to get the EPA to act.

11 But I must point out that in this case the EPA
12 has disapproved this proposed revision, so that it is not
13 exactly Petitioner's situation that is posed in the
14 hypothetical. And as a matter of fact, a case is pending
15 now in the Court of Appeals for the First Circuit in which
16 Petitioner is challenging the disapproval. We recount
17 that in our brief.

18 So I'd like now to point out that if we analyze
19 Petitioner's claim and the American Cyanamid rule adopted
20 by the Fifth Circuit in relation to the statute that is
21 before the Court, the extraordinary lack of legal footing
22 for this claim is revealed. And our analysis proceeds in
23 five short steps, which I can summarize very briefly.

24 The first is that it is undisputed and cannot be
25 disputed under this Court's decision in Train that

1 Petitioner's legal obligation under the statute is to
2 comply with the requirements of a SIP that is in place.
3 That's what the Court held in Train. And here the SIP was
4 adopted -- the state implementation plan was adopted by
5 Massachusetts and approved by EPA to address
6 Massachusetts' very serious ozone problem.

7 Two, the Act explicitly confers authority on the
8 government to bring an enforcement suit against a source
9 of emissions for failure to comply with the requirements
10 of the SIP.

11 Now, number three --

12 QUESTION: (Inaudible) in that regard, suppose
13 the EPA approves a revision and -- but meanwhile,
14 obviously, the -- the -- or, it so happens that the
15 company has not been living up to the unrevised plan, to
16 the original one, can you then fine the company for that
17 period up till approval of the revision?

18 MR. WALLACE: A suit could be brought. There is
19 enforcement authority. The Act is concerned with damage
20 to the public health that occurs --

21 QUESTION: So your answer to the question is
22 yes?

23 MR. WALLACE: Yes.

24 QUESTION: Yes.

25 MR. WALLACE: Although, as a matter of

1 enforcement policy, EPA does not ordinarily bring such
2 suits. We've pointed that out in footnote 32 of our brief
3 on page 29 and explained the enforcement policy that EPA
4 has been following.

5 Now, to return to my brief analysis here --

6 QUESTION: Of course, the company here had no
7 real reason to think that that policy would apply because
8 fairly early on, as I recall, there was indication that
9 EPA would oppose this -- this revision anyway.

10 MR. WALLACE: EPA even testified in the state
11 proceedings that it had doubts about it. And there was
12 considerable communication between the state and Federal
13 authorities, as there should be. This is an Act that
14 contemplates cooperation between the state and Federal
15 authorities.

16 Of course, EPA could not state a concluded view
17 in the state proceedings, but it did certainly indicate
18 its doubts. And it urged the state authorities to pursue
19 the course they did, which was to try to negotiated a so-
20 called delayed compliance order, which would have required
21 General Motors before making this major technological
22 change to take some steps to improve the emissions
23 situation as it was existing. It would have set up a
24 schedule of improvements. But those negotiations failed.

25 QUESTION: In a way, Mr. Wallace, your position

1 would be better for purposes of this case if you didn't
2 have that humane enforcement policy. That is to say, if
3 it was your policy to go after lawbreakers whether or not
4 the manner in which they were breaking the law was later
5 approved, because it seems to me one of the strongest
6 arguments that General Motors has here is that your
7 attitude towards the revision will -- will be affected by
8 the fact that you bring a prosecution.

9 While the revision is pending, you -- you come
10 into court to prosecute somebody for violating it, it's
11 very difficult later to say, yeah, it was a good idea
12 after all, they were violating what was a stupid law and
13 -- and -- you know, you're not inclined to approve the
14 submission.

15 MR. WALLACE: Or the scheme --

16 QUESTION: Now, that wouldn't be a problem if
17 you prosecuted everybody anyway, see?

18 (Laughter.)

19 MR. WALLACE: Even if we thought it appropriate
20 to prosecute everybody, it would be hard to devote the
21 resources to that endeavor. And the scheme Congress
22 adopted is one which does not remove prosecutorial
23 discretion and still confers the responsibility to pass on
24 these proposed revisions. And we think of it the other
25 way around. If somebody is making satisfactory progress,

1 that's not the place to devote our limited enforcement
2 resources, even though the progress may not be ideal and
3 there might actually be legal liability. It's just the --

4 QUESTION: What do you have? About three more
5 to go?

6 MR. WALLACE: Well, in this little analysis I
7 thought I would mention these three more points.

8 Number three, the Petitioner is asking the
9 courts to erect a bar to the exercise of the government's
10 explicit enforcement authority even though no such bar
11 appears in the text of the statute itself or is adverted
12 to in any way in the legislative history of the Act.
13 Nothing is pointed to that shows that it was at all
14 contemplated by Congress in enacting it.

15 And at least the American Cyanamid court -- and
16 Petitioner hasn't totally renounced it -- that court based
17 this judicially created enforcement bar on EPA's failure
18 to complete regulatory action on a proposed SIP revision
19 within a four-month period supposedly required by the
20 statute even though that alleged four-month requirement
21 also does not appear in the text of the statute and is not
22 adverted to in any way in the legislative history of the
23 statute.

24 And my fifth point in this brief analysis is
25 that Petitioner seeks to justify its proposed judicial

1 building of inference on inference here to supersede the
2 statutory text on the ground that otherwise the Act's
3 overall policy of state and Federal cooperation will be
4 distorted to the prejudice of the states.

5 And yet Massachusetts, the state whose interests
6 are involved here, joined by 12 other states, has filed a
7 brief in this Court stating, for very cogent reasons --
8 and I commend this brief to the Court's attention -- that
9 their interests are better served by the government's
10 ability to enforce the Act according to its terms. And
11 it --

12 QUESTION: (Inaudible) National Governors'
13 Association position?

14 MR. WALLACE: Well, that brief was earlier
15 filed, and I think the Massachusetts brief which was filed
16 along with ours as a bottom-side brief took into account
17 that submission and improved on it considerably.

18 The -- the chief problem that we have with the
19 National Governors' Association brief is --

20 QUESTION: Well, it doesn't agree with you.
21 That's one problem.

22 (Laughter.)

23 MR. WALLACE: -- is -- well, it goes part way.
24 It says there should be no enforcement bar, but it assigns
25 -- it would have the Court assign to the district court in

1 the penalty proceeding --

2 QUESTION: Yeah?

3 MR. WALLACE: -- the entire authority that the
4 Act places in the court of appeals in reviewing EPA's
5 action in disapproving a proposed SIP. It equates the
6 role of the reviewing court reviewing administrative
7 action under this Court's decision in Harrison against PPG
8 Industries, with the proper role of the district court in
9 one of these enforcement proceedings.

10 So, I would have to commend the Massachusetts
11 brief as the better reasoned of the two briefs, with all
12 respect.

13 Now, in developing a couple of these points
14 briefly, there is a sixth point that I hope to make, and
15 that is that even if it would ever be appropriate for
16 courts to erect an enforcement bar in the circumstances I
17 have outlined, it would not be appropriate here, in this
18 Act it would be a misfit that would be out of phase with
19 other provisions and policies of the Act.

20 Now --

21 MR. WALLACE: Well, on that point, it is true
22 that Section 110(g) creates just such an enforcement bar
23 in a particular situation. So it's not a totally wild
24 suggestion.

25 MR. WALLACE: It -- it is -- it is the fact that

1 an enforcement bar in limited circumstances has been
2 provided by Congress in the Act which, under this Court's
3 jurisprudence, cuts more in our favor than against our
4 point because it shows that Congress, when it thought it
5 was appropriate, knew how to draft an enforcement bar, did
6 draft an enforcement bar --

7 QUESTION: Well, you say it knew how to draft
8 it, but what was it saying when it talked about the
9 required four-month period in that very section?

10 MR. WALLACE: Well --

11 QUESTION: How good was its draftsmanship?

12 MR. WALLACE: We -- we have addressed that in
13 our brief to the best of our ability. We --

14 QUESTION: Which suggests to me that you don't
15 think it was very good draftsmanship. That's my very
16 point.

17 (Laughter.)

18 MR. WALLACE: We suggest that the way that
19 provision evolved may be an explanation of why there was a
20 reference to a required four-month period. The provision
21 was dealing entirely with this temporary emergency
22 suspension authority that it -- it deals with and that was
23 the focus of congressional attention.

24 And the conclusion that we have come to is that
25 it contemplates that in those situations EPA should act

1 within four months. But it does not in terms impose a
2 four-month requirement nor is there a requirement
3 elsewhere imposed in the Act, nor was it adopted at the
4 time the 1970 provisions that Petitioner is relying on
5 were adopted.

6 So, this is a -- a -- something that --

7 QUESTION: Well, even if they're not all adopted
8 at the same time, they're all part of the same statute
9 now.

10 MR. WALLACE: That is correct.

11 QUESTION: Yes.

12 MR. WALLACE: And they can shed light on one
13 another. And we have attempted to reconcile all of the
14 provisions of the Act in a way that will help them to fit
15 together.

16 There is legislative consideration now of
17 further amendments to the Act, and while --

18 QUESTION: It wouldn't make any -- I -- it
19 wouldn't -- wouldn't your position be exactly the same if
20 there was an express four months provision for approval of
21 a plan?

22 MR. WALLACE: It certainly would.

23 QUESTION: So --

24 MR. WALLACE: That there should be no
25 enforcement bar nonetheless.

1 QUESTION: Exactly.

2 MR. WALLACE: And as a matter of fact, we are
3 entirely content with the judgment of the court of
4 appeals, even though we think the court of appeals was
5 wrong in saying --

6 QUESTION: Well, every court of appeals has
7 implied a four-month period, contrary to your view.

8 MR. WALLACE: Well, we hesitated because of
9 that. But even though they have all said the emperor is
10 draped in that, we cannot find it in the statute. We
11 don't --

12 QUESTION: Well, yes, but --

13 MR. WALLACE: -- think it makes --

14 QUESTION: -- your position --

15 MR. WALLACE: -- much sense.

16 QUESTION: Your position remains the same on
17 enforcement.

18 MR. WALLACE: It -- it remains the same as the
19 First Circuit's position.

20 QUESTION: Then, if it does, I don't know why
21 you are -- you lie down for the court of appeals' view
22 that -- that your enforcement power really is limited by
23 the discretion of a judge to keep you from fining this
24 company if it makes certain determinations.

25 MR. WALLACE: Well, see -- well, we agree with

1 the court of appeals that the question in the penalty
2 phase is whether there was unreasonable delay by EPA to
3 the prejudice of -- the company and how that should be
4 taken into account.

5 And the -- the four-month interpretation is
6 largely beside the point. To some extent it may mean that
7 four months is by definition not unreasonable, if the
8 statute has specified a four-month period.

9 But we think it can be distracting because it's
10 not there, it's impractical. There were very plausible
11 reasons for Congress to make a difference between the time
12 for acting on the initial submissions and the time for
13 acting on proposed revisions. And we don't think that
14 distraction should be part of this Court's analysis.
15 There's certain --

16 QUESTION: Mr. Wallace, could you explain to me
17 again what -- what effect you do give to -- to the -- to
18 the reference to the required four-month period in (g)(1)?
19 What effect do you give to that?

20 MR. WALLACE: We -- we take that --

21 QUESTION: You say that --

22 MR. WALLACE: -- as a guide that in the
23 situation when the state brings to our attention that it's
24 a temporary emergency suspension-type of situation, where
25 the governor is at least contemplating invoking that

1 authority, that EPA is supposed to act within four months.

2 QUESTION: And the suspension only lasts within
3 -- for four months?

4 MR. WALLACE: He can then suspend it for four
5 months. As we read that statute, that is after the four-
6 month period within -- in which it is pending before EPA.
7 That statute is set forth in the appendix to our brief.

8 QUESTION: (1)(a), right.

9 MR. WALLACE: On the very first page of the
10 appendix to our brief. And the governor's authority --

11 QUESTION: Right.

12 MR. WALLACE: -- after the little inset part --

13 QUESTION: Right.

14 MR. WALLACE: -- it says, which the
15 administrator has not approved or disapproved under this
16 section within the required four-month period. So it
17 seems to us plain on the face of it that the governor's
18 suspension authority arises if the administrator has not
19 approved or disapproved within four months. And it just
20 doesn't precede that.

21 And that is why the court of appeals was correct
22 in saying that this provision in 1977 indicated that
23 Congress thought no enforcement bar would otherwise be
24 available and Congress had to provide a limited
25 enforcement bar for this situation of the temporary

1 emergency suspensions. And even there where they thought
2 an enforcement bar would be warranted, they limited it to
3 a four-month suspension.

4 QUESTION: I see.

5 MR. WALLACE: So the court of appeals felt that
6 in interpreting the Act as not otherwise allowing the
7 courts to impose an enforcement bar, it was reconciling
8 the '77 amendments with the '70 Act. In fact, the court
9 of appeals really understated it because otherwise the '77
10 amendment would be that the temporary emergency
11 suspensions would have only a four-month enforcement bar
12 and other proposed revisions would have an indefinite
13 enforcement bar.

14 QUESTION: But getting back to the statute, you
15 simply take the words "the required" and say they're
16 synonymous with the word "a"?

17 MR. WALLACE: Well --

18 QUESTION: "Within a four-month period"?

19 MR. WALLACE: We think -- yes. The answer is
20 yes and we think that it evolved because there was a
21 requirement at one time in the House version of that bill
22 in 1977. And there may not have been an adjustment in the
23 statutory language.

24 But that has to be surmise on anyone's part.
25 The background of the -- of the consideration of that

1 amendment would suggest why it may be worded that way, Mr.
2 Justice. And that's the best we can say about it.

3 QUESTION: Mr. Wallace, I'm -- I'm a little
4 surprised that the government is so lackadaisical about,
5 you know, whether it's four months or who cares whether
6 it's a four-month requirement or not.

7 You're clearly not even trying to meet the four-
8 month requirement. I mean, if it's a provision of law,
9 you should be breaking your back to meet it. But you come
10 in here and say, well, you know, maybe it's four months,
11 maybe it isn't four months, what do we care.

12 MR. WALLACE: Mr. Justice, I thought we were
13 quite clearly saying that the four-month requirement does
14 not apply and would be impractical to try to apply --

15 QUESTION: But you said you're perfectly content
16 to accept a lower court's decision on that and all the
17 other courts of appeals which have said you're supposed to
18 be acting within four months.

19 MR. WALLACE: If -- if --

20 QUESTION: I would think that that's -- that's
21 the part of this case you should be most upset with.

22 QUESTION: If you -- If I conveyed that
23 impression, I -- I did not mean to convey that impression.
24 We are not content to accept that reading of the statute.
25 It happens to be immaterial to the judgment of the court

1 of appeals in this case which we're defending, which is
2 that no enforcement bar should apply and that the question
3 in the penalty phase is whether EPA delayed unreasonably
4 in the circumstances of the particular case.

5 QUESTION: The case, as GM charges -- it is
6 really true that EPA is not even trying to comply with the
7 four-month period.

8 MR. WALLACE: Well, we don't believe it applies
9 to us, and that is our submission to this Court. We're
10 not, in our view, violating the statute. It certainly is
11 not an express requirement of the statute, and we've
12 explained in some detail in our brief why the notice and
13 comment procedure under the Administrative Procedure Act,
14 the difficulties in making the scientific determinations
15 that must precede the proposed approval or disapproval
16 that's to be published to institute the notice and comment
17 procedure, the fact that methodologies vary so much among
18 the states that it's often necessary for both the EPA
19 regional office and for the national staff to be involved
20 because of --

21 QUESTION: But -- but, Mr. Wallace, you say it's
22 not part of the statute, but it is a part of the statute
23 as construed by several courts of appeals, which normally
24 creates some kind of a duty to comply.

25 MR. WALLACE: Well, we're -- we're doing the

1 best we can, but we -- we --

2 QUESTION: No, you're not. You're not even
3 trying to do it within four months.

4 MR. WALLACE: Well, we --

5 QUESTION: You're not even trying. Partly
6 because you know it can't be done, but -- but --

7 (Laughter.)

8 MR. WALLACE: We're -- the --

9 QUESTION: Well, maybe it's very --

10 MR. WALLACE: There are other obligations under
11 the Act, substantive obligations in the way we're to
12 handle these proposed revisions, which have to be
13 reconciled with whatever time limit the courts might think
14 is the statutory guide to regulatory action.

15 I -- I -- I will say that this question is
16 getting explicit consideration in the current amendments,
17 which are still in an early stage. But the Senate
18 committee, the Senate Environment Committee, has reported
19 out a bill which is now on the floor of the Senate. That
20 bill is S. 1630, and for the first time it explicitly does
21 have a time limitation for EPA's consideration of proposed
22 revisions, and it's 12 months --

23 QUESTION: Well --

24 MR. WALLACE: -- in -- in the bill as it now
25 exists. And there is another provision --

1 QUESTION: Is this bill drafted by the same guy
2 that put in the required four-month period?

3 (Laughter.)

4 MR. WALLACE: And there is another provision
5 that relates to the issue of this case, and I will read
6 that sentence to the Court. It is -- says,
7 "Notwithstanding any other provision of this Act, each
8 provision of such implementation plan and each permanent
9 effect under such plan shall remain in effect and shall be
10 enforced under this Act until a revision of such plan is
11 approved by the administrator or a plan as promulgated by
12 the administrator under Subsection (f)," where he has to
13 promulgate a Federal plan.

14 So, in addition to the 12-month requirement, the
15 bill, as it's now pending, repudiates the American
16 Cyanamid rule even in the context of a 12-month benchmark.

17 QUESTION: By way of anticipatory subsequent
18 legislative history?

19 MR. WALLACE: Well, I -- I'm --

20 (Laughter.)

21 MR. WALLACE: -- just pointing out that Congress
22 is dealing with -- with the question explicitly now, and
23 it perhaps corroborates our point that our interpretation
24 of the present Act is not so implausible that the courts
25 would be justified in reading into it two provisions that

1 are not there, one a four-month requirement and the other
2 an enforcement bar.

3 Since neither the legislative history nor the
4 text of the Act would support the erection of those
5 requirements by the courts, the only possible
6 justification would be that the Act would be so
7 implausible without them that the courts have to feel
8 themselves under a duty to impose them.

9 QUESTION: Maybe, again, Mr. Wallace, we're
10 dealing with very bad draftsmanship in Congress. It's not
11 the first time.

12 MR. WALLACE: Not -- not the first time.
13 Congress has many responsibilities, just as the EPA does
14 and others in the government do.

15 Now, I want to point out in the very limited
16 time that I have a very important point made in the
17 Massachusetts brief, if I may, which is footnote 13 on
18 page 23 of that brief, which is the most cogent point that
19 has been made in response to the attempt to distinguish
20 this Court's decision in Brock against Pierce County on
21 the ground that here the enforcement authority would be
22 barred only temporarily and can be regained after EPA
23 takes action on the proposed revision.

24 And Massachusetts and the sister states point
25 out very properly that the Act applies to a large variety

1 of problems, including some that endanger human health,
2 such as the carbon-monoxide problem, where hourly
3 measurements have been required, that temporary
4 suspensions would be -- of enforcement authority would be
5 an extreme misfit in this Act dealing with very serious
6 problems of public health.

7 QUESTION: Yeah, but they're only temporary
8 enforcement after the state has said, we think it's
9 perfectly safe to do it.

10 MR. WALLACE: That is --

11 QUESTION: So then emergency you're talking is
12 rather unlikely to arise.

13 MR. WALLACE: Well, still and all, we're talking
14 about interpreting an act that applies to a variety of
15 emissions, some of which are much more serious in their
16 short-term effects than others, and mistakes are made in
17 these submissions, and mistakes that can have serious
18 consequences.

19 The citizens' suit provision is another one
20 that --

21 QUESTION: I think you've answered the question,
22 Mr. Wallace.

23 Mr. Garrett, do you have rebuttal?

24 REBUTTAL ARGUMENT OF THEODORE L. GARRETT

25 ON BEHALF OF THE PETITIONER

1 MR. GARRETT: Just a few brief points, Your
2 Honor.

3 In response to the last point concerning
4 emergencies, it should be understood that our position is
5 that EPA does have authority under a separate provision of
6 the statute to deal with those, and we would not claim a
7 bar to deal with those kinds of emergencies. Our request
8 for a bar only deals with state implementation plans.

9 With respect to the commingling point and Mr.
10 Wallace's comments about the government policy with
11 respect to the negotiations of a DCO, the negotiations
12 were simply that the government wanted GM to pay penalties
13 as a price for getting the SIP revision. They weren't
14 asking GM to make any other improvements or do anything
15 else. They had just changed their policies on whether or
16 not SIP revisions could be allowed for these purposes as a
17 revision or whether a DCO with penalties was the
18 appropriate remedy.

19 And I would urge the Court to look at the
20 Hannish memo -- it's a May 1986 memorandum by an EPA
21 official that we've lodged with the Court. It
22 demonstrates the moving target problem in our brief.

23 Mr. Wallace said that the Cyanamid remedy, or
24 the temporary bar on enforcement is an extreme remedy.
25 Well, we would submit to the Court that the mandamus

1 remedy, or the First Circuit's remedies, are much more
2 intrusive and extreme than the remedy that we propose.

3 CHIEF JUSTICE REHNQUIST: Thank you, Mr.
4 Garrett.

5 The case is submitted.

6 (Whereupon, at 11:03 a.m., the case in the
7 above-entitled matter was submitted.)

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CERTIFICATION

Alderson Reporting Company, Inc., hereby certifies that the attached pages represents an accurate transcription of electronic sound recording of the oral argument before the Supreme Court of The United States in the Matter of:

No. 89-369 - GENERAL MOTORS CORPORATION, Petitioner V. UNITED STATES

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