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**THE EMPLOYER TRIP REDUCTION PROGRAM:
DRIVING RESTRICTIONS ARRIVE IN PENNSYLVANIA
VIA THE CLEAN AIR ACT**

I. Introduction

A new acronym, ETRP (Employer Trip Reduction Program), is currently making its way into the environmental law lexicon.¹ ETRP, mandated by the Clean Air Act Amendments of 1990 (1990 Amendments),² essentially requires large employers (100 or more employees) in certain urban areas to reduce the number of automobiles commuting to their worksites.³ Two aspects of ETRP distinguish it from traditional air pollution regulation: (1) The law restricts automobile use;⁴ and (2) ETRP holds employers responsible for pollution generated by their employees en route to work.⁵ The controversial program will soon affect the lives of an estimated twelve to thirteen million American commuters in eleven states, including Pennsylvania.⁶ Although ETRP is designed to modify the commuting behavior of employees, their employers bear the burden of assessing, and then monitoring, employee commuting.⁷ These strong measures arise in response to evidence⁸ that America's most persistent air pollution problems result from automobile emissions. ETRP is a landmark program because

1. Editorial, *Relieving Congestion . . . Not*, N.J. L. J., December 6, 1993, at 16.

2. Clean Air Act Amendments of 1990, P. L. No. 10-549, 104 Stat. 2399 (codified at 42 U.S.C.A. §§ 7401-7671q (West Supp. 1993)).

3. David Andrew Price, *Newest Mandate—Everyone Into the Carpool*, WALL ST. J., Nov. 8, 1993, at A16. This article did not take a favorable view of the Employer Trip Reduction Program, which it characterized as pointlessly burdensome and a "divorce from economic rationality."

4. Traditionally, laws have regulated the car rather than discouraged its use. "From the law-conscious motorist's viewpoint, the Golden Age of Driving probably arrived in 1940, when the Pennsylvania Turnpike opened without a posted speed limit." Since then, "with the major exception of rationing laws that curbed driving in World War II, the auto seemed to be the undisputed king of the road, and the law its servant." Libby Morse, *Long, Colorful Arm of the Law*, CHI. TRIB., Sept. 19, 1993, at A9.

5. ETRP affects companies and organizations based on the size of their workforce rather than on the pollution generated directly by the entity's activities. As a result, large brokerage houses, law firms, and other organizations traditionally unaffected by environmental laws must now concern themselves with the air pollution problem. Glenn L. Unterberger, *Commuting Regulated for Business, Law Firms; New Pa. Environmental Program Targets 100-Employee Companies*, THE LEGAL INTELLIGENCER, Jan. 11, 1994, at 9.

6. The other affected states are California, Connecticut, Delaware, Illinois, Indiana, Maryland, New Jersey, New York, Texas and Wisconsin. This article poses the question: "Isn't asking an American worker to give up that mind-clearing solo commute a little like asking a member of the National Rifle Association to voluntarily give up his assault weapon?" Barbara Presley Noble, *Getting Them There is Half the Job*, N.Y. TIMES, Nov. 21, 1993, at F25.

7. *Id.*

8. 136 CONG. REC. S3525, 3527 (daily ed. Mar. 29, 1990) (statement of Sen. Lieberman). "During this debate on the Clean Air Act, perhaps the clearest message to emerge is that motor vehicles are the principal source of the Nation's smog and carbon monoxide problem, contributing about fifty percent of the ozone problem and about ninety percent of the carbon monoxide problem." *Id.* The Senator went on to explain that emissions are increasing due to increased driving and increased congestion. *Id.*

it will force some of the country's drivers to reduce their solo driving in the interest of reducing ozone pollution, or smog.⁹

Limits on automobile pollution figure prominently in the 1990 Amendments,¹⁰ largely in response to extensive data showing that cars are the primary contributors to ozone and carbon monoxide pollution.¹¹ The 1990 Amendments focus primarily on attaining the national ambient air quality standards (NAAQS) for ambient ozone and ambient carbon monoxide.¹² ETRP, designed to reduce the number of automobiles used for commuting, applies only to the most polluted urban areas in the country.¹³

Section 182(d)(1)(B) (ETRP section),¹⁴ however, stands out from the other Amendments because it effectively restricts the actual *use* of automobiles in certain cities. The ETRP section is an attempt to remedy two inextricably linked problems, traffic and smog. Ambient ozone is the primary ingredient of smog, and automobiles are the most significant contributor to ambient ozone.¹⁵ Traditionally, the Clean Air Act went after industrial emissions and required

9. Ozone, the chief ingredient of smog, is produced when hydrocarbons from cars (and other sources) and nitrogen oxides react in the presence of sunlight. It is important to distinguish ground-level ozone, a pollutant, from stratospheric ozone, which protects the earth from ultraviolet rays. STEVE NADIS & JAMES J. MACKENZIE, *CAR TROUBLE* 22 (1993).

10. Michael Herz, *Judicial Textualism Meets Micromanagement; A Potential Collision in Clean Air Act Interpretation*, 16 *HARV. ENVTL. L. REV.* 175, 187 (1991). Herz's article focuses on the conflict between "plain meaning" statutory construction and the high level of detail in environmental statutes; he uses the ETRP section as an example of this dilemma.

11. 36 *CONG. REC.* S3525, *supra* note 8, at 3527.

12. Herz, *supra* note 10, at 187. The NAAQS for ambient ozone is .12 ppm (parts per million). 40 C.F.R. § 50.9 (1990). Originally set at .08 ppm, the ozone standard was weakened by increasing the NAAQS from .08 ppm to .12 ppm. The EPA justified this change by citing research showing that ozone at levels of .08 ppm was not harmful to the public. But more recent research seems to support a policy of reverting to the more stringent standard of .08 ppm. JACK FISHMAN & ROBERT KALISH, *GLOBAL ALERT* 234 (1990).

13. Price, *supra* note 3. ETRP only applies in ozone areas classified as severe or extreme and in carbon monoxide areas classified as serious; these are the areas where the public health threat from ozone and carbon monoxide is the worst. This is not a comprehensive national program—it will apply in only the very worst areas. 136 *CONG. REC.* S3525, *supra* note 8, at 3528.

14. Clean Air Act Amendments of 1990, 42 U.S.C.A. § 7511 (d)(1)(B) (West Supp. 1993). Known as section 182(d)(1)(B), the ETRP provision reads as follows:

(B) Within 2 years after November 15, 1990, the State shall submit a revision requiring employers in such area to implement programs to reduce work-related vehicle trips and miles traveled by employees. Such revision shall be developed in accordance with guidance issued by the Administrator pursuant to section 7408(f) of this title and shall, at a minimum, require that each employer of 100 or more persons in such area increase average passenger occupancy per vehicle in commuting trips between home and the workplace during peak travel periods by not less than 25 percent above the average vehicle occupancy for all such trips in the area at the time the revision is submitted. The guidance of the Administrator may specify average vehicle occupancy rates which vary for locations within a nonattainment area (suburban, center city, business district) or among nonattainment areas reflecting existing occupancy rates and the availability of high occupancy modes. The revision shall provide that each employer subject to a vehicle occupancy requirement shall submit a compliance plan within 2 years after the date the revision is submitted which shall convincingly demonstrate compliance with the requirements of this paragraph not later than 4 years after such date.

Id.

15. Herz, *supra* note 10, at 187. At a minimum, automobiles account for fifty percent of America's smog-forming hydrocarbons. 136 *CONG. REC.* S3748, 3811 (daily ed. Apr. 3, 1990) (statement of Sen. Kerry).

cleaner tailpipe standards;¹⁶ ETRP marks only the second time Congress has tried to alter the driving habits of individuals in the name of cleaner air.¹⁷ The ETRP acknowledges that the traditional approaches to automobile pollution, such as cleaner fuels and more efficient vehicles,¹⁸ cannot address the environmental dilemma of more cars travelling further in increasingly congested conditions.¹⁹ By extending environmental regulation well beyond the more traditionally regulated manufacturing and chemical industries,²⁰ Congress has made an important conceptual breakthrough; automobile commuting is now an environmental concern.

This Comment, before describing ETRP's likely effects on Pennsylvania's employers and employees, will examine the factors that led Congress to restrict automobile commuting, a previously unregulated activity.²¹ Although public awareness of the impending restrictions is still minimal,²² some of the affected employers have resisted Pennsylvania's new rule;²³ as it learns more, the public is likely to follow suit. This Comment, however, will argue that ETRP is a sound method for reducing America's unsustainable reliance on automobiles.²⁴ Despite smog-filled cities and congested roadways, American citizens unfortunately show no signs of changing their driving habits without governmental intervention. Although the trip reduction program infringes on a perceived "right" to drive, sensible citizens may eventually commend the federal government's decision to place limits on the ever-increasing use of automobiles. Since that ETRP appears to be here to stay,²⁵ commuters and their employers should now prepare themselves for the program's requirements.

16. STEPHEN BREYER, *REGULATION AND ITS REFORM* 263 (1982). However, pollution testing suggests that new cars complying with strict tailpipe standards fall out of compliance as the cars get older.

17. The Transportation Control Plans in the 1970 Clean Air Act were an unsuccessful attempt to limit vehicle use. For a discussion of the failed Transportation Control Plans, see generally John Quarles, Comment, *The Transportation Control Plans—Federal Regulation's Collision with Reality*, 2 HARV. ENVTL. L. REV. 241 (1977).

18. BREYER, *supra* note 16, at 263. In the past, the Congress has elected to simply keep hitting Detroit with ever-greater tailpipe standards at even greater costs. It has ducked the issues of vehicle use. 136 CONG. REC. S3525, *supra* note 8.

19. Johnine J. Brown, *Reducing Your Employees' Travel is Now Up to You—Carpooling or Jail, Your Choice*, CORPORATE LEGAL TIMES, Oct. 1993, at 14.

20. Unterberger, *supra* note 5.

21. See *supra* note 18 and accompanying text.

22. "ETR[P] has had a fair amount of publicity, but there hasn't been much public outrage. But the astonishment of the worker deprived of the joy of commuting by car might get more press." Brown, *supra* note 19.

23. See *infra* p. 16 and note 119.

24. Americans, only five percent of the world's population, own 35 percent of the world's cars and drive as many miles as the rest of the world combined. 136 CONG. REC. S3525, *supra* note 8, at 3527.

25. "No initiatives are emerging to amend these national legislative requirements, and any efforts to derail Pennsylvania's ETR[P] program have thus far proven unsuccessful." Unterberger, *supra* note 5.

II. Employer Trip Reduction Requirements within the Clean Air Act

The 1990 Amendments require severe and extreme ozone nonattainment areas and serious carbon monoxide nonattainment areas²⁶ to establish programs aimed at reducing commute trips to the worksites of large employers.²⁷ A nonattainment area is a geographical region that does not meet the established standard for a “criteria” pollutant.²⁸ This is one of many specific provisions designed to achieve the central goal of the Act—nationwide compliance with the NAAQS,²⁹ which exist for ozone, carbon monoxide (CO), small particulate matter (PM-10), nitrogen oxides (NO_x), sulfur dioxide, and lead.³⁰ The 1990 Amendments take an aggressive approach to ozone and carbon monoxide, the two most “intractable” of the criteria pollutants.³¹ For example, as of 1988, an estimated 112 million Americans lived in areas that exceeded the federal standard for ambient ozone attainment.³² For these two pollutants, areas are classified according to their degree of nonattainment, and the degree of each area’s nonattainment level determines which programs are required.³³ ETRP applies only to areas designated as either severe or extreme for ozone nonattainment or as serious for carbon monoxide nonattainment.³⁴

26. 42 U.S.C.A. §§ 7511(a)(1), 7512(a)(1) (West Supp. 1993) (dealing with ozone and carbon monoxide nonattainment areas, respectively).

27. See *supra* note 14 and accompanying text.

28. A nonattainment area is defined as “any area that does not meet (or that contributes to ambient air quality in a nearby area that does not meet) the national primary or secondary ambient air quality standard for the pollutant.” 42 U.S.C.A. § 7407(d)(1)(A)(i) (West Supp. 1993).

29. 42 U.S.C. § 7409 (1988).

30. 40 C.F.R. Part 50 (1990).

31. Herz, *supra* note 10, at 187.

32. The Honorable Henry A. Waxman et al., *Roadmap to Title I of The Clean Air Act Amendments of 1990: Bringing Blue Skies Back to America’s Cities*, 21 ENVTL. L. 1843, 1849 (1991).

33. The graduated control program for ozone nonattainment areas reflects the basic philosophy adopted in the 1990 Amendments; areas that have failed to attain the standards should be allotted more time to do so, but should also be required to impose a more stringent regime of new control requirements. *Id.* at 1860.

The section describing the graduated ozone nonattainment scheme reads as follows:

(1) Each area designated nonattainment for ozone pursuant to section 7407(d) of this title shall be classified at the time of such designation, under table 1, by operation of law, as a Marginal Area, a Moderate Area, a Serious Area, a Severe Area, or an Extreme Area based on the design value for the area. The design value shall be calculated according to the interpretation methodology issued by the Administrator most recently before November 15, 1990. For each area classified under this subsection, the primary standard attainment date for ozone shall be as expeditiously as practicable but not later than the date provided in table 1.

42 U.S.C. § 7511(a)(1) (West Supp. 1993)

According to table 1, a “severe” ozone nonattainment area has design value between 0.180 and 0.280 parts per million (ppm). An area is “extreme” if its design value exceeds .280 ppm. *Id.* Only the Los Angeles-Anaheim-Riverside region is categorized as extreme. Howard Latin, *Regulatory Failure, Administrative Incentives, and the New Clean Air Act*, 21 ENVTL. L. 1647, 1685 (1991).

34. U.S. EPA, OFFICE OF AIR AND RADIATION, EMPLOYEE COMMUTE OPTIONS GUIDANCE (ECO Guidance) 5 (Dec. 1992).

Affected states must submit a state implementation plan (SIP) revision³⁵ requiring nonattainment-area employers with 100 or more employees to devise trip reduction programs capable of meeting the requirements of the federal ETRP section.³⁶ At a minimum, the SIP revision shall require that each employer increase its average passenger occupancy per vehicle (APO)³⁷ in commuting trips between home and the workplace during peak travel periods by at least twenty-five percent above the average vehicle occupancy (AVO)³⁸ for all such trips in the nonattainment area at the time the SIP revision is submitted.³⁹ States that fail to submit their SIPs on schedule are subject to sanctions; the federal government may withhold highway funds, increase the region's offset ratio for new industry, or both.⁴⁰

Pursuant to Clean Air Act section 7408(f), the EPA issued the Employee Commute Options Guidance (ECO Guidance), a document designed to assist the states with their ETRP SIPs.⁴¹ In addition to spelling out the basic requirements of section 182(d)(1)(B), the ECO Guidance grants states and employers great flexibility in achieving the ETRP goals.⁴² For example, the ECO Guidance instructs the state to determine the average vehicle occupancy (AVO) for the entire nonattainment region, but suggests several different methods by which the state may arrive at the AVO estimate.⁴³ Drawing on the experiences of successful trip reduction programs that pre-date the federal ETRP,⁴⁴ the ECO Guidance suggests numerous ways for reducing the number of cars arriving at a worksite: employers may offer their employees economic incentives, vanpools, flexible hours, compressed work weeks, and

35. A SIP is the plan that a state is authorized and required to submit under section 110 of the Clean Air Act to provide for the attainment of the national ambient air quality standards. 24 Pa. Bull. 693, 697 (Jan. 29, 1994) (to be codified at 25 PA. CODE § 121.1).

36. Section 182(d)(1)(B), *supra* note 14.

37. The APO is the number of employees reporting to the worksite during the peak travel periods (6:00 a.m. through 10:00 a.m.) inclusive Monday through Friday divided by the sum of the number of vehicles in which employees report during those peak travel period plus or minus any APO credits. ECO GUIDANCE, *supra* note 34, at 12.

38. The main purpose of the AVO figure is to account for *all* commuters in the area, including those who work for employers with *less* than 100 employees. ECO GUIDANCE, *supra* note 34, at 11. The AVO can be thought of as a "baseline" in the affected area for ridership on all such trips. 136 CONG. REC. S3525, *supra* note 8, at 3528.

39. The SIP needs to include the following:

(1) the AVO for the nonattainment area or for each zone if the area is divided into zones, (2) the target APO which must be no less than 25% above the AVO(s), (3) a process for compliance demonstration, and (4) enforcement procedures to ensure submission and implementation of compliance plans by subject employers. ECO GUIDANCE, *supra* note 34, at 10.

40. 24 Pa. Bull. 693, *supra* note 35. The offset ratio determines how much existing pollution must be eliminated before any new emissions are allowed in a nonattainment area. Latin, *supra* note 33, at 1685.

41. See generally ECO GUIDANCE, *supra* note 34.

42. *Id.* at 24.

43. *Id.* at 10. The state may calculate the AVO with a telephone survey, employer administered survey, and/or available census data.

44. South Coast Air Quality Mgt. Dist., Regulation XV (amended May 17, 1990). Much of ETRP is modeled on this Los Angeles area regulation.

telecommuting, among other techniques.⁴⁵ Affected states may incorporate into their SIPs those measures best suited to their respective nonattainment areas.

The APO figure, which many employers must soon seek to increase, is to be calculated as follows:

$$\text{APO} = \frac{\# \text{ employees reporting to worksite during peak period}}{\# \text{ vehicles in which employees report } \pm \text{ APO credits}}^{46}$$

Thus, an employer whose 150 employees are found to have arrived at work in a total of 100 cars during the surveyed period⁴⁷ would have an APO of 1.5. If the employer needs to achieve an APO of 2.0, it may either follow the suggestions in its state's SIP or design its own methods of reaching the figure.⁴⁸

While providing flexibility for states and employers, the ECO Guidance emphasizes cost efficiency: "It is very important that State and local jurisdictions design a system that achieves local goals in the lowest cost manner."⁴⁹ Given the structure of ETRP, the EPA's emphasis on low cost is designed to assist employers, who ultimately bear the burden of paying for the trip reduction measures.⁵⁰

45. ECO GUIDANCE, *supra* note 34, at 23.

The ECO Guidance provides the states with the following options:

- (1) Offer cash incentives.
- (2) "Cashing out" parking — the employer provides a cash allowance to an employee equivalent to the parking subsidy that the employer would otherwise pay to provide the employee with a parking space.
- (3) Institute compressed work weeks.
- (4) Charge those who drive alone for parking.
- (5) Sponsor and/or subsidize carpools and vanpools.
- (6) Subsidize use of public transit.
- (7) Provide comprehensive rideshare matching service.
- (8) Subsidize mid-day shuttles to local shopping areas.
- (9) Provide company-owned vehicles for ridesharing.
- (10) Offer preferential or subsidized parking for carpools and vanpools.
- (11) Provide a guaranteed ride home for employees who work late.
- (12) Improve facilities to promote bicycle use.
- (13) Promote establishment of on-site amenities.
- (14) Offer telecommuting and work-at-home options.

46. One example of an APO credit is a low emission vehicle (LEV), to which the state could assign a value of less than one vehicle for purposes of determining the APO figure, 18.

47. See *infra* note 87 and accompanying text.

48. Apple Computer has offered its San Francisco Bay-Area workers a fleet of company bicycles, free shuttle buses and electronic data base of rideshare offers. Amgen Inc. advances money to its Southern California employees for bicycle purchases and pays them \$25 per month to ride to work. J. W. Waks and C. R. Brewster, *Clean Air Requires Commuting Options*, NAT'L. L. J., Oct 4, 1993.

49. ECO GUIDANCE, *supra* note 34, at 15.

50. The total cost for employers nationwide is estimated at \$1.2 - \$1.4 billion per year. *Id.* app. at 4.

III. The Commuting/Smog Nexus

The ECO Guidance provides a succinct justification for the new limits on driving: "It is widely accepted that shortly after the year 2000, the increased emissions caused by more vehicles being driven more miles under more congested conditions will outweigh the fact that each new vehicle pollutes less, resulting in an increase in emissions from mobile sources."⁵¹ Even now, the increase in drivers and the increase in the number of miles travelled offset a large part of the emissions reductions achieved through the production and sale of vehicles that operate more cleanly.⁵² Not surprisingly, all of this driving is fouling the air, and over half of U.S. citizens now live in areas where health standards for ozone are not being met.⁵³

In fact, some experts argue that ozone pollution is the greatest environmental threat to human health, even when compared to problems such as acid rain, toxic waste, and asbestos.⁵⁴ Persons exposed to ozone pollution suffer eye irritation, coughing and chest discomfort, headaches, upper respiratory illness, increased asthma attacks, and reduced pulmonary function.⁵⁵ Those especially vulnerable to ozone pollution include 31 million children, 19 million elderly, 6 million asthmatics, and 7.5 million individuals with chronic lung disease.⁵⁶ An alarming study in Los Angeles, the worst city for ozone pollution, revealed that severe lung lesions and chronic lung disease were occurring in one-fourth of the 15 to 25-year-olds.⁵⁷ The youths in the study had no particular vulnerability to lung ailments; rather, they were simply active young people in Los Angeles who damaged their lungs by breathing polluted air.⁵⁸

For many communities, industrial pollution represents a fraction of the total air pollution problem.⁵⁹ Rather, it is excessive personal automobile use that creates most of the air pollution.⁶⁰ Unfortunately, many drivers have no choice but to drive a car to work.⁶¹ For example, someone living in a suburb and working in another suburb typically depends on a car for the commute due to either inconvenient or nonexistent public transportation. Public transportation, which carried the majority of Americans to work at the end of World War II,

51. *Id.* at 1.

52. *Id.*

53. 136 CONG. REC. S16895, 16998 (daily ed. Oct. 27, 1990) (statement of Sen. Kerry).

54. 136 CONG. REC. S2826, 2854 (daily ed. Mar. 21, 1990) (statement of Sen. Lieberman).

55. NADIS & MACKENZIE, *supra* note 9, at 30.

56. 136 CONG. REC. S2826, 2832 (daily ed. Mar. 21, 1990) (statement of Sen. Kerry).

57. 136 CONG. REC. S2826, *supra* note 54.

58. *Id.*

59. Waxman, *supra* note 32, at 1849.

60. *Id.*

61. "The main reason that most workers commute is financial necessity. Seeking affordable housing, many people move way out into the surrounding areas of cities." *Stress and Absenteeism; The Hidden Costs of Commuting*, Business Wire, Feb. 4, 1992, available in LEXIS, Nexis Library.

now transports only 4.6 percent of all commuters.⁶² Due to government policies and resulting demographic shifts,⁶³ suburb-to-suburb drives now constitute an estimated forty percent of all commutes.⁶⁴ Ironically, half of all trips to work are five miles or less, a manageable bicycling distance in mild weather.⁶⁵ The following statistic, however, may be the strongest justification for ETRP: in 1989 there were 96.5 million workers in the United States and 62.3 million (65%) commuted to work alone.⁶⁶

The statistics, therefore, demonstrate the need for improvement in the American commuting system. Opponents of ETRP, however, disagree with the decision to place the trip reduction burden on employers.⁶⁷ Congress' intent to place the ETRP burden on employers has been summarized as follows:

1. Commuting to and from work accounts for about one third of the total vehicle miles traveled by individuals.
2. Heavy commuter traffic contributes greatly to regional ozone pollution. Vehicle emissions from commuter travel are disproportionately high due to stop and go traffic typical during "rush hour" travel.⁶⁸ A ten mile trip at an average speed of 20 m.p.h. results in emissions 250% greater than a ten mile trip at 55 m.p.h.
3. Commuter traffic has identifiable peak periods, during which the same population is traveling to the same places. This makes employers and their employees the obvious program participants.
4. Almost all work-related vehicle trips involve "cold engine starts," which are associated with much higher emissions of organic compounds than trips begun with a warm engine.
5. Commuter trips statistically have a lower vehicle occupancy than other trips.⁶⁹

62. NADIS & MACKENZIE, *supra* note 9, at 10.

63. Eighty-six percent of U.S. population growth since 1950 has occurred in suburban regions, and two thirds of the jobs created between 1960 and 1980 were in suburbia—a trend that has since accelerated. *Id.* at 35. The flight to the suburbs has been aided by federal highway and sewer construction expenditures, the tax advantages of home ownership, and banking policies. Today, when most urban areas are in violation of legal requirements for automobile generated pollutants, the federal government still allows employer-paid parking as a tax-free fringe benefit, but has until recently only allowed up to fifteen dollars in tax-free monthly transportation subsidies and taxes the entire subsidy if it is above fifteen dollars. This is only one small example of a complex financing system that subsidizes the choice to commute by automobile. Arnold W. Reitze, Jr., *A Century of Air Pollution Control Law: What's Worked; What's Failed; What Might Work*, 21 ENVTL. L. 1549, 1573 (1991).

64. NADIS & MACKENZIE, *supra* note 9, at 35.

65. *Id.* at 10.

66. COUNCIL ON ENVTL. QUALITY, FOURTEENTH ANNUAL REPORT OF THE COUNCIL ON ENVIRONMENTAL QUALITY 302 (1983).

67. The basic philosophical grumble with ETRP is government's decision to use employers as a "conduit for social change." Noble, *supra* note 6.

68. Bumper-to-bumper driving exacerbates pollution. Carbon monoxide and hydrocarbon emissions are highest at low speeds, especially those below 40 miles per hour. Emissions also go up during acceleration, deceleration, and idling—the basic conditions of stop-and-go driving—by roughly a factor of three. NADIS & MACKENZIE, *supra* note 9, at 10.

69. PA. DER, PENNSYLVANIA STATUS REPORT: PROGRESS IN IMPLEMENTING THE CLEAN AIR ACT REQUIREMENTS FOR GROUND LEVEL OZONE 17 (1992).

The magnitude of both the commuting problem and the recent federal ETRP requirements have paved the way for major sacrifices by affected employers and their employees.

IV. Pennsylvania's Implementation of the Federal Mandate

The Pennsylvania ETRP SIP⁷⁰ affects only the Philadelphia Consolidated Metropolitan Statistical Area (CMSA), which consists of Bucks, Chester, Delaware, Montgomery and Philadelphia counties.⁷¹ The CMSA is Pennsylvania's only severe nonattainment area for ozone.⁷² In addition to affecting 2,500 businesses and one million workers, ETRP could cost employers between 75 and 100 million dollars in exchange for a projected two percent reduction in ozone pollution.⁷³

The Pennsylvania regulation attempts to balance the concerns of a wide variety of employers with the basic requirements of Clean Air Act section 182(d)(1)(B).⁷⁴ In keeping with the goals of the Amendments, the Pennsylvania measures are designed to increase vehicle occupancy and mass transit.⁷⁵ Pennsylvania, however, failed to submit its SIP by the November 15, 1992 deadline,⁷⁶ which raises at least the possibility of federal sanctions in the form of lost federal highway funds or two to one offsets for the permitting of new industrial sources.⁷⁷

The Pennsylvania Department of Environmental Resources (DER) divided the CMSA into four APO target regions,⁷⁸ as allowed by the ECO Guidance.⁷⁹ The AVO for the entire

70. See *supra* note 35.

71. 24 Pa. Bull. 693, *supra* note 35.

72. *Id.*

73. *Clean Air: EPA Pushes Commuter Regs on Philly*, Greenwire, Oct. 29, 1993, available in LEXIS, Nexis Library.

74. *Employer Trip Reduction Regulations Receive Final Approval*, PR Newswire, Nov. 17, 1993, available in LEXIS, Nexis Library.

75. *Id.*

76. See 42 U.S.C.A. § 7511a(d)(1)(B), *supra* note 14.

77. The EPA is required to impose these mandatory sanctions 18 months after November 15, 1992. 24 Pa. Bull. 693, *supra* note 35.

78. Target area is an "area within the severe nonattainment area in which employers shall achieve specific increases in APO." 24 Pa. Bull. 693, *supra* note 35, at 697 (to be codified at 25 Pa. CODE § 121.1). The APO for the target areas are as follows:

- (1) 3.00 passengers per vehicle for target area 1;
- (2) 1.75 passengers per vehicle for target area 2;
- (3) 1.58 passengers per vehicle for target area 3; and
- (4) 1.50 passengers per vehicle for target area 4.

Id. (to be codified at 25 Pa. Code § 126.202).

In general terms, target area 1 consists of Center City Philadelphia. Target area 2 includes most areas of Philadelphia except for the far Northeast, Northwest and Southwest parts of the city. The remainder of the city, plus closer-in portions of Bucks, Montgomery and most of Delaware counties comprise target area 3. Target area 4 is the remainder of the five county area. Unterberger, *supra* note 5.

79. ECO GUIDANCE, *supra* note 34, at 15.

region is officially 1.37 passengers per vehicle.⁸⁰ Suburban areas, because of their greater reliance on automobile commuting, are less likely to reach high APO rates than nearby downtown areas and, therefore, have been given easier targets.⁸¹ The DER also opted for a staggered compliance schedule, whereby employers with over 1000 employees must implement their ETRP measures sooner than smaller affected employers.⁸² As a result, smaller employers may be able to benefit from trip reduction efforts made by the major employers.⁸³

Affected employers⁸⁴ are now grappling with the complex requirements of the Pennsylvania ETRP.⁸⁵ First, employers must hire a transportation coordinator for each worksite.⁸⁶ Under the regulation, each employer shall conduct an annual evaluation of its employees commuting methods.⁸⁷ Employees who fail to respond to the company survey will be treated as solo drivers;⁸⁸ this provision gives employers an incentive to ensure employee participation in the survey. The Pennsylvania SIP regulation allows considerable flexibility in the APO calculation.

For example, if a vehicle carries one employee from employer A and three employees from employer B, each employee would arrive in one-fourth of a vehicle. Employees who walk, take

80. The Delaware Valley Regional Planning Commission (DVRPC) assisted the DER in developing the AVO for the Philadelphia CMSA by conducting a telephone survey. 24 Pa. Bull. 693, *supra* note 35.

81. *Id.*

82. Mark A. Tarasiewicz, *Employers Must be Aware of Clean Air Amendments*, THE LEGAL INTELLIGENCER, June 4, 1993, at 1. Employers with 1000 or more employees must submit their plans by November 15, 1994, and employers with fewer than 1,000 employees must submit plans by November 15, 1995. 24 Pa. Bull. 693, *supra* note 34, at 699 (to be codified at 25 PA. CODE § 126.204). Employers with 1000 or more employees must achieve 50% of the APO increases by November 15, 1995; 80% by November 15, 1996; and 100% by November 15, 1997. Smaller employers must achieve 50% of the APO increases by November 15, 1996, and 100% by November 15, 1997. *Id.*

83. These efforts could take the form of infrastructure expenditures, such as bus routes. 24 Pa. Bull. 693, *supra* note 35, at 695.

84. For the purposes of ETRP, an "employer" is:

a person, firm, business, educational institution, government department or agency, nonprofit agency or corporation or another entity which employs 100 or more employees at a single worksite within the Philadelphia CMSA and which has 33 or more employe[e]s reporting to the worksite during the peak travel period. Several subsidiaries or units that occupy the same worksite and report to one common governing body or governing entity are considered to be one employer.

24 Pa. Bull. 693, *supra* note 35, at 696 (to be codified at 25 PA. CODE § 121.1).

85. There is considerable confusion about the ETRP requirements. Susan Q. Stranahan, *It's the Rush-Hour Compute*, PHILADELPHIA INQUIRER, May 9, 1993, at A1.

86. A transportation coordinator is an "hourly or salaried employee designated by an employer with authority for and responsibility to develop and implement the employer trip reduction program." 24 Pa. Bull. 693, *supra* note 35, at 697 (to be codified at 25 PA. CODE § 121.1).

87. The annual employer survey shall be conducted during the months of April to September. The survey shall cover 5 consecutive days, Monday through Friday inclusive, representing a typical week for the employer's business.

The survey may not include public holidays during or bordering the weekend on either side of the selected week nor include special ride share promotions.

Id. at 698 (to be codified at 25 PA. CODE § 126.203(b)(3)).

The April to September period is the time of the year when the ozone problem is most severe and therefore provides the best indication of the progress being made to address the ozone problem. *Id.* at 695.

88. *Id.* at 698 (to be codified at 25 PA. CODE § 126.203(b)(2)).

public transportation, bicycle, or work at home are assigned a zero vehicle count for that day.⁸⁹ Parents are able to include children dropped off en route as passengers for that day.⁹⁰ Low emission vehicles (LEVs) are not counted as a whole vehicle so as to reflect their lower contribution to pollution. The regulation, however, also guards against abuse; if an employee is dropped off at work by a vehicle that lacks any worksite destination, the employee is treated as a solo driver.⁹¹

Regulating the mammoth system of private transportation is not an easy task. Understandably, the federal ETRP requirements do not address every example of commute-related inefficiency. Take, for example, the employee who drives a short distance to and from a train station each day. By taking the train to work, the employee technically arrives at work in zero vehicles for the purposes of ETRP. Yet the cold starts to and from the station may produce a substantial percentage of the emissions that would have occurred had the employee driven all the way to work.⁹² At least for the moment, though, ETRP does not encompass the "commute" to a train or bus station.

By November 15, 1994, employers with 1000 or more employees must submit plans to the DER that demonstrate the ability to meet the target APO. Employers with fewer than 1,000 employees at a worksite have until November 15, 1995 to submit their plans.⁹³ The plans must include, most notably: (1) the annual APO survey; (2) a description of the available commuting options (including public transportation); (3) a description of the incentives and subsidies the employer plans to provide for its employees; and (4) a description of the employer's internal enforcement procedures.⁹⁴ As a result of the ETRP requirements, the affected employers bear a heavy logistical and financial burden. Furthermore, because the ETRP was adopted under the authority of the state's Air Pollution Control Act,⁹⁵ companies that fail to comply⁹⁶ may be subject to civil penalties of up to \$25,000 per day.

89. "For example, Bell Atlantic has given 1,600 of its managers the option of working at home up to three days a week as part of its employer trip reduction program." *Commuting Regs: Philly Suburbs May Suffer*, Greenwire, Nov. 13, 1992, available in LEXIS, Nexis Library. Work-at-home options would include telecommuters. Current developments in telecommunications are likely to increase the possibilities for working from home. The proliferation of personal computers, modems, FAX machines, voice mail, video conferences, and other communications systems will soon enable millions of Americans to 'commute' to work electronically, without adding more cars to the roadways. NADIS & MACKENZIE, *supra* note 9, at 116.

90. 24 Pa. Bull. 693, *supra* note 34, at 698 (to be codified at 25 PA. CODE § 126.203(d)(2)(iv)).

91. *Id.* (to be codified at 25 PA. CODE § 126.203(c)(4)).

92. Because the automobile "cold start" produces the majority of the pollution in a short drive, a one-half mile trip to the train station can cause almost as much pollution as a ten-mile commute to the office. Michael Bernick, *Can't Walk to Work? Then Walk to the Train*, L.A. TIMES, May 4, 1993, at B7.

93. 24 Pa. Bull. 693, *supra* note 35, at 699.

94. *Id.*

95. 1959 Pa. Laws 2119, No. 787.

96. It has been suggested that "DER may interpret the ETR regulations to be oriented towards requiring good faith measures toward achieving APO target rates, rather than using actual achievement of those rates as the enforceable measure of compliance." Unterberger, *supra* note 5.

V. Practical Effects of ETRP on Employers and Employees

Philadelphia-area employers will want to look carefully at the ETRP requirements when making business decisions.⁹⁷ The ETRP requirements may exert a major influence on decisions to either locate a new worksite in the affected area or to increase the number of employees at a current worksite.⁹⁸ A new company would be wise to locate in areas accessible by public transportation.⁹⁹ Larger companies may even try to change existing public transportation so as to better serve their immediate areas.¹⁰⁰

Employees of affected companies will have to change their daily routines. They may have to share a ride with an unpleasant colleague, agree to arrive at work during non-peak hours,¹⁰¹ or even begin bicycling to work. These changes represent significant sacrifices for people who have grown accustomed to the complete flexibility of automotive commuting. On the other hand, many people view traffic and commuting as a tremendous source of stress¹⁰² and may actually welcome a mandatory change in their commuting patterns.¹⁰³ At the very least, employees who participate in ETRP will save money by driving their automobiles fewer miles.¹⁰⁴

The employers, however, will act as front-line policemen in attempting to control employees' driving habits.¹⁰⁵ In addition to spending an estimated \$200 per employee per year, employers must also inquire into each employee's commuting habits;¹⁰⁶ issues of employee privacy will undoubtedly arise. Furthermore, the regulations may prompt suburban employers

97. *Id.*

98. *Id.*

99. *Id.*

100. *Id.*

101. ETRP only applies to the hours between 6:00 a.m. and 10:00 a.m. *See supra* note 37 and accompanying text.

102. NADIS & MACKENZIE, *supra* note 9, at 34. "Commuting employees suffer from a great deal of stress as a result of their daily trudge to work, and employers lose both money and productivity from absenteeism as a result." Another source of stress is the absence of leisure time, because commuting often requires large amounts of time. *Stress and Absenteeism: The Hidden Costs of Commuting*, Business Wire, Feb. 4, 1992, available in LEXIS, Nexis Library.

103. The transportation manager at Merck, a New Jersey company already working within the ETRP requirements, is surprised by the "overwhelmingly favorable response by employees to the program." An official at the New Jersey State Transportation Department went on to say: "It will create more flexibility in how people get to work, the number of hours they work and the way they work. Ultimately, it will become business as usual." *New Rules Nudging Companies to Reduce Employee Commuting*, N.Y. TIMES, Jan. 16, 1994, at A12.

104. The Automobile Club of Southern California estimates that the annual cost for driving 10,000 miles a year is \$5,927. This figure includes both operating and ownership costs. *Driving Costs More than You Think*, PR Newswire, Oct. 5, 1993, available in LEXIS, Nexis Library.

105. MORNING EDITION (National Public Radio broadcast, Dec. 14, 1992).

106. *Id.* Employers "dislike getting that involved in their employees' lives and they detest the expense."

to relocate to downtown Philadelphia¹⁰⁷ so as to benefit from the readily accessible public transportation already in place. It is also conceivable that some employers will reduce the number of employees at worksites, thereby escaping the 100 employee cut-off. Of course, some employers may decide to leave the affected area so as to escape ETRP entirely. Die-hard solo commuters, too, may decide to preserve their "right" to drive by leaving the affected area. Although the ETRP does raise concerns about liability for carpools and van pools, a series of Pennsylvania statutes essentially provides liability exclusions for ridesharing programs.¹⁰⁸

Recent developments in the tax law will assist those employers and employees striving to meet the ETRP requirements.¹⁰⁹ The Energy Policy Act of 1992¹¹⁰ added provisions to the Internal Revenue Code of 1986 that allow employees to exclude \$60 per month in employer-provided benefits for transit passes or carpooling, and as much as \$155 per month in benefits for parking.¹¹¹ Prior to the Energy Policy Act, employees could exclude from their taxes only \$21 per month for mass transit subsidies but could receive unlimited tax-free parking benefits,¹¹² resulting in "a significant bias against the use of mass transit."¹¹³ Changes indicate that, at last, U.S. tax law is beginning to "reinforce — rather than contravene — the nation's air pollution, energy, and congestion reduction efforts."¹¹⁴ ETRP, with its heavy reliance on economic incentives for employees, can only benefit from these more realistic fringe benefit exclusion levels.

The use of transit vouchers has increased since the monthly exemption went from \$21 to \$60.¹¹⁵ Companies in Philadelphia can buy transit vouchers for their employees through a

107. The new regulations "may encourage new employers to relocate to downtown Philadelphia" because the APO is easier to meet there because of greater access to public transportation. Unterberger, *supra* note 5.

108. PA. STAT. ANN. tit. 55, §§ 695.1 - .9 (1993).

In particular, § 695.4 reads as follows:

Liability of employer:

(a) An employer shall not be liable for injuries to passengers and other persons resulting from the operation or use of a motor vehicle, not owned, leased or contracted for by the employer, in a ridesharing arrangement.

(b) An employer shall not be liable for injuries to passengers and other persons because he provides information, incentives or otherwise encourages his employees to participate in ridesharing arrangements.

Id.

109. Waks & Brewster, *supra* note 48.

110. Pub. L. 102-436, 106 Stat. 2776 (1992).

111. Waks & Brewster, *supra* note 48. *See also* 26 U.S.C. § 132(d)(1) and (2).

112. Waks & Brewster, *supra* note 48.

113. 137 CONG. REC. S643 (daily ed. Jan. 14, 1991) (statement of Sen. Moynihan). Moynihan also said: "The juxtaposition of unlimited employee tax benefits for parking and very limited or nonexistent tax benefits for mass transit produces a tax policy encouraging automobile use." *Id.*

114. Waks & Brewster, *supra* note 48 (citing "Energy Act Delivers Employer Commute Benefits," Clean Air Transportation Rep., Dec. 1992).

115. *A Benefit for Mass Transit Commuters*, N.Y. TIMES, Dec. 7, 1993, at A26.

program called TransitChek.¹¹⁶ As a public benefit, vouchers encourage people to commute by public transit, thereby reducing car-related air and traffic pollution.¹¹⁷ Furthermore, vouchers provide mass-transit commuters with tax-free compensation comparable to the free parking enjoyed by those who drive.¹¹⁸ It appears that the combination of federal tax policy, local transportation programs, and ETRP will enable commuters and their employers to contribute to a long-overdue revamping of the commuting systems of urban America.

VI. The Controversy Surrounding ETRP in Pennsylvania and the Nation

A substantial group of Philadelphia employers, while not attacking the details of the Pennsylvania ETRP, has simply suggested that the EPA's initial designation of the CMSA as "severe" was incorrect.¹¹⁹ The group's commissioned studies of the classification indicate not only that the EPA designation was wrong, but also that the CMSA is on course to achieve attainment for ozone by 1999 without the ETRP requirement.¹²⁰ Although the coalition will take its case to the state's Independent Regulatory Review Commission, the EPA has rejected the challenge thus far.¹²¹

Both in Pennsylvania and nationally, ETRP requires individuals to change their behavior. There is the risk that some employees will refuse to change their commuting patterns regardless of incentives.¹²² Clearly, "it is going to be a difficult task to change the mindset of employees."¹²³ Some commuters are already digging in their heels: "I'll tell you right now. One, I will not give up my car no matter how it comes about. I cannot give up my car. I live an hour away. There's no way for me to get here, unless they would helicopter me in. Then I'd be happy to consider it."¹²⁴ Statistics indicate that commuters aged thirty-nine and under, who were production, technical, professional, and clerical workers, were more likely ridesharers than executives and sales and service personnel over forty.¹²⁵ It may be that older and better paid employees feel more deserving of their cars than people below them on the career ladder.¹²⁶

116. Waks & Brewster, *supra* note 48. The program is also in effect in New York, San Francisco, and Washington, D.C.

117. *A Benefit for Mass Transit Commuters*, *supra* note 115.

118. *Id.*

119. The PENJERDEL Employer Trip Reduction Coalition asserts that one suspect reading taken at the Chester, PA station has skewed the results, giving the Philadelphia region an inaccurate high classification. *Business Coalition Calls for Change in Air Quality Classification: Studies Show Philadelphia Region Air Improving*, PR Newswire, Oct. 5, 1993, available in LEXIS, Nexis Library.

120. *Id.*

121. *Clean Air: EPA Pushes Commuter Regs on Philly*, Greenwire, Oct. 29, 1993, available in LEXIS, Nexis Library.

122. Waks & Brewster, *supra* note 48.

123. Barbara Presley Noble, *Getting Them There is Half the Job*, N.Y. TIMES, Nov. 21, 1993, at F25.

124. MORNING EDITION, *supra* note 105.

125. WOLFGANG ZUCKERMAN, *END OF THE ROAD* 170 (1991).

126. *Id.*

Fortunately, employees who are already involved in trip reduction measures indicate that quitting the solo commute is less burdensome than anticipated.¹²⁷

Others grumble about using employers as a conduit for social change. Should companies not be allowed to concentrate on their bottom lines instead of being forced to worry about the personal habits of their employees? Statistics, however, indicate that a more efficient approach to commuting may actually be good for business. For example, American motorists now spend 1.6 billion hours a year on the road without even moving, wasting 2.2 billion gallons of gasoline in the process.¹²⁸ Tying up workers and goods in interminable traffic jams is not an efficient way to run a business.¹²⁹ The practice, in fact, is credited with productivity losses totalling \$40 billion a year.¹³⁰

In addition to citing the difficulty of changing individual commuting patterns, opponents claim that the small reductions in vehicular emissions that might be achieved will be quickly offset by the projected growth in total vehicle miles traveled.¹³¹ This argument, however, appears to concede that total emissions would in fact be even greater without ETRP. Furthermore, proponents of the program point out that if the government were to eliminate "all the tiny little programs like this one, there wouldn't be a clean air program at all."¹³²

Opponents of ETRP are also suggesting that California's Regulation XV, on which ETRP was modelled,¹³³ is simply not very effective.¹³⁴ Los Angeles' chief air quality officer has stated that the campaign to convince people to reduce their driving has not achieved the desired results:¹³⁵ he maintains that Regulation XV both costs too much for the air-quality benefits it produces, and it often ties up too much manpower.¹³⁶ For example, Regulation XV effectively required an aerospace firm, which had been spending \$25,000 a year on its own employer trip reduction measures, to spend \$250,000 a year merely to hire more program employees, even though the results remained the same.¹³⁷ Advocates of the federal ETRP, however, remind opponents that the EPA has learned from California's problems and made ETRP a far less

127. *New Rules Nudging Companies to Reduce Employee Commuting*, *supra* note 103. Trip reduction measures appear to be more effective when management actively participates. *Id.*

128. NADIS & MacKENZIE, *supra* note 9, at 34.

129. *Id.*

130. *Id.*

131. *Id.*

132. Quoting Elizabeth B. Thompson, an analyst for the Clean Air Council, an environmental group in Philadelphia. Noble, *supra* note 6.

133. ECO GUIDANCE, *supra* note 34, at 2.

134. David Iyata, 'Model' Smog-Busting Plan Flops; Local Firms Buck U.S. Law as Clean Air Deadline Nears, CHI. TRIB., Jan. 7, 1994, at 1.

135. *Id.*

136. *Id.*

137. *Id.*

cumbersome, paper-heavy process.¹³⁸

Opponents and advocates of ETRP alike can rest assured that the need for a reduction in automobile use is not a Congressional fantasy. Elmer Johnson, an attorney and former executive vice president of General Motors, recently published a report entitled "Avoiding the Collision of Cities and Cars: Urban Transportation Policy for the 21st Century."¹³⁹ While acknowledging that cars will be the dominant mode of transportation for years to come, Johnson believes that the time has arrived for Americans to pay the true costs of driving.¹⁴⁰ Johnson argues that large, public automobile subsidies have created such intractable urban problems as traffic gridlock, air pollution and suburban sprawl.¹⁴¹

Johnson maintains that current "laws do not encourage people to drive less or share rides" but believes that as "people pay the full social costs of driving, they will tend to drive cleaner, more fuel-efficient cars during less-congested times of day."¹⁴² Motor vehicle travel has long been subsidized, and the subsidies take many forms.¹⁴³ Johnson advocates such measures as new urban streetcar systems, government incentives to use alternative transportation, and greater use of cleaner cars.¹⁴⁴ Curiously, many of Johnson's suggested approaches coincide with ETRP's goals and likely consequences. ETRP, although limited in scope to certain regions and certain employers, appears to have tackled the issues most germane to the American automotive dilemma.

VI. Conclusion

The Employer Trip Reduction Program represents an encouraging step toward confronting the environmental effects of the inefficient transportation system in the United States. To some extent, at least for the moment, this country is stuck with urban sprawl and the resulting dependence on automobiles. This barely workable system evolved gradually over the course of decades, and ETRP is trying to work within this unfortunate transportation framework.

138. *Id.*

139. *Former General Motors V.P. Calls for Urban Transportation Plan*, Clean Air Network Online Today, Dec. 2, 1993, available in LEXIS, Nexis Library. The report is backed by the Academy of Arts and Sciences and the Aspen Institute.

140. Doug Monroe, *The Price We Pay for Driving*, THE ATLANTA JOURNAL AND CONSTITUTION, Jan. 2, 1994, at C6. Johnson cites a study estimating that "commuters going to work in a major central business district in the United States in their own motor vehicles directly pay for only about twenty-five percent of the total costs of their transport." The other seventy-five percent is typically borne by their employers (in providing free parking), by other users (in increased congestion, reduced safety), by fellow workers or residents (in air and noise pollution) and by federal, state and local governments.

141. Tom Andreoli, *Ex-GM Exec Calls for Radical Car Policy*, AUTOMOTIVE NEWS, Oct. 11, 1993, at 16.

142. *Former General Motors V.P. Calls for Urban Transportation Plan*, *supra* note 139.

143. Monroe, *supra* note 140. For example, revenues based on vehicle use cover only sixty percent of the costs of building and maintaining roads and bridges. Heavy trucks inflict at least twice as much pavement damage than is charged to their account. Employers get a federal tax break for providing parking. Motorists do not pay the costs of traffic-related police services, courts and emergency vehicles.

In terms of air pollution, cheap gasoline prices offer no incentive to get rid of gas guzzlers. *Former General Motors V.P. Calls for Urban Transportation Plan*, *supra* note 139.

144. *Id.*

Individual drivers are not to blame for this dilemma and should not view ETRP as either punishment or arbitrary government intervention. Rather, citizens are being called upon to contribute to a governmental attempt to alleviate the twin woes of traffic and smog in America.

At first glance, it may not seem particularly fair to saddle employers with the burden of controlling commuting patterns. Large employers are, however, relatively stable, centralized entities through which the government can regulate driving. More fundamentally, ETRP also reflects the need for environmental regulation to evolve as government recognizes new environmental problems. For example, few would dispute the advisability of regulating the emissions from a large factory. Yet fumes from commuting vehicles are another real by-product of operating a business. Viewed in terms of the overall air pollution picture, the decision to assign ETRP to employers appears more logical.

Environmental benefits beyond the targeted pollution reductions are likely to result from ETRP. Employees affected by ETRP may become generally more aware of the environmental impacts of their actions. Unlike most environmental laws, ETRP requires tangible responses from individual drivers who are the main cause of ozone pollution. By forcing people to confront the effects of their driving, ETRP brings to the American consciousness the reality of driving's environmental consequences.

Michael R. Campbell

