The claim in dispute arose out of an audit conducted by the former Department of Health, Education, and Welfare Audit Agency which concluded that the Denver and Pueblo, Colorado LEAs had improperly spent Title I funds during the 1972–73 school year.

Specifically, the audit questioned the Denver, Colorado LEA's use of $42,936 of Title I funds to provide services in a Follow Through project that it administered, and the Pueblo, Colorado LEA's use of $1,901 of Title I funds to provide services in its occupational training program. The auditors had found that, in violation of the Title I regulations, both LEAs had failed to specify in their applications for Title I assistance that these Title I funds would be spent on those projects. In addition, they found that neither the Colorado State Department of Education nor either LEA had been able to demonstrate that the funds in question were nonetheless expended for permissible Title I purposes.

On April 19, 1978, the Office of Education (OE) notified the Colorado State Department of Education that it was responsible for refunding to OE the $44,537 because of the actions of the two LEAs. The Colorado Department of Education appealed this final determination to OE's Title I Audit Hearing Board.

Under Section 451(a) of the General Education Provisions Act, 20 U.S.C. 1234, the former U.S. Commissioner of Education established the Education Appeal Board (EAB) as successor to the Title I Audit Hearing Board, and conferred on it jurisdiction to, among other things, conduct audit appeal hearings. The procedures of the EAB were published as final regulations in the **Federal Register** on April 3, 1980 (45 FR 22634). Revised regulations governing procedures before the EAB were published in the **Federal Register** on May 18, 1981 (46 FR 27304).

The EAB conducted proceedings on the appeal of the Colorado State Department of Education during 1980 and 1981. During the course of those proceedings, the parties stipulated to a reduction of the Department's claim to $10,773 (amounting to $10,294 and $479 that were attributed to the Denver and Pueblo, Colorado LEAs respectively) due to the applicability of the statute of limitations (20 U.S.C. 884 (1976)).

On September 13, 1981, the EAB issued its decision and transmitted it to the Secretary for review. In that decision, the EAB determined that the Colorado State Department of Education had failed to establish that the services provided by the Denver and Pueblo, Colorado LEAs were designed to meet the special educational needs of the children who were enrolled in the respective programs as required by the Title I regulations, and that it had not otherwise refuted the findings of the audit. The EAB concluded that the Colorado State Department of Education therefore had to submit repayment to the United States Department of Education in the amount of $10,773 because of the Title I misexpenditures made by the Denver and Pueblo, Colorado LEAs during the 1972–73 school year.

On November 25, 1981, the Secretary issued a final decision in this case accepting the EAB's decision, but compromising the claim of $10,773. Under the proposed terms of the compromise, the Secretary would require the Denver and Pueblo, Colorado LEAs to supplement their present Title I programs from non-Federal sources to the extent of not less than the $10,294 and $497 that the Secretary had determined were misspent, instead of requiring the Colorado State Department of Education to repay the $10,773. Under the terms of the proposed compromise, the Colorado State Department of Education would be responsible for verifying the nature, extent, and source of supplementation.

The Secretary would give to the Denver and Pueblo, Colorado LEAs, the discretion to determine the form that the supplementation would take, which might be direct financial assistance to their respective Title I programs or a shift of existing non-title I services to those Title I programs.

In this case, the Secretary determined that collection of the $10,773 in question would not be in the public interest, and that the practices giving rise to the Department's claim have been corrected and will not recur. This proposed compromise will not adversely affect any other audit proceeding currently pending before the Education Appeal Board.

The Secretary proposes to compromise the claim in this manner in order to achieve the goals of (1) resolving the differences that gave rise to the claim, (2) correcting any and all practices that may be in violation of Title I requirements, and (3) providing increased benefits to eligible disadvantaged children in the respective LEAs without diverting valuable and limited resources from the public education system in the State of Colorado.

The Secretary intends that the responsibilities of the Denver and Pueblo, Colorado LEAs and the Colorado State Department of Education under the terms of the proposed compromise in this notice will be formalized by an agreement that is executed by the Denver and Pueblo Colorado LEAs, the Colorado State Department of Education, and the United States Department of Education.

The public is invited to comment on the Secretary's intent to compromise the claim under the terms specified in this notice. Additional information may be obtained by writing to Mr. Richard B. Mellman whose address is at the beginning of this notice.

(20 U.S.C. 1234 and 1234a(f))

Dated: February 10, 1982.

T. H. Bell,

Secretary of Education.

[FR Doc. 82-4282 Filed 2-17-82; 8:45 am]

BILLING CODE 4000-01-M

Office of Postsecondary Education; Comprehensive Program; Fund for the Improvement of Postsecondary Education; Extension of Closing Date for Transmittal of Application

AGENCY: Education Department.

ACTION: Notice of extension of closing date for transmittal of applications under the comprehensive program for fiscal year 1982.

SUMMARY: This notice extends the closing date of March 2, 1982 to March 9, 1982 for the transmittal of applications under the Comprehensive Program of the Fund for the Improvement of Postsecondary Education. The application notice for this program, published in the **Federal Register** on November 13, 1981 (46 FR 56008), provides detailed information concerning the Comprehensive Program.

FOR FURTHER INFORMATION: Inquiries concerning this extension date and the program should be addressed to the Fund for the Improvement of Postsecondary Education, 400 Maryland Avenue, SW. (Regional Office Building 3, Room 3100), Washington, D.C. 20202 regarding 84.116A, the Comprehensive Program; Telephone: (202) 245–8091.

SUPPLEMENTARY INFORMATION: Only those applicants who submitted preapplications on or before December 14, 1981 are eligible for assistance under the Comprehensive Program.

Dated: February 10, 1982.

(Catalog of Federal Domestic Assistance No. 84.116A, Fund for the Improvement of Postsecondary Education)

T. H. Bell,

Secretary of Education.

[FR Doc. 82-4281 Filed 2-17-82; 8:45 am]

BILLING CODE 4000-01-M

ENVIRONMENTAL PROTECTION AGENCY

[AEN-FRL-1975-3]

California State Motor Vehicle Pollution Control Standards; Waiver of Federal Preemption; Summary of Decision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Reconsideration of Waiver of Federal preemption.

SUMMARY: This decision reconsiders and affirms a prior EPA waiver of Federal preemption under section 209(b) of the Clean Air Act, as amended (Act), for California to enforce its "Specifications for Fill-Pipes and Openings of Motor Vehicle Fuel Tanks" as they apply to motorcycles. EPA cannot make the findings necessary to revoke California's waiver of Federal preemption; thus, this action will permit California to continue implementing its motorcycle fill-pipe and fuel tank opening regulations.

ADDRESSES: The complete decision document and other relevant information is available for public inspection during normal working hours (8:00 a.m. to 4:30 p.m.) at: U.S. Environmental Protection Agency, Manufacturers Operations Division, 499 South Capitol St., SW., Washington, D.C., (202) 382-2521. Interested parties may also obtain copies of the decision document from the Manufacturers Operations Division by contacting Michael Chernekoff, as noted below.

FOR FURTHER INFORMATION CONTACT: Michael Chernekoff, Attorney-Advisor, Manufacturers Operations Division (EN-340), U.S. Environmental Protection Agency, Washington, D.C. 20460, (202) 382-2495.

SUPPLEMENTARY INFORMATION: I have decided to affirm EPA's prior waiver of Federal preemption to permit the State of California to enforce its motorcycle fill-pipe and fuel tank opening regulations. Section 209(b) of the Act requires me to grant the State of California a waiver of Federal preemption unless I can make certain findings, including a finding that the State standards and accompanying enforcement procedures are not consistent with section 202(a) of the Act in that they are not technologically feasible within available lead time, considering cost.

EPA decided to reconsider the prior decision because subsequent Executive Orders issued by the Director of the California Air Resources Board (CARB) to implement the specifications called into question findings EPA made in its prior decision regarding technological feasibility. (42 FR 1503 (January 7, 1977)). The record on reconsideration does not support revocation of the waiver of Federal preemption. The motorcycle manufacturers have not established that the specifications are inconsistent with section 202(a) of the Act. Specifically, the manufacturers have not shown that the designs that CARB suggested would meet its requirements are not technologically feasible within available lead time, considering cost. A full explanation of my decision to affirm the prior waiver is contained in the decision document, which may be obtained from EPA as noted above.

My decision will affect not only persons in California but also the manufacturers located utside the State which must comply with California's standards in order to produce motor vehicles for sale in California. For this reason, I hereby determine and find that this decision is of nationwide scope and effect.

Section 3(b) of Executive Order 12291, 46 FR 13193 (February 19, 1981) requires EPA to determine whether a "rule" it intends to issue is a major rule and to prepare Regulatory Impact Analyses (RIA) for all major rules. Section 1(b) of the Order defines "major rule" as any "regulation" (as defined in the Executive Order) that is likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

EPA has determined that this action is not a "major rule" requiring preparation of an RIA. This decision reaffirms a prior waiver of Federal preemption to permit the State of California to enforce its motorcycle fill-pipe and fuel tank opening regulations. Thus, it does not impose any new burdens on motorcycle manufacturers. Further, the annual effect on the economy of the California regulations themselves will be less than $100 million, particularly since most of the manufacturers affected are foreign. While there may be an increase in costs to consumers associated with these California regulations, any increase will not be "major." Since the regulations fall on all motorcycle manufacturers, there will not be any significant adverse effects on competition. There are no anticipated adverse effects on employment, investment, productivity, or the ability of United States-based enterprises to compete with foreign compaines.

This regulation was submitted to the Office of Managment and Budget (OMB) for review as required by Executive Order 12291.

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et. seq.*, EPA is required to determine whether a regulation will have a significant economic impact on a substantial number of small entities so as to require a regulatory analysis. The motorcycle manufacturers are not "small entitites," as defined by the Act. Therefore, pursuant to 5 U.S.C. 605(b), I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities.

Dated: February 11, 1982.

John W. Hernandez,

Acting Administrator

California State Motor Vehicle Pollution Control Standards; Waiver of Federal Preemption; Decision of the Administrator

I. Introduction

This decision, issued under section 209(b) of the Clean Air Act (Act),[1] reconsiders and affirms the waiver of Federal preemption that EPA granted California on January 7, 1977,[2] permitting it to enforce its motorcycle fill-pipe and fuel tank opening requirements. The reconsideration is in light of subsequent California Air Resources Board (CARB) Executive Orders implementing its fill-pipe and fuel tank opening specifications as they apply to motorcycles.[3] The Executive Orders call into question the findings made in the previous waiver decision.

Section 209(b) of the Act requires me to grant the State of California a waiver of Federal preemption, after opportunity for a public hearing, if California determines that its standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards. I may not grant a waiver if I find that the protectiveness determination of the State of California is arbitrary and capricious, that the State does not need its own standards to meet compelling and extraordinary conditions, or that the State standards and accompanying enforcement

[1] 42 U.S.C. 7543(b), as amended (1977).

[2] 42 FR 1503 (January 7, 1977).

[3] The CARB Executive Order now in effect that implements "Specifications for Fill-Pipes and Openings of Motor Vehicle Fuel Tanks," 13 California Administrative Code, Section 2290, (hereinafter "specifications"), is Executive Order G-70-16-E, dated July 3, 1980, and is reproduced at 45 FR 49133 (July 23, 1980).

procedures are not consistent with section 202(a) of the Act. State standards and enforcement procedures are deemed not to be consistent with section 202(a) if there is inadequate lead time to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within that time frame, or if the Federal and California certification and test procedures are inconsistent. The only issue that I am reconsidering here is whethre CARB's modified fill-pipe and fuel tank opening regulations are inconsistent with section 202(a) of the Act.

On the basis of the record before me, I cannot make the findings required to vacate that portion of the waiver granted previously under section 209(b) of the Act pertaining to California's motorcycle fill-pipe and fuel tank opening specifications. Therefore, the January 7, 1977, waiver decision is affirmed.

II. Background

On March 24, 1976, CARB adopted "Specifications for Fill-Pipes and Openings of Motor Vehicle Fuel Tanks" for 1977 and later model year gasoline powered vehicles, including motorcycles. CARB intended the specifications to require compatibility between vehicle fuel tanks and service station nozzles equipped with vapor recovery devices.[4] On January 7, 1977, EPA published a decision granting the State of California a waiver of Federal preemption to enforce these specifications including that portion applicable to motorcycles.[5]

That waiver decision was based in part on a finding that specific technology was then available to the motorcycle industry that would permit compliance with the specifications. That technology involved relocating the fuel tank opening offcenter so that the fill nozzle could be fully inserted into the tank without striking the center hump where the tank is shallow to accommodate the vehicle frame.

I decided to reconsider the previous waiver decision because Executive Orders subsequently issued by CARB may affect one of the determinations made in that decision. Specifically, they may affect the determination that CARB's specifications are not inconsistent with section 202(a) because they are technologically feasible within available lead time, considering the cost of compliance.[6] By Executive Orders issued to implement these specifications, CARB made a number of changes in the schedule for achieving full compliance with the specifications.[7] The Executive Order currently in effect [8] requires full compliance for all newly-introduced 1983 and subsequent model year motor-cycle models and all models that undergo fuel tank design changes in 1983 and later model years. Certain models are exempt from these requirements.[9] Manufacturers also have the option of obtaining an exemption from compliance with the specifications through the use of alternative means of achieving the same degree of vapor emissions control as the specifications.[10]

The Executive Order also states that "full compliance" with the specifications includes the requirement that the fuel tank is capable of being filled with the service station nozzle in "normal resting position." It is this requirement that most directly caused EPA to question the finding of consistency with section 202(a) that EPA made in the earlier waiver decision.

The specific technology deemed available in EPA's earlier waiver decision [11] to meet the specifications no longer appeared to be capable of achieving "full compliance" in light of the recent Executive Order, since a motorcyclist might not be able to fill the tank with the nozzle in "normal resting position" using that technology. The gas pump's shut-off mechanism might stop the flow of fuel well before the tank was filled because the nozzle would extend at least three inches into the fuel tank. As a result, in order to fill the motorcycle to capacity the consumer most likely would have to unseal and withdraw the nozzle. Since the earlier determinations regarding consistency with section 202(a) of the Act were possibly no longer applicable, EPA decided to reconsider the issue.

III. Discussion

The only issue I am reconsidering is whether the California fill-pipe and fuel tank opening regulations are consistent with section 202(a) of the Act.[12] I have already determined that the specifications are at least as protective of public health and welfare as applicable Federal standards, and that California needs its regulations to meet compelling and extraordinary circumstances,[13] and the new Executive Orders do not affect these determinations.

CARB described examples of technologies that it believes would comply with the specifications or would qualify as alternative designs which it would exempt from compliance under

[4] Transcript of July 24, 1980, Public Hearing on Reconsideration of Waiver of Federal Preemption Granted to California (hereinafter "Tr.") at 41.

[5] 42 FR 1503.

[6] Shortly after EPA published its decision, Kawasaki Motors Corporation (Kawasaki) sought judicial review of the waiver grant insofar as it would permit California to enforce its fill-pipe and fuel tank opening specifications with regard to motorcycles.("Kawasaki Motors Corp., U.S.A. v. Environmental Protection Agency," D.C. Cir., No. 77-1103.) After EPA decided to reconsider the waiver decision in light of subsequent California regulatory developments, Kawasaki voluntarily withdrew its lawsuit.

[7] Executive Order G-70-4, dated July 8, 1977, first established a compliance schedule for motorcycles to comply with the specifications, and exempted certain small and off-road mopeds and motorcycles.

Executive Order G-70-16, dated March 16, 1978, extended that date of compliance for motorcycles for one model year.

Executive Order G-70-16-D, dated April 4, 1980, extended the date of compliance again. It also established new exemptions covering motorcycles with substantially unchanged fuel tank designs, small and off-road motorcycles, motorcycles that qualify for an evaporative emission trade-off, and motorcycles that use qualifying alternative designs, and clarified the term "full compliance."

The Executive Order currently in effect does not differ markedly from G-70-16-D.

[8] Executive Order G-70-16-E, dated July 3, 1980.

[9] "The classes of motorcycles that are exempt from the specifications are:

(1) All 1979 to 1982 model year motorcycles;

(2) All Class III 1983 model year motorcycles;

(3) All 1983 and subsequent model year motorcycles with fuel tank designs which remain unchanged from their 1982 designs;

* * * * *

(7) Motorcycles equipped with evaporative emission control systems certified at U.2 gm/test, or more, below the applicable evaporative emission standard."

Executive Order G-70-16-E, dated July 3, 1970.

[10] "The criteria for evaluation of alternative designs shall be:

(1) The alternative system shall allow the service station vapor recovery system to provide vapor recovery performance as efficient as its certification value as determined using the Board's Test Procedures for determining the Efficiency of Gasoline Vapor Recovery Systems at Service Stations, (Title 17 California Administrative Code Section 94001), or, if any onboard recovery system is used, no less than 90 percent (by weight) of the vapors which would be displaced during refueling an uncontrolled motorcycle shall be contained;

(2) The fuel tank shall be capable of being filled to its rated capacity when the vapor recovery system is operated in its design mode;

(3) The alternative means of recovery shall not encourage or readily allow the consumer to intentionally defeat the vapor recovery system; and

(4) The manufacturer's normal standard for safety, reliability, and customer acceptance shall be observed."

Executive Order G-70-16-E, dated July 3, 1980.

Formerly motorcycle manufacturers were able to obtain exemptions for a particular model year on a case-by-case basis if they could demonstrate that compliance was not technonogically feasible (Executive Order G-70-4, dated July 8, 1977). This provision is no longer part of the fill-pipe regulations.

[11] 42 FR 1506 (January 7, 1977).

[12] 45 FR 45356 (July 3, 1980).

[13] 45 1503, 1504 (January 7, 1977).

the Executive Order.[14] One possibility is the "side-fill" which would entail constructing the fuel tank with a raised lip containing an opening facing to one side of the motorcycle so that the service station nozzle is inserted from the side, rather than the top, into a slanted fill-pipe extending into the tank. CARB stated that this design should permit the tank to fill almost completely before the flow is stopped by the fuel pump nozzle's automatic shut-off mechanism.[15] Another possible design that CARB suggested would meet its requirements and still permit complete fuel tank fill up involves the use of a false top to the fuel tank. A manufacturer could combine this design with a change in the location of the opening (e.g., by also employing a side-fill design) so that tank capacity would not be excessively reduced. CARB also discussed the use of collapsible or telescoping filler necks to which the station nozzle could be locked and used in the "normal resting position" while still permitting the tank to be completely filled.

Motorcycle manufacturers objected to the regulations, as interpreted by the Executive Orders, on the grounds of technological infeasibility regardless of lead time, insurmountable safety problems, lack or cost effectiveness of the regulations, and marketing problems.

A. *Technology and Lead Time.* Kawasaki stated at the hearing that it has primarily been working on a collapsible or telescoping filler neck as a means of complying with the regulations.[16] It said, and CARB acknowledged, that there are a number of problems remaining with the design, including long-term durability and reliability of the filler neck.[17] Kawasaki also discussed other means of compliance, and identified some potential problems with manufacturing fuel tanks incorporating the side-fill design due to the additional complexity of fabricating an asymmetrical tank.[18]

Suzuki Motor Co., Ltd. (Suzuki) said that it had no specific comments concerning the technological feasibility of the specifications or of CARB's design proposals.[19]

Yamaha Motor Corporation (Yamaha) argued that the specifications, read literally, are not technologically feasible for motorcycles generally in that they require a fill-pipe that either would extend into the tank, thereby making complete fueling impossible, or would protrude above the surface of the tank creating a safety hazard.[20] Yamaha claimed that possible designs mentioned by CARB such as the telescoping fill-pipe, side-fill and false top do not meet the specifications exactly, nor would they qualify as "alternative fill-pipe designs" pursuant to the Executive Order because the suggested designs do not permit the tank to be completely filled without sacrificing safety or consumer acceptability.[21] Finally, Yamaha stated that apart from these objections to the regulations, after examining CARB's suggested designs Yamaha believes that it would encounter various problems manufacturing motorcycles that implement those designs.[22]

American Honda Motor Co., Inc. (Honda) stated that it would most likely attempt to qualify for an exemption under the trade-off provision of the Executive Order[23] because it concluded that no technology exists that complies with the specifications and meets Honda's own safety and consumer acceptance criteria.[24] Honda also pointed out that the technoligical feasibility of the evaporative emission standard for motorcycles, on which the trade-off provision is based, has not yet been established.[25]

The manufacturers that appeared at the hearing did not have many specific comments concerning lead time. Kawasaki argued that EPA's original lead time determination no longer applies since the amount of lead time changed each time CARB altered its regulations by executive order.[26] Suzuki mentioned that it might have lead time problems resulting from the interaction of the fill-pipe and evaporate emission regulations. Specifically, Suzuki said that meeting the evaporative emission regulations might entail changing the fuel tank design, which would require compliance with the fill-pipe regulations under the Executive Order.[27] The evaporative emission regulations require compliance by 1983 for class I and II, and by 1984 for class III motorcycles.[28] Suzuki stated that it risks failure to meet both sets of regulations simultaneously but provided no information to substantiate the probability of its potential inability to comply.[29] Neither Yamaha nor Honda had specific comments concerning lead time.

In spite of their objections to the regulations, no manufacturer has shown that it is unable to comply with the regulations. Virtually, no evidence was presented at the hearing or in supplemental submissions to indicate that the motorcycle industry would be unable to incorporate designs that would be acceptable to California as complying with the fill-pipe and fuel tank opening regulations. Kawaskai and Suzuki both admitted that it would be possible for them to produce motorcycles with fill-pipe or fuel tank designs that were suggested by CARB.[30] Kawasaki indicated that it could produce a fuel tank with a collapsible filler neck that would satisfy CARB.[31] It also said that although there were engineering questions to be resolved, it would be able to incorporate the side-fill fuel tank into its motorcycle designs.[32] Suzuki stated that it could most likely design and manufacture motorcycles that would comply with the regulations, although it would prefer not to.[33]

Finally, CARB testified that its suggested designs have been shown to be feasible.[34] CARB held a number of workshops for motorcycle manufacturers to explore possible

[14] Tr. 41. *See* "Summary of Motorcycle Fill-Pipe Workshops." The examples CARB provided were not intended as exclusive examples of technologies that it believes will comply with the regulations. Tr. 38.

[15] Tr. 38.

[16] Tr. 71.

[17] Tr. 100; Kawasaki Supplemental Comments to EPA Reconsideration of California Motorcycle Fill-Pipe Waiver (hereinafter "Kawasaki Supplemental Comments") at 2.

[18] Kawasaki Supplemental Comments at 2.

[19] Tr. 114.

[20] Tr. 120. *See*, section III of this decision for further discussion of the safety issue.

[21] Tr. 121.

[26] Yamaha submitted information that it requested be held confidential that raised concerns similar to those mentioned by Kawasaki and discussed above.

[23] Tr. 135.

[24] Comments of American Honda Motor Co., Inc. to EPA's Reconsideration of Waiver of Federal Preemption (hereinafter "Honda Comments") at second unnumbered page.

[25] Honda Comments at 3. EPA has provided the public with an opportunity for a public hearing to consider California's request for a waiver of Federal preemption covering its evaporative emission standard for motorcycles. *See* 46 FR 10851 (February 4, 1981). Since no party expressed an intention to testify at the hearing on this or the other issues scheduled for EPA's consideration that day, EPA cancelled the hearing. EPA will decide on that waiver request on the basis of the written record. *See* 46 FR 18348 (March 24, 1981).

[26] Tr. 59.

[27] *See* note 7, *supra*.

[28] "California Evaporative Emission Standards and Test Procedures for 1978 and Subsequent Model Gasoline-Powered Motor Vehicles," adopted April 16, 1975, amended April 23, and June 26, 1980.

[29] Tr. 115–117.

[30] One of the arguments that has been an undercurrent in this proceeding is that CARB's suggested designs would not meet its own specifications or qualify as alternative designs. CARB has said that it would be satisfied with implementation of these suggested techologies. *See* Tr. 41.

[31] Tr. 90.

[32] Tr. 96.

[33] Suzuki said that it would probably choose the evaporative emission trade-off exemption provided in the Executive Order because it felt that in order to meet the specifications it would have to employ a design that it considers commercially unacceptable. Tr. 113.

[34] Tr. 39.

means of compliance with the fill-pipe regulations. Based on the designs shown to CARB at those workshops, and designs developed by CARB's own technical staff, CARB concluded that, "in view of the cost effectiveness and relative ease of implementation of various types of fuel tank or fill-pipe modifications * * * technology is clearly available to meet California's fill-pipe specifications." [35]

The motorcycle manufacturers have failed to establish that they have any lead time problem in complying with CARB's requirements. According to the terms of the Executive Order in effect, after model year 1982 manufacturers must comply with the regulations when they redesign existing models, or introduce new models. Not all models would need to be brought into compliance in the same year.[36] Kawasaki testified at the hearing that one of the CARB's suggested designs could be incorporated into a fuel tank within normal redesign cycle,[37] and stated that motorcycle models are typically redesigned every 4–5 years.[38] Suzuki stated that it intends to use the evaporate emission trade-off to comply with the refueling emission regulations, and that although some risks remain,[39] it appears to be on schedule for meeting the evaporative standard and thus using the trade-off exemption.[40] No other manufacturer presented evidence as to its actual redesign needs, or showed that it was under manufacturing constraints that would prevent it from making necessary changes in time to meet the vapor recovery requirements.

CARB testified that it intended the Executive Orders to provide manufacturers with sufficient lead time to develop the details of an appropriate design capable of complying with the regulations with a minimum of disruption and additional cost to the industry.[41] Because the implementation date of the specifications is geared to the date of redesign of the fuel tank or the introduction of a new model, CARB pointed out that the manufacturers may delay compliance until they have worked out the details of the technology and are confident they would be able to comply.[42]

I cannot conclude on the basis of the record that the fill-pipe and fuel tank opening regulations are not technologically feasible within available lead time. Representatives of the motorcycle industry have not established that the manufacturing difficulties they mentioned are insoluble within the time constraints CARB has presented.

B. *Cost of Compliance.* With regard to the cost of compliance with the motorcycle fill-pipe and fuel tank opening regulations, Kawasaki estimated the cost of compliance per pound hydrocarbon (HC) controlled to be $19, or $18 per vehicle,[43] while Honda's estimate was $65–$93 per pound HC.[44] None of the other manufacturers submitted information regarding the cost of compliance.

Even using the motorcycle manufacturers' cost estimates, the cost of compliance per vehicle amounts to a small fraction of the price of a new vehicle.[45] Further, Honda's cost estimate included an allocation of die cost over the number of vehicles produced.[46] If the requisite technology were introduced during redesign of the vehicle, some portion of the cost of retooling would have been incurred anyway and would not be directly attributable to manufacturers' efforts at compliance with the regulations.[47] Thus, the cost of compliance per vehicle would be considerably lower. Moreover, it might not be necessary to use completely different stampings for those motorcycles sold in California market than for those motorcylces destined to be sold nationally. Kawasaki stated, for instance, that it could probably incorporate its telescoping fill-pipe design in most of its larger models and would probably not require two entirely different stampings for the California and national markets.[48] Thus, the manufacturers probably would not incur substantial additional manufacturing costs to produce California vehicles that comply with the fill-pipe and fuel tank opening regulations than it would to produce Federal vehicles.

Finally, CARB testified that the cost of meeting the regulations was not excessive.[49] CARB estimated the cost effectiveness of the regulation to be between $1.80 and $14.80 per pound HC.[50] Although these figures represent only the cost of the hardware, the Executive Orders changed the compliance schedule to minimize additional retooling expenses.[51] Therefore, I cannot conclude that the cost of compliance with these regulations is so excesive as to warrant revocation of the waiver on these grounds.[52]

C. *Other Objections.* The motorcycle manufacturers raised safety concerns that they claimed make CARB's suggested designs infeasible. The best articulated safety concern is the risk associated with any protrusion from the surface of the fuel tank.[53] For example, Kawasaki indicated that use of a telescoping fill-pipe, a false top, or side-fill could present a safety hazard in that a higher tank or protruding top, possibly combined with 2½ inches of fill-tube inside the false top, could increase the risk of groin injury or fuel spills in the event of a collision.[54]

The manufacturers have not submitted evidence to show that the false top or recessing the cap and/or fill-pipe would not solve this potential

[35] Tr. 39–40.

[36] Tr. 117.

[37] Tr. 96.

[38] Tr. 86–87.

[39] *See* text accompanying note 29, *supra*.

[40] Tr. 118.

[41] Tr. 44–45. The earliest model year that motorcyles are no longer covered by blanket exemptions is 1983 for class I and II motorcyles (50–279 cubic centimeters) and 1984 for class III (280 cubic centimeters or larger) motorcycles. CARB Executive Order G–70–16–E, dated July 3, 1980.

[42] Tr. 117.

[43] Tr. 62–63.

[44] Honda Comments, at 8.

[45] The Kawasaki representative estimated the average price of its motorcycles to be $1800. Tr. 68. Thus, at an estimated cost of compliance of $18 per vehicle, the cost of compliance represents only one percent of the price of the vehicle.

[46] Honda Comments at 8.

[47] Tr. 49.

[48] Tr. 103–104.

[49] Tr. 39–40.

[50] Tr. 39.

[51] Tr. 44. *See* footnotes 7–9 and accompanying test, *supra* for an explanation of CARB's compliance schedule.

[52] The low end of the CARB cost effectiveness estimate ($1.80 per pound HC removed (1979 dollars)) is greater than EPA's estimate for its 1980 and subsequent model year Federal motorcycle HC exhaust emissions standard ($0.43 to $0.72 per pound (1979 dollars)). *See* Environmental and Economic Impact Statement, Exhaust and Crankcase Regulations for 1978 and Later Model Year Motorcycles, December 1976; Summary of Group I Control Technique Guideline Documents for Control of Volatile Emissions from Existing Stationary Sources, Document No. EPA–450/3–78–120; and Cost Effectiveness of EPA Motorcycle Exhaust Emission Standards, Memorandum from George Kittredge, Office of Mobile Source Air Pollution Control, to Michael Chernekoff, Manufacturers Operations Division. However, as then Administrator Train stated in the January 7, 1977 waiver decision I am affirming:

> arguments concerning the wisdom of California's actions, the cost effectiveness of compliance with the specifications, and the degree of improvements in air quality that will result are all outside my permissible scope of inquiry. These are matters of public policy which are left to California's judgment.

44 FR 1504, 1506, 1507. *See also* 41 FR 44209 (October 7, 1976).

[53] Several manufacturers referred to a study performed by the University of Denver to support their contention that tank-top protrusions have the ability to injure a motorcycle rider in the event of a crash. "Dynamics of Motorcycle Impact Vol. II Motorcycle Crash Test Program", University of Denver, Denver Research institute, July 1971.

[54] Tr. 92; Kawasaki Supplemental Comments at 4–5.

problem.[55] The evidence does not show an increased incidence of actual rider injury due to protrusions, or that the incidence or severity of injuries would increase if manufacturers were to employ one of CARB's suggested designs to meet the fill-pipe vapor recovery regulations. CARB stated that its designs are reasonably safe. It said that the false top is designed to eliminate protrusion of the fill-pipe, and that there is no reason to expect a telescoping fill-pipe to protrude more than a noncollapsible one.[56]

A second potential safety concern the manufacturers expressed is the possibility of fuel spillage due to overfilling the tank. This problem is not unique to motorcycles. The manufacturers did not submit evidence establishing that spills would occur with greater frequency using technology that meets the regulations than with technology not meeting the regulations. CARB has examined the designs that the motorcycle industry has been exploring to meet the specifications, or as alternatives to the specifications, and is convinced that the safety problems can be overcome. Moreover, as CARB pointed out, compatibility of motorcycle fill inlets with vapor recovery nozzles should help prevent spills that result when motorcyclists must retract the vapor recovery boot in order to fill a noncompatible tank.[57] Thus, the manufacturers have not substantiated their own claims that complying with the regulations poses safety concerns that they would be unable to resolve.

Kawasaki, as well as other motorcycle manufacturers, argued that the regulations will not be effective because consumers will defeat the vapor recovery device.[58] The manufacturers also objected on the grounds that California does not need the fill-pipe regulations because they will not have a significant impact on air quality, and on the grounds that they would encounter marketing difficulties due to a lack of consumer acceptance of design changes that might be incorporated in order to comply with the regulations.[59]

In deciding on a request for waiver of Federal preemption, I am not empowered under the Act to consider the effectiveness of California regulations, since Congress intended that California should be the judge of "the best means to protect the health of its citizens and the public welfare." [60] CARB is concerned with effectiveness, and has testified that compliance by the motorcycle industry with the regulations as implemented by the Executive Orders will result in significant air quality benefits.[61] Furthermore, the manufacturers have not presented adequate evidence substantiating their claims that motorcyclists would opt to defeat the vapor recovery system.[62]

I am not required to make a determination as to California's need for a particular regulation.[63] EPA has determined in prioir waiver decisions that California's regulatory program is necessary to meet compelling and extraordinary cicumstances. I am not reconsidering that determination in today's decision.

With regard to the manufacturers' consumer acceptability arguments, no manufacturer has demonstrated that lost sales due to consumer dissatisfaction with manufacturers' design modifications intended to effectuate compliance with the regulations would be substantial.[64] No party submitted information to show how much tank capacity would be reduced by various designs, or by how much tank size would be increased, and to what degree these changes would be likely to affect sales. Finally, as Suzuki acknowledged, marketing concerns can be accommodated by choosing to comply with the regulations through the use of the evaporative emissions trade-off.[65]

The Act does not authorize me to deny California a waiver on the grounds supplied in these other objectives. The decision on such matters of public policy is properly left to California's judgment.[66]

IV. Findings and Decision

I have reconsidered EPA's prior decision to waive Federal preemption for California motorcycle fill-pipe and fuel tank opening specifications in light of subsequent Executive Orders of the CARB implementing those specifications. The thrust of the modifications appears to be an attempt to insure the effectiveness of the specifications by more clearly defining "full compliance" while providing manufacturers more lead time and greater flexibility. CARB submitted information as to the feasibility of a number of technologies that it believes would satisfy the regulations. I cannot conclude that the fill-pipe and fuel tank opening regulations are not technologically feasible if there is a reasonable means of satisfactory compliance. Several motorcycle manufacturers have indicated that they would be able to implement at least one of CARB's suggested technologies, although they questioned their effectiveness, safety and consumer acceptability. I have evaluated the various concerns that were raised by manufacturers. Based on all the information in the record before me, I have determined that I cannot make the findings necessary to revoke California's waiver of Federal preemption for its motorcycle fill-pipe and fuel tank opening regulations.

Dated: February 11, 1982.

John W. Hernandez, Jr.,

Acting Administrator.

[FR Doc. 82-4312 Filed 2-17-82; 8:45 am]

BILLING CODE 6560-33-M

[55] Kawasaki admitted that this problem could be mitigated by recessing the filler cap into the fuel tank. Tr. 71. A false top could also eliminate the problem of a protruding fill-pipe or cap.

[56] Tr. 51-52.

[57] Memorandum to all Motorcycle Manufacturers from CARB, dated October 15, 1979. *See also* Tr. 141.

[58] Tr. 56, 64-65, 70, 110, 113, 124.

[59] One of Kawasaki's major objections to the use of a false top, alone or in conjunction with a side-fill or telescoping-fill, is that it would require using a tank that would be commercially undesirable either because it would have to hold less fuel or be unattractively large in order to accommodate the same volume. Kawasaki Supplemental Comments at 5, Tr. 71, 79-80, 89, 90.

[60] H.R. Rep. No. 95-294, 95th Cong., 1st Sess., 301-302 (1977).

[61] CARB pointed out that local governments in Southern California have already considered and will implement pollution control measures that produce similar air quality benefits to those expected from implementation of the motorcycle fill-pipe and fuel tank opening regulations. CARB feels that it needs even small programs such as the control of motorcycle refueling emissions so that the State government can carry its fair share, *vis-a-vis* local governments, of the burden of protecting the environment. Tr. 140-141; Memo to All Motorcycle Manufacturers, dated October 15, 1979, at 2.

[62] CARB pointed out that it had not seen any empirical evidence that motorcyclists intentionally defeat the vapor recovery system. Tr. 97, 141-142. The representative from Kawasaki stated that he had observed motorcyclists defeating the system but that Kawasaki had no surveys or data concerning the incidence of this behavior. *Id.* 97-98.

[63] *See* 44 FR 38660, 38661 (July 2, 1979).

[64] Kawasaki testified that if all manufacturers had to comply with the regulations by using designs that would make the tank larger, there would be no individual marketing detriment, because there would be no problem for one manufacturer that would not be shared by all. Tr. 85.

[65] Tr. 117.

[66] 43 FR 1829 (January 12, 1978).

[OPTS-513971; TSH-FRL-2052-5]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacuture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of interim

policy published in the **Federal Register** of May 15, 1979 (44 FR 28558) and November 7, 1980 (45 FR 74378). This notice announces receipt of three PMNs and provides a summary of each.

DATES: Written comments by:

PMN 82-70, April 4, 1982.
PMN 82-71, April 5, 1982.

ADDRESS: Written comments, identified by the document control number "[OPTS-51397]" and the specific PMN number should be sent to: Document Control Officer (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-409, 401 M St. SW., Washington, DC 20460, (202-382-3532).

FOR FURTHER INFORMATION CONTACT: David Dull, Acting Chief, Notice Review Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-216, 401 M. St. SW., Washington, DC 20460, (202-382-3729).

SUPPLEMENTARY INFORMATION: The following are summaries of information provided by the manufacturer on the PMNs received by EPA:

PMN 82-70

Close of Review Period. May 4, 1982.

Manufacturer's Identity. CIBA-GEIGY Corporation, P.O. Box 18300, Greensboro, NC 27419.

Specific Chemical Identity. α-[(1,3-dioxolan-2-ylmethoxy)imino]benzeneacetonitrile.

Use. The manufacturer states that the PMN substance will be used as a herbicide antidote.

Production Estimates. Claimed confidential business information.

Physical/Chemical Properties

Appearance—White crystalline solid.
Specific gravity—1.33.
Melting point—78° C.
Heat of fusion—7.8 kcal/mole.
Solubility: water @ 20° C—20 parts per million (ppm). Density @ 20° C—1.33 g/cm ^{3}.
n-Octanol/Water Partition Coefficient—575.
Vapor pressure @ 20° C—3.9 × 10^{-6} torr.
Molecular weight—232.24 g/mole.
Heat of evaporation—19 kcal/mole.
Heat of sublimination—26.8 kcal/mole.

Toxicity Data

Acute oral toxicity LD_{50} (rat)—> 5,000 mg/kg.
Acute oral toxicity LD_{50} (mouse)—> 5,000 mg/kg.
Acute oral toxicity LD_{50} (chinese hamster)—> 3,000 mg/kg.
Acute oral toxicity LD_{50} (bob white quail)—> 2,000 mg/kg.
Acute oral toxicity LD_{50} (mallard ducks)—> 2,000 mg/kg.
Acute dermal toxicity LD_{50} (rat)—> 5,000 mg/kg.
Primary skin irritation (rabbit)—Minimally irritating.
Primary eye irritation (rabbit)—Minimally irritating.
Ames salmonella—Not a mutagen.
Skin sensitization (guinea pig)—Not a sensitizer.
Acute intraperitoneal LD_{50} (rat)—> 2,000 mg/kg.

Environmental Test Data

Acute LC_{50} 96 hr. (bluegill sunfish)—12 mg/1.
Acute LC_{50} 96 hr. (rainbow trout)—7.1 mg/1.
Acute LC_{50} 48 hr. (daphnia magna)—8.5 mg/1.
Subacute dietary LC (8 day) to bob white quail—5,000 ppm.
Subacute dietary LC (8 day) to mallard ducks—> 5,000 ppm.

Exposure. The manufacturer states that during manufacture workers may experience dermal exposure per 12 hr/shift during sampling and drumming.

Environmental Release/Disposal. The manufacturer states that release to the environment will be minimal from accidental release or agricultural use.

PMN 82-71

Close of Review Period. May 5, 1982.

Manufacturer's Identity. Claimed confidential business information. Organization information provided:
Annual sales—$500,000,000 and up.
Manufacturing site—West South Central region.
Standard Industrial Classification Code—286.

Specific Chemical Identity. Claimed confidential business information. Generic name provided: Alkyl aryl amino polyol.

Use. Claimed confidential business information. Generic use information provided: The manufacturer states that the PMN substance will be used in a contained use.

Production Estimates. Claimed confidential business information.

Physical/Chemical Properties

Appearance—Amber viscous liquid.
Specific gravity 20°/20° C—1.059.
Boiling point—Decomposes before boiling.
Flash point, closed cup—260° F.
Viscosity @ 25° C—8,000-10,000 cps.
Solubility: water—Insoluble. acetone—Soluble. methanol—Soluble. methylene chloride—Soluble.
Volatility—Nil.
Reactivity—Reacts vigorously.

Toxicity Data. No data were available.

Exposure. The manufacturer states that during manufacture a total of 2 workers may experience dermal exposure up to 2 hrs/day, up to 330 days/yr during sampling, transfer, loading and filling.

Environmental Release/Disposal. The manufacturer states that less than 10 kg/yr will be released to air, land and water. Disposal is by incineration.

PMN 82-72

Close of Review Period. May 5, 1982.

Manufacturer's Identity. Celanese Plastics and Specialties Company, 1 Riverfront Plaza, Louisville, KY 40202.

Specific Chemical Identity. Claimed confidential business information. Generic name provided: Alkenoic acid ester of a halogenated alkyl aryl ether.

Use. Claimed confidential business information. Generic use information provided: The manufacturer states that the PMN substance will be used as an industrial component of coating.

PRODUCTION ESTIMATES

	Kilograms per year	
	Minimum	Maximum
1st year	1,000	10,000
2d year	5,000	20,000
3d year	5,000	50,000

Physical/Chemical Properties

Viscosity @ 25° C—Solid.
Acid value SMT 9L—< 5.
% non-volatile—Assumed.

Toxicity Data. No data were submitted.

Exposure. The manufacturer states that during manufacture and processing a total of 170 workers may experience dermal exposure up to 8 hrs/day, up to 15 days/yr during filling, sampling, cleaning operations and transfer.

Environmental Release/Disposal. The manufacturer states that 10-10,000 kg/yr will be released to land 24 hrs/day, 250 days/yr. Disposal is by Resource Conservation Recovery Act (RCRA), landfill or incineration.

Dated: February 5, 1982.

James A. Combs, Jr.,

Acting Director, Management Support Division.

[FR Doc. 82-4095 Filed 2-17-82; 8:45 am]

BILLING CODE 6560-31-M

[OPTS 140005; TSH-FRL-2052-7]

Maxima Corp.; Transfer of Data to Contractor

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has contracted with Maxima Corporation of Bethesda, Maryland to provide typing and editing services to the Office of Toxic Substances. Some of the material which Maxima will have access to may contain confidential business information.

DATE: Access to confidential business information will occur no sooner than March 1, 1982.

FOR FURTHER INFORMATION CONTACT: John G. Davidson, Management Support Division (TS-793), Office of Toxic Substances, Environmental Protection Agency, Rm. E-521, 401 M St. SW., Washington, D.C. 20460, (202-382-3783).

SUPPLEMENTARY INFORMATION: EPA has contracted with Maxima Corporation (Contract Number 68-01-6466) to provide typing and editing services to the Office of Toxic Substances (OTS). OTS needs the assistance of Maxima because it does not have sufficient staffing for the amount of work it must perform within certain time constraints.

Some of the drafts which Maxima will receive to type and edit may contain information claimed confidential, including Toxic Substances Control Act (TSCA) confidential business information. Pursuant to 40 CFR 2.306(j), it has been determined that such disclosure of confidential business information to Maxima is necessary for the satisfactory performance of this contract.

At no time will Maxima be permitted to remove any confidential business information from EPA premises. Maxima employees will have access to confidential business information only while working on site at EPA.

Maxima is legally required under the terms of its contract to safeguard confidential business information from any unauthorized disclosure. It is especially prohibited from revealing such information to any third party in any form without written authorization from EPA. Maxima's employees will have signed nondisclosure agreements and will be briefed on appropriate security procedures which must be followed before they will be allowed access to any confidential business information.

Dated: February 7, 1982.

Don R. Clay,

Director, Office of Toxic Substances.

[FR Doc. 82-4103 Filed 2-17-82; 8:45 am]

BILLING CODE 6560-31-M

[WEN-9-FRL-2015-7]

Issuance of Final General NPDES Permit for Oil and Gas Operations on the Outer Continental Shelf (OCS) Off Southern California

AGENCY: Environmental Protection Agency.

ACTION: Notice of final general NPDES permit.

SUMMARY: The Regional Administrator of Region 9 is today issuing a final general NPDES permit for certain dischargers in the Offshore Subcategory of the Oil and Gas Extraction Point Source Category. This general NPDES permit establishes effluent limitations, standards, prohibitions and other conditions on discharges from oil and gas facilities. The facilities covered by this permit are located offshore of southern California and seaward of the territorial seas of the State of California.

EPA regulations and this permit contain a procedure which allows the owner or operator of a point source to obtain an individual permit. This final general NPDES permit is based on the administrative record which includes the support document "Preliminary Report: An Environental Assessment of Drilling Fluids and Cuttings Released Onto the Outer Continental Shelf." The fact sheet sets forth the principal facts and the significant factual, legal, and policy questions considered in issuing this permit. A copy of the permit is reprinted as required by 40 CFR 122.59.

ADDRESSES: Notifications and requests should be sent to the Regional Administrator, Region 9, U.S. Environmental Protection Agency, 215 Fremont St., San Francisco, CA 94105.

FOR FURTHER INFORMATION AND COPIES OF FINAL PERMIT CONTACT: Eugene Bromley, Region 9, U.S. Environmental Protection Agency, 215 Fremont St., San Francisco, CA 94105. Telephone: (415) 974-8062.

SUPPLEMENTARY INFORMATION:

Request for an individual NPDES Permit: Any operator authorized by this permit may request to be excluded from the coverage under this permit by applying for an individual permit. The operator shall submit an application together with the reasons supporting the request to the Regional Administrator.

A source located within the general permit area, excluded from coverage under this permit solely because it already has an individual permit, may request that its individual permit be revoked, and that it be covered by the general permit. Upon revocation of the individual permit, the general permit shall apply.

FACT SHEET AND SUPPLEMENTARY INFORMATION

I. Background

A. General Permits

Section 301(a) of the Clean Water Act (the Act) provides that the discharge of pollutants is unlawful except in accordance with a National Pollutant Discharge Elimination system (NPDES) permit. Although such permits to date have generally been issued to individual dischargers, EPA's regulations authorize the issuance of general permits to categories of dischargers (40 CFR 122.59). EPA may issue a single general permit to a category of point sources located within the same geographic area, whose discharges warrant similar pollution control measures. The director of an NPDES permit program (in this case the Regional Administrator) is authorized to issue a general permit if there are a number of point sources operating in a geographic area that:

1. Involve the same or substantially similar types of operations;
2. Discharge the same types of wastes;
3. Require the same effluent limitations or operating conditions;
4. Require the same or similar monitoring requirements; and
5. In the opinion of the Director, are more appropriately controlled under a general permit than under individual permits.

As in the case of individual permits, violation of any condition of a general permit constitutes a violation of the Act and subjects the discharger to the penalties specified in section 309 of the Act. Any owner or operator authorized by a final general permit may be excluded from coverage by applying for an individual permit. This request may be made by submitting an NPDES permit application, together with reasons supporting the request. The Regional Administrator may require any person authorized by this general permit to apply for and obtain an individual permit. In addition, any interested person may petition the Regional Administrator to take this action. However, an individual permit will not be issued for an oil or gas facility covered by a general permit unless it can be clearly demonstrated that inclusion under a general permit is inappropriate. The Regional