

Mr. CARPENTER. And you would get that specific?

Dr. MIDDLETON. I think until we are specific enough to identify the odor factors, we will never be able to specifically enunciate what it is to be cleaned up, except in very vague terms.

Dr. STEIGERWALD. I think hydrogen sulfide is one that we certainly could go after. The current plan is to think about going out after it as a separate pollutant, although it is one of the most common odors.

Dr. MIDDLETON. Methyl mercaptan is another one.

Mr. FELTON. Would you say it is a little lower on your priority list, though, than some of the other items in general?

Dr. MIDDLETON. Odor criteria?

Mr. FELTON. Yes.

Dr. MIDDLETON. Yes. I think we indicated our primary emphasis is on criteria for particulates as a class, to be followed almost simultaneously by republication of criteria for sulfur oxides, and from there we would expect to go into carbon monoxide, and then we will give consideration to the others we have mentioned—hydrocarbons, oxides of nitrogen, and oxidants.

Mr. CARPENTER. Can you be more specific at this time on your timetable for those first three?

Dr. MIDDLETON. I plan to have the criteria for particulates and sulfur oxides completed this fiscal year. And I plan to have several air quality control regions designated so that full implementation of the Clean Air Act will begin.

Mr. CARPENTER. Right.

Dr. MIDDLETON. Is that timetable to the point?

Mr. CARPENTER. Yes, sir.

Mr. AUERBACH. The next question:

A Bishop, Md., plant is under HEW orders to end unpleasant odors. The company says it will challenge the constitutionality of the Air Quality Act if the Secretary of HEW seeks a court injunction to enforce the order. On what grounds would the company base its case? What is the HEW legal opinion? Do you know of any other resistant court suits concerning the Clear Air Act as amended?

Dr. MIDDLETON. I can read a statement regarding the Bishop Processing Co.'s challenge. [Reading:]

Presently there is no pending litigation involving the Clean Air Act. In a suit entitled "*Bishop Processing Co. v. Gardner*," the company asked the Federal district court to review its claim, made at the public hearing that the statute was unconstitutional. The Government's motion to dismiss that suit was granted on the grounds that the suit was premature, without mention of the constitutional issue. At this time, any discussion of grounds on which the Bishop Processing Co. may rely in attacking the constitutionality of the Clean Air Act would be speculative and of course, inappropriate. It is the view of this Department that the statute's constitutionality will be upheld.

Mr. FELTON. Do you know of any State cases involving this same general area?

Dr. MIDDLETON. Mr. Griswold, will you reply to that question?

Mr. GRISWOLD. The only one was Western Oil & Gas Association, which, in Los Angeles, questioned the constitutionality of rules and regulations limiting the sulfur content of fuel oils burned in various powerplants and other in industry, there. And the net result of that is that they lost all the way up to the State Supreme Court, and then they finally withdrew from that.