

CHAPTER X

LEGISLATIVE REQUIREMENTS

A. SUMMARY

An analysis of existing Federal statutes, included in Appendix C, has been completed to ascertain: (1) the extent of authorities that may exist that could be used to carry out the program and (2) to identify statutory requirements that must be complied with in implementing the SFCP at the Federal level. No attempt was made to assess State/local laws as they may relate to or affect the SFCP except to note that many such laws exist and will have a substantial impact on any Federally sponsored synthetic fuels program.

It should be recognized that the authorities necessary to authorize the undertaking of the program options deal mainly with financial incentives that the government would provide to industry. Changes to existing Federal statutes of a regulatory nature have not been proposed since it is assumed each regulatory requirement will be met. The one exception is the change proposed to the Natural Gas Act to clarify FPC jurisdiction over synthetic gas. The regulatory requirements at the Federal level are substantial and will require considerable time, cost, and effort on the part on any private sector entity to get the necessary permits and clearances to build and operate a synthetic fuels plant. The individual statutory requirements and their potential impact on the program are summarized in the last Section of this Chapter. The legal authorities necessary for a reasonable attempt by the Federal Government to implement the 350,000, 1,000,000 and 1,700,000 million barrel per day options differ significantly. Each is summarized as follows:

1. 350,000 bbl/day Commercial Demonstration Option

The 350,000 bbl/day program would be designed to demonstrate the commercial feasibility of the identified synthetic fuels technologies on a commercial scale. About 10-15 plants would be authorized under this option. Explicit authority to provide loans, construction grants and price supports for the purpose of commercial demonstration of synthetic fuel technologies exists under the Federal Nonnuclear Energy Research and Development Act administered by ERDA. An explicit loan guarantee authority does not exist but the availability of such authority needs to be clarified. While the scope of authorities in the Act for commercial demonstrations is not precise, it seems clear the intention of Congress was not to provide financial incentives to build a number of plants (industrial capacity) of a similar technology or to provide incentives where a technology is already commercially proven. Rather, the intent is to demonstrate the commercial feasibility (technical & economic) of nonnuclear technologies. For any given technology, (e.g., coal gasification) authority would exist under the Act to provide incentives for the building of commercial demonstration plants of differing technologies. It could also be argued that this authority could be used to build several plants with similar technology but under different conditions such as geographic, coal resource, lignite versus high sulphur bituminous coal, etc.

If the Nonnuclear Act is to be used, an authorization and appropriations as appropriate for each individual synfuels project would be needed to enable ERDA to implement this option. The Act specifies a number of requirements that must be met by the ERDA Administrator in using this authority. It would also be desirable to make several changes to the Nonnuclear Act to:

- Authorize the establishment of one additional Executive Level IV position in ERDA to head up the Synthetic Fuels Program Office as recommended in Chapter IX.
- Clarify the EPA Administrators project monitoring authority under the price support provision on an advisory, consultative basis.
- Establish loan guarantee authority. This could be handled in the authorization request in general terms or by an amendment to the Act to specifically grant such an authority.

In addition, changes to several other existing statutes appear needed as follows:

- Authority to authorize Federal oil shale lease holders to arrange for off lease site disposal of unusable products of the oil shale process on Federal lands.
- Changes to the Natural Gas Act that provide the FPC with clear regulatory jurisdiction of high btu synthetic fuels plants. These changes would spell out a framework under which FPC would make rulings on proposed plants.

2. 1,000,000 bbl/day Option

Under this option, the government's intent appears to be to provide a significant commercial capacity to produce synthetic fuels. The Nonnuclear R&D Act provides a commercial demonstration authority which could be used as the authority to subsidize the building of a portion of the 1,000,000 bbl/capacity. The extent to which plants are built would depend on whether they are commercial demonstrations.

Under the two-phased 1,000,000 bbl/day program, the Nonnuclear R&D authorities, as described in the 350,000 option, could be used. The number of plants that could be proposed for authorization will vary depending on the different technologies necessary to demonstrate technical and economic feasibility on a commercial scale. Clearly, one plant per technology could legitimately be authorized under the Act, and as discussed earlier, several plants of a given technology may be possible.

For the second phase which at higher levels will involve building a number of plants of similar technology where commercial feasibility is demonstrated, several approaches could be employed as follows:

- Nonnuclear R&D Act could be expanded by amendment.
- New legislation for industry incentives could be proposed.
- Certain other existing authorities may be used once commercial demonstration is proven including the Rural Electrification Act for utility applications involving low/medium btu gasification. Changes to the Natural Gas Act without further incentives may be adequate to encourage high btu plants beyond the first one or two if these prove successful.
- Industry may move ahead on its own without further Federal help where commercial demonstrations are successful.

In any case, the second phase would not have to be decided until at least partial results from the commercial demonstration phase are available.

The other alternative is to use financial subsidies to build a 1,000,000 bbl/day synthetic fuels industry. It is not clear that this alternative represents a commercial demonstration program effort authorized by existing law since a number of identical plants may be subsidized. However, a significant portion of the 1,000,000 bbl/day program would be commercial demonstration and appropriate under the Act.

Legal authorities beyond the commercial demonstration phase are not now available and would have to be authorized by the Congress either by amendment to the Nonnuclear R&D Act expanding the scope of this Act to permit commercialization of proven technologies or by transmitting new legislation for the synthetic fuels program. It appears that amending the Nonnuclear R&D Act would be the most expeditious course of action since it already provides a framework for financial incentives including an organization (ERDA) to administer such a program. New

legislation would have to address not only financial incentives but environmental, administrative, patents, information disclosure, socio-economic, organization, Congressional oversight, etc. Based on the legislative experience this year with the omnibus Energy Independence Act seeking and securing enactment of new legislation for a synthetic fuels program in reasonable form would probably be very difficult and time consuming.

3. 1,700,000 bbl/day Option

The 1,700,000 bbl/day option would require new legislation possibly with special powers such as: condemnation authorities to expedite land acquisition; authority to expedite and/or to override in certain situations various regulatory requirements, materials allocation authority to assure the synfuels plants have priority in getting equipment and materials. With the need for some special authorities there may be doubt as to the feasibility of this option. It is also questionable that the Congress would be willing to grant such powers unless a strong case could be made that such authorities are necessary to preserve the Nation's security.

B. FEDERAL REGULATORY REQUIREMENTS

A preliminary analysis of Federal regulatory requirements has been completed by identifying the more significant legal/regulatory requirements that will have to be met in the process of building and operating synfuels plants. This was accomplished by soliciting the input of affected agencies. Neither time nor manpower permitted an indepth analysis of certain significant considerations such as water rights, adequacy of Federal coal leases for synfuels necessary, effects on Indian lands. An indepth analysis was completed for environmental requirements.

Based on this review, the scope and impact of Federal regulation on the construction and operation of synthetic fuel plants is complex. Development will require considerable amounts of time and money to gain the necessary concurrences and approvals that would be necessary. Also, the Federal requirements are in addition to those imposed by the individual State and localities that may be involved in efforts to locate, build and operate a synthetic fuels plant operation.

The more significant requirements, which are discussed in Appendix C, that apply are:

<u>Requirement</u>	<u>Affected Synthetic Fuels Technology</u>
● Nat'l Environmental Policy Act	All
● Clean Air Act (as amended)	All
● Natural Gas Supply Act	High btu gasification
● Occupational Safety & Health Act	All
● Antitrust statutes	All
● Minerals Leasing Act	All where Federal lease is used
● Mine Development Plan	All where Federal lease is used
● Coal Mine Health & Safety Act	All where strip or underground coal mine is involved

Federal level, the agency administering any synthetic fuels program must be prepared to assist by dealing with those agencies administering the statutory requirements to ensure applications by synthetic fuels plant sponsors are:

- Acted upon in a timely manner, by the affected agency.
- Issue/disputes with other parties/agencies are recognized and worked out in a timely responsible manner.
- Considered in the context of a national need for domestic energy resources.

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