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U.S. Department of Justice
Office of Legal Counsel

Washington, D.C 20530

DATE: 10/23/91

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great victory for the environment, a day when we have strengthened our clean air statutes, already the world's toughest. This legislation is not only in America's interest; like so many of the environmental issues that we are working on, this bill is in the interest of people all over the world.

And the new environmental ethos is growing. We see it in community efforts and in school involvement across America, and we're seeing it in the innovative response of private industry—in alternative fuel service stations, electric vehicles. These companies understand we must pioneer new technology, find new solutions, envision new horizons if we're to build a bright future and a better America for our children.

There's an old saying: "We don't inherit the Earth from our parents. We borrow it from our children." We have succeeded today because of a common sense of global stewardship, a sense that it is the Earth that endures and that all of us are simply holding a sacred trust left for future generations. For the sake of future generations, I again thank each and every one of you for your commitment to our precious environment. I am now honored to sign this clean air bill into law.

Thank you all who have worked so hard for this day to become possible. Thank you, and God bless all of you.

[*At this point, the President signed the bill.*]

Maybe we could have the symbolism—I don't think there's any protocol, but if I could just invite the front row here to come up with Members of Congress, we'd at least show that this is an across-the-board—[*applause*]——

Please, go in peace. This symbolism—we've omitted some real fine movers and shakers there, but again, my thanks to all of you. Thank you all for being with us.

Note: The President spoke at 2:32 p.m. in the East Room at the White House. In his remarks, he referred to Susan S. Engeleiter, Administrator of the Small Business Administration; Representative John D. Dingell; Roger B. Porter, Assistant to the President for Economic and Domestic Policy; C. Boyden Gray, Counsel to the President; and Robert Grady, Associate Director for Natural Resources, Energy and Science at the Office of Management and Budget. S. 1630, approved November 15, was assigned Public Law No. 101–549.

Statement on Signing the Bill Amending the Clean Air Act

November 15, 1990

Today I am signing S. 1630, a bill to amend the Clean Air Act. I take great pleasure in signing S. 1630 as a demonstration to the American people of my determination that each and every American shall breathe clean air.

In July of 1989, I sent to the Congress a proposal to amend the Clean Air Act of 1970. My proposal was designed to improve our ability to control urban smog and reduce automobile and air toxic emissions, and to provide the enforcement authority necessary to make the law work. It also proposed new initiatives to cut acid rain in half and to promote cleaner automotive fuels.

As a result of that proposal, the 13-year legislative logjam has now been broken. S. 1630 contains all of the essential features of my original proposal and will lead to the achievement of the goals I originally set out. The bill I am signing today will permanently reduce sulfur dioxide emissions by 10 million tons below 1980 levels. It will cut NO_x emissions by two million tons from projected year 2000 levels and reduce air toxic emissions by over 75 percent.

The bill will allow the Nation finally to meet air quality standards in every city; and, in total, almost 30 million tons per year of dangerous chemicals and noxious pollutants will be prevented from fouling the air.

The result of this new Clean Air Act will be that cancer risk, respiratory disease, heart ailments, and reproductive disorders will be reduced; damage to lakes, streams, parks, crops, and forests will greatly be lessened; and visibility will be notably improved. As an added benefit, energy security will on balance be enhanced as utilities and automobiles switch to cleaner burning alternative fuels.

The innovative use of market incentives in the bill represents the turning of a new page in our approach to environmental problems in this country. The acid rain allowance trading program will be the first large-scale regulatory use of market incentives and is already being seen as a model for regulatory reform efforts here and abroad. The acid rain program is based on some simple concepts—that we should set tough standards, allow freedom of choice in how to meet them, and let the power of markets help us allocate the costs most efficiently.

By employing a system that generates the most environmental protection for every dollar spent, the trading system lays the groundwork for a new era of smarter government regulation; one that is more compatible with economic growth than using only the command and control approaches of the past. Other provisions to increase flexibility include increased opportunities for emissions trading and performance standards for fuel refiners to encourage alternative fuel reformulations. In all, these path-breaking features allow us to implement the legislation in a way that achieves my environmental goals at an acceptable cost. The result will be the dawning of a new era in regulatory policy, one that relies on the market to reconcile the environment and the economy.

To address the serious concerns raised by the cost of this legislation, I am directing Bill Reilly, Administrator of the Environmental Protection Agency, to implement this bill in the most cost-effective manner possible. This means ensuring that plants can continue to use emission trading and netting to the maximum extent allowed by law; that the Administration's proposed policy on WEPCO is implemented to the extent allowed by law as quickly as possible; and that the permit program is phased in over time in an orderly, nondisruptive manner. This Administration will also pursue the use of more realistic assumptions when estimating risk. These implementation strategies will help keep unnecessary costs and job losses down, while ensuring the achievement of the environmental goals of this bill in the most efficient manner possible.

Unfortunately, I must note several provisions of the bill that raise serious constitutional concerns. I strongly object to the bill's restrictions on removal or review of the Chemical Safety Investigation Board. Although the Board's principal functions are investigatory and advisory, it has also been given regulatory and enforcement authorities clearly assigned by the Constitution to the executive branch. As such, the provisions purporting to limit my authority to remove Board members and provide them with policy guidance raise serious constitutional questions. Accordingly, although I believe that these provisions are severable, I am directing the Administrator of the Environmental Protection Agency to submit curative legislation in the next session of Congress insuring that the Board's activities are consistent with the Constitution. This legislation will also address the serious constitutional concerns created by those provisions relating to the Board that invade the deliberative processes of the executive branch. Similarly, because the Urban Air Toxics Research Center created by the bill exercises executive grant-making authorities, the provision of the bill vesting appointment of part of its Board in Members of Congress violates this principle. This defect must also be rectified by curative legislation.

In addition, there are certain aspects of the bill's enforcement provisions that raise constitutional questions. I note that in providing for citizen suits for civil penalties, the Congress has codified the Supreme Court's interpretation of such provisions in the *Gwaltney* case. As the Constitution requires, litigants must show, at a minimum, intermittent, rather than purely past, violations of the statute in order to bring suit. This requirement respects the constitutional limitations on the judicial power and avoids an intrusion into the law-enforcement responsibilities of the executive branch. I should also note my interpretation of the provision permitting courts to order that civil penalties be used in beneficial mitigation projects consistent with the Act and enhancing public health or the environment. Because the Congress may not impose on courts responsibilities inconsistent with their judicial function, I do not

interpret this provision as imposing administrative responsibilities on the courts.

Even before the signing of this bill, the American public has begun to respond to the environmental leadership it embodies. In response to the direction we have signalled in this legislation:

—Cleaner reformulated gasolines are being produced by our leading refiners and are eagerly being sought out by consumers.

—Cleaner natural-gas-fueled trucks, electric vehicles, and flexible-fueled vehicles are or will soon be manufactured by domestic auto producers.

—Commitments have been made by the chief executives of leading chemical industries to reduce voluntarily their air toxic emissions by as much as 90 percent.

The speed with which companies and the public are voluntarily getting a head start is testimony to the need and timeliness of the measures I proposed and the Congress has now passed.

Passage of this bill is an indication that the Congress shares my commitment to a strong Clean Air Act, to a clean environment, and to the achievement of the goals I originally set forth.

George Bush

The White House,
November 15, 1990.

Note: S. 1630, approved November 15, was assigned Public Law No. 101–549.

Nomination of Susannah Simpson Kent To Be Director of the Institute of Museum Services

November 15, 1990

The President today announced his intention to nominate Susannah Simpson Kent, of Pennsylvania, to be Director of the Institute of Museum Services, National Foundation on the Arts and the Humanities. She would succeed Daphne Wood Murray.

Mrs. Kent has been involved with museums throughout her life. Her managerial, volunteer, and research experience includes work with history, natural history, and art museums, and also with nature centers and other environmental conservation organizations.

Mrs. Kent graduated from Smith College in 1957 with a B.A. in English. She pursued the study of economics at New York University before receiving her master of arts degree in American history from Yale University, where she also engaged in East Asian studies. Mrs. Kent is currently a master's degree candidate in museum studies at the George Washington University in Washington, DC. She is married, has two children, and resides in Washington, DC.

Proclamation 6232—National Federation of the Blind Day, 1990

November 15, 1990

By the President of the United States of America

A Proclamation

Since its founding half a century ago, the National Federation of the Blind has been a leading advocate for Americans affected by severe visual loss. Its administrators, staff, and supporters know that persons who are blind possess not only the desire but also the ability to lead full, independent, and productive lives, and they have encouraged all Americans to recognize this fact as well.

Through an effective community outreach program, the Federation has been working to enhance the public image of blind Americans and to promote real equality of opportunity for these members of our society. This outreach program includes television and radio appearances by Federation members, public presentations, and the distribution of educational materials. In addition, the Federation produces monthly and quarterly publications that serve as a valuable source of news and information on issues affecting Americans with impaired eyesight.

CAA Gen'l

Indianapolis 11/22 Star

Local official in middle of clean-air controversy

By MARCY MERMEL
The Indianapolis News

The head of the Indianapolis air pollution control division has found himself doing double duty on the clean-air front.

David R. Jordan leads a national group fighting Vice President Dan Quayle's Council on Competitiveness over clean air regulations.

As administrator of the Indianapolis Air Pollution Control division, he recently ordered an inspection that found a company owned by the council's executive director requires an air pollution permit.

The Boston Globe and the Washington Post reported Wednesday on the permit Jordan expects to order for World Wide Chemicals Inc., 1910 S. State Ave. The newspapers suggested the company could pose a potential conflict-of-interest for Allan Hubbard, co-owner of World Wide Chemicals and executive director of the competitiveness council.

"We had no idea who owned the company," said Jordan, who called his position "awkward."

Jordan is president of the Association of Local Air Pollution Control Officials.

Jordan started looking into World Wide Chemicals a few months ago after an inquiry from EPA, he said.

"It seemed to be under the context of some regulations they were working on and World Wide Chemicals was commenting on," Jordan said. "They (World Wide) just wanted to see how it would affect them."

The Indianapolis agency found only a 12-year-old questionnaire on the company, 1910 S. State Ave., which had no permits.

After an inspection of the facility, staff members agreed the company probably would need a permit for releasing hydrocarbons. The plant emits more than 15 pounds per day of hydrocarbons, which contribute to the city's ozone problem.

Hubbard has obtained a waiver from Quayle excusing him from conflict-of-interest laws so he could work on the clean air provisions despite the activities of his company.

Hubbard does not oversee daily operations of the firm.

Jordan said the Clean Air Act regulations at issue between the association and the competitiveness council do not deal with hydrocarbons. The rules being debated govern emissions of various chemicals from industries.

ARTICLES

The New York Times

Founded in 1851

ADOLPH S. OCHS, *Publisher 1896-1935*
ARTHUR HAYS SULZBERGER, *Publisher 1935-1961*
ORVIL E. DRYFOOS, *Publisher 1961-1963*

CAA-Final

Cleaner Air, by Consensus

The biggest question left by the Clean Air Act of 1990 — President Bush's grandest legislative achievement so far — was whether its promise would be thwarted by bureaucratic infighting, regulatory paralysis and endless litigation. That's been the sad fate of other ambitious laws, including the original Clean Air Act of 1970.

Although the jury is still out on the new act, legislators already complain that the President's Council on Competitiveness, headed by Vice President Quayle, is becoming a haven for businesses seeking to avoid costly investment in anti-pollution equipment. In one case, the council pressured the Environmental Protection Agency to ease regulations on old coal-fired power plants.

But there's promising news as well. In the last two weeks the E.P.A. has announced two major agreements aimed at cleaning the air in America's dirtiest cities and above the Grand Canyon. In both cases, agreement was reached only after the agency gathered traditionally hostile interests in one room and invited a consensus — using a process called regulatory negotiation or, in Washington-speak, "reg-neg."

By whatever name, it's an immensely valuable procedure that ought to be used far more often than it is. For one thing, the parties to a consensus are less likely to challenge government regulations at some later date, not least because they helped write them. That means fewer lawsuits and fewer attempts to subvert the purposes of the act through backdoor intervention with the Office of Management and Budget — or Mr. Quayle.

One agreement involved a crucial provision of the 1990 act requiring oil refiners to produce a cleaner-burning gasoline to reduce smog in the nation's nine dirtiest cities, including Los Angeles and New York. The act was far from clear on how that goal was to be reached, so the E.P.A. summoned representatives from 30 different interest groups, including environmentalists and oil company executives, for two months of negotiations.

The result was a compromise under which gasoline sold in 1995 will be 15 percent cleaner than it is now. Industry will be allowed to average the 15 percent reduction in ozone-forming hydrocarbons so that some gallons come in higher, some lower. That gives the companies flexibility to accommodate differences among refineries. But it's wholly consistent with the intent of the act.

The second set of negotiations involved the haze that fouls the Grand Canyon. The haze comes from sulfur dioxide emissions from the Navajo Generating Station, a giant coal-burning plant 15 miles northeast of the canyon. Environmentalists and the E.P.A. wanted a 90 percent reduction; the plant's owners, though clearly in violation of the law, wanted none. Mr. Quayle's council recommended a 70 percent cut.

The owners eventually agreed to the original 90 percent target — but only after the environmentalists proved to the company that, by using a complex averaging scheme, the company could meet the target at lower cost than it thought possible.

Nobody said that carrying out the act would be easy. And regulations have yet to be written for controversial sections of the law covering toxic chemicals and acid rain. Yet the odds of success went up when the E.P.A. established a simple principle: Negotiation now beats litigation later.

The Washington Post

AN INDEPENDENT NEWSPAPER

'On a Clear Day . . .'

CHANCES ARE you've never heard of "Rayleigh conditions." And if you happen to be stuck in Washington during the summer months, it's a sure bet you've never seen them. Just imagine a crystal clear sky swept free of that dull gray haze. That's a Rayleigh condition (named for the physicist who identified this phenomenon). Until recently, such conditions have been quite common along the rim of the Grand Canyon. More and more often, however, the canyon air has begun to look like the gray aerial carpet of the East Coast in the summer.

There has been considerable dispute as to what causes the layer of haze in the canyon. During much of the year, it blows in from sites as distant as the Los Angeles basin and northern Mexico. However, the Environmental Protection Agency and the U.S. Interior Department's National Park Service say that in winter the main culprit is the Navajo Generating Station, which sits 80 miles northeast of the canyon.

In February, in what was to to be the first use of federal law to protect the scenic vista of a national park, EPA Administrator William K. Reilly proposed to force the Navajo plant to reduce sulfur dioxide emissions by 70 percent. But the plant's owners, who include the Salt River Project and the Interior Department's Bureau of Reclamation, disputed the EPA's research and said that their facility had, at most, a minimal impact on the canyon. Mr. Reilly's proposal pleased neither environmentalists—who felt it did not go far enough—nor the utility industry, which decried its costs.

But a reasonable compromise has been reached. It's one that is more stringent than Mr. Reilly's proposal, and at least grudgingly acceptable to both environmentalists and even the plant's owners. Under the agreement, which is subject to EPA approval, the plant's owners have agreed to install scrubbers that will reduce sulfur dioxide emissions at the plant by 90 percent.

The price of building, installing and operating the scrubbers has been put at $89.6 million annually. For customers of the plant, the resulting rate increases will amount to a 2 percent to 4 percent rise on their monthly bills, according to the Salt River Project and the EPA. For customers of the Los Angeles Department of Water and Power, which is also a part owner of the plant, the average additional cost will be 20 cents per month. That sounds like a reasonable price to pay to protect one of the nation's most spectacular natural wonders.

THE ARIZONA REPUBLIC

Thursday, August 8, 1991

GRAND CANYON COMPROMISE

Clearing the air

THAT a tentative accord has been reached in the effort to clean up the air in the Grand Canyon is welcome news indeed. The Salt River Project, operator of the coal-fired Navajo Generating Station at Page, has agreed to install scrubbers on the power plant's three huge smokestacks, thus reducing emissions by 90 percent.

Visibility in the canyon has been the object of debate since a conservation group filed a lawsuit against the U.S. Environmental Protection Agency in 1982. Since then the controversy has revolved around a battle of scientific studies.

A 1987 National Park Service test concluded that the Navajo plant contributed significantly (40 percent to 70 percent) to reduced visibility in the canyon over winter months. SRP, which operates the plant for a consortium of Western utilities, responded with its own study allegedly establishing that Navajo made no contribution to the canyon's air pollution fully 93 percent of the time.

Reasonable people figured that the truth probably lay somewhere between the allegation that Navajo was the chief culprit and the view that all of the canyon's smog originated on the freeways of Los Angeles. Anyone who has visited Page and seen the yellow haze from the plant settling over Lake Powell would reasonably conclude that Navajo was at least partially responsible.

SRP officials remain convinced that Navajo smog is a negligible factor, but they agreed to resolve the dispute because the EPA, responding to public opinion, appears determined to impose something drastic. The utility apparently decided that even at a cost of $2 billion over 20 years, it would be less expensive to install the scrubbers than fight the issue through the courts.

This compromise (SRP's partners could still scuttle it) would make considerable sense. Though scientists will continue to squabble over how large a share Navajo contributes to the area's air pollution, it is hard to deny that the plant's ochre-colored emissions negatively affect the vistas in the Four Corners region and its unique concentration of national parks and monuments.

The proposed deal appears reasonable. SRP would install scrubbers beginning in 1997, instead of 1995, as the EPA proposed. Also, the 90 percent emission reduction would be measured annually instead of monthly. This would preclude the need to install backup scrubbers to take over when the primary units are down, thus saving the utility $1 billion.

The cleanup would result in somewhat higher electric bills for SRP customers and others who use Navajo power, but that cannot be avoided. It is only reasonable for the people who benefit from the power plant's electricity to help pay for its cleanup so that all might continue to enjoy the singular natural wonders of the region.

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Where The Spirit Of The Lord Is, There Is Liberty — II Corinthians 3:17

EDITORIALS

GRAND CANYON HAZE

Compromise in the works

FOR the past several weeks the various factions in the effort to clean up the winter haze at Grand Canyon National Park have been negotiating a plan to reduce sulfur dioxide emissions from the Navajo Generating Station at Page. Lately the signs are that a compromise is in the works.

The clearest indication of a pending accord was the decision to prolong the talks beyond the July 4 deadline set by William Rosenberg, assistant administrator of the Environmental Protection Agency. A recent EPA statement suggested that enough progress was being made on the issue of anti-pollution controls at the Page power plant to justify more negotiations.

Moreover, the agency's optimism underscores the importance that the Bush administration has attached to resolving this dispute. The Bureau of Reclamation owns the largest share of the power plant. Given Mr. Bush's desire to be known as "the environmental president," the idea of the feds contributing to canyon air pollution would hardly be welcome.

Should the talks between the EPA, the Salt River Project and the non-profit Grand Canyon Trust collapse, it would be up to the EPA to impose a cleanup plan on the coal-fired power plant. Depending on what action the EPA took, SRP and the other utilities that own the power plant or the environmental community could take the matter to court, and that would further delay emission controls at Navajo.

This point should not be lost in the wrangling over the technical arcana on reaching an agreement on emission limits. To be sure, the issue of the canyon's haze has been studied to death. It remains only to apportion the power plant's contribution to the problem. Is Navajo a "major contributor" (as the National Park Service insists), has it "contributed significantly" (as the National Research Council concludes), or is the plant's contribution less than 10 percent (as SRP, the plant's operator, alleges)?

The Interior Department has been conspicuously absent from the talks and appears content to sit on the fence. It has refused to back either the NPS call for a 90 percent emission reduction or the Bureau of Reclamation's desire to do nothing at all. Nevertheless, Secretary Manuel Lujan is obliged to protect the national parks and he should take a position. Furthermore, the power plant's operators agreed in their original environmental impact statement to install anti-pollution equipment, a promise that remains unfulfilled.

At least Interior's wishy-washiness has not deterred the EPA from pushing hard for a satisfactory resolution of the issue. All the parties to the dispute should keep working to achieve the best possible reduction of emissions from the Navajo plant.

The Washington Post

AN INDEPENDENT NEWSPAPER

Creeping Reg-Neg

ONE OF the places where government tends to break down is at the busy intersection of politics and science. Congress is simply not equipped to make the technical judgments that many of the laws it passes require, particularly in the health and safety and environmental fields. The technical issues are hotly contested besides; the typical legislative response is to take refuge in a fuzzy formulation and toss the matter to the regulators who have become the modern government's fourth branch. Too often the regulators' handiwork will then be taken to the courts by the very parties who were fighting over the wording in Congress in the first place. The business of giving effect to the laws tends to be more circular than quick.

Now comes a new process intended as a kind of shortcut through this laborious older pattern. It is called reg-neg, which stands not for negation but for regulatory negotiation. The negotiations process may already have helped to crack two of the harder issues from last year's copious amendments to the Clean Air Act, including an almost impenetrable set of questions relating to alternative fuels on which tentative agreement was announced last week.

The Administrative Conference of the United States, having commissioned a study, approved regulatory negotiation for use by federal agencies in 1982. Last year Congress gave its official blessing as well. Normally an agency with a regulatory task assembles what information it can and writes the rule on its own. The rule is published for comment, then fine-tuned or not as the agency and Office of Management and Budget, representing the president, see fit, and made final. That's when one side or the other and sometimes both will take it to court, and while the courts can only overturn regulatory decisions on rather limited grounds, the litigation tends to eat up a lot of money and time.

The negotiating process is in part an effort to do the fighting up front. A committee is formed—the law requires that it be broadly representative of the parties at interest—and tries to work out a compromise acceptable to the parties and the agency in advance. The compromise will often include a promise to refrain from future litigation. The negotiating sessions are required to be public; in that sense the process is even more open than normal rule writing. Once agreement is reached, the proposed rule is still published in the Federal Register for comment as under normal procedures. Thus no group forfeits any right, including the right to go to court, that it already has.

The process has been tried about 20 times, mostly though not always with success. Federal officials note that not all disputes are amenable to it; sometimes the span of disagreement is so great that the agency can only cut through on its own as in the past. But where it works, as apparently with alternative fuels, it's plainly a good idea. Regulatory government on the present scale is recent enough that the country is still feeling its way. This seems to be a sensible step along the path.

Post 8-14-91

THE DENVER POST

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Cleaning up the canyon

DAYBREAK AT the Grand Canyon is an excursion into spiritual silence. On a clear morning, a visitor can peer over the precipice and seemingly see into infinity. Every rock ridge, every color-splashed stone, every rugged wave on the Colorado River far, far below is etched perfectly in the crystalline light of a southwestern dawn.

But on certain days the gray tentacles of civilization seep into this cherished national treasure in the form of a terrible smog. There are times that the air pollution at the Grand Canyon is so bad that it's impossible to see the opposite rim. What's more, the same pollution appears to have fouled the air in Mesa Verde National Park in Colorado and several national playgrounds in Utah, such as Capitol Reef and Bryce Canyon. Americans who have witnessed this deterioration have been outraged.

Yet they now ought to be cheered by an agreement announced last week between a coalition of environmental groups and the operators of the giant Navajo power plant near Page, Ariz., that has created most of the air pollution fouling the Grand Canyon and surrounding national lands. The pact ends two decades of bickering and represents a complete change in how industry and environmentalists solve problems: instead of litigating, they negotiated.

The two sides didn't dream up this plan on their own, however. It was a shotgun marriage forcefully arranged by the U.S. Environmental Protection Agency, which previously had proposed a cleanup plan that neither the environmentalists nor the power company found tolerable.

The marriage appears to have produced a healthy baby — a new plan that will create cleaner air for fewer dollars than the EPA's initial proposal.

The EPA's original plan would have reduced air pollution by only 70 percent and would have required the power plant to spend $106 million annually to install redundant pollution-control equipment. Under the new plan, which the EPA still must approve, the power plant will have to cut its emissions by 90 percent, but won't have to install as many back-up "scrubbers," so the total cost of the cleanup will be only $89 million a year.

The agreement won't clean the skies over the Grand Canyon and surrounding national playgrounds until the turn of the 21st century. But that's a quicker improvement than would have been accomplished if the environmentalists and the power company continued with their endless lawsuits.

The EPA still must find solutions to regional haze and visibility problems affecting national parks in other parts of the country, where once-great vistas have vanished in the smog. But the recent agreement is so reasonable that it ought to serve as a model for future cleanup proposals.

It is, in effect, a grand plan for the Grand Canyon.

San Francisco Chronicle

THE VOICE OF THE WEST

8-12-91

EDITORIALS

Clean Skies At Grand Canyon

A NATIONALLY significant agreement reached by environmentalists and the owners of a power plant in northern Arizona promises to control the air pollution that envelops the Grand Canyon and sometimes blocks the world-famous view from rim to rim.

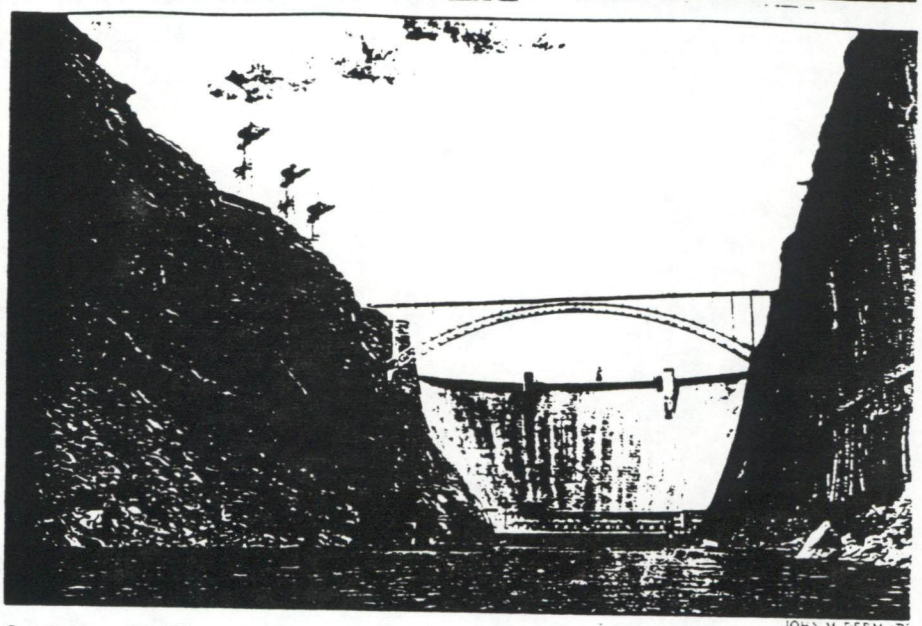
Industrial pollution from the huge coal-burning Navajo Generating Station 12 miles from the canyon has also raised concern about haze that could threaten seven other national parks and monuments in Utah, Arizona and Colorado.

Bright white haze can block views from rim to rim

The plan announced last week is the culmination of one of the most bitter environmental battles in the West and it marks the first time that a 1977 federal law will be used solely to improve visibility at a national park. Hence, the agreement can be used as an effective precedent for other national parks with problems stemming from haze.

ACCORDING TO the deal, the owners of the Navajo utility will install $430 million of control devices on their smokestacks and hopefully achieve a 90 percent reduction in sulfur dioxide emissions by the end of the decade.

Cleaning the skies over the Grand Canyon, a national landmark and a worldwide symbol of the American West, is of such political importance that the agreement could be the cata-



JOHN M. DERMOTT

Surging current: *Water from the Glen Canyon Dam has damaged the Grand Canyon*

ENVIRONMENT

Lifting the Canyon's Veil

On a clear day at the Grand Canyon, you can see . . . scratch that. There have been so few clear days that many of the 4 million tourists flocking to the rim each year can't pick out the bas-relief of rock formations, or the brick and ocher veins marbling the canyon walls. "They just don't see the beauty of the place," says superintendent Jack Davis. Since 1976, much of the haze, especially in winter, has come from coal burned in the Navajo Generating Station, 15 miles to the northeast, whose owners never made good on a 1973 promise to install scrubbers. The pall violates the Clean Air Act, so in 1982 environmental groups sued. The case bogged down—until last week, when the Environmental Protection Agency's new resolve to encourage opponents to negotiate, not litigate, broke the logjam.

Led by the Grand Canyon Trust, environmentalists had pushed for a 90 percent reduction in sulfur emissions. The plant's owners, including the federal Bureau of Reclamation, thought zero percent sounded about right. EPA was about to side with the environmentalists but, under pressure from the White House, recommended a 70 percent cut this February. But neither side was happy. That's when EPA Assistant Administrator William Rosenberg got both parties together. The trust proposed allowing the Navajo's owners to average sulfur emissions over a year, rather than monthly. This strategy would let the plant get by without costly backup scrubbers but still cut emissions more than 90 percent for $90 million—$18 million *less* than EPA's proposed 70 percent cut would have. The owners were convinced. President Bush called the accord "a milestone in our implementation of the Clean Air Act and in our efforts to protect one of America's crown-jewel national parks." He will visit the canyon next month to celebrate the accord.

The canyon faces one more threat. For years the Glen Canyon Dam has released wildly fluctuating amounts of water into the Colorado River to meet peak power demands. The surging current—which sometimes raises the river by 13 feet—has eroded the Grand Canyon's beaches, destroyed habitats of its fauna and flora, and begun to eat away at about 300 of the 400 Indian archeological sites and sacred places. Last week Interior Secretary Manuel Lujan announced that he would order the flow stabilized. That should have little impact on electricity supply—utilities can buy power from the grid—but will limit destruction downstream. To make the policy stick, the Senate is weighing a bill that requires Glen Canyon to be operated in a way that protects downstream sites. The House passed the measure in June, and Sen. Bill Bradley of New Jersey, a sponsor of the bill, thinks its chances are excellent. "When it passes," says Ed Norton of the Grand Canyon Trust, "the idea that power has primacy will be dead meat forever." And the water that carved the Grand Canyon eons ago will no longer destroy it.

SHARON BEGLEY *with* MARY HAGER *in the Grand Canyon*

AROUND THE NATION

Canyon Clear-Air Plan

■ PHOENIX—Environmentalists and utility officials announced a plan designed to clear the air over the Grand Canyon by cutting pollution from a nearby coal-burning power plant.

The agreement calls for a 90 percent cut in sulfur dioxide emissions from the Navajo Generating Station, which environmentalists blame for smog that on some winter days obscures views across the canyon. Smokestack scrubbing equipment is to be installed beginning in 1997 at a cost of $1.8 billion.

The accord, which will be submitted to the Environmental Protection Agency, was reached after months of negotiations between the Grand Canyon Trust and the Salt River Project, the Phoenix-based operator of the plant that produces power for six western utility firms.

Accord Is Reached To Clean the Air Of Grand Canyon

By Barbara Rosewicz
Staff Reporter of The Wall Street Journal

WASHINGTON—Ending years of opposition, owners of a huge Western power plant struck a deal with environmentalists to slash air pollution blamed for obscuring views of the Grand Canyon.

The accord is to be announced today in Arizona. But a spokesman for the Phoenix-based Salt River Project, operator and part-owner of the Navajo Generating Station, confirmed the agreement, which has been secretly negotiated for months.

Under the agreement, owners of the Navajo power plant in Page, Ariz., would install $430 million of air-pollution-control devices on its three giant smokestacks to clean the air and improve visibility at the canyon, a national landmark 12 miles away.

The agreement marks the first time that a 1977 federal law would be enforced to improve visibility at national parks, a growing concern around the country and the subject of lawsuits by environmental groups. The plume of sulfur dioxide from the coal-fired Navajo plant is blamed for contributing, particularly in winter, to a bright white haze that on the worst days can keep visitors from seeing across the canyon.

Pushed by environmental lawsuits, the federal government had begun taking steps to force cutbacks in pollution by the plant. But utility owners were contesting such steps. The deal is unusual because it voluntarily brings together factions that have been warring over pollution in the Grand Canyon for more than a decade. Plus, under the agreement, owners of the power plant—five utility companies and the U.S. Interior Department—would make even steeper cuts in sulfur-dioxide emissions than proposed by federal regulators, though at a reduced overall cost than under the federal plan.

The federal government is expected to approve the deal and write it into a new regulation. The White House already is embracing the accord as an example of how cost-effective solutions can be found for environmental problems, and the agreement could spur a trip by President Bush to the Grand Canyon later this year, an administration official said.

According to people close to the negotiations, environmental groups led by the Grand Canyon Trust won a 90% cutback in sulfur-dioxide emissions by 1999, more than the 70% proposed by the Environmental Protection Agency earlier this year. The incentive for the plant's owners, who originally had contested even the 70% cutback, was that they could adjust some of the technical requirements to lower their costs.

The agreement lowers the costs of compliance to an estimated $89 million a year, from $106 million annually as proposed under the EPA's plan. The cost savings would result from giving the plant additional years to begin installing its first "scrubbing" devices, and from removing a requirement that a costly back-up scrubber be installed for each boiler.

Still, the costs represent a significant expense for a plant that already burns low-polluting, low-sulfur coal and already is cleaner than the scores of power plants targeted by new acid-rain requirements. Taxpayers will share in the costs because the U.S. Bureau of Reclamation, in the Interior Department, owns the largest share of the plant, 24.3%. Other owners are: the Salt River Project, 21.7%; Los Angeles Department of Water and Power, 21.2%; Arizona Public Service Co. unit of Pinnacle West Capital Corp., 14%; Nevada Power Co., 11.3%, and Tucson Electric Power Co., 7.5%.

Ed Norton, head of Grand Canyon Trust in Washington, which negotiated for environmental groups, called the deal "a very good agreement" that will benefit not only the canyon but a circle of nearby national parks. However, he said it won't eliminate haze in the canyon because it's also caused by smog from Los Angeles and other nearby urban areas.

The Navajo plant is one of the largest coal-fired plants in the Western U.S. Its owners entered negotiations, which were informally initiated by the EPA, after contesting for years studies linking the plant to haze in the canyon.

LOS ANGELES TIMES THURSDAY, AUGUST 8, 1991 A13

Power Plant Agrees to Stiffer Smog Curbs

■ **Pollution:** Accord calls for 90% reduction in sulfur dioxide emissions at Grand Canyon by 1999. EPA had sought a 70% cut.

By LARRY B. STAMMER
TIMES ENVIRONMENTAL WRITER

The Los Angeles Department of Water and Power and other owners of a huge Arizona power plant whose emissions obscure scenic vistas at the Grand Canyon have agreed to tougher smog controls than proposed by the U.S. Environmental Protection Agency.

The agreement, to be announced today in Phoenix in Gov. Fife Symington's office, follows months of intensive negotiations with environmentalists.

The accord calls for a 90% reduction in visibility-impairing sulfur dioxide emissions by August, 1999, at a cost of $89.6 million.

In February, the EPA—reportedly under pressure from the White House to hold down costs—said it would insist on no more than a 70% cut in emissions from the Navajo Generating Station, situated 80 miles northeast of the Grand Canyon's South Rim.

But environmentalists, led by the Grand Canyon Trust, and operators of the 2,250-megawatt plant in Page, Ariz., said that the EPA has backed the compromise.

Owners of the plant agreed because the new controls, although stricter in the long run, will have a lower cost because of less restrictive interim compliance deadlines.

The agreement was hailed Wednesday as a forerunner of future efforts to protect the pristine air of the nation's national parks and wilderness areas, many of which are under a growing smog siege.

If the controls are accepted by the EPA, as expected, it will mark the first time since Congress enacted the Clean Air Act in 1977 that the law has been invoked to specifically protect air quality in national parks and wilderness areas.

"I do not think that it abuses the historic," said Ed Norton, president of the Grand Canyon Trust, which was one of the principal environmental negotiators of the pact.

"If the EPA adopts the . . . recommendation, it will be the first time that the agency has acted solely to protect visibility and the paramount aesthetic values of a national park," Norton said.

Barring unforeseen developments, the EPA regulations enforcing the agreement will become final sometime after a 30-day public comment period.

Despite the agreement, operators of the plant remained at odds with environmentalists over how much cleaner the Grand Canyon's air would be with the tougher controls.

Whatever the improvement, both sides agreed that it would be substantial. One study said that 40% of the man-made haze over the park could be blamed on the plant, which is said to be the largest source of sulfur dioxide emissions in the Southwest.

Under terms of the agreement, owners of the plant will be given until August, 1999, to complete the installation of pollution controls—two months earlier than the EPA proposed last February.

However, plant owners will be given two additional years to start fitting the controls on the power plant. Moreover, by averaging pollution on a yearly basis instead of a monthly basis, as first proposed, operators will have more flexibility in meeting the goal. It will also save them money.

Under the old proposal, operators estimated that it would cost them $106 million to comply. Under the new approach, the costs were placed at $89.6 million.

The DWP said that the controls will cost the average homeowner, who pays $40 a month for power, another 20 cents.

The plant is operated jointly by the DWP, Salt River Project, Arizona Public Service Co., Tucson Electric Power, Nevada Power Co. and the U.S. Bureau of Reclamation.

THE NEW YORK TIMES FRIDAY, AUGUST 9, 1991 A1

UTILITIES TO TAKE STEPS TO CUT HAZE AT GRAND CANYON

BIG POWER UNIT AFFECTED

Companies and Environmental Groups Reach Agreement—Impact Is Years Away

By KEITH SCHNEIDER
Special to The New York Times

WASHINGTON, Aug. 8 — After two decades of court battles and regulatory skirmishes, the owners of a giant coal-burning power plant in northern Arizona agreed today to a series of expensive measures to control air pollution and reduce haze in the Grand Canyon by the end of the decade.

The agreement, between the owners and two environmental groups, is almost certain to end one of the angriest and most visible environmental struggles in the American West. In recent years, thick haze had turned the Grand Canyon from a breath-taking natural wonder to a sad tableau of spreading industrial pollution and Government inaction. On many days, particularly in the winter, the haze is so thick that visitors standing on one rim can barely see the other side.

The power plant blamed for much of the haze had also become a symbol for environmentalists of industrial excess. Every bit as visible as the towering brownish-yellow plume of soot and smoke that poured from its 770-foot smokestack across the fragile desert landscape.

Open to Public Comment

Under the agreement, which will be open for public comment and is likely to be adopted as law this fall by the Environmental Protection Agency, which assisted in negotiations, six owners would spend roughly $430 million to install pollution control equipment on the power plant's three boilers, with the first boiler-scrubbing system to be installed by 1997 and the last by 1999.

The equipment will be designed to capture sulfur dioxide, a gas produced from the burning of coal that is chemically transformed in the atmosphere into particles which, when ... ment works properly, it will reduce the amount of sulfur dioxide pouring from the plant's smokestacks to 6,000 to 7,000 tons a year, a 90 percent reduction from the 65,000 to 70,000 tons now produced each year.

The plant generates power for four million people and businesses in Arizona, Nevada and California and to the Central Arizona Project, a manmade canal and pump system that provides water from the Colorado River for Phoenix and Tucson.

"The Grand Canyon is to the United States what the grand cathederals are to Europe," said William K. Reilly, the Administrator of the Environmental Protection Agency. "It's part of our heritage, a symbol worldwide of the American landscape."

Suit Brought in 1984

The pact reached today after months of negotiations settles a Federal lawsuit brought in 1984 against the power plant's owners by the Environmental Defense Fund, a national environmental group and the National Parks and Conservation Association, a Washington-based group.

It also ends a ticklish internal battle between two units at the Department of the Interior. The National Park Service, which owns and operates Grand Canyon National Park, has fought for the controls for years. The Bureau of Reclamation, which owns 24 percent of the power plant, the largest share, has fought the controls, saying that the cause of haze had not been proven and that controlling sulfur dioxide would cost too much.

And the agreement represents a small victory for the Environmental Protection Agency.

After reviewing studies of the haze and its causes, Mr. Reilly was prepared late last year to require the plant, the Navajo Generating Station, to reduce sulfur dioxide emissions 90 percent. But in February, the E.P.A. proposed a reduction of just 70 percent after the Office of Management and Budget and the White House objected, saying that the costs of a 90 percent reduction were too high.

An E.P.A. Eye on Costs

Within the February proposal, though, was a provision that the E.P.A. knew would make a 70 percent reduction so expensive that the owners of the power station were likely to negotiate a less costly solution. The proposed rule in February would have required the Navajo power plant to be able to cut sulfur dioxide emissions 70 percent over each month, allowing the plant less flexibility than if the emissions were measured over a year, allowing ... have had to install three pollution control systems on each boiler instead of two because if one system failed, a backup was necessary to meet the regulation. The owners and the E.P.A. estimated the cost of installing the systems under the February proposal at $510 million.

The agreement reached today calls for the plant to cut emissions 90 percent on an annual average, thus allowing it more flexibility. The effect of the longer time frame is that the plant will need to install two pollution control systems on each boiler instead of three. If one fails, the plant has more time to repair it and still make the 90 percent limit. The estimated cost of the new strategy is $430 million.

The E.P.A. played a pivotal part in providing technical specialists and data to help the negotiators, a role that was discouraged by the White House when the talks opened in April, according to E.P.A. officials who asked to remain unidentified. The White House later relented after the Bush Administration recognized the symbolic political importance of a deal to scrub the skies in the Grand Canyon.

Costs to Be Apportioned

The owners will share the cost of the pollution control equipment in percentages equal to their share of ownership, with the Bureau of Reclamation responsible for roughly $103 million of the total. Other owners are the Salt River Project, a Phoenix-based utility that also operates the plant, the Los Angeles Department of Water and Power, the Arizona Public Service Company, Tucson Electric, and Nevada Power.

The Navajo Generating Station, completed in 1976 and located 15 miles north of the Grand Canyon in Page, Ariz., has raised concern about its potential to pollute the skies of the Southwest from the day it was first proposed in 1970 by the Bureau of Reclamation. The bureau, the Government's powerful western dam-building agency, had wanted to build two dams in the Grand Canyon to provide hydroelectric power for the pumps that would divert Colorado River water into a canal to slake the thirst of Phoenix and Tucson hundreds of miles south.

The Sierra Club fought the dams, and when the Bureau of Reclamation relented in the 1960's it was the first time an environmental group had stopped a major Government dam in the West.

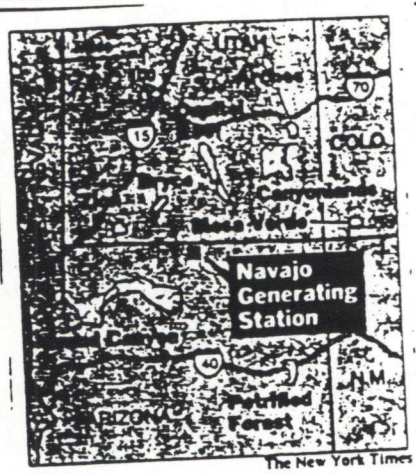
The alternative, though, proved just as troublesome to environmental groups, said Robert E. Yuhnke, a senior lawyer at the Environmental Defense Fund in Boulder, Colo. The bureau proposed the Navajo Generating Station, a 2,250 megawatt power plant fueled by 24,000 tons of coal a day, a plant so big — it covers 1,800 acres — and so polluting its trail of uncontrolled smoke could be seen miles away.

Other Parks Affected

Cont'd

groups warned that the soot would cause haze in the Grand Canyon, and they worried about the seven other national parks and monuments on the Colorado Plateau in Utah, Arizona and Colorado. A study completed this year by the Environmental Defense Fund showed that the plant's soot was a factor in the haze that obscured those parks as well.

In 1973, the Department of Interior signed an agreement with the other owners that said that as soon as technology was available to control sulfur dioxide, it would be bought and installed at the plant. Mr. Yuhnke said such equipment was ready in 1976 when the $659 million plant was finished, but never installed.



The Navajo Generating Station is blamed for haze at eight parks.

end

A FRIDAY, AUGUST 9, 1991 USA TODAY

Grand Canyon to get clearer

By Rae Tyson
USA TODAY

The skies over Arizona's haze-shrouded Grand Canyon could be clearer by decade's end under a landmark agreement disclosed Thursday.

Sulfur-dioxide emissions from the coal-fired Navajo Generating Station will be cut 90% before August 1999.

The settlement is the first under a Clean Air Act provision designed to improve visibility at national parks.

It will cost $2 billion to install pollution equipment on the plant's three smokestacks.

The plant is 12 miles from the northern end of the Grand Canyon. Environmentalists have considered it a big reason for the area's poor visibility.

"I do not think it abuses the word to call this agreement truly historic," says Ed Norton of Grand Canyon Trust, an environmental group.

The agreement won't completely eliminate haze there. Another major source: drifting Los Angeles smog.

Cleaner Air, by Consensus

NYT 9/27

The biggest question left by the Clean Air Act of 1990 — President Bush's grandest legislative achievement so far — was whether its promise would be thwarted by bureaucratic infighting, regulatory paralysis and endless litigation. That's been the sad fate of other ambitious laws, including the original Clean Air Act of 1970.

Although the jury is still out on the new act, legislators already complain that the President's Council on Competitiveness, headed by Vice President Quayle, is becoming a haven for businesses seeking to avoid costly investment in anti-pollution equipment. In one case, the council pressured the Environmental Protection Agency to ease regulations on old coal-fired power plants.

But there's promising news as well. In the last two weeks the E.P.A. has announced two major agreements aimed at cleaning the air in America's dirtiest cities and above the Grand Canyon. In both cases, agreement was reached only after the agency gathered traditionally hostile interests in one room and invited a consensus — using a process called regulatory negotiation or, in Washington-speak,"reg-neg."

By whatever name, it's an immensely valuable procedure that ought to be used far more often than it is. For one thing, the parties to a consensus are less likely to challenge government regulations at some later date, not least because they helped write them. That means fewer lawsuits and fewer attempts to subvert the purposes of the act through backdoor intervention with the Office of Management and Budget — or Mr. Quayle.

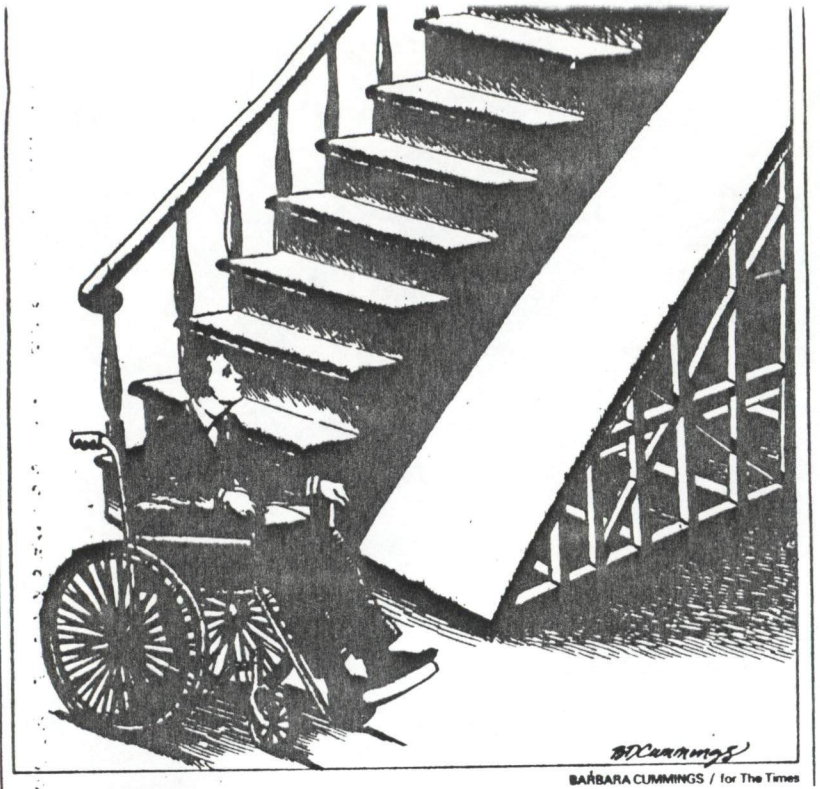
One agreement involved a crucial provision of the 1990 act requiring oil refiners to produce a cleaner-burning gasoline to reduce smog in the nation's nine dirtiest cities, including Los Angeles and New York. The act was far from clear on how that goal was to be reached, so the E.P.A. summoned representatives from 30 different interest groups, including environmentalists and oil company executives, for two months of negotiations.

The result was a compromise under which gasoline sold in 1995 will be 15 percent cleaner than it is now. Industry will be allowed to average the 15 percent reduction in ozone-forming hydrocarbons so that some gallons come in higher, some lower. That gives the companies flexibility to accommodate differences among refineries. But it's wholly consistent with the intent of the act.

The second set of negotiations involved the haze that fouls the Grand Canyon. The haze comes from sulfur dioxide emissions from the Navajo Generating Station, a giant coal-burning plant 15 miles northeast of the canyon. Environmentalists and the E.P.A. wanted a 90 percent reduction; the plant's owners, though clearly in violation of the law, wanted none. Mr. Quayle's council recommended a 70 percent cut.

The owners eventually agreed to the original 90 percent target — but only after the environmentalists proved to the company that, by using a complex averaging scheme, the company could meet the target at lower cost than it thought possible.

Nobody said that carrying out the act would be easy. And regulations have yet to be written for controversial sections of the law covering toxic chemicals and acid rain. Yet the odds of success went up when the E.P.A. established a simple principle: Negotiation now beats litigation later.



BARBARA CUMMINGS / for The Times

When It Comes to Helping the Disabled, the Administration Is All PR Hype

■ Employment: Federal rules on hiring the disabled have key loopholes that mean business as usual for those who need help in the workplace.

By Mary Johnson

HORTONVILLE, N.Y.

Disability-rights advocates suspected that the Bush Administration was being less than honest in claiming that it was on their side when the President signed the Americans With Disabilities Act this time last year amid much public-relations hype. Equal Employment Opportunity Commission rules announced on the anniversary of the act's signing last month confirmed those advocates' suspicions.

These rules—which are final—will let companies avoid hiring a disabled person if the company thinks that particular worker might hurt himself (be "a danger to himself," is how the rules put it). That's one of the very things advocates thought the year-old-law was enacted to prevent: allowing employers' fears and misconceptions about safety to keep disabled people out of the work force. The Supreme Court earlier this year told Johnson Controls that it was illegal to pull a similar version of that trick on women. The Administration, which says it supports disability rights, says it's OK to tell disabled workers that they're a danger to themselves or others and to refuse to put them in any job in which a company doesn't want them.

The EEOC's rules also do not require an employer to provide assistance for severely disabled workers in using restrooms or eating lunch. Without mandating such assistance, the rules will let companies ignore these fundamental needs of severely disabled, would-be workers. For a worker who needs help eating or using the toilet, a company's refusal to provide such assistance is no different than failing to provide a lunch break or a restroom on the job, period. These sweatshop conditions were outlawed years ago in this country for non-disabled workers.

People who are deaf, blind or who can't use their hands can flourish in the white-collar-job world provided their employer accommodates their work style. Computer-voice interfaces, faxes, telecommunications devices for the deaf, phone headsets and other technologies that are practically routine in today's larger offices can enable even totally paralyzed people to be anything from attorneys and advertising representatives to zoologists and zipper designers. Today's technology gives disabled people with equivalent educational backgrounds equal ability to compete with non-disabled people; the reason more than two-thirds of working-age disabled people are still unemployed is, therefore, mostly because of discrimination.

Holding down jobs was supposed to be a key reason disabled people were given the protections of the Americans with Disabilities Act. President George Bush himself praised this goal of the law when he signed it. But by refusing to include "personal assistance" requirements in the rules, the Administration is in effect saying that disabled people simply shouldn't need help with going to the

Please see DISABLED, B6

Mary Johnson is editor of the Disability Rag, which covers the disability-rights movement in the United States.

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LA TIMES
8/25

Disabled

Continued from 1E

restroom if they're going to work.

There needs to be an acknowledgment that the work environment is all-encompassing. Women learned, for example, that the road into formerly all-male management bastions often had as much to do with being able to talk over issues informally by the coffeemaker or over a beer after work as with more formal work situations; so, too, people who need personal assistance know that they need to have the option to participate in all levels of work life—and if you have to use the bathroom so desperately you can't stay on the job eight or more hours, you can't participate very well.

But help using the restroom is seen as something private—something dirty. By saying it doesn't have to be provided, the Administration is tacitly saying there's something wrong with disabled people needing it. Is there? If the Administration believes that, then the Americans with Disabilities Act that it helped devise—which says disabled people's problems are *not* their physical conditions, but rather segregation and exclusion—is nothing more than an empty promise.

EEOC staff members are referring to using the restroom as "medical" help. This is absurd and cruel. Just because you need someone to help you, using the restroom is no more "medical" when you're disabled than it's "medical" for any of us when we take a break to run to the restroom.

If the Bush Administration had put its rules where its PR on disability rights has been—by insisting that these basic needs be met on the job—we'd all be a lot further along the road toward integrating people with disabilities into our job market. With rules like these, however, there's little question that the Americans with Disabilities Act's central promise—to open the doors of business to severely disabled people—will remain unfulfilled.□

8/27/91 WSJ

Dues-Payers' Revolt

"I also propose to strengthen the Supreme Court's Beck *decision, which held that union members can't be forced to have their dues go to political causes or organizations they do not support. No American—no American—not one, should be compelled to give money to a candidate against his or her will."*—President Bush, June 19, 1989.

In 1988, the Supreme Court struck a blow for working men and women by ruling that workers can't be forced to pay any union dues unless they are spent on bettering wages and working conditions. The opinion by former Justice William Brennan said workers are not obliged to pay for a union's political activities or non-collective bargaining activity. The 15.4 million Americans who work under compulsory union contracts now have the right to reduce their union dues by half or more.

The *Beck* decision was a long time coming. Harry Beck sued his union, the Communication Workers of America, in 1976. After years of delaying tactics, the CWA finally admitted that only 21% of Mr. Beck's dues were spent on collective bargaining. In a case involving another union, the figure was only 10%. Much of the rest was spent on political activity—union-staffed phone banks, printing and get-out-the-vote efforts. Estimates of the value of these services exceed $200 million in election years. Almost all of it is spent on liberal candidates and causes, even though 42% of union members voted for George Bush.

President Bush is on record in support of the workers' rights in *Beck*, but since he took office almost nothing has been done to implement them. The National Labor Relations Board says union officials are largely responsible for notifying union members how much of their dues goes to politics. Not surprisingly, the unions are uninterested in conveying that information to their members.

When Charlton Heston asked Actors Equity how much of his dues went to political causes, even he was told to buzz off. When Mr. Heston persisted, he was told the union didn't want him as a member and that he should stop sending in his dues. He's since become a champion of *Beck* rights.

Mr. Heston says former Labor Secretary Elizabeth Dole pledged last year to implement the rules. That means posting workplace notices informing workers of their rights, and forcing unions to improve their antiquated records so workers can easily see how much money they spend on politics. Mrs. Dole left office without doing either, and her successor, Lynn Martin, has also punted.

There are political reasons for the delay. Some White House aides hope that a few unions, such as the Teamsters, will endorse Mr. Bush in 1992. Nothing would more infuriate unions than telling their members they no longer have to fork over hundreds of dollars a year to political causes.

This political solicitude is harder to understand, though, now that the AFL-CIO helped strong-arm the NAACP into opposing Clarence Thomas, the administration's Supreme Court nominee. Teamster delegates booed Mr. Bush during his videotaped speech to their convention. The CWA disinvited Secretary Martin while she was enroute cross-country to speak to its convention.

Hispanic workers are furious that the AFL-CIO led the fight to kill the U.S.-Mexican free-trade pact. Union leaders and delegates are increasingly out of touch with their membership, allied with the most negative elements of the Democratic Party.

Beck is the law of the land, but it is meaningless unless the Bush administration enforces it. The longer President Bush delays in implementing Justice Brennan's rules, the more likely that the right of workers not to be compelled to fund causes they don't support will gradually become a legal footnote.

Asides

Wrong Flock

Last week we said the National Audubon Society had signed on to an anti-free trade statement in Seattle. Though Audubon did meet with union officials who issued the statement, it says it declined to join in, and points to its expressed conditional support for a North American treaty. The labor council that issued the release including Audubon does not contest the disavowal, so neither will we.

An Issue this Paper Can't Sidestep

Counterpoint

By Philip F. Lawler

With more than 40,000 arrests at blockades outside abortion clinics, Operation Rescue has become the biggest civil disobedience campaign in American history. Some might find the comparison uncomfortable, but Operation Rescue's pro-life campaign shares many similarities with the civil rights movement of the 1960s. No matter what it resembles, though, this summer's month-long confrontation in Wichita does reveal that pro-life activism is reaching a critical mass.

To achieve political results, civil disobedience does not require majority support. Rather, the practitioners of non-violent protest hope to rouse the nation's conscience, and stimulate public debate. If they succeed, more conventional politicians can reap the rewards. In the aftermath of the 1963 protest marches in Birmingham, a Gallup poll found a solid 60% majority of citizens complaining that such demonstrations hurt the cause of the civil rights movement. Yet within months, the marchers had attained their main objective: the passage of the Civil Rights Act.

Like the protest marchers of a generation ago, the pro-life militants of Operation Rescue have encountered widespread public hostility. Earlier this month, a poll conducted by the Wichita Eagle and KAKE-TV found 78% of the area's residents disapproving of Operation Rescue. But the message of that overwhelming majority should not obscure the fact that 22% of the Wichita sample *approved* of the Rescue movement, and half that number felt they could "strongly approve" of militant tactics.

Admittedly, 11% constitutes only a small minority. But in a city of 300,000, it still represents a large number. If 33,000 Wichitans strongly endorse a campaign of civil disobedience, public authorities—not just in Kansas, but all across the U.S.—must take notice. Since the Supreme Court re-opened the abortion debate with the *Webster* decision in 1989, abortion questions have received extensive attention from politicians, reporters, and editorial pages everywhere in America.

Everywhere, that is, except at The Wall Street Journal. In the months filled with arguments for and against legal abortion, the Journal has daintily sidestepped the issue. The last strong note was sounded in April 1990, when a Journal editorial criticized Belgian journalists for their timidity in reporting an abortion controversy that provoked temporary abdication by that nation's King Baudouin. Acknowledging that "abortion is a sensitive issue everywhere, including the U.S.," the editorial nevertheless observed that "newspapers in democracies have a public trust to responsibly further such debates." Yet since that pious call for a lively public discussion, the Journal has lapsed into near editorial silence. The word "abortion" has not appeared in a Journal editorial once this year.

Immediately after the *Webster* decision, a Journal editorial sought the middle ground in the emerging public debate. "We agree that early abortion decisions are best left to women themselves, but at some point in the pregnancy the state has a right to protect the unborn." And what should that point be? The editorial settled on the age-old standard of "quickening": "This is more-or-less good enough for us, and our sense is that despite the militants on each side, society generally agrees."

Society *does* agree that women should have the right to choose; that fact is confirmed by poll after poll. But the public is also ready to restrict that choice, just as American law places restrictions on a host of other activities ranging from automobile driving to dentistry to stock manipulation. According to an extensive poll published by the Boston Globe before *Webster*, 82% of all Americans believe it should be illegal to seek abortion simply because the pregnancy is inconvenient. Yet according to statistics provided by the Guttmacher Institute (an affiliate of Planned Parenthood, and certainly no foe of legal abortion) the great majority of abortions are motivated by the woman's problems with her family budget, her career, or her personal relationships. Only about 5% of all abortions involve the so-called "hard cases" of rape, incest, or a serious threat to the woman's health.

The "right to choose" provides a powerful slogan. But the public also knows that some women will make irresponsible choices. Americans overwhelmingly disapprove of abortion as a form of birth control. Yet today some 40% of all abortions are repeat procedures, and thousands of women have undergone four or five abortions. At least a few parents use abortion as a means of ensuring a child of the "appropriate" sex. And 16,000 abortions each year—or roughly 45 every day—are performed after the 20th week of pregnancy. A political compromise, prohibiting abortion under those circumstances, could easily generate majority support.

Such a compromise is impossible today, for two reasons. First, the Supreme Court has disallowed it. In effect, the *Roe v. Wade* decision (and the companion case *Doe v. Bolton*) prohibited all public restrictions on abortion, so that in most states today, a woman can have the legal authority to procure an abortion at any stage in her pregnancy, for any reason she finds compelling. Second, the "pro-choice" movement has obdurately resisted any restriction, however symbolic, on legalized abortion. But in the end, even a compromise solution may not prove adequate. Once the law recognizes the demand to protect human life, the logic of that position becomes inexorable. If the unborn child deserves protection after 12 weeks of development, why not after 10, or eight? If it is wrong to destroy a human life in order to save the mother's pocketbook, can it be justified to save her from some unspecified emotional distress?

Ultimately, the American abortion debate cannot be settled without answering the fundamental question: At what point—before, at, or after birth—does human life qualify for legal protection? Medical science can establish that human life begins at conception, but even that fact does not settle the issue. Does the Constitutional protection of life extend to all forms of human life? If not, who has the authority to determine which human lives qualify for protection?

In days past, jurists settled such apodictic questions by appeal to the principles of natural law, which undergird the language of our Constitution. But today the natural-law tradition is itself under attack. So the debate on abortion points toward an even more profound struggle for control of the American Constitutional tradition. On the one hand, critics of Judge Clarence Thomas point with alarm to his embrace of natural-law reasoning. On the other, leaders of Operation Rescue invoke the natural law to justify their defiance of a judicial injunction.

One influential group of Americans sees the natural law as a last defense against judicial tyranny. Another pictures the threat of tyranny looming behind any invocation of the natural law. Those two viewpoints cannot be reconciled quickly or easily, but the issue must be settled. The American public debate over legalized abortion may be painful, but it cannot be avoided. A kingdom divided against itself cannot stand.

Mr. Lawler, a Boston-based journalist, is currently working on a book about Operation Rescue.

ABA Panel Hides Behind Screen Of Anonymity

Potomac Watch

By Paul A. Gigot

Which elite outfit conducts private investigations, maintains secret files and issues anonymous public judgments that can damage careers? The KGB is going out of business. So that leaves the American Bar Association.

America's legal nomenklatura judged Supreme Court nominee Clarence Thomas worthy, sort of, this week. An ABA statement said a "substantial majority" of its 15-member screening committee gave him a "qualified" rating, its middle ranking. Even hermetic David Souter got a "well qualified." Two panel members judged Mr. Thomas "not qualified."

The ABA provided no reasons for these judgments. No elaboration. No names, even. Just a pronouncement from Mount Olympus that made headlines, and was immediately exploited by Mr. Thomas's critics. Judge Thomas will survive; considering the makeup of the ABA panel (more below), it's amazing that this 43-year-old jurist was judged qualified. (The ABA defines qualified as "at the top of the legal profession" with "outstanding legal ability and wide experience.")

The better question is whether the ABA's judicial screening should survive. Who elected these people anyway? And why in the name of Brandeis ("sunlight is the most powerful of all disinfectants") is a secretive special-interest group allowed to play such a prominent role in a democracy?

The ABA won't even disclose the names of the two dissenters. Everyone's leading suspect is Joan Hall, a Chicago lawyer at the firm of Jenner & Block who has opposed nominees who disagree with her views on affirmative action. She's also widely believed to have judged Robert Bork "not qualified," though she wouldn't admit or deny it at the time.

Ms. Hall is once again hiding behind the ABA's skirts. "You declare yourself in committee," not in public, she says bravely. So Ms. Hall could play j'accuse without accountability. Perhaps she fears people might doubt her credibility if they knew she is a leader of such left-wing activist groups as the Lawyers' Alliance for Nuclear Arms Control and the Lawyers' Committee for Civil Rights Under Law. Or perhaps she fears her firm's clients might not like it if they knew she attacks federal judges who rule on their cases.

The other dissenter's identity is more speculative, though there are plenty of panel members who don't share Mr. Thomas's politics. The panel's only black member, Robert Watkins, is a leader of the Washington, D.C., branch of Ms. Hall's Lawyers' Committee. He won't comment on his vote, or even his resume.

Ronald Olson, the current committee chairman and a partner in the Los Angeles firm of Munger Tolles, served as finance chairman for Alan Cranston's 1980 Senate race and is a former general counsel for the California Democratic Party. Federal records show he's a generous campaign donor to such liberals as Sens. Bill Bradley and Carl Levin, Rep. Mel Levine, and the Democratic Congressional Campaign Committee. There's nothing wrong with being political, but why not let the public in on these allegiances? Mr. Olson won't even return phone calls.

The ABA's political bias has miffed conservatives since the Bork fight, but liberals should be wary too. In the 1950s, Dwight Eisenhower brought the ABA into judicial screening precisely because it was white-shoe and Republican, but ostensibly apolitical.

Richard Nixon also used the ABA as political cover; it even gave a ringing endorsement to G. Harrold Carswell. Remember him? He's the man about whom then Nebraska Sen. Roman Hruska said, "Even if he is mediocre there are a lot of mediocre judges and people and lawyers. They are entitled to a little representation, aren't they?"

Liberals should also understand that more important to lawyers even than ideology is their self-interest. They are like any other special interest—the bankers, the pipe fitters, or the tuna fishermen. Federal Judge Laurence Silberman, who has seen the ABA's judicial work both as consumer (deputy attorney general) and target, said in a 1990 speech that the screening committee is dominated by litigators.

And litigators love judges who create legal uncertainty. "After all, the more uncertain the law, the more litigation will take place," Mr. Silberman said. "And the more judges can be induced to be receptive to new and ingenious arguments, the more uncertainty can be introduced." So the screening committee tends to "look askance" at the ability of mere corporate attorneys or public servants.

Judge Thomas believes in judicial restraint and has limited litigation experience; it's easy to see why some ABA litigators might want to sabotage his nomination. Especially since 14 of this committee's 15 members are trial lawyers. The resume of Jorge Rangel, of Corpus Christi, Texas, says he specializes in "personal injury and general civil litigation." Kathlyn Graves of Little Rock has a practice limited to "employment law and civil rights."

Mr. Olson has contributed money to South Carolina's Ernest Hollings, the Senate's most important protector of the plaintiff's bar. It's also safe to say that every one of these trial lawyers is far, far wealthier than Mr. Thomas, who has devoted his life to public service.

The Bush administration had its chance, after the Bork fiasco, to drop the ABA from judicial screening. But then-Attorney General Richard Thornburgh blinked, partly because then-committee chairman Ralph Lancaster promised no more split decisions. He couldn't deliver; the ABA deserves to follow the KGB out of the screening business.

EVAN KEMP JR.

Opportunity for the disabled

This Labor Day will, thankfully, be the last one that will not be just another day for millions of Americans who are kept out of work by artificial barriers.

The Americans With Disabilities Act (ADA), a revolutionary law signed by President Bush on July 26 a year ago, not only brings persons with disabilities into the workforce but also serves as a model for future civil rights legislation.

For all the rancor this year over a civil rights bill, we should take some lessons from the ADA, a civil rights bill that Congress passed with lopsided margins.

This long overdue legislation proclaims that "the nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living and economic self-sufficiency for such individuals" with disabilities. The ADA thus guarantees that places of public accommodation, transportation, telecommunications and, above all, employment will be accessible to those with disabilities, such as people who are blind, wheelchair users, those with hearing and speech impediments and others who have a major life activity that is substantially impaired.

This legislation, which will take effect for most businesses on July 26, 1992, will obviously require fundamental changes in the way we regard the workplace and its employees. Though opponents wildly exaggerated the costs of reasonable accommodation of qualified individuals with disabilities, this law will make a world of difference to those individuals seeking work and all its benefits.

Why the contrasting reception with the other civil rights bills currently being debated? Let me focus on the employment provisions of the ADA, since these are the parts of the civil rights bill that are currently most in dispute. The difference is far more than a matter of the specific groups being affected; approval for the ADA rests on other grounds, which should be examined by those who want another civil rights bill.

First of all, the whole premise of the ADA is to bring individuals into the *mainstream* of American society; to end job, housing and public accommodations segregation. Rather than emphasizing the differences of persons with disabilities, our newest civil rights law seeks common ground between them and those who are fully able-bodied. The disability rights movement is one of those rare groups whose logic requires it to disappear.

Rather than emphasizing the differences of persons with disabilities, our newest civil rights law seeks common ground between them and those who are fully able-bodied.

Second, the ADA does not require businesses to hire just any person with disabilities; they must be qualified. The ADA requires only that employers offer the opportunity to work, and if the accommodation (for example, a reader for a blind attorney) required for the business is too expensive, then it cannot be forced upon them. The ADA is not an entitlement program.

Thus, the ADA does not require, encourage or permit preferences or quotas for those with disabilities. Accommodation of people who use wheelchairs (widening an aisle) is different from acommodation for someone who is hearing-impaired (providing a telephone relay system). The action an employer takes must be individual and not just addressed to a mass labeled as "the disabled." Remedies are thus *tailored to the individual.*

Finally, none of these developments would have been possible if the ADA had not drawn its strength from this nation's belief in the fundamental principle of equal opportunity. At long last, this ideal will embrace those with disabilities. A moral consensus, which is surely built on the civil rights movement, underlies the ADA.

The lessons to be drawn seem very plain. Proponents of civil rights bills of the future should look to the ADA. They must ask themselves: Is this civil rights bill going to bring Americans closer together? Will it reduce workplace frictions and those throughout society? Or will it foster resentment?

Does the bill encourage people to get the most out of their education? Does it reward those who have the incentive to complete training programs? Can employers feel they can hire the most qualified — without fear of lawsuit?

Are the remedies the civil rights bill offers appropriate to the violation? Can employees believe they are being treated fairly in hiring and promotions and have adequate recourse when they must sue for their rights? Are we really compensating the victim adequately if we require quotas or their euphemisms, goals and timetables? (I look forward to seeing a damages provision.) What good does it do a victim of discrimination to hire others of his or her particular class? A desirable civil rights bill would allow tough remedies that at the same time aid specific victims of discrimination.

Finally, proponents of civil rights must ask themselves how their legislation addresses the moral consensus on civil rights that goes back to the Declaration of Independence. We must take civil rights back from the domain of interest groups and lawyers and restore it in the language and tone of the family dinner table. We need to revive the connection between civil rights and fundamental moral principles.

The ADA passed these tests. Any civil rights bill that does so will become law. Like our holidays, such a law will be another occasion for all Americans to rejoice in their common heritage.

Evan Kemp Jr. is chairman of the U.S. Equal Employment Opportunity Commission, which enforces federal employment discrimination laws.

On Discrimination

By Herbert Stein

The nomination of Clarence Thomas for membership on the Supreme Court is the occasion for some ruminations on discrimination, equal treatment, the level playing field and all that. These ruminations properly have nothing to do with Judge Thomas's qualifications for the Supreme Court, which are a matter of his personal characteristics rather than of general principles. But they have something to do with the quality of the current discussion of his nomination and of related civil rights matters, which I believe is low.

An Illusion

Many people are impressed that Mr. Thomas "made it on his own" from a poor, uneducated, black background. They take this as evidence that public assistance to those who are poor, or to those who are black, is unnecessary if not positively harmful. They interpret his life story as a rebuke to those, pejoratively called "liberal," who favor such assistance.

The idea that anyone "makes it" entirely on his own, or even mainly on his own, is, of course, an illusion. Everyone starts with an endowment, more or less, of human talent and material assets that he did not make. And how he fares with this endowment depends on conditions, including institutions, laws and markets, that he did not make either. I doubt that many of the people who have made it in America in the last quarter of the 20th century would have made it on Robinson Crusoe's island or in Stalin's Russia or in most of the other times and places of human history. One doesn't have to imagine extreme cases. I suppose Michael Jordan made it on his own. But even with his exceptional talents he would not have made it in a world without pro basketball and television—or at least would not have made it so big.

All of that is quite obvious, although often neglected. We get closer to current issues when we recognize that these conditions that affect which people prosper most are heavily influenced by government. Government discriminates in favor of some people or some kinds of people and against others. That is inevitable. Government doesn't exist to keep things the way they were without government, which means that it discriminates against the people who thrived in the pre-government situation. I can hear the physically strong and violent men driven out by the first village government complaining that the playing field is no longer level.

Government discrimination is pervasive. Free public education is discriminatory in favor of poor people with many children against rich people with few. The income tax is a big fat book of discriminations. Agricultural and tariff policies are by nature discriminatory. Social Security discriminates in favor of people born in 1915 and against those born in 1965.

Board of Contributors

Basically, the fact that government discriminates is accepted. Demands for a level playing field are almost always demands that government do more for me.

Basically, the fact that government discriminates is accepted. Demands for a level playing field are almost always demands that government do more for me. Even the word "quota," such a hot political button, does not stir any reaction when it refers to a quota on textile imports or tobacco production. We have longstanding "affirmative action" programs for tobacco farmers and textile producers.

The question is not whether government should discriminate but for what purpose and by what means. As far as the means is concerned, the test is efficiency—achieving the desired purpose with the least cost.

Many government discriminations are highly inefficient. Programs to raise farm incomes by restricting agricultural production are an example. These programs are intended, at least nominally, to raise the incomes of poor farmers and are justified by sympathy for poor people in general. But many of the farmers who gain the most are not poor, and consumers, the poor included, bear the cost.

If the purpose of the program is to raise the income of farmers in general, and just because they are farmers, production limitation is still inefficient. A more efficient method would be to allow the farmers to produce as much as they want, which would increase the national output, and then to compensate them in cash for the effect of low prices on their incomes.

Although efficiency provides some guidance as to the way in which government should discriminate, there is no similar guidance about the purposes or classes of persons for which it should discriminate. At this point we must rely on the democratic process and, one may hope, on the good sense and morals of the American people. Americans want to discriminate in favor of old folks for no other reason than that they are old. I disagree but I cannot prove the preference wrong.

Public policy about two kinds of discrimination is now settled, although not everyone is happy with the settlement. Discrimination on the basis of race is improper, whereas discrimination on the basis of economic condition is proper.

We have decided that the government must not discriminate on the basis of race and that racial discrimination is not permissible in some private activities that are heavily affected by public policy—such as employment, housing and education. Racial discrimination remains, but it no longer has the moral sanction it once did. The idea that the government should discriminate on the basis of economic condition—in favor of poor people—is represented in welfare, food stamps, Medicaid, the progressive income tax and much else. In both cases—racial and economic discrimination—many questions of definition, degree and implementation remain, but the principle of what is a permissible basis of discrimination remains clear.

Confusion and problems arise because racial minorities in America are disproportionately poor. The sympathy of the white community for the civil rights movement in the 1960s was, I believe, partly due to the miserable condition in which blacks were seen to live. Longstanding discrimination against Jews, for example, did not evoke similar sympathy from the Gentile community—in part, I think, because Jews on the average by then were not poor. And policies to give preference to minorities, or make avoidance of such preference hard, are still supported and sold on the ground that the minorities are especially poor.

On the other hand, opposition in some quarters to anti-poverty programs is influenced by the feeling that most beneficiaries would be black. And there are people for whom opposition to racial preference seems to be at least a cover for opposition to aid to the poor of all races. Those most indignant about preferences for minorities are not leading supporters of color-blind anti-poverty programs.

Inefficient Means

Advocates of racial preferences should recognize that they are not efficient ways of dealing with the real problems of poverty, high dropout rates, female-headed families, unemployment and violence that affect minorities disproportionately but not only minorities. They do not reach those who are most disadvantaged; if they take the form of preferences in hiring and college admissions, they reduce productivity; and they impose burdens randomly among members of the majority who are not particularly affluent, which naturally provokes resentment.

The advocates for minorities should recognize their interest in respecting the principle that discrimination by race is illegitimate, a principle that is vital for the protection of racial minorities. At the same time, those who are most insistent on the impropriety of reverse discrimination, affirmative action and racial quotas should see that they are not exempt from responsibility to face the real problems of the disadvantaged in America, regardless of race. If this happens on both sides we may be able to get away from largely irrelevant and outdated arguments and confront some of these real problems.

A former chairman of the president's Council of Economic Advisers, Mr. Stein is an American Enterprise Institute fellow.

BCCI

They Bought Stock With Insider Loans And Made Millions

NYT 9/3/91

By STEVE LOHR

Clark M. Clifford and Robert A. Altman resigned from their executive posts at First American Bankshares last month with their reputations tarnished, their pockets full, and some important questions unanswered, Government investigators say.

The role of the two prominent Washington lawyers is part of the investigations in New York and Washington of the Bank of Credit and Commerce International, which controlled First American.

Neither Mr. Clifford nor Mr. Altman has been accused of any wrongdoing. The main legal issue is whether they misled banking regulators when they repeatedly assured them that B.C.C.I. was not behind the acquisition in 1982 of First American by a group of investors. In fact, the investors were front men for B.C.C.I.

Mr. Clifford and Mr. Altman have maintained that like most everyone else, they were deceived for years by B.C.C.I. But unlike the banking supervisors from several countries who eventually seized B.C.C.I. in a global sweep on July 5, Mr. Clifford and Mr. Altman were, in a sense, insiders.

The two men borrowed from

Continued on Page D4

Millions Made at Washington Bank

Continued From First Business Page

B.C.C.I. to buy shares in the holding company, Credit and Commerce American Holdings, that owned First American Bankshares. They profited handsomely when they sold those shares.

The law firm of Clifford & Warnke represented the investors since 1978 in their effort to buy Financial General Bankshares Inc., which was later renamed First American, and since 1982, Clifford & Warnke has been the general counsel to First American. The legal fees collected by the firm over that period amounted to "several million dollars," a former First American official said.

Mr. Altman, the protégé of Mr. Clifford, attended B.C.C.I. conferences in Europe during the mid-1980's, where virtually all the guests were from B.C.C.I. affiliates, charities and the National Bank of Georgia, another American bank that B.C.C.I. secretly controlled.

The Federal Reserve Board says Mr. Altman hired a former B.C.C.I. executive for a senior position in First American's New York bank after discussing the candidate with Swaleh Naqvi, the former chief executive of B.C.C.I.

Wrongdoing Is Denied

Lawyers and public-relations specialists representing Mr. Clifford and Mr. Altman say the two men did nothing wrong. Meeting B.C.C.I. executives, borrowing money from B.C.C.I or handling legal work for the bank, they point out, does not show that the two men knew B.C.C.I. was the actual owner of First American.

Representatives for the two men say that while some of their arrangements with B.C.C.I. may raise questions, there are innocent answers for those questions.

A guest list for the 1984 B.C.C.I. annual conference in Vienna on Feb. 26 and 27 shows that under a category marked "Special Invitees" were a handful of First American executives including Mr. Altman, Khusro Elley and Bruno Richter. (Mr. Altman's name was spelled with two "n's" on the guest list, but a person who attended the conference confirmed that Robert A. Altman was there.)

In the Federal Reserve enforcement proceeding against B.C.C.I., Mr. Elley is one of nine people banned from any future involvement with banking in the United States. In 1983, according to the Fed report, Mr. Elley, "a long-time B.C.C.I. employee," was hired as a senior vice president of First American in New York, after Mr. Naqvi suggested him to Mr. Altman. "Elley continued to receive a financial benefit from B.C.C.I. while employed at F.A.B.N.Y. (First American Bank of New York)," the Fed report said.

Little in direct compensation, but substantial sums from legal fees.

Mr. Richter was the first president of First American of New York. He was suggested for the job, the Fed states, by Aga Hassan Abedi, the founder and former president of B.C.C.I. When Mr. Richter wanted to hire an executive, the person had to go through two sets of interviews: one with Mr. Elley and Mr. Altman, and another in London with a few B.C.C.I. executives, including Mr. Abedi and Mr. Naqvi.

Robert Fiske, a partner at Davis Polk & Wardwell in Washington, one of the firms representing Mr. Clifford and Mr. Altman, said Mr. Altman did attend a couple of B.C.C.I. conferences, but not because First American was part of B.C.C.I. "He was trying to get business from B.C.C.I.," Mr. Fiske said.

Clifford & Warnke earned sizable legal fees from its relationship first with the front men who bought First American and later as counsel to the bank. "The stock deal was lucrative for Clifford and Altman, but they took even more out of the bank in legal fees," one investigator said.

It is not unusual for a lawyer to become an executive of a corporation or bank and then funnel some legal work back to his old firm. But typically, the lawyer will have left his law firm when he becomes a corporate executive. In the case of Mr. Clifford and Mr. Altman, however, it was a bit like giving the work to themselves. Still the First American board apparently did not object to the arrangement.

Carl Rauh of Skadden, Arps, Slate, Meagher & Flom, which is also representing Mr. Clifford and Mr. Altman, said legal fees to a firm should not be confused with compensation to individuals. "A lot of legal fees go toward expenses," he said.

Questions From a Director

The hefty profits the two men made from transactions in the shares of Credit and Commerce American Holdings, the holding company for First American, have attracted the most attention. The effort to oust Mr. Clifford and Mr. Altman began when Charles McC. Mathias, a former United States Senator from Maryland and a First American director, questioned those gains earlier this year.

The profits the two men made on the shares were huge, though the exact amount can be subject to different interpretations. The most widely used figure is that Mr. Clifford and Mr. Altman made just under $10 million before taxes, after paying off their loans from B.C.C.I., interest on the borrowings and commissions. That calculation was provided this spring by the public relations firm of Hill & Knowlton, which represents the two men.

But that calculation understates the profits somewhat because it figures as an expense the repaying of loans used to buy virtually all the 8,392 shares the two men bought, even though they sold only 4,800 shares. In less than two years, the gross profit on the sale of those 4,800 shares — the difference between the buying and the selling price — was $22 million.

On July 25, 1986, Mr. Clifford bought 4,495 shares for $2,216 a share and Mr. Altman bought 2,247 at the same price, with both purchases financed by B.C.C.I. loans. On Aug. 14, 1987, Mr. Clifford bought an additional 951 shares at $2,430 a share and Mr. Altman bought 475 shares at the same price. Then, on March 1, 1988, Mr. Clifford sold 3,200 shares for $6,800 a share and Mr. Altman sold 1,600 shares at the same price.

No Public Market

The selling price the two men received was more than triple the price they paid less than two years earlier and more than twice the price five and a half months earlier. Because the holding company was a private company, there was no free market for the shares, nearly all of which were held by the front men for B.C.C.I.

"The price of those shares was what B.C.C.I. said it was, period," one investigator said.

A memorandum from Frank Mankiewicz, a vice chairman of Hill & Knowlton, notes that Mr. Clifford took a salary of only $50,000 a year as chairman of First American. Mr. Altman, as a director of First American and president of the First American Corporation, the bank's parent company, did not receive any salary. The amount the two were paid in directors' fees has not been disclosed.

The two men, according to Hill & Knowlton, were in effect to take their compensation in stock and profit only if the bank did well. They purchased the stock in rights offerings at book value and sold when the bank seemed to be prospering. By 1986, "the project was thriving under Messrs. Clifford and Altman, and successful years lay ahead," Hill & Knowlton said.

Investing in shares whose price tripled in only two years.

Last year, hurt by bad real estate loans in Washington, Maryland and Virginia and the poor performance of its "strategic acquisition" in New York, the bank recorded a net loss of $158 million.

This year, the Federal Reserve worked to get Mr. Clifford and Mr. Altman to resign so the scandal surrounding B.C.C.I. would not push an already weakened First American toward failure.

The two men are scheduled to appear before the House Committee on Banking, Finance and Urban Affairs on Sept. 11. "That's when they'll present their side of the story," said Mr. Rauh of Skadden, Arps.

Agence France-Presse

Aga Hassan Abedi, the founder and former president of B.C.C.I., during an interview at his home in Karachi, Pakistan, in February.

Stock Transactions of Clark Clifford and Robert Altman

Purchases and sales of shares in Credit and Commerce American Holdings by Clark M. Clifford and Robert A. Altman. The men borrowed money from B.C.C.I. to buy the stock; the profitability of their transactions depends on what costs are included.

CLARK M. CLIFFORD

Transaction date	Shares bought	Shares sold	Price per share	Amount spent	Amount received
July 25, 1986	4,495		$2,216	$9,960,920	
Aug. 14, 1987	951		2,430	2,310,930	
March 1, 1988		3,200	6,800		$21,760,000
July 18, 1989	149		2,774	413,326	

Gross profit on the March 1, 1988, sale
3,200 shares sold at $6,800 each minus 3,200 shares bought for $2,216 each — **14,668,800**

Amount received in March 1, 1988, stock sale — **21,760,000**

Less costs and expenses: B.C.C.I. loans to buy shares on July 25, 1986 and Aug. 14, 1987; interest on loans, and commission on stock sale — **15,183,681**

The gain reported by Mr. Clifford — **6,576,319**

ROBERT A. ALTMAN

Transaction date	Shares bought	Shares sold	Price per share	Amount spent	Amount received
July 25, 1986	2,247		$2,216	$4,979,352	
Aug. 14, 1987	475		2,430	1,154,250	
March 1, 1988		1,600	6,800		$10,880,000
July 18, 1989	75		2,774	206,050	

Gross profit on the March 1, 1988, sale
1,600 shares sold at $6,800 each minus 1,600 shares bought for $2,216 each — **7,334,400**

Amount received in March 1, 1988, stock sale — **10,880,000**

Less costs and expenses: B.C.C.I. loans to buy shares on July 25, 1986 and Aug. 14, 1987; interest on loans, and commission on stock sale — **7,608,891**

The gain reported by Mr. Altman — **3,271,109**

Note: The loan repayments used in the calculation of costs include loans to purchase shares not involved in the March 1, 1988, transaction. Mr. Clifford says he paid about $3.8 million in taxes on the sale; Mr. Altman says he paid about $1.9 million in taxes.

Sources: Federal Reserve Board enforcement proceeding against B.C.C.I., July 29, 1991 (stock transactions of Messrs. Clifford and Altman); memorandum from Frank Mankiewicz of Hill & Knowlton, representing Messrs. Clifford and Altman (calculations of costs and expenses)

A Friendship, a Washington Bank and a Trail of Money Leading to B.C.C.I.

NYT 9/3/91

Clifford and Altman, Mentor and Protégé, At Center of Inquiry

By NEIL A. LEWIS

Special to The New York Times

WASHINGTON, Sept. 2 — Somewhere near the center of the tangled financial story of First American Bankshares Inc., Washington's largest bank holding company, is the mentor and protégé relationship of Clark M. Clifford and his junior law partner, Robert A. Altman.

At 85 years old, Mr. Clifford, a former poker-playing partner of President Truman and Winston Churchill, was the Secretary of Defense who helped persuade President Johnson to wind down the Vietnam War, the man who counseled President Kennedy about his private life, and the diplomat sent on special missions by President Carter.

A Well-Known Wife

Mr. Altman, at 44 years old, has done little in his adult life but practice corporate law and prosper under Clark Clifford at their small Washington law firm. Until he became embroiled in the widening problems surrounding First American, Mr. Altman was best known as the husband of Lynda Carter, the actress and model who starred in the television series "Wonder Woman."

As Federal and New York State officials intensify their investigations of how First American came to be secretly controlled by the Luxembourg-based Bank of Credit and Commerce International, Mr. Clifford and Mr. Altman stand at the center of the prosecutorial bull's-eye.

The focus of the investigators' interest is the role of the two men in helping a group of Middle Eastern investors take over First American in 1982. Federal regulators approved the takeover after assurances from Mr. Clifford and Mr. Altman that First American would have nothing to do with B.C.C.I, a largely unregulated international bank that was trying to expand its reach into the United States.

Mr. Clifford became First American's chairman, and Mr. Altman its president.

But this year, facts became known that strongly suggested to investigators that Mr. Clifford and Mr. Altman played a far different role than what

Continued on Page D4

Associated Press

Agence France-Presse

Clark M. Clifford, left, the former Secretary of Defense and adviser to Democratic Presidents, and Robert A. Altman, with his wife, the actress Lynda Carter. Mr. Clifford is shown last month as he announced his resignation as chairman of First American Bankshares; Mr. Altman, the junior law partner of Mr. Clifford who resigned as the bank's president, and Ms. Carter are seen at the Democratic National Convention in 1988.

Clifford and Altman, Mentor and Protégé, at Center of Inquiry Into B.C.C.I.

Continued From First Business Page

they had described.

In January, an audit disclosed that several original investors in First American had been merely fronting for B.C.C.I.; that Mr. Clifford and Mr. Altman were given loans by B.C.C.I. on unusually favorable terms to buy First American stock, and that in little more than a year they sold that stock for a profit of $9.8 million. The nominal buyer of the stock was a small money-lender whose purchase was bankrolled by a shadowy B.C.C.I. affiliate.

One of the first indications that B.C.C.I. had a secret interest in the Clifford and Altman bank was in September 1988, when a B.C.C.I. official was heard on a tape recording bragging to an undercover Customs Bureau agent on the trail of the Panamanian leader Manuel A. Noriega. The official said that his company controlled a bank in Washington through Mr. Clifford. He described Mr. Clifford as "practically the godfather of the Democratic Party" and Mr. Altman as the man "married to Wonder Woman."

Mr. Clifford and Mr. Altman resigned their First American posts on Aug. 14, insisting that it was for the good of the bank. But it was clear that they had been forced out by Federal regulators and the bank's board.

The personal Clifford-Altman story begins in the early 1970's, when Mr. Clifford rejoined a small Washington law firm that specialized in helping blue-chip corporate clients navigate the capital.

During his term as Secretary of Defense, which ended in 1969, he was transformed from a hawk on Vietnam to someone convinced it was a grave mistake to continue the war. The issue of Vietnam meant something different to Mr. Altman's generation, a choice of whether to serve or resist. Mr. Altman was spared that decision because asthma assured him a medical deferment.

Men of different generations joined by a personal and professional bond.

He enrolled in George Washington University Law school after graduating from the University of Wisconsin. The Clifford firm asked the law school to recommend a summer clerk in 1971 and Prof. David Seidelson, greatly impressed with Mr. Altman even as a first-year student, sent him.

After graduation, at the age of 25, Mr. Altman joined the lobbying firm and began a relationship with Mr. Clifford that deepened as Mr. Clifford grew to depend on his younger colleague. The adulation of the younger man, friends said, was repaid by a growing respect from the older.

"There is obviously a strong bond there," said one lawyer who spoke on the condition that he not to be identified. "Clark has great respect for his legal skills and a personal affection for him."

Over the years, Mr. Altman picked up some of Mr. Clifford's trademark habits. Frequently dressed in the dark double-breasted suits associated with Mr. Clifford, Mr. Altman will often put his hands together at the fingertips, a gesture so identified with his mentor that it is known in Washington as the "Clifford tent" or "Clifford steeple."

Some Traits Not Shared

Some gestures that Mr. Clifford has brought off with great panache over the years Mr. Altman does not try to duplicate. Mr. Clifford likes to telephone lawyers and officials and introduce himself with an exaggerated modesty, saying, "My name is Clark Clifford, and I practice law in Washington," confident the other person will certainly know who he is. Mr. Altman, several lawyers said, seems more sensitive to the need to show that he is person of standing.

Mr. Altman's 1984 marriage to Ms. Carter gave him a glittering social stature in Washington. The couple met in Nashville, where Ms. Carter was a spokeswoman for Maybelline cosmetics. They were married in Bel Air, Calif., in 1984 in a ceremony that Mr. Altman boasted brought together the glitz of Hollywood and the importance of Washington.

Mr. Clifford was the best man. Aga Hassan Abedi, the founder of B.C.C.I., was a guest and offered to give Ms. Carter a car of her choice as a gift. She chose a black Jaguar, she recently told People magazine.

Tennis and a Waterfall

In recent years, the Altmans have been Olympic-class socializers in the capital, often entertaining at their huge suburban home that is typically referred to in newspapers here as a 16-bathroom residence. The house also has lighted tennis courts, an artificial waterfall and what one regular guest called "a Hollywood grandiosity but a nice lived-in feeling."

Ms. Carter counts among her friends Mary (Honey) Skinner, the wife of the Transportation Secretary, Samuel K. Skinner, and Dorothy Bush LeBlond, President Bush's daughter. She has been active in the kinds of charity drives that thrive on celebrity associations.

But Mr. Altman's legal difficulties have put strains on some relationships. When The Wall Street Journal called Michael J. Boskin, the chairman of the President's Council of Economic Advisers, to ask about his friendship with the Altmans and a recent ski trip to Aspen, Colo., a Boskin spokesman emphasized that the Altmans and Boskins had "skiied on separate mountains."

Common Line of Defense

As the legal drama has been played out, lawyers, bankers and friends of both men have waited to see how Mr. Clifford and Mr. Altman would treat each other. So far, they have a common set of lawyers and a common line of defense: they were both deceived by Aga Hassan Abedi, the founder of B.C.C.I.

"I have a choice of seeming either venal or stupid," Mr. Clifford told The New York Times this year. Mr. Altman has declined to be interviewed, but through lawyers has similarly insisted he was taken in by Mr. Abedi.

Many of Mr. Clifford's friends yearn to believe in a sequence of events in which he was led astray in his twilight years by a younger and more hustling colleague. To many people watching for any indication that the common front will crack, such a split would be unthinkable. Over the years, Mr. Clifford, who has three daughters, has often called Mr. Altman the "son he never had." Mr. Altman named his first child Clark.

Prosecutors, who acknowledge that Mr. Altman is a more palatable target than Mr. Clifford, note an area in which Mr. Altman was more actively involved with B.C.C.I. One thing that made investigators skeptical about Mr. Clifford's and Mr. Altman's professed ignorance of the B.C.C.I. role in running First American was the fact that the two had said they used B.C.C.I. as a liaison with First American shareholders. Mr. Clifford said it was a matter of convenience, since the shareholders were spread throughout the Middle East and Mr. Abedi saw them often.

But records show, in the words of one investigator, that 90 percent of the telephone calls and visits to B.C.C.I. officials were made by Mr. Altman. According to a report by the Federal Reserve, B.C.C.I. officials did not act as a liaison but appeared to control the decisions at First American on things like hiring.

B.C.C.I Unit Sale Is Set

HONG KONG, Sept. 2 (Reuters) - Hong Kong's High Court today approved the sale, with certain conditions, of the local arm of the Bank of Credit and Commerce International to the Lippo Group of Indonesia, a court official said.

Noel Gleeson, the provisional liquidator, said the agreement with Hong kong Chinese Bank, a Lippo subsidiary, was not legally binding. If the deal falls through, he said, Bank of Credit and Commerce Hong Kong would be liquidated.

The Hong Kong Government closed the bank in July, after reports of widespread fraud at B.C.C.I. operations around the world and only three days after assuring depositors that the Hong Kong unit was sound. The bank's closing shook depositors, leading to runs on local branches of four banks, including Citibank and Standard Chartered of Britain.

In a statement, Mr. Gleeson said the agreement was legally binding on only two points: that the acquirer would have eight weeks to study the B.C.C.I. affiliate's books, and that details of the conditional deal would be secret.

The Government had sought to liquidate the Bank of Credit and Commerce Hong Kong, but large demonstrations and a hunger strike by depositors put pressure on the Government to change its plan.

ID # 317741 CU

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Date Correspondence Received (YY/MM/DD) 1 1

Name of Correspondent: James N. Sullivan

☐ **MI Mail Report** **User Codes: (A)** _____ **(B)** _____ **(C)** _____

Subject: • copy of letter to Sec. Card & Sec. Reilly
• re: Tank Car Specifications, Elevated Temp. Materials
• re: Negligible Risk Provision for Clean Air Act MACT Reg.; Marine Vapor Recovery, Oxygenated Fuels, Reform. Gas, etc

ROUTE TO:		ACTION		DISPOSITION		
Office/Agency	(Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
cuofc		ORIGINATOR	92/03/24			1 1
		Referral Note:				
cuat30		A	92/03/24		S	92/04/07
		Referral Note:				
cuat17		I	92/03/24		C	92/03/27
		Referral Note:				
cuat10		L	92/03/24		C	92/03/27
		Referral Note:				
cuat02		I	92/03/24		C	92/03/27
cugray		Referral Note:				

ACTION CODES:
A - Appropriate Action
C - Comment/Recommendation
D - Draft Response
F - Furnish Fact Sheet to be used as Enclosure
I - Info Copy Only/No Action Necessary
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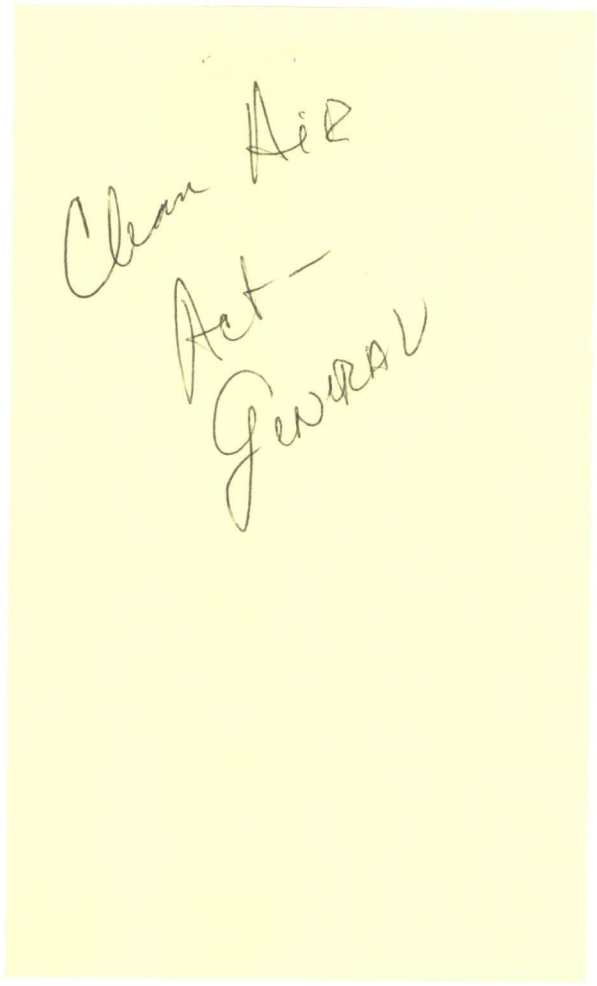
Clean Air
Act –
General

Chevron Corporation
225 Bush Street, San Francisco, California 94104-4289

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James N. Sullivan
Vice-Chairman of the Board

March 23, 1992

The Honorable Andrew H. Card, Jr.
Secretary of Transportation
Nassif Building
400 7th Street, S.W.
Washington, D.C. 20590

Dear Secretary Card:

In response to the Request for Comments that was published in the Federal Register on February 7, 1992 concerning Departmental regulations that substantially impede economic growth, may no longer be necessary, are unnecessarily burdensome, or impose needless costs or red tape, the following is submitted for your consideration:

HM-175A Tank Car Specifications

Issue

HM-175A is a DOT Research and Special Programs Administration rulemaking concerning specifications of rail car tanks. These rules would require the modification and/or replacement of many of our 3,500 owned and leased fleet of rail cars.

The rules would require thermal protection on rail cars transporting non-flammable gas (Anhydrous Ammonia). While it is true that this protection could reduce the volume (if any) escaping from the safety valve in a crash-caused fire, this vapor is not flammable. We question the need for this thermal protection on cars transporting non-flammable gas.

Our fleet of owned and leased cars transporting Styrene Monomer are insulated but do not have thermal protection or head shields. We question the benefits to be gained by adding head shields and thermal protection. These cars have 4" insulation and a steel outer jacket. These features provide some of the benefits DOT is seeking. Any further enhancement should be product specific as there is no history of significant problems with styrene cars that we are aware of.

The benefit of full shields is very questionable. Historically, statistics show that only a small percentage of punctures could have been prevented with full head shields.

The most objectionable of all the proposals is the change of construction steel specifications. If the steel used to construct the cargo tank is included, this proposal would ban all cars not made of the latest steel specification. The benefits are questionable. Existing cars have stood up very well in many derailments/accidents, and in most cases, no product was lost.

Status

Advanced notice of proposed rulemaking. The closing date for comments was 1/4/91.

Impact on Industry

The addition of thermal protection on cars transporting non-flammable gas will cost $2,303,000. The addition of thermal protection on cars transporting Styrene Monomer will cost $1,100,000 for owned cars and $500,000 for leased cars.

The full head shield rules apply to our LPG, Anhydrous Ammonia and Styrene Monomer cars, plus two transporting Titanium Tetrachloride. If we are required to replace half shields with full shields, or install full shields, it will cost us $5,200,000 for owned cars and $3,000,000 for leased cars.

The proposed change in steel specifications would cost Chevron approximately $125,000,000 for replacement of owned cars and $100,000,000 for leased cars.

The tremendous cost of complying with these rules of questionable benefit, would inhibit the ability of some companies to remain profitable and certainly drive up consumer costs.

Action Needed

We recommend that HM-175A proposed rulemaking be dropped from the rulemaking docket.

HM-198A Elevated Temperature Materials

Issue

The Department of Transportation (DOT) Regulation number HM-198A requires that materials at elevated temperatures meet new classification, Hazardous communication and placarding regulations. The main impact on Chevron is that previously unregulated products such as paving and industrial asphalts (and possibly Altamont gas oil/log wax) will be subject to the DOT Hazardous Materials Regulations.

The stated goal of the regulation is to alert the public and emergency responders and to specify minimum levels of packaging to minimize the possibility of unintentional releases. However, HM-198A came about in response to National Transportation Safety Board (NTSB) recommendations relating to investigations of two serious incidents involving molten sulfur and molten aluminum.

Status

Final rules published 10/2/91 with a 3/30/92 effective date.

Impact on Industry

It is not clear that the benefits of the regulation outweigh the costs for materials such as asphalts. Chevron U.S.A. Asphalt estimated costs of $500,000 to cover initial HazMat training for up to 250 employees. In addition, there would be ongoing costs for recurrent training and increased truck freight expense. Rates are likely to increase as carriers pass on the costs of training drivers and upgrading cargo tanks to meet the new requirements.

In reviewing our files, we found that nine incidents involving asphalt loads were reported to Chevron Supply, Planning and Transportation between 1987 and 1991. This represents an estimated average incident rate of less than .02 incidents per thousand shipments. Based on these incident reports, there is no evidence that lack of awareness concerning the hazards of hot materials may have injured emergency responders or members of the general public.

Action Needed

We recommend that HM-198A be proposed for regulatory relief by deregulating paving and industrial asphalts and waxes shipped at temperatures above 212 degrees F, but below flash point.

Very truly yours,

Jim Sullivan

cc: Mr. Neil R. Eisner
Assistant General Counsel for Regulation and Enforcement,
Review Coordinator

Mr. C. Boyden Gray
Special Counsel to the President

Mr. Michael J. Boskin
Chairman, Council of Economic Advisers

Mr. David M. McIntosh
Assistant to the Vice President for Domestic Policy

Mr. James McRae
Director of the Office of Information and Regulatory Affairs (OIRA), OMB

Chevron Corporation
225 Bush Street, San Francisco, California 94104-4289

James N. Sullivan
Vice-Chairman of the Board

March 23, 1992
(Supersedes March 19, 1992 Letter)

Mr. William K. Reilly
Administrator
Environmental Protection Agency
WW, Waterside West Building
401 M Street, S.W., Room 1200
Washington, D.C. 20460

Dear Mr. Reilly:

In response to the Request for Comments that was published in the Federal Register on February 7, 1992, concerning Departmental regulations that substantially impede economic growth, may no longer be necessary, are unnecessarily burdensome, or impose needless costs or red tape, the following is submitted for your consideration:

Negligible Risk Provision for Clean Air Act MACT Regulations

Issue

Title III of the Clean Air Act requires EPA to establish technology-based standards, referred to as Maximum Achievable Control Technology (MACT), to control the emissions of hazardous air pollutants. EPA has written the first of the MACT rules, the Hazardous Organic NESHAPS rule, which sets these standards for the synthetic organic chemical manufacturing industry. EPA has written these rules to require facilities to install MACT controls regardless of the risk imposed by the facilities.

Status

The Hazardous Organic NESHAPS rule is currently at OMB for review.

Impact on Industry

There are facilities in the refinery and exploration and production source categories that already have controls such that the risk to the most exposed actual person (MEAP) from the pollutant emitted is less than $1x10^{-6}$. Requiring these facilities to install controls is not cost effective and will result in over control.

Action

All air toxic regulations including the HON should contain a provision to allow a facility to opt out of MACT controls if the facility can demonstrate, by modeling, that the risk to the MEAP is less than $1x10^{-6}$.

Marine Vapor Recovery

Issue

Title I of the Clean Air Act requires EPA to promulgate marine vapor recovery (MVR) standards to control emissions from facilities loading and unloading tank vessels. EPA is proposing to require MVR nationally, even though the statutory provisions calling for it refer only to ozone non-attainment areas.

Status

EPA is currently preparing the draft rule. They have reviewed marine facility data for those states which do not already have marine vapor control laws, and have estimated that about 1800 U.S. facilities load gasoline and crude oil into marine tank vessels.

Impact on Industry

The capital cost of installing MVR control systems will normally range between $5 million and $30 million each, depending on the complexity. Some very complex systems are estimated to cost between $75 million and $150 million each. For the 1800 facilities that could be impacted by this rule, MVR systems would cost about $30 billion. However, EPA has looked at several thruput options which would exempt smaller transfer facilities and thereby significantly reduce the financial impact on industry. Currently EPA is favoring a thruput option referred to as 'Option D', which would control only facilities that load over 5 million barrels per year of gasoline or 100 million barrels per year of crude oil. EPA should be encouraged to proceed with this option.

EPA should not apply MVR regulations to facilities that are in areas which are in attainment for ozone. Such a requirement goes beyond the statutory mandate, and would cost industry hundreds of millions of dollars.

Action Needed

Marine Vapor Recovery regulations should apply only to facilities that are in ozone non-attainment areas. EPA should proceed with writing MVR regulations to apply only to facilities that load over 5 million barrels per year of gasoline or 100 million barrels per year of crude oil.

Oxygenated Fuels: Attest Engagements by Independent CPA's

Issue

EPA has proposed to require an independent CPA attestation of compliance with the oxygenated fuels program. This proposal to establish an independent CPA attestation compliance program raises two fundamental issues, the significance of which rise far beyond the oxygenated fuels regulatory program.

This first issue is a basic policy question as to whether the fiscal burden for enforcing laws should be borne by government or the regulated community. The second issue is a statutory construction question, calling into issue EPA's authority to make such a dramatic policy move without the supporting statutory authorization.

Status

EPA is currently reviewing comments on their supplemental notice of proposed guidelines for the oxygenated fuels program.

Impact on Industry

The proposal to require hiring of expensive, independent CPA's for attest engagements is an unprecedented and unnecessary cost to impose on the private sector.

Government regulation of the public, both industry and individuals, has been founded on the premise that government bears the fiscal burden of enforcing the various laws that govern society's conduct. Congress and the various state legislative bodies carefully evaluate the manner in which it will allow the executive function of government to police compliance with these laws and the fiscal resources that should be devoted to such enforcement. There are many good reasons as to why the government should bear the fiscal burden of enforcing legal standards.

The program proposed by EPA in the oxygenated fuels area can be equally applied to any one of thousands of regulatory programs that EPA has promulgated. This dramatic change in policy need not be limited to EPA; other regulatory agencies, such as the Internal Revenue Service, could adopt similar enforcement programs. American business could not effectively compete in international markets with such a significant handicap.

EPA's proposed requirement of an independent CPA attestation of compliance cannot be viewed in the narrow context of the oxygenated fuels program. The program must be evaluated in terms of its potentially broader impact. It is questionable whether such a policy decision should be made without careful consultation with the President and Congress.

Action Needed

Eliminate from the proposed guidelines the requirement for an independent CPA attestation of compliance with the oxygenated fuels program.

Compliance Survey - Reformulated Gasolines (RFG)

Background

Beginning January 1, 1995 refiners are required to supply reformulated gasoline with reduced emissions of volatile organic compounds (VOC) to certain ozone non-attainment areas. Through a regulatory negotiation (Reg-Neg) involving EPA and all other interested parties, compliance with the requirement for 15% reduction in VOC's is to be monitored through "VOC surveys" which sample service stations in each of those areas. All refineries supplying an area which fails to comply with the "VOC standard" during a single survey are ratcheted to a higher VOC reduction requirement in subsequent years.

EPA is violating the Reg-Neg agreement, which it signed, by proposing to ratchet refineries if the survey shows that gasoline in an area either contains less than 2% oxygen on average or is above certain Reid Vapor Pressure (RVP) levels. This dual oxygen and RVP requirement imposes a more stringent VOC reduction requirement than contained in the Clean Air Act and the Reg-Neg agreement.

Issue

In the gasoline Reg-Neg agreement, all parties--including EPA--agreed to surveys to monitor compliance with the RFG Program for refineries which comply with RFG requirements by averaging over the summer. The ratchets EPA will impose if the surveys uncover a problem are onerous and beyond the scope of the original reg-neg agreement. Furthermore, EPA's use of separate RVP and oxygen triggers for a VOC ratchet (under the simple model) removes the limited flexibility remaining for refiners. API instead supports a VOC equation with an RVP and an oxygen term as the trigger for the VOC ratchet.

Status

EPA is expected to issue a supplemental notice of proposed rulemaking with this proposal by March 23, 1992.

Impact on Industry

EPA's proposal could create disincentives to supply areas where a ratchet is in effect, constrain supply to those areas, and drive up consumer costs.

Action Needed

The survey should be for compliance with VOC reduction requirements based on a technically-valid equation which relates vehicle emissions to gasoline RVP and oxygen content.

Drilling Fluid Toxicity Testing

Issue

EPA requires all offshore exploration and production operations to take drilling fluid samples once a month and at the "End of Well" on every drilling job, and analyze the samples for toxicity. This requirement is fixed regardless of toxicity of the materials used to create the drilling fluids, or the knowledge and judgement of the drilling job's operators. The result of this rigid requirement is the testing for toxicity of drilling fluids known to be non-toxic.

Drilling fluid toxicity is determined in large part by the materials used to create the fluid. The toxicity of these materials is well known, and most of these products are in the toxicity range of no measurable toxicity to relatively non-toxic. Some are less toxic than many products sold for human consumption.

Status

The drilling fluid testing is required by EPA policy as outlined in the general Gulf of Mexico OCS Permit (51 FR 24897). A proposed rule making now in progress titled "Offshore Effluent Limitation Guidelines" would set this policy into regulations (40 CFR 435).

Impact on Industry

Toxicity testing of drilling fluids known to be non-toxic is a waste of time and money. Each toxicity test costs approximately $1250. Based on Chevron's current level of operations, the cost of testing fluids known to be non-toxic is about $150,000 per year. This unnecessary testing costs the oil industry several million dollars annually.

Action Needed

The EPA should delay the proposed rule making to allow the collection of additional information. The final rule making should include the following points:

- Delete required toxicity testing for offshore exploration and production discharges where only relatively non-toxic to non-toxic drilling fluid materials are used.

- Limit toxicity testing to those discharges containing substances known to be or expected to produce significant toxicity.

- Delete any toxicity testing for drilling fluids not discharged.

- Require the EPA to create a list of relatively non-toxic to non-toxic drilling fluid materials.

Stormwater Regulation: Improve Oil and Gas Exploration and Production Stormwater Permit Exemption

Issue

The Federal Clean Water Act has a stormwater permit exemption for active oil and gas facilities (Sec. 402 (l)). However, construction of these sites requires a permit if the site is larger than five acres including access roads (40 Fed. Reg. 122.26 (b)(14)(x)). We believe that construction of these sites should be included in the exemption.

Stormwater regulations also eliminate the above exemption if the discharge of stormwater contains a reportable quantity (RQ) of oil which is defined as a "sheen" and can be as little as one drop of oil (40 CFR110.3). In order to ensure that we do not discharge stormwater of this tiny RQ, we may need to add containment systems to our oil handling facilities to collect all storm water at a considerable expense and with no environmental benefit. The RQ of a "sheen" needs to be changed to a quantity which realistically and scientifically harms the environment.

Status

The stormwater regulations which require modification are existing regulations (40 CFR 110.3 and 122.26 (b)(14)).

Impact on Industry

Requiring stormwater permits for construction of our oil and gas exploration facilities and not including this in the existing exemption is an onerous requirement without an environmental benefit. It could cost us tens of thousands of dollars to monitor and permit these sites.

The RQ of a "sheen" of oil which eliminates the oil and gas exploration and production exemption for stormwater permitting purposes is overkill, and will cost our oil and gas facilities $5,500,000 by upgrading 300 facilities so that stormwater will be contained. There

will be little environmental benefit provided as a result of this expenditure. It would only result in capture of an occasional sheen which would otherwise quickly disperse and not harm the environment.

Action

- Regulations should include construction of oil and gas facilities under the oil and gas facility stormwater permit exemption.

- Increase the reportable quantity (RQ) for oil from a sheen to an amount which realistically poses an environmental risk.

Stormwater Regulations: Prioritize Facilities Requiring Permits Instead of Using Broad Sic Codes

Issue

The Federal Clean Water Act mandates that "stormwater discharges associated with industrial activity" apply for a National Pollutant Discharge Elimination System (NPDES) permit for discharges to storm sewers or waters of the United States by October 1, 1992. Industrial discharges are described in SEC. 40 CFR 122.26 (b)(14) and include discharges from facilities in various SIC codes. This regulation does not take into account whether or not there is a need for a permit. For example, a facility that manufacturers plastic sewer pipe (for stormwater) under roof but stores the pipe outside is required to obtain an NPDES permit for stormwater discharge because it is identified by a SIC code in these regulations. Stormwater runoff from this facility does not pose an environmental danger. The permitting process is not cost effective.

Status

The Federal Register which describes industrial discharges and requires modification is an existing regulation (40 Fed. Reg. 122.26 (b)(14)).

Impact on Industry

The stormwater discharge NPDES permitting process is not cost effective in many areas because it is unnecessary and will not positively impact the environment. The cost of containing storm water runoff from "unnecessary" areas only because they are included in the list of SEC. 40 CFR 122.26 (b)(14) could potentially cost our company millions of dollars without an environmental benefit.

Action Needed

Prioritize sources of stormwater runoff which pose real threats to the environment instead of using broad classifications and SIC codes. Stormwater permitting and monitoring programs in many areas are not cost effective, not necessary and will not help the environment.

Notification of Proposal to List the Coastal California Gnatcatcher as an Endangered Species

Issue

The Coastal California Gnatcatcher is proposed for protection as an endangered species under the Endangered Species Act of 1973, as amended. We believe that this proposed rule is unwarranted and not cost effective. Its rejection or delay will not harm the environment or the future of the Coastal California Gnatcatcher since there is no immediate threat to the United States population. The rule should not be promulgated until there is a conclusive demonstration that the subspecies is genetically distinct. Delaying the listing process would allow an unbiased reanalysis of data used to define the subspecies.

This petition is not cost effective for the following reasons:

1. Protecting the Gnatcatcher is not warranted. **The California Game Commission rejected the same petition** since there is no data demonstrating a rapid decline in its population and the threat to the animal is overstated. Data available from the Auduban Society bird counts actually show a **population increase** in the last ten years. Also, only a small fraction of the bird's habitat is slated for development over the next twenty years.

2. There are over three million Gnatcatchers estimated to thrive in Baja California. Efforts by the petitioners to divide the Gnatcatcher into subspecies have been accepted by the U. S. Fish and Wildlife staff even though we believe that the subspecies analysis is flawed and requires further analysis. Accepting the subspecies theory effectively separates less that one percent (1%) of the 3 million Gnatcatchers for regulatory protection in the United States.

Status

The proposed rule describing this action was published in the Federal Register on September 17, 1991. The 180-day public comment period ended on March 16, 1992.

Impact on Industry

This unwarranted listing could cost our Company $75 million dollars in land values and $95 million dollars in land development profit due to land which cannot be developed because of a "supposedly endangered species" existing on the property.

Action Needed

Stop or delay the listing of the California Gnatcatcher as an endangered species, (currently a proposed rule published in the Federal Register on September 17, 1991) until data can be collected and evaluated which validates the listing.

Our Company has extensive background information on this subject including written testimony and comments to the State of California and the U. S. Fish and Wildlife Service and reviews of the literature and studies we are funding. Please contact us if you are interested in this additional information.

Very truly yours,

Jim Sullivan

cc: Mr. Richard Morgenstern
Assistant Administrator for Policy, Planning and Evaluation

Mr. C. Boyden Gray
Special Counsel to the President

Mr. Michael J. Boskin
Chairman, Council on Economic Advisors

Mr. David M. McIntosh
Assistant to the Vice President for Domestic Policy

Mr. James McRae
Director of the Office of Information and Regulatory Affairs (OIRA), OMB

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Subject: letter to EPA RE: Dept. Regulations that impede economic growth

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CU AT 30	I	92 03 25		C	92 03 25
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CU GRAY	I	92 03 25		C	92 03 25
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Clean Air

Act —

General

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Chevron Corporation
225 Bush Street, San Francisco, California 94104-4289

James N. Sullivan
Vice-Chairman of the Board

March 19, 1992

Mr. William K. Reilly
Administrator
Environmental Protection Agency
WW, Waterside West Building
401 M Street, S.W., Room 1200
Washington, D.C. 20460

Dear Mr. Reilly:

In response to the Request for Comments that was published in the Federal Register on February 7, 1992, concerning Departmental regulations that substantially impede economic growth, may no longer be necessary, are unnecessarily burdensome, or impose needless costs or red tape, the following is submitted for your consideration:

Negligible Risk Provision for Clean Air Act MACT Regulations

Issue

Title III of the Clean Air Act requires EPA to establish technology-based standards, referred to as Maximum Achievable Control Technology (MACT), to control the emissions of hazardous air pollutants. EPA has written the first of the MACT rules, the Hazardous Organic NESHAPS rule, which sets these standards for the synthetic organic chemical manufacturing industry. EPA has written these rules to require facilities to install MACT controls regardless of the risk imposed by the facilities.

Status

The Hazardous Organic NESHAPS rule is currently at OMB for review.

Impact on Industry

There are facilities in the refinery and exploration and production source categories that already have controls such that the risk to the most exposed actual person (MEAP) from the pollutant emitted is less than $1x10^{-6}$. Requiring these facilities to install controls is not cost effective and will result in over control.

Action

All air toxic regulations including the HON should contain a provision to allow a facility to opt out of MACT controls if the facility can demonstrate, by modeling, that the risk to the MEAP is less than $1x10^{-6}$.

Marine Vapor Recovery

Issue

Title I of the Clean Air Act requires EPA to promulgate marine vapor recovery (MVR) standards to control emissions from facilities loading and unloading tank vessels. EPA is proposing to require MVR nationally, even though the statutory provisions calling for it refer only to ozone non-attainment areas.

Status

EPA is currently preparing the draft rule. They have reviewed marine facility data for those states which do not already have marine vapor control laws, and have estimated that about 1800 U.S. facilities load gasoline and crude oil into marine tank vessels.

Impact on Industry

The capital cost of installing MVR control systems will normally range between $5 million and $30 million each, depending on the complexity. Some very complex systems are estimated to cost between $75 million and $150 million each. For the 1800 facilities that could be impacted by this rule, MVR systems would cost about $30 billion. However, EPA has looked at several thruput options which would exempt smaller transfer facilities and thereby significantly reduce the financial impact on industry. Currently EPA is favoring a thruput option referred to as 'Option D', which would control only facilities that load over 5 million barrels per year of gasoline or 100 million barrels per year of crude oil. EPA should be encouraged to proceed with this option.

EPA should not apply MVR regulations to facilities that are in areas which are in attainment for ozone. Such a requirement goes beyond the statutory mandate, and would cost industry hundreds of millions of dollars.

Action Needed

Marine Vapor Recovery regulations should apply only to facilities that are in ozone non-attainment areas. EPA should proceed with writing MVR regulations to apply only to facilities that load over 5 million barrels per year of gasoline or 100 million barrels per year of crude oil.

Oxygenated Fuels: Attest Engagements by Independent CPA's

Issue

EPA has proposed to require an independent CPA attestation of compliance with the oxygenated fuels program. This proposal to establish an independent CPA attestation compliance program raises two fundamental issues, the significance of which rise far beyond the oxygenated fuels regulatory program.

This first issue is a basic policy question as to whether the fiscal burden for enforcing laws should be borne by government or the regulated community. The second issue is a statutory construction question, calling into issue EPA's authority to make such a dramatic policy move without the supporting statutory authorization.

Status

EPA is currently reviewing comments on their supplemental notice of proposed guidelines for the oxygenated fuels program.

Impact on Industry

The proposal to require hiring of expensive, independent CPA's for attest engagements is an unprecedented and unnecessary cost to impose on the private sector.

Government regulation of the public, both industry and individuals, has been founded on the premise that government bears the fiscal burden of enforcing the various laws that govern society's conduct. Congress and the various state legislative bodies carefully evaluate the manner in which it will allow the executive function of government to police compliance with these laws and the fiscal resources that should be devoted to such enforcement. There are many good reasons as to why the government should bear the fiscal burden of enforcing legal standards.

The program proposed by EPA in the oxygenated fuels area can be equally applied to any one of thousands of regulatory programs that EPA has promulgated. This dramatic change in policy need not be limited to EPA; other regulatory agencies, such as the Internal Revenue Service, could adopt similar enforcement programs. American business could not effectively compete in international markets with such a significant handicap.

EPA's proposed requirement of an independent CPA attestation of compliance cannot be viewed in the narrow context of the oxygenated fuels program. The program must be evaluated in terms of its potentially broader impact. It is questionable whether such a policy decision should be made without careful consultation with the President and Congress.

Action Needed

Eliminate from the proposed guidelines the requirement for an independent CPA attestation of compliance with the oxygenated fuels program.

Compliance Survey - Reformulated Gasolines (RFG)

Background

Beginning January 1, 1995 refiners are required to supply reformulated gasoline with reduced emissions of volatile organic compounds (VOC) to certain ozone non-attainment areas. Through a regulatory negotiation (Reg-Neg) involving EPA and all other interested parties, compliance with the requirement for 15% reduction in VOC's is to be monitored through "VOC surveys" which sample service stations in each of those areas. All refineries supplying an area which fails to comply with the "VOC standard" during a single survey are ratcheted to a higher VOC reduction requirement in subsequent years.

EPA is violating the Reg-Neg agreement, which it signed, by proposing to ratchet refineries if the survey shows that gasoline in an area either contains less than 2% oxygen on average or is above certain Reid Vapor Pressure (RVP) levels. This dual oxygen and RVP requirement imposes a more stringent VOC reduction requirement than contained in the Clean Air Act and the Reg-Neg agreement.

Issue

In the gasoline Reg-Neg agreement, all parties--including EPA--agreed to surveys to monitor compliance with the RFG Program for refineries which comply with RFG requirements by averaging over the summer. The ratchets EPA will impose if the surveys uncover a problem are onerous and beyond the scope of the original reg-neg agreement. Furthermore, EPA's use of separate RVP and oxygen triggers for a VOC ratchet (under the simple model) removes the limited flexibility remaining for refiners. API instead supports a VOC equation with an RVP and an oxygen term as the trigger for the VOC ratchet.

Status

EPA is expected to issue a supplemental notice of proposed rulemaking with this proposal by March 23, 1992.

Impact on Industry

EPA's proposal could create disincentives to supply areas where a ratchet is in effect, constrain supply to those areas, and drive up consumer costs.

Action Needed

The survey should be for compliance with VOC reduction requirements based on a technically-valid equation which relates vehicle emissions to gasoline RVP and oxygen content.

Marine Vapor Recovery

Issue

Title I of the Clean Air Act requires EPA to promulgate marine vapor recovery (MVR) standards to control emissions from facilities loading and unloading tank vessels. EPA is proposing to require MVR nationally, even though the statutory provisions calling for it refer only to ozone non-attainment areas.

Status

EPA is currently preparing the draft rule. They have reviewed marine facility data for those states which do not already have marine vapor control laws, and have estimated that about 1800 U.S. facilities load gasoline and crude oil into marine tank vessels.

Impact on Industry

The capital cost of installing MVR control systems will normally range between $5 million and $30 million each, depending on the complexity. Some very complex systems are estimated to cost between $75 million and $150 million each. For the 1800 facilities that could be impacted by this rule, MVR systems would cost about $30 billion. However, EPA has looked at several thruput options which would exempt smaller transfer facilities and thereby significantly reduce the financial impact on industry. Currently EPA is favoring a thruput option referred to as 'Option D', which would control only facilities that load over 5 million barrels per year of gasoline or 100 million barrels per year of crude oil. EPA should be encouraged to proceed with this option.

EPA should not apply MVR regulations to facilities that are in areas which are in attainment for ozone. Such a requirement goes beyond the statutory mandate, and would cost industry hundreds of millions of dollars.

Action Needed

Marine Vapor Recovery regulations should apply only to facilities that are in ozone non-attainment areas. EPA should proceed with writing MVR regulations to apply only to facilities that load over 5 million barrels per year of gasoline or 100 million barrels per year of crude oil.

Drilling Fluid Toxicity Testing

Issue

EPA requires all offshore exploration and production operations to take drilling fluid samples once a month and at the "End of Well" on every drilling job, and analyze the samples for toxicity. This requirement is fixed regardless of toxicity of the materials used to create the drilling fluids, or the knowledge and judgement of the drilling job's operators. The result of this rigid requirement is the testing for toxicity of drilling fluids known to be non-toxic.

Drilling fluid toxicity is determined in large part by the materials used to create the fluid. The toxicity of these materials is well known, and most of these products are in the toxicity range of no measurable toxicity to relatively non-toxic. Some are less toxic than many products sold for human consumption.

Status

The drilling fluid testing is required by EPA policy as outlined in the general Gulf of Mexico OCS Permit (51 FR 24897). A proposed rule making now in progress titled "Offshore Effluent Limitation Guidelines" would set this policy into regulations (40 CFR 435).

Impact on Industry

Toxicity testing of drilling fluids known to be non-toxic is a waste of time and money. Each toxicity test costs approximately $1250. Based on Chevron's current level of operations, the cost of testing fluids known to be non-toxic is about $150,000 per year. This unnecessary testing costs the oil industry several million dollars annually.

Action Needed

The EPA should delay the proposed rule making to allow the collection of additional information. The final rule making should include the following points:

- Delete required toxicity testing for offshore exploration and production discharges where only relatively non-toxic to non-toxic drilling fluid materials are used.

- Limit toxicity testing to those discharges containing substances known to be or expected to produce significant toxicity.

- Delete any toxicity testing for drilling fluids not discharged.

- Require the EPA to create a list of relatively non-toxic to non-toxic drilling fluid materials.

Stormwater Regulation: Improve Oil and Gas Exploration and Production Stormwater Permit Exemption

Issue

The Federal Clean Water Act has a stormwater permit exemption for active oil and gas facilities (Sec. 402 (l)). However, construction of these sites requires a permit if the site is larger than five acres including access roads (40 Fed. Reg. 122.26 (b)(14)(x)). We believe that construction of these sites should be included in the exemption.

Stormwater regulations also eliminate the above exemption if the discharge of stormwater contains a reportable quantity (RQ) of oil which is defined as a "sheen" and can be as little as one drop of oil (40 CFR110.3). In order to ensure that we do not discharge stormwater of this tiny RQ, we may need to add containment systems to our oil handling facilities to collect all storm water at a considerable expense and with no environmental benefit. The RQ of a "sheen" needs to be changed to a quantity which realistically and scientifically harms the environment.

Status

The stormwater regulations which require modification are existing regulations (40 CFR 110.3 and 122.26 (b)(14)).

Impact on Industry

Requiring stormwater permits for construction of our oil and gas exploration facilities and not including this in the existing exemption is an onerous requirement without an environmental benefit. It could cost us tens of thousands of dollars to monitor and permit these sites.

The RQ of a "sheen" of oil which eliminates the oil and gas exploration and production exemption for stormwater permitting purposes is overkill, and will cost our oil and gas facilities $5,500,000 by upgrading 300 facilities so that stormwater will be contained. There will be little environmental benefit provided as a result of this expenditure. It would only result in capture of an occasional sheen which would otherwise quickly disperse and not harm the environment.

Action

- Regulations should include construction of oil and gas facilities under the oil and gas facility stormwater permit exemption.

- Increase the reportable quantity (RQ) for oil from a sheen to an amount which realistically poses an environmental risk.

Stormwater Regulations: Prioritize Facilities Requiring Permits Instead of Using Broad Sic Codes

Issue

The Federal Clean Water Act mandates that "stormwater discharges associated with industrial activity" apply for a National Pollutant Discharge Elimination System (NPDES) permit for discharges to storm sewers or waters of the United States by October 1, 1992. Industrial discharges are described in SEC. 40 CFR 122.26 (b)(14) and include discharges from facilities in various SIC codes. This regulation does not take into account whether or not there is a need for a permit. For example, a facility that manufacturers plastic sewer pipe (for stormwater) under roof but stores the pipe outside is required to obtain an NPDES permit for stormwater discharge because it is identified by a SIC code in these regulations. Stormwater runoff from this facility does not pose an environmental danger. The permitting process is not cost effective.

Status

The Federal Register which describes industrial discharges and requires modification is an existing regulation (40 Fed. Reg. 122.26 (b)(14)).

Impact on Industry

The stormwater discharge NPDES permitting process is not cost effective in many areas because it is unnecessary and will not positively impact the environment. The cost of containing storm water runoff from "unnecessary" areas only because they are included in the list of SEC. 40 CFR 122.26 (b)(14) could potentially cost our company millions of dollars without an environmental benefit.

Action Needed

Prioritize sources of stormwater runoff which pose real threats to the environment instead of using broad classifications and SIC codes. Stormwater permitting and monitoring programs in many areas are not cost effective, not necessary and will not help the environment.

Notification of Proposal to List the Coastal California Gnatcatcher as an Endangered Species

Issue

The Coastal California Gnatcatcher is proposed for protection as an endangered species under the Endangered Species Act of 1973, as amended. We believe that this proposed rule is unwarranted and not cost effective. Its rejection or delay will not harm the environment or the future of the Coastal California Gnatcatcher since there is no immediate threat to the United States population. The rule should not be promulgated until there is a conclusive demonstration that the subspecies is genetically distinct. Delaying the listing process would allow an unbiased reanalysis of data used to define the subspecies.

This petition is not cost effective for the following reasons:

1. Protecting the Gnatcatcher is not warranted. **The California Game Commission rejected the same petition** since there is no data demonstrating a rapid decline in its population and the threat to the animal is overstated. Data available from the Auduban Society bird counts actually show a **population increase** in the last ten years. Also, only a small fraction of the bird's habitat is slated for development over the next twenty years.

2. There are over three million Gnatcatchers estimated to thrive in Baja California. Efforts by the petitioners to divide the Gnatcatcher into subspecies have been accepted by the U. S. Fish and Wildlife staff even though we believe that the subspecies analysis is flawed and requires further analysis. Accepting the subspecies theory effectively separates less that one percent (1%) of the 3 million Gnatcatchers for regulatory protection in the United States.

Status

The proposed rule describing this action was published in the Federal Register on September 17, 1991. The 180-day public comment period ended on March 16, 1992.

Impact on Industry

This unwarranted listing could cost our Company $75 million dollars in land values and $95 million dollars in land development profit due to land which cannot be developed because of a "supposedly endangered species" existing on the property.

Action Needed

Stop or delay the listing of the California Gnatcatcher as an endangered species, (currently a proposed rule published in the Federal Register on September 17, 1991) until data can be collected and evaluated which validates the listing.

Our Company has extensive background information on this subject including written testimony and comments to the State of California and the U. S. Fish and Wildlife Service and reviews of the literature and studies we are funding. Please contact us if you are interested in this additional information.

Very truly yours,

Jim Sullivan

cc: Mr. Richard Morgenstern
Assistant Administrator for Policy, Planning and Evaluation

Mr. C. Boyden Gray
Special Counsel to the President

Mr. Michael J. Boskin
Chairman, Council on Economic Advisors

Mr. David M. McIntosh
Assistant to the Vice President for Domestic Policy

Mr. James McRae
Director of the Office of Information and Regulatory Affairs (OIRA), OMB

Chevron Corporation
225 Bush Street, San Francisco, California 94104-4289

James N. Sullivan
Vice-Chairman of the Board

March 19, 1992

The Honorable Manuel Lujan, Jr.
Secretary of the Interior
Interior Building
1849 C Street, NW
Washington, DC 20240

Dear Secretary Lujan:

In response to the Request for Comments that was published in the Federal Register on February 7, 1992, concerning Departmental regulations that substantially impede economic growth, may no longer be necessary, are unnecessarily burdensome, or impose needless costs or red tape, the following is submitted for your consideration:

Royalty Valuation. Documentation and Reporting of Allowances. 30 CFR 206.

Annual Estimates: The requirement contained in 30 CFR 206, to annually file an estimated allowance for every combination of product and selling arrangement on each lease prior to taking the deduction, is acknowledged as an administrative burden by both industry and the MMS. Further, the MMS admits it does not use this information except for one purpose, which is to place timing restrictions on industry in order to disallow an allowance in its entirety if a form was not timely sent to the MMS. If the requirement to file annual estimates is eliminated, it would also eliminate the corollary restriction that a company can only deduct allowances starting three months before the estimated allowance paperwork is filed.

Chevron filed 1300 estimated allowance forms in 1991. Estimated total hours = 200.

Annual Actuals: The MMS requires excessive paperwork to document the adjustment of estimated allowances (which are calculated as part of the monthly royalty payment) to reflect actual expense. The paperwork is designed to allow the MMS to monitor allowance deductions, but this is duplicative of the MMS's audit effort.

Chevron filed 1900 actual allowance forms in 1991. Estimated total hours = 1200.

"Excessive" Allowance Petitions: The MMS requires a petition to be filed before a payor can deduct allowances exceeding 50% of gross proceeds. We believe that the MMS does little analysis of the data provided in the petition.

Chevron filed 70 petitions in 1991. Estimated total hours = 10.

Estimated Allowances: These estimates are used in calculating the monthly royalty payment. After year-end close, actual costs are calculated. Instead of paying the difference, or recouping the overpayment as a lump sum on a lease-by-lease basis, the MMS requires the difference to be allocated to every combination of product and selling arrangement on the lease for each sales month. We see little value in this level of detail, and significant manpower is devoted to this allocation effort.

We estimate saving 300 hours of work per year by eliminating this requirement.

Transportation Allocation: The MMS requires that the cost of transporting wet gas and oil be allocated to products when calculating royalty. This is an administrative burden with little known benefit to the MMS, and it complicates further the generally tricky issue of calculating royalties on NGLs and residue.

We estimate saving 100 hours of work per year by eliminating this requirement.

In total, the elimination of the filing and allocation requirements related to the reporting of allowances noted above would save approximately $100,000 a year in manpower and computer costs.

Recommendation: Modify 30 CRF 206.105, 206.157, and 206.159 to eliminate the unnecessary filings and adjustments noted above.

Valuation of Gas Sold Under a Non-Arms Length Contract

The MMS has proposed amendments to 30 CFR 206 to provide greater certainty in valuing gas sold under non-arms length contract. This MMS proposal accepts gross proceeds from a non-arms length contract as long as they are not less than the lowest priced available arms length contract. Chevron believes that this proposal reflects existing MMS policy which has been effective since March 1, 1988.

Recommendation: We support the adoption of this MMS rule to clarify the valuation of gas sold under non-arms length contract, subject to the comments submitted by Chevron in its February 12, 1992 letter to the MMS. We recommend that the adoption of this rule not be impeded by the regulatory moratorium.

Section 10 of the Outer Continental Shelf Lands Act

The three onerous parts of Section 10 of OCS are as follows:

(1) Requests to recoup excess royalty on an OCS lease must be filed within two years of making the overpayment. The two-year statue of limitations (S/L) is too brief given the uncertainty surrounding measurement and valuation issues. The MMS rigidly enforces this Section S/L. We believe that the S/L for recouping excess royalties should be the same as the MMS' S/L which we argue is six years from the date a payment is made. Had a longer S/L been available in 1990, Chevron would have been able to recoup $665,000 in royalties paid on FERC93 proceeds when the courts ruled after the two-year S/L that royalties were not owed. This is not an isolated instance of the two-year S/L barring recoupment of an overpayment.

(2) The government does not pay interest on excess royalty payments on offshore leases. This is in contrast to the IRS practice of paying interest on overpaid tax collections. This practice gives the MMS little incentive to expedite refund requests or to expedite resolution of issues. We believe the MMS should follow the IRS practice of paying interest on overpaid amounts, both on- and offshore.

(3) Section 10 provides that refund requests must be submitted to Congress for review. As a matter of policy, the MMS reviews all refund requests before submitting them to Congress. All of this causes up to 12-month delays in receiving refunds, resulting in the lost time value of money. (Chevron submitted 700 requests totalling $12MM in 1991.)

Overpayments on offshore royalties should be handled expeditiously the same as overpayments on onshore royalties, where industry recoups the money in the course of its monthly payment process. This would eliminate the manpower devoted to the burdensome process of documenting the refund requests estimated to cost $200,000 annually, and hasten the return of our overpayments. The MMS would still be able to maintain appropriate control of this process through the audit program.

Prior to a December 20, 1991, letter from the MMS, industry had been advised that allowances on offshore production were not subject to Section 10. This allowed Chevron to recoup royalty overpayments resulting from understated transportation and manufacturing allowances by reducing current royalty payments, thus saving manpower in documenting formal refund requests and avoiding the delay in receiving our funds. Now, however, via a revised "interpretation" of Section 10, MMS has announced that certain allowance adjustments are subject to Section 10 refund procedures. For reasons outlined above, this is a big setback to industry, and we believe the new interpretation is incorrect. We would like to see the December 20 advice retracted.

Recommendations:

Legislative Action — We recommend amendment of Section 10 of the OCSLA(1) to increase the S/L to 6 years from the date payment is made; (2) to require the MMS to pay interest on the refunded excess royalty payments; and (3) to eliminate the requirement that refund requests must be reviewed by Congress.

Regulatory Action — We recommend that the MMS retract its December 20, 1991, interpretation that allowances on OCS production are subject to Section 10. We also support the MMS undertaking whatever regulatory solution is permitted by statute to address the problems noted above, including allowing "cross-lease netting" to permit industry to correct errors in allocating production between two or more OCS leases, thus avoiding interest assessments where the MMS is not out of pocket for money.

MMS Offshore Operating Orders.

Normal Blow Out Preventor testing generally requires 12 hours to complete a full equipment evaluation. These tests are conducted every 7 days to satisfy MMS requirements. Along with each test is a 2-hour minimum time for an individual to properly complete the associated paperwork. In approximately 95% of the subsequent testing done after the initial test, no problems have been encountered with faulty or damaged equipment. Also, evidence indicates that frequent testing may cause premature failure of elements necessary for a safe and prudent operation.

The average offshore rig operating cost is $1725/hour for any given day. With an average of 17 workover or drilling rigs per month operating for Chevron across the Gulf of Mexico in one year, the cost of BOP testing is over $18,300,000. This cost does not include any extra testing equipment sometimes required for high pressure testing or the occasional operations which are interrupted to pull the drill string out of the hole to meet required deadlines.

Recommendation: We recommend the MMS revise its requirements to allow for testing of BOP's every 14 days instead of every 7, and also provide for a 48-hour grace period. This would allow for proper periodic testing of equipment and for testing to be accomplished without interruption of expensive operations. Allowing for a 3-minute test cycle, instead of 5 minutes, on low pressure and high pressure tests would also reduce the amount of testing time required. Instead of 12 hours, tests could properly be conducted in an average of 6 hours. With these minor adjustments to testing, the same 17-rig average per month would cost slightly less than $5,000,000 for a total savings of $13,000,000.

Thank you for the opportunity to comment and to participate in the regulatory review process.

Very truly yours,

Jim Sullivan

cc: The Honorable John E. Schrote
Assistant Secretary for Policy,
Management and Budget

The Honorable Edward T. Cassidy
Deputy Assistant Secretary, Policy

Mr. C. Boyden Gray
Special Counsel to the President

Mr. Michael J. Boskin
Chairman, Council of Economic Advisors

Mr. David M. McIntosh
Assistant to the Vice President for Domestic Policy

Mr. James McRae
Director of the Office of Information and Regulatory Affairs
(OIRA), OMB

Chevron Corporation
225 Bush Street, San Francisco, California 94104-4289

James N. Sullivan
Vice-Chairman of the Board

March 19, 1992

The Honorable Lynn M. Martin
Secretary of Labor
Frances Perkins Building
200 Constitution Avenue, NW
Washington, DC 20210

Dear Secretary Martin:

In response to the Request for Comments that was published in the Federal Register on February 7, 1992, concerning Departmental regulations that substantially impede economic growth, may no longer be necessary, are unnecessarily burdensome, or impose needless costs or red tape, the following is submitted for your consideration:

Regulation — Labor Regulation section 2510.3-101.

Purpose of Regulation — Describes what constitutes assets of a plan with respect to the plan's investment in another entity.

Recommended Action — Amend to make less restrictive.

Under these regulations, when an employee benefit plan invests in an entity that is not a publicly-offered security or a security issued by a registered investment company, the plan's assets are generally treated as including the underlying assets of the investment entity. Thus, if a plan invests in a partnership that owns real estate, the plan's assets are generally treated as including an undivided interest in the real estate. If the sponsor of the plan or any others who have fiduciary relationships to the plan also have relationships to the underlying assets (e.g., investor, owner, lessor, lessee), then the plan's investment may be treated as a "prohibited transaction" under the ERISA and the Internal Revenue Code. The "look-through" rule effectively restricts the range of pension plan investments to a very narrow band because the risk of an inadvertent prohibited transaction is very high.

Employer-sponsored pension plans in this country hold enormous sums of money for investment. Broadening the range of permitted investment by amending these regulations could be a powerful spur to economic growth.

Thank you for the opportunity to comment and to participate in the regulatory review process.

Very truly yours,

Jim Sullivan

cc: The Honorable Nancy Rohrbach
Assistant Secretary for Policy

Mr. C. Boyden Gray
Special Counsel to the President

Mr. Michael J. Boskin
Chairman, Council of Economic Advisors

Mr. David M. McIntosh
Assistant to the Vice President for Domestic Policy

Mr. James McRae
Director of the Office of Information and Regulatory Affairs
(OIRA), OMB

Chevron Corporation
225 Bush Street, San Francisco, California 94104-4289

James N. Sullivan
Vice-Chairman of the Board

March 19, 1992

The Honorable Nicholas F. Brady
Secretary of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, DC 20220

Dear Mr. Brady:

In response to the Request for Comments that was published in the Federal Register on February 7, 1992, concerning Departmental regulations that substantially impede economic growth, may no longer be necessary, are unnecessarily burdensome, or impose needless costs or red tape, the following is submitted for your consideration:

Regulation	Treasury Regulation section 1.401(a)(4)-(0) through (13).
Purpose of Regulation	Provides quantitative rules to implement the requirement of Internal Revenue Code section 401(a)(4) that contributions or benefits under a tax-qualified pension, profit-sharing or stock bonus plan not discriminate in favor of highly compensated employees.
Recommended Action	Amend significantly to broaden safe harbors and to eliminate the "general" test.

For decades, the Internal Revenue Code has required that benefits under a tax-qualified retirement plan not discriminate in favor of highly compensated employees. More than 30 years ago, the Treasury issued regulations providing that all facts and circumstances would be taken into account in determining nondiscrimination in benefits. Employers could request an IRS ruling that the form of its plan met the rules for tax qualification, while discrimination in a plan's operation could be policed by way of IRS audit. If a plan discriminated in form of operation, the IRS could disqualify it, resulting in the loss of tax deductions for employer contributions, loss of tax deferral for the plan trust and loss of favorable tax treatment for distributions to employees. The IRS had a liberal policy, however, of permitting employers to correct discrimination and avoid disqualification.

Treasury regulations issued in 1991 under Code section 401(a)(4) take a completely different approach to determining nondiscrimination in benefits. First, the regulations prescribe "safe harbor" plan designs that automatically qualify as nondiscriminatory. Unfortunately, the Treasury has so narrowly drawn the safe harbors that they can be met by very few plans. If a plan is not a safe-harbor plan, it must demonstrate

nondiscrimination every single year by passing a "general" test that compares the annual benefits of highly and nonhighly compensated employees. The general test imposes new and onerous requirements on employers to gather, analyze and report data concerning every employee, the employer itself and all of its benefit plans, at a cost of many, perhaps hundreds, of thousands of dollars each year. The regulations do not permit sampling, estimating or averaging of data in the application of the general test, which unnecessarily increases the cost of applying the test and which means that the test can be failed because of *de minimis* "violations."

At the same time Treasury issued these regulations, it also announced a new policy with respect to plans that violate tax-qualification rules. Under the "closing agreement pilot program" (or "CAPP"), the IRS agrees not to disqualify a plan in exchange for the employer's agreement to correct the disqualifying defect and its payment of a nondeductible settlement payment of an amount representing a negotiated portion of the total tax liability that would have resulted to the employer, the plan trust and to employees if the plan had been disqualified. In informal discussions, representatives of the IRS have stated that their objective is that this negotiated portion will be 100 percent. In light of the CAPP, it is particularly inappropriate for the Treasury to prescribe complex, rigid and burdensome regulations, like the 401(a)(4) regulations, under which inadvertent violations are likely to occur. The confluence and the CAPP and these regulations present employers with two choices: to incur huge compliance-related expenses that are not borne by their foreign competitors or to terminate plans and shift the burden of retirement savings to employees.

At the urging of Senators Bentsen and Pryor, who threatened to delay the regulations by legislation, the Treasury acted in February, 1992 to announce a one-year delay in the effective date of the 401(a)(4) regulations and expressed some willingness to address employers' concerns. Before making any 401(a)(4) regulations effective, Treasury should significantly liberalize the regulations' safe harbors to accommodate common plan design features. The general test should be entirely eliminated, because even with the addition of sampling, estimating and averaging features, the cost of a quantitative general test would be unduly burdensome. Moreover, this type of test can never anticipate and accommodate the myriad of plan designs, employers and employee demographics. Instead, the employer sponsoring a nonsafe-harbor plan should be permitted to request an IRS ruling that its plan is nondiscriminatory, based on relevant facts and circumstances, and should be given an opportunity to correct unintentional discrimination without incurring punitive penalties.

Regulation	Treasury Regulation section 1.414(r)-(0) through (11).
Purpose of Regulation	Provides rules to permit a controlled group of corporations to separate its operations into separate lines of business and to apply the nondiscrimination tests of the Internal Revenue Code to each line as if it were a separate employer.

Recommended Action Amend significantly to simplify and make less restrictive.

As a general rule, all employees of a controlled group of corporations or other businesses (where control is generally defined at an 80-percent level) are aggregated and treated as if employed by a single employer for purposes of certain retirement plan qualification rules, most significantly the rule under Internal Revenue Code section 410(b) requiring that the plan cover a nondiscriminatory group of highly compensated and nonhighly compensated employees. Congress was concerned that an employer operating separate lines of business in fundamentally different markets may find it difficult to comply with Code section 410(b) on a controlled-group basis and be forced to increase benefits in some lines substantially above its competitors or reduce benefits in other lines. As part of the Tax Reform Act of 1986, Congress added separate-line-of-business (or "SLOB") rules to section 414(r) of the Internal Revenue Code to permit a controlled group to treat its bona fide SLOBs as separate employers when applying plan qualification rules. Each SLOB can then offer an employee benefit package comparable to its direct competitors.

The 30 pages (in small type, single-spaced on 8.5 x 11 paper) of final regulations issued by the Treasury under Code section 414(r) are far more complex and restrictive than either the Internal Revenue Code or the legislative history of section 414(r) contemplate. Even the Treasury acknowledges that it expects only a few hundred employers to try to qualify for SLOB treatment. Employers are required to gather and analyze extremely detailed data about their business operations and all employees in order to satisfy the regulations. Much of this information is not readily available and will be extremely expensive to produce. In addition, the substantive requirements of the regulations are so narrowly defined that most employers operating in what are clearly very different markets will not be able to avail themselves of SLOB treatment. To meet Congress' goals in enacting the SLOB rules, significant changes should be made to simplify and liberalize these regulations.

Regulation Treasury Regulation section 1.125-(1) and (2) (Proposed)

Purpose of Regulation Provides rules concerning so-called "cafeteria" plans.

Recommended Action Repeal. Alternatively, amend significantly to make less restrictive.

Internal Revenue Code section 125 provides that an employer may provide a "cafeteria" plan under which employees choose between cash and employee benefits that are excludable from income under the Code (such as health care coverage or dependent care assistance benefits). Cafeteria plan benefits are excludable from the employee's income to the extend the employee chooses excludable benefits rather than cash. From 1984 through 1989, the Treasury has issued a series of proposed regulations on cafeteria plans.

These regulations contain several extremely restrictive rules that have no statutory basis. In speaking engagements, representatives of the IRS have acknowledged that they intend these rules to discourage cafeteria plans.

Cafeteria plans are popular because they permit employees to tailor their benefits packages to meet their individual needs and they enable employers to respond to the varied needs of a diverse workforce in a cost-effective way. The Treasury's position increases employer costs unnecessarily. Moreover, it is inappropriate for the Treasury to promulgate regulations whose spirit is antithetical to the purpose of the statute. The proposed regulations should be revoked or amended to reflect the purpose of the statute.

Income Tax Regulation Section 1.861-8(e)(6) and Examples 25 through 32 of Section 1.861-8(g).

These existing regulations require a substantial apportionment to foreign source income of the deduction for state income taxes. The regulations result in a significant added cost of doing business for multinational companies who are active in California and other states utilizing worldwide unitary taxation methods. The regulations are a substantial cost and compliance burden to a relatively small number of multinational companies.

Recommendation: Provide, either through regulations or legislation, that the deduction for state and local income and franchise taxes is a U.S. source deduction. This would eliminate a significant compliance burden for affected taxpayers and an audit burden for the government, and it would improve the competitiveness of those affected taxpayers by removing a cost of doing business from them that is not borne by their competitors.

Income Tax Regulation Section 1.861-8(e)(3).

These existing regulations require a substantial apportionment to foreign source income of the deduction for U.S. incurred research and development costs. Since these regulations were first issued in 1977, they have been the subject of a series of eight Congressional suspensions and temporary modifications. These regulations result in a substantial added cost for U.S. multinational companies doing research and development as compared to their foreign competitors.

Recommendation: Provide in permanent regulations or legislation for the application of the sourcing rule that is currently in effect under the most recent Congressional intervention. That rule automatically allocates 64 percent of U.S. performed R&D costs to U.S. source income, and apportions the remainder.

Income Tax Proposed Regulation Section 1.861-8 (e)(12) and Example 34 of Section 1.861-8(g).

These proposed regulations require multinational U.S. taxpayers to apportion to foreign source income some portion of their charitable contributions. The portion is determined by looking at where the charitable contributions are to be used. These regulations, while some improvement over prior IRS positions, are difficult to comply with since the taxpayer must gather information on the use of its charitable contributions. In addition, they are a disincentive to charitable gifts to entities that may use the gifts overseas.

Recommendation: Provide either through regulations or legislation that all charitable contributions that are deductible under current law are sourced to domestic income. This is consistent with the proposal in President Bush's 1993 budget proposal and could be done through regulations.

Proposed Uniform Capitalization Regulations.

The Uniform Capitalization Regulations which were issued in proposed form in August of 1991 are representative of regulatory overload. These regulations which deal with interest capitalization cover sixty-eight pages and are extremely complex. The regulations are inconsistent with the balance of the code in that they change the tax definition of real and personal property for purposes of capitalization. Such inconsistencies raise the cost of compliance. The lack of a meaningful *de minimis* rule will force taxpayers to compute and record capitalized interest which will result in minimal increase in governmental revenue (less than $1). In many cases, the cost of compliance will exceed the tax involved.

Thank you for the opportunity to comment and to participate in the regulatory review process.

Very truly yours,

Jim Sullivan

GJK:mh

cc: Mr. C. Boyden Gray
Special Counsel to the President

Mr. Michael J. Boskin
Chairman, Council on Economic Advisors

Mr. David M. McIntosh
Asst. to the Vice President for Domestic Policy

Mr. James McRae
Director of the Office of Information and Regulatory Affairs
(OIRA), OMB

Chevron Corporation
225 Bush Street, San Francisco, California 94104-4289

James N. Sullivan
Vice-Chairman of the Board

March 19, 1992

The Honorable Barbara Hackman Franklin
Secretary of Commerce
Herbert C. Hoover Building
14th Street & Constitution Avenue, N.W.
Washington, D.C. 20230

Dear Secretary Franklin:

In response to the Request for Comments that was published in the Federal Register on February 7, 1992, concerning Departmental regulations that substantially impede economic growth, may no longer be necessary, are unnecessarily burdensome, or impose needless costs or red tape, the following is submitted for your consideration:

15 CFR 930.120 through 930.134

The regulations applicable to appeals to the Secretary of Commerce from consistency rulings on Outer Continental Shelf oil and gas exploration, development, and production activities provide in Section 930.127 (a) that the Secretary shall provide timely public notice of the appeal within 15 days of receipt of the notice and in 930.130 (b) that the Secretary shall make all reasonable efforts to complete consideration of an appeal within 90 days from the date of public notice. Nevertheless, the appeal process to Commerce has taken an inordinate amount of time. For example: (1) Chevron's consistency appeal on its Destin Dome exploratory well has been pending with Commerce since March 1991, was not noticed to the public under October 1991 and, presently, there is no certainty when a decision will be issued by Commerce; (2) Mobil's consistency appeal on its Pulley Ridge Plan of Exploration is still pending and 37 months have elapsed since the notice of appeal; (3) Chevron's earlier appeal affecting an exploratory plan on lease OCS P-0525 languished in the Department of Commerce for more than two years before Commerce issued a decision.

As you can appreciate, considerable investments have been made in these oil and gas ventures. Delays increase the economic burden thereby making the return on investment less attractive---perhaps uneconomic. Future projects will be viewed as risky, or even cancelled. The result is less capital available for much needed domestic oil and gas activities and an increasing flight of investment dollars to overseas locations---a further drain on the nation's balance of payments and job creating capability.

The solution is easy. No changes in regulations are necessary. We simply request that the Department of Commerce adhere to the time limitations provided in its regulations.

Thank you for the opportunity to comment and to participate in the regulatory review process.

Very truly yours,

Jim Sullivan

cc: Mr. Wendell L. Willkie II
General Counsel, Department of Commerce

Ms. Margaret Hayes
Assistant General Counsel for Fisheries
National Oceanic and Atmospheric Administration
Department of Commerce

Mr. C. Boyden Gray
Special Counsel to the President

Mr. Michael J. Boskin
Chairman, Council on Economic Advisors

Mr. David M. McIntosh
Asst. to the Vice President for Domestic Policy

Mr. James McRae
Director of the Office of Information and Regulatory Affairs
(OIRA), OMB

ID # CU

Rec'd 2/27 3:00pm

WHITE HOUSE
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Name of Correspondent: Nicholas Garcia

☐ **MI Mail Report** **User Codes: (A)** _____ **(B)** _____ **(C)** _____

Subject: The Cost of the Onboard Refueling Vapor Control System

ROUTE TO:

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
Cmos	ORIGINATOR	90 10 26		_	1 1
Cmat 17	Referral Note: A	90 10 26			S 90 10 31 05
Cmat 02	Referral Note: I	1 1		_	1 1
Cmgmt	Referral Note: I	1 1		_	1 1
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Subject:

CAA - Gen

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

FEB 23 1990

NOTE TO JOHN SCHMITZ

FROM: Nicolas Garcia

REASON: The Cost of the Onboard Refueling Vapor Control System

EPA's most recent (January 1989) estimate of the cost of the onboard System is $9.65 per car. This estimate may be too low for several reasons.

1. EPA's simplified onboard system does not have some fuel system modifications and components that likely will be necessary. For example, we estimate that a vapor/liquid separator and fuel tank modifications will add about $2.00 to the cost of each onboard system.

2. EPA's simplified onboard system locates the carbon canister at the rear of the vehicles. Carbon canisters associated with current evaporative control systems are typically located in the front. We estimate that it will cost about $0.50 per vehicle for automobile companies to re-engineer the canisters to the rear. In addition there will be some cost resulting from lost trunk space.

3. NHTSA has raised concerns that EPA's simplified onboard system may result in additional vehicle fires and driveability problems. The automobile companies will likely have to expend considerable funds to alleviate these concerns. We do not have an estimate of the cost of this effort.

We also question EPA's assumption that all vapors trapped by the canister will be efficiently burned in the vehicle engine. EPA has no data to support this contention. The vapor purged from the onboard canister will be more highly variable than vapor from current evaporative canisters. This variability will make it difficult to maintain the precise air/fuel ratios, under various driving conditions, necessary for efficient combustion. Therefore, we believe that some portion of these vapors will not add to vehicle mileage and some may even exit the vehicle uncombusted.

ID # _____ CU

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Name of Correspondent: The President

☐ **MI Mail Report** **User Codes: (A)** _____ **(B)** _____ **(C)** _____

Subject: Clean Air Veto Letter

ROUTE TO: / **ACTION** / **DISPOSITION**

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
Cuffe	ORIGINATOR	90/01/19			/ /
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Cuff M	R	90/01/19		S	90/01/22
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Cuff 02	I	/ /			/ /
	Referral Note:				
Cuffay	I	/ /			/ /
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Subject:

Clean Air Act – General

same letter to Mitchell

THE WHITE HOUSE

WASHINGTON

January 19, 1990

Dear Senator Dole:

Last July I submitted to the Congress a comprehensive proposal for reauthorizing and strengthening the Clean Air Act. That proposal was the result of a long and careful debate within the Administration, and reflected extensive consultation with Members of the House and Senate, representatives of affected industries, state and local governments, and environmental and public health groups.

Consistent with my belief that environmental protection and economic growth can be compatible, the Administration's Clean Air bill seeks to achieve public health and environmental protection in an economically efficient way by making extensive use of market principles. My comprehensive proposal carefully balanced our mutual desire for enhanced public health, a cleaner environment, and sustained economic growth. Even so, the cost estimate of the Administration's bill to the American economy is approximately $19 billion annually when fully phased-in.

As the Senate moves toward floor consideration of the Clean Air Act, I am convinced that we must maintain the balance reflected in the Administration's bill. Initial cost estimates of the Clean Air bill reported by the Senate Environment and Public Works Committee exceed $40 billion annually -- more than double the cost of the Administration's bill. Yet the Committee bill provides little incremental environmental benefit above that proposed by the Administration. And the additional costs of some of the Committee bill's far-reaching provisions have yet to be incorporated in these estimates.

I want to sign a Clean Air bill this year -- so that the 1990s can indeed be known as the "Clean Air decade." But I will only sign legislation that balances environmental and economic progress.

Specifically, I will only approve legislation which meets the following minimum tests of balance and reasonableness:

1.) The important environmental protections afforded by the Administration's bill must be maintained in the final legislation and preserved over time. The Administration proposes to: reduce sulfur dioxide emissions permanently by 10 million tons; achieve attainment of ozone, carbon monoxide and particulate matters standards; and sharply curtail the hazards posed by air toxics emissions. These represent critically important steps in achieving clean and healthy air for all Americans. In view of the environmental and health risks posed by acid rain; the fact that 100 million Americans now live in cities which are out of attainment with public health standards for ozone; and the estimate that current excessive levels of air toxics emissions may result in premature cancer deaths and other serious adverse health effects; it is vital that we move quickly and decisively to reduce these pollutants. The Administration's proposed bill would do just that.

2.) The bill should not impose aggregate costs on the economy that exceed the already considerable costs embodied in the Administration's bill -- with an adjustment of no more than ten percent to reflect certain mobile source provisions added in the House Energy and Commerce Subcommittee on Health and the Environment. The House subcommittee added certain provisions affecting mobile sources to the titles of the bill which relate to non-attainment that will modestly increase the cost of these titles. Unfortunately, several provisions currently contained in the Senate Environment and Public Works Committee's bill -- such as mandatory nationwide second phase tailpipe standards for automobiles, an inflexible second phase of air toxics control, and carbon dioxide emissions standards for mobile sources -- cause the Senate bill to exceed substantially the cost of the Administration bill. The result of an excessively costly bill will be a less competitive American economy with fewer jobs for American workers.

The Administration has received letters from around the country, for example, indicating that a considerable number of plant closings could result from adoption of the Senate's air toxics provisions. The Administration has set up a task force under the chairmanship of the Council of Economic Advisers, and including the Environmental Protection Agency, the Office of Management and Budget, the Department of Energy, and the White House Office of Policy Development, to monitor and estimate the economic cost of various clean air proposals as the debate proceeds.

3.) Controls in the bill should be designed to achieve reductions in the most cost-efficient way -- that is, for the least cost per ton of reduced pollutant. By incorporating flexibility and innovation in its recommended control strategies, the Administration's bill would allow environmental and health standards to be met in a way that creates maximum choice for both states and regulated industries and places fewer burdens on consumers. For example, the Administration's alternative fuels proposal will challenge the automobile and oil industries to produce cleaner vehicles and cleaner fuels at the lowest cost to the consumer.

The "command and control" approach embodied in several provisions of the Environment and Public Works Committee's bill -- such as that which disallows "netting" for factories and commercial facilities seeking to meet ozone non-attainment standards in the most cost-effective way -- results in the same environmental benefit, but at greatly increased cost and with sharply increased impediments to economic growth. Similarly, the provisions in the Environment and Public Works Committee's bill which move up emissions reduction deadlines while failing to provide incentives for clean coal technology needlessly inflate the cost of acid rain control.

4.) The system of emissions trading, which allows acid rain reductions to be achieved in the least costly and most equitable fashion, must be allowed to work. The Administration's proposed acid rain emissions trading program inherently reduces the cost of any given level of sulfur dioxide or nitrogen oxide reduction, and provides an efficient mechanism for balancing the burdens imposed on any given region of the country. The Administration has provided information to several Senators which indicates that this trading system can dramatically reduce the impact of acid rain controls on electric utility rates in any given state, while at the same time reducing the cost of the overall bill by up to billions of dollars per year. In the first phase, the initial allocation of required reductions to 107 plants is essential to ensuring that effective trading opportunities exist. The trading system must survive in a form that achieves environmental benefits comparable to those in the Administration's bill and involves a sufficient number of plants in the first phase to ensure its workability.

5.) The legislation must not include a national electricity tax to pay for controls, which would penalize consumers in those states which have already undertaken reductions by making them in effect "pay twice" for clean air. Supporters of such "cost sharing" argue that it is needed to address regional inequities. Any imbalance in control costs can be addressed far more effectively, efficiently, and equitably through the operation of a robust emissions trading system -- which would not require new taxes.

The Administration took substantial time and effort to craft a balanced proposal. My staff and I stand ready to assist you and the other Members of both the House and Senate as you work to develop legislation which maintains this vitally important balance, and which does not violate one or more of the above mentioned "tests."

I look forward to signing legislation that will accelerate progress toward cleaner air for a growing America at the earliest possible opportunity.

Sincerely,

The Honorable Robert Dole
Republican Leader
United States Senate
Washington, D.C. 20510

1977 AMENDMENTS -- BALANCE OF INFLUENCE BETWEEN HOUSES

In the process leading up to the 1977 amendments to the Clean Air Act, both houses of Congress contributed substantially to the shape of the final bill. However, many of the crucial decisions were driven by the Senate's version of the bill. A few examples are listed below:

-- Nonattainment. The permit requirement for new sources in nonattainment areas derived from the House Bill, as did the program for allowing states with approved attainment plans to adopt motor vehicle standards equivalent to California's. However, the principal requirements for SIPs under the bill, such as inspection and maintenance programs, RACT (reasonably available control technology for all sources), and the sanctions (such as highway funding cutoffs) came from the Senate bill.

-- Stack heights. Both bills contained provisions limiting the credit that could be allowed in SIPs for dispersion from tall stacks. However, the "good engineering practice" limit on such stacks that is the heart of Section 123 of the existing Act came from the House. The Senate's provision was far less detailed.

-- New source review. Both houses had PSD programs. The final PSD program is an amalgam of both versions, but incorporates somewhat more of the elements of the Senate than the House bills.

-- Motor vehicle standards. Both houses would have extended the statutory standards applicable to 1977 vehicles for two years. However, the Senate sought greater reductions thereafter for CO than did the House (to 3.4 grams/mile rather than 9), and it sought to tighten the NO_x standard more rapidly than did the House. These and other differences were compromised.

Although these summaries may not adequately reflect the process, the final 1977 Amendments result from the confluence of powerful legislators and particularly knowledgeable staff members in both Houses. In the House, Representative Rogers relied on Jeff Schwartz. In the Senate, Senator Muskie relied on Leon Billings. Both staffers were adroit and versed in great detail on the bills. Senator Muskie, in particular, developed a command of the detail of the legislation that gave him even more control over its content than would be expected from his position as Chairman of the Committee.

Schwartz and Billings both had strong ties to the national environmental groups, and guided their patrons wherever possible to accommodate the concerns of those groups in the legislation. The Carter Administration's largely reactive posture gave it less influence, and industry's voice was little heeded.

Today, circumstances have changed. Although Senate staff generally are sympathetic to the concerns of environmental

groups, and unsympathetic to those of industry, no Senate staffer wields influence comparable to Billings in 1977. Similarly, while several Senators have displayed great interest in the legislation, the Committee chairman, Senator Burdick, has not immersed himself in detail in the same way that Senator Muskie did. There is no other comparable commanding figure, including even Senator Mitchell, whose principal interest is in seeing strong acid deposition controls.

On the House side, circumstances more closely resemble 1977, in that a powerful Member -- Committee Chairman Dingell -- is allied with a powerful staffer with encyclopedic command of the detail -- Dave Finnegan. Dingell and Finnegan, however, are not aligned with the environmental groups (though not blind to their concerns). They have been highly receptive to industry views.

As a result, the Administration has wielded far more influence in the current debate than in 1977, and it is no longer a foregone conclusion that the views of environmental groups will prevail. On the Senate side, environmental groups have publicly complained of alleged secret deals, and about their own exclusion from the process. They have little expectation of a more favorable reception in the House than in the Senate. Because of these changes, it seems likely that no group -- environmental groups, industry, states, or the Administration -- will be disproportionately influential in the forthcoming conference.

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Name of Correspondent: Ronald K. Peterson

☐ **MI Mail Report** **User Codes: (A)** _____ **(B)** _____ **(C)** _____

Subject: FYI — Statement of Administration Policy on S. 1630, Clean Air Restoration and Standards act of 1989

ROUTE TO:

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
Cmoffice	ORIGINATOR	90 01 26			/ /
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CMAT 17	I	90 01 26		S	90 02 06
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CMAT 02	I	/ /			/ /
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ACTION

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Subject:

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EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

January 22, 1989

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer -

Environmental Protection Agency (Schilling 382-5414)	326
Department of Commerce (Levitt 377-3151)	324
Department of the Treasury (Carro 566-8523)	228
Department of Justice (Reinhardt 633-2113)	217
Department of Energy (Rabben 586-6718)	209
Department of Transportation (Herlihy 366-4687)	226
Office of Science and Technology Policy	
Council of Economic Advisers (Obermiller 395-5046)	242
Department of Defense (Brick 697-1305)	325
Department of State (Rappaport 647-4463)	225
Department of the Interior (Somers 343-4547)	329
Council on Environmental Quality (D. Bear x5754)	256
Department of Agriculture (Shapiro 382-1516)	312
Department of Health & Human Svcs. (White 245-7750)	328
Department of Housing & Urban Development (Murphy 755-7093)	215
Nuclear Regulatory Commission (Rothschild 492-1607)	227
Department of Labor (Zinman 523-8201)	330
General Services Administration (Brady 523-3956)	237
Small Business Administration (Forbes 653-7581)	315

SUBJECT: FYI - Statement of Administration Policy on S. 1630, Clean Air Restoration and Standards Attainment act of 1989.

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

Questions should be referred to **HOLLY FITTER (395-6194)**, the legislative analyst in this office.

Ronald K. Peterson

RONALD K. PETERSON FOR
Assistant Director for
Legislative Reference

Enclosures

cc: C.B. Gray
A. Frass
K. Glozer
R. Adkins
N. Maloley
G. Bennethum

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

January 22, 1990
(Senate)

STATEMENT OF ADMINISTRATION POLICY

(THIS STATEMENT HAS BEEN COORDINATED BY OMB WITH THE CONCERNED AGENCIES.)

S. 1630 - Clean Air Restoration and Standards Attainment Act of 1989
(Baucus (D) Montana and 12 others)

The President, in a letter to Senate Minority Leader Dole dated January 19, 1990, reaffirmed his support for reauthorizing and strengthening the Clean Air Act.

Text of the President's Letter

Last July I submitted to the Congress a comprehensive proposal for reauthorizing and strengthening the Clean Air Act. That proposal was the result of a long and careful debate within the Administration, and reflected extensive consultation with Members of the House and Senate, representatives of affected industries, state and local governments, and environmental and public health groups.

Consistent with my belief that environmental protection and economic growth can be compatible, the Administration's Clean Air bill seeks to achieve public health and environmental protection in an economically efficient way by making extensive use of market principles. My comprehensive proposal carefully balanced our mutual desire for enhanced public health, a cleaner environment, and sustained economic growth. Even so, the cost estimate of the Administration's bill to the American economy is approximately $19 billion annually when fully phased-in.

As the Senate moves toward floor consideration of the Clean Air Act, I am convinced that we must maintain the balance reflected in the Administration's bill. Initial cost estimates of the Clean Air bill reported by the Senate Environment and Public Works Committee exceed $40 billion annually -- more than double the cost of the Administration's bill. Yet the Committee bill provides little incremental environmental benefit above that proposed by the Administration. And the additional costs of some of the Committee bill's far-reaching provisions have yet to be incorporated in these estimates.

I want to sign a Clean Air bill this year -- so that the 1990s can indeed be known as the "Clean Air decade." But I will only sign legislation that balances environmental and economic progress.

Specifically, I will only approve legislation which meets the following minimum tests of balance and reasonableness:

1.) The important environmental protections afforded by the Administration's bill must be maintained in the final legislation and preserved over time. The Administration proposes to: reduce sulfur dioxide emissions permanently by 10 million tons; achieve attainment of ozone, carbon monoxide and particulate matters standards; and sharply curtail the hazards posed by air toxics emissions. These represent critically important steps in achieving clean and healthy air for all Americans. In view of the environmental and health risks posed by acid rain; the fact that 100 million Americans now live in cities which are out of attainment with public health standards for ozone; and the estimate that current excessive levels of air toxics emissions may result in premature cancer deaths and other serious adverse health effects; it is vital that we move quickly and decisively to reduce these pollutants. The Administration's proposed bill would do just that.

2.) The bill should not impose aggregate costs on the economy that exceed the already considerable costs embodied in the Administration's bill -- with an adjustment of no more than ten percent to reflect certain mobile source provisions added in the House Energy and Commerce Subcommittee on Health and the Environment. The House subcommittee added certain provisions affecting mobile sources to the titles of the bill which relate to non-attainment that will modestly increase the cost of these titles. Unfortunately, several provisions currently contained in the Senate Environment and Public Works Committee's bill -- such as mandatory nationwide second phase tailpipe standards for automobiles, an inflexible second phase of air toxics control, and carbon dioxide emissions standards for mobile sources -- cause the Senate bill to exceed substantially the cost of the Administration bill. The result of an excessively costly bill will be a less competitive American economy with fewer jobs for American workers.

The Administration has received letters from around the country, for example, indicating that a considerable number of plant closings could result from adoption of the Senate's air toxics provisions. The Administration has set up a task force under the chairmanship of the Council of Economic Advisers, and including the Environmental Protection Agency, the Office of Management and Budget, the Department of Energy, and the White House Office of Policy Development, to monitor and estimate the economic cost of various clean air proposals as the debate proceeds.

3.) Controls in the bill should be designed to achieve reductions in the most cost-efficient way -- that is, for the least cost per ton of reduced pollutant. By incorporating flexibility and innovation in its recommended control strategies, the Administration's bill would allow environmental and health standards to be met in a way that creates maximum choice for both states and regulated industries and places fewer burdens on consumers. For example, the Administration's alternative fuels proposal will challenge the automobile and oil industries to produce cleaner vehicles and cleaner fuels at the lowest cost to the consumer.

The "command and control" approach embodied in several provisions of the Environment and Public Works Committee's bill -- such as that which disallows "netting" for factories and commercial facilities seeking to meet ozone non-attainment standards in the most cost-effective way -- results in the same environmental benefit, but at greatly increased cost and with sharply increased impediments to economic growth. Similarly, the provisions in the Environment and Public Works Committee's bill which move up emissions reduction deadlines while failing to provide incentives for clean coal technology needlessly inflate the cost of acid rain control.

4.) The system of emissions trading, which allows acid rain reductions to be achieved in the least costly and most equitable fashion, must be allowed to work. The Administration's proposed acid rain emissions trading program inherently reduces the cost of any given level of sulfur dioxide or nitrogen oxide reduction, and provides an efficient mechanism for balancing the burdens imposed on any given region of the country. The Administration has provided information to several Senators which indicates that this trading system can dramatically reduce the impact of acid rain controls on electric utility rates in any given state, while at the same time reducing the cost of the overall bill by up to billions of dollars per year. In the first phase, the initial allocation of required reductions to 107 plants is essential to ensuring that effective trading opportunities exist. The trading system must survive in a form that achieves environmental benefits comparable to those in the Administration's bill and involves a sufficient number of plants in the first phase to ensure its workability.

5.) The legislation must not include a national electricity tax to pay for controls, which would penalize consumers in those states which have already undertaken reductions by making them in effect "pay twice" for clean air. Supporters of such "cost sharing" argue that it is needed to address regional inequities. Any imbalance in control costs can be addressed far more effectively, efficiently, and equitably through the operation of a robust emissions trading system -- which would not require new taxes.

The Administration took substantial time and effort to craft a balanced proposal. My staff and I stand ready to assist you and the other Members of both the House and Senate as you work to develop legislation which maintains this vitally important balance, and which does not violate one or more of the above mentioned "tests."

I look forward to signing legislation that will accelerate progress toward cleaner air for a growing America at the earliest possible opportunity.

* * * * *

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The above floor position was prepared by LR (Fitter). An information copy has been provided to WHGC, NR, NRES/SS, OIRA, ES, EPA, CEA, Commerce, Treasury, Justice, Energy, Transportation, OSTP, DOD, State, Interior, CEQ, USDA, HHS, HUD, NRC, Labor, GSA, and SBA.

A description and critique of S. 1630 has been prepared by EPA in its "Administration Report on S. 1630," and "Administration and Senate Clean Air Act Cost Comparison."

ID # _____ CU

Rec'd 2/21
11:10 am

WHITE HOUSE
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Cuat 02	Referral Note: I	1 1		_	1 1
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Subject

CAA - Gen.

WILLIAM K. REILLY

TALKING POINTS

See page 5

NATIONAL WILDLIFE FEDERATION SYNERGY CONFERENCE

January 30, 1990

*****AS DELIVERED*****

O THANK YOU VERY MUCH, JAY (HAIR)

-- IF THE FIRST EARTH DAY AND THE EARLY 1970S WERE THE SALAD DAYS OF THE ENVIRONMENTAL MOVEMENT, THEN THE 1990S ARE RAPIDLY SHAPING UP AS THE MAIN COURSE

-- AS WE APPROACH THE 20TH ANNIVERSARY OF EARTH DAY AND AS WE ENTER THE THIRD ENVIRONMENTAL DECADE, I APPRECIATE THIS OPPORTUNITY TO SHARE A FEW OBSERVATIONS WITH THE CORPORATE CONSERVATION COUNCIL

-- I BELIEVE STRONGLY IN EFFORTS OF THIS KIND, ENGAGING IN EXTENSIVE PROCESSES OF CONSULTATION, EXPLORING OUR COMMON INTERESTS

-- WE IN THE ENVIRONMENTAL COMMUNITY CANNOT ACCOMPLISH ANYTHING ENDURING WITHOUT THE CLOSE COLLABORATION OF THE ECONOMIC SECTOR

-- WE LEARNED IN THE 1970S THAT IT'S POSSIBLE TO PASS LEGISLATION WITHOUT BUSINESS SUPPORT -- BUT IT'S NOT POSSIBLE TO MAKE LAWS AND REGULATIONS WORK EFFECTIVELY WITHOUT CLOSE CONSULTATION, PARTICIPATION AND A GENUINE EXCHANGE OF VIEWS

-- WE HAVE A VERY FULL PLATE IN FRONT OF US, PILED HIGH WITH ENTICING -- INDEED IRRESISTIBLE -- CHALLENGES, AND I DON'T SEE IT GETTING ANYTHING BUT FULLER IN THE COMING MONTHS AND YEARS

-- BECAUSE THERE IS SO MUCH TO DO, THIS COUNCIL'S WORK IS OF VITAL IMPORTANCE

-- THE COOPERATION BETWEEN INDUSTRY AND ENVIRONMENTALISTS THAT YOU HAVE FOSTERED OVER THE LAST EIGHT YEARS HAS HELPED TO KEEP THE COUNTRY MOVING TOWARD ITS ENVIRONMENTAL GOALS

-- AND THAT SAME KIND OF COOPERATION IS GOING TO BE EVEN MORE INDISPENSABLE IN THE 1990S

-- NOT ONLY FOR THE HEALTH OF THE ENVIRONMENT, BUT FOR THE HEALTH OF THE ECONOMY AS WELL

-- YOUR WORK WILL HELP POINT THE WAY TOWARD THE ACCOMPLISHMENT OF TWO VITALLY IMPORTANT GOALS: THE PROTECTION AND RESTORATION OF THE ENVIRONMENT; AND SUSTAINABLE, LONG-TERM ECONOMIC GROWTH

O THE GREAT DEBATES OF THE 1970S AND EARLY 1980S WERE CAST TYPICALLY AS ENVIRONMENT-VS-DEVELOPMENT CONFLICTS; AS CHOICES BETWEEN HIGH LEVELS OF PROTECTION OF HEALTH AND THE ENVIRONMENT, AND MAINTENANCE OF JOBS AND U.S. COMPETITIVE PERFORMANCE

-- ENVIRONMENTAL ISSUES WILL CONTINUE TO POSE HARD CHOICES AND INVOLVE SERIOUS TRADEOFFS; BUT INCREASINGLY, THEY ARE TAKING PLACE IN A NEW CONTEXT: NO LONGER <u>WHETHER</u>, BUT <u>HOW</u>

-- THAT POSES NEW RESPONSIBILITIES ON ALL OF US, AND PARTICULARLY ON ADVOCATES OF ENVIRONMENTAL PROGRESS, TO APPROACH PUBLIC ISSUES WITH A HEIGHTENED REGARD FOR PURSUING ENVIRONMENTAL GOALS IN THE MOST ECONOMICALLY EFFICIENT MANNER

-- ALL OF US ACKNOWLEDGE THAT A HEALTHY ENVIRONMENT IS THE UNDERPINNING FOR A SUSTAINABLE ECONOMY; LET US, THEN, IN THE NEW CLIMATE OF OPINION, RESOLVE GENUINELY TO WORK TO INTEGRATE THE NATION'S ENVIRONMENTAL GOALS WITH OUR ECONOMIC ASPIRATIONS

O LET ME TURN NOW TO A SPECIFIC PRIORITY -- THE CLEAN AIR ACT

-- THE PRESIDENT HAS MADE REAUTHORIZING AND STRENGTHENING THAT LAW HIS TOP LEGISLATIVE PRIORITY

-- THANKS TO THE ORIGINAL CLEAN AIR ACT, WE'VE MADE SIGNIFICANT PROGRESS IN REDUCING AIR POLLUTION IN THE LAST TWENTY YEARS

-- BUT HIGH LEVELS OF SMOG, ACID RAIN, AND AIR TOXICS REMAIN, AND THEY CONTINUE TO ENDANGER THE HEALTH OF THE AMERICAN PEOPLE AND THE WELL-BEING OF OUR ENVIRONMENT

-- THE PRESIDENT HAS PROPOSED A CREATIVE, INNOVATIVE APPROACH, BASED LARGELY ON MARKET PRINCIPLES, TO ACCOMPLISH THE INTERTWINED GOALS OF CLEANING UP THE NATION'S AIR AND INSURING SUSTAINED ECONOMIC GROWTH

-- THE PRESIDENT'S PROPOSAL WOULD PUT THE UNITED STATES ON THE PATH TOWARD DRAMATICALLY CLEANER AIR BY THE END OF THE CENTURY:

-- ACID RAIN POLLUTANTS WOULD BE CUT BY NEARLY HALF;

-- MOST URBAN AREAS IN THE COUNTRY WOULD FINALLY ATTAIN NATIONAL CLEAN AIR STANDARDS;

-- AND TOXIC AIR POLLUTANTS WOULD BE SLASHED BY TENS OF MILLIONS OF POUNDS A YEAR

O THE PRESIDENT'S PROPOSAL AIMS HIGH ENVIRONMENTALLY -- AND IT ALSO MEETS THE ECONOMIC CHALLENGE

-- IT REDUCES EMISSIONS BY THE MOST COST-EFFECTIVE MEANS AVAILABLE, USING MARKET-BASED PRINCIPLES WHENEVER POSSIBLE

-- NOW, IF YOU'VE BEEN FOLLOWING THE CLEAN AIR DEBATE SO FAR, YOU'RE PROBABLY WONDERING WHAT TO BELIEVE ABOUT THE COSTS AND BENEFITS OF THE VARIOUS PROPOSALS NOW BEFORE THE CONGRESS

-- THE ESTIMATES ARE ALL OVER THE LOT:

-- INDUSTRY GROUPS ARE SAYING THAT SOME PROPOSALS WILL COST MORE THAN $100 BILLION AND WILL LEAD TO WIDESPREAD INDUSTRIAL SHUT-DOWNS AND LOSS OF PRODUCTIVITY

-- THE AMERICAN LUNG ASSOCIATION, ON THE OTHER HAND, HAS ESTIMATED THE HEALTH COSTS FROM MOTOR VEHICLE POLLUTION ALONE AT AS MUCH AS $50 BILLION A YEAR

-- AND ONE REPORT, BY TWO INDUSTRY CONSULTANTS WRITING IN REGULATION MAGAZINE, PEGGED THE COST OF THE PRESIDENT'S PROPOSALS FOR CONTROLLING TOXIC AIR POLLUTION FROM INDUSTRIAL SOURCES AT BETWEEN $4 BILLION AND $9 BILLION TO AVOID JUST ONE CASE OF CANCER!

-- I MUST SAY THIS BATTLE OF NUMBERS REMINDS ME OF THE TIME PRESIDENT LINCOLN AND HIS ADVISORS WERE DISCUSSING CIVIL WAR MANPOWER AND RESOURCES

-- SOMEONE ASKED LINCOLN HOW MANY MEN THE CONFEDERATES HAD IN THE FIELD

-- AND TO THE ASTONISHMENT OF EVERYONE PRESENT, HE PROMPTLY ANSWERED, "TWELVE HUNDRED THOUSAND" -- FULLY THREE TIMES THE NUMBER OF UNION TROOPS

-- "YOU SEE," LINCOLN EXPLAINED, "ALL OUR GENERALS, EVERY TIME THEY GET WHIPPED, THEY TELL ME THAT THE ENEMY OUTNUMBERED THEM AT LEAST THREE TO ONE, AND I MUST BELIEVE THEM

-- "WE HAVE FOUR HUNDRED THOUSAND MEN IN THE FIELD. AND THREE TIMES FOUR EQUALS TWELVE. SO THE CONFEDERATES HAVE TWELVE HUNDRED THOUSAND MEN. NO DOUBT ABOUT IT!"

-- WELL, I THINK WE'D BE WISE TO TAKE A SIMILARLY SKEPTICAL VIEW OF SOME OF THE NUMBERS NOW BEING BANDIED ABOUT WITH RESPECT TO CLEAN AIR

O WE AT EPA HAVE OUR OWN NUMBERS; AND THEY FALL BETWEEN THE TWO EXTREMES

-- THE BEAUTY OF THE PRESIDENT'S PROPOSAL IS THAT BY ALLOWING FLEXIBILITY AND INCORPORATING INNOVATIVE MARKET INCENTIVES, IT WILL ACHIEVE THE POLLUTION REDUCTIONS WE NEED IN THE MOST COST-EFFECTIVE WAY POSSIBLE

O UNFORTUNATELY, THE SAME CANNOT BE SAID OF SOME OF THE AIR TOXICS PROVISIONS IN THE BILL REPORTED OUT BY THE SENATE ENVIRONMENT AND PUBLIC WORKS COMMITTEE

-- OUR COST ANALYSES SHOW THAT THE ADMINISTRATION'S AIR TOXICS PROVISION WILL COST ABOUT $4.6 BILLION PER YEAR IN ITS SECOND PHASE

-- THE AIR TOXICS PROVISIONS IN THE SENATE BILL WILL COST ABOUT $10 BILLION -- MORE THAN DOUBLE THE COST OF THE ADMINISTRATION'S PROPOSAL

-- BOTH THE PRESIDENT'S PROPOSAL AND THE SENATE BILL USE A SIMILAR TECHNOLOGY-BASED APPROACH FOR THE FIRST PHASE OF REQUIRED AIR TOXICS REDUCTIONS

-- THIS IS CLEARLY THE MOST EFFECTIVE WAY TO DEAL WITH THIS COMPLEX PROBLEM

-- BUT THE SENATE BILL ALSO INCLUDES A SECOND PHASE EMISSIONS REDUCTION REQUIREMENT -- A "RESIDUAL RISK" PROVISION -- WHICH SERIOUSLY THREATENS THE EXISTENCE OF KEY PLANTS AND INDUSTRIES

-- THIS PROVISION WOULD REQUIRE FACILITIES TO REDUCE THEIR EMISSIONS TO A SO-CALLED "BRIGHT LINE" INDIVIDUAL RISK LEVEL

-- RATHER THAN GIVING EPA THE FLEXIBILITY TO ADDRESS ON A CASE-BY-CASE BASIS THE RISK THAT REMAINS AFTER CONTROLS ARE APPLIED, AS THE ADMINISTRATION'S PROVISION FOR THE SECOND PHASE OF AIR TOXICS REDUCTIONS ENVISIONS

-- UNDER THE SENATE BILL, ANY SOURCE THAT POSES A LIFETIME CANCER RISK GREATER THAN ONE IN 10,000 TO THE "MAXIMUM EXPOSED INDIVIDUAL" IN ITS VICINITY WOULD HAVE TO CONTROL ITS EMISSIONS BELOW THAT LEVEL OR SHUT DOWN

-- THIS "BRIGHT LINE" REQUIREMENT WOULD RELY ON THE MISUSE OF THE RESULTS OF RISK ASSESSMENTS WHICH WERE NEVER INTENDED FOR THAT PURPOSE

-- A "BRIGHT LINE" APPROACH TAKES ONE WORST-CASE NUMBER OUT OF A RISK ASSESSMENT AND MISUSES IT IN TWO WAYS:

-- FIRST, IT TREATS THAT NUMBER AS A TRUE RISK, WHEN IT IS IN FACT A WORST-CASE ESTIMATE THAT IS ONLY AS RELIABLE AS THE UNDERLYING DATA

-- AND SECOND, IT TREATS THE NUMBER AS THE SOLE CORRECT MEASURE OF PUBLIC HEALTH, WHEN IT IS ONLY ONE PIECE OF INFORMATION IN AN EXAMINATION THAT SHOULD COVER ALL ASPECTS OF PUBLIC HEALTH

-- SO THE "BRIGHT LINE" NUMBER IGNORES MANY "REAL-WORLD" CONSIDERATIONS, SUCH AS THE NUMBER OF PEOPLE WHO ARE ACTUALLY AT RISK, AND IT FAILS TO TAKE INTO ACCOUNT MANY OTHER FACTORS AND UNCERTAINTIES THAT EPA MUST CONSIDER

-- SUCH A STANDARD COULD LEAD TO UNACCEPTABLE ECONOMIC AND SOCIAL COSTS, INCLUDING THE CLOSING OF FACILITIES AND THE LOSS OF HUNDREDS OR THOUSANDS OF JOBS, WITHOUT COMPARABLE ENVIRONMENTAL BENEFITS

-- THE ADMINISTRATION'S BILL WOULD ELIMINATE APPROXIMATELY 80 PERCENT OF THE TOXIC SUBSTANCES EMITTED FROM STATIONARY SOURCES IN ITS FIRST PHASE

-- THE SENATE BILL PURPORTS TO ELIMINATE ALL REMAINING RESIDUAL RISKS IN PLANTS THAT HAVE ALREADY INSTALLED THE BEST TECHNOLOGY

-- THE PRESIDENT'S BILL, TOO, WOULD ADDRESS WHATEVER RISKS REMAIN

-- BILL ROSENBERG, EPA'S ASSISTANT ADMINISTRATOR FOR AIR AND RADIATION, RECENTLY DESCRIBED TO ME HIS VISIT TO A NATIONAL STEEL PLANT IN DETROIT

-- THAT 30-YEAR-OLD PLANT WAS RECENTLY RENOVATED, INCLUDING AN INVESTMENT OF MILLIONS OF DOLLARS FOR POLLUTION CONTROL

-- IT NOW EMPLOYS 5,000 PEOPLE, INCLUDING MANY WOMEN AND MINORITIES, WHO EARN $25 AN HOUR IN A REGION THAT IS OTHERWISE ECONOMICALLY DISTRESSED

-- NOW, I THINK DECISIONS ABOUT THE FUTURE CONTROL OF SUCH A PLANT, WHEN ITS VERY SURVIVAL IS AT STAKE, SHOULD BE BASED ON A FULL CONSIDERATION OF REAL, NOT THEORETICAL WORST CASE, PUBLIC HEALTH FACTORS

-- THE COMMUNITY'S, AND THE NATION'S, INTEREST IN THAT PLANT, AND OTHERS LIKE IT, IS LARGE ENOUGH THAT WE DARE NOT DESTROY IT ON PURE SURMISE

-- YET AS IT NOW READS, THE SENATE BILL COULD CAUSE THAT PLANT TO SHUT DOWN

-- IS THIS GOOD PUBLIC POLICY? TO MAKE DECISIONS PUTTING PEOPLE OUT OF WORK WITHOUT CONSIDERING THE PUBLIC HEALTH AS A WHOLE, WITHOUT CONSIDERING THE RISK ASSESSMENT UNCERTAINTIES, THE POTENTIAL FOR FUTURE DEVELOPMENT OF CONTROL TECHNOLOGIES, WITH ALL THE DISTRESS OF AN ECONOMIC CALAMITY FOR THOUSANDS OF PEOPLE, FOR AN ENTIRE COMMUNITY, POSSIBLY A WHOLE INDUSTRY?

-- I THINK IT'S IMPORTANT FOR THE EPA ADMINISTRATOR TO WEIGH ALL OF THESE FACTORS; TO MAKE SURE THAT WE CONSIDER EVERYTHING THAT'S IMPORTANT TO PEOPLE'S WELL-BEING, AND TO BE ALLOWED TO INCLUDE ECONOMIC AND HEALTH FACTORS IN THE FINAL SHUTDOWN CALCULUS

O BY THE YEAR 2010, THE ADMINISTRATION'S AUTO CONTROLS (BOTH FUELS AND TAILPIPE EMISSIONS) WILL PROVIDE A 26.2 PERCENT REDUCTION IN VOLATILE ORGANIC COMPOUNDS, OR VOCS

-- THE SENATE BILL WOULD PRODUCE A 28.7 PERCENT REDUCTION -- AND THE DIFFERENCE IS EVEN SMALLER IN 20005

-- THIS ADDITIONAL 2.5 PERCENT REDUCTION WILL COST MORE THAN $8 BILLION A YEAR

-- MOREOVER, THE ADMINISTRATION'S ALTERNATIVE FUELS PROPOSAL WOULD CLOSE MOST OF THE GAP IN REDUCTIONS, REDUCING EMISSIONS AN ADDITIONAL 1.6 PERCENT

-- SO MY MESSAGE TO INDUSTRY IS, WORK WITH US TO BRING RISKS TO HEALTH DOWN, AND DOWN SHARPLY

-- HELP US SOLVE THIS PROBLEM PROMPTLY AND FINALLY

-- AND MY MESSAGE TO ENVIRONMENTALISTS IS, RECOGNIZE THAT WE WILL WANT TO DO MANY THINGS IN THE YEARS AHEAD -- SOME OF WHICH WILL INVOLVE NEW LEGISLATION AND MORE MONEY

-- LET'S DON'T SPEND IT ALL ON CLEAN AIR, WITHOUT GETTING THE COMMENSURATE GAINS

O THE PRESIDENT'S CLEAN AIR PROPOSALS, BY CAPTURING MARKET FORCES AND PUTTING THEM TO WORK ON BEHALF OF CLEAN AIR, WILL BRING ABOUT BOTH ENVIRONMENTAL IMPROVEMENTS AND HEALTHY ECONOMIC GROWTH OVER THE LONG TERM

-- THESE ARE GOALS I THINK WE ALL SHARE, AND I HOPE YOU WILL WORK WITH US TO SECURE A NEW CLEAN AIR ACT THAT ACHIEVES BOTH ENVIRONMENTAL PROTECTION AND ENVIRONMENTALLY SOUND, SUSTAINABLE ECONOMIC GROWTH

-- AND LET'S DO IT BY EARTH DAY!

-- THANK YOU, AND MY BEST WISHES FOR A VERY SUCCESSFUL CONFERENCE

-- THE ACID RAIN PROVISIONS, FOR EXAMPLE, COUPLE A MARKET-BASED TRADING SYSTEM WITH A CAP ON EMISSIONS THAT CAUSE ACID RAIN; THIS APPROACH HAS STRONG SUPPORT IN BOTH THE HOUSE AND THE SENATE, AND ITS ENACTMENT WILL BE A REAL BREAKTHROUGH IN MARRYING ENVIRONMENTAL REGULATION AND MARKET EFFICIENCIES

-- THE MARKET-BASED APPROACH, BY THE WAY, WILL ALSO HELP REDUCE EMISSIONS OF CARBON DIOXIDE AND OTHER GREENHOUSE GASES, BECAUSE IT WILL GET INDUSTRY THINKING IN TERMS OF GREATER EFFICIENCY IN THE USE OF FOSSIL FUELS

-- WE ALSO THINK IT'S IMPORTANT TO CREATE INCENTIVES FOR THE DEVELOPMENT OF CLEAN COAL TECHNOLOGY, AND WE HOPE THE SENATE WILL ADD THIS ASPECT OF THE PRESIDENT'S PROPOSAL TO ITS BILL

O WITH RESPECT TO SMOG, THE ADMINISTRATION'S PROPOSAL WOULD REQUIRE A THREE PERCENT PER YEAR REDUCTION IN EMISSIONS THAT CONTRIBUTE TO OZONE FORMATION

-- THIS IS COUPLED WITH AN INNOVATIVE ALTERNATIVE FUELS PROGRAM THAT CHALLENGES OIL AND AUTO MANUFACTURERS TO PRODUCE CLEANER CARS THAT OPERATE ON CLEANER FUELS

-- THE SENATE BILL USES THE SAME BASIC APPROACH, BUT ADDS A VERY EXPENSIVE SECOND ROUND OF AUTOMOBILE TAILPIPE EMISSION CONTROLS -- AT A COST OF MORE THAN $500 PER CAR -- AND SUBJECTS TOO MANY SMALL FACILITIES TO EXPENSIVE COMMAND-AND-CONTROL REQUIREMENTS

-- THOSE REQUIREMENTS PROVIDE LITTLE OR NO ADDITIONAL ENVIRONMENTAL BENEFIT, BUT SUBSTANTIALLY INCREASE THE COSTS OF THE LEGISLATION -- AND FOR THAT REASON, THE ADMINISTRATION OPPOSES THEM

SEE THE FOLLOWING PAGES

3

7-9

24-25

34-35

38-41

TRANSCRIPT OF PROCEEDINGS

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FEBRUARY 12, 1990

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ENVIRONMENTAL PROTECTION AGENCY

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FEBRUARY 12, 1990

This transcript was taken from a live tape provided by the United State Environmental Protection Agency.

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P R O C E E D I N G S

MR. _____: Well, it was a week like any other last week here, filled with those events that alter and illuminate our time, but are increasingly just par for the course. I think it's a measure of the degree to which the environment has risen on the radar scope of everyone, both within and without the Administration, that we found ourself in the center of global warming, wetlands, clean air, oil spills, a little bit of food safety. What have I missed?

Cabinet status, that's right. Legislation.

I don't have an opening statements, and I am sure you will supply all the energy I need to muster up some information on each of those issues, or others. So, the floor is open.

MR. _____: Perhaps we could begin with the global warming issues and the IPCC. I would sort of like to just invite you to comment on the alleged spat between you and the White House, and Sununu in particular. And also, address the concerns expressed to me by a number of environmental groups after the President's speech and at the conclusion of the IPCC gathering, in which his sense was conveyed that the organization was left in somewhat disarray.

MR. _____: IPCC?

MR. _____: That there were a lot of divisions at the conclusion of the gathering, and the sense, again, conveyed that somehow the United States hadn't taken the kind of leadership role that might have prevented that.

MR. Reilly: I hadn't heard that, actually, that that had come from the delegates there.

Let me say that I think the President did what we needed to have done at this point in the IPCC deliberations. First of all, he dignified those proceedings and made clear by his unprecedented appearance there, no other head of state has spoken to the IPCC, that this is the forum, that is the process that we believe should lead to the negotiations for a treaty.

He made clear by the specific initiatives that are in his budget this year, that we take the climate change problem itself very seriously. The decision to support the planting of a billion trees a year; to go forward with clean air legislation that the Environmental Defense Fund has said will remove CO2 at an equivalent basis of getting a fifth of our car fleet off the road for 10 years; the 50 percent increase in funding for research and monitoring of climate change; and the invitation to host to other countries to come to the United States, where we would host a framework convention -- I think makes it clear that we are on a course that we expect will lead to a treaty. We understand what a

treaty will involve.

It will involve a set of agreements on equivalency of greenhouse gases, on a schedule for protocols, and, finally, protocols themselves.

What a number of people are upset about, I think, has to do with the unwillingness thus far of the Administration to commit to specific reductions of CO2 by a date certain. Quite frankly, we don't know what implementation strategies or what the cost would be as, of this point, of electing those reductions, and we are beginning to go into a phase when it's quite clear there will be serious negotiations that have potentially significant economic consequences with other countries about all of that.

We, the Council of Economic Advisors, others, are looking at cost information. We are trying to get a sense of what's realistic, what our own base is as of this point, and that of other countries, and we will be prepared for those negotiations. In fact, sooner rather than later.

One of the discussions I had was about the possibility of our entering negotiations in August or September, rather than waiting for the conclusion of the World Meteorological Conference, World Climate Conference, in Geneva in November. People don't think that's a good idea, I gather, in close to the process. And so, we will

wait a little longer.

But we very much hope that a framework convention will be agreed to in the first term of the Bush Administration, and we're committed to it.

Where you have the kinds of uncertainties about the data that we have in the climate field, the distrust of the models as of this point, the sense that they are relatively primitive, the oscillations in the indications of severity of the warming -- we've seen it go up and down in the last several months even, and the potential economic effects -- I think it is only reasonable that you are going to have significant divisions on some issues within the Government. We have in this Government and every other government I'm aware of has them.

They, as of this point, do not cause us to deflect us from the course that would lead to a treaty. But they do have an impact on the language that's used, the sense of urgency that's expressed, and obviously have led to some of the criticisms that we have received.

The long course that's been set, though, in the first year, we are adhering to. And the President has -- when the moment has come to make key decisions, such as will we support a phase out of CFC; will we commit to a treaty; will we commit, in fact, to host it; will we increase our resources for climate change research; will we support the

IPCC; will we share the response strategies working group and lead in that effort -- in every case, we have been constructive, I think, and positive, and done what the urgency of that problem, the seriousness of it, will or do require.

MS. _____: The President didn't reiterate a position that came out of (inaudible) to stabilize as soon as possible?

MR. Reilly: That's right, and that is one of those nuances that I think people have identified as missing from the speech that has been criticized.

MS. _____: And do you think that's a fair criticism?

MR. _____: Well, I think that --

MS. _____: Can it be interpreted as backpedaling, that we are not committed to stabilize (inaudible)?

MR. Reilly: I hope it's not. I hope it's not. I believe very much that, as a matter of principle, we have to acknowledge what virtually all atmospheric scientists have made clear to me, and that is, that ultimately a continuation of CO2 build-up in the atmosphere will lead to warming, and a doubling of CO2 may well lead to significant warming. We're talking about a matter of time, insofar as I, a nonscientist, am aware, based on contact

with scientists.

Mike.

MR. _____: Well, increasingly your position is that losing out in the debates over environmental policy of alternative fuels, there is a clash with Sununu during the House hearing, looks more and more like it wasn't just a faulty breakdown in communication, but a real kind of clash in principle.

On wetlands and global warming issue, and you only know how many other issues, the issues come --

MR. _____: I suspect you know as well as I do.

(Laughter.)

MR. _____: I think I have learned from you all. And probably a little more.

MR. _____: The question comes up around environmentalists' board meetings, and even in Congress, about who is in charge of environmental policy.

What's your answer?

MR. Reilly: The President's clearly in charge of environmental policy. On all of the issues that we have addressed of any significance, he has been very aware, and certainly on the global climate issue, himself elected to make the speech that he made.

I think that the reality is that we are advocates

for the environment. I see my own role as that. And as an advocate, it's only realistic that we will get out from time to time beyond others and perhaps occasionally get yanked back.

My sense is that we have won far more than we have lost in this Administration. And when I look down the list, I don't think we have lost on clean fuels at all. The position the Administration has in the Senate and in the House is not Hallfields. It's something that goes far beyond Hallfields, which was the issue last summer.

I've got a list of 13 items on which the President has stood behind me: clean air options, Two Forks, the asbestos bank, the ivory ban, 500 new full-time equivalence staff positions for Super Fund, our food safety package, banning EDBC's, hosting the IPCC framework convention, committing to a treaty, a global climate treaty, phasing out CFC's, tightening cafe standards, reviewing offshore drilling leases, and a reaffirmation of the no-net-loss of wetlands policy. And there is one that I see as the banning, or proposing to ban, shipments of hazardous wastes abroad. These are all issues that generated some concern and discussion, a certain amount of debate and contentiousness.

And, he took what I regarded as the -- well, he supported us.

MR. _____: In a lot of these cases -- the follow-up question is these are not -- a lot of these are not issues which impinge on industry.

MR. Reilly: Clean air sure does. And asbestos did.

MR. _____: But clean air, you've been backpedaling in so fas as acid rain, especially on alternative fuels, and you're taking a position that's not really as far out as what members of Congress. And --

MR. _____: Wait, wait a minute. There is nothing about clean fuels in the Environment Public Works Committee in the Senate.

What we have been doing in the Senate, at least on clean fuels, has been trying to bring a committee that didn't see fit even to include anything in the bill, to do so, and have been trying to craft a procedure that would cause them to want to do that. I mean, the reality is, clean fuels have not had much support either on the committee or in the broader Senate. And we are trying to encourage a much clearer sense of the contribution we think clean fuels can make. And, in fact, we think it's an essential contribution in about nine cities, and maybe a few more. So, on that, I don't think that would be a fair characterization.

On the clean air issue, generally, my view of it

is that, and you all, I think, have seen the letter that the President sent to Senator Dole, where he set out a couple of markers. He said, I want the legislation to pass, and I want it to achieve two things. I want it to achieve the environmental results based on performance that my bill would achieve. But, I want it to be equally cost effective. I don't want it to cost twice as much to get about 1.5 percent more pollution reduction.

I think that we ought to understand that the debate that is now underway in the Senate is a debate about whether. It's not a debate about how. And I would very much hope that we don't end up with a situation that causes folks to conclude, who are particularly sensitive about our economic situation right now, as a lot of people are, that we spend it all on clean air, and that we haven't anything left to spend on a lot of the other things the Administration is going to want to do in the environment.

From my point of view, the past week of negotiations with Senator Mitchell and others has been directed to maintaining the pollution reduction objectives, but to finding a more cost effective way to get to them.

Julie?

MS. _____: You had mentioned food safety, and that seems like another area where (inaudible) a lot of concern (inaudible), and others have supposedly

invested their time towards the Administration coming up with a bill, and now we've heard that the Administration is merely going to (inaudible).

What is your feeling on this whole idea? Winning and losing in battles, and if you think that's significant, or how would you respond to some of the concerns that people have about that?

MR. _____: We agreed, really because of some of the concerns of the House members, that they had food safety legislation that already was moving forward, and that an effort by us to develop a bill and propose it would possibly derail the forward motion. And I believe there are 43 sponsors out of a 44-member committee for the food safety initiative that's up there.

I want to be very clear, however, that what the Administration did on food safety was very like what it did on clean air, was to submit a package that we in the Agriculture Department and the Food and Drug Administration considered quite well balanced. It did, in fact, support uniformity and negligible risk and a fixed for the Delaney Clause. It also supported some significant changes in the FIFRA amendments, in the FIFRA Act, to wit, a streamlining of the cancellation process and interim suspension.

We will hear certainly at EPA argue very vigorously for both parts of that package, and would

consider anything that focuses on merely the first part as insufficient and unworthy of the effort that we expended. We stand behind what we propose, and we'll expect to advocate it very vigorously in the Congress.

MS. _____: (inaudible) alternative fuels. Can you maybe give us some kind of a sense of where we're standing in negotiations with the Senate? There was a report last week in the Journal of Commerce, a report that was saying that we're now willing to go with a new formulated gasoline approach, and this report describes a change in position (inaudible).

Is that true? And what, in practice, is the status of the (inaudible)?

MR. _____: We have been willing for some months to recraft, to redraft some language on alternative fuels, to try to reassure people that we are serious about performance. But we do not prefer one fuel over another.

When I briefed at the White House after the President announced his support for clean air, I used methanol as a measure, really, because we know more about methanol and have some sense of its likely cost, that we didn't have for other fuels.

Unfortunately, that led a lot of people to believe that we had drafted a bill that was a methanol bill. It's not, and we since have seen Arco, particularly, testify that

they believe that reformulated gasoline can achieve the same kinds of pollution reductions: get out the toxics and get out the VOC's.

If that is the case, that's fine with us. We want the industries to develop the technology and the fuel that, together, achieve very significant reductions in both VOC's and toxics. I mean, in a range of 80 - 90 percent over time. If that can be achieved with reformulated gasoline, we're entirely open and supportive.

MS. _____: So, how does that work, then, in the nine cities that are involved here? I mean, are you talking about setting a pollution reduction standard, or would you stick with sales of cars, or how would you --

MR. _____: Well, the other objection that's been raised about the proposal to require that 30 percent of the new cars in each of the nine cities run on clean fuels is that it will lead to funny cars on the road, to some cars that are different from other cars, and possibly create a sales problem for those cars. To which I have said that I would be just as happy to see us, or see the automotive manufacturers, offer 100 percent of the vehicles in those cities achieving a third of the VOC and toxic reductions that we had anticipated the 30 percent would achieve, so that the aggregate impact on pollution

will be just the same, only everybody will be offered the same cars.

MR. _____: What would be the standard?

MS. _____: (Inaudible).

MR. _____: I don't want to go into too much detail on this right now because --

MS. _____: Are you sticking to the MA5, the equivalent of a MA5 standard (inaudible)?

MR. _____: I don't want to say that right now, because we have agreed with Senator Mitchell and Senator Dole that they will remain the spokespeople for the process of negotiation that's going on.

But let me say that we are --

MS. _____: Is there a change in the Administration's -- ?

MR. _____: There is no change in the goals or the performance objectives that we want to achieve, but we have tried to indicate more flexibility about methods of getting there.

There has been a great deal of concern also on the -- what's it called? Mandated Sales Requirement. I must say that's a marvelously successful public relations way to characterize all of this. I suppose one could say that catalytic converters were part of the Mandated Sales Requirement, as well, and lead-free gasoline, and the rest.

But that has caused an erosion of support that might otherwise have been there from some Senators we've heard a lot about, and we want to reassure people that our objective, really, throughout the Clean Air Act, in acid rain and sulfur dioxides, reductions as in mobile sources, is oriented toward performance.

And if someone knows a better way to achieve pollution reductions than, perhaps, our air staff thought of, we're open to it. We're interested in results.

MR. _____: We can assume, though, that whatever reformulated gas we come up with, it will be lower than M100, otherwise --

MR. _____: I would not assume that for -- I would not make that assumption.

MR. _____: You're talking about taking VOC's out of gasoline, though.

MR. _____: I don't want to go further into it right now, because none of these issues has been resolved. We don't have an agreement.

I should say this to make it clear. We don't have an agreement on anything yet in the Senate. The understanding is that until we have agreed on everything, we have not agreed on anything. There is a meeting of minds on some points, but it's dependent really on people seeing the language and making sure that we did, in fact, achieve what

we thought we achieved, and we'll see about that.

MS. _____: But what's you're envisioning, then, would be as an alternative to the existing proposal. All of the cars sold in the nine cities would have to be equipped or adapted in some way so that they would produce less pollution, than say a car sold in another city.

MR. _____: Depending on whether reformulated gasoline will operate with current technology. That may or may not be correct.

I don't want to leave the impression with you that this is the only thing that we would accept either. We would be perfectly happy to see the requirement of a 30 percent of the new cars meet the two-stage objectives that we previously set. A flexible fuel vehicle followed by an exclusive clean fuels vehicle later on. That, however, has a good deal of opposition, and that's what has caused us to revisit some of these questions.

MS. _____: So, your 100 percent, if you went with that, how much, again, would it have to reduce pollution (inaudible)?

MR. _____: In the first phase, 100 percent, would be what? It would be about nine, I guess, nine or 10.

MS. _____: And if I could just follow

up on this same issue. Where did you see on the House side, when the Sharp Subcommittee marks up, do you anticipate that the Administration will attempt to change back the Hallfields Proposal, or are you going to try to make any changes in the proposal?

MR. _____: Whether we do it in the Sharp Subcommittee or in full committee, we haven't really decided.

MR. _____: If you have to implement this agreement, assuming it's finally passed, last week, I guess, the Senate in that negotiation agreed to take the FIP hammer away. What is your sense of some of the revisions of --

MR. _____: That's not really correct. We have had a concern here about FIP's that, in fact, are never required, and that practically, realistically, politically, are often impossible to impose due to a want of resources here, due to threatened withdrawals of resources, if we do attempt to take the actions required, due to the very extreme nature of the pollution reductions you have to get. At Chicago, it was a 68 percent reduction of VOC's that would be have been required.

That being the case, we proposed a menu that would be available, including a partial FIP, which, frankly, would be a lot more easy to impose, and, I should think, would be

a much stronger incentive, because it's more realistic of use of application. That would also include the possibility of cutting off hook-ups for new drinking water, not a tool that we've had in the arsenal before, but a potentially very useful one, staunching new growth, which is associated with pollution.

The highway fund reductions and other elements that have been part of a FIP, presumably, will stay in the law. But we simply would not be required, as we have been since when, 1970, to take these very extreme actions to, in effect, to drop a nuclear bomb on a city when, in fact, most of the politically savvy folks in such places fully understand that we are not capable of doing it.

You had a question?

MR. _____: Yes. The National Acid Precipitation Assessment Plan is coming out now, and the NAPAP study. And someone suggested that it's a strong sign of consensus against radical action, that the situation isn't as been as has been portrayed, and that it's possible that the Bush Adminstration actually jumped the gun by agreeing to a fairly strong proposal on acid rain limitations.

MR. _____: And according to that view, what do we need, one more study?

MR. _____: No. Apparently we need fewer

reductions and we don't need to worry so bad about the problems, it's largely a natural problems.

MR. _____: That's not the way I read it.

MR. _____: That's what I want to know. How do you read it and is it the final word on acid precipitation?

MR. _____: As I read it, and as I believe Dr. Mahoney testified, we do expect that ultimately, and there is some argument about how soon, the consequence of reducing, by about 50 percent, the SO2 loading on ecological systems would have an effect; will have an effect on aquatics, on upper elevation forests, and on visibility.

I might mention that we would expect that the visibility improvements would come earliest among those, and they are significant. Something in the range of 40 percent visibility impairment in the Northeastern United States is associated with sulfates, and sulfur dioxides. That's not insignificant. That will benefit everybody, and it will be of benefit that they will see early.

I would also expect that we will see health, to the extent there are health effects associated with sulfates, and aerosols, we will begin to see the results of fewer of them around, earlier as well.

We are fully committed to the acid rain measures that we proposed. We recognize they are ambitious, and we

don't expect in some areas that they will lead to overnight improvement. But we fully expect, as the National Academy said back in 1985, that everything that goes up does come down, and there will ultimately be causality here and we will see the benefits.

MR. _____: At the press conference the other day, somebody asked about the plan for cost sharing with acid rain. I think Senator Mul(inaudible) said it's dead. It didn't exactly die right off. Senator Glenn and some others were saying, well, we would have tax credits or something, and that could be a way we could finance this.

Do you know if the Administration, if the President's opposition to special tax for this extends to a tax credit, too?

MR. _____: We are, obviously, sympathetic to the special burdens that Midwestern utilities and their ratepayers will bear as a result of acid rain legislation. We also have committed to polluter pays as a principle here. And find that whenever any measure is proposed that would reduce the burden on the major generators of SO2, we are reminded by those areas of the country that have already either accommodated new source performance standards or built nuclear power plants that they would be asked to give twice in such a proposal.

I won't comment specifically at this time on any

measures to alleviate impact in the Middle West, other than to just leave out there what I just said.

MR. _____: The World Watch that just came out with its latest state of the world, in which they said we've got about 40 years to turn things around and reach a sustainable society or we're in a lot of trouble, do you agree with that assessment, that time frame?

MR. _____: With respect to some really critically important ecosystems, we have far less than 40 years. With respect to tropical forests, I think it's a matter of about 15 years before we have lost most of the major integral tropical forest systems in South America, Central America, West Africa, and in Asia, Indonesia.

I think the rate at which resources of that sort are being degraded, and there are others as well, critical groundwater resources, soils in areas that are affected by the spread of deserts, and also in some of the mountainous areas, particularly those subjected to the fastest population growth, such as Central America, are extreme, and I have no sense about -- I haven't read the World Watch report. I have read those reports about whether 40 years is the measure, but at present rates of loss, we will not have some of those systems well before the 40 years have run out.

The situation for any number of environmental resources is dire, and there is nothing near on the horizon

that's going to change that.

MR. _____: One of the things they were saying that had to happen in this 40-year time frame was a large-scale abandonment of fossil fuels.

MR. _____: Well, either, certainly conversion to a renewable fuel base or very significant order-of-magnitudes improvements in fuel efficiency are going to be needed in many parts of the world. We see that particularly in some of the highly urbanized parts of the developing world, that the fuel choices that have been made are having severe consequences for both ecology and for public health.

MR. _____: Could I return for a minute to the Clean Air Bill? Your opposition to the Tier 2 in the Senate bill is based, as I understand it, almost exclusively on cost. And yet, there seems to be an awful difference in opinion on that cost. And you all have adopted $500.00 per car, that you came up with the auto industry.

What makes you think that that is a correct figure, instead of 130 or 125 or whatever is being thrown out by other people supporting the Senate bill?

MR. _____: Well, essentially the criticism of the number that we have used on that says that, look, this is 12 - 13 years away, maybe more, and it's very difficult to estimate now what technology will be at that

time. And I would agree. Based on our present understanding of technology, which is about all we could use to make these estimates, the costs are as we have cited them.

But more to the point, the reductions in pollution that you get from a second phase of the tailpipe, as has been proposed, are significantly less than you get from clean fuels, and it's much more difficult to target them to where they are most needed.

If you go with a clean fuels program, you can require its use in the very places that will not attain without it. And a second tier of tailpipe will not cause those places to attain, whereas clean fuels conceivably will. So, the argument is, in my view, not between a dirty air and a clean air bill but, rather, between two environmentally significant and progressive pieces of legislation, one of which happens to cost about twice as much as the other, and achieve less than 2 percent more pollution reduction.

MS. _____: You mentioned your view of offshore oil leases as one area where the President (inaudible). I would like to ask you about an argument that's come up in the last couple of days what with the oil spill off the coast of California. And the oil industry and offshore industry are putting out statements saying that

spill is actually an argument for offshore drilling because offshore drilling would prevent more oil from being imported and brought by tankers to the U.S. coast.

I was just wondering if you could comment on that on the environmental --

MR. Reilly: The sad reality of this country's heavy dependency on petroleum is that we have had to look for it everywhere. We are committed to energy use levels that will require us for some time to come to import a large amount of oil from other countries. That does, in fact, pose a large number of hazards, particularly as it comes in in tankers, many of which present problems.

I don't see a near-term alternative to that, nor do I see a near-term alternative to continued offshore leasing in a lot of places. California is, in some respects, a very special place.

MR. _____: Do you see offshore drilling as a more benign alternative environmentally than importing oil?

MR. _____: Not necessarily. It depends where we're talking about. I think my answer suggests that I think we're going to have some of both. It's not clear to me that we can fold up our OCS activity, and we certainly can't cease importing foreign oil at this time with all of the risks that that presents.

It is true, as a matter of experience, that OCS activities since 1969, after Santa Barbara, has caused far less in the way of spills and pollution impacts in the coast than tanker accidents.

MS. _____: If the wetlands agreement that went into effect last week is just a reaffirmation of the existing policy, do you have anything in mind for special states like Louisiana to prevent the erosion going on there? I mean, they're losing 80 square miles to erosion.

MR. _____: Yes. It was a Louisiana Congressman who made the remark that he might be the first congressman ever eroded out of his district. Guess who that was?

MS. _____: (Inaudible).

MR. _____: Was it?

No, I don't have any clear sense of how we would prevent that scale of erosion. It's occurring -- you know, the argument is always made that it's occurring largely as a consequence of natural processes. And I guess to some degree that is true. The Mississippi is delivering its sediment now straight off the edge rather than spreading it out in the delta. But one reason for that is all of the diking.

MS. _____: The levies.

MR. _____: The levies that have been built and the canals that have been built into those wetlands.

I would very much like to see some work done to see if we can't get the grasses to grow again in some of those canals, and shore them up that way. I don't know whether that's possible on any scale, and I wouldn't hold out the expectation that that's something that will quickly be done.

MS. _____: There are some areas that at the current rate will be under water in our lifetime.

MR. _____: I know.

MS. _____: Is this something that is going to have to happen from the delegation or?

MR. _____: Our no net loss policy we have assumed cannot attempt to make up for all of the losses that occur naturally, which I think we would have to take the view in southern Louisiana is predominately the case, at least. We will want to make sure that as a result of human interventions losses are compensated by gains somewhere else, by restoration or under some circumstances, once we acquire the technology to do it, creation of wetlands in some places.

MS. _____: How could you create in the Mississippi where it's all silt and headed straight out in

the ocean?

MR. _____: Isn't clear that we could. We might have to do it somewhere else. We have a significant amount of money in the conservation reserve program in the Farm Bill to actually restore wetlands, particularly in the pothole region where we've lost so many, and their loss has been associated with the crash of the duck population and other water fowl.

We may have something in the range of -- what did I hear -- I forgot. I'd better not quote the number. But it's a significant number that could be created. We're moving to 40 million acres, from 34, I believe, in the CRP. Some reasonably significant proportion of that will be wetlands on which we will hope to acquire easements.

We very much need, and having just gone through this exercise we went through here, we very much need a nonregulatory supplement to our regulatory programs if we are to achieve no net loss. No net loss cannot be achieved through 404 regulation.

Well, 404 doesn't touch what have been four-fifths of the losses that have been agricultural draining and clearing anyway. But that should make it all easier, I think, over time.

MS. _____: So, right now you just don't know?

MR. _____: On the natural losses?

MS. _____: Yes.

MR. _____: We don't have any --

MS. _____: Natural cause by the Mississippi or levies.

MR. _____: We don't have any realistic answer to that at this time, no.

MR. _____: Could I ask you to outline the Administration's sewer grant policy and to explain what advice you have for small communities such as Massachusetts and elsewhere having trouble financially to face huge sewer projects without Federal assistance?

MR. _____: Well, we have ourselves done studies of the continuing need of communities for waste water treatment construction, and it's a significant number. The Federal Government has spent $52 billion now on construction grants, and we're phasing them down as a result of an agreement reached in the previous Administration and the Congress.

This year we're proposing $1.6 billion. That's significantly more. I think, $400 million more than the President proposed last year. It's less than the Congress, however, appropriated last year, and we're proposing that it all go to the revolving funds, state revolving funds, with the object being to capitalize those funds and create a

permanent fund that will be there long after the federal government is no longer there.

I regret that it's necessary for us to phase this program out when there is so much work that remains to be done. But there are a lot of other things that we need to do as well.

As far as the Massachusetts situation is concerned, it's by no means unique. I think some of the largest costs have been associated with Boston Harbor. But really, because the effort has been put off for so long, and there is no way that we can make a significant dent in those costs. We could send the entire $1.6 billion this year on Boston Harbor and we still wouldn't solve their problem. They would still have billions to spend.

MR. _____: (Inaudible).

MR. _____: In this budget, we are expecting, I think, that the commitment to the Commonwealth of Massachusetts will be $54 million. Last year, it was about in the same range. And, in addition to that, the Congress appropriated an additional $20 million. So, I would guess $50 - $60 million is it.

MR. _____: I remember last year's budget, and there was no money proposed for the Boston Harbor in your budget.

MR. _____: That is correct.

MR. _____: And I think -- so, you just recited 20 million?

MR. _____: Congress added it. Congress has -- the specific Boston Harbor fund, appropriation, was added by Congress, and they've done that for each of the last three years. They've spent $60 million separately appropriated, thereabouts.

MR. _____: Have you proposed any money this year?

MR. _____: For Boston Harbor, we have not. For Massachusetts, we do.

MR. _____: But not for the Boston Harbor?

MR. _____: Nor for San Francisco Harbor, or New York Harbor, or many of the others.

MS. _____: Along the lines of these budgets, the local budgets, in a lot of cases they --

MR. _____: Except for Tijuana, San Diego. $15 million there.

MS. _____: -- either remain the same, or in some cases, dropped a little bit. And together with the increasing focus on our global sense that the EPA is showing, what do you see as the state's role in working with EPA on an environmental basis? Is EPA going to be pulling out more, doing less active?

MR. _____: No.

MS. _____: I mean, budget-wise, enforcement is getting to be a problem.

MR. _____: Our enforcement budget is up 22 percent this year. It's the highest single increase percentage-wise, I think, in the entire budget, to 600 and some million, I think.

We will continue to expect that states will carry the largest burden of implementing our programs. We function to work very closely with states; make grants, contracts with states, and very often enforce against them. That will continue to be the structure of the law. We will work very closely with states. I hope more effectively than ever before, recognizing that more and more we depend on them to achieve environmental objectives that are in Federal Law.

And, to the extent that resources permit, we will make more grants to them. The grants are up reasonably significantly this year. I had those numbers at the press briefing and can get them for you again.

MS. _____: I've got them.

MR. _____: But it's in the $400 million range, I think.

Well, depending on how you put it, calculate it, it's well over, I think, 600 million, excluding Super Fund

and waste water treatment. So, it's a large fraction of what we do.

MR. _____: Back to oil for just a second. Do you have real up-to-date assessment on the damage from this last spill in California?

MR. _____: Well, I have what the Coast Guard has as of this moment, but it's not conclusive in a number of areas.

One of the principal questions I've had is, would this or would this not have been averted if we had a double bottom or a double hull? And the answer I've gotten thus far has been that they don't know. I heard yesterday that the Commandant of the Coast Guard was quoted as having said a double hull would have averted this spill, but I haven't gotten that from him yet. That's one of the question we've, obviously, got here.

MR. _____: Is it true that if these California leases are opened up, of course, it's his decision, that there is going to be more rather than less tanker traffic? That most other --

MR. _____: Which leases?

MR. _____: The three in California.

MR. _____: That if he opens it up, there will be less tanker traffic?

MR. _____: There will be more tanker

traffic rather than less.

MR. _____: Or more? Why would there be more?

MR. _____: Presumably because the Interior Department's five-year OCS plan envisions bringing the oil ashore by tankers rather than pipeline.

MR. _____: I see. I see. I haven't focused on that, and don't know whether that's true. Honestly, I suspect that whether the leases go forward or not there is going to be a lot more tanker traffic coming into the country, because our own rate of production is decreasing as our rate of usage is going up. That would be my guess, but that's not informed really.

Deborah?

MS. _____: Do you have a new recycling proposal to put forward any time soon? There was a trial balloon quoted before, that --

MR. _____: Yes, I hope so. Yes, I think within 90 days.

MS. _____: Can you give us any inkling of which direction it's going?

MR. _____: No. No, not yet. Not yet. We're working on it within the agency and with OMB at the moment, but I would hope that we will have a fairly interesting set of proposals on pollution prevention that do

include some reasonably significant incentives to recycling.

MS. _____: Would they include some kind of cost imposed on these (inaudible) materials?

MR. _____: Oh, I'm -- stay tuned. You didn't use the bad word "tax", the three-letter word.

MS. _____: No, I tried to avoid that.

MR. _____: Yes, you did, and rightfully so.

So, possibly, but I don't -- well, I shouldn't say that. Let's leave it open. It's a little premature at this point. I don't want to signal anything one way or the other.

MR. _____: There's no secret that you don't see eye to eye with Congress Sununu and Dick (inaudible) on several of these issues. Given the President's rhetorical emphasis on environmental protection, are those two guys out of step with the President?

MR. Reilly: The President has a very clear sense, I think, of the need both to achieve environmental gains and to protect the economy. I think that you see arguments about where the proper balance should come with respect to any number of environmental issues, and you will continue to see them. And certainly, I sometimes advocate that that line be in a different place than some of my colleagues.

The President does, in fact, decide. I think he's consistently decided in ways that have advanced the environmental cause, and have given us some of the achievements that I listed there earlier. He, obviously, will not always resolve those questions in ways that fully satisfy EPA's advocacy.

One consequence of being out there is you occasionally get yanked back. I think that, as someone said the other evening, it was Governor Sununu, that from where he sits we do batting about 980.

Well, whether we've been batting 980, I think we've been batting very well, and certainly in this Administration we're very near the top of the lineup whereas in the previous one, we often weren't even in the game.

My sense is that if you're going to engage, as we are, some of the most divisive and difficult issues of the day, you have to be prepared for vigorous debates and differences of opinion. You have to be prepared also sometimes to get less than you might like.

MS. _____: (Inaudible). Are you entirely happy with environmental positions that the White House has (inaudible)? (inaudible), is there a chance to hear (inaudible)?

MR. Reilly: Well, what we're doing in those negotiations is trying to bring the Senate Environment

Public Works Committee, and some of the other senators who are sitting in, to support the President's bill or something as close to the clean air initiative that we propose as possible.

In no case are we advocating anything less than what the President proposed. And I'm completely comfortable with what went forward. I think it was a very ambitious, very complex, in many ways very sophisticated and innovative piece of legislation. It will achieve attainment for virtually all American cities within 10 years. It will address the acid rain problem. It will get 80 percent of the toxics out of the air, and it will do it for about $19 billion.

The Senate bill will do all the same things. It won't do much more. I mean, it will do it for, our estimate, somewhere in the range of $40 billion.

So, the answer is yes.

MS. _____: (Inaudible.)

MR. _____: You know what we want to do? I'll tell you what we want to do.

We want to have a policy that does not involve EPA having to make independent judgments of the effectiveness of the waste management of every damn country that we export it to. We are worried here about the drain on resources and about the intrusiveness that that would entail. And the

simplest way to protect ourselves against having, in effect, to apply RICRA abroad is simply to ban the shipments, subject to very narrow exceptions for recycling.

Virtually all of the hazardous waste that's shipped out of the United States goes to Canada. What little doesn't goes to Mexico, and we'd like to leave it at that.

Now, there is an argument about whether that's an excessive restriction on free trade, and I feel quite strongly that we ought not to get ourselves in the business of trying to make some kind of extra-territorial application of our laws. I don't think we're equipped to do that. And I think when people reflect on that and think it through, they will come to agree with us. But thus far that's an issue in contention.

MR. _____: What realistically do you think is likely to happen in the next couple of years that will break the impasse on global warming?

I mean, the President said basically he wants to do something that -- he wants to take actions that are consistent with economic growth. And yet, you've got a situation where nations' actions impinge upon both the global problem and a problem that really may relate to future generations way down the line.

Isn't it pretty difficult to do cost benefit

analyses on a problem like that?

MR. _____: It's very difficult.

MR. _____: And is the science going to become suddenly more clear in two years than --

MR. Reilly: It's very difficult. You know, I have wondered whether there is an issue around that has as much conceptual complexity and arguments about equivalency as climate change. I'm told by the people in the disarmament area that it may be one.

When you look at what we're trying to do on climate change, now we're trying to get some sense of basis, and I notice the base estimates coming in from various countries are quite high. Clearly preparatory to going forward and negotiating. They want to have the base curve go up sharply, so that they can get credit for the reductions they make.

The kinds of things that we hear from other countries and the kinds of public positions that are often attributed to them are sometimes very different. We are hearing expressions of great concern on the part of the developing countries. I heard them in Nordvague, and I heard them this past week, that, in effect, say there is no way that, consistent with our economic aspirations, we can engage in any serious effort to reduce CO2. All of our curves go up.

And one answer to that in the international IPCC process is to get them a pass for any number of years. Simply excuse them from reductions.

Another is to provide significant help with funding, technology transfer. Commonly we hear we should do both. Well, if you give them a pass, you look at a scenario that has very significantly increasing emissions from certain of those countries. India and China, particularly.

We've heard from the Soviet minister just three weeks ago that they see no near-term prospect of being able to reduce CO2 and strongly hope that they won't be asked to, and the regime will not impose that on them.

From most of the European countries, including many members of the European Community that I talked to in Nordvague, the prospect is for in the range of 20 percent increases in CO2 in 10 years, which causes me to wonder about some of the public positions that some of them have taken.

The most helpful thing in all of this would be an improvement in certainty, and we won't get to conclusive certainty in the near term, I gather, from the scientific community. We seem to be on a track that maybe five to 10 years out will give us the date that people consider more reliable.

But when we've got solid science in the CFC area,

consensus began to form around it. Even so, we haven't seen any ratified protocol, or China or --

MR. _____: What you've got is an ozone.

MR. _____: Pardon me?

MR. _____: The ozone all concentrated minds considerably.

MR. Reilly: It did, indeed. It did, indeed. And the very high summers we experienced in the United States certainly had some impact on public opinion, and I think on political opinion as well.

I would hope, frankly, that fundamentally there will be a shift of opinion that will acknowledge that the kinds of efficiency improvements that we need to address climate change do, in fact, offer significant near-term advantages economically as well. That's what I would hope. And that the major reforestation, particularly in the tropics, is feasible and that the trees can be protected once they are planted in these areas, and that they will have all sorts of other benefits as some countries already see: Costa Rica, Mexico, and Thailand, among them, China.

MR. [redacted]: Well, wouldn't a case -- just break in -- a case in point be that reducing the CO2 output of automobiles like Senator Chaffey wants to do, wouldn't that do what you're talking about and solved some of these tanker problems we were referring earlier to?

MR. Reilly: The CO2 initiative in the Clean Air Act is a very controversial one. And, as you know, the clean air has not been the place where that debate has been fought out. It originally was proposed as an energy efficiency measure. And I don't think that politically it's possible to do that in the Clean Air Act.

I think it would layer too much on an already difficult and controversial piece of legislation.

MR. _____: Excuse me for interrupting.

MR. _____: If I could (inaudible) one more. Governor Sununu last week talked about faceless bureaucrats who wanted America to give up its oil and coal. Presumably those faceless bureaucrats was within EPA.

Do you think he accurately characterized the advice that EPA's bureaucracy is giving about the choices the nation faces on global warming?

MR. _____: I think he was referring at the time to the source of the leak, wasn't he? Which I do not believe is EPA's --

MR. _____: I don't think he directly said (inaudible). He was talking about faceless bureaucrats within the government. He suggested we're going to have to give up driving. We're going to have to give up coal and oil.

MR. _____: I have been very public about

the things that I've advocated, and EPA has not been shy. I'm sure he didn't have us in mind. We are rarely accused here of being faceless. Other things, yes, but not faceless.

MS. _____: Just to follow up on that line of questioning. I mean what you're talking about is economic advantages (inaudible) global warming measures, and talking about the rain forests.

But what are the prospects you could have the same sort of phenomenon happen again where it seems to be -- it seems there is a tremendous reluctance to do anything that might begin to wean us off of some of the --

MR. _____: Let's be realistic. We have got both the highest per capita emissions in the -- possibly not in the world. Canada is in our league, perhaps, but there are very few other countries that are. We have something in the range of 22 tons per capita, emissions of CO32. Germany has in the range of 12 or 13, and the Germans don't understand how they can get reductions, which they think they can get, and we cannot.

I think we can get reductions. And I think that over time we can get them in ways that will advantage our economy. We are dealing in a real world, however, in which our automobile industry has lost market share to the Japanese and to other imports, and in which something like

two-thirds or three-quarters of auto assembly plants are now laying people off. That creates resistance to taking some of the measures that the EPA study on stabilization concluded would probably have to be part of a comprehensive response to climate change for it to be successful. So, that's what we're working to put together.

There is a tendency on the part of some economists to -- well, the story has been told of the economist walking down the street with another person who points out that there is a $50 bill on the street. You know, and the people are walking by. And the economist's reaction to that is to say, well, couldn't be a $50 bill, because with all these people around, somebody would have picked it up.

That imputes the current practice, the maximum cost effectiveness, and rationality. It strikes me that that kind of economic thinking will not get us to an analysis that concludes that many of the things that I believe will prove to be in our economic interest are. That's an argument that's going to go on for some time to come.

All the way down.

MR. _____: The Super Fund --

MR. _____: Anybody hear from Tom?

(Laughter.)

MR. _____: The OTA Super Fund --

MR. _____: I'm sorry?

MR. _____: The OTA Super Fund assessment program has found significant problems with the enforcement first strategy of the Super Fund. And this week is a significant moment in assessing that.

Do you have any comment?

MR. _____: I would refer anybody who has a problem with that strategy to look at the numbers for last year. They are the best numbers we've ever seen. In most settlements, in most civil referrals, the most contributions, more than a billion dollars from industry. We've never had as good a year as we've had this past year in Super Fund, and I think it's a consequence of our enforcement first strategy.

Someone asked at a meeting, I think, in one of these meetings a couple months ago, whether I would claim that the new management reforms and the management study were responsible for some of these numbers. And at that time I said, no, I didn't dare do that. I wasn't sure enough.

And our staff the next day took me to task and said that's absolutely the reason that we got these settlements up. We have a specific negotiating period now, and it's well understood that at the end of a stated period of time, 120 days, the curtain drops. That's the end of it.

We don't negotiate anymore. We enforce. And that's what makes those negotiations lead to settlements, and they are leading to more settlements.

MR. _____: And that's also how it differs from the fox guarding the chickens?

MR. _____: From the what?

MR. _____: The fox guarding the chicken coop.

MR. _____: What's the argument there?

MR. _____: Well, that if you've got that that 120-day curtain, then you come in and guard.

MR. _____: Right.

MS. _____: On enforcement, the South is often called the dumping ground of the nation, and there has been a lot of talk, especially in Washington and even in the South, that EPA in the southern region is not enforcing as strongly as they should, especially when compared to other regions.

Do you think that is the case? And if so, what is being done to counter that?

MR. _____: I don't know that that's the case with respect to the South, or any particular area. I have heard arguments made that we do not have uniformity across the board with respect to any number of our programs, and the Super Fund is one that's mentioned.

One principal of good management, I think, in this Agency must be a continuing respect for the values of decentralization and of allowing a lot of decisions to be made in the field. When you do that, you necessarily acknowledge the possibility of some divergence in approach. Different RA's have different opinions, and there are different philosophies out there.

It's our job to bring those within a permissible sphere, I think, of divergence, and I want to do that. I think probably there is something to the concern that one hears both from environmentalists and also industry, that we take a different approach in different parts of the country. But we will never have perfect uniformity across the regions, because the country is so different, and the people will inevitably be as well.

MS. _____: So you accept that, and there is nothing specific that would happen, for instance, in Region IV?

MR. _____: Not at this time.

I'll take one more.

MR. _____: Are you now or have you ever been a Perrier drinker?

MR. _____: I remember drinking, I used to drink stuff -- bottled water, flying back and forth across the ocean, and I got in a habit of just drinking

constantly. And an airline stewardess about 10 years ago told me that I ought to drink club soda, I think it was, or regular water, rather than bottled water, because of the sodium. And so I stopped at that time. I do occasionally drink it, however, but not as a regular matter.

MR. _____: Are you comfortable with their finding? Apparently, they have concluded it was the bottling company handling it?

MR. _____: I have seen that, but no know more about it, I think, than any of you who have read the stories in the paper.

MS. _____: (Inaudible) pass up those commercials (inaudible)

MR. _____: That's right. It's led to some terrific one liners, that you probably all have heard by now.

MS. _____: No, no.

MR. _____: I don't dare. A year and a half ago -- the one thing that is clearly different from being an insider than an outsider, and --

MS. _____: Can't tell jokes.

MR. _____: You can't tell those kinds of jokes. I learned early on.

Thank you very much.

(Whereupon, the meeting was concluded.)

REMARKS BY

WILLIAM K. REILLY

Administrator

U.S. Environmental Protection Agency

sw page 21

BUSINESS-GOVERNMENT RELATIONS COUNCIL

Washington, DC
January 31, 1990

O I VERY MUCH APPRECIATE THIS OPPORTUNITY TO REVIEW SOME OF THE ADMINISTRATION'S ENVIRONMENTAL PRIORITIES WITH THE BUSINESS-GOVERNMENT RELATIONS COUNCIL

-- I RECOGNIZE A FEW FACES AS I LOOK AROUND; I EXPECT I'VE RUN INTO SOME OF YOU IN THE HALLWAYS AND HEARING ROOMS OF CAPITOL HILL

-- I SEEM TO SPEND A GOOD DEAL OF MY TIME ON THE HILL THESE DAYS -- I'VE BEEN UP THERE TO TESTIFY 21 TIMES AT LAST COUNT, IN LESS THAN A YEAR IN OFFICE

-- NOW, TESTIFYING ON THE HILL CAN BE EITHER A VERY PLEASANT OR A VERY PAINFUL EXPERIENCE

-- CONGRESSMAN MO UDALL, ONE OF THE BEST FRIENDS THE ENVIRONMENT EVER HAD ON CAPITOL HILL, TELLS A PERTINENT STORY ABOUT BEING CHAIRMAN OF A CONGRESSIONAL COMMITTEE

-- MO SAID THAT NOT LONG AFTER HE ROSE TO THE CHAIRMANSHIP OF THE HOUSE INTERIOR COMMITTEE, AN IRISH COLLEAGUE COME UP TO HIM IN THE CLOAKROOM

-- AND THE COLLEAGUE SAID, "THERE'S AN OLD IRISH LEGEND THAT WHEN AN INFANT IS PLACED IN HIS CRADLE IMMEDIATELY AFTER BIRTH, AN ANGEL OF THE LORD HOVERS OVER HIM AND KISSES HIM

-- "IF THE ANGEL KISSES HIM ON THE FOREHEAD, THE CHILD WILL GROW UP TO BE A GREAT THINKER OR PHILOSOPHER; IF THE KISS IS ON THE THROAT, A GREAT SINGER OR ORATOR; IF ON THE HEART, A GREAT HUMANITARIAN

-- "THE ANGEL HAS KISSED YOU IN SEVERAL PLACES," MO'S FRIEND CONCLUDED, "INCLUDING ONE WHICH WILL MAKE YOU A GREAT CHAIRMAN!"

-- SOME MIGHT SAY YOU HAVE TO BE KISSED IN THE SAME PLACE TO BE THE EPA ADMINISTRATOR...

-- AT ANY RATE, THE DAYS WHEN MO UDALL AND A HANDFUL OF OTHER MEMBERS OF CONGRESS WERE LONELY VOICES CRYING OUT FOR CONSERVATION AND ENVIRONMENTAL PROTECTION ON CAPITOL HILL ARE LONG GONE

-- NOW IT SEEMS THAT EVERY COMMITTEE AND SUBCOMMITTEE IS SCRAMBLING FOR A PIECE OF THE ACTION

-- AND THE GROWING INTEREST IN ENVIRONMENTAL ISSUES ON THE HILL IS SYMPTOMATIC OF WHAT'S HAPPENING THROUGHOUT THE COUNTRY -- AND THROUGHOUT THE WORLD

-- CONCERN FOR THE ENVIRONMENT -- FOR THE FUTURE OF THE PLANET -- IS PROBABLY AT ITS HIGHEST LEVEL IN HISTORY, AMONG THE PUBLIC, IN THE NEWS MEDIA, AND AT ALL LEVELS OF GOVERNMENT

-- THE PRESENT SITUATION REMINDS ME OF THE MAN WHO WAS DRIVING THROUGH A RURAL PART OF THE COUNTRY AND SPOTTED A FARMER IN AN APPLE ORCHARD, DOING SOMETHING THE MAN THOUGHT WAS RATHER STRANGE

-- THE FARMER WAS HOLDING A GOOD-SIZED PIG UP TO AN APPLE TREE, SO THE PIG COULD EAT THE APPLES OFF THE BRANCHES

-- THE DRIVER STOPPED HIS CAR AND WATCHED FOR A WHILE AS THE FARMER STRAINED TO KEEP THE PIG UP IN THE BRANCHES, ENJOYING HIS FEAST

-- FINALLY THE MAN GOT OUT OF HIS CAR AND WENT UP TO THE FARMER

-- "I KNOW THIS IS NONE OF MY BUSINESS," HE SAID, "BUT YOU COULD SAVE A LOT OF TIME IF YOU JUST SHOOK THAT TREE AND LET THE APPLES FALL, SO THE PIG COULD EAT THEM OFF THE GROUND"

-- THE FARMER LOOKED AT THE MAN, SHRUGGED HIS SHOULDERS, AND SAID, "WHAT'S TIME TO A PIG?"

O WELL, TIME MAY NOT MEAN MUCH TO A PIG, BUT FOR THOSE OF US CONCERNED ABOUT THE PROTECTION OF THE ENVIRONMENT -- AND I INCLUDE EVERYBODY IN THIS ROOM IN THAT CATEGORY -- TIME, AND TIMING, IS EVERYTHING

-- I THINK THAT RIGHT NOW, AT THIS MOMENT IN TIME, WE HAVE A UNIQUE OPPORTUNITY TO SET THE DIRECTION AND PACE OF ENVIRONMENTAL PROTECTION AND RENEWAL, NOT ONLY FOR THE NEXT DECADE BUT INTO THE 21ST CENTURY

-- THE OPPORTUNITY TO MAKE REAL AND LASTING PROGRESS IS SURELY AS NEAR AS IT HAS BEEN FOR MANY YEARS -- WITHIN REACH, IT SEEMS, OF OUR HANDS

-- PRESIDENT BUSH HAS MADE IT CLEAR, BOTH IN PUBLIC AND IN PRIVATE, THAT HE WANTS TO MOVE FORWARD TO ADDRESS ENVIRONMENTAL ISSUES -- AND QUICKLY

-- PRESIDENT BUSH WAS THE FIRST PRESIDENT IN MORE THAN A DECADE TO PROPOSE MAJOR REVISIONS TO THE CLEAN AIR ACT -- AND THE FIRST EVER TO PROPOSE CONTROLS ON ACID RAIN

-- THE PRESIDENT HAS MADE IT CLEAR THAT HE REGARDS PROTECTION AND RESTORATION OF THE ENVIRONMENT, AND SUSTAINABLE, LONG-TERM ECONOMIC GROWTH, AS INTERDEPENDENT AND MUTUALLY REINFORCING GOALS

-- AND THAT WE SIMPLY CAN'T ACHIEVE ONE WITHOUT THE OTHER

-- YOU MAY RECALL THAT THE GREAT ENVIRONMENTAL DEBATES OF THE 1970S AND EARLY 1980S WERE CAST TYPICALLY AS ENVIRONMENT-VS-DEVELOPMENT CONFLICTS; AS CHOICES BEWTWEEN HIGH LEVELS OF PROTECTION OF HEALTH AND THE ENVIRONMENT, AND MAINTENANCE OF JOBS AND U.S. COMPETITIVE PERFORMANCE

-- ENVIRONMENTAL ISSUES WILL CONTINUE TO POSE HARD CHOICES AND INVOLVE SERIOUS TRADEOFFS; BUT INCREASINGLY, THEY ARE TAKING PLACE IN A NEW CONTEXT: NO LONGER <u>WHETHER</u>, BUT <u>HOW</u>

-- THAT PLACES NEW RESPONSIBILITIES ON ALL OF US, AND PARTICULARLY ON ADVOCATES OF ENVIRONMENTAL PROGRESS, TO APPROACH PUBLIC ISSUES WITH A HEIGHTENED REGARD FOR PURSUING ENVIRONMENTAL GOALS IN THE MOST ECONOMICALLY EFFICIENT MANNER

-- ALL OF US ACKNOWLEDGE THAT A HEALTHY ENVIRONMENT IS THE UNDERPINNING FOR A SUSTAINABLE ECONOMY; LET US, THEN, IN THE NEW CLIMATE OF OPINION, RESOLVE GENUINELY TO WORK TO INTEGRATE THE NATION'S ENVIRONMENTAL GOALS WITH OUR ECONOMIC ASPIRATIONS

O LET ME TURN NOW TO A SPECIFIC PRIORITY -- THE CLEAN AIR ACT

-- THE PRESIDENT HAS MADE REAUTHORIZING AND STRENGTHENING THAT LAW HIS TOP LEGISLATIVE PRIORITY

-- THANKS TO THE ORIGINAL CLEAN AIR ACT, WE'VE MADE SIGNIFICANT PROGRESS IN REDUCING AIR POLLUTION IN THE LAST TWENTY YEARS

-- BUT HIGH LEVELS OF SMOG, ACID RAIN, AND AIR TOXICS REMAIN, AND THEY CONTINUE TO ENDANGER THE HEALTH OF THE AMERICAN PEOPLE AND THE WELL-BEING OF OUR ENVIRONMENT

-- THE PRESIDENT HAS PROPOSED A CREATIVE, INNOVATIVE APPROACH, BASED LARGELY ON MARKET PRINCIPLES, TO ACCOMPLISH THE INTERTWINED GOALS OF CLEANING UP THE NATION'S AIR AND INSURING SUSTAINED ECONOMIC GROWTH

-- THE PRESIDENT'S PROPOSAL WOULD PUT THE UNITED STATES ON THE PATH TOWARD DRAMATICALLY CLEANER AIR BY THE END OF THE CENTURY:

-- ACID RAIN POLLUTANTS WOULD BE CUT BY NEARLY HALF;

-- MOST URBAN AREAS IN THE COUNTRY WOULD FINALLY ATTAIN NATIONAL CLEAN AIR STANDARDS;

-- AND TOXIC AIR POLLUTANTS WOULD BE SLASHED BY TENS OF MILLIONS OF POUNDS A YEAR

O THE PRESIDENT'S PROPOSAL AIMS HIGH ENVIRONMENTALLY -- AND IT ALSO MEETS THE ECONOMIC CHALLENGE

-- IT REDUCES EMISSIONS BY THE MOST COST-EFFECTIVE MEANS AVAILABLE, USING MARKET-BASED PRINCIPLES AND INNOVATIVE PROGRAMS WHENEVER POSSIBLE

-- NOW, IF YOU'VE BEEN FOLLOWING THE CLEAN AIR DEBATE SO FAR, YOU'RE PROBABLY WONDERING WHAT TO BELIEVE ABOUT THE COSTS AND BENEFITS OF THE VARIOUS PROPOSALS NOW BEFORE THE CONGRESS

-- THE ESTIMATES ARE ALL OVER THE LOT:

-- INDUSTRY GROUPS ARE SAYING THAT SOME PROPOSALS WILL COST MORE THAN $100 BILLION AND WILL LEAD TO WIDESPREAD INDUSTRIAL SHUT-DOWNS AND LOSS OF PRODUCTIVITY

-- THE AMERICAN LUNG ASSOCIATION, ON THE OTHER HAND, HAS ESTIMATED THE HEALTH COSTS FROM MOTOR VEHICLE POLLUTION ALONE AT AS MUCH AS $50 BILLION A YEAR

-- AND ONE REPORT, BY TWO INDUSTRY CONSULTANTS WRITING IN REGULATION MAGAZINE, PEGGED THE COST OF THE PRESIDENT'S PROPOSALS FOR CONTROLLING TOXIC AIR POLLUTION FROM INDUSTRIAL SOURCES AT BETWEEN $4 BILLION AND $9 BILLION TO AVOID JUST ONE CASE OF CANCER!

-- I MUST SAY THIS BATTLE OF NUMBERS REMINDS ME OF THE TIME PRESIDENT LINCOLN AND HIS ADVISORS WERE DISCUSSING CIVIL WAR MANPOWER AND RESOURCES

-- SOMEONE ASKED LINCOLN HOW MANY MEN THE CONFEDERATES HAD IN THE FIELD

-- AND TO THE ASTONISHMENT OF EVERYONE PRESENT, HE PROMPTLY ANSWERED, "TWELVE HUNDRED THOUSAND" -- FULLY THREE TIMES THE NUMBER OF UNION TROOPS

-- "YOU SEE," LINCOLN EXPLAINED, "ALL OUR GENERALS, EVERY TIME THEY GET WHIPPED, THEY TELL ME THAT THE ENEMY OUTNUMBERED THEM AT LEAST THREE TO ONE, AND I MUST BELIEVE THEM

-- "WE HAVE FOUR HUNDRED THOUSAND MEN IN THE FIELD, AND THREE TIMES FOUR EQUALS TWELVE. SO THE CONFEDERATES HAVE TWELVE HUNDRED THOUSAND MEN. NO DOUBT ABOUT IT!"

-- WELL, I THINK WE'D BE WISE TO TAKE A SIMILARLY SKEPTICAL VIEW OF SOME OF THE NUMBERS NOW BEING BANDIED ABOUT WITH RESPECT TO CLEAN AIR

O WE IN THE ADMINISTRATION HAVE OUR OWN NUMBERS; AND THEY FALL BETWEEN THE TWO EXTREMES

-- THE BEAUTY OF THE PRESIDENT'S PROPOSAL IS THAT BY ALLOWING FLEXIBILITY AND INCORPORATING INNOVATIVE MARKET INCENTIVES, IT WILL ACHIEVE THE POLLUTION REDUCTIONS WE NEED IN THE MOST COST-EFFECTIVE WAY POSSIBLE

-- THE ACID RAIN PROVISIONS, FOR EXAMPLE, COUPLE A MARKET-BASED TRADING SYSTEM WITH A CAP ON EMISSIONS THAT CAUSE ACID RAIN; THIS APPROACH HAS STRONG SUPPORT IN BOTH THE HOUSE AND THE SENATE, AND ITS ENACTMENT WILL BE A REAL BREAKTHROUGH IN MARRYING ENVIRONMENTAL REGULATION AND MARKET EFFICIENCIES

-- WITH RESPECT TO SMOG, THE ADMINISTRATION'S PROPOSAL WOULD REQUIRE A THREE PERCENT PER YEAR REDUCTION IN EMISSIONS THAT CONTRIBUTE TO OZONE FORMATION

-- THIS IS COUPLED WITH AN INNOVATIVE ALTERNATIVE FUELS PROGRAM THAT CHALLENGES OIL AND AUTO MANUFACTURERS TO PRODUCE CLEANER CARS THAT OPERATE ON CLEANER FUELS

-- BY THE YEAR 2010, THE ADMINISTRATION'S AUTO CONTROLS (BOTH FUELS AND TAILPIPE EMISSIONS) WILL PROVIDE A 26.2 PERCENT REDUCTION IN VOLATILE ORGANIC COMPOUNDS, OR VOCS

-- THE BILL REPORTED OUT BY THE SENATE ENVIRONMENT AND PUBLIC WORKS COMMITTEE WOULD PRODUCE A 28.7 PERCENT REDUCTION -- AND THE DIFFERENCE IS EVEN SMALLER IN 2005

-- AND THIS ADDITIONAL 2.5 PERCENT REDUCTION WILL COST MORE THAN $8 BILLION A YEAR

-- MOREOVER, THE ADMINISTRATION'S ALTERNATIVE FUELS PROPOSAL WOULD CLOSE MOST OF THE GAP IN REDUCTIONS, REDUCING EMISSIONS AN ADDITIONAL 1.6 PERCENT AT LITTLE ADDITIONAL COST

-- THE ALTERNATIVE FUELS PROGRAM WILL ALSO PROVIDE THE STRUCTURE FOR EVEN GREATER LONG-TERM BENEFITS; THESE COULD OCCUR AS ADDITIONAL CITIES DECIDE TO JOIN THE PROGRAM OR THOSE ALREADY PARTICIPATING DECIDE TO INCREASE THEIR INVOLVEMENT

O THE AIR TOXICS PROVISIONS IN THE SENATE BILL ALSO PROVIDE LITTLE OR NO ADDITIONAL ENVIRONMENTAL BENEFIT, BUT AT A SUBSTANTIALLY HIGHER COST

-- OUR COST ANALYSES SHOW THAT THE ADMINISTRATION'S AIR TOXICS PROVISION WILL COST ABOUT $4.6 BILLION PER YEAR IN ITS SECOND PHASE

-- THE AIR TOXICS PROVISIONS IN THE SENATE BILL WILL COST ABOUT $10 BILLION -- MORE THAN DOUBLE THE COST OF THE ADMINISTRATION'S PROPOSAL

-- BOTH THE PRESIDENT'S PROPOSAL AND THE SENATE BILL USE A SIMILAR TECHNOLOGY-BASED APPROACH FOR THE FIRST PHASE OF REQUIRED AIR TOXICS REDUCTIONS

-- THIS IS CLEARLY THE MOST EFFECTIVE WAY TO DEAL WITH THIS COMPLEX PROBLEM

-- BUT THE SENATE BILL ALSO INCLUDES A SECOND PHASE EMISSIONS REDUCTION REQUIREMENT -- A "RESIDUAL RISK" PROVISION -- WHICH SERIOUSLY THREATENS THE EXISTENCE OF KEY PLANTS AND INDUSTRIES

-- THIS PROVISION WOULD REQUIRE FACILITIES TO REDUCE THEIR EMISSIONS TO A SO-CALLED "BRIGHT LINE" INDIVIDUAL RISK LEVEL

-- RATHER THAN GIVING EPA THE FLEXIBILITY TO ADDRESS ON A CASE-BY-CASE BASIS THE RISK THAT REMAINS AFTER CONTROLS ARE APPLIED, AS THE ADMINISTRATION'S PROPOSAL ENVISIONS FOR THE SECOND PHASE OF AIR TOXICS REDUCTIONS ENVISIONS

-- UNDER THE SENATE BILL, ANY SOURCE THAT POSES A LIFETIME CANCER RISK GREATER THAN ONE IN 10,000 TO THE "MAXIMUM EXPOSED INDIVIDUAL" IN ITS VICINITY WOULD HAVE TO CONTROL ITS EMISSIONS BELOW THAT LEVEL OR SHUT DOWN

-- THIS "BRIGHT LINE" REQUIREMENT WOULD RELY ON THE MISUSE OF ONE ELEMENT OF A RISK ASSESSMENT

-- A "BRIGHT LINE" APPROACH TAKES ONE WORST-CASE NUMBER OUT OF A RISK ASSESSMENT AND MISUSES IT IN TWO WAYS:

-- FIRST, IT TREATS THAT NUMBER AS A TRUE RISK, WHEN IT IS IN FACT A WORST-CASE ESTIMATE THAT IS ONLY AS RELIABLE AS THE UNDERLYING DATA

-- AND SECOND, IT TREATS THE NUMBER AS THE SOLE CORRECT MEASURE OF PUBLIC HEALTH, WHEN IT IS ONLY ONE PIECE OF INFORMATION IN AN EXAMINATION THAT SHOULD COVER ALL ASPECTS OF PUBLIC HEALTH

-- SO THE "BRIGHT LINE" NUMBER IGNORES MANY "REAL-WORLD" CONSIDERATIONS, SUCH AS THE NUMBER OF PEOPLE WHO ARE ACTUALLY AT RISK, AND IT FAILS TO TAKE INTO ACCOUNT MANY OTHER FACTORS AND UNCERTAINTIES THAT EPA MUST CONSIDER

-- SUCH A STANDARD COULD LEAD TO UNACCEPTABLE ECONOMIC AND SOCIAL COSTS, INCLUDING THE CLOSING OF FACILITIES AND THE LOSS OF HUNDREDS OR THOUSANDS OF JOBS, WITHOUT COMPARABLE ENVIRONMENTAL BENEFITS

-- THE ADMINISTRATION'S BILL WOULD ELIMINATE APPROXIMATELY 80 PERCENT OF THE TOXIC SUBSTANCES EMITTED FROM STATIONARY SOURCES IN ITS FIRST PHASE

-- THE SENATE BILL PURPORTS TO ELIMINATE ALL REMAINING RESIDUAL RISKS IN PLANTS THAT HAVE ALREADY INSTALLED THE BEST TECHNOLOGY

-- THE PRESIDENT'S BILL, TOO, WOULD ADDRESS WHATEVER RISKS REMAIN

-- BILL ROSENBERG, EPA'S ASSISTANT ADMINISTRATOR FOR AIR AND RADIATION, RECENTLY DESCRIBED TO ME HIS VISIT TO A NATIONAL STEEL PLANT IN DETROIT

-- THAT 30-YEAR-OLD PLANT WAS RECENTLY RENOVATED, INCLUDING AN INVESTMENT OF MILLIONS OF DOLLARS FOR POLLUTION CONTROL

-- IT NOW EMPLOYS 5,000 PEOPLE, INCLUDING MANY WOMEN AND MINORITIES, WHO EARN $25 AN HOUR IN A REGION THAT IS OTHERWISE ECONOMICALLY DISTRESSED

-- NOW, I THINK DECISIONS ABOUT THE FUTURE CONTROL OF SUCH A PLANT, WHEN ITS VERY SURVIVAL IS AT STAKE, SHOULD BE BASED ON A FULL CONSIDERATION OF REAL, NOT THEORETICAL WORST CASE, PUBLIC HEALTH FACTORS

-- THE COMMUNITY'S, AND THE NATION'S, INTEREST IN THAT PLANT, AND OTHERS LIKE IT, IS LARGE ENOUGH THAT WE DARE NOT DESTROY IT ON PURE SURMISE

-- YET AS IT NOW READS, THE SENATE BILL COULD CAUSE THAT PLANT TO SHUT DOWN

-- IS THIS GOOD PUBLIC POLICY? TO MAKE DECISIONS PUTTING PEOPLE OUT OF WORK WITHOUT CONSIDERING THE PUBLIC HEALTH AS A WHOLE, WITHOUT CONSIDERING THE RISK ASSESSMENT UNCERTAINTIES, THE POTENTIAL FOR FUTURE DEVELOPMENT OF CONTROL TECHNOLOGIES, WITH ALL THE DISTRESS OF AN ECONOMIC CALAMITY FOR THOUSANDS OF PEOPLE, FOR AN ENTIRE COMMUNITY, POSSIBLY A WHOLE INDUSTRY?

-- I THINK IT'S IMPORTANT FOR THE EPA ADMINISTRATOR TO WEIGH <u>ALL</u> OF THESE FACTORS; TO MAKE SURE THAT WE CONSIDER EVERYTHING THAT'S IMPORTANT TO PEOPLE'S WELL-BEING, AND TO BE ALLOWED TO INCLUDE ECONOMIC <u>AND</u> HEALTH FACTORS IN THE FINAL SHUTDOWN CALCULUS

O SO MY MESSAGE TO INDUSTRY IS, WORK WITH US TO BRING RISKS TO HEALTH DOWN, AND DOWN SHARPLY

-- HELP US SOLVE THIS PROBLEM PROMPTLY AND FINALLY

-- AND MY MESSAGE TO ENVIRONMENTALISTS IS, RECOGNIZE THAT WE WILL WANT TO DO MANY THINGS IN THE YEARS AHEAD -- SOME OF WHICH WILL INVOLVE NEW LEGISLATION AND MORE MONEY

-- LET'S DON'T SPEND IT <u>ALL</u> ON CLEAN AIR, WITHOUT GETTING THE COMMENSURATE GAINS

O THE PRESIDENT'S CLEAN AIR PROPOSALS, BY CAPTURING MARKET FORCES AND PUTTING THEM TO WORK ON BEHALF OF CLEAN AIR, WILL BRING ABOUT BOTH ENVIRONMENTAL IMPROVEMENTS AND HEALTHY ECONOMIC GROWTH OVER THE LONG TERM

-- THESE ARE GOALS I THINK WE ALL CAN SHARE, AND I HOPE YOU WILL WORK WITH US TO SECURE A NEW CLEAN AIR ACT THAT ACHIEVES BOTH ENVIRONMENTAL PROTECTION AND ENVIRONMENTALLY SOUND, SUSTAINABLE ECONOMIC GROWTH

-- THANK YOU

ID # _____ CU

WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

☐ O - OUTGOING
☐ H - INTERNAL
☐ I - INCOMING
Date Correspondence Received (YY/MM/DD) 1 1

Name of Correspondent: Elaine L. Chao

☐ **MI Mail Report** **User Codes:** (A) _____ (B) _____ (C) _____

Subject: Clean Air Act - Statement of Administration Position on the Senate Version of the Clean Air Act Amendments

ROUTE TO:		ACTION		DISPOSITION		
Office/Agency	(Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
	Chao	ORIGINATOR	90/01/19		_	/ /
		Referral Note:				
	Chat 17	A	90/01/0		S	90/01/25
		Referral Note:				
	Chat 02	I	/ /		_	/ /
		Referral Note:				
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		Referral Note:				
		_	/ /		_	/ /
		Referral Note:				

ACTION CODES:
- A - Appropriate Action
- C - Comment/Recommendation
- D - Draft Response
- F - Furnish Fact Sheet to be used as Enclosure
- I - Info Copy Only/No Action Necessary
- R - Direct Reply w/Copy
- S - For Signature
- X - Interim Reply

DISPOSITION CODES:
- A - Answered
- B - Non-Special Referral
- C - Completed
- S - Suspended

FOR OUTGOING CORRESPONDENCE:
- Type of Response = Initials of Signer
- Code = "A"
- Completion Date = Date of Outgoing

Comments: No action required. JRH 2/14/90

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5/81

Subject:

Clean Air

Act - Gen.

THE DEPUTY SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

JAN 19 1990

MEMORANDUM FOR: C. BOYDEN GRAY
Counsel to the President
The White House

FROM: Elaine L. Chao

SUBJECT: Clean Air Act

I understand that things are moving rapidly in the formulation of a Statement of Administration Position on the Senate version of the Clean Air Act Amendments. Knowing your keen interest in CAA issues, I want to be sure that you are familiar with the concerns of the Department of Transportation with the Senate bill.

We have recently provided our comments to OMB through the normal legislative clearance process. A copy of our letter is attached for your information.

I also understand that some consideration is being given to an indication of those concerns that could result in a recommendation that the President veto the bill. From our perspective, the first two items on our list--the CO2 standard and the impacts on the Federal-aid highway program--should be considered as possible veto concerns.

I would be pleased to discuss these issues with you, if you wish.

Attachment

U.S. Department of Transportation

General Counsel

400 Seventh St., S.W.
Washington, D.C. 20590

January 17, 1990

The Honorable Richard G. Darman
Director
Office of Management and Budget
Washington, D.C. 20503

This responds to your request for the views of the Department of Transportation as input to the floor position on S. 1630, a bill

> "To amend the Clean Air Act to provide for attainment and maintenance of health protective national ambient air quality standards, and for other purposes."

The Department of Transportation supports the Administration's proposed Clean Air Act amendments. S. 1630 differs substantially from the Administration bill. The Department is seriously concerned about the impacts of a number of provisions of the bill on the Department's programs and on transportation entities. Our major concerns are as follows:

- Carbon Dioxide Standards (§206). S. 1630 would require the Environmental Protection Agency to issue fleetwide average carbon dioxide (CO_2) standards for light duty vehicles (defined in §201 of the bill to include cars, vans and light trucks under 3750 pounds). This effectively requires a higher fuel economy standard. The bill would set an emissions standard of 266 grams per mile for MY 1996-99 vehicles, effectively requiring fuel economy of 33 mpg, and 220 grams per mile for MY 2000 and beyond, effectively requiring fuel economy of 40 mpg.

  The Department strongly objects to this provision. First, we do not believe vehicle CO_2 emissions should be regulated when no comparable regulation of other major sources of CO_2 is proposed. Second, we believe that such a stringent fuel economy requirement would have a major adverse impact on U.S. auto manufacturers and employment. Since the provision would apply to a significant percentage of light trucks, it would be particularly difficult to meet the stringent standard proposed by the bill. The language of the bill has no provision for consideration of technical feasibility or

economic practicality, comparable to the Corporate Average Fuel Economy (CAFE) program. The bill's mandate for specific fleet CO_2 emission levels in effect supersedes the Department's authority to administer the CAFE program, and undermines DOT's discretion under the Motor Vehicle Information and Cost Savings Act.

o Impact on Urban Highway Construction. S. 1630 contains several provisions which would cause serious disruption and delays in highway planning and construction in urban areas. The bill would give the EPA Administrator authority to set standards for transportation planning (§106(f)). It would expand the imposition of highway funding sanctions beyond the Administration's proposal to include failure to implement any provision of the state implementation plan or to achieve required emission reductions and would make imposition of sanctions mandatory. The bill would give EPA approval of certain sanction exemptions, including safety and bridge rehabilitation projects (§106(g)). The bill would also establish a cumbersome and completely unworkable process for determining that individual highway projects conform with clean air plans (§106(h)).

We strongly oppose any changes in the planning, sanctions and conformity provisions from those in the Administration's bill. We particularly object to the provisions in the sanctions section (§106(g)) which would make all highway apportionments to a state "available without limitation" to implement transit, air quality improvement and vehicle occupancy programs, with a state matching requirement not to exceed 10 percent. Collectively, these provisions will transfer the transportation decisionmaking authority from DOT to EPA in air quality nonattainment areas. As the Department charged by statute with implementing the highway and mass transit legislation, it is unacceptable to DOT to cede authority over implementation of those programs to another agency not charged with that responsibility.

o Highway Trust Fund Impacts (§218). S. 1630 would require 3.1 percent oxygen content of fuel sold in carbon monoxide nonattainment areas. Gasohol, a mixture of 90 percent gasoline and 10 percent ethanol which is exempt from 6 cents of the 9.1 cent per gallon Federal fuel tax, is the only fuel which currently meets this requirement. The requirement for 3.1 percent oxygen content could result in revenue losses up to $1 billion annually from the Highway Trust Fund, in addition to current Trust Fund losses of some $480 million annually due to the ethanol and other alternate fuel exemptions.

We are not aware of any justification for setting a specific 3.1 percent oxygen standard. We recognize that the bill would allow EPA to promulgate guidelines allowing the exchange of marketable oxygen credits among sellers of fuels. Nevertheless, the Department objects strongly to the proposed 3.1 percent requirement. We prefer the Administration's proposal, which would provide that serious CO nonattainment area plans require sale of fuels which contain "such level of oxygen necessary, in combination with other measures, to provide for attainment."

- Bus Emission Standards (§201). S. 1630 would require new "heavy duty buses" to meet a particulate matter standard of 0.10 grams per brake horsepower hour (gbh) in 1991. The transit industry and manufacturers have indicated that it is unlikely that such a standard can be met under current technology and market conditions. Thus, the requirement would be a major problem for the transit and intercity bus industries. Further, heavy duty diesel trucks would be required to meet a less stringent standard of .25 gbh between 1991 and 1994. We believe that trucks and buses should meet the same standard.

We strongly object to a .10 gbh particulate standard for buses in 1991, and instead support the Administration's proposed requirement of a .10 gbh particulate standard in 1994, together with a requirement for phased-in purchase of clean fueled buses in large urban areas beginning in 1991.

- Onboard/Stage II Vapor Controls (§203). S. 1630 would require vehicle onboard systems for gasoline refueling vapor recovery, as well as Stage II pump controls in ozone nonattainment areas. There is no provision for consideration of the safety of onboard systems or consultation with the Department of Transportation in establishing requirements for onboard systems.

The Department of Transportation objects strongly to the requirement for onboard systems. The Department has stated repeatedly that safety concerns about proposed onboard refueling vapor recovery systems have not been satisfactorily resolved. A recent independent evaluation of the safety of onboard refueling vapor recovery systems concluded that "there is adequate evidence to support the position that there are indeed potential safety risks associated with onboard systems. It is too early in the development process to adequately and completely assess risks, which can only be fully addressed after more comprehensive development and

testing." The Department recommends that the Administration oppose the requirement for onboard systems.

The Department appreciates the opportunity to provide these comments. Additional technical comments are provided in an attachment.

Sincerely,

Phillip D. Brady

Attachment

ATTACHMENT
DEPARTMENT OF TRANSPORTATION
TECHNICAL COMMENTS ON S. 1630

Vessel Loading Emissions. Section 107 of S. 1630 would amend the Act by adding a new section 185(b) requiring the Administrator to publish control technique guidelines for vessel loading and unloading of petroleum products. Individual states could issue varying standards, which would result in confusion and economic impact on vessel owners. The section does not provide for consultation with the Coast Guard or the Secretary with respect to the safety of such guidelines. Section 107 refers to vessels rather than marine tank vessels, which are the source of VOC emissions. In addition, the section refers to vessel loading or unloading. Current and proposed state regulations address VOC emissions from tank vessel loading and ballasting, rather than unloading, because those operations are the source of VOC emissions.

We recommend that Section 107 be revised to provide for exclusive Federal standards, developed by the Administrator in consultation with the Secretary of the Department in which the Coast Guard is operating. We also recommend that the language be revised to address emissions from "loading and ballasting of marine tank vessels."

Non-Road Engines. Section 210 of S. 1630 would authorize the Administrator to promulgate regulations for emissions from non-road engines and non-road vehicles. As defined in Section 210(a), it appears that vessel engines could be considered non-road engines. We believe that this is not the intent, since there is no reference to vessel engines elsewhere in the bill, and we recommend that vessel engines be explicitly excluded.

Simple Negligence Standard (§601). S. 1630 would amend §113 of the Clean Air Act to authorize a wide range of enforcement methods including civil and criminal sanctions. The criminal enforcement provisions contain a simple negligence standard. Criminal statutes normally require gross negligence, willful acts or aggravated circumstances. We recommend limiting simple negligence to civil penalties and setting a higher standard for the imposition of criminal penalties.

Fuel Volatility

Section 214 of the bill would amend §211 of the CAA to require significant reductions in fuel volatility and would allow gasoline with a 10 percent ethanol content to have a Reid vapor pressure of

10 pounds, one pound greater than the 9 pounds allowed for other fuels. Reducing volatility has safety benefits. However, a proviso in subsection (h)(4) allows a gasoline/ethanol blend to be considered as complying if the gasoline by itself has a Reid vapor pressure of 9 pounds and the ethanol has received a waiver for emissions purposes. Since the addition of ethanol to gasoline typically has much more than a one-pound effect on the gasoline's vapor pressure, the effect of the proviso is to remove any limits on the Reid vapor pressure of a 90/10 gasoline/ethanol blend. We believe this proviso significantly detracts from the goal of reducing fuel volatility and therefore recommend the deletion of the proviso in subsection (h)(4).