

Originally Processed With FOIA(s):
2001-1865-F

FOIA Number:
2001-1865-F

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Record Group/Collection: George H.W. Bush Presidential Records
Collection/Office of Origin: Counsels Office, White House
Series: Holmstead, Jeffrey, Files
Subseries: Environmental Subject Files

OA/ID Number: 45127
Folder ID Number: 45127-015

Folder Title:
EPA [Environmental Protection Agency] - Miscellaneous: Permitting

Stack:	Row:	Section:	Shelf:	Position:
G	12	8	1	2

A TWO-TRACK PROCESS

LEGAL PRINCIPLES RESOLUTION
(WH Counsel's Office, DOJ, EPA)

July 31

Legal

↓
August 31

Administration Briefings

Sept 15

Policy

↓
Oct 1

Full Administration Review

Oct 1

Details

↓
Nov 1

EPA
REGULATORY DEVELOPMENT

July 31

↓
Nov 15

REGULATORY SCHEDULE

- 0 EARLY AUGUST: INITIAL BRIEFING WITH DEPUTY ADMINISTRATOR ON MAJOR ISSUES
- 0 EARLY/MID-AUGUST: SUMMARY OF COMMENTS AVAILABLE
- 0 LATE-AUGUST: INITIAL "STAFF DRAFT" OF RULE AND RESPONSES TO COMMENTS CIRCULATES WITHIN EPA
- 0 EARLY SEPTEMBER: EPA CLOSURE ON MAJOR ISSUES WITH DEPUTY ADMINISTRATOR
- 0 MID-SEPTEMBER:
FIRST ADMINISTRATION BRIEFING
CIRCULATE CLOSURE DRAFT WITHIN EPA
- 0 LATE SEPTEMBER: EPA CLOSURE ON DRAFT RULE WITH DEPUTY ADMINISTRATOR
- 0 OCTOBER 2: PACKAGE TO OMB/ADMINISTRATION AND SECOND ADMINISTRATION BRIEFING
- 0 NOVEMBER 1: ADMINISTRATOR SIGNS RULE

**INITIAL LIST OF ISSUES
FOR RESOLUTION OF LEGAL PRINCIPLES**

- MINOR PERMIT AMENDMENTS**
- OPERATIONAL FLEXIBILITY**
- APPLICABILITY OF COMPLIANCE PLAN
REQUIREMENT**
- SCOPE OF PERMIT SHIELD**
- SEPARATING STATE/FEDERAL
REQUIREMENTS**

LEGAL PRINCIPLES SCHEDULE

**0 JULY 31: INTRODUCTORY BRIEFING ON PROCEDURAL
ELEMENTS FOR MINOR PERMIT AMENDMENTS**

0 WEEK OF AUGUST 5:

**CLOSE ON PROCEDURAL ELEMENTS MINOR PERMIT
AMENDMENTS, AND**

**INTRODUCTORY BRIEFING ON OPERATIONAL FLEXIBILITY
AND THE TIMING FOR MINOR PERMIT AMENDMENT
PROCEDURES**

0 WEEK OF AUGUST 12:

**CLOSE ON OPERATIONAL FLEXIBILITY AND THE TIMING
FOR MINOR PERMIT AMENDMENT PROCEDURES, AND**

**INTRODUCTORY BRIEFING ON COMPLIANCE PLANS AND
MONITORING**

0 WEEK OF AUGUST 19:

CLOSE ON COMPLIANCE PLANS AND MONITORING, AND

**INTRODUCTORY BRIEFING ON SEPARATING STATE AND
FEDERAL REQUIREMENTS AND SCOPE OF THE PERMIT
SHIELD**

Withdrawal/Redaction Sheet

(George Bush Library)

Document No. and Type	Subject/Title of Document	Date	Restriction	Class.
01. Note	Process for Resolving Legal Disputes Under Clean Air Act (redaction of handwritten notes) (1 pp.)	n.d.	P-5	

Collection: Bush Presidential Records
Counsels Office
Jeffrey Holmstead Files - EPA/Environment Subject File

Record Group: Bush Presidential Records
Office: Counsel to the President, Office of
Series: Holmstead, Jeffrey
Subseries: Environmental Subject Files

WHORM Cat.:

File Location: EPA [Environmental Protection Agency] - Miscellaneous: Permitting

**Open on Expiration of PRA
(Document Follows)**
By Cap (NLGB) on 4/24/06

Date Closed: 8/7/2002
FOIA/SYS Case #: 2001-1865-F
Re-review Case #:
P-2/P-5 Review Case #:

OA/ID Number: 45127-015

MR Case #:
MR Disposition:
Disposition Date:

Appeal Case #:
Appeal Disposition:
Disposition Date:

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P-1 National Security Classified Information [(a)(1) of the PRA]
P-2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P-3 Release would violate a Federal statute [(a)(3) of the PRA]
P-4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P-5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
P-6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Removed as a personal record misfile.

Freedom of Information Act - [5 U.S.C. 552(b)]

(b)(1) National security classified information [(b)(1) of the FOIA]
(b)(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
(b)(3) Release would violate a Federal statute [(b)(3) of the FOIA]
(b)(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
(b)(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
(b)(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
(b)(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
(b)(9) Release would disclose geological or geophysical information

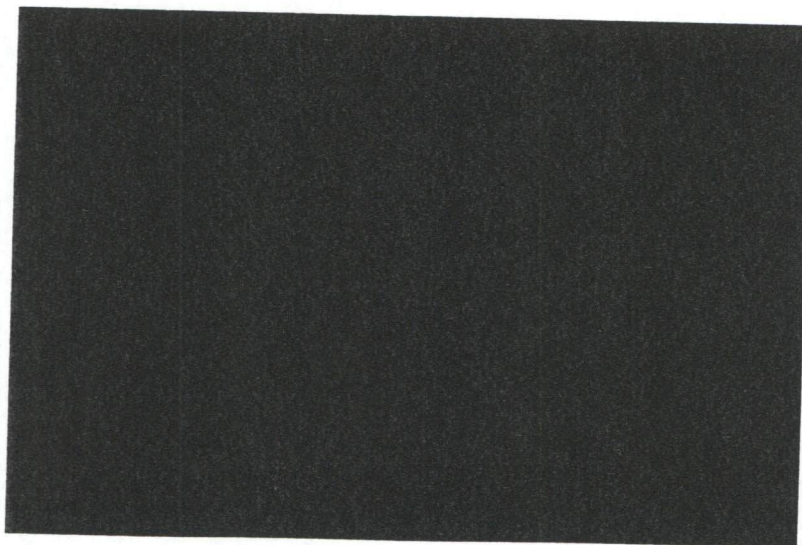
PROCESS FOR RESOLVING LEGAL DISPUTES UNDER CLEAN AIR ACT

1. EPA General Counsel signs legal opinion and forwards it to White House Counsel.
2. White House Counsel circulates the EPA legal opinion to relevant offices within the Executive Branch.
3. The relevant offices have 7 days to take any dispute to the Office of Legal Counsel.
4. The Office of Legal Counsel issues its opinion within 21 days.

Den wants to be able to
blame someone else if it comes
out the way it did in the
proposal

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ANALYSIS OF STATE AND LOCAL COMMENTS ON MINOR PERMIT AMENDMENTS

Over 400 comment letters and 60 testimonies at public hearings were received by EPA on the May 10, 1991 proposal of regulations establishing requirements for operating permit programs. Of the written comments submitted to the docket, 32 were from State air agencies, 12 from local agencies, three from associations of those agencies, 10 from State attorneys general, and nine from State legislatures. These comments have been analyzed with respect to their viewpoints on the proposed provisions for minor permit amendments.

State and local air agencies are co-regulators with EPA in the operating permit program. One of the principles EPA set forth in developing the Part 70 proposal is that the operating permit program will build on existing State and local programs in an effort to ease transition, utilize the vast experience already available in these agencies, and to not unduly disrupt their current practices. In general, these commenters are strongly opposed to minor permit amendments and feel the concept, as proposed, is unworkable. This portion of the proposal is essentially their most important concern. Below are specific comments received from State and local agencies:

- (1). The proposal on minor permit amendments is illegal and conflicts with section 502(b)(6). Congress never intended for permit restrictions to be relaxed without sufficient review.
- (2). Agency personnel are especially concerned with the shortness of the 7-day period in which the permitting authority must object to a proposed change. From a practical standpoint, State and local agencies will need at least 60 days, and possibly more, for review of any such amendments. The 7-day period may not even be enough time for the notice to even go through an agency's internal mail system. It is certainly not enough time for meaningful review and does not afford time enough to notify EPA or other affected parties. The process is backward from the normal process, which allows an amendment only after the agency gives approval. Several suggested that no shield be granted during the review time.
- (3). Enforcement could be frustrated. It would be difficult to determine what requirements are applicable to a source if changes are allowed via minor permit amendments using a 7-day notice.
- (4). Agencies feel the provision should in no event become a mandatory requirement and preempt States' rights. This concept would severely impact operation of current programs and inhibit their effectiveness.
- (5). If adopted, the provision for minor permit amendments should be limited to truly de minimis events (e.g., more restrictive of 5 tpy or 20% of applicable major threshold).
- (6). There is no demonstrated need for this provision. The operational flexibility provision is a workable mechanism for allowing anticipated changes. Other changes would likely fall under a State new source review provision. This process defines an applicable requirement that must be met. Processing subsequent changes as administrative, rather than minor, permit amendments is a viable option.

ABC News with Peter Jennings
(early May)
The American Agenda with Ned Potter

ABC news reported that President Bush, while claiming to be the environmental president, is backing away from tough environmental regulations. The piece cites Los Angeles factories emitting toxic air pollution, south and midwest wetlands being threatened by developers, and New York's tainted wells as examples of the Administration "sabotaging" its own environmental platform.

In the spring of 1990, President Bush expressed his pride in the Clean Air Act Amendments of 1990, which strive to reduce emissions in smog, acid rain and toxics, making our country a safer place to live. However, industry when complained about the cost of clean-up, the President backed off.

The President was quoted as saying, "We all know the strangling effects over-regulation has on business...and quite frankly, some are not needed."

In response to concerns about excessive regulations, President Bush named Vice President Quayle head of a "Council on Competitiveness," which was designed to help industry avoid expense caused by government regulations. **For example, to avoid complying with federal air regulations, industries need only to write their state governments to ask for more time to comply. If the state does not respond within seven days, the industry automatically receives permission to continue polluting.**

Congressman Gerry Sikorski (D-MN) called this "environmental treason" and "a loophole a MACK truck could run through." Congressman Waxman asserted that this process is "a secret kind of process, a secret kind of government which the Vice President is in charge of, that is going to rewrite the laws."

In an effort to avoid strict regulations, industries such as the Pharmaceutical Manufacturers Association, the Motor Vehicle Manufacturers Association and Ed Lilly & Company, appealed to the EPA and were turned down. They then turned to Vice President Quayle's Council and their request was granted.

President Bush claims to be trying to strike a careful balance between government over-regulations and strict environmental laws but his critics argue that he is gaining unfair mileage from backing environmental laws on which his Administration does not follow through.