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Folder Title:
CEQ [Council on Environmental Quality] Language - OMB [Office of Management and Budget]
Master 5:40 PM February 23, 1993

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THE WHITE HOUSE
WASHINGTON

Ka
Ol
P
Rc

Kathleen McGinty
Office on Environmental
Policy
Room 360
Issue Files *- Box 1*
(June 1993 - June 1994)

WASHINGTON

Kathleen McGinty
Office On Environmental
Policy
Room 360
Legislative Referrals *- Box 2*
Issue Files
(June 1993--June 1994)

ENCLOSURES FILED OVERSIZE ATTACHMENTS

2572

2573

from - you can get the Nevada office to help.

- Me. 7. The mock hearing needs to be scheduled at least three days before the hearing date, tentatively 1/7/92. [Michael Berman/Jim Hamilton]

8. A briefing needs to be prepared and scheduled for Administrator-designee Browner on Congressional action on the Nevada nuclear waste site, statements made during the campaign about the nuclear waste issue, and any developments from the policy people during the Transition. Administrator-designee Browner needs to be fully briefed on the issue. [Katie McGinty/Kate Kimball]

- Kate Kimball 9. The Environmental Forum piece on the Butte, MT, site needs to be acquired (as well as the BNA piece on Administrator-designee Browner). [Katie McGinty/Kate Kimball]

- Kate Kimball 10. A briefing paper needs to be prepared on specific EPA-related problems in the home state of each Member of the Committee. [Katie McGinty/Kate Kimball]

11. A decision needs to be made about how to use business support (not for testimony, unless the need arises). [Loretta Ucelli/Michael Berman/Bob Hattoy]

- Me 12. A full briefing needs to be prepared (and Administrator-designee Brown needs to be briefed) on the WTI incinerator issue. [Katie McGinty/Kate Kimball]

13. A decision needs to be made on the issue of who should introduce Administrator-designee Browner (Senator Graham, Senator Mack?, Governor Chiles?). [Michael Berman/Kay Casstevens/Susan Brophy]

14. Decisions need to be made about Senators not on the Environment and Public Works Committee to whom Administrator-designee Browner needs to pay attention. [Michael Berman/Kay Casstevens/Susan Brophy]

15. Similar decisions need to be made about actions with the House side. [Michael Berman/Kay Casstevens/Susan Brophy]

If there are any additions or corrections, please contact Nestor at 973-1781. Thank you.

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Page 358

PAHAS\MD\FI\NEPA.001

[Discussion Draft]

✓
Tom NITSS
MNT
ELC. Committee

5-24-29

OMB MASTER MARKUP
REFLECTING AGENCY COMMENTS AS
[DISCUSSION DRAFT] OF 5:40 P.M.
FEB 23, 1993,

103D CONGRESS
1ST SESSION

H. R. _____

IN THE HOUSE OF REPRESENTATIVES

Mr. _____ introduced the following bill: which was referred to the Committee
on _____

A BILL

To amend the National Environmental Policy Act of 1969
to transfer functions of the Council on Environmental
Quality to the Secretary [of the Environment], and for
other purposes.

- 1 Be it enacted by the Senate and House of Representa-
- 2 tives of the United States of America in Congress assembled.

3 SECTION 1. SHORT TITLE.

- 4 This Act may be cited as the "____ Act of 1993".

1 SEC. 2. TRANSFER OF FUNCTIONS OF COUNCIL ON ENVI-
2 RONMENTAL QUALITY; TERMINATION OF
3 COUNCIL AND OFFICE OF ENVIRONMENTAL
4 QUALITY.

5 (a) TRANSFER OF FUNCTIONS.—There are hereby
6 transferred to the Secretary [of the Environment] (here-
7 inafter in this Act referred to as the "Secretary") all func-
8 tions of the Council on Environmental Quality under title II
9 I of the National Environmental Policy Act of 1969 (42
10 U.S.C. 4321 et seq.) and any other law, as in effect on
11 the day before the date of the enactment of this Act.

12 (b) TERMINATION OF COUNCIL AND OFFICE.—The
13 Council on Environmental Quality created by section 202
14 of the National Environmental Policy Act of 1969 (42
15 U.S.C. 4342) and the Office of Environmental Quality es-
16 tablished by section 203 of the Environmental Quality Im-
17 provement Act of 1970 (42 U.S.C. 4372) are hereby ter-
18 minated.

19 (c) TRANSFER OF PROPERTY AND RECORDS.—The
20 President shall ensure that all property owned or con-
21 trolled by the Council on Environmental Quality, the Of-
22 fice of Environmental Quality, or the Director or Deputy
23 Director of that Office (including all books, papers, mate-
24 rials, supplies, and equipment) and all documents and
25 records of those agencies and officials are transferred to
26 the Secretary.

EPA

1 (d) SAVINGS PROVISIONS.— •

2 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-
3 TIONS NOT AFFECTED.—Nothing in this Act affects
4 the validity of any right, duty, or obligation of the
5 United States, any agency of the United States, or
6 any other person, which—

7 (A) arises under or pursuant to any provi-
8 sion of law referred to or amended or repealed
9 by this Act; and

10 (B) existed on the day before the date of
11 the enactment of this Act.

12 (2) CONTINUATION OF SUITS.—

13 (A) IN GENERAL.—No action or other pro-
14 ceeding commenced by or against the Council
15 on Environmental Quality or the Office of Envi-
16 ronmental Quality (as in existence on the day
17 before the date of the enactment of this Act)
18 shall abate by reason of the enactment of this
19 Act.

20 (B) SUBSTITUTION OF PARTIES.—In any
21 action or proceeding against the Council on En-
22 vironmental Quality or the Office of Environ-
23 mental Quality (as in existence on the day be-
24 fore the date of the enactment of this Act) the

1 Secretary shall be substituted as a party to the
2 action or proceeding.

3 (e) CONTINUATION OF ORDERS, RESOLUTIONS, DE-
4 TERMINATIONS, AND REGULATIONS.—All orders, resolu-
5 tions, determinations, and regulations which—

6 (1) have been issued, made, prescribed, or al-
7 lowed to become effective by the Council on Environ-
8 mental Quality, the Office of Environmental Quality,
9 the Director or Executive Director of that Office, or
10 a court of competent jurisdiction, in the performance
11 of any function of any such agency or officer (other
12 than functions under provisions of law which are re-
13 pealed by this Act); and

14 (2) are in effect on the date this Act takes ef-
15 fect (or become effective after such date pursuant to
16 the terms of the order, resolution, determination or
17 regulation, as in effect on such date),

18 shall continue in effect according to the terms of such or-
19 ders, resolutions, determinations, and regulations, and
20 shall be enforceable by or against the Secretary until
21 modified, terminated, set-aside, or superseded in accord-
22 ance with applicable law by the Secretary, by any court
23 of competent jurisdiction, or by operation of law.

24 (f) REFERENCES IN FEDERAL LAW.—Any reference
25 in any Federal law to the Council on Environmental Qual-

1 ity, the Office of Environmental Quality, or any officer
2 of the Office of Environmental Quality is deemed to be
3 a reference to the Secretary or the [Department of the
4 Environment], as appropriate.

5 (g) CONFORMING AMENDMENTS.—

6 (1) NATIONAL ENVIRONMENTAL POLICY ACT OF
7 1969.—The National Environmental Policy Act of
8 1969 is amended—

9 (A) in section 2 (42 U.S.C. 4321) by—

10 (i) inserting "and" after "man;"; and

11 (ii) striking "; and to establish" and

12 all that follows through the end of the sen-

13 tence and inserting a period;

14 (B) by inserting after section 2 the fol-

15 lowing:

16 "SECRETARY DEFINED

17 "SEC. 3. As used in this Act the term 'Secretary'
18 means the Secretary [of the Environment].";

19 (C) in section 102(B) (42 U.S.C. 4331(B))

20 by striking "Council on Environmental Quality"

21 and inserting "Secretary";

22 (D) in section 102(C) (42 U.S.C. 4331(C))

23 in the matter following subparagraph (v) by

24 striking "Council on Environmental Quality"

25 and inserting "Secretary,"; and

we have EPA
(Council on Environmental Quality)

1 (E) in section 102(I) (42 U.S.C. 4331(I))
2 by striking "Council on Environmental Quality"
3 and all that follows through the end of the sen-
4 tence and inserting "Secretary".

5 (2) ENVIRONMENTAL QUALITY IMPROVEMENT
6 ACT OF 1970.—The Environmental Quality Improve-
7 ment Act of 1970 (42 U.S.C. 4372 et seq.) is re-
8 pealed.

[Note that you might want some of the provi-
sions of the Environmental Quality Improvement
Act of 1970 to remain in effect. See, e.g., sections
202(a) and (b) and 204 (42 U.S.C. 4371(a) and (b),
4373). Also, what is to become of amounts (if any)
remaining in the Office of Environmental Quality
Management Fund established under section 206
(42 U.S.C. 4375)?]

[Are there any references to the Council or Office in
any other laws that we need to conform?]

9 SEC. 3. FUNCTIONS OF SECRETARY UNDER TITLE II OF NA-
10 TIONAL ENVIRONMENTAL POLICY ACT OF
11 1969.

12 Title II of the National Environmental Policy Act of
13 1969 (42 U.S.C. 4341 et seq.) is amended to read as fol-
14 lows:

EPA
Yes
+ these should
remain in effect
EPA would take
them over.

EPA
Yes, there
are many.
(See CEC
list)

1 "TITLE II--IMPLEMENTATION OF
2 NATIONAL ENVIRONMENTAL
3 POLICY

4 "SEC. 201. ENVIRONMENTAL QUALITY REPORT.

5 "The Secretary shall transmit to the Congress on
6 July 1 of each year an Environmental Quality Report
7 which shall set forth—

8 "(1) the status and condition of the major nat-
9 ural, manmade, or altered environmental classes of
10 the Nation, including the air, the aquatic, including
11 marine, estuarine, and fresh water, and the terres-
12 trial environment, including the forest, dryland, wet-
13 land, range, urban, suburban, and rural environ-
14 ment;

15 "(2) current and foreseeable trends in the qual-
16 ity, management, and utilization of such environ-
17 ments and the effects of those trends on the social,
18 economic, and other requirements of the Nation;

19 "(3) the adequacy of available natural resources
20 for fulfilling human and economic requirements of
21 the Nation in the light of expected population pres-
22 sures;

23 "(4) a review of the programs and activities (in-
24 cluding regulatory activities) of the Federal Govern-
25 ment, the State and local governments, and non-

CEQ - reconcile
with sec 108 rpt
on Environmental
Statistics. Sec 201

↑
EPA → these reports
are different.

EPA → Pres.
currently transmits
this report
(NOT A BIG ISSUE)

1 governmental entities or individuals, with particular
2 reference to their effect on the environment and on
3 the conservation, development, and utilization of
4 natural resources; and

5 "(5) a program for remedying the deficiencies
6 of existing programs and activities, together with
7 recommendations for legislation.

[This is from current section 201 of NEPA.]

8 "SEC. 202. ADDITIONAL STUDY, ASSISTANCE, AND ADVI-
9 SORY FUNCTIONS OF SECRETARY.

10 "The Secretary shall—

11 "(1) gather timely and authoritative informa-
12 tion concerning the conditions and trends and the
13 quality of the environment both current and prospec-
14 tive, analyze and interpret such information for the
15 purpose of determining whether such conditions and
16 trends are interfering, or are likely to interfere, with
17 the achievement of the policy set forth in title I and
18 compile and submit to the President studies relating
19 to such conditions and trends;

[This is from current section 204(2) of NEPA.]

20 "(2) review and appraise the various programs
21 and activities of the Federal Government in light of
22 the policy set forth in title I for the purpose of de-
23 termining the extent to which such programs and

*Common object
this role should
be within the
EXOP. See M.*

1 activities are contributing to the achievement of such
2 policy, and make recommendations to the President
3 with respect thereto;

[This is from current section 204(3) of NEPA]

*CEQ - should this
go to OEP?
See Ltr.*

4 → "(3) develop and recommend to the President
5 national policies to foster and promote the improve-
6 ment of environmental quality to meet the con-
7 servation, social, economic, health, and other re-
8 quirements and goals of the Nation;

[This is from current section 204(4) of NEPA]

9 "(4) conduct investigations, studies, surveys, re-
10 search, and analyses relating to ecological systems
11 and environmental quality;

[This is from current section 204(5) of NEPA]

12 "(5) document and define changes in the natu-
13 ral environment, including plant and animal sys-
14 tems, and accumulate necessary data and other in-
15 formation for a continuing analysis of these changes
16 or trends and interpretation of their underlying
17 causes;

[This is from current section 204(6) of NEPA]

18 "(6) report at least once each year to the Presi-
19 dent on the state and the condition of the environ-
20 ment;

[This is from current section 204(7) of NEPA]

1 “(7) make and furnish such studies, reports
2 thereon, and recommendations with respect to mat-
3 ters of policy and legislation as the President may
4 request;

[This is from current section 204(8) of NEPA]

5 “(8) provide for the integration of sustainable
6 development principles in the development and im-
7 plementation of Federal policies;

[This is new policy.]

8 “(9) assist the Federal agencies and depart-
9 ments in appraising the effectiveness of existing and
10 proposed facilities, programs, policies, and activities
11 of the Federal Government, and those specific major
12 projects designated by the President which do not
13 require individual project authorization by the Con-
14 gress, which affect environmental quality;

15 “(10) assist the President in—

16 “(A) coordinating implementation of title I
17 by all Federal agencies and in resolving con-
18 flicts between agencies with respect to that im-
19 plementation; and

20 “(B) coordinating among the Federal de-
21 partments and agencies those programs and ac-
22 tivities which affect, protect, and improve envi-
23 ronmental quality;

Energy &
Interior
questions
What this
means; must
be clarified

DOT
objeto --
Ch.

- 1 “(11) assist the Federal departments and agen-
 2 cies in the development and interrelationship of envi-
 3 ronmental quality criteria and standards established
 4 through the Federal Government; and
 5 → “(12) collect, collate, analyze, and interpret
 6 data and information on environmental quality, eco-
 7 logical research, and evaluation.

Comments:
 Circumvents effort
 to define BES role
 See 221.

[Paragraphs (9), (10), (11), and (12) are
 drawn from current paragraphs (2), (5), (6), and
 (7), respectively, of section 203(d) of the Environ-
 mental Quality Improvement Act of 1970.]

8 **“SEC. 203. POLICY REVIEW FUNCTIONS OF SECRETARY.**

9 **“(a) REVIEW AND COMMENT.—**

- 10 “(1) IN GENERAL.—The Secretary shall review
 11 and comment in writing on the environmental im-
 12 pact of any matter relating to duties and responsibil-
 13 ities of the Secretary, contained in any—

14 “(A) legislation proposed by any Federal
 15 department or agency;

16 “(B) newly authorized Federal projects for
 17 construction and any major Federal agency ac-
 18 tion (other than a project for construction) to
 19 which section 102(2)(C) applies; and

Comments:
 Expresses
 concern re
 Sec 203(a)(1)(b)

↓ MAJOR
ISSUE!

ISSUE
↓

12

1 “(C) proposed regulations published by any
2 department or agency of the Federal Govern-
3 ment.

4 “(2) AVAILABILITY OF COMMENTS.—The Sec-
5 retary shall make public the written comments of
6 the Secretary under paragraph (1) at the conclusion
7 of any such review.

8 “(b) DETERMINATIONS OF SECRETARY.—If the Sec-
9 retary determines that any such proposed legislation,
10 project, action, or proposed regulation is unsatisfactory
11 from the standpoint of public health or welfare or environ-
12 mental quality the Secretary shall publish that determina-
13 tion and submit it to the President.

[Subsections (a) and (b) are drawn from section 309
of the Clean Air Act.]

OMB & SEVERAL
MAJOR AGENCIES
OBJECT

Commerce
Interior
Justice

Agency

14 “(c) LIMITATION ON AGENCY ACTIONS.—If the Sec-
15 retary makes a determination described in subsection (b)
16 regarding any proposed legislation, project, action, or pro-
17 posed regulation, the agency proposing or conducting the
18 legislation, project, action, or regulation may not proceed
19 with the matter, unless before the end of the 45-day period
20 beginning on the date the Secretary publishes the
21 determination—

22 “(1) the head of the agency submits to the
23 President a written appeal of the determination;

↓

1 “(2) the President issues a written order
2 which—

3 “(A) overrides the determination of the
4 Secretary; and

5 “(B) explains the basis for that override;
6 and

7 “(3) the President submits to the Committee on
8 Environment and Public Works of the Senate and
9 the Committee on Merchant Marine and Fisheries of
10 the House of Representatives a copy of—

11 “(A) the appeal of the head of the agency;
12 and

13 “(B) the order of the President.

14 “SEC. 204. REGULATORY FUNCTIONS OF SECRETARY.

15 “The Secretary shall promulgate regulations govern-
16 ing the implementation of this Act by all Federal agencies
17 (including independent regulatory commissions), which in-
18 clude provisions for public review and comment on the de-
19 tailed statements required by section 102(2)(C) and, as
20 appropriate, on other documents prepared pursuant to
21 this Act.

[This is new policy.]

↑ OMB staff suggests deletion

some an
exception
T. NEPA

EPA - what is
scope

Commerce
Is this
rule approp.

It may
also have
concern

CEQ - modify so that functions are delegated to an Asst Sec. Sec 4h.

1 "SEC. 205. OFFICE OF NATIONAL ENVIRONMENTAL POLICY.
2 "(a) ESTABLISHMENT.—There is established in the
3 [Department of the Environment] the Office of National
4 Environmental Policy.

5 "(b) FUNCTIONS.—The Secretary shall delegate to
6 the head of the Office of National Environmental Policy
7 the responsibility for administering the functions of the
8 Secretary under this Act.

9 "SEC. 207. AUTHORIZATION OF APPROPRIATIONS.

10 "There are authorized to be appropriated to the Sec-
11 retary to carry out this Act \$ ___ for each of the fiscal
12 years ___, which shall remain available until expended."

13 SEC. 4. MONITORING AND PREDICTING ENVIRONMENTAL
14 CHANGES.

15 Title I of the National Environmental Policy Act of
16 1969 (42 U.S.C. 4321 et seq.) is amended by inserting
17 after section 105 the following:

18 "MONITORING AND PREDICTING ENVIRONMENTAL
19 CHANGES

20 "SEC. 106. The Under Secretary of Commerce for
21 Oceans and Atmosphere shall assist and advise the Presi-
22 dent on policies and programs of the Federal Government
23 affecting environmental quality, by reviewing the adequacy
24 of existing systems for monitoring and predicting environ-
25 mental changes in order to achieve effective coverage and
26 efficient use of research facilities and other resources."

*potentially
internal EPA*

*Commerce
"ensure" of
intent of this
provision,
see 4h.*

*EPA doesn't
want this
codified; can
do administratively.
Delete*

*EPA - should
delete Sec 4;
Add the
responsibilities
to list of
Dept. functions
listed in
Sec. 200 of
this draft*

*[old Q's 394
of 203(d) B]*

February 17, 1993 (2:52 P.M.)

*the Envir. Quality Improvement
Act of 1970.*

[This is drawn from section 203(d)(3) of the Environmental Quality Improvement Act of 1970 (42 U.S.C. 4372(d)(3)).]

EPA -- INTERNATIONAL ACTIVITIES

Sec. 102. FINDINGS

The Congress finds that --

(1) recent concern with Federal environmental policy has highlighted the necessity of assigning to protection of the domestic and international environment a priority which is at least equal to that assigned to other functions of the Federal government;

(2) protection of the environment increasingly involves cooperation with foreign states, including the most highly industrialized states all of whose top environmental officials have ministerial status;

Sec. 103. ESTABLISHMENT OF THE DEPARTMENT OF THE ENVIRONMENT

(f) International Responsibilities of the Secretary -- (1) The Secretary, in addition to exercising his international responsibilities under existing provisions of law, is authorized and encouraged to --

(A) cooperate with the Secretary of State in carrying out the latter's primary responsibility for the negotiation of international agreements, representation of the United States in international organizations, and coordination of international activities, on matters within the purview of the Secretary; and

(B) ensure the domestic implementation of matters primarily within the purview of the Secretary that are provided for in international agreements; and

(C) With the concurrence of the Secretary of State, participate in international agreements and other arrangements with foreign governments and international organizations or other bodies of foreign states on matters within the purview of the Secretary; and

(D)

(1) conduct research on and apply existing research capabilities to the nature and impacts of international environmental problems and develop responses to such problems; and

(ii) With the concurrence of the Secretary of State and in cooperation with such Federal Agencies as may be appropriate, improve the quality of the environment through:

-- the use of contracts, assistance agreements, interagency agreements, international agreements, other arrangements for supporting or conducting activities such as education, training,

cooperate with the Secretary of State on matters requiring international implementation;

** Admin. Browner refers to this language. Browner will speak with McGinty.*

d. Coffey
on Executive Order

In cooperation with NSCA

In cooperation with NSC

NSC

monitoring, research, development, investigations, experiments, demonstrations, surveys, studies, and emergency response;

-- the provision of technical, financial, legal and other assistance; and

-- cooperation with other foreign governments and international organizations;

(iii) on request from or with the concurrence of a foreign government or international organization, and with the consent of the employee concerned and with the concurrence of the Secretary of State, to arrange for the assignment or detail of an employee of the Department to a foreign government or international organization (with or without reimbursement to the United States government) or notwithstanding any other provision of law to arrange for the assignment or detail, of an employee of a foreign government or international organization to the Department (with or without compensation by the Department); and

(iv) upon compliance with all statutory requirements and Executive Branch directives concerning staffing at U.S. posts abroad, and with the consent of the employee concerned, assign an employee of the Department to and U.S. post abroad.

(2) The Secretary of State shall consult with the Secretary, on matters primarily within the purview of the Secretary, and such other persons as he determines appropriate on the activities described under paragraph (1) (A).

omb

February 23, 1993

NRD Comments on draft bill on CEQ termination:

NRD recommends deletion of section 203 of the proposed bill, due to concern about the delegation to the Secretary of the Environment of virtual veto authority over actions proposed by other Federal agencies. This proposed language does not constitute a simple transfer of existing CEQ authority, but rather creates a completely new authority to which heads of most other Federal agencies will most certainly object.

NRD recommends that, in place of the proposed section 203, language be included in the draft bill that amends section 309 of the Clean Air Act, to substitute "the President" for "the Council on Environmental Quality." This will have the effect of allowing the Secretary to refer matters directly to the President, without also granting the objectionable veto authority. Under current CEQ NEPA regulations (promulgated under general authority granted by NEPA, EQIA and Executive Orders 11514 and 11991), CEQ has the option of referring to the President matters involving irreconcilable differences between agencies.

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

23-Feb-1993 11:58am

TO: Elyse H. Fitter
TO: Richard A. Mertens
TO: Ronald K. Peterson

FROM: Raymond P. Kogut
 Office of Mgmt and Budget, GMD

CC: Robert B. Rideout
CC: Debra L. Williams

SUBJECT: LRM #I-64, Amdts to S 171

As proposed in section 2 (page 2), (a) transfer of function takes place from CEQ/OEQ to the Secretary of the Environment, with (b) terminating CEQ/OEQ.

5 USC 3503 provides that when a function is transferred from one agency to another, the employees in the function (identified by the losing agency) follow function and must be transferred to a position in the gaining agency before the gaining agency may appoint anyone from another source to that position. No mention of personnel is made in the proposed amendments -- there is no need to if the above is expected and understood.

I have raised the above only as an alert. If some other disposition of personnel is expected or planned, consideration should be given to including needed special provisions in the bill.

OFFICE OF MANAGEMENT AND BUDGET

FAX COVER SHEET

NUMBER OF PAGES: 1
(Excluding this Cover Sheet)DATE: 2/23/93TO: HOLLY FITTER

AGENCY & ROOM NO: _____

OFFICE NO: _____

TELEFAX NO: _____

FROM: NEIL SHAPIRO

AGENCY: _____

OFFICE NO: _____

TELEFAX NO: _____

SPECIAL INSTRUCTIONS:

HERE ARE THE GM COMMENTS.
A FEW POINTS I MENTIONED ON THE
PHONE WERE DROPPED.

*omb*G.M. Comments on Discussion Draft Amendments to S. 171

This draft goes far beyond simply shifting the CEQ responsibilities for NEPA over to the new Department of the Environment, e.g., Section 203 ("Policy Review Functions of Secretary").

GM opposes the following NEPA amendments in Section 3:

Section 203(c). This is an unprecedented and unwarranted encroachment on the authority of the President and threatens the management of the entire executive branch. In effect, it elevates the Department of the Environment above all the rest of the executive branch by giving the Secretary veto power over just about anything. This provision obviously will be in conflict with a great number of other statutes (like the Administrative Procedure Act) and will interfere with the orderly function of the rest of the executive branch. Finally, it deprives the President of the ability to reverse a determination by the Secretary after the 45-day period or if the President does not wish to put his position in writing. The President's manner of resolving policy disputes between the Secretary and other agencies should not be limited by statute.

Section 205. Requiring the Secretary to create a new office is needless layering and the confusing delegation of the "functions of the Secretary" appears to be an unnecessary encroachment on the Secretary's managerial discretion.

In addition, Section 2(c) does not reflect the fact that CEQ is a part of the EOP, and the President announced that its policy functions would be assumed by the White House. Shouldn't the White House retain some of the CEQ documents and records?



United States Department of State

Washington, D.C. 20520

FEB 23 1993

Dear Mr. Panetta:

Thank you for the opportunity to comment on additional proposed amendments to S. 171. The Department of State has the following comments on these proposals.

With respect to proposed Section 103(f), this provision is acceptable, noting that the various references to the primary responsibility of the Secretary of State and the need for State Department concurrence are indispensable aspects of its acceptability.

We understand that much of the first part of the proposed amendment is intended to accomplish a shifting of current CEQ responsibilities to the new Department of the Environment. However, a wholesale transfer of such responsibilities raises numerous questions which the State Department would need to have answered before further comments are possible:

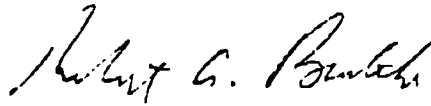
- It is the State Department's understanding that the sum total of the new environmental department's international responsibilities in S. 171 would be contained in Section 103(f). It is on that basis that the Department can clear the proposed language in Section 103(f). Is there any intention/expectation that the new proposed amendments to S. 171 other than Section 103(f) apply to any international activities? (For example, section 202(10)(B) of Title II would be unacceptable if there were any intention to have this section apply to international activities.)
- Regarding section 201 of Title II, would the Environmental Quality Report be prepared through an interagency process?
- In numerous provisions of section 202 of Title II, the Department of Environment is to submit "to the President" studies, reports, advice, recommendations, etc. How would these functions interact with the role of the new White House Office of Environmental Policy? Further, would such studies, reports, advice, etc. be prepared through an interagency process?

The Honorable
Leon Panetta, Director,
Office of Management and Budget.

- Concerning section 202(10)(A) of Title II, it would be acceptable to the State Department for the Department of the Environment to coordinate domestic implementation of Title I (which includes NEPA).

In addition, unless it were crystal clear that Section 203 did not apply to any conceivable functions of the State Department, we would find that Section unacceptable. In the foreign affairs arena, this Section, particularly "limitation on agency actions," would constitute an unacceptable purported Congressional restraint on the President's foreign affairs powers.

Sincerely,



Robert A. Bradtke,
Acting Assistant Secretary
for Legislative Affairs



U.S. Department of
Transportation

Office of the Secretary
of Transportation

Memorandum

ACTION: Policy's Comments on Draft Bill/
S. 171

Subject

Date FEB 23 1993

From Joseph F. Canny *Joe Canny*
Deputy Assistant Secretary for Policy
and International Affairs

Reply to
Attn of:

To Thomas Herlihy
Assistant General Counsel for Legislation

The draft Bill would amend the National Environmental Policy Act to abolish the Council on Environmental Quality and transfer its functions to the Department of the Environment.

Section 202(9) would have Department of the Environment assist the President in coordination of title I (procedural requirements of NEPA), including resolution of conflicts. Strongly we object to this provision because the NEPA "ombudsman" should be a more of a neutral entity. EPA currently reviews EISs and CEQ provides guidance. EPA could be in the position of recommending a referral and arbitrating the same referral under this proposal.

Moreover, Section 203 would give policy authority to the Secretary of the Environment to determine that an action is environmentally unsatisfactory. Section 203(c) provides that if the Secretary makes such a determination, the agency proposing the action may not proceed with the matter unless the agency appeals, the President overrides the Secretary and the President submits to the Congress a copy of the appeal and order. We strongly object to this proposal. This changes NEPA from a statute which charges each agency of the government to consider impacts of its actions on the environment to one which gives another agency the ability to stop a project. This would, in effect, give the Secretary of the Environment veto authority over a wide range of Department of Transportation actions. We strongly oppose this fundamental change to policy. The current NEPA process works well and the referral to CEQ has provided an avenue for resolving disputes which agencies could not resolve among themselves.

As an alternative approach, essential CEQ functions could be preserved and transferred to the new White House Environmental Policy office, thereby avoiding the concerns noted above.

EXECUTIVE OFFICE OF THE PRESIDENT

Washington, D. C.

FAX TRANSMITTAL COVER SHEET

DATE: 23-Feb-93

TO: FITTER

SUBJECT:

DISCUSSION DRAFT -- S 171

FROM:

BEVERLY B. THIERWECHTER (202) 395-3593

OFFICE OF MGMT AND BUDGET, BRCD

If there are any problems receiving this transmission,
please call the sender, or (202) 395-7370.

On page 6, the draft mentions the need to include language on the disposition of the management fund. The same is true for the S&E account.

What happens to the funds in the S&E account...if the law becomes enacted in FY 1993? What happens to the appropriation for FY 1993? Since funds are annual, unobligated balances expire at the end of FY 1993. What happens to the obligated balances after that point?

There are several approaches... the language could authorize the new Department of the Environment to make payments out of the S&E account to liquidate prior obligations after CEQ/OEP terminate, or it could authorize that the balances be transferred to the new Department.

In addition, the draft does not seem to address what happens to the staff in CEQ/OEP. Shouldn't Hilda Schreiber take a look at this draft to determine what is necessary in this area?

Revised

February 23, 1993

TO: Holly Fitter/Ron Peterson
OMB

FROM: Ted Pulliam
DOE
Phone: 202/586-6718
FAX: 202/586-5870

SUBJECT: DOE Comments on Draft Bill to Transfer Functions of the Council on Environmental Quality to the Department of the Environment

Among other things, the draft CEQ bill proposes a major expansion of the NEPA process. It would allow the Department of the Environment to veto, subject to Presidential override, major agency actions (§ 203). Now NEPA is purely procedural and cannot compel a particular outcome.

DOE strongly opposes this expansion:

- o It would delay, or possibly kill, many proposals that are of general public benefit.
 - It would set up a self-defeating conflict of interest in the executive branch. EPA's mandate and historical practice has been to protect the environment. It would be very difficult for it, as the Department of the Environment, to be an impartial arbiter of the benefit of projects with diverse public purposes.
 - A possible result of having the new Department as the arbiter would be that agencies would appeal many decisions to the President, with attendant delays, and the White House would be required to increase its staff or establish yet a new office to handle these appeals with no commensurate increase in the benefits to the environment beyond the present NEPA review process.
- o It is micromanagement by Congress of the President's operation of the executive branch and unnecessary. If the President chooses, he now could establish his own procedures for resolving conflicts between two agencies regarding environmental or other policies.
- o If this provision were attached to a Department of the Environment bill, it may make the bill more controversial and possibly delay or kill it.

February 23, 1993

TO: Holly Fitter
OMB

FROM: Ted Pulliam TP
DOE
Phone: 202/586-6718
FAX: 202/586-5870

SUBJECT: Additional Comment on CEQ Bill

Section 205(b) would delegate all NEPA responsibilities to a new office director in the Department of the Environment. It will be difficult for an office director to carry out all the USDE NEPA responsibilities on an equal standing with assistant secretaries or higher within USDE and in other agencies. If the USDE is to have these responsibilities, we recommend that the functions be delegated to an assistant secretary.

TELEFAX TRANSMITTAL

TO:

Ron Peterson

(X7302)

(Fax#

X5491)

FROM:

Kelly Brown

(202-377-2724)

(Fax#

202-377-0512)

DATE:

2/23/93

NUMBER OF PAGES TO FOLLOW:

(2)

SUBJECT:

Commerce Comments on Discussion
Draft of S. 171 (Re: CEO
Functions)

REMARKS:

Ron -

Fyi - Jonathan Sallot
(Doc Secretary's Office) may well
be forwarding these comments
to Katie McGinty.

Kelly



UNITED STATES DEPARTMENT OF COMMERCE
Office of the General Counsel
Washington, D.C. 20230

TELEFAX TRANSMITTAL

February 23, 1993

TO: Ron Peterson, OMB (395-6194; FAX # 395-5691) •

FROM: Kelly Brown, DOC (482-2724; FAX # 482-0512) *Kelly Brown*

SUBJECT: Department of Commerce (Commerce) comments on Discussion Draft of Amendments for S. 171, the Department of the Environment Act of 1993, to Transfer of the Functions the Council of Environmental Equality (CEQ) to the Secretary of the Environment

Number of Pages to Follow: (1)

Upon a quick review, this office has analyzed the discussion draft to transfer the functions of the Council on Environmental Quality to the Secretary of the Environment and have identified the following problems with the text. The following comments focus on the discussion draft's conforming amendments to various sections of the National Environmental Policy Act of 1969 (NEPA), as amended.

- ◆ The draft would require the new Department of the Environment to review the programs of the Federal Government and make recommendations to the President. This provision could be problematic; if the Administration would like to conduct such a review, it should within the Executive Office of the President. One cabinet agency should not be reviewing program decisions of another. [Amending Section 202(2) of NEPA]
- ◆ The draft would transfer to the new Department data collection and analysis functions of CEQ. This would circumvent our efforts to ensure that other provisions of S. 171 (specifically, provisions creating a Bureau of Environmental Statistics) do not allow the new Department to duplicate information collection, analysis and archiving functions of other agencies. [Amending Section 202(12) of NEPA]
- ◆ The draft unnecessarily and inappropriately would give the new Department authority over regulations, legislation and actions of other agencies to the extent that they affect public health, welfare or the environment. Any adverse determination by the new Department would be published and submitted to the President. [Amending Section 203(a) and (b) of NEPA] [Note: While OMB has indicated that this language is taken from section 309 of the Clean Air Act, we question whether it is necessary to include the language again in this legislation.]

- ◆ In addition, the bill would allow the new Department to halt any agency legislation, regulation or action for 45 days, unless the agency submits a written appeal to the President, the President issues a written order overriding the determination of the new department, and the President submits to Congressional committees a copy of the appeal and the order of the President. [Amending Section 203(c) of NEPA]
- ◆ Section 203 imparts too much authority to a single Federal agency over other Federal agencies. The authority granted by section 203 is also unnecessary, as OMB and the White House currently coordinate interagency views on legislation, regulation and actions initiated by the various agencies. Furthermore, by providing for public review of internal, interagency disagreements, Section 203 of the draft would hinder the ability of the Executive Branch to effectively coordinate policy among the various agencies.
- ◆ The draft requires the Under Secretary of Commerce for Oceans and Atmosphere to review the adequacy of existing systems for monitoring and predicting environmental changes in order to achieve effective coverage and efficient use of research facilities and other resources. While we do not have any objections to this provision at this time, we are unsure of the intent or the effect of this provision.



EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
WASHINGTON, D.C. 20503

TO: Ronald K. Peterson (for Assistant Director for
Legislative Reference)

FROM: Dinah Bear *Dinah Bear*
General Counsel

DATE: February 23, 1993

RE: Discussion Draft of Amendments to S.171

We have several technical comments on the discussion draft; to wit:

1. The requirement for the Environmental Quality Report (current and proposed Section 201 of the National Environmental Policy Act) should be reconciled with the requirement for an Environmental Statistics Annual Report contained in Section 108 of S. 171. The two are not inconsistent, but perhaps the latter could be made part of the former, as to avoid unnecessary costs and duplication.

2. Some thought should be given to the desirability of transferring Section 204(4) of NEPA to the Department of Environment ("develop and recommend to the President national policies to foster and promote the improvement of environmental quality to meet the conservation, social, economic, health, and other requirements and goals of the Nation"). This function appears to be precisely what the Office of Environmental Policy (OEP) is intended to accomplish, and thus could be seen as duplicative.

3. Section 205 creates a new Office of National Environmental Policy in the Department, and directs the Secretary to delegate to the head of that office the responsibilities for administering the functions contained in this bill. We strongly advise that this be modified so that the functions will be delegated to an Assistant Secretary slot. Each of the other statutes administered by EPA is overseen by an Assistant Secretary. It will do great harm to oversight of NEPA responsibilities if they are vested at an office level, both within the Department and in carrying out oversight responsibilities for the entire executive branch. We recommend the creation of a new Assistant Secretary position - perhaps Assistant Secretary for Federal Activities. We note that the administration's technical amendments to S.171, circulated earlier this week, contain a recommended addition from 12 to 13 for the number of authorized assistant secretaries.



DEPARTMENT OF DEFENSE
OFFICE OF GENERAL COUNSEL
WASHINGTON, D.C. 20301-1600

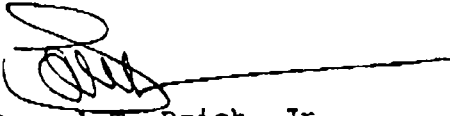
February 23, 1993

MEMORANDUM FOR RON PETERSON

SUBJECT: S. 171 and Discussion Draft; LRM # I-64

We would defer to the Department of Justice as to the constitutionality of section 203 of the proposed bill as it relates to the manner in which the President recommends measures to the consideration of the Congress as he deems necessary and expedient (section 3, Article II of the Constitution). Executive Order 12,778 would appear a more appropriate review mechanism should such a policy be determined appropriate for the submission of legislation. The proposed procedure sets up a burdensome process that would multiply rather than simplify the submission of legislation by an administration.

Section 204 should state that the President rather than the Secretary is authorized to promulgate regulations regarding the governance of the proposed department. The Administrative Procedure Act (5 U.S.C. 551, et seq.) sets forth procedures for publication and review of proposed public regulations.


Samuel T. Brick, Jr.
Director, Legislative Reference
Service

EXECUTIVE OFFICE OF THE PRESIDENT

23-Feb-1993 03:25pm

TO: Elyse H. Fitter
FROM: Jerry L. Coffey
Office of Mgmt and Budget, OIRA
CC: Steven D. Aitken
SUBJECT: comments on S 171 Amendments

LRM #I-64

Views RE: Discussion Draft of Amendments for S 171

We concur, with the following changes.

Insert in section 103 (f), after the phrase "existing provisions of law," the following words:

"and consistent with the orderly and efficient conduct of the work of the Executive Branch,"

Analysis:

In our comments of February 3 on earlier language in this bill, we asserted that:

- 1) that language did not appear to be inconsistent with E.O. 10033, and
- 2) that it did not appear that there is any intent to alter the responsibilities assigned to OMB by E.O. #10033 for the oversight and coordination of international data collections.

Consultations with the Department of State indicate that consistency with E.O. #10033 was not explicitly considered in developing the current revisions to the language. Since the new paragraph 103 (f)(B) authorizes the Secretary to "ensure the domestic implementation of matters ... that are provided for in international agreements", it might be construed as intending to override the direction of the President in E.O. #10033. Such an interpretation might draw further support from the listing in subparagraph (D)(ii) of "monitoring, research, ... surveys, [and] studies" as tasks that might be accomplished through use of international agreements.

Since the Bureau of Environmental Statistics must still rely on

the data collections and expertise of other statistical agencies to perform its mission, the coordination established in E.O. #10033 will still be needed. The language proposed to be added above makes clear that there is no intent to alter the authority of the President to assure an orderly and efficient discharge of U.S. responsibilities vis-a-vis international organizations.



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

February 23, 1993

Mr. Bernard H. Martin
Assistant Director for Legislative Reference
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Martin:

The Nuclear Regulatory Commission has reviewed the discussion draft of amendments to S. 171, the Department of the Environment Act of 1993. We wish to share with you some significant concerns about the possible impact of the draft on the work of the Nuclear Regulatory Commission.

In particular, the Commission is concerned about proposed section 203 (page 11 of discussion draft), which provides that the Secretary of the Environment "shall review and comment in writing on the environmental impact of any matter relating to duties and responsibilities of the Secretary" contained in any legislation proposed by any Federal agency, regulations published by any Federal agency, and any Environmental Impact Statement relating to Federal projects for construction or a major Federal agency action. Section 203 goes on to provide that if the Secretary determines that any such proposed legislation, regulation, or action is unsatisfactory from the standpoint of public health or welfare or environmental quality, the agency may not proceed unless the President overrides the Secretary's determination.

The phrase "relating to duties and responsibilities of the Secretary" in section 203 is unclear but, if interpreted broadly, could be read to give the Secretary of the Environment a virtual veto over actions by the NRC. This would seriously compromise the statutory independence of this agency, and would be inconsistent with our statutory mandate independently to protect public health and safety in the use of source, byproduct and special nuclear materials. The result would be to increase uncertainty about any regulatory action we consider necessary to protecting the public health and safety and possibly to undermine our ability to protect the public health and safety. At the very least, it will increase considerably the time required for any action the NRC proposes, particularly if the Secretary is also burdened with reviewing actions of other Federal agencies. The Commission strongly opposes any measure that could have these consequences and, for these reasons, specifically opposes section 203. CEQ has no such authority currently, so this would be a new authority rather than a simple transfer of a CEQ authority to the

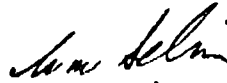
- 2 -

Department of the Environment. We would prefer to see Section 203 struck, but at the very least, would insist that it not be made applicable to independent regulatory agencies.

Similarly, Section 204 may be read to extend CEQ's current mandate over the independent regulatory agencies in a way inconsistent with current law and practice.

The Commission appreciates the opportunity to comment on these amendments and while the NRC fully supports and complies with NEPA, we cannot concur in amendments that could diminish the independent status of this agency.

Sincerely,



Ivan Selin



THE CHAIRMAN

EXECUTIVE OFFICE OF THE PRESIDENT

COUNCIL OF ECONOMIC ADVISERS

WASHINGTON, D.C. 20500

February 24, 1993

MEMORANDUM FOR ALICE RIVLIN
DEPUTY DIRECTOR OF OMB

FROM: LAURA D. TYSON *for*
CHAIR, COUNCIL OF ECONOMIC ADVISERS

RE: Proposed Administration Amendment to S-171

The Administration is proposing to submit the attached draft legislation as an amendment to S.171, the bill raising EPA to the new Department of Environment (USDE).

Most of the attached draft legislation is aimed at abolishing CEQ and transferring its functions to USDE. The President announced the proposal to abolish CEQ last week; the idea of vesting CEQ's powers in EPA/USDE is new.

What is of most concern, however, is Section 203 (pp. 11-13):

Section 203 would provide that the Secretary of USDE shall review all actions, projects, legislation, and regulations proposed by any Federal agency for their environmental impacts. This review function would expand a similar duty under the Clean Air Act.

If the Secretary finds that any action, project, legislation, or regulation is "unsatisfactory from the standpoint of public health or welfare or environmental quality," the Secretary's finding will then prohibit the agency from proceeding with the matter, unless, within 45 days:

- the Secretary's decision is appealed to the President
- the President overrides that decision in writing with an explanation
- the President's written order is submitted to the Congress.

These power and appeals processes are entirely new proposals.

Concern #1. Policy Balance. The potential environmental effects of a proposed action by any Federal agency are obviously important, and they need to be fully considered in the design and implementation of Federal policy. Nonetheless, the power of review proposed in Section 203 appears to be unprecedented, unparalleled and unwarranted. Section 203, as written, allows for an effective prohibition by the

2

EPA of agency actions that it deems unsatisfactory and requires a written override of EPA's decision by the President to loosen the prohibition. No other agency currently has the right to prohibit other agencies from proceeding with an action that it deems to be unsatisfactory relative to its mission.

Concern #2. Presidential authority. Moreover, as an institutional matter wholly apart from the environment, Section 203, as written, essentially makes the President answer to a cabinet Secretary (and to Congressional committees), instead of the other way around. The President will be obliged to undertake repeated, potentially embarrassing decisions in a fishbowl. Usually Presidential resolution of interagency disputes is the highest and last resort for resolving them. Section 203, as written, would require the President to intervene to settle disputes between the EPA and other agencies on a regular basis. Presidential discretion could be seriously compromised as a result.

Attachment

cc: Bernard H. Martin
Assistant Director for Legislative Reference

OFFICE OF THE UNITED STATES
TRADE REPRESENTATIVE
EXECUTIVE OFFICE OF THE PRESIDENT •
WASHINGTON
20506

February 25, 1993

MEMORANDUM

TO: Ronald K. Peterson
Assistant Director for Legislative Reference

FROM: Frederick L. Montgomery *FLM*
Executive Director for Policy Coordination

SUBJECT: USTR COMMENTS ON AMENDMENTS TO S. 171 (Department of
the Environment Bill)

The Office of the U.S. Trade Representative submits the following comments regarding the proposed amendments to S. 171, which would abolish the Council on Environmental Quality and transfer its functions to the proposed Department of the Environment, and which would clarify the international activities of the Department of the Environment.

Of greatest institutional concern to USTR is the EPA International Activities Amendment and Section 203(c) of the NEPA amendments (see below). Other comments are offered from USTR's perspective as part of the Executive Office of the President.

EPA International Activities Amendments to S. 171.

Section 103(f)(D)(ii) (authorizing the Secretary, "with the concurrence of the Secretary of State and in cooperation with such Federal Agencies as may be appropriate", to "improve the quality of the environment through . . . the use of . . . international agreements". We recommend amending to read "international environmental agreements" to clarify that this does not include the authority to negotiate trade agreements.

Section 2(c) -- Transfer of Property and Records.

The transfer of "all books, papers, materials. . ." from within the Executive Office of the President to an Executive Agency may remove those materials from the purview of the President's Executive Privilege. We defer to the White House Counsel and the Department of Justice on whether such would be the case, and whether it presents an issue of concern.

Section 201 -- Environmental Quality Report.

In the limited time available for review we have not conducted a detailed comparison of the various environmental reporting requirements contained within S. 171 and its proposed amendments. There may be, however, significant overlap between

- 2 -

the former CEQ Annual Report function (Section 201) and the annual report to the President on the state of the environment (Section 202)(6) (both of which would be delegated to the Office of Environmental Policy by Section 205(b)), and the proposed annual statistical report to be required of the Bureau of Environmental Statistics (S. 171 Section 108(c)). Costs might be reduced by coordinating or combining those functions.

Section 201(5), requiring the Secretary to transmit legislative recommendations to Congress as part of an annual Environmental Quality Report, should be modified to make the submission of legislative recommendations discretionary. As was noted in the Draft Administration Technical Corrections package, in reference to Section 117 of S. 171: "Article II, Section 3 of the Constitution confers on the President plenary authority to submit whatever legislative proposals he deems 'necessary and expedient' at any time that he chooses."

Section 202(8) -- requiring the Secretary to "provide for the integration of sustainable development principles in the development and implementation of Federal policies."

We are unsure how a single Federal agency could "provide" for this unilaterally, and are concerned that the language implies that the Department of the Environment would be the only agency seeking to integrate sustainable development principles into its policies. In light of the need to coordinate with those agencies responsible for developing and implementing relevant federal policies, the language should be changed from "provide for" to "facilitate".

Section 203 -- Policy Review Functions of Secretary.

We share the concerns of other Federal agencies and offices regarding the extraordinary authority given to the Secretary in Section 203(c), in which a single agency is granted the unilateral authority to determine whether other agencies' legislation, projects, regulations, and other major agency actions may go forward, and in which the only way to reverse an adverse determination is a written appeal to the President. Moreover, we question the constraints placed on the President by the short time frame and requirement that the President's decision be in writing. The additional requirement that the President must submit the agency's appeal and the President's written order to certain Senate and House committees seems like an unusual intrusion into executive privilege and the separation of powers.

We note that this legislation does not define what is an "agency" for purposes of the requirements of Sections 203 and 204. Assuming for the purposes of commenting on this legislation that Executive Office entities would be "agencies" subject to

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these provisions, the result would be to give the Secretary (or, more accurately, an office director below the Secretary, given the mandated delegation of authority in Section 205(b)) veto power over USTR and every other entity within the EOP (including the NSC, NEC, OMB, the new Office of Environmental Policy, etc.).

These concerns may counsel for giving the Office of Environmental Policy within the White House, rather than the Department of the Environment, the decision regarding whether a project should go forward. If this authority is to reside within a particular agency, it may be appropriate to clarify the meaning of "unsatisfactory" or to raise the standard. In addition, an exclusion for EOP entities may be advisable.

As a technical matter, we also note that the authority given the Secretary in Section 203(a) and (b) was already granted to the EPA Administrator by Section 309 of the Clean Air Act. Accordingly, a conforming amendment to the Clean Air Act would be needed.

Section 204 -- Regulatory Functions of Secretary.

This amendment appears to give the Secretary authority to promulgate regulations binding on other Federal agencies. The reference to "this Act" is ambiguous in light of the fact that this language is proposed as an amendment to S. 171 (i.e., does "this Act" refer to S. 171 or to NEPA?). Moreover, the language appears overly broad, possibly implying a grant of authority to the Secretary to promulgate regulations binding on other federal agencies for a wide range of implementing activity (e.g., regulations regarding data collection by other agencies to implement the Secretary's report writing functions).

It might be useful to clarify that the Secretary would be responsible only for generally applicable NEPA regulations, while reserving federal agencies' existing authority to promulgate their own, agency-specific, supplemental NEPA regulations.

Section 205(b) -- Functions of the Office of National Environmental Policy.

We question the mandatory delegation of the Secretary's new authorities to the head of the Office of National Environmental Policy, an apparently subordinate officer within the same Department. This would appear to be a matter best left to the head of the agency.

COMMENTS.171
February 25, 1993

K. McGINTY

F:\HAS\MMF\NEPA.001

[Discussion Draft]

TOM NITSS
MMT
ELC. Committee

5-2429

OMB MASTER MARKUP
REFLECTING AGENCY COMMENTS AS
[DISCUSSION DRAFT] OF 5:40 P.M.
FEB 23, 1993

103D CONGRESS
1ST SESSION

H. R. _____

IN THE HOUSE OF REPRESENTATIVES

Mr. _____ introduced the following bill: which was referred to the Committee
on _____

A BILL

To amend the National Environmental Policy Act of 1969
to transfer functions of the Council on Environmental
Quality to the Secretary [of the Environment], and for
other purposes.

1 Be it enacted by the Senate and House of Representa-
2 tives of the United States of America in Congress assembled,

3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the "___ Act of 1993".

1 SEC. 2. TRANSFER OF FUNCTIONS OF COUNCIL ON ENVI-
2 RONMENTAL QUALITY; TERMINATION OF
3 COUNCIL AND OFFICE OF ENVIRONMENTAL
4 QUALITY.

5 (a) TRANSFER OF FUNCTIONS.—There are hereby
6 transferred to the Secretary [of the Environment] (here-
7 inafter in this Act referred to as the "Secretary") all func-
8 tions of the Council on Environmental Quality under titles
9 I of the National Environmental Policy Act of 1969 (42
10 U.S.C. 4321 et seq.) and any other law, as in effect on
11 the day before the date of the enactment of this Act.

12 (b) TERMINATION OF COUNCIL AND OFFICE.—The
13 Council on Environmental Quality created by section 202
14 of the National Environmental Policy Act of 1969 (42
15 U.S.C. 4342) and the Office of Environmental Quality es-
16 tablished by section 203 of the Environmental Quality Im-
17 provement Act of 1970 (42 U.S.C. 4372) are hereby ter-
18 minated.

19 (c) TRANSFER OF PROPERTY AND RECORDS.—The
20 President shall ensure that all property owned or con-
21 trolled by the Council on Environmental Quality, the Of-
22 fice of Environmental Quality, or the Director or Deputy
23 Director of that Office (including all books, papers, mate-
24 rials, supplies, and equipment) and all documents and
25 records of those agencies and officials are transferred to
26 the Secretary.

1 (d) SAVINGS PROVISIONS.— •

2 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-
3 TIONS NOT AFFECTED.—Nothing in this Act affects
4 the validity of any right, duty, or obligation of the
5 United States, any agency of the United States, or
6 any other person, which—

7 (A) arises under or pursuant to any provi-
8 sion of law referred to or amended or repealed
9 by this Act; and

10 (B) existed on the day before the date of
11 the enactment of this Act.

12 (2) CONTINUATION OF SUITS.—

13 (A) IN GENERAL.—No action or other pro-
14 ceeding commenced by or against the Council
15 on Environmental Quality or the Office of Envi-
16 ronmental Quality (as in existence on the day
17 before the date of the enactment of this Act)
18 shall abate by reason of the enactment of this
19 Act.

20 (B) SUBSTITUTION OF PARTIES.—In any
21 action or proceeding against the Council on En-
22 vironmental Quality or the Office of Environ-
23 mental Quality (as in existence on the day be-
24 fore the date of the enactment of this Act) the

1 Secretary shall be substituted as a party to the
2 action or proceeding.

3 (e) CONTINUATION OF ORDERS, RESOLUTIONS, DE-
4 TERMINATIONS, AND REGULATIONS.—All orders, resolu-
5 tions, determinations, and regulations which—

6 (1) have been issued, made, prescribed, or al-
7 lowed to become effective by the Council on Environ-
8 mental Quality, the Office of Environmental Quality,
9 the Director or Executive Director of that Office, or
10 a court of competent jurisdiction, in the performance
11 of any function of any such agency or officer (other
12 than functions under provisions of law which are re-
13 pealed by this Act); and

14 (2) are in effect on the date this Act takes ef-
15 fect (or become effective after such date pursuant to
16 the terms of the order, resolution, determination or
17 regulation, as in effect on such date),

18 shall continue in effect according to the terms of such or-
19 ders, resolutions, determinations, and regulations, and
20 shall be enforceable by or against the Secretary until
21 modified, terminated, set-aside, or superseded in accord-
22 ance with applicable law by the Secretary, by any court
23 of competent jurisdiction, or by operation of law.

24 (f) REFERENCES IN FEDERAL LAW.—Any reference
25 in any Federal law to the Council on Environmental Qual-

1 ity, the Office of Environmental Quality, or any officer
2 of the Office of Environmental Quality is deemed to be
3 a reference to the Secretary or the [Department of the
4 Environment], as appropriate.

5 (g) CONFORMING AMENDMENTS.—

6 (1) NATIONAL ENVIRONMENTAL POLICY ACT OF
7 1969.—The National Environmental Policy Act of
8 1969 is amended—

9 (A) in section 2 (42 U.S.C. 4321) by—
10 (i) inserting "and" after "man;"; and
11 (ii) striking "; and to establish" and
12 all that follows through the end of the sen-
13 tence and inserting a period;

14 (B) by inserting after section 2 the fol-
15 lowing:

16 "SECRETARY DEFINED

17 "SEC. 3. As used in this Act the term 'Secretary'
18 means the Secretary [of the Environment].";

19 (C) in section 102(B) (42 U.S.C. 4331(B))
20 by striking "Council on Environmental Quality"
21 and inserting "Secretary";

22 (D) in section 102(C) (42 U.S.C. 4331(C))
23 in the matter following subparagraph (v) by
24 striking "Council on Environmental Quality"
25 and inserting "Secretary,"; and

*was part of EPA
(because
more appropriate
title)*

1 (E) in section 102(D) (42 U.S.C. 4331(D))
2 by striking "Council on Environmental Quality"
3 and all that follows through the end of the sen-
4 tence and inserting "Secretary".

5 (2) ENVIRONMENTAL QUALITY IMPROVEMENT
6 ACT OF 1970.—The Environmental Quality Improve-
7 ment Act of 1970 (42 U.S.C. 4372 et seq.) is re-
8 pealed.

[Note that you might want some of the provi-
sions of the Environmental Quality Improvement
Act of 1970 to remain in effect. See, e.g., sections
202(a) and (b) and 204 (42 U.S.C. 4371(a) and (b),
4373). Also, what is to become of amounts (if any)
remaining in the Office of Environmental Quality
Management Fund established under section 206
(42 U.S.C. 4375)?]

[Are there any references to the Council or Office in
any other laws that we need to conform?]

9 SEC. 3. FUNCTIONS OF SECRETARY UNDER TITLE II OF NA-
10 TIONAL ENVIRONMENTAL POLICY ACT OF
11 1969.

12 Title II of the National Environmental Policy Act of
13 1969 (42 U.S.C. 4341 et seq.) is amended to read as fol-
14 lows:

EPA

Yes
these things
remain in effect

EPA would take
these funds.

EPA

Yes, there
are many.
(See CEF
list)

1 "TITLE II--IMPLEMENTATION OF
2 NATIONAL ENVIRONMENTAL
3 POLICY

4 "SEC. 201. ENVIRONMENTAL QUALITY REPORT.

5 "The Secretary shall transmit to the Congress on
6 July 1 of each year an Environmental Quality Report
7 which shall set forth—

8 "(1) the status and condition of the major nat-
9 ural, manmade, or altered environmental classes of
10 the Nation, including the air, the aquatic, including
11 marine, estuarine, and fresh water, and the terres-
12 trial environment, including the forest, dryland, wet-
13 land, range, urban, suburban, and rural environ-
14 ment;

15 "(2) current and foreseeable trends in the qual-
16 ity, management, and utilization of such environ-
17 ments and the effects of those trends on the social,
18 economic, and other requirements of the Nation;

19 "(3) the adequacy of available natural resources
20 for fulfilling human and economic requirements of
21 the Nation in the light of expected population pres-
22 sures;

23 "(4) a review of the programs and activities (in-
24 cluding regulatory activities) of the Federal Govern-
25 ment, the State and local governments, and non-

CEQ - reconcile
with sec 108 rpt
on Environmental
Statistics. See ltr.

↑
EPA → these reports
are different.

EPA → Pres.
currently transmits
this report
(NOT A BIG ISSUE)

1 governmental entities or individuals, with particular
2 reference to their effect on the environment and on
3 the conservation, development, and utilization of
4 natural resources; and

5 "(5) a program for remedying the deficiencies
6 of existing programs and activities, together with
7 recommendations for legislation.

[This is from current section 201 of NEPA.]

8 "SEC. 202. ADDITIONAL STUDY, ASSISTANCE, AND ADVI-
9 SORY FUNCTIONS OF SECRETARY.

10 "The Secretary shall—

11 "(1) gather timely and authoritative informa-
12 tion concerning the conditions and trends and the
13 quality of the environment both current and prospec-
14 tive, analyze and interpret such information for the
15 purpose of determining whether such conditions and
16 trends are interfering, or are likely to interfere, with
17 the achievement of the policy set forth in title I, and
18 compile and submit to the President studies relating
19 to such conditions and trends;

[This is from current section 204(2) of NEPA.]

20 "(2) review and appraise the various programs
21 and activities of the Federal Government in light of
22 the policy set forth in title I for the purpose of de-
23 termining the extent to which such programs and

*Commer objects
this role should
be within the
EXOP. See M.*

1 activities are contributing to the achievement of such
2 policy, and make recommendations to the President
3 with respect thereto;

[This is from current section 204(3) of NEPA.]

*CEQ - should this
go to OEP?
See ltr.*

4 → "(3) develop and recommend to the President
5 national policies to foster and promote the improve-
6 ment of environmental quality to meet the con-
7 servation, social, economic, health, and other re-
8 quirements and goals of the Nation;

[This is from current section 204(4) of NEPA.]

9 "(4) conduct investigations, studies, surveys, re-
10 search, and analyses relating to ecological systems
11 and environmental quality;

[This is from current section 204(5) of NEPA.]

12 "(5) document and define changes in the natu-
13 ral environment, including plant and animal sys-
14 tems, and accumulate necessary data and other in-
15 formation for a continuing analysis of these changes
16 or trends and interpretation of their underlying
17 causes;

[This is from current section 204(6) of NEPA.]

18 "(6) report at least once each year to the Presi-
19 dent on the state and the condition of the environ-
20 ment;

[This is from current section 204(7) of NEPA.]

1 “(7) make and furnish such studies, reports
2 thereon, and recommendations with respect to mat-
3 ters of policy and legislation as the President may
4 request;

[This is from current section 204(8) of NEPA.]

5 “(8) provide for the integration of sustainable
6 development principles in the development and im-
7 plementation of Federal policies;

*Energy &
Inter-
questions
What this
means; must
be clarified*

[This is new policy.]

8 “(9) assist the Federal agencies and depart-
9 ments in appraising the effectiveness of existing and
10 proposed facilities, programs, policies, and activities
11 of the Federal Government, and those specific major
12 projects designated by the President which do not
13 require individual project authorization by the Con-
14 gress, which affect environmental quality;

*DOT
objects - -
etc.*

15 “(10) assist the President in—

16 “(A) coordinating implementation of title I
17 by all Federal agencies and in resolving con-
18 flicts between agencies with respect to that im-
19 plementation; and

20 “(B) coordinating among the Federal de-
21 partments and agencies those programs and ac-
22 tivities which affect, protect, and improve envi-
23 ronmental quality;

1 “(11) assist the Federal departments and agen-
2 cies in the development and interrelationship of envi-
3 ronmental quality criteria and standards established
4 through the Federal Government; and
5 → “(12) collect, collate, analyze, and interpret
6 data and information on environmental quality, eco-
7 logical research, and evaluation.

*Commerce objects:
circumvents effort
to define BES role
See 224.*

[Paragraphs (9), (10), (11), and (12) are
drawn from current paragraphs (2), (5), (6), and
(7), respectively, of section 203(d) of the Environ-
mental Quality Improvement Act of 1970.]

8 “SEC. 203. POLICY REVIEW FUNCTIONS OF SECRETARY.

9 “(a) REVIEW AND COMMENT.—

10 “(1) IN GENERAL.—The Secretary shall review
11 and comment in writing on the environmental im-
12 pact of any matter relating to duties and responsibil-
13 ities of the Secretary, contained in any—

14 “(A) legislation proposed by any Federal
15 department or agency;

16 “(B) newly authorized Federal projects for
17 construction and any major Federal agency ac-
18 tion (other than a project for construction) to
19 which section 102(2)(C) applies; and

*Commerce
expresses
concern re
Sec 203(a) & (b)*

↓ MAJOR
ISSUE!

ISSUE
↓

12

1 “(C) proposed regulations published by any
2 department or agency of the Federal Govern-
3 ment.

4 “(2) AVAILABILITY OF COMMENTS.—The Sec-
5 retary shall make public the written comments of
6 the Secretary under paragraph (1) at the conclusion
7 of any such review.

8 “(b) DETERMINATIONS OF SECRETARY.—If the Sec-
9 retary determines that any such proposed legislation,
10 project, action, or proposed regulation is unsatisfactory
11 from the standpoint of public health or welfare or environ-
12 mental quality the Secretary shall publish that determina-
13 tion and submit it to the President.

[Subsections (a) and (b) are drawn from section 309

of the Clean Air Act.]

OMB & SEVERAL
MAJOR AGENCIES
OBJECT

14 “(c) LIMITATION ON AGENCY ACTIONS.—If the Sec-
15 retary makes a determination described in subsection (b)
16 regarding any proposed legislation, project, action, or pro-
17 posed regulation, the agency proposing or conducting the
18 legislation, project, action, or regulation may not proceed
19 with the matter, unless before the end of the 45-day period
20 beginning on the date the Secretary publishes the
21 determination—

22 “(1) the head of the agency submits to the
23 President a written appeal of the determination;

Comments
Interior
Justice
Agency

↓

1 “(2) the President issues a written order
2 which—

3 “(A) overrides the determination of the
4 Secretary; and

5 “(B) explains the basis for that override;
6 and

7 “(3) the President submits to the Committee on
8 Environment and Public Works of the Senate and
9 the Committee on Merchant Marine and Fisheries of
10 the House of Representatives a copy of—

11 “(A) the appeal of the head of the agency;
12 and

13 “(B) the order of the President.

14 “SEC. 204. REGULATORY FUNCTIONS OF SECRETARY.

15 “The Secretary shall promulgate regulations govern-
16 ing the implementation of this Act by all Federal agencies
17 (including independent regulatory commissions), which in-
18 clude provisions for public review and comment on the de-
19 tailed statements required by section 102(2)(C) and, as
20 appropriate, on other documents prepared pursuant to
21 this Act.

[This is new policy.]

*Some are
exempt from
NEPA*
*EPA - what is
scope*
Commerce
*Is this
role approp.*
*It may
also have
concern*
OMB staff suggest deletion

CEQ - modify so
that functions are
delegated to an
Asst Sec. See Lh.

EPA doesn't
want this
codified; can
do administratively

∴ Delete

EPA - should
delete Sec 4;

Add the
responsibilities
to list of
Dept. functions
listed in
Sec. 200 of
this draft

[old Q's 3 & 4
of 203(d)]

77 Envr. Quality Improvement
Act of 1970.

"SEC. 205. OFFICE OF NATIONAL ENVIRONMENTAL POLICY.

"(a) ESTABLISHMENT.—There is established in the
[Department of the Environment] the Office of National
Environmental Policy.

"(b) FUNCTIONS.—The Secretary shall delegate to
the head of the Office of National Environmental Policy
the responsibility for administering the functions of the
Secretary under this Act.

"SEC. 207. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated to the Sec-
retary to carry out this Act \$___ for each of the fiscal
years ___, which shall remain available until expended."

SEC. 4. MONITORING AND PREDICTING ENVIRONMENTAL CHANGES.

Title I of the National Environmental Policy Act of
1969 (42 U.S.C. 4321 et seq.) is amended by inserting
after section 105 the following:

"MONITORING AND PREDICTING ENVIRONMENTAL CHANGES

"SEC. 106. The Under Secretary of Commerce for
Oceans and Atmosphere shall assist and advise the Presi-
dent on policies and programs of the Federal Government
affecting environmental quality, by reviewing the adequacy
of existing systems for monitoring and predicting environ-
mental changes in order to achieve effective coverage and
efficient use of research facilities and other resources."

get them
improved EPA

Commerce
"ensure" of
intent of this
provision,
see Lh.

[This is drawn from section 203(d)(3) of the Environmental Quality Improvement Act of 1970 (42 U.S.C. 4372(d)(3)).]

EPA -- INTERNATIONAL ACTIVITIES

Sec. 102. FINDINGS

The Congress finds that --

(1) recent concern with Federal environmental policy has highlighted the necessity of assigning to protection of the domestic and international environment a priority which is at least equal to that assigned to other functions of the Federal government;

(2) protection of the environment increasingly involves cooperation with foreign states, including the most highly industrialized states all of whose top environmental officials have ministerial status;

Sec. 103. ESTABLISHMENT OF THE DEPARTMENT OF THE ENVIRONMENT

(f) International Responsibilities of the Secretary -- (1) The Secretary, in addition to exercising his international responsibilities under existing provisions of law, is authorized and encouraged to --

(A) cooperate with the Secretary of State in carrying out the latter's primary responsibility for the negotiation of international agreements, representation of the United States in international organizations, and coordination of international activities, on matters within the purview of the Secretary; and

(B) ensure the domestic implementation of matters primarily within the purview of the Secretary that are provided for in international agreements; and

(C) With the concurrence of the Secretary of State, participate in international agreements and other arrangements with foreign governments and international organizations or other bodies of foreign states on matters within the purview of the Secretary; and

(D)

(i) conduct research on and apply existing research capabilities to the nature and impacts of international environmental problems and develop responses to such problems; and

(ii) With the concurrence of the Secretary of State and in cooperation with such Federal Agencies as may be appropriate, improve the quality of the environment through:

-- the use of contracts, assistance agreements, interagency agreements, international agreements, other arrangements for supporting or conducting activities such as education, training,

cooperate with the Secretary of State on matters requiring international implementation;

* Admin Browner objects to this language; Browner will speak with McGinty,

J. Coffey

on Executive Order

In cooperation with NSCA

In cooperation with NSC A

NSC A

monitoring, research, development, investigations, experiments, demonstrations, surveys, studies, and emergency response;

-- the provision of technical, financial, legal and other assistance; and

-- cooperation with other foreign governments and international organizations;

(iii) on request from or with the concurrence of a foreign government or international organization, and with the consent of the employee concerned and with the concurrence of the Secretary of State, to arrange for the assignment or detail of an employee of the Department to a foreign government or international organization (with or without reimbursement to the United States government) or notwithstanding any other provision of law to arrange for the assignment or detail, of an employee of a foreign government or international organization to the Department (with or without compensation by the Department); and

(iv) upon compliance with all statutory requirements and Executive Branch directives concerning staffing at U.S. posts abroad, and with the consent of the employee concerned, assign an employee of the Department to and U.S. post abroad.

(2) The Secretary of State shall consult with the Secretary, on matters primarily within the purview of the Secretary, and such other persons as he determines appropriate on the activities described under paragraph (1) (A).

February 23, 1993

NRD Comments on draft bill on CEQ termination:

NRD recommends deletion of section 203 of the proposed bill, due to concern about the delegation to the Secretary of the Environment of virtual veto authority over actions proposed by other Federal agencies. This proposed language does not constitute a simple transfer of existing CEQ authority, but rather creates a completely new authority to which heads of most other Federal agencies will most certainly object.

NRD recommends that, in place of the proposed section 203, language be included in the draft bill that amends section 309 of the Clean Air Act, to substitute "the President" for "the Council on Environmental Quality." This will have the effect of allowing the Secretary to refer matters directly to the President, without also granting the objectionable veto authority. Under current CEQ NEPA regulations (promulgated under general authority granted by NEPA, EQIA and Executive Orders 11514 and 11991), CEQ has the option of referring to the President matters involving irreconcilable differences between agencies.

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

23-Feb-1993 11:58am

TO: Elyse H. Fitter
TO: Richard A. Mertens
TO: Ronald K. Peterson

FROM: Raymond P. Kogut
 Office of Mgmt and Budget, GMD

CC: Robert B. Rideout
CC: Debra L. Williams

SUBJECT: LRM #I-64, Amdts to S 171

As proposed in section 2 (page 2), (a) transfer of function takes place from CEQ/OEQ to the Secretary of the Environment, with (b) terminating CEQ/OEQ.

5 USC 3503 provides that when a function is transferred from one agency to another, the employees in the function (identified by the losing agency) follow function and must be transferred to a position in the gaining agency before the gaining agency may appoint anyone from another source to that position. No mention of personnel is made in the proposed amendments -- there is no need to if the above is expected and understood.

I have raised the above only as an alert. If some other disposition of personnel is expected or planned, consideration should be given to including needed special provisions in the bill.

OFFICE OF MANAGEMENT AND BUDGET

FAX COVER SHEET

NUMBER OF PAGES: 1
(Excluding this Cover Sheet)DATE: 2/23/93TO: HOLLY FITTER

AGENCY & ROOM NO: _____

OFFICE NO: _____

TELEFAX NO: _____

FROM: NEIL SHAPIRO

AGENCY: _____

OFFICE NO: _____

TELEFAX NO: _____

SPECIAL INSTRUCTIONS:

HERE ARE THE GM COMMENTS,
A FEW POINTS I MENTIONED ON THE
PHONE WERE DROPPED,

G.M. Comments on Discussion Draft Amendments to S. 171

This draft goes far beyond simply shifting the CEQ responsibilities for NEPA over to the new Department of the Environment, e.g., Section 203 ("Policy Review Functions of Secretary").

GM opposes the following NEPA amendments in Section 3:

Section 203(c). This is an unprecedented and unwarranted encroachment on the authority of the President and threatens the management of the entire executive branch. In effect, it elevates the Department of the Environment above all the rest of the executive branch by giving the Secretary veto power over just about anything. This provision obviously will be in conflict with a great number of other statutes (like the Administrative Procedure Act) and will interfere with the orderly function of the rest of the executive branch. Finally, it deprives the President of the ability to reverse a determination by the Secretary after the 45-day period or if the President does not wish to put his position in writing. The President's manner of resolving policy disputes between the Secretary and other agencies should not be limited by statute.

Section 205. Requiring the Secretary to create a new office is needless layering and the confusing delegation of the "functions of the Secretary" appears to be an unnecessary encroachment on the Secretary's managerial discretion.

In addition, Section 2(c) does not reflect the fact that CEQ is a part of the EOP, and the President announced that its policy functions would be assumed by the White House. Shouldn't the White House retain some of the CEQ documents and records?



United States Department of State

Washington, D.C. 20520

FEB 23 1993

Dear Mr. Panetta:

Thank you for the opportunity to comment on additional proposed amendments to S. 171. The Department of State has the following comments on these proposals.

With respect to proposed Section 103(f), this provision is acceptable, noting that the various references to the primary responsibility of the Secretary of State and the need for State Department concurrence are indispensable aspects of its acceptability.

We understand that much of the first part of the proposed amendment is intended to accomplish a shifting of current CEQ responsibilities to the new Department of the Environment. However, a wholesale transfer of such responsibilities raises numerous questions which the State Department would need to have answered before further comments are possible:

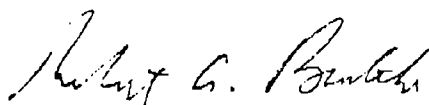
- It is the State Department's understanding that the sum total of the new environmental department's international responsibilities in S. 171 would be contained in Section 103(f). It is on that basis that the Department can clear the proposed language in Section 103(f). Is there any intention/expectation that the new proposed amendments to S. 171 other than Section 103(f) apply to any international activities? (For example, section 202(10)(B) of Title II would be unacceptable if there were any intention to have this section apply to international activities.)
- Regarding section 201 of Title II, would the Environmental Quality Report be prepared through an interagency process?
- In numerous provisions of section 202 of Title II, the Department of Environment is to submit "to the President" studies, reports, advice, recommendations, etc. How would these functions interact with the role of the new White House Office of Environmental Policy? Further, would such studies, reports, advice, etc. be prepared through an interagency process?

The Honorable
Leon Panetta, Director,
Office of Management and Budget.

-- Concerning section 202(10)(A) of Title II, it would be acceptable to the State Department for the Department of the Environment to coordinate domestic implementation of Title I (which includes NEPA).

In addition, unless it were crystal clear that Section 203 did not apply to any conceivable functions of the State Department, we would find that Section unacceptable. In the foreign affairs arena, this Section, particularly "limitation on agency actions," would constitute an unacceptable purported Congressional restraint on the President's foreign affairs powers.

Sincerely,



Robert A. Bradtke,
Acting Assistant Secretary
for Legislative Affairs



U.S. Department of
Transportation

Office of the Secretary
of Transportation

Memorandum

Subject: ACTION: Policy's Comments on Draft Bill/
S.171 Date: FEB 23 1993

From: Joseph F. Canny *Joe Canny*
Deputy Assistant Secretary for Policy
and International Affairs Reply to
Attn of:

To: Thomas Herlihy
Assistant General Counsel for Legislation

The draft Bill would amend the National Environmental Policy Act to abolish the Council on Environmental Quality and transfer its functions to the Department of the Environment.

Section 202(9) would have Department of the Environment assist the President in coordination of title I (procedural requirements of NEPA), including resolution of conflicts. Strongly we object to this provision because the NEPA "ombudsman" should be a more of a neutral entity. EPA currently reviews EISs and CEQ provides guidance. EPA could be in the position of recommending a referral and arbitrating the same referral under this proposal.

Moreover, Section 203 would give policy authority to the Secretary of the Environment to determine that an action is environmentally unsatisfactory. Section 203(c) provides that if the Secretary makes such a determination, the agency proposing the action may not proceed with the matter unless the agency appeals, the President overrides the Secretary and the President submits to the Congress a copy of the appeal and order. We strongly object to this proposal. This changes NEPA from a statute which charges each agency of the government to consider impacts of its actions on the environment to one which gives another agency the ability to stop a project. This would, in effect, give the Secretary of the Environment veto authority over a wide range of Department of Transportation actions. We strongly oppose this fundamental change to policy. The current NEPA process works well and the referral to CEQ has provided an avenue for resolving disputes which agencies could not resolve among themselves.

As an alternative approach, essential CEQ functions could be preserved and transferred to the new White House Environmental Policy office, thereby avoiding the concerns noted above.

EXECUTIVE OFFICE OF THE PRESIDENT[®]

Washington, D. C.

FAX TRANSMITTAL COVER SHEET

DATE: 23-Feb-93

TO: FITTER

SUBJECT:

DISCUSSION DRAFT -- S 171

FROM:

BEVERLY B. THIERWECHTER (202) 395-3593

OFFICE OF MGMT AND BUDGET, BRCD

If there are any problems receiving this transmission,
please call the sender, or (202) 395-7370.

On page 6, the draft mentions the need to include language on the disposition of the management fund. The same is true for the S&E account.

What happens to the funds in the S&E account...if the law becomes enacted in FY 1993? What happens to the appropriation for FY 1993? Since funds are annual, unobligated balances expire at the end of FY 1993. What happens to the obligated balances after that point?

There are several approaches... the language could authorize the new Department of the Environment to make payments out of the S&E account to liquidate prior obligations after CEQ/OEP terminate, or it could authorize that the balances be transferred to the new Department.

In addition, the draft does not seem to address what happens to the staff in CEQ/OEP. Shouldn't Hilda Schreiber take a look at this draft to determine what is necessary in this area?

Revised

February 23, 1993

TO: Holly Fitter/Ron Peterson
OMB

FROM: Ted Pulliam
DOE
Phone: 202/586-6718
FAX: 202/586-5870

SUBJECT: DOE Comments on Draft Bill to Transfer Functions of the
Council on Environmental Quality to the Department of
the Environment

Among other things, the draft CEQ bill proposes a major expansion of the NEPA process. It would allow the Department of the Environment to veto, subject to Presidential override, major agency actions (§ 203). Now NEPA is purely procedural and cannot compel a particular outcome.

DOE strongly opposes this expansion:

- o It would delay, or possibly kill, many proposals that are of general public benefit.
 - It would set up a self-defeating conflict of interest in the executive branch. EPA's mandate and historical practice has been to protect the environment. It would be very difficult for it, as the Department of the Environment, to be an impartial arbiter of the benefit of projects with diverse public purposes.
 - A possible result of having the new Department as the arbiter would be that agencies would appeal many decisions to the President, with attendant delays, and the White House would be required to increase its staff or establish yet a new office to handle these appeals with no commensurate increase in the benefits to the environment beyond the present NEPA review process.
- o It is micromanagement by Congress of the President's operation of the executive branch and unnecessary. If the President chooses, he now could establish his own procedures for resolving conflicts between two agencies regarding environmental or other policies.
- o If this provision were attached to a Department of the Environment bill, it may make the bill more controversial and possibly delay or kill it.

February 23, 1993

TO: Holly Fitter
OMB

FROM: Ted Pulliam TP
DOE
Phone: 202/586-6718
FAX: 202/586-5870

SUBJECT: Additional Comment on CEQ Bill

Section 205(b) would delegate all NEPA responsibilities to a new office director in the Department of the Environment. It will be difficult for an office director to carry out all the USDE NEPA responsibilities on an equal standing with assistant secretaries or higher within USDE and in other agencies. If the USDE is to have these responsibilities, we recommend that the functions be delegated to an assistant secretary.

T E L E F A X T R A N S M I T T A L

TO: Ron Peterson (X7302)

(Fax# X5491)

FROM: Kelly Brown (202-377-2724)

(Fax# 202-377-0512)

DATE: 2/23/93NUMBER OF PAGES TO FOLLOW: (2)

SUBJECT: _____

Commerce Comments on Discussion
Draft of S. 171 (Re: CEO
Functions)

REMARKS: Ron -

Fyi - Jonathan Sallet
(Doc Secretary's Office) may well
be forwarding these comments
to Katie McGinty.

Kelly



UNITED STATES DEPARTMENT OF COMMERCE
Office of the General Counsel
Washington, D.C. 20230

TELEFAX TRANSMITTAL

February 23, 1993

TO: Ron Peterson, OMB (395-6194; FAX # 395-5691)

FROM: Kelly Brown, DOC (482-2724; FAX # 482-0512) *Kelly Brown*

SUBJECT: Department of Commerce (Commerce) comments on Discussion Draft of Amendments for S. 171, the Department of the Environment Act of 1993, to Transfer of the Functions the Council of Environmental Equality (CEQ) to the Secretary of the Environment

Number of Pages to Follow: (1)

Upon a quick review, this office has analyzed the discussion draft to transfer the functions of the Council on Environmental Quality to the Secretary of the Environment and have identified the following problems with the text. The following comments focus on the discussion draft's conforming amendments to various sections of the National Environmental Policy Act of 1969 (NEPA), as amended.

- ◆ The draft would require the new Department of the Environment to review the programs of the Federal Government and make recommendations to the President. This provision could be problematic; if the Administration would like to conduct such a review, it should within the Executive Office of the President. One cabinet agency should not be reviewing program decisions of another. [Amending Section 202(2) of NEPA]
- ◆ The draft would transfer to the new Department data collection and analysis functions of CEQ. This would circumvent our efforts to ensure that other provisions of S. 171 (specifically, provisions creating a Bureau of Environmental Statistics) do not allow the new Department to duplicate information collection, analysis and archiving functions of other agencies. [Amending Section 202(12) of NEPA]
- ◆ The draft unnecessarily and inappropriately would give the new Department authority over regulations, legislation and actions of other agencies to the extent that they affect public health, welfare or the environment. Any adverse determination by the new Department would be published and submitted to the President. [Amending Section 203(a) and (b) of NEPA] [Note: While OMB has indicated that this language is taken from section 309 of the Clean Air Act, we question whether it is necessary to include the language again in this legislation.]

- ◆ In addition, the bill would allow the new Department to halt any agency legislation, regulation or action for 45 days, unless the agency submits a written appeal to the President, the President issues a written order overriding the determination of the new department, and the President submits to Congressional committees a copy of the appeal and the order of the President. [Amending Section 203(c) of NEPA]
- ◆ Section 203 imparts too much authority to a single Federal agency over other Federal agencies. The authority granted by section 203 is also unnecessary, as OMB and the White House currently coordinate interagency views on legislation, regulation and actions initiated by the various agencies. Furthermore, by providing for public review of internal, interagency disagreements, Section 203 of the draft would hinder the ability of the Executive Branch to effectively coordinate policy among the various agencies.
- ◆ The draft requires the Under Secretary of Commerce for Oceans and Atmosphere to review the adequacy of existing systems for monitoring and predicting environmental changes in order to achieve effective coverage and efficient use of research facilities and other resources. While we do not have any objections to this provision at this time, we are unsure of the intent or the effect of this provision.



EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
WASHINGTON, D.C. 20503

TO: Ronald K. Peterson (for Assistant Director for
Legislative Reference)

FROM: Dinah Bear *Dinah Bear*
General Counsel

DATE: February 23, 1993

RE: Discussion Draft of Amendments to S.171

We have several technical comments on the discussion draft; to wit:

1. The requirement for the Environmental Quality Report (current and proposed Section 201 of the National Environmental Policy Act) should be reconciled with the requirement for an Environmental Statistics Annual Report contained in Section 108 of S. 171. The two are not inconsistent, but perhaps the latter could be made part of the former, as to avoid unnecessary costs and duplication.

2. Some thought should be given to the desirability of transferring Section 204(4) of NEPA to the Department of Environment ("develop and recommend to the President national policies to foster and promote the improvement of environmental quality to meet the conservation, social, economic, health, and other requirements and goals of the Nation"). This function appears to be precisely what the Office of Environmental Policy (OEP) is intended to accomplish, and thus could be seen as duplicative.

3. Section 205 creates a new Office of National Environmental Policy in the Department, and directs the Secretary to delegate to the head of that office the responsibilities for administering the functions contained in this bill. We strongly advise that this be modified so that the functions will be delegated to an Assistant Secretary slot. Each of the other statutes administered by EPA is overseen by an Assistant Secretary. It will do great harm to oversight of NEPA responsibilities if they are vested at an office level, both within the Department and in carrying out oversight responsibilities for the entire executive branch. We recommend the creation of a new Assistant Secretary position - perhaps Assistant Secretary for Federal Activities. We note that the administration's technical amendments to S.171, circulated earlier this week, contain a recommended addition from 12 to 13 for the number of authorized assistant secretaries.



DEPARTMENT OF DEFENSE
OFFICE OF GENERAL COUNSEL
WASHINGTON, D.C. 20301-1600

February 23, 1993

MEMORANDUM FOR RON PETERSON

SUBJECT: S. 171 and Discussion Draft; LRM # I-64

We would defer to the Department of Justice as to the constitutionality of section 203 of the proposed bill as it relates to the manner in which the President recommends measures to the consideration of the Congress as he deems necessary and expedient (section 3, Article II of the Constitution). Executive Order 12,778 would appear a more appropriate review mechanism should such a policy be determined appropriate for the submission of legislation. The proposed procedure sets up a burdensome process that would multiply rather than simplify the submission of legislation by an administration.

Section 204 should state that the President rather than the Secretary is authorized to promulgate regulations regarding the governance of the proposed department. The Administrative Procedure Act (5 U.S.C. 551, et seq.) sets forth procedures for publication and review of proposed public regulations.

A handwritten signature in dark ink, appearing to read "S. Brick", followed by a horizontal line.

Samuel T. Brick, Jr.
Director, Legislative Reference
Service

E X E C U T I V E O F F I C E O F T H E P R E S I D E

23-Feb-1993 03:25pm

TO: Elyse H. Fitter
FROM: Jerry L. Coffey
 Office of Mgmt and Budget, OIRA
CC: Steven D. Aitken
SUBJECT: comments on S 171 Amendments

LRM #I-64

Views RE: Discussion Draft of Amendments for S 171

We concur, with the following changes.

Insert in section 103 (f), after the phrase "existing provisions of law," the following words:

"and consistent with the orderly and efficient conduct of the work of the Executive Branch,"

Analysis:

In our comments of February 3 on earlier language in this bill, we asserted that:

- 1) that language did not appear to be inconsistent with E.O. 10033, and
- 2) that it did not appear that there is any intent to alter the responsibilities assigned to OMB by E.O. #10033 for the oversight and coordination of international data collections.

Consultations with the Department of State indicate that consistency with E.O. #10033 was not explicitly considered in developing the current revisions to the language. Since the new paragraph 103 (f)(B) authorizes the Secretary to "ensure the domestic implementation of matters ... that are provided for in international agreements", it might be construed as intending to override the direction of the President in E.O. #10033. Such an interpretation might draw further support from the listing in subparagraph (D)(ii) of "monitoring, research, ... surveys, [and] studies" as tasks that might be accomplished through use of international agreements.

Since the Bureau of Environmental Statistics must still rely on

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the data collections and expertise of other statistical agencies to perform its mission, the coordination established in E.O. #10033 will still be needed. The language proposed to be added above makes clear that there is no intent to alter the authority of the President to assure an orderly and efficient discharge of U.S. responsibilities vis-a-vis international organizations.



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

February 23, 1993

CHAIRMAN

Mr. Bernard H. Martin
Assistant Director for Legislative Reference
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Martin:

The Nuclear Regulatory Commission has reviewed the discussion draft of amendments to S. 171, the Department of the Environment Act of 1993. We wish to share with you some significant concerns about the possible impact of the draft on the work of the Nuclear Regulatory Commission.

In particular, the Commission is concerned about proposed section 203 (page 11 of discussion draft), which provides that the Secretary of the Environment "shall review and comment in writing on the environmental impact of any matter relating to duties and responsibilities of the Secretary" contained in any legislation proposed by any Federal agency, regulations published by any Federal agency, and any Environmental Impact Statement relating to Federal projects for construction or a major Federal agency action. Section 203 goes on to provide that if the Secretary determines that any such proposed legislation, regulation, or action is unsatisfactory from the standpoint of public health or welfare or environmental quality, the agency may not proceed unless the President overrides the Secretary's determination.

The phrase "relating to duties and responsibilities of the Secretary" in section 203 is unclear but, if interpreted broadly, could be read to give the Secretary of the Environment a virtual veto over actions by the NRC. This would seriously compromise the statutory independence of this agency, and would be inconsistent with our statutory mandate independently to protect public health and safety in the use of source, byproduct and special nuclear materials. The result would be to increase uncertainty about any regulatory action we consider necessary to protecting the public health and safety and possibly to undermine our ability to protect the public health and safety. At the very least, it will increase considerably the time required for any action the NRC proposes, particularly if the Secretary is also burdened with reviewing actions of other Federal agencies. The Commission strongly opposes any measure that could have these consequences and, for these reasons, specifically opposes section 203. CEQ has no such authority currently, so this would be a new authority rather than a simple transfer of a CEQ authority to the

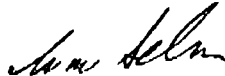
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Department of the Environment. We would prefer to see Section 203 struck, but at the very least, would insist that it not be made applicable to independent regulatory agencies.

Similarly, Section 204 may be read to extend CEQ's current mandate over the independent regulatory agencies in a way inconsistent with current law and practice.

The Commission appreciates the opportunity to comment on these amendments and while the NRC fully supports and complies with NEPA, we cannot concur in amendments that could diminish the independent status of this agency.

Sincerely,



Ivan Selin