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Transportation Department Comments on EPA Environmental Protection Agency] Bill S. 171 March 3, 1993

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EXECUTIVE OFFICE OF THE PRESIDENT
Office of Management and Budget
Legislative Reference Division
Washington, DC 20503

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TO KATIE McGINTY

TO:	AGENCY:
K. McGinty	
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K. Perry	EPA

FROM: Holly Fitter PHONE: (202) 395-3233 FAX: (202) 395-5691
DATE: 3/11/93

SUBJECT: Transportation Department comments on EPA Cabinet
Legislation, S. 171

FYI - attached are comments on S. 171 from the Department of
Transportation.

cc: R. Mertens
D. Corbett



U.S. Department of
Transportation

General Counsel

400 Seventh St. S.W.
Washington, D.C. 20590

March 9, 1993

The Honorable Leon E. Panetta
Director
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Panetta:

The Department of Transportation has reviewed the "discussion draft amendment" to S. 171, a bill

"To establish the Department of the Environment, provide for a Bureau of Environmental Statistics and Presidential Commission on Improving Environmental Protection, and for other purposes."

The draft amendment to S. 171 would amend the National Environmental Policy Act (NEPA) to abolish the Council on Environmental Quality (CEQ) and transfer its functions to the proposed Department of the Environment, and provide new policy review functions to the proposed Department. The Department of Transportation has serious concerns about certain elements of the discussion draft amendment to S. 171.

NEPA has been and remains one of the most effective environmental statutes because of the responsibility it assigns to each Federal agency and its informational, rather than substantive, nature. Several provisions of the draft amendment to S. 171 would fundamentally change this essential characteristic of the statute.

First, the bill gives virtual veto power over all Federal actions to the Secretary of the Environment. Section 203(b) would give policy authority to the Secretary of the Environment to review proposed Federal actions, including legislative and regulatory proposals, and to determine that a proposed action is "unsatisfactory from the standpoint of public health or welfare or environmental quality" (authority currently assigned to the Environmental Protection Agency (EPA) under Section 309 of the Clean Air Act). Section 203(c) greatly expands current law to provide that if the Secretary makes such a determination, the agency proposing the action may not proceed with the matter unless the agency appeals to the President, the President overrides the Secretary, and the President submits to the Congress a copy of the appeal and Presidential order. The proposal changes NEPA from a statute that directs each agency of the Federal Government to consider the impacts of its actions on the environment to one that gives a single agency the ability to stop actions proposed by others.

We strongly oppose this fundamental change to existing policy. Section 203(c) would give the Secretary of the Environment virtual veto authority over a wide range of DOT actions, including important safety regulations. DOT's authority to administer its programs could be significantly restricted by this change. The current NEPA process works well and the CEQ referral process has provided an avenue for resolving disputes that agencies could not resolve among themselves.

Further, we are concerned about the section's requirement that the President submit to Congressional committees his order to override the Secretary of the Environment's veto of an agency action. The Secretary of the Environment's finding that an agency proposal is unsatisfactory, the agency's appeal, and the President's override order constitute "internal communications" of the Executive Branch, and should not be subject to Congressional review.

A second major DOT concern with the draft amendment relates to Section 202, which transfers to the Secretary of the Environment authority now resting in CEQ under NEPA and the Environmental Quality Improvement Act. Section 202(10)(A) would have the Secretary assist the President in coordinating implementation of title I (procedural requirements) of NEPA, including resolution of conflicts between agencies.

We object strongly to this provision. Currently, EPA reviews environmental impact statements, and CEQ provides guidance and responds to referrals of proposed actions to which agencies object on environmental grounds. The draft amendment would give the Secretary of the Environment the responsibility for evaluating and resolving conflicts between or among other agencies, in addition to EPA's current responsibility to review environmental impacts of proposed actions of other agencies. To assign the Department of the Environment both responsibilities creates an inherent conflict. We believe that conflict resolution authority should more appropriately rest with an entity that could be more independent and objective. These problems could be avoided by preserving essential CEQ functions and transferring these to the new White House Environmental Policy Office or another appropriate organization. Under such an arrangement, OMB could continue to play its current role in resolution of agency disagreements on environmental and other issues regarding proposed legislation and regulations.

Finally, Section 202(8) requires the Secretary to "provide for the integration of sustainable development principles in the development and implementation of Federal policies." The wording is extremely broad, and could be read to create regulatory authority over virtually all government actions. We suggest that Section 202(8) be rewritten as follows:

"develop and recommend to the President national policies for the integration of sustainable development principles in the development of Federal policies;"

We appreciate the opportunity to review this legislative proposal and would be pleased to discuss our concerns with you.

Sincerely,

A handwritten signature in black ink, appearing to read "Rosalind A. Knapp". The signature is fluid and cursive, with the first name "Rosalind" being more legible than the last name "Knapp".

Rosalind A. Knapp
Acting General Counsel