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Series/Staff Member: Kathleen (Katie) McGinty
Subseries: *Correspondence*

OA/ID Number: 2255
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Folder Title:
C - Katie McGinty: January-July 1993 [3]

Stack:	Row:	Section:	Shelf:	Position:
S	61	5	2	3

THE WHITE HOUSE

WASHINGTON

June 9, 1993

The Honorable Joseph C. Ciraulo
Mayor
City of Arcadia
240 West Huntington Drive
P.O. Box 60
Arcadia, CA 91066

Dear Mayor Ciraulo:

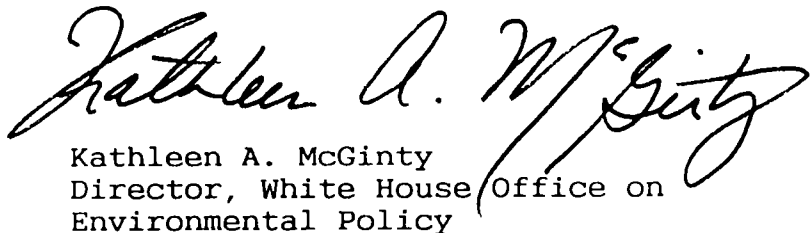
Thank you for contacting me regarding your concerns about liability of toxic waste cleanup under Superfund.

As you know, I share President Clinton's and Vice President Gore's commitment to the preservation of our environment. In his first State of the Union address, the President reaffirmed his goal to increase the efficiency of toxic waste cleanup, as well as to decrease the need for numerous liability lawsuits facing Superfund sites.

I understand your concerns about the burdensome nature of these potentially long and costly lawsuits. EPA Administrator Carol Browner is currently reviewing the 1992 EPA guidance document that was rejected by the Bush Administration. Be assured that we will give every consideration to your concerns as we work toward improving the Superfund program.

Again, thank you for sharing your thoughts with me.

Sincerely,



Kathleen A. McGinty
Director, White House Office on
Environmental Policy

KAM/avl



City of Arcadia

240 West Huntington Drive
P.O. Box 60
Arcadia, California 91066-0060
(818) 574-5400

DENNIS A. LOJESKI
MAYOR PROTEMPORE

GEORGE FASCHING
ROBERT C. HARBICHT
BOB MARGETT
COUNCILMEMBERS

DONALD R. DUCKWORTH
CITY MANAGER

JOSEPH C. CIRAULO
MAYOR
May 28, 1993

JUNE D. ALFORD
CITY CLERK

Ms. Katie McGintry
Environmental Advisor to the President
Old Executive Office Building
Room 360
Washington, D.C. 20500

SENT VIA FACSIMILE

Dear Ms. McGintry,

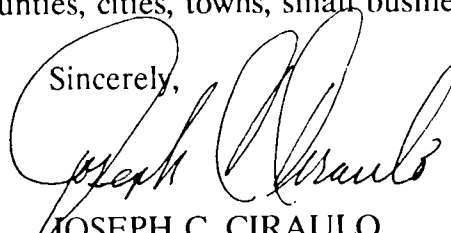
In his first State of the Union address, President Clinton recognized the importance of the nation's toxic waste cleanup effort and pledged to get the lawyers out of the Superfund process. We are writing to urge the Administration to take one crucial step that could help accomplish that worthy goal. Please release an Environmental Protection Agency (EPA) guidance that will relieve hundreds of local governments, thousands of small businesses, and countless citizens of the crushing burden of private party lawsuits designed to shift billions of dollars of cleanup costs from polluting industries to the general taxpayer.

Across the country, entities that polluted Superfund sites are seeking to spread their cleanup costs to cities and counties, small businesses such as pizza stands and flower shops, little league teams, the Girl Scouts and even individual citizens. The theory of these cases is that sending ordinary household garbage and sewage sludge to a Superfund site is enough to trigger staggering liability under the law, even though industrial hazardous waste and not benign household wastes is the reason expensive cleanups are necessary. At a time when scores of local governments and small businesses are struggling to avert fiscal collapse, provide vital services and remain competitive, this catastrophic liability poses an unforeseen and unjustified threat to their survival.

Several months before the 1992 election, EPA career staff prepared an excellent guidance document which was designed to spur reasonable settlements of such cases. This guidance was killed by the Bush White House after a lobbying blitz by polluting industries. The Clinton Administration now has an opportunity to correct this misguided decision.

Please act today to help America's counties, cities, towns, small businesses and citizens.

Sincerely,



JOSEPH C. CIRAULO
Mayor

JCC:ADM:klm

cc: American Communities for Cleanup Equity

THE WHITE HOUSE

WASHINGTON

June 10, 1993

Ms. Maureen Cimoch
13 Beacon Road
Webster, MA 01570

Dear Ms. Cimoch:

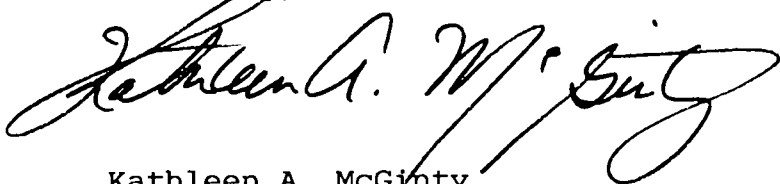
Thank you for contacting me regarding your concerns about the proposed Douglas Massachusetts landfill, and I apologize for the delay in my response.

As you know, I share President Clinton's and Vice President Gore's commitment to the preservation of the global environment in a way that leads to strong and sustainable economic growth. Be assured that we will continue our efforts to protect our natural resources. You may be aware that the President announced in his Earth Day speech in April several initiatives in the environmental arena including pollution prevention and recycling, thereby reaffirming this Administration's intention to make environmental issues a top priority.

I have forwarded your information to US EPA Region I Administrator for review, and I am sure that your concerns will be given every consideration. I certainly appreciate learning of your efforts to promote public awareness of the environmental challenges now facing your community.

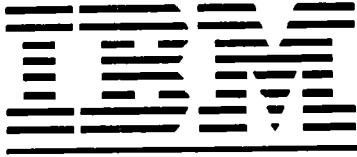
Again, I appreciate hearing from you.

Sincerely,

A handwritten signature in black ink, reading "Kathleen A. McGinty". The signature is fluid and cursive, with the first name "Kathleen" and last name "McGinty" clearly legible.

Kathleen A. McGinty
Director, White House Office on
Environmental Policy

KAM/avl



Wednesday February 24th, 1993

Dear Tres,

Thanks for taking the time to speak with me again on Tuesday, February 23rd, concerning the Douglas Massachusetts landfill project.

I thought it might interest you to know that our State Representative, Richard Moore, is strongly opposed to this project, as are State Senator Louis Bertonazzi, U. S. Congressman Richard Neal, and U. S. Senator Ted Kennedy.

Representative Richard Moore was one of the first officials to endorse Bill Clinton, in his bid for the Democratic Presidential nomination. He has met with President Clinton on several occasions, and has escorted the First Lady on recent visits to the Boston area.

This location has previously been rejected as a landfill site because of its proximity to lakes, reservoirs, water supplies, and the discovery of fault lines, and endangered species. And now, because of the influence of special interests, and their lobbying efforts, the Department of Environmental Protection is not addresssing our concerns.

I am not blind to the fact that money talks, but there comes a time in our lives when we must fight against what is wrong. This Douglas landfill project is wrong. We are 750,000 people strong in opposition to this project. Shouldn't the concerns of this many people be answered?

Please make a phone call to our Governor, William Weld. 617-727-3600 or 617-727-6250 Ask to speak to him directly. Tell him that people have contacted you with serious concerns, and you would like to know more. Thank You.

Maureen Cimoch
13 Beacon Road
Webster, MA 01570
Phone 508-949-0711

THE WHITE HOUSE

WASHINGTON

June 1, 1993

Mr. Red Cavaney
American Forest & Paper Association
1250 Connecticut Avenue, N.W.
Second Floor
Washington, D.C. 20036

Dear Mr. Cavaney:

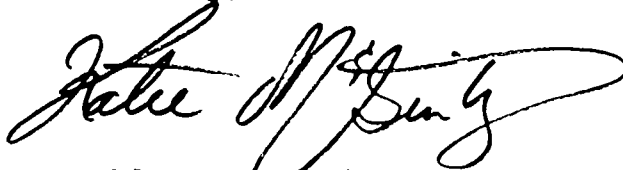
Thank you for contacting me regarding your thoughts on the Executive Order on Recycled Goods. It was good to hear from you.

I share President Clinton's and Vice President Gore's commitment to preserving our environment in a way that leads to strong and sustainable economic growth. Recycling is one of our top priorities. As you know, through the hard work and initiative of many community and industry leaders, recycling has become almost routine to many people. However, to really make recycling a success, further outreach is needed to encourage both the supply and demand for recycled products. To that end, President Clinton announced in his Earth Day speech his intention to sign an Executive Order on recycled goods. This Executive Order will strengthen the previous Federal Agency Recycling Order of October 1991 by requiring a revision of procurement guidelines for recycled products, establishing new content standards for recycled printing and writing paper, and encouraging federal agencies to set procurement goals for recycled products.

I appreciate hearing your ideas on postconsumer content in recycled printing and writing paper. Please keep me apprised of your thoughts and suggestions on this very important issue.

Again, thank you for sharing your concerns with me.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kathleen McGinty', with a large, sweeping flourish at the end.

Kathleen A. McGinty
Director, White House Office on
Environmental Policy

AGJ/avl

AMERICAN
FOREST &
PAPER
ASSOCIATION

20 May 1993

Ms. Katie McGinty
Office on Environmental Policy
Room 360
The White House
Washington, D.C.

Dear Ms. McGinty:

I am writing to request a meeting with you, personally, and a delegation of our industry's chief executive officers from U.S. printing-writing paper companies to discuss our capabilities and strong commitment to increased recycling and to ensure that you are fully aware of the consequences of various courses of action the Administration is considering in the development of new EPA procurement guidelines for printing-writing papers as part of the President's proposed Recycled Good Executive Order.

At such a meeting, we are prepared to provide you with data and company-specific situations to underscore the dynamics involved in increasing the use of recovered paper in the production of printing-writing paper grades. Enclosed is a brief issue paper outlining this matter.

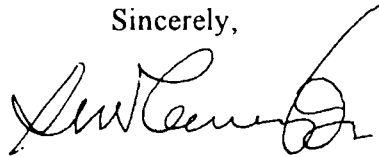
Ken Connolly has been extremely helpful in working with our industry on this issue. Of particular importance was a wide-ranging meeting that included Cathy Zoi and representatives from the other involved offices in the government. It was at that meeting that the submission of additional data/information was suggested, information we had hoped to pass along in person to your staff last Monday.

Concern over this issue has become elevated this past week, however, as a result of cancellation of a meeting on the matter between ourselves, environmental groups and your staff; and rumors that there is still no understanding or appreciation for the fact that the large machines cannot utilize 50 percent recovered fiber.

With hundreds of millions of new investment dollars at stake, not to mention billions in existing facilities, the Printing-Writing Division leadership feels it is vital that they have an opportunity to be heard directly, hopefully before any final decision is reached. The paper industry wants the President to be successful in his recycling initiative, and feels it can help you understand how best to get maximum recycled content growth in the U.S. printing-writing paper sector. The U.S. paper industry's record over decades, particularly the last ten years, demonstrates that no industry has a greater record and commitment to future recycling.

I will follow up with Ken to see when such a meeting might be arranged. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Red Cavaney", with a stylized flourish at the end.

Red Cavaney

Enclosure

cc: Ken Connolly
Mike Draper
Virgil Horton
Mark Rey

THE WHITE HOUSE

WASHINGTON

June 4, 1993

Mr. Paul Cook
President
Laurel Green Seedlings Company
3 South Main Street
Stockton, NJ 08559

Dear Mr. Cook:

Thank you for your letter. It was good to hear from you.

I appreciate learning of your efforts in promoting tree planting. I understand that you are also requesting an endorsement from Vice President Gore and the White House Office on Environmental Policy for this project.

While I know that the Vice President is honored by your request, I regret to inform you that the White House has a policy which discourages the use of the names or likenesses of the President, the Vice President, or their staffs in private, commercial or charitable activity of the sort in question. The essential reason for this policy is to protect the Offices of the President and Vice President and to ensure that the holders of those offices are not involved in activities that might even indirectly create the appearance of a conflict of interest. I regret, therefore, that an endorsement is not possible, but I wish you great success in your important efforts.

Thank you for thinking of the Vice President and the White House Office on Environmental Policy.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Kathleen McGinty', with a large, sweeping flourish extending from the end of the name.

Kathleen A. McGinty
Director, White House Office on
Environmental Policy

KAM/avl



Laurel Green Seedlings Co.

**3 South Main Street
Stockton, NJ 08559
609-397-5946**

May 13, 1993

The Honorable Kate McGinty, Director
White House Office on Environmental Policy
286 Old Executive Office Building
Washington DC 20501

Dear Ms. McGinty:

By way of introduction, I am Liz Cook's brother, and a friend of your brother, John. First, please accept my congratulations on your appointment as Director of this vitally important office; I wish you all possible success with your agenda.

I am writing to inform you of our Environmental Awareness Tree Seedling Program and our plans for Arbor Day, 1994.

The Seedling Program forges partnerships between business and education in which companies supply evergreen tree seedlings and related environmental educational material to schools. After appropriate classroom work, each student is given a seedling to plant, and educational material to take home. In the two years since the program began, more than 100,000 American families have received trees and educational information.

So far, business partners have included companies in the real estate, natural gas, and financial industries; our largest participant has been GMAC Mortgage Corporation.

We are now developing a partnership with major league baseball, in which teams will give attendees at games on or around Arbor Day, 1994 a seedling to take home and plant, along with educational literature. The Philadelphia Phillies have already signed up, and two other teams have agreed verbally.

Most exciting is our proposal to Major League headquarters (with the help of the Phillies) to involve all teams, and to make Arbor Day '94 a "Trees Across America" day. We also are seeking other business partnerships. Our goal is to see one million trees planted on next Arbor Day - the largest tree planting event in the history of the country!

The Honorable Kate McGinty - 2 -

An endorsement from your office and Vice President Gore would help ensure the success of this vitally important venture. I have included some material for you and your staff to review, and would like the opportunity to discuss this further.

I look forward to hearing from you.

Sincerely yours,



Paul Cook
President

THE WHITE HOUSE
WASHINGTON

June 1, 1993

To the Conferees of the
California Forestry Conference:

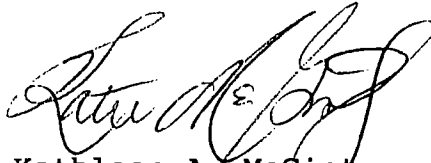
I would like to commend you for organizing and participating in your own Forest Conference on June 2, 1993.

It continues to be the President's sincere hope that the dialogue which was initiated at the Portland Conference two months ago be nurtured and expanded by local and regional efforts. I applaud your efforts to build on a process that brings affected parties and individuals together in a cooperative forum to address the difficult social and economic aspects of forest resource issues.

Through this conference you are demonstrating a real commitment to using a collaborative rather than adversarial process for dealing with complex issues which have burdened the region for many years. You are taking the President up on his request that you "stay in the conference room and not in the courtroom." In doing so you have created an opportunity to make a real and valuable contribution to the well-being of your communities both now and in the future.

I know that the President and the Vice President join me in wishing you all the best for a successful conference.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Kathleen McGinty', with a stylized flourish at the end.

Kathleen A. McGinty
Director, White House Office on
Environmental Policy

KAM/avl

May 11, 1993

The Honorable John Chafee
United States Senate
Washington, D.C. 20510

Dear Senator Chafee:

On behalf President Clinton and Vice President Gore, I would like to express my deep gratitude for your assistance in passing the EPA Cabinet level bill. Your help was absolutely essential, and we are most appreciative of your efforts.

I look forward to working with you as we move forward on a wide range of environmental issues. Please call on me whenever I can be of assistance.

Again, thank you for your help in this regard.

Sincerely,

Kathleen A. McGinty
Director, Office on
Environmental Policy

THE WHITE HOUSE

WASHINGTON

May 12, 1993

Dr. Jill Conley
National Research Council
Office of International Affairs
2101 Constitution Avenue
Washington, D.C. 20418

Dear Jill:

Thank you for the note and kind words of support. It was good to hear from you.

I appreciated the opportunity to meet with you and to learn about your work in protecting our environment.

Again, thank you for sharing your thoughts with me. Let me know of your future initiatives.

Sincerely,

Kathleen A. McGinty
Director, Office on
Environmental Policy

KAM/avl

NATIONAL RESEARCH COUNCIL

OFFICE OF INTERNATIONAL AFFAIRS

BOARD ON SCIENCE AND TECHNOLOGY FOR INTERNATIONAL DEVELOPMENT

2101 CONSTITUTION AVENUE
WASHINGTON, D.C. 20418 USA
TELEPHONE: 202/334-

TELEX: 353001 BOSTID WSH
Cable Address: NARECO
Fax No 202/334-2660

March 5, 1993

Ms. Katie McGinty
Special Assistant to the President
for the Environment
Office of the Vice President
Old Executive Office Building
Washington, DC 20501

Dear Katie:

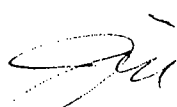
Congratulations on your new position! I was really pleased to hear of your appointment. You will certainly have your work cut out for you, but you'll be great!

As was the case in the days immediately following our misspent youth (AAAS liver conferences), I am still at the NAS and traveling frequently. The work is varied and stimulating, and I'm still in the state of Perpetual Learning Curve (south of Pennsylvania).

I wanted to wish you the best of luck in your new job (and office), and if I can be of any help (however unlikely) here at the Academy, please let me know. My phone number is 334-1785, fax is 334-2660.

Again, congrats and good luck!

Sincerely,



Jill Conley, Ph.D.
Senior Program Officer

THE WHITE HOUSE

WASHINGTON

May 28, 1993

Mr. Michael Cox
1500 Theresa Lane
Madisonville, KY 42431

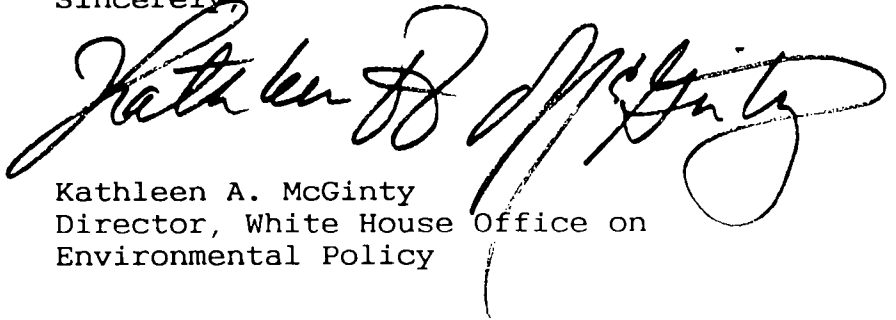
Dear Mr. Cox:

Thank you for contacting me regarding your thoughts about the appointment of Mr. Bruce Boyens to Director, Office of Surface Mining in the Department of the Interior.

As you know, I share President Clinton's and Vice President Gore's commitment to the preservation of our environment. I appreciate learning of your support of Mr. Boyens for this position. I have notified Interior Secretary Babbitt of your concerns.

Again, thank you for sharing your thoughts with me.

Sincerely,

A handwritten signature in black ink, reading "Kathleen A. McGinty". The signature is fluid and cursive, with the first name "Kathleen" and last name "McGinty" clearly legible. It is positioned above the typed name and title.

Kathleen A. McGinty
Director, White House Office on
Environmental Policy

KAM/avl

MICHAEL COX
1500 THERESA LN
MADISONVILLE KY 42431

**WESTERN
UNION** | **MAILGRAM®**



010358002579 05/19/93

WHSА

▶ KATIE MCGINTY
RM 360 OLD EXECUTIVE OFFICE BLDG
WASHINGTON DC 20501

I SUPPORT BRUCE BOYANS FOR DIRECTOR OF THE OFFICE OF SURFACE MINING.
THE LAW HAS DETERIORATED DRASTICALLY DURING RECENT ADMINISTRATIONS.
I BELIEVE MR BOYANS CAN GET OSM BACK ON ITS FEET. LET'S SAVE WHAT'S
LEFT OF AMERICA.

MICHAEL COX

14959

00:32 EST

MGMCOMP

THE WHITE HOUSE

WASHINGTON

May 24, 1993

Ms. Kristin L. Coleman
3401 E. River Road
Tucson, AZ 85718

Dear Friends:

Thank you for contacting me regarding your thoughts about the Animal Damage Control Act. I apologize for the delay in my response.

We are in the process of reviewing our policy with the Department of Agriculture and the Department of the Interior on this very important matter. I agree that further study of the options involved is necessary for an informed and balanced decision to be made. Be assured that we will give every consideration to your concerns as we look at this issue.

Again, thank you for letting me hear from you.

Sincerely,

A handwritten signature in cursive script, reading "Kathleen A. McGinty", followed by a small monogram "AL".

Kathleen A. McGinty
Director, White House Office on
Environmental Policy

KAM/avl

March 17, 1993

Kathleen McGinty
White House Office on Environmental Policy
Old Executive Office Bldg., Room 358
Washington, D. C. 20501

Dear Kathleen McGinty:

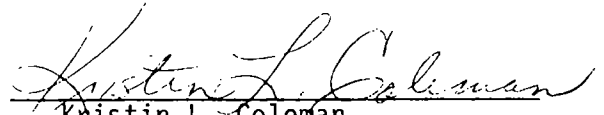
We hope you will look carefully at putting an end to the Animal Damage Control Program.

At a time when there is an attempt to reintroduce endangered species and to preserve endangered environments (not to mention the efforts to curb all unnecessary federal spending), this program spends over 45 million taxpayer dollars to kill wildlife on public lands and to develop poisons and control techniques for wild animals--all as a subsidy to the livestock industry.

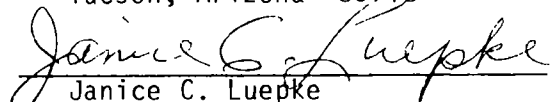
In 1992 over one hundred thousand predatory mammals and more than one and one-half million birds were reported killed by the ADC. Its killing methods--poison baits, traps, snares, denning and aerial gunning--are indiscriminate and inhumane.

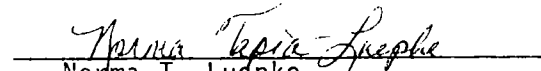
We demand that this outdated tax-supported federal war on wildlife come to an end, and that the government begin to protect our natural heritage.

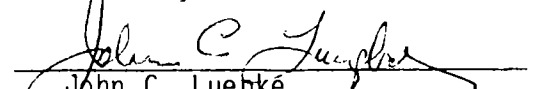
Sincerely,


Kristin L. Coleman
3401 E. River Road
Tucson, Arizona 85718


Steven L. Coleman D.D.S.
3401 E. River Road
Tucson, Arizona 85718


Janice C. Luepke
3401 E. River Road
Tucson, Arizona 85718


Norma T. Luepke
Klondyke Rural Station
Willcox, Arizona 85643


John C. Luepke
Klondyke Rural Station
Willcox, Arizona 85643

THE WHITE HOUSE

WASHINGTON

May 24, 1993

Dr. Ellen M. Clark
360 Panoramic Way
Berkeley, CA 94704

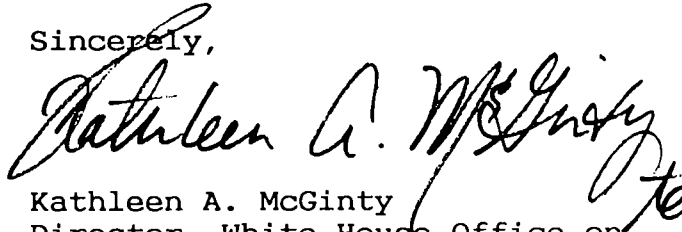
Dear Dr. Clark:

Thank you for contacting me regarding your thoughts about the Animal Damage Control Act. I apologize for the delay in my response.

We are in the process of reviewing our policy with the Department of Agriculture and the Department of the Interior on this very important matter. I agree that further study of the options involved is necessary for an informed and balanced decision to be made. Be assured that we will give every consideration to your concerns as we look at this issue.

Again, thank you for letting me hear from you.

Sincerely,



Kathleen A. McGinty
Director, White House Office on
Environmental Policy

KAM/avl

November 30, 1992

Kathleen McGinty
Clinton-Gore Transitional Team
P.O. Box 615
Little Rock, Arkansas 72203

Dear Ms. McGinty:

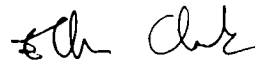
It has come to my attention that the Alaska Division of Wildlife Conservation has approved a plan to slaughter wolves in parts of the Alaska wilderness in an attempt to manipulate the population levels of moose and caribou (see enclosed article from the New York Times). As a Ph.D. biologist, I follow both the scientific and political controversies regarding management of wildlife populations in the U.S.

It is apparent from the Times article that the opinion of the scientific community has not been considered in the decision to decimate Alaska wolf populations. In fact, as far as I can tell, the Alaska Board of Game is entertaining some rather weird concepts altogether in their approach to wildlife "management". I therefore conclude that the Alaska state government is dominated by special-interest groups with a vested interest in business from a hunting lobby. I surmise that a particular subset of the hunting community is prepared to pay a sizeable fee for the "privilege" of shooting a few wolves.

I feel strongly about this issue because the decision to slaughter wolves represents more than bad science and bad management. Wolves symbolize the Alaskan wilderness. We here in California struggle to preserve tracts of wilderness in which most predators have been virtually eliminated. The damage we have already wrought on our environment reduces the quality of life for us all (and is wreaking havoc with our economy, too). Alaskans have stewardship over an irreplaceable treasure, and it is truly painful to watch a retrogressive element of the Alaska state government attempt to abuse the natural heritage of all Americans.

I am writing to you because I understand that you are primarily responsible for initiating the implementation of Al Gore's environmental agenda. Preventing the reinstatement of aerial wolf hunts symbolizes our struggle to halt the destruction of our remaining wilderness. Unlike issues such as oil resource development, timber harvests, or the moratorium on wetlands development, there isn't even a viable economic argument in favor of this plan; Alaskans will not lose jobs if the wolves are left in peace. I therefore believe that the new administration would be sending a positive and generally well-received message if the killing of wolves were vigorously opposed by Mr. Gore, John Turner, William K. Reilly, and/or whoever is appointed as the new Secretary of the Interior.

Sincerely yours,



Ellen M. Clark, Ph.D.
360 Panoramic Way
Berkeley, CA 94704

P.S. And I'm not even looking for a job.

THE WHITE HOUSE

WASHINGTON

May 24, 1993

Ms. Kathleen Chaplin
1875 Ottinger Road
Roanoke, TX 76262

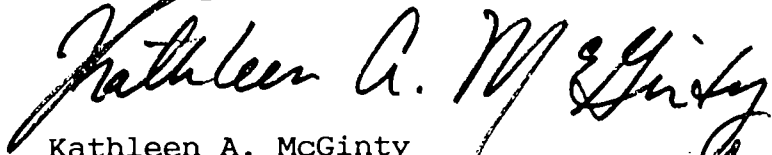
Dear Ms. Chaplin:

Thank you for contacting me regarding your thoughts about the Animal Damage Control Act. I apologize for the delay in my response.

We are in the process of reviewing our policy with the Department of Agriculture and the Department of the Interior on this very important matter. I agree that further study of the options involved is necessary for an informed and balanced decision to be made. Be assured that we will give every consideration to your concerns as we look at this issue.

Again, thank you for letting me hear from you.

Sincerely,


Kathleen A. McGinty
Director, White House Office on
Environmental Policy

KAM/avl

Ms. Kathleen Chaplin
1875 Ottinger Road
Roanoke, Texas 76262-9136

March 29, 1993

Kathleen McGinty
White House Office on Environmental Policy
Old Executive Office Building
Room 358
Washington, DC 20501

Dear Ms. McGinty;
I have enclosed a copy of a letter I am forwarding to President Clinton, as I thought it would be of interest to you also.

I firmly believe that our government subsidies for special interest groups must be stopped before we can begin to properly address the federal debt. American's pay their tax dollars in the good faith that the government will use that money to directly support GOVERNMENT functions and services. Those services should be in the interest of the taxpayers, not the special interest of the oil & gas industry, the cattle industry, the tobacco companies, etc.

I would appreciate hearing from you on this issue. I fully realize how powerful many of these special interest lobbies are, but I have confidence that the Congress, the Senate and President Clinton can take a more realistic stand against this discriminating practice of American tax dollars being used to finance special interest groups.

I look forward to hearing from you and certainly appreciate any information you might be able to provide on this issue.

Kind regards,


Kathleen Chaplin

THE WHITE HOUSE

WASHINGTON

May 24, 1993

Mr. Pete Christensen
16636 North 58th Street
#2021-I
Scottsdale, AZ 85254

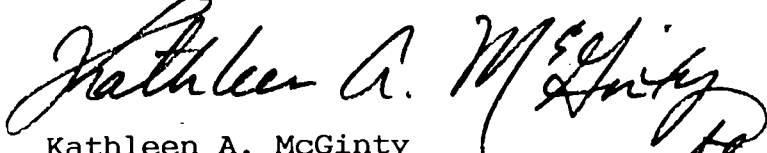
Dear Mr. Christensen:

Thank you for contacting me regarding your thoughts about the Animal Damage Control Act. I apologize for the delay in my response.

We are in the process of reviewing our policy with the Department of Agriculture and the Department of the Interior on this very important matter. I agree that further study of the options involved is necessary for an informed and balanced decision to be made. Be assured that we will give every consideration to your concerns as we look at this issue.

Again, thank you for letting me hear from you.

Sincerely,

A handwritten signature in black ink, reading "Kathleen A. McGinty". The signature is fluid and cursive, with a large, stylized "K" and "M".

Kathleen A. McGinty
Director, White House Office on
Environmental Policy

KAM/avl

Representative,

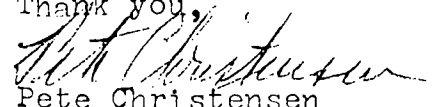
In a time when spending cuts are being finally talked about seriously, I'm taking the time to write you to request you reduce or completely end the funding of the Animal Damage Control program.

ADC isn't cost effective or sound biologically. In 1992 over 45 million dollars were spent to kill predators like the mountain lion that will no doubt eventually be put on the endangered species list so we can spend millions more protecting it.

Ranchers need to be responsible for their own business. Taxpayers shouldn't be expected to provide a no risk business environment for them. I feel confident ranchers won't go out of business if forced to fend for themselves, they'll simply become financially responsible.

Please let me know if you plan to do anything about this waste of taxpayer dollars, and if not, why?

Thank you,


Pete Christensen
16636 N. 58th. St.
#2021-I
Scottsdale, AZ.
85254

THE WHITE HOUSE

WASHINGTON

May 24, 1993

Mr. William L. Conley
2140 N.W. 13th Street
Corvallis, OR 97330

Dear Mr. Conley:

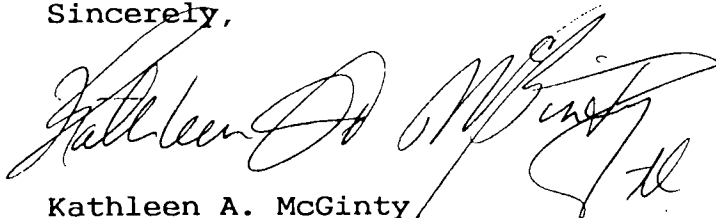
On behalf of President Clinton and Vice President Gore, I would like to thank you for contacting me with your concerns about the Forest Management Plan.

The President and I believe that the Forest Conference held in Portland on April 2 was a significant step toward the resolution of the problems facing the the Pacific Northwest. At the conclusion of the conference, President Clinton directed his Cabinet to develop a Forest Management Plan within 60 days.

As you may know, three working groups have been established to work on developing this plan. The first group, working on ecosystem management assessment, is exploring management alternatives that attain the greatest economic and social contribution from the forests of the region and meet the requirements of applicable laws and regulations. Working Group II, focusing on labor and community assistance, will develop an economic plan to address not just temporary efforts but long-term economic development and diversification. The last working group will work to improve the relationships among federal and state agencies in the region and to eliminate impediments that block coordinated action.

I certainly appreciate learning of your continued interest in this arena as we work toward the resolution of this very important matter. Again, thank you for sharing your views with me.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Kathleen A. McGinty', with a stylized flourish at the end.

Kathleen A. McGinty
Director, White House Office on
Environmental Policy

KAM/avl

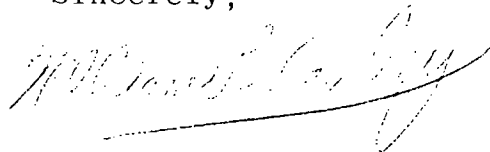
William L. Conley
2140 NW 13th St.
Corvallis, OR 97330

Dear Ms. McGinty

One of the greatest problems that you have inherited from the previous Administrations is the U.S. Forest Service's abuse and mismanagement of our National Forests, which results in overcutting, excessive clearcutting, destruction of old-growth forests, the devastation of fish habitat, and the pollution of watersheds. It's outrageous that American citizen's tax dollars are being used to subsidize the destruction of our natural resources

I urgently request that you take immediate steps to bring Forest Service practices into compliance with the National Forest Management Act of 1976, by restricting logging to environmentally suitable areas, by eliminating timber sales that lose money, and by managing our National Forests to preserve all their values, including recreation, clean water, wildlife habitat, scenic beauty, biological diversity, wilderness, and scientific values.

Sincerely,

A handwritten signature in cursive script, appearing to read "William L. Conley", with a long horizontal flourish extending to the right.

THE WHITE HOUSE

WASHINGTON

May 24, 1993

Ms. Melissa Carlson-Price
Skamania County Commissioner
Skamania County Courthouse
P.O. Box 790
Stevenson, WA 98648

Dear Ms. Carlson-Price:

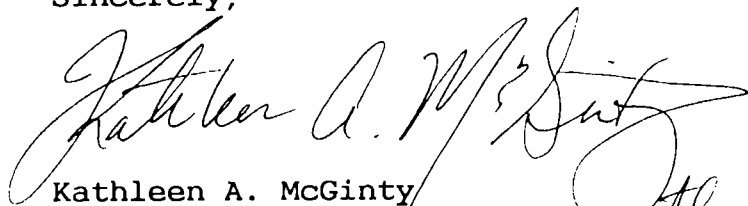
On behalf of President Clinton and Vice President Gore, I would like to thank you for contacting me with your concerns about the Forest Management Plan.

The President and I believe that the Forest Conference held in Portland on April 2 was a significant step toward the resolution of the problems facing the the Pacific Northwest. At the conclusion of the conference, President Clinton directed his Cabinet to develop a Forest Management Plan within 60 days.

As you may know, three working groups have been established to work on developing this plan. The first group, working on ecosystem management assessment, is exploring management alternatives that attain the greatest economic and social contribution from the forests of the region and meet the requirements of applicable laws and regulations. Working Group II, focusing on labor and community assistance, will develop an economic plan to address not just temporary efforts but long-term economic development and diversification. The last working group will work to improve the relationships among federal and state agencies in the region and to eliminate impediments that block coordinated action.

I certainly appreciate learning of your continued interest in this arena as we work toward the resolution of this very important matter. Again, thank you for sharing your views with me.

Sincerely,



Kathleen A. McGinty
Director, White House Office on
Environmental Policy



SKAMANIA COUNTY BOARD OF COMMISSIONERS

Skamania County Courthouse
Post Office Box 790
Stevenson, Washington 98648
(509) 427-5141 FAX: (509) 427-4165

MELISSA CARLSON-PRICE
District 1

DEAN EVANS
District 2

ED CALLAHAN
District 3

May 14, 1993

Katy McGinty
Deputy Assistant to the President for
Environmental Policy
OEOP Room 360
Washington, D.C. 20506

Dear Ms. McGinty:

Thank-you for taking the time to meet with the timber-dependent counties of the Northwest on May 4th.

My impression of our meeting was that the critical issues that are common among the timber-dependent Counties were not clearly represented by some of those present. I would like to take this opportunity to set the record straight.

The timber issues that have been agreed upon as general unified concepts that are critical to the solution of the timber dilemma are as follows:

A. Counties and Federal government have a partnership in the forest whereby the federal government manages the national forests and shares timber income with the counties. The counties provide essential public services to the forests. Federal funding, through federal forest receipts or an equal alternative, shall be continued to counties to maintain adequate services.

B. Healthy communities are essential to the management of the forest. For communities to survive a level of timber production must be established that provides certainty to the industry and is sufficient to allow communities to continue to exist.

C. Federal assistance shall be provided to timber communities to assist in developing infrastructure for economic diversification in recognition that past forest funds have been primarily used to build and maintain infrastructure serving the national forests and other public lands. Other assistance shall be provided to encourage expanded use of our natural resources such as value-added wood products.

D. Local governments shall have substantial control over the use of any funds allocated to counties or communities for economic diversification, employment programs, and social services. Most timber communities have developed economic plans and seek funding assistance for plan implementation.

I appreciate the magnitude of the work that still needs to be completed to present an equitable, compromise position to the timber issue in the Northwest. Skamania County has summarized their position by saying that if everyone is dissatisfied with the solution then it must be the right solution. Good luck in the difficult work you have yet to complete.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Melissa Carlson-Price'.

Melissa Carlson-Price
Skamania County Commissioner

THE WHITE HOUSE

WASHINGTON

May 13, 1993

Mr. Clark H. Coan
331 Indiana Street
Lawrence, KS 66044

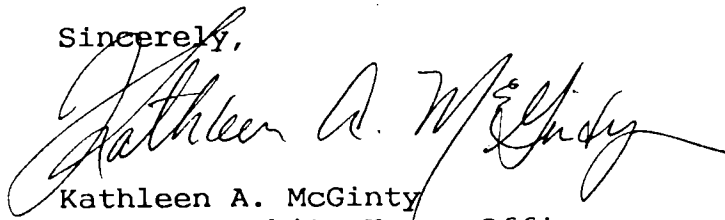
Dear Mr. Coan:

Thank you for contacting me regarding your efforts to the South Lawrence Trafficway Project through the Baker Wetlands. I apologize for the delay in my response.

As you know, I share President Clinton's and Vice President Gore's commitment to the preservation of our global environment. I appreciate learning of your work in this arena. I have forwarded your information to Lieutenant Williams of the Army Corps of Engineers for his review and response. I am sure that your concerns will be given every consideration.

Again, thank you for sharing your thoughts with me.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Kathleen A. McGinty', written over a horizontal line.

Kathleen A. McGinty
Director, White House Office on
Environmental Policy

KAM/avl

cc: Lieutenant Williams

331 Indiana St.
Lawrence, KS 66044

April 6, 1993

Ms. Kathleen McGinty
Deputy Assistant to the President
Office on Environmental Policy
The White House
Washington, DC 20500

Dear Ms. McGinty:

Congratulations on your appointment to head the Office on Environmental Policy. I'm sure that with your experience you will do an excellent job developing environmental policy alternatives for the President. Also, if the NEPA guideline-making functions of the former Council on Environmental Quality are transferred to your office, I'm sure you will see that the intent of this landmark law is fully carried out.

It was revealed in the confirmation hearings of EPA Administrator Carol Browner that she once stated that wetlands cannot be replicated. Clearly, humans don't understand how complex ecosystems such as wetlands function and thus can't hope to realistically re-create them. That is why I believe that the national "no net loss" wetlands policy is off the mark. The definition of "no net loss" means utilizing mitigation projects that require replication of wetlands. In essence, high-quality, natural wetlands are traded for low-quality, man-made "wetlands". A flooded field does not make a functioning wetlands. That is why I am writing you. The Federal Highway Administration (FHWA) and EPA hope to mitigate a direct taking of nearly 12 acres of the Baker Wetlands in Lawrence, Kansas by flooding a field and calling it a wetlands.

The South Lawrence Trafficway Project is a development scheme dreamed up in a secret meeting held by the local chamber of commerce and county commission. Even the official traffic count projections indicate that the road will not significantly reduce traffic. Most importantly, the preferred alignment of the South Lawrence Trafficway would directly obliterate 11.89 acres and drainage alterations created by road construction could shrink the wetlands even more. Likewise, polluted runoff from the road could harm the pollution-sensitive amphibians such as the Northern Crawfish frog, which has officially been designated as a Kansas species in need of conservation.

The Baker Wetlands was designated a National Natural Landmark in 1969 by the U.S. Department of Interior, former owner/custodian of the site. The landmark program was begun in 1962 to "identify and encourage the preservation of the full range of ecological and geological features that are nationally significant examples of the Nation's natural heritage." The Baker Wetlands contains "undisturbed examples of wetland prairie, and breeding ground for pintails, mallards and Canada geese." (*Federal Register*, Dec. 1, 1980, Part VI, *National Registry of Natural Landmarks*)

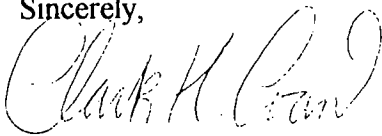
It should be pointed out that the Final Environmental Impact Statement (FEIS) for the trafficway is fatally flawed because the NEPA regulations require that "all reasonable alternatives" be "rigorously explored and objectively evaluated." However, the FEIS fails to examine the environmental impact of the route south of the Wakarusa River recommended in a 1971 State Highway Commission study. The recommended "South of the Wakarusa River" route would completely avoid the Baker Wetlands. Only by fully studying the environmental impact of all alternatives can decision-makers make rational choices. The NEPA regulations require that a supplemental or new EIS be prepared if reasonable alternatives are omitted.

Despite repeated requests by local environmentalists, the previous administrators of the FHWA and the EPA decided to ignore the law by refusing to prepare a supplemental EIS. EPA's own guidelines require that whenever a Draft EIS fails to consider a reasonable alternative it should receive an EO-3 rating, which requires the preparation of a new or revised DEIS. However, EPA Region VII in Kansas City erroneously gave the DEIS an EO-2 rating and cleared it for release as a final statement.

To ensure compliance with the law, local environmentalists filed a lawsuit against the FHWA and EPA in February. However, this has not stopped the FHWA from proceeding with right-of-way acquisition. Thus, we would greatly appreciate it if you would call Rodney Slater, the FHWA nominee, and Carol Browner and urge them to agree to a settlement stipulating preparation of a supplemental EIS or, at the minimum, suspension of all right-of-way acquisition activity while the case is in litigation.

All we want is to have the law followed so that our Nation's precious, vanishing wetlands have a chance of surviving. Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Clark H. Coan".

Clark H. Coan

THE WHITE HOUSE

WASHINGTON

May 26, 1993

The Honorable Sonny Callahan
Congress of the United States
House of Representatives
Washington, D.C. 20515

Dear Congressman Callahan:

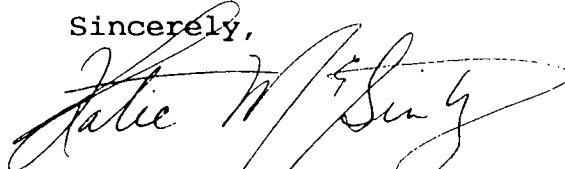
Thank you for contacting me regarding your work on the Forestry 2000 Task Force. It was good to hear from you.

The President and I believe that the Forest Conference held in Portland on April 2 was a significant step toward the resolution of the problems facing the Pacific Northwest. As you may know, three working groups have been established to work on developing a Forest Management Plan. The first group, working on ecosystem management assessment, is exploring management alternatives that attain the greatest economic and social contribution from the forests of the region and meet the requirements of the applicable laws and regulations. Working group two, concerned with labor and community assistance, will focus on an economic plan to address not just temporary efforts but long-term economic development and diversification of industries. The last working group will work to improve the relationships among federal and state agencies in the region and to eliminate impediments that block coordinated action.

I appreciate learning of your interest in being involved in all forthcoming matters related to forest issues. I look forward to working with you as we continue to forge a resolution to this very important matter.

Again, thank you for letting me hear from you.

Sincerely,

A handwritten signature in dark ink, appearing to read "Kathleen A. McGinty", written over a horizontal line.

Kathleen A. McGinty
Director, White House Office on
Environmental Policy

KAM/avl

SONNY CALLAHAN

1st District, Alabama

**COMMITTEE ON
APPROPRIATIONS**

SUBCOMMITTEES:
Foreign Operations
Military Construction

Congress of the United States
House of Representatives
Washington, DC 20515-0101

May 18, 1993

OFFICES:
2418 Rayburn Building
Washington, D.C. 20515-0101
(202) 225-4931

2970 Cottage Hill Road
Suite 126
Mobile, AL 36606
(205) 690-2811

Toll Free to District Office:
1-800-288-USA1

Ms. Katie McGinty
Office On Environmental Policy
Old Executive Office Building
Room 360
Washington, D.C. 20501

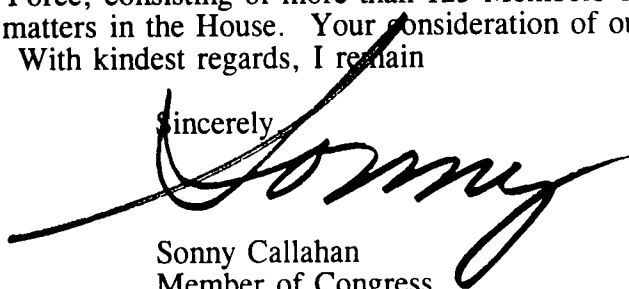
Dear Ms. McGinty:

As Chairman of the Forestry 2000 Task Force, on behalf of the entire membership, I respectfully request that we be considered as a voice to be heard on whatever solutions may be forthcoming related to forest issues.

We share your concern on these vital issues and believe both short-term and long-term solutions need to be considered in the administrative as well as legislative arenas in order to fully resolve crises facing timber production. Since there are several key issues approaching that will set the stage for legislation later on in the year, including the reauthorization of the Endangered Species Act, we would very much like to be included in the formulation of the proposed policies and legislation to be deliberated in the coming months.

The Forestry 2000 Task Force, consisting of more than 125 Members of Congress, is the leading authority on timber matters in the House. Your consideration of our request would certainly be appreciated. With kindest regards, I remain

Sincerely,



Sonny Callahan
Member of Congress

SC:gwn

cc: Dale Robertson,
USDA Forest Service

*July - need a
response*
Copy Cotton

THE WHITE HOUSE

WASHINGTON

April 29, 1993

The Honorable Jerry F. Costello
Congress of the United States
House of Representatives
Cannon House Office Building
Room 119
Washington, D.C. 20515

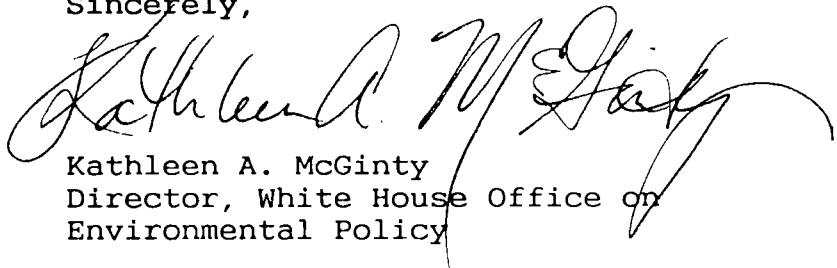
Dear Congressman Costello:

Thank you for contacting me regarding the work of Mr. Don Brown of Abdelmalek Associates, Inc. It was good to hear from you.

I certainly appreciate learning of Mr. Brown's efforts in creating a process to clean boiler flue gases. I have passed on the information to the Administrator Browner and Secretary O'Leary for their review.

Again, I appreciate hearing from you.

Sincerely,



Kathleen A. McGinty
Director, White House Office on
Environmental Policy

KAM/avl

cc: Administrator Carol Browner
Environmental Protection Agency
Secretary Hazel O'Leary
Department of Energy

JERRY F. COSTELLO

21ST DISTRICT, ILLINOIS

119 CANNON BUILDING
WASHINGTON, DC 20515-1321

TEL: (202) 225-5661

FAX: (202) 225-0285

1316 NIEDRINGHAUS AVENUE

GRANITE CITY, IL 62040

TEL: (618) 451-2122

FAX: (618) 451-2126

8787 STATE ST., SUITE 207

EAST ST. LOUIS, IL 62203

TEL: (618) 397-8833

Congress of the United States

House of Representatives

Washington, DC 20515-1321

COMMITTEE:
PUBLIC WORKS AND TRANSPORTATION

SUBCOMMITTEES:
AVIATION
SURFACE TRANSPORTATION
WATER RESOURCES

COMMITTEE:
SCIENCE, SPACE, AND TECHNOLOGY

SUBCOMMITTEES:
ENERGY RESEARCH AND DEVELOPMENT
SCIENCE RESEARCH AND TECHNOLOGY
SELECT COMMITTEE ON AGING

April 26, 1993

Ms. Katie McGinty
Director
Office of Environmental Policy
Vice President Gore's Office
O E O B, Room 36
Washington, D.C. 20501

Dear Ms. McGinty:

I am writing to make you aware of an environmentally-beneficial project that Mr. Don Brown of Abdelmalek Associates, Inc. of St. Louis has shared with me. Mr. Brown's engineering firm has created a process which would clean boiler flue gases, increase power production and liquefy sodium dioxide and carbon dioxide. I have enclosed for your information copies of documentation he has given me relating to this project.

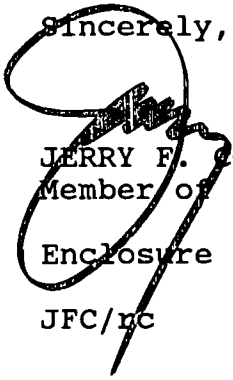
The flue gas cooling process will be capable of reducing the temperature of the boiler flue gas below its vapor dew point temperature to condense approximately 75 percent of the acid vapor and recover its heat of evaporation. Users will recover enough energy from flue moisture to increase their power production enough to recover their capital investment in five to six years or less.

This process can burn high sulfur coal without going to the use of an expensive scrubbing method and reduces coal consumption. The system will desulfurize gas and liquefy sodium dioxide and carbon dioxide which are marketable products in other industries. Several scientists and engineers in both Illinois and Missouri have reviewed the process and can endorse the process's benefits.

With coal being a major industry and energy source in my congressional district, I am supportive of technologies which will allow for cleaner burning coal and simultaneously be in compliance with federal and state clean air laws. I would ask that the Administration give this process full consideration for wide-scale implementation as a means of keeping in line with the nation's Clean Air Act guidelines.

A great amount of money and time have been invested in this process, and I would appreciate your sharing this information with the proper officials in the executive branch for further consideration. Please let me know your initial feelings on this matter. Thank you for your time and attention.

Sincerely,



JERRY F. COSTELLO
Member of Congress

Enclosure

JFC/rc

THE WHITE HOUSE

WASHINGTON

April 30, 1993

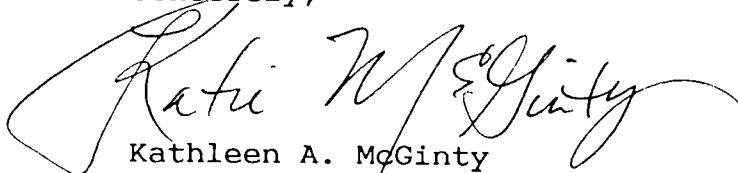
Ms. Karen Carlin
President & CEO
National Fund for the
U.S. Botanic Garden
245 First Street, S.W.
Washington, D.C. 20024

Dear Ms. Carlin:

The President asked me to express his appreciation for your hard work in preparing the Botanic Garden for his visit. I would like to thank you for your efforts in arranging the reception following the President's Earth Day Address.

Everyone thoroughly enjoyed themselves. Again, thanks for your help.

Sincerely,



Kathleen A. McGinty
Director, White House Office
on Environmental Policy

KAM/avl

*The cookies and lemonade
were great! Thanks again!*

THE WHITE HOUSE

WASHINGTON

April 30, 1993

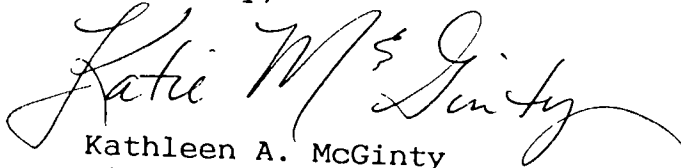
Mr. Jeffrey Coopersmith
Executive Director
United States Botanic Garden
245 First Street, S.W.
Washington, D.C. 20024

Dear Mr. Coopersmith:

On behalf of the President and the Vice President, I wish to express my appreciation for your hard work in preparing the Botanic Garden for our visit. Everyone was impressed with the great display of endangered species surrounding the President as he gave his Earth Day Address.

Again, thank you for your help.

Sincerely,



Kathleen A. McGinty
Director, White House Office
on Environmental Policy

KAM/avl

*Thanks again for all
of your hard work!*

THE WHITE HOUSE

WASHINGTON

March 3, 1993

Castro.CLM
Done 3/3

Mr. Luis Castro
Staff Assistant
Office of Senator Paul Simon
230 S. Dearborn
Kluczynski Building, 38th Floor
Chicago, IL 60604

Dear Mr. Castro:

I have received Senator Paul Simon's letter to Mr. Thurgood Marshall Jr. regarding a scheduling request with the Vice President made by Kenneth S. Marsh.

As we develop the Office on Environmental Policy, we hope to consider many suggestions and concerns from a variety of resources. While it is currently not possible to schedule a meeting with the Vice President, I would welcome any ideas Mr. Marsh would like to forward to our office.

Thank you for bringing this to my attention.

Sincerely,

Kathleen McGinty
Director, The White House
Office on Environmental Policy

United States Senate

WASHINGTON, DC 20510-1302

February 10, 1993

CASTRO. CLM

Mr. Thurgood Marshall Jr.
Legislative Affairs
White House
1600 Pennsylvania Ave.
Washington, D.C. 20500

Dear Mr. Marshall Jr.:

I received the enclosed correspondence from my constituent, Mr. Kenneth S. Marsh, concerning his ideas on environmental initiatives. For a more detailed explanation, please see the attached information.

I would appreciate your giving his request full and fair consideration. Please advise Luis Castro, staff assistant in my Chicago office, of your findings as soon as possible.

Thank you for your cooperation and assistance.

My best wishes.

Cordially,



Paul Simon
U.S. Senator

230 S. Dearborn (3892)
Chicago, Illinois 60604
(312) 353-4952

PS/lbc
Enclosure

12-19-92

10:14

KS MARSH & ASSOC

NO. 001

003



KENNETH S. MARSH & Associates, Ltd.

Consultants to the Food, Pharmaceutical and Packaging Industries
1228 Blakely Street • Woodstock, IL 60098 • USA • (815) 338-3500 • Fax (815) 338-3506

Senator Al Gore
Senate Office Building
Washington, DC 20510

November 24, 1992

Dear Senator Gore:

I am writing to offer support, both moral and expert, for your environmental efforts as you take on your new responsibilities with the Clinton administration.

As a scientist with expertise in packaging and environmental concerns, I was an organizer for the workshop on "Food Packaging, Food Protection and the Environment", held in Washington, DC November 7-8, 1990. Sixteen scientific societies, representing over 120,000 scientists and professionals endorsed the report that was hand delivered to your office on October 3, 1991. I have also written and spoken on this subject in the U.S. and abroad (and would be happy to send a list of papers and seminars). In summary, I am an environmentalist and a packaging scientist with knowledge and experience to develop environmental initiatives with intended beneficial effects, and foresee and eliminate the unintended negative consequences of specific legislative policy.

Over the past few years I have become increasingly concerned that proposed "solutions" to solid waste concerns may jeopardize the level of food safety that was described by C. Everett Koop as the highest in the world. Proposed legislation that presents a simple solution to a complex problem can have consequences on food contamination and/or disease transmission. Even some of the recognized experts have made statements that are either misleading or false.

I propose a meeting with you to discuss programs that will have a beneficial impact on the environment without unintended negative consequences that are scientifically predictable. I suggest this because I believe in a cooperative, non-adversarial interface between government and industry, and because I know what the industry can do, and should do. The ultimate result can be reduced red tape, reduced implementation costs, more rapid implementation, with policies that help the environment and recognize economic realities. I find this a compelling model for efficiency and effectiveness.

I look forward to your thoughts on this proposal.

Sincerely,

Kenneth S. Marsh, Ph.D.
President/Research Director

cc: Senator Paul Simon

12/19/92

10:14

KS MARSH & ASSOC

NO. 001

002



KENNETH S. MARSH & Associates, Ltd.

Consultants to the Food, Pharmaceutical and Packaging Industries
1228 Blakely Street • Woodstock, IL 60098 • USA • (815) 338-3500 • Fax (815) 338-3505

November 20, 1992

Senator Paul Simon
Dearborn Street
Chicago, IL 60

Dear Senator Simon:

I sent the enclosed letter to Senator Gore, to offer assistance on environmental matters. As your constituent and as an expert in packaging and the environment, I am asking you to arrange an audience with Senator Gore. I have sent you information on my activities in the past, and you were also given a copy of the report mentioned in the letter (the report was hand delivered to all Congressman, sent to each Governor, and submitted to interested agencies by the Institute of Food Technologists Office of Scientific & Public Affairs, based in Chicago).

I'll call you in mid-December to follow-up on this request.

Thank you for your assistance.

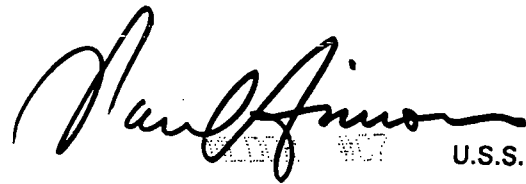
Sincerely,

Kenneth S. Marsh, Ph.D.
President/Research Director

United States Senate

WASHINGTON, DC 20510-1302

OFFICIAL BUSINESS


U.S.

RECEIVED

FEB 20 P12:58

MAIL ROOM TO GEORGE

Mr. Thurgood Marshall Jr.
Legislative Affairs
White House
1600 Pennsylvania Ave.
Washington, D.C. 20500

iii

Caron. (LM (3/2)

THE WHITE HOUSE
WASHINGTON

March 2, 1993

The Honorable Paul E. Caron
House of Representatives
Commonwealth of Massachusetts
Room 473B, State House
Boston, MA 02133

Dear Representative Caron:

I have received your information from Mr. Mark Gearan and appreciate your concern regarding chlorofluorocarbons. I have asked the Environmental Protection Agency's Air and Radiation Division to review the materials you enclosed.

Again thank you for your interest.

Sincerely,

Kathleen McGinty
Director, The White House
Office on Environmental Policy

THE WHITE HOUSE
WASHINGTON

February 2, 1993

The Honorable Paul E. Caron
House of Representatives
Commonwealth of Massachusetts
Room 473B, State House
Boston, MA 02133

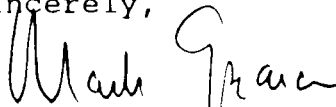
Dear Representative Caron:

Thank you for sharing your ideas on balancing environmental interests with economic growth and your concerns on the issue of chlorofluorocarbons.

As you know, Vice President Al Gore will be working with the Administrator of the EPA and the Special Assistant for the Environment in leading this administration's policy on the environment. I've taken the liberty of forwarding your concerns to Katie McGinty, special assistant to the President for the Environment, as well as Ann Hardison, chief-of-staff to EPA Administrator Carol Browner. You should be hearing from Katie or Ann's office in the near future.

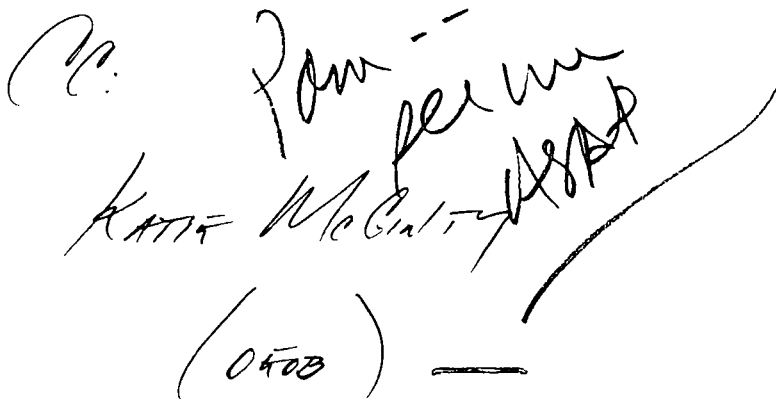
Paul, thanks again for sharing your thoughts. It was a pleasure hearing from you.

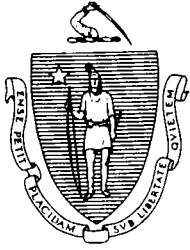
Sincerely,



Mark D. Gearan
Deputy Chief of Staff

cc: Ann Hardison
Katie McGinty





The Commonwealth of Massachusetts
HOUSE OF REPRESENTATIVES

PAUL E. CARON
REPRESENTATIVE
11TH HAMPDEN DISTRICT

Chairman
Committee on Public Safety
ROOM 473B, STATE HOUSE
BOSTON, MA 02133
(617) 722-2230

DISTRICT OFFICE:
535 MAIN STREET
INDIAN ORCHARD, MA 01151
(413) 543-8058

January 6, 1992

Mr. Mark Gearan
c/o Presidential Transition Team
1120 Vermont Avenue NW, 12th Floor
Washington, D.C. 20270

Dear Mr. Gearan,

I am writing in regards to what I see as a tremendous opportunity for President Elect Clinton to quickly begin to implement an idea which he discussed frequently over the course of the Presidential campaign. I am referring to the concept of combining economic growth with environmental concerns. I agree with President Elect Clinton that the economy does not need to suffer in order for environmental concerns to be properly addressed. Rather, the economy, environment and industry can grow together.

With this in mind I would call your attention to a grave environmental and economic concern facing our country today, the issue of chlorofluorocarbon reclamation. I know of this issue from personal experience with Theraflo of Springfield, a small family based company in Springfield, Massachusetts, and a division of American Theraflo Corporation. Theraflo of Springfield, an emerging "green technology" company which has developed a lightweight freon reclamation unit to recycle liquid refrigerant, was projected to do \$40 million of business this year. However, most of the projected business fell through due to the following circumstances.

The problem of chlorofluorocarbon reclamation was addressed with the Clean Air Act Amendments of 1990, according to which venting of chlorofluorocarbons (CFCs) was to have been illegal as of July 1, 1992. However, the regulations outlawing venting of CFCs were not in place in July, and will not be in place until April 1993.

The Office of Budget and Management has approved Environmental Protection Agency regulations to take effect in April. However, in the OMB approved regulations, mandatory certification of individuals involved in the venting of CFCs has been removed, and replaced with voluntary certification. This means that the EPA will not know who is involved in the affected industries, and therefore will not be able to enforce the new regulations.

The combination of the missed July 1992 deadline and the removal of mandatory certification from the regulations, has given many companies in the affected industries the misconception that this law is a "paper-tiger." In our country's present economic climate, far too many companies will, and many already have begun to, ignore this law. It will be far cheaper for companies to continue venting deadly CFCs into the atmosphere, than to comply with unenforceable new regulations.

In addition, there is a fledgling industry developing in our country as a direct result of the Clean Air Act Amendments of 1990, the CFC reclamation industry. This industry is indicative of the "green technology" which is just beginning to emerge around the world.

"Green technology" is the application of modern technology to environmental problems. There are many "green technology" industries developing worldwide today. One of them is CFC reclamation. The potential for the growth of these industries, as well as the economic growth which they will spur, is tremendous. President Elect Clinton could use the CFC reclamation industry as a centerpiece for an environmental technology strategy which could put American companies on the cutting edge of industry of the future. The regulations needed to enforce the Clean Air Act Amendments of 1990 are already in place for the President Elect, with one exception, the issue of mandatory certification. To make the new regulations work, President Elect Clinton would need to put mandatory certification back into the regulations, thereby giving EPA the ability to enforce a much needed law.

To understand the importance of CFC reclamation one only has to turn to the nightly news. At least once a week we hear reports of the "hole in the ozone layer." These reports are accurate in that the hole in the ozone layer is growing, and subsequently, so is the threat to the human race due to the disintegration of the atmosphere. A leading cause of ozone depletion is the release of CFCs into the atmosphere. If we fail to address this issue in the near future, it may be too late.

To demonstrate the potential for the CFC reclamation industry, I will use the above mentioned company in Springfield, Massachusetts. Thermaflo of Springfield developed and patented a machine which reclaims freon from the atmosphere. Freon is the gas used for cooling purposes in refrigerators and air

conditioners. Thermaflo's machine has the ability to gather and clean freon for further use, in effect recycling the gas.

When the Clean Air Act Amendments of 1990 were passed, Thermaflo's business increased by volumes. With the increase in business, Thermaflo experienced a need for more workers. As a **direct** result of the 1990 Amendments, Thermaflo, a small family business, hired an additional 250 employees. When one considers the subcontractors needed to build the parts for Thermaflo's freon reclamation devices, it becomes apparent that the 1990 Amendments alone were responsible for the creation of nearly 500 jobs. It should also be noted that these jobs were created in the midst of a recession, in a state hit harder than most by the recession, and in a section of the state which suffered disproportionately from the recession.

Thermaflo projected doing \$40 million of business this year. However, when the July 1, 1992 deadline for implementation of EPA enforcement regulations passed, followed by the issuance of OMB approved regulations without mandatory certification, Thermaflo's business dried up. The 250 additional workers who had been hired to meet demand have been let go, as have the workers hired by subcontractors to build Thermaflo's parts. The reasoning behind this is not difficult to figure out. The companies which needed Thermaflo's product to comply with the new regulations now realize that the EPA cannot enforce the regulations as they are, and therefore there is no reason to buy Thermaflo's product.

At a time when "green technology" is on the rise with unlimited potential for growth worldwide, I feel that we cannot destroy our fledgling industries as appears to be the case with CFC reclamation. OMB's decision to drop mandatory certification from the regulations, a decision heavily influenced by the Quayle Competitiveness Council, will render these new regulations unenforceable. If mandatory certification is not placed back in the regulations, it will be a death knell for the CFC reclamation industry.

We need to give our "green technology" industries and businesses every advantage we can. These industries will soon be vital to our country, as well as other countries worldwide. The market for "green technology" is just now being explored, and we must actively help American businesses pursue this exploration. When "green technology" begins to boom in the next several years, American firms should be in a position to compete with their foreign counterparts, a position they will not be in if such decisions as the removal of mandatory certification from CFC venting regulations are allowed to stand.

I would end by once again stating that I feel this provides President Elect Clinton with the opportunity to put his ideas concerning economic growth and environmental concerns into action quickly and efficiently, while at the same time providing support for "green technology." Thermaflo of Springfield would be more

than willing to assist the Clinton Administration in any way possible on this issue.

I have enclosed information which will help you better understand this problem. Thank you for your attention in this matter and I hope to hear from you in the near future. If you have any questions regarding this situation, or if you require additional information, feel free to contact me at (617) 722-2230.

With warmest regards,

A handwritten signature in cursive script, reading "Paul E. Caron". The signature is written in dark ink and is positioned above the printed name.

PAUL E. CARON
Chairman
Committee on Public Safety

cc: Stephen Scuderi - Thermaflo of Springfield

THERMA-FLO

Recycling to make a world of difference

Paul Caron
Ma. State Representative
8 Rhinebeck Ave.
Springfield, Ma. 01129

Dear Paul,

I am sending you the following supporting documents:

1. a memorandum on civil action no. 92-1225; including declarations by myself, Victoria Kamm of Thermal Engineering, and Steve Scods of R.S.I.,
2. a separate copy of my declaration,
3. a letter from Ellen Larson of A.C.C.A. to Arthur Fraas of O.M.B.,
4. a letter to the U.T.C. Carrier sales department from Ruth Johnson,
5. and a Sept. 14 headline article in the Air Conditioning, Heating & Refrigeration News.

The O.M.B. is currently reviewing refrigerant recycling regulations proposed by the E.P.A. as required by section 608 of the Clean Air Act.

There are many issues involved with these regulations, but two have the unanimous support of virtually every organization and company involved with our refrigeration industry. These two issues are:

1. Even though the Clean Air Act has made it illegal to vent refrigerants as of July 1, 1992, the E.P.A. has not been able to effectively enforce it.
2. Certifying technicians through a qualified course in recovery, recycling, and reclamation should be mandatory, not voluntary.

Both of these issues are discussed in detail by the supporting documents I have given you. The immediate impact, however, of not enforcing the law, and not requiring mandatory certification is to:

1. portray the law as a paper tiger,
2. encourage the venting of refrigerant,
3. hurt companies like mine that have heavily invested in green recovery technology,
4. and cause approximately 1000 people to lose their jobs.

THERMA-FLO

Recycling to make a world of difference

It seems that the O.M.B. is the bottleneck for both these issues. The E.P.A. cannot do its job without their financial support, and it is the O.M.B. (possibly with the encouragement of the Quayle Competitiveness Council) that has removed mandatory certification from the E.P.A.'s proposed regulations.

It is very important to all of us in this industry that the new administration be aware of this problem. With the administration's support we can easily reverse this situation, prevent the venting, and put people back to work again.

It seems to me that in most cases industry is reluctant to implement E.P.A. regulations in a timely manner. Here we have a rare case of the opposite. The U.S. refrigeration industry has worked hard, and invested much, to develop the programs and technology necessary to meet the demands of the Clean Air Act and the Montreal Protocol. However the E.P.A., and especially the O.M.B. have been dragging their feet. We could be setting an example for the rest of the world to follow, instead we are suffering from a lack of support.



Very truly yours,

Stephen P. Scuderi

Stephen P. Scuderi
Vice President
American Thermaflo Corp.

Worth.ltr

Recycling to make a world of difference

FACTS:

Chlorofluorocarbons (CFCs) are used in many facets of everyday life. They are used to air condition buildings, planes, trains and automobiles; they are used to sterilize medical equipment; they are used to clean delicate electronic equipment.

LAW:

Clean Air Act Amendments of 1990 (CAAA) state that as of July 1, 1992 it is unlawful to vent Class I and Class II substances (CFCs and HCFCs) during the maintenance, servicing or disposal of equipment using these substances.

EPA is required to write the regulations for enforcement of the law. These regs have been recently written and submitted to OMB. The following steps then take place:

- 1) EPA incorporates the OMB's comments and changes and send the regs out for public review (usually 45 days)
- 2) EPA incorporates changes and resubmits to OMB
- 3) Regs go into effect

There have been a number of companies that have manufactured products and developed services to assist technicians and service personnel recover and recycle CFCs and their alternatives. Most of these companies were racing the clock to provide equipment to satisfy the CAAA deadline as well as the anticipated regs from the EPA.

Two major events have taken place:

- o The July 1, 1992 deadline came and went without the EPA regs being in place - these regs were originally going to 1) push the no-venting law, 2) require recovery/recycling equipment certification, 3) require technician certification

RESULT: Many contractors/dealers/technicians who would have purchased equipment have not - research indicates that they are hesitant to purchase equipment that has not been certified, hesitant to go through a certification process that has not been finalized and in general hesitant to do anything until the regs are in place

- o The OMB in its first look at the EPA regs removed the requirement for mandatory technician certification (suggesting instead that it be voluntary)

RESULT: Contractors/dealers/technicians who use the equipment are now concerned about certification and are waiting in general for the regs (to see what else may or may not be included).

These two events in combination with the fact that the majority of the country is heading out of the cooling season and the fact that the cooling season in general this year was not as "hot" around the country has created the following problems:

- o Many recovery/recycling equipment manufacturers, who were racing to insure enough product to cover the calculated demand, are stuck with a large amount of inventory, have laid off numerous employees and have caused the layoffs of personnel from many other manufacturers and vendors who were supplying them with parts
- o Many wholesale/distribution houses around the country are stuck with a large amount of inventory causing economic hardship
- o Research indicates that approximately 30% of the market in the Heating Ventilating and Air Conditioning (HVAC) niche have purchased equipment to recover/recycle CFCs. What are the other 70% doing? It is assumed that these contractors/dealers/technicians are following previously used practices for dealing with CFCs - most notably VENTING.

DECLARATION IN SUPPORT

OF MOTION FOR SUMMARY

JUDGEMENT

CIVIL ACTION NO.
92-1225 (SS)

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA

DECLARATION OF STEPHEN P. SCUDERI

Stephen P. Scuderi under penalty of perjury, affirms and declares that the following statements are true and correct to the best of his knowledge and belief, and are based on his own personal knowledge or on information contained in the records of AMERICAN THERMAFLO CORPORATION or supplied to him by employees under his supervision at AMERICAN THERMAFLO CORPORATION.

My name is Stephen P. Scuderi, I am Vice President of AMERICAN THERMAFLO CORPORATION (THERMAFLO) IN Springfield, Ma.

Thermaflo is a leading manufacturer of refrigerant recovery equipment in the United States producing more than 30,000 recovery machines in 1992. Thermaflo is a very active member of the Air Conditioning Refrigeration Institute (ARI), having delegates on the ARI-700 and ARI-740 committees, as well as the ARI committee to certify off site refrigerant reclaimers. I personally am a member of the Stratospheric Ozone Protection Advisory Council, an ARI-740 committee member, and an ISO delegate for technical committee 36 which is preparing an ISO standard to rate recovery recycling machinery internationally.

I would like to make it clear from the start that I believe the people at the EPA have done an excellent job in the content of the regulations they have proposed to OMB. Their people have researched the problem and designed a set of regulations that have been embraced, for the most part, by our industry. And their ongoing correspondence with our industry has always been responsive, fair and diligent.

The problem is they are late. Very late. Not from a lack of effort, but, I believe, from a lack of resources. And that, unfortunately has caused problems for many companies investing in this area.

Our company was typical of several small companies that viewed this as an area of green technology that we could

We developed the recovery/recycling equipment necessary for our industry to meet the requirements of the Clean Air Act and the Montreal Protocol. When the demand for this equipment skyrocketed, we hired the people.

In Springfield, Ma., Thermaflo hired more than 200 people, and created more than 500 jobs when you consider all of our subcontractors. Our production capacity rose to meet the demand, and we were receiving inquiries from all over the world about our product. The possibility of exporting this green technology was excellent.

Unfortunately, the EPA was so far behind in promulgating its regulations that it was having trouble effectively enforcing the law. This became apparent shortly after July 1, of this year.

As a result some contractors perceived the law, however incorrect they may be, as a paper -tiger. Some continued to vent refrigerants. This created an unlevel playing field in which the contractors who were trying to adhere to the law had to compete against the ones who were illegally venting. Therefore, the demand for this equipment dried up, and we had to lay our people off.

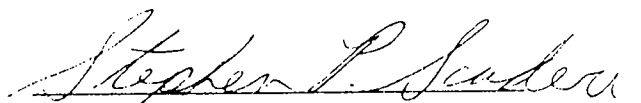
In Thermaflo almost all 200 employees have been laid off. We expected some attrition since this a cyclic industry tied to our cooling season (perhaps 25%), but the sudden and drastic drop in demand for the product can only be attributable to the lack of enforcement of the law.

I do not wish to advocate a witch hunt against our ultimate customers, the contractors. If violators are caught venting they must be given their constitutional right of due process. Also consideration must be given to the fact that industry was having trouble supplying the units in time to meet the demand.

But the law is a good one, and it must be made clear to everyone that it will be enforced. The longer it takes the EPA to finalize its regulations, the harder this will be.

Pursuant to 28 U.S.C. section 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed this 16th day of October, 1992, at American Thermaflo Corporation in Springfield, MA.


STEPHEN P. SCUDERI

NOV. 12, 1992

Dear Jeff, This just came in.

Stephen P. Scader

INDUSTRY NEWS

Mandatory CFC certification seen as not worth the costs

PALM SPRINGS, CALIF. — The White House Office of Management & Budget is opposed to making CFC technician certification mandatory because it figures it's not worth the trouble.

As EPA's Deborah Ottinger explained to service contractors here recently, "To rule in favor of it, OMB

must determine that the benefits of mandatory certification outweigh its costs. They obviously don't see it that way."

She told the contractors that if they want certification to be mandatory they need to communicate that, including letter writing to elected officials, EPA, OMB and trade maga-

zines, and by lobbying through their associations.

Several contractors questioned the effectiveness of the no-venting rule that went into effect July 1. Ottinger, however, said many tips on violators have been received and are being pursued. "We just can't point to someone and say, 'there is a viola-

tor,' and we've got them," she explained. "There are enforcement actions going on right now."

The refrigerant regulation session took place during the recent Mechanical Service Contractors Ass'n convention here.

MSCA chairman Kenneth Wohlfarth related that an MSCA member contractor recently reported an unannounced EPA inspection of a service site. The technician had to explain his recovery and recycling procedures.

Lack of mandatory technician certification in the Environmental Protection Agency's pending proposed CFC rules, alternative refrigerant development and use, and the management of future refrigerant supplies were thoroughly discussed by contractors at the MSCA convention.

According to Wohlfarth, the group sought to give its members the most timely refrigerant information possible.

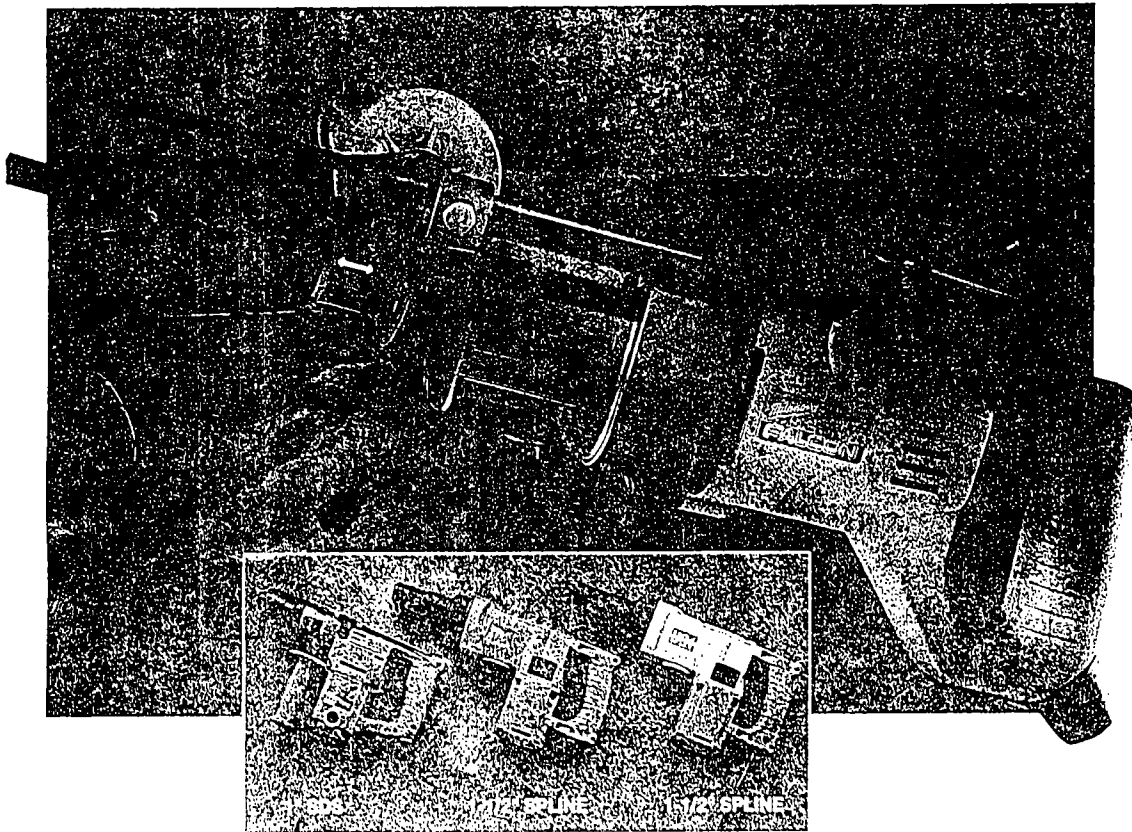
For example, James Wolf, chairman of the Alliance for a Responsible CFC Policy, spoke to the 240 attendees just two days after meeting with government officials about accelerated CFC phaseout dates.

"We've done such a good job phasing out production and reducing the need for new [CFC] refrigerant, [federal officials] are going to make us work even harder," Wolf said.

"We've proven we can reduce the amount of refrigerant we need by so much, we're going to be challenged to reduce even further, and at a faster rate."

It's expected that parties to the Montreal Protocol, meeting at the end of this month in Copenhagen, Denmark, will amend the treaty so as to phase out CFCs by the beginning of 1996.

Homebuilders install sprinklers in NAHB show model house



Milwaukee's new FALCON rotary hammer... American-made. American-tough.

The NEW Milwaukee FALCON is born and bred American. And it's raising some heavy-duty dust. This lightweight (6-12 pounds) rotary hammer is no lightweight when it comes to serious work.

It's got the power of a hammer drill plus a reversing motor.

ek

TECHNICIAN CERTIFICATION REMOVED FROM EPA RULE

by Thomas A. Mahoney

In a key move, the Office of Management and Budget removed the requirement for mandatory certification of service technicians as part of the proposed (and long-awaited) refrigerant recycling rule.

Last week, in response to OMB's direction, EPA began working on revised language that will call for a voluntary certification program.

This is the only "significant" change to the draft rule, which has been circulating within the industry for several months, said EPA's Debbie Ottinger.

The proposed rule—to be published within eight weeks—will invite industry comments on the desirability of a mandatory certification plan, she said.

However, it is not certain that an outpouring of favorable comments for mandatory certification would change OMB's mind. OMB reviews proposed regulations to determine their cost to the industries being regulated.

The requirement for mandatory certification of refrigerant recovery-recycling-reclaim units remains, she said.

Sales of these units have declined sharply, as many contractors watched the July 1 no-vent deadline pass without dramatic enforcement action by EPA.

Industry dismay

Several national service groups, which have invested time and money in testing and training people for certification, expressed dismay at the action.

They also are meeting in Washington this week to plan ways to get mandatory certification back into the rule. The meeting is sponsored by the Air Conditioning Contractors of America.

In a series of meetings over the past year, contractor groups, manufacturers, and other industry specialists have met at EPA's invitation to structure a training and testing program to comply with the expected mandatory certification program.

Earlier this summer, the group submitted a uniform data bank of test

questions to EPA, for use by certified training establishments. Whether all of that preparatory work has been wasted remains to be seen.

The earlier proposal of mandatory certification won support from many because it promised to help rid the industry of unqualified service people, said Dick Shaw, a program manager at Ferris State University, Big Rapids, Mich.

Without evidence of certification, these people would have been unable to buy refrigerant from wholesalers, significantly preventing them from competing against those who had been tested and certified.

Restraint of trade?

However, without mandatory certification, wholesalers who refused to sell refrigerant to non-certified technicians could find themselves charged with restraint of trade, Shaw said.

"The government is shooting itself in the foot," said Bill Podd, who runs the education and certification program for the Refrigeration Service Engineers Society (RSES).

The society already has tested more than 20,000 service technicians on the assumption that its program would be grandfathered-in by EPA.

Podd said lack of mandatory certification would result in shoddy work practices.

Working with Ferris State, ARI has certified another 10,000 people and also wants to retain mandatory certification.

Moreover, equipment manufacturers have begun training service technicians for certification.

The only way to keep mandatory certification is by an overwhelming industry response, according to Bar

(Next Page, Please)

Four companies achieve ARI's r-r certification

ARLINGTON, Va.—Four additional companies are participating in the Conditioning and Refrigeration Institute's (ARI's) certification program for recovery-recycling machines.

are: Carrier Corp.; Goodman Manufacturing Corp.; ReKlame, Inc.; and Trane Company.

Also, three other companies signed license agreements and will become participants upon passing initial qualifying tests, the institute said.

The addition brings the total of participating qualified companies to

Fixing customers

WHEN IT COMES to service, Sibley Services has the right attitude. Technicians don't just repair equipment—they fix customers. The contractor's customer "partnering" philosophy works. Story on page 28.



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is stitched
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nbers for
nation and

ells energy savings school district

ares through traditional funding
ources, such as the California
tate Deferred Maintenance Pro-
gram.

However, many ideas never came
to fruition due to lack of funds.

The Honeywell design-build pro-
gram used a 10-year lease-pur-
chase contract funded from the
issuance of certificates of partici-
pation. After construction is com-
pleted, energy and operational
savings will provide the cash flow
to make lease payments.

The district also contracted with
Honeywell to provide maintenance
and training over the 10-year con-
tract. The savings guarantee speci-

fies that energy and operational
savings will be sufficient to make
lease and maintenance payments.

Any shortfall will be made up by
Honeywell.

The company worked with the
school staff to identify equipment
additions and retrofit solutions.
The company will provide the dis-
trict with hvac automation and
efficiency improvements, lighting
retrofits, and controls moderniza-
tion.

Further information on the pro-
gram is available by calling 800-
345-5770, ext. 930.

Technician certification

(Continued from Preceding Page)

Dolim, of the Mechanical Service
Contractors of America.

"We don't support a voluntary
certification program. We would
rather have no program at all than
a voluntary one," Dolim said. "It
won't work, and it has proved not to
work in other circumstances.

"Unless it's mandatory, the fly-
by-night contractors won't get
trained and certified. They'll con-
tinue to do what they've always
done, which is harming us."

Her group recently issued a re-
frigerant-handling guideline to be
incorporated in all local training
programs, and purchased a new data
base system to accommodate a test-
ing program.

Another stumbling block could
crop up if the presidential election
results in a new administration,
Dolim said. Any final rule would
not be issued before the Nov. 3 elec-
tion, and a new administration may
freeze any regulations, pending a
new team at EPA.

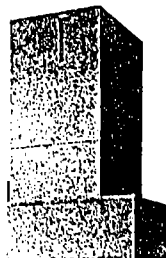
In its review of the draft rule,
OMB agreed to retain several other
provisions, such as requiring that
reclaimed refrigerant meet ARI
Standard 700 purity levels.

Also untouched is the rule's re-
quirement that HCFCs, such as R-
22, be subject to the recycling rule.

Once published, there will be a
public meeting at which industry
specialists can give their opinions,
along with a 45-day period for writ-
ten comments.

Introducing 20+ SEER*, Humidity Control, And Hot Water. Seriously!

nt SEER with dehumidification and water-heating: almost sounds hard to
it? But that's just what you get with "Powermiser," the amazing new



'SMACNA issue' now Oct. 12

A change in the dates of the
Sheet Metal and Air Condi-
tioning Contractors' National
Association's (SMACNA's) an-
nual meeting to Oct. 12-15 has
made it necessary for *The News*
to distribute the Oct. 12 issue
at that event. *The News*' 1992
Editorial Calendar had shown
bonus SMACNA distribution
of Oct. 19 issues. This is no
longer possible.

ABC attacks Bush for backing union agreement

WASHINGTON — President
Bush's refusal to withdraw his
support of the union-only agree-
ment on the Boston Harbor
Cleanup Project has caused the
Associated Builders and Contrac-
tors (ABC) to withhold re-election
support.

In a brief submitted to the Su-
preme Court, the ABC announce-
ment said, "The administration
reiterated its support of the union-
only project provision on the \$6.1
billion Boston Harbor Cleanup
Project—the largest public works
project in the history of Massa-
chusetts. The Supreme Court has
agreed to review the case this fall."

ABC president Steven Westra, a
general contractor from Waupun,
Wis., said he was "outraged by the
President's support of the union-
only provision" on the project, and

September 16, 1992

ATTN: SALES DEPARTMENT

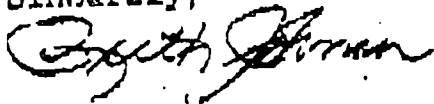
A decision has been made to cease production of our TotalClaim and TotalSave product lines effective immediately. This decision was reached after thoroughly reviewing market conditions related to enforcement of the Clean Air Bill. Without this enforcement, we do not anticipate any further demand for these products above the levels that we have already produced.

Please stop all component and assembly production and shipments related to these product lines **IMMEDIATELY**. We have identified the affected purchase orders on the attached sheet.

We recognize that this situation may result in excess inventories of raw and finished material, and a Buyer from Carrier Transicold Purchasing Department will be contacting you within the next few weeks to assess the magnitude and address the disposition of all materials.

We truly regret that this decision had to be made and we appreciate your understanding and prompt attention to this matter.

Sincerely,



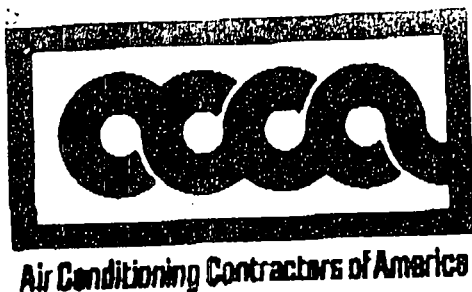
(Mrs.) Ruth Johnson
Purchasing and Material
Control Manager

*Carrier has laid off
more than 100 people.*

Stephen P. Sanders
11/10/92

/C1a
RJ-9/16/92





August 28, 1992

Arthur Fraas
Natural Resources Branch Chief
Office of Information and Regulatory Affairs
Office of Management and Budget
3019 New Executive Office Building
725 17th Street, NW
Washington, DC 20503

Dear Mr. Fraas:

I am writing to you on behalf of the Air Conditioning Contractors of America (ACCA) to offer some observations on proposed refrigerant recycling regulations now under OMB review (P.L. 101-549, Title VI, Section 608). These regulations will have a momentous effect on our members.

ACCA is a nonprofit trade association of heating, ventilating, and air conditioning (HVAC) contractors. These are firms, individuals and/or corporations who design, install, service and repair environmental systems. ACCA represents nearly 3,000 members and 50 affiliated chapters across the country. Associate members of ACCA include HVAC equipment manufacturers, wholesalers and distributors, vocational and technical schools, and utilities.

Air conditioning and refrigeration contractors already are feeling the impact of the Clean Air Act Amendments of 1990. The July 1, 1992, prohibition on intentional venting of chlorofluorocarbon (CFC) and hydrochlorofluorocarbon (HCFC) refrigerants requires businesses to invest in costly refrigerant recovery and/or recycling equipment as well as training for service technicians. We believe that some aspects of EPA's draft proposal (5/21/92) are right on target. Other proposals, however, would severely impede contractors' abilities to comply with section 608 requirements and maintain a viable business.

ACCA will submit official comments to EPA when the proposed rule is published. As you assess the government's role in these regulations, please consider the air conditioning contractor's perspective on the following issues: 1) recycling restrictions; 2) leak repair; 3) refrigerant sales; 4) recordkeeping; 5) technician certification; 6) HCFC controls; 7) enforcement.

1) Restrictions on Recycling

EPA proposes to require that refrigerant which changes ownership must be reclaimed to ARI Standard 700-88 specifications.

ACCA believes that such a requirement will effectively prohibit the practice of recycling. Eliminating one of the two options for dealing with recovered refrigerant will increase costs for contractors and consumers and may even reduce compliance with the law against intentional refrigerant releases. Contractors should be able to choose appropriate, cost-effective methods for complying with the law.

After recovering refrigerant, contractors should be able to decide whether to:

return the used refrigerant to the system without any cleaning or reprocessing,

recycle the refrigerant using an EPA-approved recycling machine, or

transport the refrigerant to a reclamation facility.

In an ACCA survey this spring, 47% of the respondents indicated they planned to implement a combination of recovery, recycling and reclamation in their contracting business. 66% said that EPA's proposal to prohibit the use of recycled refrigerant when there was a change in ownership would seriously hamper their compliance plans.

Many contractors are now recycling refrigerant for their customers at rates significantly lower than the cost of new or reclaimed refrigerant. Customers reportedly are pleased with the option and respond positively to the idea of recycling.

Prohibiting recycling at the inception of this CFC containment effort could have adverse long-term consequences. Without a market for recycled refrigerant, technological advances in recycling equipment will be stifled as well as improvements in the on-site capability of removing refrigerant contaminants.

Many areas of the country are not serviced by reclamation centers. Contractors in these areas would be at a clear disadvantage if recycling was not an option for complying with the law.

Contractors who purchased recycling equipment in preparation for the July 1, 1992 no-venting deadline will suffer financially. Furthermore, Section 608 distinctly calls for the "recycling" of ozone-depleting refrigerants.

While ACCA believes that EPA is going beyond its ozone-protection mandate by virtually eliminating the recycling option, we appreciate the need to safeguard the quality of used refrigerant.

Therefore:

ACCA supports the development and use of a recycled refrigerant purity standard.

In the absence of an approved standard, ACCA supports adoption of industry-recognized guidelines for recycling refrigerant.

To avoid the emergence of unregulated and unmonitored "recycling centers," ACCA recommends that recycled refrigerant be restricted for use only in appliances which are serviced by the same contracting firm.

2) Leak Repair

ACCA strongly urges EPA to require the repair of substantial refrigerant leaks.

Common sense tells us that charging leaking appliances is, in fact, "intentional venting." Owners as well as contractors and technicians should be held responsible for preventing refrigerant releases. The credibility and effectiveness of Section 608 already has been undermined by this omission.

Environmentally-responsible contractors have "walked away" from jobs where the owner insists on "topping off" a leaking system, only to be replaced by contracting companies who have no intention of complying with any portion of the law and will gladly oblige.

3) Purchase of Refrigerant

The key to making EPA's ozone-protection rules work, we believe, is to restrict the sale of ozone-depleting chemicals. EPA proposes to allow only certified technicians to purchase refrigerant. ACCA strongly recommends that refrigerant purchase be tied instead to registered contracting companies.

This would allow the contracting company to retain its current relationship with the wholesaler -- company owners, not technicians, order and pay for refrigerant. In addition, contractors need to be allowed to use "helpers" and other lower-skill personnel (rather than higher-paid technicians) to pick up refrigerant from the wholesaler and deliver it to the shop or job site.

Contractor registration could easily be accomplished. EPA proposes to require contractors to submit a statement to EPA verifying the ownership of certified recovery equipment and employment of certified technicians. A contractor registration program need only take this requirement a step further by attaching registration numbers to the signed statements. Pre-numbered, carbon-copy forms could easily be developed for this purpose.

The contractor-owner is responsible for controlling the distribution of the refrigerant. Moreover, the contractor-owner is ultimately responsible for complying with the law and is most vulnerable to penalties and fines.

If ozone-depleting refrigerants are indeed a controlled substance, they should be treated as such and sold only to law-abiding companies.

4) Recordkeeping

Most of the recordkeeping requirements in EPA's 5/21/92 draft are reasonable. For their own accounting needs, contracting companies will keep inventory of refrigerant purchased and consumed by each customer. However, ACCA opposes the proposed requirement to keep a record of the amount of refrigerant purchased and used by their company each month. Such a record serves no useful purpose either to the EPA or to the contractor.

5) Technician Certification

ACCA wholeheartedly supports training and testing for persons who service air conditioning and refrigeration systems.

Training in the proper procedures for recovery, recycling, reclamation, leak repair and safe handling of ozone-depleting refrigerants is critical for reducing CFC/HCFC emissions. Testing for knowledge of Clean Air Act requirements and environmental consequences of refrigerant venting will greatly increase awareness of the issue and compliance with EPA regulations.

We think it is entirely appropriate for EPA to require certification. Industry will, and already is, conducting training programs and is working closely with EPA to develop industry-accepted tests. Most technicians have little if any experience working with recovery/recycling equipment. It is in the best interest of the public and the environment that technicians do not release refrigerants into the atmosphere, a practice that was standard operating procedure for many years. Training is essential to change old ways, and testing is needed to prove that technicians are indeed competent.

From the contractor's point of view, training and testing of technicians has its costs, but the long term benefits far outweigh the drawbacks. In the HVAC industry, as in others, time is money. Proper training for technicians in the new Clean Air Act requirements will help technicians explain the new law to consumers quickly and accurately. Proper training in the technical aspects of recovery and recycling will reduce time on the job, improve productivity for a company, and will educate technicians in the safe handling of refrigerants and proper disposal of used oil and other materials. Moreover, proper training will provide more assurance to contractors that their employees are not violating the law.

6) HCFC Controls

CFCs are widely recognized to be more harmful to the Earth's ozone layer than HCFCs and are scheduled for phaseout on December 31, 1995. HCFCs are scheduled for phaseout in 2030. ACCA believes that HCFCs are critical as a transition refrigerant as we move to CFC alternatives.

Mr. Arthur Fraas
August 28, 1992
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While HCFCs are less destructive than CFCs, HCFCs do have a relative ozone depletion potential and are included in the no-venting law. Although not required by law, EPA is proposing to include HCFCs (Class II) substances in the proposed recycling regulations. ACCA believes this is appropriate. Because deliberate venting of HCFC refrigerants is prohibited, what will technicians and contractors "do" with the chemicals? It makes sense to recycle these valuable substances as well.

7) Enforcement

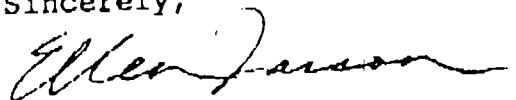
All of the efforts associated with the new ozone-protection law and the considerable costs to thousands of U.S. businesses will be pointless if the law is not aggressively enforced. HVAC contractors who comply with this law are concerned they will be undercut by competitors who do not comply and who do not incur the same costs. Unfortunately, our industry has had a bad experience in this regard. State licensing laws often are not enforced, allowing many unscrupulous "contractors" to operate freely and rendering contractor licensing virtually meaningless.

Our other concern is that contracting companies who comply with the law will be held liable for a disproportionate share of refrigerant venting violations. Contractors have the responsibility to develop a company policy against venting, for purchasing proper recovery/recycling equipment, and for training their technicians. Beyond that, technicians who deliberately violate the company's policy and the law should be held accountable. HVAC equipment owners who insist on re-charging a leaking system should be held accountable.

In summary, ACCA supports efforts to protect the Earth's ozone layer. We have explained the July 1, 1992, venting prohibition to our members and are trying to tell them how to comply even though regulations have not yet been published. As outlined above, we believe that many of the requirements EPA might propose to implement this law are appropriate. Other proposals need more careful scrutiny, however, as to the impact they will have on a substantial number of U.S. businesses.

We appreciate your consideration of our views and invite OMB to contact ACCA with any questions.

Sincerely,



Ellen Larson
Director of Government Relations

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MARYLAND ENVIRONMENTAL INTEREST GROUP,
et al.,

Plaintiffs,

v.

WILLIAM K. REILLY, in his official
capacity as Administrator,
United States Environmental
Protection Agency,

Defendant.

Civil Action No.
92-1225 (SS)

REPLY MEMORANDUM IN SUPPORT OF
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

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56 Fed. Reg. 54065. 17

The only remaining issue for resolution in this action is the fashioning of an appropriate remedial schedule for this clear violation of law. Defendant Reilly (hereinafter also referred to as "EPA") argues that competing agency priorities and resource needs require a schedule that would not result in the promulgation of final National Recycling and Emissions Reduction Program regulations until May 31, 1993, eighteen months after the Clean Air Act deadline. Yet all but 45 days of EPA's proposed 7 1/2

month schedule consist of further governmental review of the 608(a)(1) regulations, even though the government has been working on the regulations since 1990. Claussen Declaration at ¶ 12, attached to Opposition of William K. Reilly, Administrator, United States Environmental Protection Agency, to Plaintiffs' Motion For Summary Judgment ("EPA Memorandum").

EPA fails to explain why it requires an additional month simply to publish draft regulations for comment when these draft regulations have been completed since June of this year. The agency further fails to explain why it requires five months for two separate tiers of agency review of final regulations and why these two levels of review cannot occur concurrently. Finally, EPA continues to insist on a schedule that provides for further Office of Management and Budget ("OMB") review, despite the fact that OMB review is not legally authorized where a statutory deadline has been violated. Memorandum In Support Of Plaintiffs' Motion For Summary Judgment ("Plaintiffs' Opening Memorandum") at 21-22.

As an alternative, plaintiffs propose an expeditious, yet reasonable, schedule for promulgation of the final National Recycling and Emissions Reduction Program regulations in light of EPA's failure to even publish draft regulations nearly 11 months after the statutory deadline. EPA can publish the draft regulations immediately, and should be ordered to do so. However, in the interest of narrowing the issues before the Court, plaintiffs accept EPA's proposed schedule to the extent it

requires defendant Reilly to sign the draft regulations and transmit them to the Office of the Federal Register by November 5, 1992, with publication by November 12, 1992. Claussen Declaration at ¶¶ 20-21. Plaintiffs also accept the 45-day notice and comment period urged by EPA, ending on December 27, 1992. Id. at ¶ 22. The only remaining issue, then, is the final promulgation date.

In its moving papers, plaintiffs requested that the Court order EPA to conduct its review of comments and revision of the regulations within 30 days. In the interest of further narrowing the issues before the Court to expedite the Court's decision, plaintiffs request that the Court order EPA to conduct its review of comments, revision of the regulations if necessary, and promulgation of final regulations within 90 days or by March 31, 1993, at the latest. Thus, under plaintiffs' proposed schedule, EPA has 5 1/2 months from today's date to complete this long overdue rulemaking. This schedule is feasible and more than reasonable. See Natural Resources Defense Council v. United States Environmental Protection Agency, 1992 WESTLAW 158767 at 2 (E.D.N.Y. July 6, 1992) (Exhibit 9 to Plaintiffs' Opening Memorandum) (EPA ordered to promulgate similarly overdue regulations required by Clean Air Act in four months with 60 days for final agency review).

Promulgating final regulations is critical to averting further stratospheric ozone depletion and global warming -- twin threats to public health and the environment. Plaintiffs'

Opening Memorandum at 2-11. EPA's inaction -- which the agency candidly admits violates federal law -- has thwarted Congress' carefully crafted solution to these global crises. Plaintiffs respectfully request that the Court expeditiously rule on their motion and accept their proposed compliance schedule to ensure that the 608(a)(1) regulations are promulgated on the fastest schedule feasible.

I. EPA MISINTERPRETS THE RELEVANT LAW GOVERNING THIS COURT'S
EQUITABLE POWERS TO FASHION AN APPROPRIATE REMEDIAL
SCHEDULE

To support its lengthy remedial schedule, EPA asserts that this Court should give due deference to the agency's evidence of its priorities and capabilities when fashioning an appropriate administrative schedule. EPA Memorandum at 6-10. EPA has misinterpreted the relevant law governing the court's equitable powers when a statutory deadline for promulgating regulations has been missed.

EPA first cites to In re Barr Labs., Inc., 930 F.2d 72, 74 (D.C. Cir. 1991), cert. denied, 112 S.Ct. 297 (1991), to support its due deference argument. Id. at 7. This case simply is inapposite. In Barr Labs, a drug company challenged the Food and Drug Administration's ("FDA") failure to act promptly to either approve or disapprove the company's generic drug applications. 930 F.2d at 73. The issue presented was whether the court should exercise its equitable powers to order FDA to expedite consideration of Barr Laboratory's application over other pending applications. Id. Circuit Judge Williams concluded that the

case was not appropriate for equitable relief because while prompt disposition of Barr's application might be in the public interest, so would the disposition of other pending applications. Id.

In this case, EPA has conceded that this Court should exercise its equitable powers to fashion an appropriate remedial schedule. EPA Memorandum at 2 ("The sole issue in this case is therefore establishment of a reasonable schedule for final agency action."). Thus, the discussion in Barr Labs about whether the court should exercise its discretion, and the language quoted in EPA's memorandum, is irrelevant to this case. More to the point, nowhere in Barr Labs does Judge Williams state or even suggest that a court should defer to an agency's position on its priorities and capabilities in fashioning an appropriate administrative schedule when the agency has failed to promulgate regulations by a statutory deadline.

EPA next argues that the Court should take "into account the agency's assessment of its own priorities and capabilities" in fashioning a remedial schedule, relying on Natural Resources Defense Council v. Train, 510 F.2d 692 (D.C. Cir. 1975). EPA Memorandum at 7-10. EPA also misreads this case. In Train, the District of Columbia Circuit considered EPA's failure to issue effluent guidelines required under the federal Clean Water Act. In its decision, the court divided the effluent guidelines into two groups: those covering the industries specifically listed in the Act as requiring guidelines within one year ("Group I"), 510

F.2d at 704-05, and those that were not so listed ("Group II"), id. at 705-06.

As to the effluent guidelines for Group II industries, the Court of Appeals found that EPA had some limited discretion with regard to timing because Congress had not included an explicit deadline. Id. at 710-14. In discussing the appropriate deadline for the Group II industries, where no explicit statutory deadline existed, the Train court stated that under some circumstances SPA's proposals might be followed where the court is convinced that EPA "has in good faith employed the utmost diligence in discharging [its] statutory responsibilities," because a party should not be compelled to "'to do an impossibility.'" Id. at 713. The Train court cautioned, however, that courts should "scrutinize [impossibility] claims carefully since officials may seize on a remedy made available for extreme illness and promote it into the daily bread of convenience." Id.¹ As to the Group I industries, the Court of Appeals agreed with the District Court that EPA had a "mandatory, non-discretionary duty" to issue the rules within one year and the Court of Appeals upheld the District Court's prescribed remedy: an order with specific deadlines compelling EPA to complete its non-discretionary duty within one year after the deadline had been missed. Id. at 697, 704.

¹ Accord Alabama Power Co. v. Costle, 636 F. 2d 323, 39 (D.C. Cir. 1979); Sierra Club v. Thomas, 658 F. Supp. at 171; Sierra Club v. Gorsuch, 551 F. Supp. at 787; State v. Gorsuch, 554 F. Supp. at 1064.

Finally, in support of its theory that Train provides leeway for EPA and its assessment of its priorities and capabilities, EPA relies upon Illinois v. Costle, 12 Env't Rep. Cas. (BNA) 1597 (D.D.C. 1979) and Environmental Defense Fund v. Thomas, 627 F. Supp. 556 (D.D.C. 1986). EPA Memorandum at 9-10. But, as the court explained in Sierra Club v. Thomas, these decisions "misconstrue[d] Train. . . . [Train] does not impose a pure good faith standard . . . , but clearly requires the agency to demonstrate that it is proceeding with utmost diligence." 658 F. Supp. at 171 n.5. Thus, to be afforded any leeway, EPA must demonstrate that it is "completely unable to fulfill [its] duties" more expeditiously. State v. Gorsuch, 554 F. Supp. at 1065 n.4.

In sum, the cases cited by EPA do not support its contention that its remedial schedule is entitled to deference. Rather, as another district court has concluded in a strikingly similar case, "'when...a statute sets forth a bright-line rule for agency action...('Not later than December 31, 1980 ...'), there is no room for debate -- Congress has prescribed a categorical mandate that deprives EPA of all discretion over the timing of its work.'" Natural Resources Defense Council v. United States Environmental Protection Agency, 1992 WESTLAW 158767 at 2 (E.D.N.Y. July 6, 1992) (Exhibit 9 to Plaintiffs' Opening Memorandum), quoting American Lung Ass'n v. Reilly, No. 92-6060, slip op. at 10 (2d Cir. May 4, 1992).

II. EPA'S BURDEN IN ESTABLISHING THAT IT CANNOT MEET A MORE EXPEDITIOUS SCHEDULE IS ESPECIALLY HEAVY

A. In Framing Equitable Relief, Courts Must Follow Congressional Mandates Unless EPA Demonstrates Infeasibility

In framing a remedial schedule, the court must comply with Congress' explicit instructions and objectives, unless EPA meets its "heavy burden to demonstrate the existence of an impossibility." Alabama Power Co. v. Costle, 636 F.2d 323, 359 (D.C. Cir. 1979).²

Here, Congress explicitly stated that EPA must issue the National Recycling and Emissions Reduction Program regulations by January 1, 1992. 42 U.S.C. § 7671(a)(1). This Congressional mandate plays a key role in Congress' scheme to reduce emissions of ozone depleting substances and greenhouse gases to the lowest achievable level before and during the decades-long phase out in the manufacture of these substances. 42 U.S.C. § 7671g; Plaintiffs' Opening Memorandum at 9-11. These man-made substances have created two distinct but related global environmental crises: stratospheric ozone depletion and global warming. Plaintiffs' Opening Memorandum at 2-6. Only by drastically reducing and ultimately eliminating the emissions of these substances will these crises be averted. Id.

² Accord Natural Resources Defense Council v. United States Environmental Protection Agency, 1992 WESTLAW 158767 at 2 (E.D.N.Y. July 6, 1992) (Exhibit 9 to Plaintiffs' Opening Memorandum); Sierra Club v. Thomas, 658 F. Supp. 165, 170 (N.D. Cal. 1987); New York v. Ruckelshaus, 21 Env't Rep. Cas. (BNA) 1721, 1723-24 (D.D.C. 1984); State of New York v. Gorsuch, 554 F. Supp. 1060, 1063-64 (S.D.N.Y. 1983); Sierra Club v. Gorsuch, 551 F. Supp. 785, 787-88 (N.D. Cal. 1982).

Now that Congress' January 1, 1992 deadline for EPA action has been missed, the Court's order should follow Congress' mandate as closely as possible by ordering the most expeditious compliance schedule feasible. See, e.g., Natural Resources Defense Council v. United States Environmental Protection Agency, 1992 WESTLAW 158767 at 4 (E.D.N.Y. July 6, 1992) (Exhibit 9 to Plaintiffs' Opening Memorandum). Plaintiffs' proposed schedule obviously would require more expeditious promulgation of the 608(a)(1) regulations. Importantly, this schedule also is feasible.

1. EPA Has Not Met Its Burden To Prove Impossibility

EPA has not met its burden to prove that it would be impossible to promulgate the 608(a)(1) regulations on plaintiffs' proposed schedule. As outlined in the introduction of this brief, plaintiffs' proposed schedule is identical to EPA's except that it limits EPA final review of the regulations after the notice and comment period to 90 days, as opposed to the 150 days urged by EPA. EPA's proposed 150 day period for further governmental review after the close of the public comment period provides a full 90 day period for staff review and then an additional 60 day period for review of the proposed final regulations by senior EPA management, other federal agencies, and Administration staff. Claussen Declaration at ¶¶ 23-29.

A single 90 day period for both EPA staff and EPA senior management review is more than adequate. By way of comparison, a district court recently limited EPA to a final review period of

60 days in a substantially similar case. See Natural Resources Defense Council v. United States Environmental Protection Agency, 1992 WESTLAW 158767 at 4 (E.D.N.Y. July 6, 1992) (Exhibit 9 to Plaintiffs' Opening Memorandum).

Moreover, no justification exists for such prolonged final review under these circumstances. First, although EPA is obligated to respond to public comment, EPA already has received and considered extensive public comment on its proposed rulemaking issued in 1990, Claussen Declaration at ¶ 12, which should expedite its review of public comments on the draft regulations. EPA also has consulted with "a wide range of affected parties, including other EPA offices, associations representing air contractors and technicians, environmental groups and various affected industry groups" and conducted "several dozen meetings to discuss issues and determine approaches," *id.*, both steps which should have assisted EPA in anticipating and responding to public comments. See also, id. at ¶¶ 13-14. Finally, EPA has conducted studies "to evaluate the effectiveness of various regulatory strategies," *id.* at 15, an additional step that will allow EPA to quickly and accurately respond to public comments.

Second, EPA presents no specific reasons why EPA senior management review of almost-final regulations requires an additional 60 days and why this review cannot, even in part, occur concurrently with the staff review. See Environmental Defense Fund v. Reilly, 89-0598, slip op. at 2-4 (D.D.C. Feb. 21,

1990) (Exhibit 1) (court rejects EPA proposal for 30 day final review, directing Administrator to sign final Resource Conservation and Recovery Act regulations within two weeks of order). EPA also alludes to further OMB review, stating that this 60 day period "includes the time necessary for the Administration as a whole to review the rule . . . [which has] widespread regulatory impacts for conformance with general Administration." Claussen Decl. at ¶ 24. Any additional delay of the regulations for OMB review is unlawful. See Plaintiffs' Opening Memorandum at 21-22.

2. EPA's Excuses Do Not Justify A Lengthy Remedial Schedule

EPA suggests that the Court should accept its proposed 7 1/2 month schedule because "Congress imposed a massive rulemaking task on EPA in the 1990 Clean Air Act amendments," and the 608(a)(1) rulemaking "cannot be accomplished without due consideration to the competing resource and manpower demands of these numerous other rulemaking responsibilities." Claussen Declaration at ¶ 11.³

EPA's generalized complaint that the Clean Air Act's accelerated air pollution reduction scheme is too much work does not justify EPA's proposed 7 1/2 month schedule. It is EPA's responsibility to seek and allocate resources to meet Congressional or court-ordered deadlines and failure to do so

³ This statement casts doubt on EPA's later assertion that "EPA could not effectively speed up its work on this rule by the commitment of more resources." Claussen Declaration at ¶ 28.

does not justify failure to fulfill a statutory duty. See Sun Enterprises, LTD v. Train, 532 F.2d 280, 290 (2d Cir. 1976); Natural Resources Defense Council v. EPA, 595 F. Supp. 1255, 1270 (S.D.N.Y. 1984). Moreover, "shifting resources in response to statutory requirements and court orders is commonplace for EPA." Sierra Club v. Thomas, 658 F. Supp. at 174.

Although EPA may be faced with numerous competing demands and priorities, EPA simply is not free to adjust Congress' explicit deadline for promulgation of the 608(a)(1) regulations in light of its own view of the priority that these requirements should take. If EPA feels overburdened by the regulatory agency of the Clean Air Act, it must seek relief elsewhere: "In the absence of a showing of impossibility, EPA must look to Congress, not this Court, for an extension of time." Sierra Club v. Thomas, 658 F. Supp. at 175. Accord State v. Gorsuch, 554 F. Supp. at 1065; Sierra Club v. Gorsuch, 551 F. Supp. at 1066.

Instead of seeking extensions from Congress, EPA has represented that it could meet the Clean Air Act deadlines. At a Congressional hearing in May 1991, EPA Assistant Administrator for Air and Radiation William G. Rosenberg was asked whether EPA had sufficient personnel resources to meet the Clean Air Act regulation deadlines during the first two years after CAA enactment. Mr. Rosenberg stated that he thought EPA did have sufficient resources. See Excerpts from May 1, 1991 Congressional hearing at 246, 247, Exhibit 2; see also, Natural Resources Defense Council v. United States Environmental

Protection Agency, 1992 WESTLAW 158767 at 3 (E.D.N.Y. July 6, 1992) (Exhibit 9 to Plaintiffs' Opening Memorandum) (rejecting EPA's argument for a lengthy remedial schedule because of competing agency priorities, citing Mr. Rosenberg's testimony).

EPA also states, without supporting legal citations, that "if the Court does not adopt the Agency's proposed schedule, EPA would be forced to promulgate the refrigerant recycling regulations without complying with the procedural requirements of the Administrative Procedure Act and the CAA, making its actions vulnerable to legal challenge. . . ." Claussen Declaration at ¶ 31. No basis for this proposition exists. In fact, plaintiffs' proposed 5 1/2 month schedule includes exactly the same amount of time for public comment and hearing as does EPA's, and as detailed above, other courts repeatedly required EPA action in similar situations in far less than the 150 days proposed by EPA.

Finally, EPA sets forth at length the reasons for its past delay in issuing the draft regulations from May 1990 through present. See Claussen Declaration at ¶¶ 12-19. This long explanation is not germane to the only issue now before the Court, which is the determination of the fastest feasible compliance schedule for the future.⁴

Moreover, EPA's explanation in no sense justifies its delay.

⁴ If germane at all, this long history demonstrates that EPA has had years to develop emissions reduction regulations and still has failed to issue for public comment even a draft of these regulations.

In the nearly two years from the enactment of the Clean Air Act to the present, EPA has encountered no exceptional difficulties in the process of developing the draft regulations other than the routine bureaucratic rulemaking procedures that Congress was aware of when it enacted the Act. EPA's own decision, not required by Congress, to conduct meetings and prepare studies prior to drafting regulations, Claussen Declaration at ¶¶ 13-15, does not justify failure to meet Congress' deadline because "[t]he Agency may fulfill its mandate to issue regulations as well as satisfy its lingering technical and policy concerns by issuing regulations and later consider revision if the Agency's understanding and expertise expand." State of Illinois v. Gorsuch, 530 F. Supp. 340, 34 (D.D.C. 1981). See also, Sierra Club v. Thomas, 658 F. Supp. at 174 ("EPA's litany that 'further study always makes everything better' . . . has never been persuasive."). Finally, there is no conceivable excuse for OMB's illegal review of the proposed draft regulations, which has now continued for almost five months. See Plaintiffs' Opening Memorandum at 21-22.

B. EPA's Unnecessarily Lengthy Proposed Schedule Will Adversely Affect Public Health, The Environment, And Businesses Dependent On The Issuance Of These Regulations

EPA asserts that no undue injury to the public or the environment would occur by allowing EPA an additional two months to promulgate the 608(a)(1) regulations. EPA Memorandum at 16. EPA's argument simply is disingenuous.

EPA has conceded that stratospheric ozone depletion and the

greenhouse effect are among "the most significant environmental problems addressed by the CAA." EPA Memorandum at 16. EPA has admitted that broad scientific evidence demonstrates that "depletion of the stratospheric ozone layer will lead to increased levels of ultraviolet radiation penetrating to the earth's surface resulting in potential health and environmental harm, including increased incidence of skin cancer, cataracts, suppression of the immune system, and damage to crops and aquatic organisms." Answer of Defendant Reilly To First Amended Complaint at ¶ 3. EPA has admitted that scientists now are reporting ozone loss over Antarctica and Northern America, and that emissions of man-made substances such as CFCs are responsible for this loss. *Id.* at ¶¶ 4-5. To then suggest that no harm results from the agency's failure to promulgate regulations necessary to control the emissions of CFCs and other ozone-depleting substances -- especially when none of these substances have been phased out -- strains all credibility.⁵

Moreover, EPA has ignored the substantial adverse impact to businesses that relied on EPA's statutory obligation to promulgate the 608(a)(1) regulations by January 1, 1992, and still are waiting for these regulations to be proposed. Based on the statutory mandate of the Clean Air Act, these businesses

⁵ Where health and the environment is at stake, the Court should order EPA to proceed with promulgation of the 608(a)(1) regulations on expeditious schedule. See Public Citizen Health Research Group v. Aucter, 702 F.2d 1150, 1157 (D.C. Cir. 1983); Natural Resources Defense Council v. EPA, 595 F. Supp. at 1269-70.

spent millions of dollars and hired hundreds of employees to construct, market, and sell equipment to capture and recycle CFCs and other ozone-depleting substances. See Declarations of Stephen P. Scuderi, Victoria M. Kamm, and Steven R. Sords, Exhibits 3-5. This equipment is necessary to comply with the prohibition on venting ozone depleting substances currently in effect pursuant to section 608(c) of the Clean Air Act, 42 U.S.C. § 7671g(c), and will be necessary to comply with the 608(a)(1) regulations whenever they are issued.

EPA delay in promulgating these regulations has created massive confusion in the air conditioning and refrigeration industries about which equipment ultimately will satisfy EPA, and thus few in these industries are willing to invest in recycling equipment in advance of the final rulemaking. Id. As a consequence, those businesses that relied on the assumption that EPA would comply with Congress' mandate to issue the regulations by January 1, 1992 now are unable to sell their recycling equipment and are losing millions of dollars a month and laying off hundreds of employees. Id. From the perspective of these businesses, the faster the regulations are issued (especially the earliest next spring so that supplies can be ordered and equipment can be manufactured and sold prior to the busy summer air conditioning repair season, id.), the better. Id. For this reason alone, plaintiffs' proposed March 31, 1993 promulgation date avoids significant further harm to these businesses and

their employees compared to EPA's proposed May 31, 1993 promulgation date.

C. The Court's Order Should Include Specific, Binding Compliance Milestones.

EPA's proposed schedule sets forth only "anticipate[d]," or "estimate[d]" milestones. Claussen Declaration at ¶¶ 20-25. The Court should be aware that, unfortunately, EPA in the past has not proven capable of meeting its own estimated dates for issuance of the emissions reduction program regulations. See, e.g., 56 Fed. Reg. 54065 (October 21, 1991) (wherein EPA announced that final action on the 608(a)(1) regulations would be completed in July of 1992) (Exhibit 8 to Plaintiffs' Opening Brief).

EPA's continued inability to meet its own internal deadlines for promulgating the 608(a)(1) regulations, as well as Congress' mandatory deadline, underscores the need for the Court to enter plaintiffs' proposed 5 1/2 month compliance schedule, with specific, binding milestones.⁶

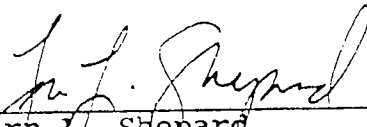
CONCLUSION

Plaintiffs respectfully request that the Court grant summary judgment and accept and enter plaintiffs' proposed 5 1/2 month schedule for final issuance of the 608(a)(1) regulations. Because each further day of EPA delay adversely affects public health, the environment, and recycling businesses dependent on

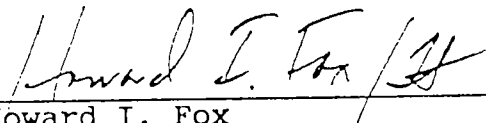
⁶ For these same reasons, should this Court decide to adopt EPA's proposed schedule, the deadlines should be set forth in a specific, binding court order to ensure EPA's compliance.

the issuance of these regulations, plaintiffs respectfully ask that the Court expedite consideration of this matter.

Respectfully submitted this 16th day of October, 1992.



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Attorneys for Plaintiffs Maryland
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing REPLY MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT was deposited with the United States mail, postage prepaid, on this 16th day of October, 1992, addressed to the following:

Kevin W. McLean
U.S. Environmental Protection Agency
M/C LE-132A
Air & Radiation Division
401 M Street, S.W.
Washington, D.C. 20460

Alice Mattice
U.S. Department of Justice
Environment and Natural Resources
Environmental Defense Section
P.O. Box 23786
Washington, D.C. 20026-3986

David Doniger
NRDC
1350 New York Avenue, NW
Suite 300
Washington, DC 20005

Donna Redda

Exhibit 1

Environmental Defense Fund v. Reilly, No. 89-0598 (D.D.C.
February 21, 1990)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ENVIRONMENTAL DEFENSE FUND, INC.,)

Plaintiff,)

v.)

WILLIAM K. REILLY, et al.,)

Defendants,)

v.)

AMERICAN PETROLEUM INSTITUTE,)

Intervenor-Defendant,)

and)

EDISON ELECTRIC INSTITUTE, et al.,)

Intervenor-Defendants.)

Civil Action No. 89-0598
(RCL)

FILED

FEB 21 1990

Clerk, U.S. District Court
District of Columbia

MEMORANDUM AND ORDER

This matter comes before the court on plaintiff's oral motion for partial summary judgment to require the Administrator of the Environmental Protection Agency to immediately issue the agency's organic toxicity characteristics rule.

The court has reviewed the opposition filed by EPA, the opposition filed by defendant-intervenors Edison Electric Institute, et al., and the American Petroleum Institute, as well as plaintiff's reply and the record herein.

Plaintiff's motion will be substantially granted, for the reasons set forth herein.

Section 3001(h) of the Resource Conservation and Recovery Act, 42 U.S.C. § 6921(h), required EPA to promulgate regulations "identifying additional characteristics of hazardous waste, including measures or indicators of toxicity." Although it is now more than 18 months since the deadline established by Congress in the statute for promulgation of these rules, EPA continues to delay issuance despite OMB having expedited and completing its review within 4 days of its receipt of the rules, rather than the 30 days allowed by Executive Order 12291. EPA refuses to similarly expedite its own actions.

EPA argues that the new Administrator now wants to conduct his own personal, final review of the rulemaking package, and that the agency needs time to assure that the record is properly assembled. EPA fails to explain why the new Administrator - who has been in office a year - could not have conducted his review prior to this time, or at least simultaneous with the OMB review. EPA totally fails to explain what they have done to expedite this rule after failing to meet their own earlier estimates to the court regarding when the rule would be issued. In June, 1989, Sylvia K. Lowrance, Director of EPA's Office of Solid Waste, estimated that the final rule would be issued in November, 1989. She explained that although it was proposed in June, 1986, it was technical and complex and there had been four additional comment periods, closing in the summer of 1988 - now more than 18 months ago. The new rule

was not promulgated in November, 1989, however, and Ms. Lowrance, in a Declaration dated January 19, 1990, revised her estimate to the end of March, 1990. She claimed at that time that the "rule is currently undergoing final revisions in response to final Agency review." She expected that following the 30-day period of OMB review, her staff would "make any necessary final revisions to the rulemaking package and transmit the rule to the EPA Administrator for promulgation."

Now that OMB's speedy review action - notably in sharp contrast to EPA's action - has removed 26 days from that schedule, EPA still wants the additional 26 days. EPA has now filed a declaration of Don R. Clay, Assistant Administrator for EPA's Office of Solid Waste and Emergency Response, dated February 14, 1990 (the day after OMB concluded its review), claiming the agency still needs the same amount of time - to the end of March, 1990 - "to assemble the lengthy administrative record for this rulemaking and provide the Administrator with a final briefing." The court cannot accept this conclusory statement, and EPA has offered no factual support for it. The court will shorten EPA's schedule by 26 days, to March 5, 1990.

The court accepts the government's statements that OMB has completed its review, and the issue of OMB review of other regulations in this case will have to await another occasion. The continuing delay as to this rule - as it has been for the last 38

months - is solely the responsibility of EPA.

EPA did not even attempt to have the Administrator look at the final rule simultaneously with OMB, as it has done in other cases where promulgation of the rule was months or years past a statutory deadline. See, e.g., E.D.F. v. Thomas, 627 F.Supp. 566 (D.D.C. 1986).

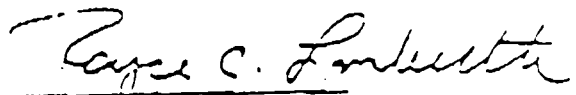
Plaintiff and EPA both agreed at the court's hearing on the defendants' pending motions that the court must now determine whether the agency has proposed a reasonable schedule to bring itself into compliance with the statutory deadline. EPA has failed to demonstrate that the schedule it has proposed as to its toxicity characteristic rule is reasonable. The court will, however, allow EPA until March 5, 1990, to complete its work and brief its Administrator.

Accordingly, it is hereby

ORDERED that plaintiff's oral motion for partial summary judgment as to EPA'S promulgation of the toxicity characteristic rule is GRANTED, and it is further

ORDERED that EPA shall promulgate the toxicity characteristic rule in accordance with Section 3001(h) of the Resource Conservation Recovery Act, 42 U.S.C. § 6921(b), no later than March 5, 1990.

SO ORDERED.



ROYCE C. LAMBERTH
United States District Judge

DATE:

CLEAN AIR ACT IMPLEMENTATION
(Part 1)

HEARINGS
BEFORE THE
SUBCOMMITTEE ON
HEALTH AND THE ENVIRONMENT
OF THE
COMMITTEE ON
ENERGY AND COMMERCE
HOUSE OF REPRESENTATIVES
ONE HUNDRED SECOND CONGRESS
FIRST SESSION

MARCH 21, 1991—INCINERATORS AND PARK PROTECTION
MAY 1, 1991—PERMITS
JULY 22, 1991—WEPKO RULE

Serial No. 102-55

Printed for the use of the Committee on Energy and Commerce



the administration and the Senate, pass what I think is a pretty good bill. I will monitor carefully what you are doing to make sure the issues today because we think you are going in the wrong direction. We are certainly with EPA's actions from outside the Council on Competitiveness. We do not want to make it impossible to have environmental protection we all thought we had with the 1990 Clean Air Act amendments.

We will look closely with you. We probably will have other hearings on the Clean Air Act.

Mr. Chairman.

for today. We stand adjourned. The committee adjourned, to reconvene at the

CLEAN AIR ACT IMPLEMENTATION

Permits

WEDNESDAY, MAY 1, 1991

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ENERGY AND COMMERCE,
SUBCOMMITTEE ON HEALTH AND THE ENVIRONMENT,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:05 a.m., in room 2123, Rayburn House Office Building, Hon. Henry A. Waxman (chairman) presiding.

Mr. WAXMAN. The meeting of the subcommittee will come to order.

I would like to welcome everyone to the subcommittee's second hearing on the implementation of the Clean Air Act of 1990.

Last November, President Bush signed the Clean Air Act Amendments of 1990, capping more than a decade of debate. Although the law is far stronger than the administration's initial proposal, the President endorsed the measure and enjoyed considerable credit for doing so. The Clean Air Act remains the administration's single-most important domestic policy success.

Now, however, that achievement is being tarnished. There is unmistakable evidence that the White House officials, spearheaded by Vice President Dan Quayle, who heads a White House creation, called the Council on Competitiveness, are working with industry to undermine the implementation of the new clean air law. This is particularly true with regard to the new permit proposal that EPA released last week.

The permit program is supposed to be the cornerstone of the effort to regulate chemical plants, oil refineries and other stationary sources. Unfortunately, changes advocated by the Vice President create such a huge loophole for polluters that it will actually be more difficult to enforce the Clean Air Act under the new proposal than it is today under the old law.

The subcommittee is today releasing an April 6 memo from the Office of the Vice President demonstrating how he has sabotaged the most important rulemaking to date under the new Clean Air Act. This memo includes the comments on EPA's original proposal which was forwarded to the agency as part of the Vice President's regulatory review process for the proposed permit rule.

More than 100 changes are listed by the Vice President's Council on Competitiveness on the draft by EPA, none which serve to strengthen the permit program, and almost all would weaken it.

that the Executive of this Nation is doing what he was elected to do, that he is seeing that our administration speaks with one voice and I want to hope and encourage you to keep going the way you are going and not be bullied into doing something that you don't think is proper by people on this committee or other Members of Congress. Thank you.

Thank you, Mr. Chairman.

Mr. WAXMAN. Thank you, Mr. Lent.

Mr. Dingell.

Mr. DINGELL. Thank you, Mr. Chairman.

Mr. ROSENBERG, during the next 2 years, EPA has to issue a number of guidances to the States, a number of standards, a number of regulations and rules, which are essentially the same thing, and you have to deal with a large number of State actions. Approximately how many of each must you do during that period of 2 years?

Mr. ROSENBERG. To implement the Clean Air Act, about 55 regulations and some 20 guidances, and then, of course, there will be specific interpretations that staff has to review of a number that I couldn't estimate, but in terms of major regulations and guidances, about 70 or so.

Mr. DINGELL. Now, you will have to do a large number of rules—rather, State action approvals. You will have to approve a large number of State actions under the Clean Air Act.

Mr. ROSENBERG. To the extent they submit things under those regulations for our approval, we would have to determine if they met those requirements. Most of those, I think, would be beyond the 2-year deadline, Mr. Chairman.

Mr. DINGELL. You also will have to approve a number of SIP's will you not?

Mr. ROSENBERG. The SIP—we will, and of course, that will also pick up in terms of how much we have to do as we issue these regulations.

Mr. DINGELL. Do you have sufficient personnel resources to meet the deadlines on these regulations and see to it that they are completed in a timely fashion?

Mr. ROSENBERG. I think we do for the first 2 years. I can't speak beyond that. We have received approximately a 46 percent increase in—from our 1990 levels for 1991 and 1992, 70 percent of all the increases for operating funds that went to EPA were dedicated to the air program and we are hiring people as fast as we actually can.

Mr. DINGELL. Now, you have said that. Can you meet your deadlines?

Mr. ROSENBERG. If we can get these rules out and commented upon, we have, as you know, a 2-year, month-by-month schedule. What was very important to us was to meet this particular deadline because it was so controversial and we needed to have the public input during the proposal process. Mr. MacRae, who manages the gate, if you will, on whether we can issue these and EPA have worked out a procedure that we hope we can live with that gives adequate review to the executive branch under Executive Order 12291, and so far, we are meeting most of the deadlines. We are having a little startup problem, but I am pleased that this particular regulation did come out on time.

good. We just got into it.

Mr. DINGELL. Will you provide the standings you have between yourself and the manner in which these actions are going please?

Mr. ROSENBERG. Certainly,

Mr. DINGELL. Now, having said that, question yes or no? Do you have the personnel, other things that you need to complete prescribed time limit?

Mr. ROSENBERG. I think we have the have the schedule and I can't predict that we have a plan that allows us to be optimistic that we will.

Mr. DINGELL. Now, Mr. Rosenberg, I estimate that there will be some 34,000 permits on the basis of that application—of that estimate these permit applications come?

Mr. ROSENBERG. Our OAQPS Office does estimate, consulting with the regions of the that would be subject to this regulation. said in the first 5 years, minor sources—sources did not have to obtain permits taken it into the several hundred thousand.

It is our best guess of what would be submit rules—permits under the acid rain or title III and we did a survey around that that estimate would be.

Those people who are major sources would submit to the States after the States secure State operating permit program. In the not submit an approvable program, then obviously could be—some of those sources submit to EPA, although in our budget, States will meet their requirements and do that.

Mr. DINGELL. What is the basis for the some thousand?

Mr. ROSENBERG. I will have to submit our professional staff in North Carolina estimate.

Mr. DINGELL. Could there be more or could?

Mr. ROSENBERG. I am sure it is not exactly the basis for it.

Mr. DINGELL. You have discussed today for sources. What is the legal authority for?

Mr. ROSENBERG. Can I ask our counsel?

Mr. DINGELL. You may.

Mr. ELLIOTT. There is a provision in defer permitting if we find that it is in necessarily burdensome for categories exempt any major source from such regulation 502(a).

this Nation is doing what he was elected to do. That our administration speaks with one voice and encourage you to keep going the way you are. Don't be bullied into doing something that you don't want to do. People on this committee or other Members of

Thank you, Mr. Lent.

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ular regulation did come out on time. So I would say, so far, so good. We just got into it. ... the committee with the under-

Mr. DINGELL. Will you provide the committee with the understandings you have between yourself and OMB with regard to the manner in which these actions are going to be approved by OMB, please?

Mr. ROSENBERG. Certainly,

Mr. ROSENBERG. Certainly, Mr. DINGELL. Now, having said that, is the answer to the question yes or no? Do you have the personnel, the authority and the other things that you need to complete these actions within the prescribed time limit?

Mr. ROSENBERG. I think we have the personnel and I think we have the schedule and I can't predict that we will meet them, but I think we have a plan that allows us to meet them and I am optimistic that we will.

Mr. DINGELL. Now, Mr. Rosenberg, I understand that you estimate that there will be some 84,000 permit applications. What is the basis of that application—of that estimate, and from whom will these permit applications come?

Mr. ROSENBERG. Our OAQPS Office down in Durham did an estimate, consulting with the regions of the number of major sources that would be subject to this regulation. I might point out that we said in the first 5 years, minor sources—things that were not major sources did not have to obtain permits because that would have taken it into the several hundred thousand range potentially.

It is our best guess of what would be those people who have to submit rules—permits under the acid rain title or under the title I or title III and we did a survey around our regions to find out what that estimate would be.

those people who are major sources would be submitting applications to the States after the States secure EPA's approval on the State operating permit program. In the event that the States do not submit an approvable program, then some of those States conceivably could be—some of those sources could be submitting applications to EPA, although in our budget, we are assuming that the States will meet their requirements and we will not be having to do that.

Mr. DINGELL. What is the basis for the estimate of 34,000 or 250,000 thousand?

Mr. ROSENBERG. I will have to submit that for the record. It was our professional staff in North Carolina that provided that estimate.

Mr. DINGELL. Could there be more or could there be less?

Mr. ROSENBERG. I am sure it is not exactly precise, but I will give you the basis for it.

Mr. DINGELL. You have discussed today the exempting of nonmajor sources. What is the legal authority for that action by EPA?

Mr. ROSENBERG. Can I ask our counsel to answer that?

Mr. ROSENBERG. Can I ask a question?
Mr. DINGELL. You may.

Mr. ELLIOTT. There is a provision in title V that allows us to defer permitting if we find that it is impractical, infeasible or unnecessarily burdensome for categories except that we may not exempt any major source from such requirements. That is in section 502(a).

ing the burden of a complete application?

an application that is incomplete. I do think that we—

the authority—
to establish a—

In the statute to support section

the general authority of an agency to create presumptions after a period of time, really a statute of limitations.

saying is that if there is an ambiguity—benefit polluters under these regulations—don't wink and blink—this

that was exactly what I was saying,

but then if there isn't—if there isn't a specific, the twist is going to occur of a kind of general grant of authority in

as given us, in section 502(b), about a guidance as to what the character of the permit program. Then they have, in addition to that, of creating a much larger set of administrative requirements. What we have 88 pages is to put flesh on the bare

minimum requirements that Congress set out with the understanding that that was in-

clear here that what has happened is very tortuous compromises that the industry involved in, came up with a good compromise everyone posed for the holy pictures releases, and the rest of it on it, in the air.

process of putting the guts to it, the regulations, made proposals that would do to the benefit of the industry and to the public health of the citizens of the country. It is based on ambiguities that aren't there, a majority that somehow can overcome

the industry's favorite weapon is delay, if not a grant of—informal grant of authority. If you don't have to kill it off officially.

RCRA, the Resource Conservation and Recovery Act, issue regulations controlling emissions by May 1987. These facilities are a source of smog-causing VOC's in that they kill more than 100 people each

A year and a half ago, EPA submitted a rule to you that would have cut emissions from facilities dramatically by more than 2 million tons per year, yet despite the long-overdue statutory deadline, the statute was specific, despite the enormous benefits of the agency's proposal, despite the deaths and the smog, OMB has refused to process this regulation.

Death by delay is a terrible fate. I want your assurance that this will not happen to the permit rule or any other rules under the new Clean Air Act. Will you commit to us that OMB will not hold any regulations past their due date under the new Clean Air Act?

→ Mr. MACRAE. Absolutely.

Mr. SIKORSKI. And you agree with that, Mr. Rosenberg?

Mr. ROSENBERG. Yes, and I might point out that this rule has not been delayed.

Mr. SIKORSKI. No, we are just—listen, we have tried kicking the football that you, as Lucy, have held for several times over the course of the years, and I just want to make sure that we are not beating our rear end down and the OMB picking up the football or someone else picking up the football.

Mr. ROSENBERG. Part of the advantage for our having the consultations with the White House on a broad basis, which we are doing, is that I think that we mutually share the schedule for the Clean Air Act, which, of course, was proposed by the President, and we have previously furnished to the committee, our month-by-month schedule for the next 2 years that we are working diligently to achieve, with the cooperation from the White House.

Mr. SIKORSKI. You just understand that paranoia doesn't mean that people aren't delaying?

Mr. WAXMAN. Will the gentleman yield to me?

Mr. SIKORSKI. Yes.

Mr. WAXMAN. Mr. Rosenberg, you have this cooperative arrangement, but you also have some other arrangement within EPA where you said you want to have a process where you work with industry and business as well as others affected by the law to reach consensus decisions and that is obviously a laudable objective, but why would industry—if industry can go to Vice President Quayle's Office to seek major weakening changes, even ones that are, I think, in clear violation of the law, then why would they ever want to participate in good faith with EPA in any negotiated rulemaking efforts where they would have to settle for half a loaf?

Mr. ROSENBERG. I think that the industry position on this particular issues was not—

Mr. WAXMAN. I am not asking about any particular issue—

Mr. ROSENBERG [continuing]. Adopted by either the White House or EPA. I mean, industry is concerned about the clarification of these issues in many cases as well. They are concerned about being sued by environmentalists; they are concerned about how the States are—

Mr. WAXMAN. They are being taken care of, as we have seen, because they get a shield from lawsuits under this permit change if they simply notify in 7 days and the State doesn't open its mail in time, they can just amend their permit and never have to be sued. That is a shield from a lawsuit. But I am not talking about that specific one; I am talking about this process. You have lauded to us

THERMAFLO

Recycling to make a world of difference

DECLARATION IN SUPPORT

OF MOTION FOR SUMMARY

JUDGEMENT

CIVIL ACTION NO.
92-1225 (SS)

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA

DECLARATION OF STEPHEN P. SCUDERI

Stephen P. Scuderi under penalty of perjury, affirms and declares that the following statements are true and correct to the best of his knowledge and belief, and are based on his own personal knowledge or on information contained in the records of AMERICAN THERMAFLO CORPORATION or supplied to him by employees under his supervision at AMERICAN THERMAFLO CORPORATION.

My name is Stephen P. Scuderi, I am Vice President of AMERICAN THERMAFLO CORPORATION (THERMAFLO) IN Springfield, Ma.

Thermaflo is a leading manufacturer of refrigerant recovery equipment in the United States producing more than 30,000 recovery machines in 1992. Thermaflo is a very active member of the Air Conditioning Refrigeration Institute (ARI), having delegates on the ARI-700 and ARI-740 committees, as well as the ARI committee to certify off site refrigerant reclaimers. I personally am a member of the Stratospheric Ozone Protection Advisory Council, an ARI-740 committee member, and an ISO delegate for technical committee 86 which is preparing an ISO standard to rate recovery recycling machinery internationally.

I would like to make it clear from the start that I believe the people at the EPA have done an excellent job in the content of the regulations they have proposed to OMB. Their people have researched the problem and designed a set of regulations that have been embraced, for the most part, by our industry. And their ongoing correspondence with our industry has always been responsive, fair and diligent.

The problem is they are late. Very late. Not from a lack of effort, but, I believe, from a lack of resources. And that, unfortunately has caused problems for many companies investing in this area.

Our company was typical of several small companies that viewed this as an area of green technology that we could invest in to help solve a problem of global significance.

THERMAFLO is a division of AMERICAN THERMAFLO CORPORATION

3640 Main Street • Springfield, Massachusetts • 01107 • 1-800-8484-CFC



We developed the recovery/recycling equipment necessary for our industry to meet the requirements of the Clean Air Act and the Montreal Protocol. When the demand for this equipment skyrocketed, we hired the people.

In Springfield, Ma., Thermaflo hired more than 200 people, and created more than 500 jobs when you consider all of our subcontractors. Our production capacity rose to meet the demand, and we were receiving inquiries from all over the world about our product. The possibility of exporting this green technology was excellent.

Unfortunately, the EPA was so far behind in promulgating its regulations that it was having trouble effectively enforcing the law. This became apparent shortly after July 1, of this year.

As a result some contractors perceived the law, however incorrect they may be, as a paper-tiger. Some continued to vent refrigerants. This created an unlevel playing field in which the contractors who were trying to adhere to the law had to compete against the ones who were illegally venting. Therefore, the demand for this equipment dried up, and we had to lay our people off.

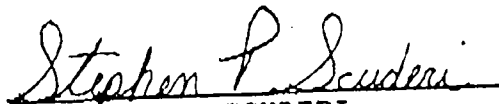
In Thermaflo almost all 200 employees have been laid off. We expected some attrition since this a cyclic industry tied to our cooling season (perhaps 25%), but the sudden and drastic drop in demand for the product can only be attributable to the lack of enforcement of the law.

I do not wish to advocate a witch hunt against our ultimate customers, the contractors. If violators are caught venting they must be given their constitutional right of due process. Also consideration must be given to the fact that industry was having trouble supplying the units in time to meet the demand.

But the law is a good one, and it must be made clear to everyone that it will be enforced. The longer it takes the EPA to finalize its regulations, the harder this will be.

Pursuant to 28 U.S.C. section 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed this 16th day of October, 1992, at American Thermaflo Corporation in Springfield, MA.


STEPHEN P. SCUDERI



Thermal ENGINEERING COMPANY

DIVISION OF SEAKAY CO.



DECLARATION OF VICTORIA M. KAMM

Victoria M. Kamm, under penalty of perjury, affirms and declares that the following statements are true and correct to the best of her knowledge and belief, and are based on her personal knowledge or on information contained in the records of Thermal Engineering Co., Inc., div. of Seakay Company or supplied to her by employees and/or representatives of Thermal Engineering Co.

1. My name is Victoria M. Kamm. I am the National Sales Manager of Thermal Engineering Co., Inc. This company manufactures, among other things, refrigerant recovery and recycling equipment.
2. I have been the national sales manager for approximately eight years. I supervise fourteen manufacturer representative organizations, an export agency and direct staff. I am extremely active in industry associations and technical committees. Through these contacts I have gained expertise and national recognition on refrigerant recovery and recycling issues.

I am a certified proctor for both the Refrigeration Service Engineers Society and Air Conditioning Contractors of America refrigerant handling training and certification programs. I have technical knowledge on the actual recover and recycle processes as well as how the current laws and proposed rules will probably affect my customers' businesses.

3. This declaration is filed in support of the plaintiffs' motion for summary judgement.

BACKGROUND

Thermal Engineering Co., Inc. (the company) is a thirty year old manufacturing facility located in Toledo, Ohio. Since its beginning, it has produced and distributed refrigeration and air conditioning service tools and instruments through approximately eight hundred wholesale outlets. The company currently has fourteen sales representative organizations in the United States. These reps provide information, technical support and so on since it is physically impossible for the company to do so. The rep organizations are independent and carry several other, usually non-competing lines (of products). The reps are paid on a commission-only basis with



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a set percentage of the wholesale invoice. Our export agent is a contract relationship and deals only with non-domestic customers. What happens to the company directly affects our export agent. However, the Environmental Protection Agency (EPA) rules do not. Other than background, then, the export agent will not be considered for this declaration. Approximately four years ago, the company produced a refrigerant recovery/recycle machine for exhibition at an industry trade show. There were no plans for even small scale production since we felt the market was not ready. We were aware of the international discussions of the potential for ozone depletion and the distinct possibility that refrigerant recovery may be required at some point. However, we surmised that to be at least five years into the future and probably ten.

Early in 1989, surprised and encouraged by market response to our machine, we purchased enough inventory for a small production run of fifty units. We sold all of them before they were actually produced and the machine became an integral part of our product offering. By the end of 1989 the company had sold approximately 663 machines.

The next year was a turning point for the company. The Clean Air Act Amendments of 1990 (CAA) had been written, passed into law and signed by the President. Now a guideline had been established regarding minimum requirements, rule and regulation proposals and implementation schedules and enforcement. The "crystal ball" forecasting was no longer necessary.

We added new products to our line. We were aware that the CAA required only recovery although published comments by EPA certainly promoted the concept, in fact the necessity, of recycling as well. Due to my avid interest in the legislative aspects of the CAA, I travelled extensively speaking to industry groups particularly the service technicians who would be most affected by the laws. The sales reps were doing the same type of presentation.

Equipment certification was not specifically mentioned in the CAA. Once again, through advisory committees established by EPA and efforts of other industry groups, it became clear that proposed regulations would include minimum machine standards. We did not expect to know what these minimum standards would be until the rules promulgation of January 1, 1992. Market forces only would produce sales of approximately 1200 machines by the end of 1990.



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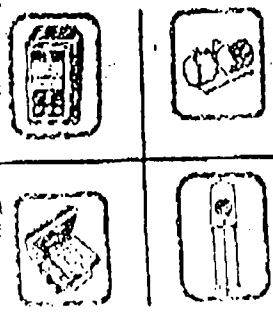
The company's focus in 1991 was technician certification and training as well as research and development. We planned to expand our production facilities in 1992. We had a wide array of new products and services to introduce to the market but we wanted to wait until the January 1, 1992 rules promulgation to commit ourselves entirely. We continued our plans and began taking orders in November for 1992 shipment. We were forced to offer our customers a guarantee of compliance with EPA regulations even though we realized they would not even be proposed by January 1, 1992. Our total sales for 1991 were approximately 3380 units.

Between November 15, 1991 and December 15, 1991, the company received orders for approximately 15,000 units to be delivered before July 1, 1992. The wholesalers were preparing for an unprecedented number of orders based solely on the July 1, 1992 no-venting deadline. Most of the company's customers wished to take delivery after March. The conventional wisdom was the industry would have proposed rules by then and we could sort out any potential compliance problems.

The company went on a massive expansion program. A 35,000 square foot facility was leased and approximately eighty additional employees were hired. All new employees were given a four week training and probationary period since they were hired primarily from the central city and through Toledo's Private Industry Council.

Many new refrigerant recovery/recycle manufacturers were established at the end of 1991 and into 1992. The demand for machines was estimated at approximately 500,000. There was absolutely no way that the demand could be met. Production was estimated at approximately 125,000 to 150,000 units. It was evident that any single company's sales were strictly a function of its production capabilities. Certainly, there were better sellers than others but there was more than enough room for all manufacturers assuming they would be able to meet the grandfathering criteria for certification. The next two to three years would possibly be as busy as 1992 was projected to be.

Thermal Engineering Co. had a production forecast of approximately 12,000 to 15,000 units. We expected cancellations of orders as July 1 got closer because we could not produce them fast enough and we had more and more competitors. We encouraged a lot of our customers to buy machines wherever they could. At one point, we had about 20,000 units on backorder and did not get the cancellations we expected. Our customer service staff, sales representatives, production employees, etc. were under fire for about six months straight.



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Of course, rapid growth is part of being in business (hopefully) and the consequences are generally known. The reasons for participating in this declaration have nothing to do with business events occurring before July 1, 1992 except as a frame of reference.

REASONS FOR SUPPORT OF SUMMARY JUDGEMENT

There are three specific requirements of the CAA. First is that rules be promulgated by January 1, 1992. The second is these rules must be in place by July 1, 1992. Third, the CAA provides enforcement for any violation of the venting prohibition as of July 1, 1992.

As of the date of this declaration, none of these three requirements have been fulfilled. The promulgation of the rules is approximately ten and one-half months overdue. I am aware EPA has submitted a set of proposed rules and regulations to the Office of Management and Budget (OMB). Portions of these proposed rules were not found acceptable by OMB and were returned to EPA for revision. Once again, as of this date there is no scheduled release.

It follows, then, that once the proposed rules are published and after the obligatory and necessary public comment period, there will be revision and review by OMB and EPA. Unfortunately, since the required dates have already passed I am quite concerned that an aggressive implementation schedule will not be considered important.

These are generalizations. Let me be very specific about the affect of EPA's failure to get rules promulgated, published and enforced.

1. On or about July 16, 1992 the company starting receiving the cancellations we had expected. Within approximately ten days, 6,000 machines were cancelled. Not only did we receive cancellations, all our competitors did as well. The bottom literally dropped out of the market. We called our customers, our sales reps, our competitors. The answer to this phenomenon was the direct result of the lack of enforcement by EPA. Literally no one would be punished for failure to comply with the no-venting prohibition. For what possible reason, in a lackluster economy, was there to invest in refrigerant recovery equipment if the law was a "paper tiger"?

2. Our entire production on order was stopped by August 1,



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1992. Hoping for an announcement by EPA that venting violators would be aggressively pursued and prosecuted as provided by the CAA, we continued to build stock. On August 7, 1992 however we were forced to begin layoffs. As of October 2, 1992 sixty-four employees have filed for unemployment benefits. The company expects to continue to layoff if we do not get some direction soon. Our costs for unemployment coverage will increase.

3. Our building is underutilized yet we still must make our fixed cost payments. This building should have been fully utilized for at least two years.
4. We are holding inventory for machines that are no longer on order. Seven of the company's top suppliers are willing to issue credit for returned merchandise with restocking fees ranging from 15 to 60%. We will have to take those losses directly out of our profit.
5. Since there are no proposed rules much less published rules, the company is extremely uncomfortable with making any decision to build production for next year. Our suppliers are not interested in selling large quantities as they do not want to be put in the same position next year.
6. Our customers are totally unwilling to buy equipment. Even if EPA does begin to enforce the venting prohibition, there are no definite guidelines on what machine minimum standards will be. It is a gamble no one is willing to take.
7. Because we were willing to guarantee our machines compliance with possible EPA requirements, some of our customers used that as a means of returning machines to us. "You promised we would not get stuck with your machines." Of course, I could not have known it would have nothing to do with Thermal Engineering. We have had to put back into inventory almost \$580,000 worth of machines back into our stock. We are trying to delay returns of another \$150,000 from others.
8. Our sales reps have taken losses as well. Whenever we have issued credit, the rep receives a credit as well. Our reps have lost approximately \$52,000 since the middle of July. They are not interested in promoting machines until they are sure the customers really need them.

Quite honestly, the company can and will survive this. However, we will be exception rather than the rule particularly



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If the rules promulgation takes until the middle of next year as has been rumored. First, we will not build units until we are positive they will be in compliance. Second, any competitors that drop out because of the excessive burden of waiting will lower the supply to the service technician. Third, costs will increase simply because of the first two.

The cost to the general public is great. The consumer feels the CAA protects the environment by putting into place all the necessary controls. The cost to the customer in real dollars will be high if current refrigerants are not recovered and they are forced to use far more expensive alternate refrigerants. The loss of direct jobs of course is a cost to society as well.

Regulating industries is certainly not a simple task. This industry built machines willingly allowing market forces to support the law. We now need the support of EPA to shape the market. Simply put, give us the rules and regulations to make that happen.

Pursuant to 28 U.S.C. section 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed this 16th day of October, 1992 at Toledo, Ohio.

Victoria M. Kamm

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MARYLAND ENVIRONMENTAL INTEREST)
GROUP, et.al.)

Plaintiffs,)

v.)

WILLIAM K. REILLY, in his)
official capacity)
as Administrator of the)
United States Environmental)
Protection Agency,)

Defendant.)

DECLARATION IN
OPPOSITION TO
MOTION FOR
SUMMARY JUDGMENT

Civil Action No.
92-1225 (SS)

DECLARATION OF STEVEN R. SORDS

Steven R. Sords under penalty of perjury affirms and declares that the following statements are true and correct to the best of his knowledge and belief, and are based on his own personal knowledge and information concerning the industry in which he participates i.e., the manufacturing of CFC recovery and recycling equipment.

1. My name is Steven R. Sords. I am the Chief Executive Officer of Recycling Specialists International (R.S.I.) of Cleveland, Ohio. My company which has been incorporated for approximately a year and a half was set up specifically to react to the mandatory legislation for which the Environmental Protection Agency (EPA) was responsible to publish and enforce.

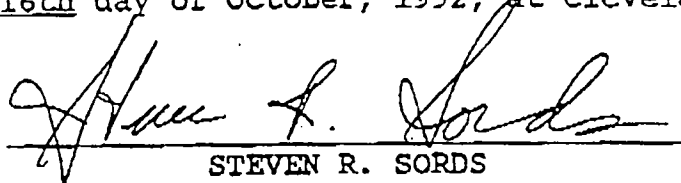
2. I have been Chief Executive Officer of the R.S.I. Company for approximately one (1) year and during that time I have witnessed the growth of R.S.I. Company from six (6) people to over

seventy (70) people at our peak in August 1992. Since August, there has been a massive turn down in the industry due to lack of compliance by contractors in the Air Conditioning Industry due to the fact that the EPA has failed to do its' non-discretionary duty of publishing laws concerning the venting of refrigerant by January 1 of 1992 and enforcing said laws by July 1, 1992. This massive turn down has cost R.S.I. Company in the order of three (3) million dollars monthly since our sales went to virtually zero (0) after August 1992, and a manpower cost in lost jobs of over forty (40) people. R.S.I. Company reacted to the imminent EPA legislation to produce high quality recovery and recycling equipment for the industry. Because of the massive turn down in business due to lack of compliance since the EPA has not published or enforced their laws which was their discretionary duty, we like many recovery and recycling manufacturers are struggling to survive. I like many of my peers in this industry wonder whether there will be any manufacturers left to produce and supply equipment once the EPA begins to carry-out their enforcement duties.

3. This declaration is filed in support of the plaintiffs motion for summary judgment.

4. Section 608 of the Clean Air Act as amended in 1990 requires the EPA to promulgate regulations to reduce the use and emissions of ozone depleting substances used as refrigerants. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed this 16th day of October, 1992, at Cleveland Ohio.


STEVEN R. SORDS