

FOIA MARKER

This is not a textual record. This is used as an administrative marker by the William J. Clinton Presidential Library Staff.

Collection/Record Group: Clinton Presidential Records
Subgroup/Office of Origin: Council on Environmental Quality
Series/Staff Member: Kathleen (Katie) McGinty
Subseries:

OA/ID Number: 2890
FolderID:

Folder Title:
Clean Air Bill

Stack:	Row:	Section:	Shelf:	Position:
S	61	5	10	3

PHOTOCOPY
PRESERVATION

100-4192
K. L. Smith
322-4192

Memorandum

To: AGJ

RE: Clean Air

This memo provides an overview of the large issues involved in the Clean Air debate and specific recommendations on how you might best involve yourself in the debate. Briefly, I believe there are two major lines available to you for involvement: CFC's and CO2. The Senate bill currently includes a CFC phaseout provision which could be strengthened. The Senate bill also includes a CO2 tailpipe emission standard which is extremely controversial and Bryan may use the debate on this provision to raise CAFE. I think we should take the opportunity to at least discuss your CAFE type proposal and we may even want to introduce something. Rick is still working with Oak Ridge on the precise language.

The Sierra Club undertook a study which they called the "Smog Crisis: The Untold Story" of 12 US cities. Memphis and Nashville were included. The report was released in Tennessee on Thursday, January 18. The focus of the report was that smog is occurring in these cities at levels that can threaten public health "seven times more frequently" than is reported by government air pollution agencies. The Sierra Club compared the number of days in violation of EPA's health-based standard (1 hour at 120 ppb) versus the number of days exceeding a level known to be damaging to health (8 hours at 80 ppb). Eighty ppb was the one hour standard until 1978. In Nashville in May there was one day at the one hour level, and 3 days at the eight hour level. In June there were 2 days at the one hour level and 12 days at the eight hour level.

We have seen nothing but an AP wire story on the Sierra Club press conference.

The National Clean Air Coalition is running TV ads in some TN markets about the fact that Congress is considering the Clean Air legislation. You are not mentioned.

The Business Roundtable released a study on Thurs. which said that the costs imposed on TN by the Senate's version of the bill would be \$2 billion--sixth highest in the nation--behind CA (11 bill), Texas (10.4 bill), Louisiana (2.7 bill), Ill (2.6 bill), and New York (2.1 bill).

I. Urban Smog -- Mobile Sources

A. Emissions Standards: Passenger Car & Light Truck -- Both the House and the Senate bill would tighten tailpipe standards in two phases for hydrocarbons, NOx, carbon monoxide (CO) and particulate matter (PM-10) emissions from passenger cars and light trucks. Both bills require the second phase of reductions to occur by 2003. The House bill, however, makes the second phase of reductions discretionary depending on EPA findings as regards necessity, technological feasibility and cost effectiveness, while the Senate's second round of reductions is mandatory. Many believe that EPA will never order a discretionary second round of reductions since EPA is currently saying that such reductions would be at a cost of \$500 per car (this figure includes the cost of installing a catalyst that can meet the standards and later replacing it--manufacturers are required under the bill to warranty the catalyst for 10 yrs/100,000 miles). On the contrary, a study by the State of California suggests that by the year 2003 technology will be available making the cost \$125 per car.

Focus of Debate: Nature of the second phase of reductions: discretionary vs. mandatory vs. alternative fuels. The Administration would like to see the second phase of reductions, either discretionary or mandatory, replaced with an alternative fuels program. Burns will introduce an amendment for alternative fuels. Chafee now believes that the second round of reductions must be mandatory and include an alternative fuels program. Chafee and Baucus are working on an alternative fuels proposal.

A sub-issue is the nature of an alternative fuels program. Of particular concern is whether or not the program is fuel neutral; will the program cover passenger and fleets or only fleets and who will be responsible for implementation of the program.

Chafee's amendment will be fuel neutral and cover both cars and fleets.

As to implementation of an alternative fuel program, the environmental community would prefer to put the burden of implementation on the manufacturers rather than the individual states. The enviros believe that the manufacturers are much better equipped to market cars that will use alternative fuels and the fuel producers better able to ensure that alternative fuels are competitively priced.

POSSIBLE GORE AMENDMENT: In 1988 when Rockefeller successfully pushed his alternative fuels program encouraging the development and use of coal derived methanol fuel he kept off any limits on CO2 emissions for alternative fuels. It is suspected that Rockefeller and others will again seek to keep CO2 emission limits out of any alternative fuels program. You may wish to propose an amendment to require consideration of CO2 emissions in the development and use of any and all alternative fuels.

B. CO2 Tailpipe Standards/CAFE

Against all early indications to the contrary, EPW has included a CO2 tailpipe emission standard which is equivalent to requiring fuel economy of 33 mpg by 1996 and 40 mpg by 2000. The environmental community is adamant in their support for such a provision. Levin/Nickles will offer an amendment to delete this section. This will be a key vote for the enviros. The House bill does not include a CO2 provision.

Bryan may offer as a substitute his CAFE proposal which would be equivalent to about 33 mpg by 1995 and 38.5 mpg by 2001. (This assumes the 1988 standard for the manufacturer was 27.5 mpg -- recall that Bryan takes a manufacturer-by-manufacturer approach. The Asian manufacturers were at around 32 mpg in 1988, so they must grow to 38 mpg by 1995, and 40 mpg by 2001 -- they would have to grow further but for the fact that Bryan sets a cap on the maximum required improvement of 40 mpg.)

Senate politics here are as follows: It is widely believed that the EPW tailpipe CO2 standards were initially included in the Clean Air bill to be a sacrificial bargaining chip. Bryan staff then began to work with EPW about introducing the Bryan bill as an amendment to substitute for the tailpipe CO2 standards. However, the Bryan staffer in Colorado with Rick last week said that the Administration is strongly rumored to be preparing to fight CAFE provisions in the Clean Air bill in general, and will attack the Bryan bill, if offered, on its unfair trade implications (requires Asian mfgs to meet a higher standard). As of last week, the Bryan staffer was pretty confused about what to do, against these odds (the trade question has always been one of the strongest arguments against Bryan's bill). And, as mentioned above, Levin and Nickles will fight a CAFE provision from within the Senate.

The issue for the environmental community is not how you get the CO2 reduction -- be it tailpipe emission standards, CAFE or something else -- but that you get it. They would like you to indicate to Mitchell your support for retaining some sort of CO2 reductions in the bill. (Rick's note: The environmentalists have put dangerously little thought into the implications of the policies that they are pushing here, beyond whether the policy reduces CO2 emissions. One could do that by banning cars, but that's not necessarily the best policy. The environmentalists have flip-flopped on this issue in just the last month: first they claimed that Bryan's mfg-by-mfg approach was the best "policy", but now they support a totally different approach in the clean air bill -- a uniform increase in mpg for all mfgs, i.e., the traditional CAFE approach.)

The VAFE (Volume-Average Fuel Economy) approach that you have talked about would require vehicles to meet certain efficiencies based on their size. This approach is favored by OTA, EPA, DOE, and Oak Ridge. Its only drawback in virgin form is that it doesn't require manufacturers to meet an overall efficiency -- they could produce only

large, profitable cars as long as their large cars met the efficiency req'd for a large car. Thus, the enviros rightly argue, fleet efficiency could actually go down. However, this is easily fixed in two ways. First, by combining a "safety net" CAFE standard with the VAFE. In other words, implement the VAFE standards, but also require that all manufacturers keep their overall fleet above a certain standard. Second, the experts note that manufacturers simply wouldn't quit making small cars even if we allowed them to -- they consider the enviro argument a red herring. Nevertheless, for political purposes, we'll have to calm those fears, and the "safety net" CAFE seems like the best way to do it, if we go ahead with VAFE.

POSSIBLE GORE AMENDMENT: At a minimum you may wish to discuss your VAFE (Volume-Average Fuel Economy) proposal when Bryan offers his CAFE amendment. EPW has indicated a willingness to work with us if we decide to offer our idea as an amendment. Oak Ridge, DOE, and EPA are currently working with Rick to develop a piece of VAFE legislation, on a fast track, that hopefully will be ready should you decide to proceed with it. Finally, there are two other possible amendments to any CAFE provision: the DRIVE+ fee/rebate legislation, and a "high-tech incentive" that Rick developed with one of the enviro groups, that gives a company CAFE credits if the company produces a super-high-efficiency model.

II. Urban Smog -- Non-Attainment Areas

Tennessee currently has 3 non attainment areas: Knoxville, Nashville and Memphis, with Memphis being the worse. Under both the House and Senate bills, metropolitan areas currently violating federal standards for ozone, carbon monoxide and/or particulates would be given deadline extensions, with longer deadlines for the more severely polluted areas. Under the Senate bill Memphis would have until 2000 and Knoxville and Nashville would have until 1995. I have not heard from any of these cities.

Both the House and Senate bills include enforcement provisions for failure to meet the standards. Because it makes sanctions, such as a ban on new source construction and withholding of highway funds mandatory, the Senate bill is more stringent than the House bill. The Senate bill also sets milestones that must be met along the way to complete compliance, and imposes mandatory penalties for failure to meet these interim standards. The House bill has no comparable provisions. Finally, under both bills, a failure to achieve standards would result in the reclassification of the source as a more serious polluter. Under the Senate bill, the source would then be immediately required to implement additional control measures. Under the House bill, the source would receive an extension of deadline and an extended period for implementation of added control measures.

The House bill has a clean fuel provision requiring auto makers to demonstrate the capacity to produce and sell 1 million clean fuel cars by 2000. Auto makers would not be required to actually sell the vehicles, and there is no fleet provision.

We do not yet know whether anyone will seek to amend the Senate bill to include a clean fuels provision.

III. Acid Rain

Both the House and Senate bills require utilities to achieve first a 5-million ton and then a 10-million ton reduction in annual SO₂ emissions below 1980 levels. The Senate bill requires the reductions one year earlier than the House bill, with the 10-million ton reduction to be achieved by 2000. Both bills place a cap on emissions from new sources after 2000. Both bills also require NO_x reductions by 2000, but neither places a cap on NO_x emissions.

A marketable allowance trading system is a common feature of the House and Senate bills. If a source reduces its pollution more than the level specified in its operating permit (--another new feature of these amendments--the old clean air act only required sources to obtain construction permits), it will have left-over allowances that it can sell to an expanding old source or to a new source that has to acquire offsets in order to operate. EPA is charged with dividing the country into two regions. Trading among old units is permitted only within designated regions; new sources may secure allowances nationwide. Both bills also permit "NO_x-for-SO_x" trading.

Burdick, Baucus, Durenberger and Simpson secured a special exemption from initial reduction requirements for plants in MN, MT, WY, NM, ND, KS and UT in recognition of the investments they have already made in pollution control technology. The exemption has raised some eyebrows but is not expected to engender heated debate.

Focus of Debate: Cost sharing. Midwest and Southeast states are particularly hardhit by the emissions reduction requirements. Twenty-six TVA facilities (19 in TN) are listed among the worst polluters. One industry group estimates that 13 states (TN, GA, FL, ILL, IN, IA, KS, KY, MD, MI, OH, PA, WV) which collectively emit 60 percent of the national total of SO₂, will be required to make 86.5 percent of the SO₂ reductions.

Byrd and Mitchell are expected to introduce a cost-sharing proposal that calls for 21 plants (18 utilities plus 3 DOE facilities, including several TVA plants) to reach specified reductions by 1995. A two year extension is given to those utilities that use scrubbing technology (Byrd is interested in saving high-sulfur mining). In addition, a 2-for-1 credit system is established whereby a utility that goes below the specified levels would receive 2 credits for every one earned. The proposal is not a "cap buster;" that is, a 10 million ton SO₂ reduction will still be achieved. (CAVEAT: This is all still very much up in the air--some say that the cap will be "busted" at least temporarily due to the increased availability of credits). The utilities that achieve reductions sufficient to receive the 2-for-1 would retain one of the allowances, and would give the other to EPA. EPA would then sell that allowance, and give the proceeds back to the

utility. As long as the overall objective of a 10-million ton SO2 reduction is achieved, the environmental community is neutral with respect to cost-sharing.

TVA is not supportive of the Byrd-Mitchell proposal. They feel that it deprives them of flexibility in choosing options (i.e., they do not want to be forced to scrub) to deal with the reduction requirements. In addition, they do not like the idea of EPA selling allowances for them: having put out a lot of money to achieve reductions, they would have no idea of when to expect money back. TVA's board is meeting on Tuesday to discuss options and formulate a position.

POSSIBLE GORE AMENDMENT: The acid rain section of the bill was not intended to address CO2 and other greenhouse gas emissions. Obviously, as coal consumption is reduced, CO2 emissions are reduced. Byrd-Mitchell, because it encourages the use of scrubbing technology, encourages continued use of high sulfur coal and thus greater CO2 emissions will result than would be achieved under the existing Senate language. While politically you may have to support Byrd-Mitchell (assuming TVA comes to support it) you may want to offer an amendment to require that utilities report on CO2 emissions, and specifically on reductions they achieve in CO2 emissions, in the same way that they will be required to do for SO2 emissions.

IV. Air Toxics

The House and Senate bills adopt the Administration's list of approximately 200 substances, and in phase I require EPA to determine the Maximum Available Control Technology (MACT) for each category of sources. The Senate bill reaches all sources that emit any one of the listed pollutants in quantities greater than 10 tons or any combination greater than 25 tons, while the House bill only requires EPA to regulate 50% of major industrial sources. The Senate bill is also more stringent in setting deadlines for EPA to determine MACT. Standards are to be promulgated within 2, 3, 5, and 10 years of date of enactment, depending on the source category. Existing sources must comply with MACT standards not later than three years after promulgation; new sources must comply immediately.

In a second phase of regulation, EPA is charged with eliminating "Residual Risks;" that is, risks to health or the environment that persist even after installation of MACT. EPA has five years from the date of setting MACT to establish tighter residual risk standards.

Focus of Debate: Residual Risk versus Unreasonable Risk. The Senate bill establishes two residual risk standards (1-in-10,000 and 1-in-1 million) and stipulates that EPA may not consider costs in setting performance requirements. By contrast, under the House and Administration proposals, additional controls are required only if EPA determines that emissions cause "unreasonable risk"--that is, only if the health risk outweighs costs of compliance. The environmental community is, of course, opposed to the House/Administration proposal.

We have heard from Eastman Kodak with regard to the stringency of the Senate bill requirements. Eastman employs 11,000 in TN. It seems, however, that the requirements are not unduly onerous. To the contrary, compliance deadlines are extremely generous: EPA has 5 years after MACT to set standards; sources then have 3 years to meet cancer risks of 1-in-10,000 and can obtain one, non-renewable 5 year extension; unlimited extensions are available to meet the 1-in-1 million standard. At the earliest therefore, a source would have 12 years to comply before it would be required to shut down. In any event, it does not seem that Eastman expects us to take a lead for them--I've only heard from them once.

V. Stratospheric Ozone and Global Climate Protection

The Senate bill is alone in including a provision on CFC's. Chafee introduced the title against Mitchell's opposition who fears it will stall the bill. The language is for the most part lifted from S. 201. It is more stringent than S.201 in that more substances are placed on the priority list, however phaseout deadlines are more generous than S. 201 calling for a year 2000 phaseout.

POSSIBLE GORE AMENDMENTS:

(1) **Phase Out Dates:** Require phase out of the priority substances by 1996 and 2000 for everything else.

(2) **Safe Alternatives Policy:** Most now believe that HCFCs are only a temporary fix. We could propose a phase out of HCFCs or perhaps a study to determine what are the best and safest alternatives for HCFCs or a combination -- if there is a safe alternative than HCFC's will be gone by x year if no alternative than HCFC can continue to be used.

(3) **Military Specifications** -- many military contracts still call for the use of CFC's. You could offer an amendment requiring the military to stop the use of CFC's by a certain date or immediately if something else could be used. (I need to talk with Leon about this.)

(4) **Foreign Country** -- As American manufacturers begin to phaseout CFC production foreign countries and companies are seeking to purchase remaining CFC's and, more importantly, the equipment for making CFCs. Perhaps an amendment to prohibit US companies from selling this equipment to foreign companies and countries. (Again, need to talk with Leon.)

POSSIBLE GORE AMENDMENTS:

- * Require consideration of CO2 emissions in any and all alternative fuels program.
- * CAFE type program focusing on size, class instead of mpg.
- * Require utilities to report CO2 emissions, and specifically, reductions in annual CO2 emissions.
- * CFCs
 - (1) Phase out by 1996 of priority list
 - (2) Safe alternatives policy
 - (3) Military specifications
 - (4) Sales to foreign countries of CFC manufacturing equipment.
- * Insert clean coal provision requiring DOE when making contracts in the clean coal technology development program to consider more than just SO2 emissions. Under the current program DOE basically makes the decision on what the technology claims to do viz a viz SO2 emissions. They can only look at other factors if the SO2 emissions are equal. It would be reasonable to require DOE to look at CO2 emissions, particulates and sludge during the initial consideration.

In addition to these amendments, we have been approached by several groups seeking amendments or support for amendments addressing problems particular to their business.

1. Eastman Kodak -- Employees 11,000 people in Tenn. All of their proposed amendments would substantially weaken the bill. We do not think you should support any of them. Kodak only contacted us once.

a. Air Toxics -- Residual Risk: Specific risk numbers should be eliminated from the bill; EPA should have discretion in determining what level is acceptable, and should be allowed to consider cost and feasibility.

b. Air Toxics -- Credit for Early Reduction of Emissions: Exemptions from technology and risk standards should be allowed for any source that can demonstrate negligible risk, and extensions of compliance time should be allowed for those that achieve significant reductions before they are so required.

c. Acid Rain -- Exempt industrial boilers from SO2 emission reduction requirements. Only the House Sikorski-Conte bill includes industrial boilers; the Senate bill not only does not cover industrials, but invites them to sell reductions they voluntarily achieve.

d. Permitting: eliminate EPA role where a state already has a permitting system in place.

e. Air Toxics -- Remove 17 categories of substances currently listed under the air toxics provisions.

f. Air Toxics -- Weaken the role given EPA in developing a regulatory program to minimize the potential for sudden, accidental releases of toxics; preserve OSHA's lead role in workplace safety.

2. Nissan

a. Stationary Source Emissions: Language is needed to clarify that, in the case of sources that are currently under construction, baseline emission limits will be determined on the basis of allowable, rather than actual emissions. **This problem is very real for Nissan. On May 11, 1989, Nissan was issued a construction permit by the TN Dept. of Health and Environment under an EPA approved State Implementation Plan. Having begun construction on the plant (which will boost capacity by 200,000 units and create 2000 jobs), Nissan is afraid that it will not be able to use it to the capacity for which it has been approved. We should seriously consider supporting this. We are checking on whether they have gotten anyone to introduce this yet.

b. CO2 emission standards: Prefers Senate bill's set mileage mark to Bryan's percent increase CAFE proposal.

c. In general, Nissan claims that all of the mobile source requirements (tailpipe standards, onboard controls to capture refueling fumes, the 10 yr/100,000 mile useful life warranty) are exorbitantly expensive and technologically unfeasible.

3. Cummins Engines--make 50% of the diesel engines in the U.S.; subsidiaries Fleetguard and Diesel ReCon employ 820 and 572 people in TN, respectively. The EPW committee staff has talked with Cummins is trying to help them but they need to show some support. We should probably call the committee staff with an indication that you support their request. Their requests are generally small technical corrections.

a. Heavy-Duty Emission Standards: The implementation date for the 4.0 gph NOx standard should be shifted from 1996 to 1998.

b. Specific statutory standards set in the Senate bill conflict with the existing standard-setting process; technical amendments are necessary.

c. As in on-road engines, Federal law should preempt state off-road engine emission standards (with the exception of CA which is allowed to regulate separately to address its acute problems).

4. Boeing

a. Would like us to sign a letter to Burdick to insert a requirement that EPA develop integrated control technique guidelines for regulation of air emissions from coatings and solvent usage within the aerospace and air transport industries. Currently, federal guidelines for these industries are included in a provision that covers coatings for thousands of miscellaneous metal parts--the special needs of the aerospace industry are not addressed. Breaux is to introduce the language; Baucus and Burdick apparently have no problem with it. The plan is that the language will be added as part of the committee package, rather than on the floor. We will talk to Leon about this.

5. TVA

As mentioned in the acid rain portion they will call us on Tuesday with their position on Bryd-Mitchell. They may have additional matters for us on Tuesday.