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Council on Environmental Quality (CEQ) [2]

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1 SEC. 5. ASSISTANCE FOR OFFICE OF NATIONAL ENVIRON-
2 MENTAL POLICY ACT COMPLIANCE.

3 The National Environmental Policy Act of 1969 (as
4 amended by section 3) is amended by adding at the end
5 the following:

6 "SEC. 208. (a) *In performing the functions of the Office under the*
provisions of this law in a timely manner,
or otherwise obtain assistance
7 from other entities in the Executive Office of the President
8 or other Federal agencies, by mutual consent with the
9 heads of those entities or agencies *to assist the Director*
10 ~~in performing the functions of the Office.~~

11 ~~["(b) The Director may request the head of any Fed-~~
12 ~~eral agency to assist the Director in timely carrying out~~
13 ~~functions of the Director under this or any other law.".]~~

14 SEC. 6. AUTHORIZATION OF APPROPRIATIONS.

15 (a) AMENDMENT.—Section 209 of the National Envi-
16 ronmental Policy Act of 1969 is amended to read as fol-
17 lows:

18 "SEC. 209. (a) There are authorized to be appro-
19 priated to the Director to carry out the functions of the
20 Director under this or any other Act—

21 "(1) \$800,000 for fiscal year 1994;

22 "(2) \$1,000,000 for fiscal year 1995;

23 "(3) \$1,200,000 for fiscal year 1996; and

24 "(4) \$1,400,000 for fiscal year 1997.

225-4627

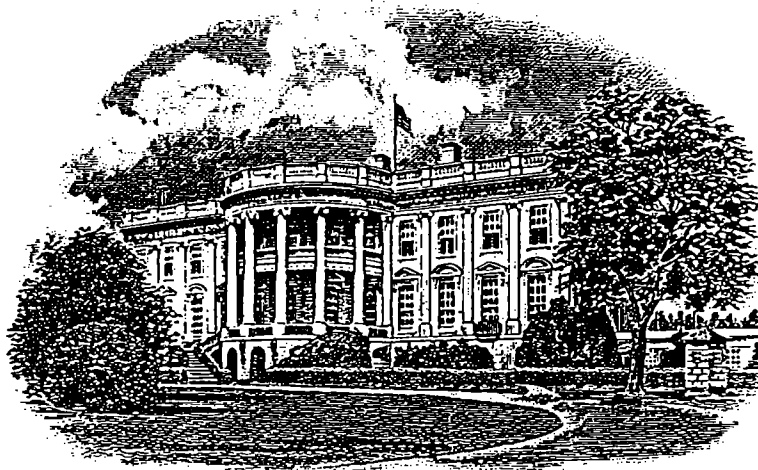
WHITE HOUSE OFFICE ON ENVIRONMENTAL POLICY

TO: Mark Kramer
FROM: Cathy Zoi
DATE: 11/24
FAX: 402-5

Number of pages including cover:

COMMENTS: *Suggested* Edits Attached.

I agree w/ you -- we
should not be specific in terms
of #s of additional bodies or
at this time.



PHONE - (202) 456-6224 FAX - (202) 456-2710
OLD EXECUTIVE OFFICE BUILDING, ROOM 360
WASHINGTON, DC 20501

Honorable John D. Dingell
Chairman,
Subcommittee on Oversight and Investigation,
Committee on Energy and Commerce
Washington, D.C. 20515-6116

Dear Chairman Dingell:

Thank you for your letter in which you express your concern regarding the Risk Assessment and Management Commission (Commission) and the Council on Environmental Quality (CEQ).

As noted in my response to your previous inquiry, Presidential appointments to commissions are the responsibility of the Office of Presidential Personnel in the White House. I have forwarded a copy of your letter to them to make them aware of your concerns.

With respect to CEQ, I understand that your concerns have been addressed by ~~the compromise developed between representatives of the Administration and Congressional staff~~ ^{HR 3512} ^{in consultation with Administrative officials}. The proposal described in H.R. 3512, as passed by the House, would create a successor entity to CEQ--the Office of National Environmental Policy Act (NEPA) Compliance. This new office will provide oversight and serve as the forum within the Executive Office of the President for resolution of disagreements between agencies regarding implementation of NEPA.

The \$375 thousand dollars the Administration requested for CEQ is sufficient to support a staff of three for a period of one year. Provision of additional funding for CEQ and its successor entity in FY 1994 and beyond will be addressed in the President's Budget for FY 1995. ^{and a supplemental budget request for FY 94.}

Thank you for your continued interest in these matters.

Sincerely,

Leon Panetta
Director

MEMORANDUM TO:

Katie
Cathy
Keith
Mark

FR:

Will *WKS*

RE:

Department of Environment Bill

DATE;

12 November 93

Attached are some of the amendments to the EPA bill.

**AMENDMENT TO H.R. 3425, AS REPORTED
OFFERED BY MR. HERGER OF CALIFORNIA**

At the end of title I, add the following:

1 **SEC. __. PROTECTION OF PRIVATE PROPERTY.**

2 (a) **PROTECTION OF PRIVATE PROPERTY.**—No regu-
3 lation promulgated after the date of enactment of this Act
4 by the Secretary shall become effective until the Attorney
5 General certifies that the Department is in compliance
6 with Executive Order 12630, entitled "Government Ac-
7 tions and Interference with Constitutionally Protected
8 Property Rights" (commonly known as the "Takings Ex-
9 ecutive Order"), as in effect in 1991.

10 (b) **REQUIREMENTS.**—The requirements of Executive
11 Order 12630, as in effect in 1991, shall apply to any as-
12 sessment of the potential for the taking of private property
13 in a Department regulatory activity. The goal of the appli-
14 cation of the requirements shall be to minimize the poten-
15 tial for the taking of private property where possible.

16 (c) **JUDICIAL REVIEW.**—(1) Judicial review of an ac-
17 tion taken pursuant to this section shall be limited to
18 whether the Attorney General has certified that the De-
19 partment is in compliance with Executive Order 12630,
20 as in effect in 1991, or similar procedures, and shall be

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1 permitted in the same forum and at the same time as the
2 issued regulations are otherwise subject to judicial review.

3 (2) Only a person adversely affected or aggrieved by
4 a Department action shall have standing to challenge an
5 action referred to in paragraph (1) as contrary to this sec-
6 tion.

7 (3) In no event shall a review under this subsection
8 include any claim for which the United States Claims
9 Court has jurisdiction.

10 (4) Nothing in this subsection shall affect any right
11 to judicial review of Department action available under
12 other law.

13 (d) TAKING OF PRIVATE PROPERTY DEFINED.—As
14 used in this section, the term "taking of private property"
15 means an activity by the Department with respect to
16 which private property is taken in such manner that com-
17 pensation to the owner of the property is required by the
18 Fifth Amendment to the Constitution of the United
19 States.

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AMENDMENT TO H.R. 3425
OFFERED BY MR. MICA

Strike section 113 (relating to Office of Environmental Risk) and insert:

1 **SEC. 3425. OFFICE OF ENVIRONMENTAL RISK AND COST**
2 **ANALYSIS.**

3 (a) **OFFICE OF ENVIRONMENTAL RISK AND COST**
4 **ANALYSIS.**—The Secretary shall establish in the Depart-
5 ment an Office of Environmental Risk and Cost Analysis
6 (hereinafter in the section referred to as the "Office"),
7 which shall be independent of the Department's single-me-
8 dium program offices but shall have the authority to ad-
9 vise such offices about environmental risk and cost-related
10 matters. The office shall be under the direction of a Direc-
11 tor appointed by the President, by and with the advice
12 and consent of the Senate. The director shall be com-
13 pensated at level V of the Executive Schedule under sec-
14 tion 5316 of title 5, United States Code.

15 (b) **PROGRAM.**—The Director shall develop and, with
16 the approval of the Secretary, implement a program to
17 provide, to the maximum extent practicable, information
18 on the costs and benefits of regulatory proposals and final
19 actions of the Department, to the Secretary, the Congress,
20 State and local governments and the public. The program

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1 shall be consistent with the provisions of this section and
2 other provisions of law applicable to the department. The
3 program shall, to the extent practicable, provide informa-
4 tion in a manner which is timely for regulatory decision-
5 making and provide a basis for Congress to measure
6 whether agency programs are cost-effective, set appro-
7 priate priorities, and reflect the best use of national re-
8 sources. Where it is not practicable to provide this infor-
9 mation in a timely manner for categories of individual pro-
10 posals or actions, the Director shall provide information
11 to assess cost and benefits for the given categories as a
12 class. The program shall ensure that any statements of
13 risk to human health and the environment are, to the max-
14 imum extent practicable, scientifically objective and unbi-
15 ased and provide appropriate comparisons of the mag-
16 nitude of any health risks to other risks to which the pub-
17 lic is exposed. The Director shall develop and, with the
18 approval of the Secretary, implement a strategy, to ensure,
19 to the greatest extent practicable and consistent with the
20 provisions of the section and other provisions of law appli-
21 cable to the Department, that the programs of the Depart-
22 ment reflect the best use of national resources, including
23 the resources of State and local governments and the regu-
24 lated community, and are practicable given the goal of re-
25 ducing risks to human health and the environment.

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AMENDMENTS TO H.R. 3425, AS REPORTED
OFFERED BY MR. TAUZIN OF LOUISIANA
(Protection of private property owner rights)

In section 112(b) (page __, beginning at line __),
designate the existing text as paragraph (1) and add at
the end the following:

1 (2) The Director shall develop and with the approval
2 of the Secretary implement procedures and guidelines for
3 ensuring that the constitutional and other legal rights of
4 private property owners are protected whenever the De-
5 partment makes or participates with other agencies in the
6 making of any final decision that restricts the use of pri-
7 vately owned property. The Director shall propose a plan
8 for providing compensation to private property owners
9 whenever a decision or recommendation of the Depart-
10 ment pursuant to section 404 of the Federal Water Pollu-
11 tion Control Act (33 U.S.C. 1344) results in substantial
12 devaluation of the fair market value of privately owned
13 property.

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EXPLANATION OF AMENDMENT
BY MR. TAUZIN OF LOUISIANA TO H.R. 3425
THE DEPARTMENT OF ENVIRONMENTAL PROTECTION ACT

H. R. 3425 creates the Department of Environmental Protection. The bill also creates an Office of Environmental Justice within the department. This amendment would require the director of that office to develop a plan to protect the legal and constitutional rights of private property owners when affected by a decision of the new department. The amendment is consistent with the current language of the bill which requires the director to insure that the rights of citizens are protected regardless of income, race, ethnicity, or national origin.

The amendment would also require the director to propose a plan to provide compensation to private property owners when a decision or recommendation of the department pursuant to the 404 wetlands regulatory program results in a substantial devaluation of the property. Under the current 404 program, a landowner must obtain a 404 permit to conduct any activity on a wetland that involves the movement of dirt or placement of fill. Although the 404 permit is issued by the Corps of Engineers, the Environmental Protection Agency is involved in every permit decision and has the power to veto a 404 permit.

The 404 program has generated most of the current Claims Court cases seeking compensation for a taking of private property. Many permit denials are due to the veto or threat of veto by the Environmental Protection Agency. Under this amendment the department's plan would only be applicable to the 404 program and only to those cases that result from a decision of the Department of Environmental Protection.

Environmental justice should include insuring that our government does not unduly damage the property values of our citizens.

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**AMENDMENT TO H.R. , AS REPORTED
OFFERED BY MRS. THURMAN OF FLORIDA**

(Contents of risk reduction strategy)

At the end of section 113 (page __, after line __),
add the following:

1 (d) CONTENTS OF STRATEGY.—

2 (1) IN GENERAL.—Except as provided in para-
3 graph (2), the strategy under subsection (b) shall re-
4 quire that the Secretary shall include in each regula-
5 tion relating to human health or the environment
6 that is proposed by the Department after the date
7 of enactment of this Act—

8 (A) an estimate with as much specificity as
9 practicable, of—

10 (i) the risk to human health or the en-
11 vironment that is addressed by the regula-
12 tion, including the effect of the risk on
13 human health or the environment, respec-
14 tively; and

15 (ii) the costs associated with imple-
16 mentation of, and compliance with, the
17 regulation;

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1 (B) a comparative analysis of that risk rel-
2 ative to other risks to human health or the en-
3 vironment, respectively; and

4 (C) the Secretary's certification that—

5 (i) the estimate under subparagraph

6 (A) and the analysis under subparagraph

7 (B) are based on a scientific evaluation of

8 the risk addressed by the regulation and

9 are supported by the best available sci-

10 entific data;

11 (ii) the regulation will substantially

12 advance the purpose of protecting human

13 health or the environment, as applicable,

14 against the risk addressed by the regula-

15 tion; and

16 (iii) the regulation will produce bene-

17 fits to human health or the environment

18 that will justify the costs incurred by local

19 and State governments, the Federal Gov-

20 ernment, and other public and private enti-

21 ties as a result of implementation of and

22 compliance with the regulation, as esti-

23 mated under subparagraph (A)(ii).

24 (2) REPORT.—If the Secretary cannot make the

25 certification required under paragraph (1) for a reg-

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1 ulation, the Secretary shall report to the Congress
2 that such certification cannot be made, and shall in-
3 clude a statement of the reasons therefore in such
4 report and in the final regulation.
5 (3) RULES OF CONSTRUCTION.—This subsection,
6 and any certification required by paragraph (1)(C), shall
7 not be construed to amend, modify, or alter any statute
8 and shall not be subject to judicial review. This subsection
9 shall not be construed to grant a cause of action to any
10 person.

November 10, 1993 (12:00 p.m.)

NO

FAX FROM THE OFFICE OF TOM KITSOS
COMMITTEE ON MERCHANT MARINE AND FISHERIES
1339 LONGWORTH HOB
WASHINGTON, D. C. 20515
PHONE: (202) 225-2429
FAX: (202) 225-7627

DATE:

Nov. 8, 1993

TO:

CATHY ZOI

Office of Environmental Policy

NUMBER OF PAGES (INCLUDING COVER):

17

CONTACT _____ IF PROBLEMS ARISE.

COMMENTS:

Clean draft of CEQ bill.
Likely to be introduced on Tuesday.
Contains changes requested by Administration plus about a dozen purely technical and cross reference corrections that Leg. Council and I discovered over the weekend.
This is the only copy that I am sending to the Administration. Please provide a copy to JACK or anyone else who may be interested. Thanks.

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108^D CONGRESS
1ST SESSION

H. R. _____

IN THE HOUSE OF REPRESENTATIVES

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

A BILL

To abolish the Council on Environmental Quality and to
provide for the transfer of the duties and functions of
the Council.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "National Environ-
5 mental Policy Act Administrative Reorganization Amend-
6 ments of 1993".

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1 **SEC. 2. ESTABLISHMENT OF OFFICE OF NATIONAL ENVI-**
2 **RONMENTAL POLICY ACT COMPLIANCE.**

3 Sections 201, 202, and 204 of title II of the National
4 Environmental Policy Act of 1969 (42 U.S.C. 4331 et
5 seq.) are redesignated and amended to read as follows:

6 "SEC. 201. (a) There is established in the Executive
7 Office of the President the Office of National Environ-
8 mental Policy Act Compliance. The Office may be referred
9 to as the 'Office of NEPA Compliance'.

10 "(b) The head of the Office shall be the Director of
11 the Office of National Environmental Policy Act Compli-
12 ance, who shall be appointed by the President, by and with
13 the advice and consent of the Senate. The compensation
14 of the Director shall be at the rate of compensation pay-
15 able to the Deputy Director of the Office of Management
16 and Budget.

17 "SEC. 202. (a) The Director shall—

18 "(1) promulgate regulations governing the im-
19 plementation of this Act by all Federal agencies (in-
20 cluding independent regulatory commissions) which
21 include provisions for public review and comment on
22 the detailed statements required by section
23 102(2)(C) and, as appropriate, on other documents
24 prepared pursuant to this Act;

25 "(2) mediate interagency disputes, including
26 recommending to the President, as appropriate, res-

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1 olutions of referrals of interagency disagreements
2 under section 203;

3 “(3) monitor Federal agency implementation of
4 this Act and regulations issued under paragraph (1),
5 including—

6 “(A) reviewing and approving regulations
7 issued by other Federal agencies to implement
8 this Act;

9 “(B) determining which Federal agency is
10 the lead agency for purposes of compliance with
11 this Act in cases in which Federal agencies do
12 not agree on which is the lead agency;

13 “(C) developing alternative procedures for
14 complying with this Act in cases in which emer-
15 gency circumstances make it necessary for a
16 Federal agency to take an action with signifi-
17 cant environmental impact;

18 “(D) developing alternative procedures for
19 complying with this Act, in cases in which a
20 change in a proposed Federal agency action or
21 new information relating to the environmental
22 impacts of such an action makes it necessary to
23 supplement existing analysis under this Act;
24 and

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1 “(E) developing and publishing guidance
2 to Federal agencies regarding implementation
3 of title I and regulations promulgated under
4 paragraph (1); and

5 ~~“(4) perform such other functions related to en-~~
6 ~~vironmental laws, policies, and programs as the~~
7 ~~President may specify.~~

8 “(b) Nothing in this Act shall be construed to affect,
9 alter, or limit the independence of independent regulatory
10 commissions under the laws establishing such commis-
11 sions. The policies, practices, and interpretations under
12 this Act and the Environmental Quality Improvement Act
13 of 1970 and other laws applicable to, or adopted by, such
14 commissions or the Council on Environmental Quality be-
15 fore the date of the enactment of the National Environ-
16 mental Policy Act Administrative Reorganization Amend-
17 ments of 1993 shall continue in effect to the extent they
18 are consistent with such independence and carry out the
19 purposes of such Acts.

20 “(c)(1) The Director, subject to paragraph (2),
21 shall—

22 “(A) review and appraise the various programs
23 and activities of the Federal Government in light of
24 the policy set forth in title I for the purpose of de-
25 termining the extent to which such programs and

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

4 "(B) coordinate or facilitate the development of
5 recommendations to the President regarding na-
6 tional policies to foster and promote the improve-
7 ment of environmental quality to meet the con-
8 servation, social, economic, health, and other re-
9 quirements and goals of the Nation; and

10 "(C) coordinate or facilitate the development of
11 such studies, reports thereon, and recommendations
12 with respect to matters of policy and legislation, as
13 the President may request.

14 "(2) The President may transfer to another official
15 in the Executive Office of the President, by Executive
16 order, any function of the Director under this subsection.

17 "(d)(1) The Director, subject to paragraph (2),
18 shall—

19 "(A) assist Federal agencies and departments
20 in appraising the effectiveness of existing and pro-
21 posed facilities, programs, policies, and activities of
22 the Federal Government, and those specific major
23 projects designated by the President which do not
24 require individual project authorization by the Con-
25 gress, which affect environmental quality; and

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1 “(B) assist in coordinating among Federal de-
2 partments and agencies those programs and activi-
3 ties which affect, protect, and improve environmental
4 quality.

5 “(2) The President may transfer to another official
6 in the Executive Office of the President or to the head
7 of any Federal agency, by Executive order, any function
8 of the Director under this subsection.

9 “(e) The Director shall keep the appropriate Commit-
10 tees of the Senate and the House of Representatives in-
11 formed of the actions, regulations, policies, and practices
12 of the Office in carrying out the functions and other re-
13 quirements of the Director and the Office under this Act
14 (other than functions of the Director transferred in ac-
15 cordance with subsection (c)(2) or (d)(2)).

16 “SEC. 203. Referrals of interagency disagreements by
17 the head of any Federal agency concerning proposed
18 major Federal actions significantly affecting the quality
19 of the human environment under section 102(2)(C) or
20 concerning matters under section 309(b) of the Clean Air
21 Act shall be made to the Office for mediation and, as ap-
22 propriate, resolution by the President.”.

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1 **SEC. 3. TECHNICAL AND CONFORMING AMENDMENTS TO**
2 **NEPA.**

3 Sections 203, 205, 207, and 208 of the National En-
4 vironmental Policy Act of 1969, as in effect on the date
5 of enactment of this Act, are redesignated in order as sec-
6 tions 204, 205, 206, and 207, respectively; such sections
7 are each amended by striking "Council" and inserting
8 "Office" each place it appears; and section 206 of such
9 Act, as in effect on the day before the date of the enact-
10 ment of this Act, is repealed.

11 **SEC. 4. TECHNICAL AND CONFORMING AMENDMENTS TO**
12 **THE ENVIRONMENTAL QUALITY IMPROVE-**
13 **MENT ACT OF 1970.**

14 The Environmental Quality Improvement Act of
15 1970 (42 U.S.C. 4372 et seq.) is amended—

16 (1) in section 202(c) by—

17 (A) striking "The purposes" and all that
18 follows through "(1) to" and inserting "the
19 purpose of this title is to"; and

20 (B) striking "; and" and all that follows
21 through the end of the section and inserting a
22 period;

23 (2) in section 203, by striking subsections (a)
24 through (d) and the designation for subsection (e);

25 (3) by striking sections 204 and 205;

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1 (4) in section 206(a), by striking "Office of En-
2 vironmental Quality Management Fund" and insert-
3 ing "Office of National Environmental Policy Act
4 Compliance Management Fund";

5 (5) by redesignating section 206 as section 204;
6 and

7 (6) by adding at the end the following:

8 "DEFINITIONS

9 "SEC. 205. In this title, each of the terms 'Director'
10 and 'Office' has the meaning given that term in section
11 3 of the National Environmental Policy Act of 1969."

12 SEC. 5. ASSISTANCE FOR OFFICE OF NATIONAL ENVIRON-
13 MENTAL POLICY ACT COMPLIANCE.

14 The National Environmental Policy Act of 1969 (as
15 amended by section 3) is amended by inserting after sec-
16 tion 207 the following:

17 "SEC. 208. To assist in the timely performance of
18 the functions of the Office, the Director may utilize per-
19 sonnel or otherwise obtain assistance from other entities
20 in the Executive Office of the President or other Federal
21 agencies, by mutual consent with the heads of those enti-
22 ties or agencies, to assist the Director in performing the
23 functions of the Office."

24 SEC. 6. AUTHORIZATION OF APPROPRIATIONS.

25 Section 209 of the National Environmental Policy
26 Act of 1969 is amended to read as follows:

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1 "SEC. 209. (a) There are authorized to be appro-
2 priated to the Director to carry out the functions of the
3 Director under this or any other Act—

4 "(1) \$1,000,000 for fiscal year 1994;

5 "(2) \$1,100,000 for fiscal year 1995;

6 "(3) \$1,200,000 for fiscal year 1996; and

7 "(4) \$1,400,000 for fiscal year 1997.

8 "(b) Amounts appropriated to, or available for the
9 use of, the Office or the Director shall remain available
10 until expended."

11 SEC. 7. DEFINITIONS.

12 The National Environmental Policy Act of 1969 is
13 amended by inserting after section 2 (42 U.S.C. 4321)
14 the following:

15 "SEC. 3. In this Act:

16 "(1) The term 'Director' means the Director of
17 the Office of National Environmental Policy Act
18 Compliance appointed under section 201(b).

19 "(2) The term 'Fund' means the Office of Na-
20 tional Environmental Policy Act Compliance Man-
21 agement Fund established by section 208.

22 "(3) The term 'Office' means the Office of Na-
23 tional Environmental Policy Act Compliance estab-
24 lished by section 201(a)."

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1 **SEC. 8. TRANSFER OF FUNCTIONS TO SECRETARY OF THE**
2 **ENVIRONMENT.**

3 (a) **TRANSFERS.**—There are transferred to the Sec-
4 retary of the Environment—

5 (1) the functions of the Council on Environ-
6 mental Quality under paragraphs (2), (5), (6), and
7 (7) of section 204 of the National Environmental
8 Policy Act of 1969, as in effect on the day before
9 the date of the enactment of this Act; and

10 (2) the functions of the Chairman of the Coun-
11 cil on Environmental Quality (as Director of the Of-
12 fice of Environmental Quality) under paragraphs
13 (3), (4), (6), and (7) of section 203(d) of the Envi-
14 ronmental Quality Improvement Act of 1970, as in
15 effect on the day before the date of the enactment
16 of this Act.

17 (b) **CONSTRUCTION.**—The functions transferred to
18 the Secretary of the Environment by this section or pursu-
19 ant to any executive order issued pursuant to amendments
20 made by this Act shall not be construed by anyone to af-
21 fect, alter, change, or amend any other law or regulation
22 administered by the Secretary or his or her delegate.

23 (c) **ACCOUNTABILITY.**—The Secretary of the Envi-
24 ronment shall be accountable to the appropriate commit-
25 tees of the Senate and House of Representatives for all
26 functions described in subsection (b).

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1 (d) AUTHORIZATION OF APPROPRIATIONS.—There is
2 authorized to be appropriated to the Secretary such sums
3 as may be necessary specifically to carry out the functions
4 described in subsection (b) effectively and in a timely man-
5 ner.

6 SEC. 9. TERMINATION OF COUNCIL ON ENVIRONMENTAL
7 QUALITY AND OFFICE OF ENVIRONMENTAL
8 QUALITY.

9 (a) TERMINATION.—The Council on Environmental
10 Quality and the Office of Environmental Quality are ter-
11 minated.

12 (b) REFERENCES.—Reference to the Council on En-
13 vironmental Quality, the Office of Environmental Quality,
14 or any officer or employee of that council or that office
15 in any other Federal law, Executive order, rule, regulation,
16 or delegation of authority, or in any document of or relat-
17 ing to the Council on Environmental Quality—

18 (1) with respect to functions that were vested in
19 that council or office on the day before the date of
20 the enactment of this Act and are vested in the Di-
21 rector of the Office of National Environmental Pol-
22 icy Act Compliance Office by section 202 of the Na-
23 tional Environmental Policy Act of 1969, as amend-
24 ed by section 2 of this Act, is deemed to refer to the
25 Director of the Office of National Environmental

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1 Policy Act Compliance or to such other official to
2 whom such a function is transferred in accordance
3 with section 202(c)(2) or (d)(2) of that Act, as ap-
4 propriate; or

5 (2) with regard to disputes, disagreements, and
6 matters described in sections 202(a)(2) and 203 of
7 that Act, as amended by section 2 of this Act, is
8 deemed to refer to the Director of the Office of Na-
9 tional Environmental Policy Act Compliance or to
10 that office, as appropriate.

11 (c) SAVINGS PROVISIONS.—

12 (1) CONTINUATION OF ORDERS, ETC.—All or-
13 ders, determinations, rules, regulations, agreements,
14 grants, contracts, privileges, and other administra-
15 tive actions—

16 (A) which have been issued, made, grant-
17 ed, or allowed to become effective by the Presi-
18 dent, the Council on Environmental Quality, or
19 the Office of Environmental Quality, in the per-
20 formance of functions of the Council on Envi-
21 ronmental Quality or the Office of Environ-
22 mental Quality, or by a court of competent ju-
23 risdiction with respect to those functions, and

24 (B) which are in effect on the date of the
25 enactment of this Act, or were final before that

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1 date of enactment and are to become effective
2 on or after that date of enactment,
3 shall continue in effect according to their terms until
4 modified, terminated, superseded, set aside, or re-
5 voked in accordance with law by the President, the
6 Director of the Office of National Environmental
7 Policy Act Compliance, any other authorized official,
8 a court of competent jurisdiction, or operation of
9 law.

10 (2) CONTINUATION OF PROCEEDINGS AND AP-
11 PLICATIONS.—The provisions of this Act shall not
12 affect any proceedings pending before the Council on
13 Environmental Quality on the date of the enactment
14 of this Act, but such proceedings shall be continued.
15 Orders shall be issued in such proceedings, appeals
16 shall be taken therefrom, and payments shall be
17 made pursuant to such orders, as if this Act had not
18 been enacted, and orders issued in any such proceed-
19 ings shall continue in effect until modified, termi-
20 nated, superseded, or revoked by a duly authorized
21 official, by a court of competent jurisdiction, or by
22 operation of law. Nothing in this paragraph shall be
23 considered to prohibit the discontinuance or modi-
24 fication of any such proceeding under the same
25 terms and conditions and to the same extent that

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1 such proceeding could have been discontinued or
2 modified if this Act had not been enacted.

3 (3) SUITS NOT AFFECTED.—The provisions of
4 this section shall not affect suits commenced before
5 the date of the enactment of this Act, and in all
6 such suits, proceedings shall be had, appeals taken,
7 and judgments rendered in the same manner and
8 with the same effect as if this Act had not been en-
9 acted.

10 (4) SUITS INVOLVING COUNCIL OR OFFICE.—
11 No suit, action, or other proceeding commenced by
12 or against the Council on Environmental Quality or
13 the Office of Environmental Quality, or by or
14 against any individual in the official capacity of such
15 individual as an officer or employee of the Council
16 or that Office, shall abate by reason of the enact-
17 ment of this Act.

18 (5) RULEMAKING.—Any administrative action
19 relating to the preparation or promulgation of a reg-
20 ulation by the Council on Environmental Quality
21 shall be continued by the Director of the Office of
22 National Environmental Policy Act Compliance or
23 the President with the same effect as if this Act had
24 not been enacted.

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1 (6) **ASSETS AND INTERESTS.**—The contracts, li-
2 abilities, records, property, and other assets and in-
3 terests of the Council on Environmental Quality and
4 the Office of Environmental Quality shall, on and
5 after the date of the enactment of this Act, be con-
6 sidered to be the contracts, liabilities, records, prop-
7 erty, and other assets and interests of the Office of
8 National Environmental Policy Act Compliance.

9 (d) **CONTINUING AVAILABILITY OF AMOUNTS.**—
10 Amounts available to the Council on Environmental Qual-
11 ity on the date of the enactment of this Act shall be avail-
12 able for use by the Director of the Office of National Envi-
13 ronmental Policy Act Compliance.

14 **SEC. 10. TECHNICAL AND CONFORMING AMENDMENTS.**

15 The National Environmental Policy Act of 1969 (42
16 U.S.C. 4321 et seq.) is amended—

17 (1) in section 2 (42 U.S.C. 4321)—

18 (A) by inserting “and” after “man;”; and

19 (B) by striking “Nation;” and all that fol-
20 lows through the end of the section and insert-
21 ing “Nation.”;

22 (2) by striking “Council on Environmental
23 Quality” each place that term appears and inserting
24 “Director”;

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1 (3) in section 102(2)(B) (42 U.S.C.
2 4332(2)(B)) by striking "established by title II of
3 this Act";

4 (4) in section 102(2)(G) (42 U.S.C.
5 4332(2)(G)) by inserting "and" after the semicolon;

6 (5) in section 102(2)(H) (42 U.S.C.
7 4332(2)(H)) by striking "; and" and inserting a pe-
8 riod;

9 (6) by striking section 102(2)(I) (42 U.S.C.
10 4332(2)(I));

11 (7) in section 205(1) (42 U.S.C. 4345(1)) by
12 striking "the Citizen's" and all that follows through
13 "and with"; and

14 (8) in section 205(2) (42 U.S.C. 4345(2)) by
15 striking "the Council's" and inserting "the Office's".

Kurt - 

Final letter that
went for President's
signature. includes
OEP's changes.

JP

Room 360

DRAFT LETTER FROM THE PRESIDENT ON EPA BILL

Dear Mr. Speaker:

I am writing to express my very strong support for H.R. 3425, legislation to establish a new Department of Environmental Protection.

Protecting a healthy environment, reducing the pollution of our air and water, and ensuring that we pass along to our children a safer, healthier world is a high priority for my Administration and for the American people. It is time that we reflect this priority in the way we organize our own Federal house by elevating the Environmental Protection Agency to Cabinet status. I therefore strongly support this legislation and encourage its prompt passage.

I also strongly support action on legislation to establish a new Office of NEPA Compliance as a part of H.R. 3425. The reorganization of the existing Council on Environmental Quality into the new Office is consistent with our efforts to elevate the stature of environmental decision-making within the Executive Branch, and I urge the inclusion of the appropriate authorization for the new office into H.R. 3425.

I would strongly oppose other amendments to H.R. 3425 affecting environmental policy. The purpose of H.R. 3425 is to provide for the structural elevation of the EPA to Cabinet status. It is an inappropriate vehicle for the consideration of broader environmental policy issues. I urge the Congress to reject such amendments and move quickly to enact this critical legislation.

Sincerely,

MEMORANDUM FOR OEP SENIOR STAFF

FROM: Cathy 
SUBJECT: Agendas: Next Step
DATE: November 22, 1993

Thank you for your efforts in putting together each "list of 7 above-the-line activities" for last Friday's meeting. Katie was impressed and even a bit overwhelmed at the magnitude of each of your tasks. That is movement in the right direction!!!

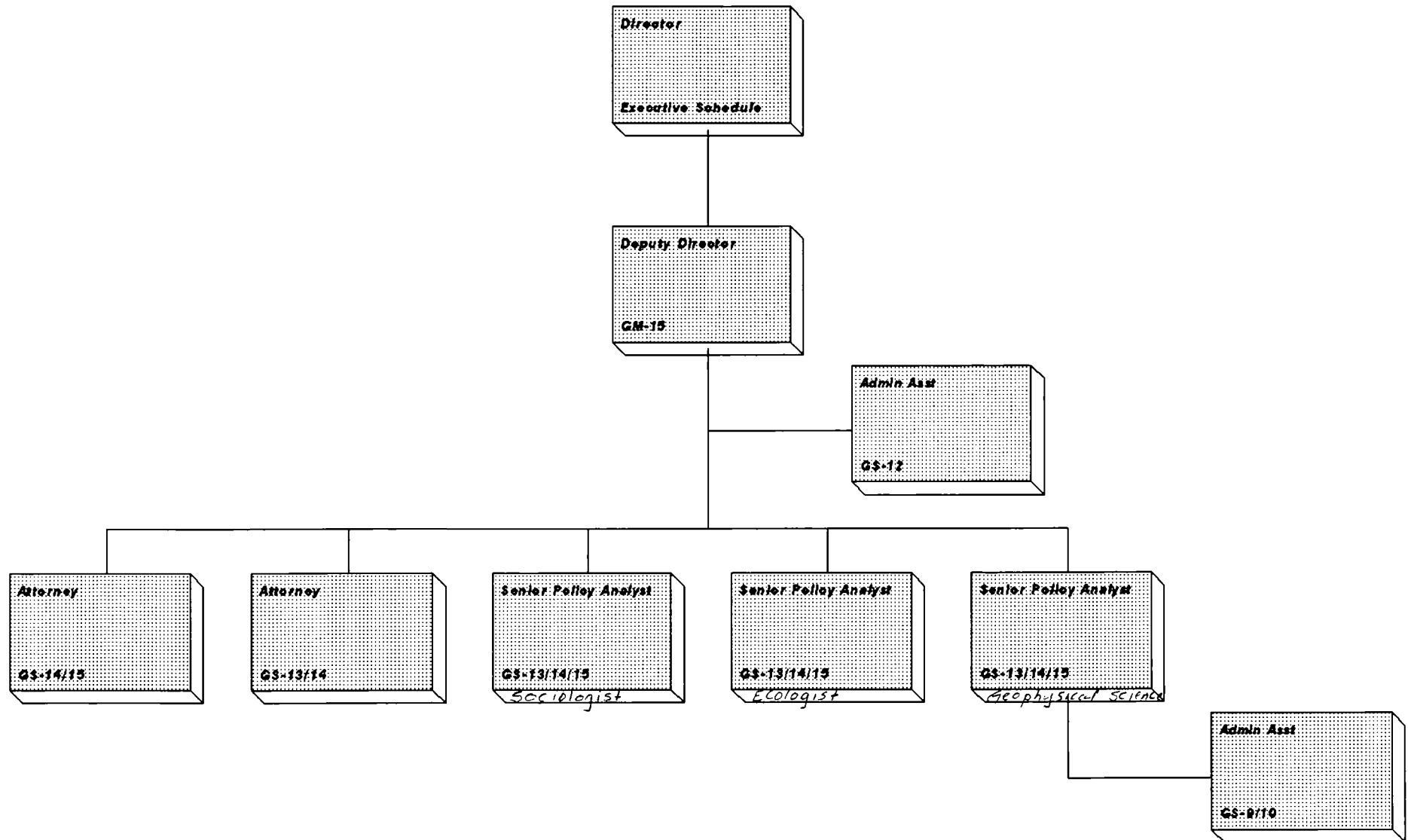
I would like to re-group with you guys before Thanksgiving and discuss some general ideas -- before each of us refines what was presented last week and adds to the list all of the "below-the-line" activities. Key points to cover as part of this **reality check** include:

- o what percentage of our time is non-discretionary (i.e., the dribs and drabs of urgent, time-sensitive requests that appear to fill up 8 hours of each day)?
- o if we planned better, how could this burden be reduced?
- o what percentage of our time is necessary for monitoring/keeping tabs on "below-the-line" activities in each portfolio?
- o in light of these time constraints, is the magic number of 7 OEP-led initiative per portfolio simply too high for a one-year time horizon?

Obviously, the answers to these questions will be specific to each associate director's portfolio, but I think it may be useful to have a quick discussion as a group.

Thanks -- your attention to this will increase the effectiveness of OEP, the advancement of the overall environmental agenda, and help instill a modicum of sanity around here.

Office of NEPA Compliance



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14:38

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Amendments submitted to the Rules Committee on H.R. 3425
Department of Environmental Protection Act

Filing Deadline - Wednesday, November 10, 1993 - 5:00 p.m.

- 1) Traficant** Adds a sense of the Congress that the Secretary of DEP should comply with the Buy American Act.
- 2) Waxman** withdrawn
- 3) Tauzin** Requires the Office of Environmental Justice to develop a plan to protect the legal and constitutional rights of private property owners when affected by a decision of that office.
- 4) Thomas (WY)** Establishes a Small Business Ombudsman Office to provide technical and compliance assistance to small business concerns and to small governmental jurisdictions.
- 5) Studds/Dingell** Establishes within the Executive Office of the President a new office of National Environmental Policy Act (NEPA) Compliance to oversee federal agency compliance of this Act. This office replaces the Council on Environmental Quality (CEQ).
- 6) Dooley** Adds two requirements to the peer review guidelines: 1) requires that the peer review be conducted by independent scientists recommended by the National Academy of Sciences; and 2) requires that the Secretary allow for consideration during the review process of scientifically valid information provided by any independent source.
- 7) Dooley** Strikes subsection (c) of the Scientific Integrity section which limits the legal enforceability of the peer review.
- 8) Hefley** Requires the Secretary to conduct cost-benefit analyses for all proposed environmental regulations and limits the issuance of those regulations whose costs exceed the benefits to public health and the environment.
- 9) Baker (LA)** Establishes a regulatory procedure to address the impact of federal legislative and regulatory activity on small business and the private economic sector.
- 10) Herger** Requires the Secretary to assess any DEP regulatory action for any potential taking of private property.

- 11) **Thurman/Mica** Requires the Secretary to include with any new regulations relating to human health or the environment: 1) an estimate of the risk to be addressed; 2) the costs associated with implementation and compliance with the regulation; and 3) a comparative analysis of the risk addressed relative to other risks.
- 12) **Walker** Substitute amendment creating a Department of Science, Space, Energy, and Technology which would include the current EPA.
- 13) **Schiff** Reduces the number of Assistant Secretaries from 10 to 7.
- 14) **Schiff** Reduces the number of Deputy Assistant Secretaries from 20 to 14.
- 15) **Dingell** Technical amendment clarifies that the Office on Environmental Risk authority does not alter, affect, or amend substantive provisions of law.
- 16) **Mica** Creates an Office of Environmental Risk and Cost Analysis.
- 17) **Mica** Delays the elevation of the EPA to cabinet-level status for one year pending the implementation of agency management reforms.
- 18) **Portman** Strikes the Office of Environmental Justice.
- 19) **Pryce** Requires that the Secretary annually assess the performance of each Regional Office instead of periodically and requires that the first such assessment be completed within one year of the date of enactment instead of two.
- 20) **Portman** Sense of the Congress that the National Headquarters for the new DEP be named in honor of George Bush.
- 21) **Clinger** Requires the Assistant Secretary assigned functions for Intergovernmental Affairs to develop and implement a strategy to promote the easing of unfunded environmental mandates on State and local governments.
- 22) **Clinger** Substitute amendment to elevate EPA to cabinet status without any structural or policy changes to the Agency. Provides for a Secretary of the Dept. of Environmental Protection, 10 Assistant Secretaries, 20 Deputy Assistant Secretaries, Office of General Counsel, Office of Inspector General, and up to 11 Regional Administrators.
- 23) **DeLay** Authorizes the IG of DEP to enter into an interdepartmental investigatory task force with the Department of Justice to identify waste, fraud, and criminal misconduct within the DEP.

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- 24) DeLay** Reduces the number of regional offices from 10 to 8.
- 25) DeLay** Reduces the number of deputy assistant secretaries from 20 to 14.
- 26) DeLay** Reduces the number of assistant secretaries from 10 to 7.
- 27) Hastert** Requires the Assistant Secretary for Solid Wastes to inform the Secretary of potential environmental impacts of proposed landfill construction.

FAX FROM THE OFFICE OF TOM KITSOS
COMMITTEE ON MERCHANT MARINE AND FISHERIES
1339 LONGWORTH HOB
WASHINGTON, D. C. 20515
PHONE: (202) 225-2429
FAX: (202) 225-7627

DATE:

Nov 4

TO:

Cathy ZOI

OEP

NUMBER OF PAGES (INCLUDING COVER):

3

CONTACT

IF PROBLEMS ARISE.

CEQ bill -

COMMENTS:

Corrections on two
pages - not really substantive,
but I thought you should have
them. Will wait to hear from tax
& OMB review before introducing.

Tom Kitsos

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1 supplement existing analysis under this Act;
2 and

3 "(E) developing and publishing guidance
4 to Federal agencies regarding implementation
5 of title I and regulations promulgated under
6 paragraph (1); and

7 "(4) perform such other functions related to en-
8 vironmental laws, policies, and programs as the
9 President may specify. ~~Except that the Director may~~
10 ~~not perform any function relating to the review or~~
11 ~~consideration of any draft rule that the Director is~~
12 ~~not specifically authorized to perform under this or~~
13 ~~another law or Executive order.~~

14 "(b) Nothing in this [title] shall be construed to affect
15 the independence of independent regulatory commissions
16 under the laws establishing such ~~Commission~~^s. The poli-
17 cies, practices, and interpretations under this Act and the
18 Environmental Quality Improvement Act of 1970 and
19 other laws applicable to, or adopted by, such ~~Commission~~^s
20 or the Council on Environmental Quality before the date
21 of the enactment of this subsection shall continue in effect
22 to the extent they are consistent with such independence.

23 "(c)(1) The Director, subject to paragraph (2),
24 shall—

Act

alter or
limitcarry
outand the
purposes
of such
Acts.

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1 Policy Act of 1969, as in effect on the day before
2 the date of the enactment of this Act; and

3 (2) the functions of the Chairman of the Coun-
4 cil on Environmental Quality (as Director of the Of-
5 fice of Environmental Quality) under paragraphs
6 (3), (4), (6), and (7) of section 203(d) of the Envi-
7 ronmental Quality Improvement Act of 1970, as in
8 effect on the day before the date of the enactment
9 of this Act.

10 (b) CONSTRUCTION.—The ~~transfer of~~ functions ^{transferred} to
11 the Secretary of the Environment pursuant to this Act or ^{section 70F}
12 pursuant to any executive order pursuant to amendments
13 made by this Act shall not be constrained by anyone to af-
14 fect, alter, change, or amend any ^{other} law or regulation admin-
15 istered by the Secretary or his or her delegate. The Sec-
16 retary shall be accountable to the appropriate committees
17 of the Senate and House of Representatives for all such
18 functions and there is authorized to the Secretary such
19 sums as may be necessary specifically to carry out such
20 functions effectively and in a timely manner.

be
appropriated

11/1/93

current
statutory
language
attached

Jack-

O.K. w/ me...

Question about the management fund --
how strongly does Dingell feel about
the ^{non-}delegability of it? From a
statutory point of view, the mgmt fund
has a broader mandate than the one
that will reside w/ the Office of NEPA
compliance. It seems that we should
either:

① make it delegable w/ in OEP, or

② limit its applicability to NEPA
compliance issues only.

What do you think? (On the other hand,
we could just keep this broad environ-
mental fund around -- even if it
does reside in the wrong place). Call me.
1:55

Jack -
Kittos is
supposed to go
to send some
over on Monday
Management in
you didn't want
least... Shouldn't
Problem, and I
to you please if I
have a good
- (copy)

Cathy - I haven't
seen anything as
yet, but I've
given a call that
maybe want this to
be the new
office. All calls
52

(5) assisting in coordinating among the Federal departments and agencies those programs and activities which affect, protect, and improve environmental quality;

DEAD

(6) assisting the Federal departments and agencies in the development and interrelationship of environmental quality criteria and standards established throughout the Federal Government

DEAD

(7) collecting, collating, analyzing, and interpreting data and information on environmental quality, ecological research, and evaluation.

DEAD TO 264

(e) The Director is authorized to contract with public or private agencies, institutions, and organizations and with individuals without regard to section 3324(a) and (b) of Title 31 and section 5 of Title 41 in carrying out his functions.

42 USC § 4373. Each Environmental Quality Report required by Public Law 91-190 shall, upon transmittal to Congress, be referred to each standing committee having jurisdiction over any part of the subject matter of the Report.

42 USC § 4374. There are hereby authorized to be appropriated for the operations of the Office of Environmental Quality and the Council on Environmental Quality not to exceed the following sums for the following fiscal years which sums are in addition to those contained in Public Law 91-190:

(a) \$2,126,000 for the fiscal year ending September 30, 1979.

(b) \$3,000,000 for the fiscal years ending September 30, 1980, and September 30, 1981.

(c) \$44,000 for the fiscal years ending September 30, 1982, 1983, and 1984.

(d) \$480,000 for each of the fiscal years ending September 30, 1985 and 1986.

~~42 USC § 4375.~~

(a) There is established an Office of Environmental Quality Management Fund (hereinafter referred to as the "Fund") to receive advance payments from other agencies or accounts that may be used solely to finance —

(1) study contracts that are jointly sponsored by the Office and one or more other Federal agencies; and

(2) Federal interagency environmental projects (including task forces) in which the Office participates.

(b) Any study contract or project that is to be financed under subsection (a) of this section may be initiated only with the approval of the Director.

(c) The Director shall promulgate regulations setting forth policies and procedures for operation of the Fund.

*Call by 201 -
Jack would like
your comments
ASAP*

FAX FROM THE OFFICE OF TOM KITSOS
COMMITTEE ON MERCHANT MARINE AND FISHERIES
1339 LONGWORTH HOB
WASHINGTON, D. C. 20515
PHONE: (202) 225-2429
FAX: (202) 225-7627

DATE:

10/29/93

TO:

JACK QUINN

NUMBER OF PAGES (INCLUDING COVER):

6

CONTACT

IF PROBLEMS ARISE.

COMMENTS:

This reflects our understanding about the underlying principles on which the CEQ Replacement amendment will be drafted.

This has been agreed to by Alan Roth, David Finegan, and me.

Tom Kitsos

STATEMENT OF PRINCIPLES

10/29/93

REPLACEMENT FOR THE
COUNCIL ON ENVIRONMENTAL QUALITY (CEQ)UNDER THE TERMS OF THIS AGREEMENT:

The Council on Environmental Quality (CEQ) and the Office of Environmental Quality (OEQ) would be abolished. In place of CEQ and OEQ, a new Office of NEPA Compliance would be established by law in the Executive Office of the President.

Those functions of CEQ contained in Title II of NEPA and section 203(d) of EQIA that are integral to the proper functioning of the NEPA process would be statutorily granted to the new office but could be assigned by the President by executive order to another unit in the Executive Office of the President (EOP), for certain of these functions, or to another unit in the EOP or other federal agency, for certain other functions.

Additionally, there would be clarifying provisions based on the accepted and historical practice of CEQ in implementing NEPA. These would include explicit authority to promulgate NEPA regulations, oversee agency compliance with the regs, interpret NEPA for federal agencies and citizens, and mediate interagency disputes. These functions would be based on present authority in NEPA and executive orders or by established CEQ practice. However, most of the functions now carried in section 204 of NEPA and section 203(d) of the EQIA would be transferred directly to the new Department of EPA.

[Note: Legislative language to implement this agreement is being drafted]

FIVE EXISTING CEQ/OEQ STATUTORY FUNCTIONS TO BE GRANTED TO THE
(NEW) OFFICE OF NEPA COMPLIANCE BUT ASSIGNABLE BY THE PRESIDENT
TO OTHER ENTITIES:

I. Existing statutory language from Title II of NEPA and section 203(d) of EQIA (functions presently carried out by CEQ):
(present statute and section #'s in brackets; new language in brackets, bold print)

A. The following functions are to be carried out by the Office of NEPA Compliance unless assigned by the President, by executive order, to another unit in the EOP:

(1) review and appraise the various programs and activities of the Federal Government in light of the policy set forth in title I of NEPA for the purpose of determining the extent of which such programs and activities are contributing to the achievement of such policy, and to make recommendations to

-- 2 --

the President with respect thereto [sec. 204(3) of NEPA];

(2) [coordinate the development of recommendations to the President on] national policies to foster and promote the improvement of environmental quality to meet the conservation, social, economic, health, and other requirements and goals of the Nation [sec. 204(4) of NEPA];

(3) make and furnish [or facilitate the development of] such studies, reports thereon, and recommendations with respect to matters of policy and legislation as the President may request [sec. 204(8) of NEPA];

B. The following functions are to be carried out by the Office of NEPA Compliance unless assigned by the President, by executive order, to another unit in the EOP or to another federal agency:

(4) assist the Federal agencies and departments in appraising the effectiveness of existing and proposed facilities, programs, policies, and activities of the Federal Government, and those specific major projects designated by the President which do not require individual project authorization by Congress, which affect environmental quality [sec. 203(d)(2) of EQIA]; and

(5) assist in coordinating among the Federal departments and agencies those programs and activities which affect, protect, and improve environmental quality [sec. 203(d)(5) of EQIA];

The Director of the Office of NEPA Compliance shall be accountable to Congress for the above functions not assigned by the President to other EOP units or other federal agencies.

RELATED AND NECESSARY NEPA-SPECIFIC AUTHORITIES TO BE CARRIED OUT BY THE OFFICE OF NEPA COMPLIANCE (NONASSIGNABLE):

II. Additional provisions specifying and clarifying NEPA-related (nonassignable) functions that have been carried out by CEQ, are necessary to enable the Office of NEPA Compliance to execute NEPA functions, and are directly or indirectly authorized under NEPA or Executive Order 11514 of March 5, 1970 as amended by Executive Order 11991 of May 24, 1977, or historically practiced by CEQ in furtherance of its NEPA responsibilities.

(1) promulgate regulations governing the implementation of NEPA by all Federal agencies (including independent regulatory commissions) which include provisions for public review and comment on the detailed statements required by section 102(2)(C) of NEPA and, as appropriate, on other documents prepared pursuant to NEPA;

-- 3 --

(2) mediate interagency disputes and receive referrals of interagency disagreements under section 102(2)(C) of NEPA or matters under section 309(b) of the Clean Air Act for, as appropriate, resolution by the President;

(3) monitor federal agency implementation of NEPA and the new institution's regulations, including the approval of agency NEPA regulations;

(4) provide consultative and interpretative functions for agencies and citizens on NEPA and the regulations including specific direction on lead agency determinations, emergency situations, etc.

[note: The legislation would also provide for the retention by the new Office of existing functions in section 205 of NEPA; these involve consultation with representatives of various outside organizations and utilizing the services, facilities, and information of public and private agencies and organizations, and individuals to avoid duplication of effort and expenses.]

The Director of the Office of NEPA Compliance shall be accountable to Congress for the functions in II above.

LIST OF FUNCTIONS IN TITLE II OF NEPA AND THE ENVIRONMENTAL QUALITY IMPROVEMENT ACT OF 1970 THAT WOULD BE DIRECTLY TRANSFERRED TO THE NEW DEPARTMENT OF ENVIRONMENTAL PROTECTION:

(present statute and section #'s in brackets)

(1) to gather timely and authoritative information concerning the conditions and trends in the quality of the environment both current and prospective, to analyze and interpret such information for the purpose of determining whether such conditions and trends are interfering, or are likely to interfere, with the achievement of the policy set forth in NEPA, and to compile and submit to the President studies relating to such conditions and trends [sec. 204(2) of NEPA];

(2) to conduct investigations, studies, surveys, research, and analyses relating to ecological systems and environmental quality [sec. 204(5) of NEPA];

(3) to document and define changes in the natural environment, including the plant and animal systems, and to accumulate necessary data and other information for a continuing analysis of these changes or trends and an interpretation of their underlying causes [sec. 204(6) of NEPA];

(4) to report at least once each year to the President on the state and condition of the environment [sec. 204(7) of NEPA];

(5) reviewing the adequacy of existing systems for monitoring

-- 4 --

and predicting environmental changes in order to achieve effective coverage and efficient use of research facilities and other resources [sec. 203(d)(3) of EQIA];

(6) promoting the advancement of scientific knowledge of the effects of actions and technology on the environment and encouraging the development of the means to prevent or reduce adverse effects that endanger the health and well-being of man; [sec. 203(d)(4) of EQIA];

(7) assisting the Federal departments and agencies in the development and interrelationship of environmental quality criteria and standards established throughout the Federal Government [sec. 203(d)(6) of EQIA];

(8) collecting, collating, analyzing, and interpreting data and information on environmental quality, ecological research, and evaluation [sec. 203(d)(7) of EQIA];

[Note: The transfer of these eight functions does not confer on the Department of EPA any new regulatory or enforcement authorities. Additionally, it is our expectation that a number of these functions will be carried out by the independent Bureau of Environmental Statistics that is part of the EPA elevation legislation.]

DIRECTOR AND STAFF OF OFFICE OF NEPA COMPLIANCE:

A. Director:

1. Appointed by the President;
2. By and with the advice and consent of the Senate;
3. Shall carry out the functions of the Office;
4. Perform other functions as directed by the President;
5. Shall not review draft rules not specifically authorized under this or other federal law;
6. Shall be accountable to Congress (as noted above);
7. May request the head of any Federal agency to assist the Director in carrying out the functions of the Office.

B. Staff:

1. Director may employ such staff as necessary to carry out the functions of the Office;
2. Director may employ and fix the compensation of such experts and consultants as may be necessary;
3. Director may accept service of volunteers;
4. Director may contract with public and private institutions to assist in carrying out functions of Office;
5. The President may detail other federal personnel.

[Note: These elements are essentially based on existing provisions in section 203 of Title II of NEPA and sections 203(c) and (d) of the EQIA and made applicable to the new Office.]

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C. FY 1994 Staff:

(This is a separate budget and appropriation matter,
not part of the CEQ amendment, but an essential
element in this agreement)

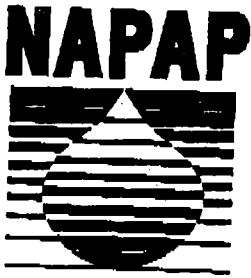
The Administration agrees that it will take necessary and appropriate steps to increase the present staff of three FTE's in the existing CEQ to seven professional staff and additional administrative and clerical personnel when the Office of NEPA Compliance is established by the legislation. There will be modest increases in the out years. Authorization levels reflecting this agreement still need to be worked out.

} strong
enough
that
Congress
is
request

TRANSITION PROVISIONS:

To make the transition from the CEQ and OEQ to the Office of NEPA Compliance will require a few pages of legislative text to address such matters as:

1. references in other federal laws, executive orders, rules, and regulations;
2. savings provisions for the continuation of orders, rules, regulations, permits, agreements, grants, and other administrative actions;
3. continuation of proceedings and applications;
4. suits involving the CEQ or OEQ;
5. protection for existing CEQ NEPA regulations;
6. transfer of the CEQ Management Fund to the Office of NEPA Compliance Management Fund; and
7. technical and conforming changes to title I of NEPA and to section 309 of the Clean Air Act.



NATIONAL ACID PRECIPITATION
ASSESSMENT PROGRAM

722 Jackson Place, NW
Washington, DC 20503

FAX TRANSMISSION

Phone: (202) 296-1002
FAX: (202) 296-1009

To:

NAME

KATIE MCGINTY
456-2710

COMPAN

DATE AND TIME OF TRANSMISSION

11/8/93

FAX NUMBER

From:

NAME

DEREK WINSTANLEY

Reference:

SUBJECT

TRANSFER OF NAPAP ADMIN. TO NOAA

Message:

Cathy

NATIONAL ACID PRECIPITATION ASSESSMENT PROGRAM

722 JACKSON PLACE, N.W. • WASHINGTON, D.C. 20503
Tel: 202/296-1002 • Fax: 202/296-1009



November 8, 1993

MEMORANDUM

TO: Interagency Committee members

FROM: *M. Clancy, Jr.*
Derek Winstanley

Subject: Transfer of NAPAP administrative functions to NOAA

Some progress has been made regarding the issue of transferring the administration of funds for the NAPAP Office of the Director to NOAA. Attached is a draft agreement prepared by NOAA that would enable the NAPAP funds to be transferred from the Office of Environmental Quality (OEQ) Management Fund to a special account within NOAA.

As a refresher, I have included the paper trail from the Administrators that has lead to this action. The first is Dr. Baker's letter to Katie McGinty suggesting the establishment, within NOAA, of an interagency management fund for central NAPAP operations. The second is Katie McGinty's response to Dr. Baker stating that she had no objections to such a transfer but to first seek approval from the other funding agencies. This issue has been discussed at the past few Interagency Committee meetings, at which no agency voiced any objection to such a transfer. The third is a letter from Carol Browner to Jack Gibbons stating her concurrence with Dr. Baker's recommendation that NOAA should serve as a home for NAPAP.

As you know all too well, the need for such an action came out of the downsizing of CEQ and OEQ, the current administrator of NAPAP's funds. The President's appointment of Dr. Baker as Acting Chair of CEQ lifted a tremendous obstacle which had basically halted the functioning of this office. However, this appointment is a temporary



fix and permanent measures need to be enacted for the long-term functioning of the Office of the Director due to NAPAP's indefinite continuation under the 1990 Clean Air Act Amendments.

If you have any comments or alternative views, please submit them to me by COB Friday, November 12. If I do not receive any comments by this date, we will proceed to finalize the Agreement and have it approved by NOAA/OAR and CEQ/OEQ.

Thanks for your attention to this important matter.

Attachments

cc: Kathleen McGinty, WHOEP
Jürg Hochuli, EOP/OA/FMD
Elisabeth Blaug, CEQ
Ray Clark, CEQ

DRAFT

COOPERATIVE AGREEMENT
BETWEEN THE COUNSEL ON ENVIRONMENTAL QUALITY
OFFICE OF ENVIRONMENTAL QUALITY
AND THE
OFFICE OF OCEANIC AND ATMOSPHERIC RESEARCH OF THE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

I. GENERAL INFORMATION

1. This agreement is between the Council on Environmental Quality (CEQ), Office of Environmental Quality (OEQ), hereinafter referred to as OEQ, and the Office of Oceanic and Atmospheric Research (OAR) of the National Oceanic and Atmospheric Administration (NOAA), hereinafter referred to as NOAA/OAR.
2. This agreement provides for the transfer of duties, obligations, and funds identified for use by the National Acid Precipitation Assessment Program (NAPAP), Office of the Director (OD), hereinafter referred to as NAPAP/OD, which are currently held within the OEQ Management Fund, to NOAA/OAR.
3. Following the execution of the transfer of duties, NOAA/OAR will be responsible for managing NAPAP/OD monies, including responsibility for disbursements under existing contracts, issuing new contracts, and for receiving any new monies, whether appropriated specifically for NAPAP/OD or transferred from an agency.
4. This agreement is in accordance with the responsibility of OEQ for the OEQ Management Fund (42 U.S.C. § 4375).
5. This agreement will transfer to NOAA, a member of the NAPAP Task Force, the responsibility for managing interagency monies identified for NAPAP/OD use, thus ensuring the orderly function of NAPAP/OD and providing a location for the NAPAP/OD account, consistent with the Acid Precipitation Act of 1980, which established the Administrator of NOAA as the NAPAP Director of Research.

II. REFERENCES AND AUTHORITIES

Memorandum from the President to the Honorable D. James Baker, October 14, 1993

15 U.S.C. § 1525

42 U.S.C. § 4375

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Acid Precipitation Act of 1980, Pub. L. No. 96-294, Title VII (1980), 42 U.S.C. §§ 8901 - 8905, as amended, Pub. L. No. 100-685, Title IV, § 414 (1988), 42 U.S.C. § 8906.

Clean Air Act Amendments of 1990, Pub. L. No. 101-549, Title IX, Section 901(j) (1990), 42 U.S.C. § 7403(j)

Memorandum of Understanding Among Federal Agencies of the Joint Chairs Council of the National Acid Precipitation Assessment Program (effective October 10, 1985)

[EPA Fund Transfer agreement?]

III. PURPOSE

The purpose of this agreement is to provide for the orderly and permanent management and disbursement of monies identified for use by NAPAP/OD by establishing NOAA/OAR as the entity responsible for receiving advance payments from other agencies or accounts. This agreement provides for the transfer of all current and future monies and obligations identified for NAPAP/OD from the OEQ Management Fund to NOAA/OAR.

IV. RESPONSIBILITIES OF AGENCIES

1. OEQ agrees to transfer to NOAA/OAR all monies and obligations identified for the purposes of NAPAP that are held in the OEQ Management Fund. This transfer will include existing and future obligations and monies.
2. NOAA/OAR agrees to receive all monies and obligations identified for the purposes of NAPAP/OD that are in the OEQ Management fund.
3. NOAA/OAR agrees to receive all future monies for NAPAP/OD purposes from interagency transfers, direct appropriations, or otherwise.
4. NOAA/OAR agrees to deposit the above-referenced monies in a separate account, and to faithfully administer that account for the purposes of all existing and future obligations for which the monies are dedicated.
5. NOAA/OAR will assume the expenses and duties associated with administering the NAPAP/OD monies.

V. FUNDING

The monies deposited in the NOAA/OAR NAPAP/OD account will be comprised of interagency contributions or, potentially, direct appropriations to NAPAP/OD. NOAA is not responsible for funding this account beyond its own contribution.

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UNITED STATES DEPARTMENT OF COMMERCE
The Under Secretary for
Oceans and Atmosphere
Washington, D.C. 20230

AUG 4 1993

Ms. Kathleen McGinty
Deputy Assistant to the President and
Director of The White House
Office on Environmental Policy
Old Executive Office Building
Washington, D.C. 20500

Dear Katie:

This letter refers to the future of the National Acid Precipitation Assessment Program (NAPAP). You will be aware from the enclosed August 3 letter from the Director, Derek Winstanley, that it is timely that we focus on the future of this important interagency program.

The National Oceanic and Atmospheric Administration (NOAA) has historically played a central role in supporting the high quality scientific research and assessment activities of NAPAP, and a major thrust of my team at NOAA is to strengthen our leadership role in helping solve regional air quality problems. The Administrator of NOAA is, by law, Director of Research for NAPAP.

In order to move this process along, I would like to indicate to you that I would be willing to serve as Chair of the Acid Precipitation Task Force, should President Clinton wish to make such an appointment. It may also be timely for the President to direct the Task Force to invigorate its interagency leadership and cooperation in the search for solutions to acid rain and related regional air quality problems.

As Chair of the Task Force, and in my statutory position as Director of Research for NAPAP, I would propose the following initial steps:

- (1) Confirm that Derek Winstanley will continue to serve as my representative as Director of NAPAP. Dr. Winstanley has unique multidisciplinary expertise in the broad range of technical areas that fall under the purview of NAPAP and has demonstrated his capability to lead the national program.



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VI. ADMINISTRATION

1. NOAA/OAR will be solely responsible for administering the NAPAP/OD account in a manner consistent with the guidance provided by Director of NAPAP/OD, in coordination with the NAPAP Task Force and its staff representation on the NAPAP Interagency Committee.
2. The Director of NAPAP/OD, a NOAA employee, will have final signatory authority over all expenditures. The Director of NAPAP/OD may re-delegate this authority to an employee under his/her supervision.

VII. TERMS AND CONDITIONS

1. All responsibilities and deliverables agreed to by NOAA/OAR are subject to budgetary limitations and contingent upon availability of appropriated funds.
2. Nothing herein is intended to conflict with present or future NOAA or OEQ directives, or with Presidential directives. If the terms of this agreement are inconsistent with existing or future directives of either NOAA or OEQ or the President, then those portions of this agreement which are determined to be inconsistent shall be invalid, but the remaining terms and conditions of this agreement not affected by any inconsistency shall remain in full force and effect. Under these circumstances, upon opportunity for review of the agreement, such changes as are deemed necessary shall be accomplished by either written amendment to this agreement or by entering into a new written agreement, whichever is deemed expedient to the interest of the parties.
3. The terms of this agreement shall become effective upon the signature of both of the approving officials of the respective agencies entering into this agreement.

APPROVED:

CEQ/OEQ

NOAA/OAR

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- (ii) Establish within NOAA a home for the Office of the Director, including the establishment of an inter-agency management fund for central NAPAP operations. This would allow the participating agencies to continue to contribute to NAPAP operations and would obviate the need for NAPAP to be dependent on the Council on Environmental Quality.
- (iii) Convene a meeting of the Task Force to marshall the highest level support for the interagency program and to identify pathways to success.
- (iv) Ask the interagency process to consider expanding NAPAP's scope beyond acid rain. As you know, the same pollutants that cause acid rain also cause visibility degradation and radiative cooling and contribute to ozone formation. It is scientifically appropriate, therefore, to broaden the scope of the interagency program to encompass these interrelated regional air quality problems, and perhaps toxics and trace metals also. Regional air quality problems are of growing importance in our country and in our relationships with Canada and Mexico. I firmly believe that establishing an appropriate interagency forum is a necessary step in identifying cost-effective solutions to these related environmental problems. In the future, we may wish to rename NAPAP to reflect the broader scope of the national program.

In summary, I believe that there would be a positive response if President Clinton and Vice President Gore were to announce support for this well-established interagency program and its planned expansion into a major regional, and perhaps North American, air quality program for the 21st Century - a program that is needed by our Nation and our neighbors. This program would complement the existing international programs on global climate change and stratospheric ozone depletion.

I very much look forward to having an opportunity to discuss these proposals with you.

Sincerely,



D. James Baker

Enclosure

cc: Jonathan Sallet, DOC
Mark Schaefer, OSTP
Acid Precipitation Task Force Members

THE WHITE HOUSE
WASHINGTON

August 11, 1993

Dr. D. James Baker
Under Secretary for Oceans
and Atmosphere
U.S. Department of Commerce
Washington, D.C. 20230

Dear Dr. Baker:

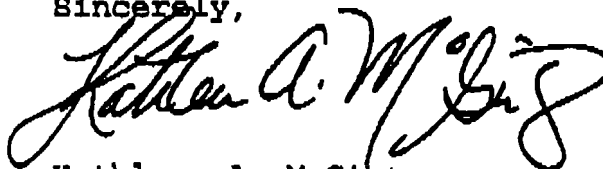
Thank you for contacting me regarding your thoughts about the future of the National Acid Precipitation Assessment Program (NAPAP). It was good to hear from you.

I appreciate learning your views on NAPAP and possible future initiatives of the Acid Precipitation Task Force. I share your commitment to the study of all relevant scientific data in order to come to the most environmentally conscious decisions in this arena.

After reviewing your August 4 letter and discussing the matter with Mark Shaefer of OSTP, we have no objections to your appointment as the Chair of the Acid Precipitation Task Force. However, this office has not discussed your proposals with any of the other agencies involved with NAPAP. Before a final decision can be made, NOAA would need to get approval on the suggested transfer of NAPAP from those agencies that help fund the program. I look forward to future discussions with you about this very important matter.

Again, thank you for sharing your thoughts with me.

Sincerely,



Kathleen A. McGinty
Director, Office on
Environmental Policy

KAM/avl

cc: Mark Shaefer, OSTP
Dr. Derek Winstanley



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

SEP 07 1993

THE ADMINISTRATOR

John H. Gibbons
Assistant to the President for
Science and Technology
424 OEOB
Washington, D.C. 20500

Dear Jack:

This letter regards EPA's role as a member of the Acid Precipitation Task Force of the National Acid Precipitation Assessment Program (NAPAP). As required by Congress, the President is to select a chair from among the members of the Task Force. I would like to formally express and clarify my interest in EPA chairing the Acid Precipitation Task Force.

Over the past ten years EPA has been the primary supporter of NAPAP and continues to provide extensive resources now. The Clean Air Act (CAA) Amendments reauthorized NAPAP to report on the impact of the newly created acid rain control program. EPA is the primary customer of these assessments since the responsibility for implementing the acid rain control program rest with the Agency. It is appropriate that leadership of such a Task Force also rest with EPA. As Congress envisioned, I anticipate that NAPAP's research and assessment efforts will help EPA enhance its effectiveness in implementing Title IV of the Clean Air Act Amendments.

I have read the August 4 letter from James Baker to Kathleen McGinty offering NOAA as a "home" for NAPAP and indicating his willingness to serve as Chair of the Task Force. NOAA has made a significant contribution to NAPAP over the years through its participation and providing a Director of Research to NAPAP. I concur with the recommendation that NOAA should serve as a home for NAPAP. To provide interagency balance however, it is appropriate that the Director of Research should not also act as chair of the Task Force and that the chair of the Task Force should be the primary customer of the products.

-2-

I look forward to effectively using the expertise coming from all the participating agencies and to working closely with my colleagues from the other agencies in an effort to support this interagency program and its mission.

Sincerely,



Carol M. Browner

cc: Kathleen McGinty, OEP
James Baker, NOAA
Derek Winstanley, NAPAP

NO

FAX FROM THE OFFICE OF TOM KITSOS
COMMITTEE ON MERCHANT MARINE AND FISHERIES
1339 LONGWORTH HOB
WASHINGTON, D. C. 20515
PHONE: (202) 225-2429
FAX: (202) 225-7627

DATE:

Nov. 8, 1993

TO:

CATHY ZOI

Office of Environmental Policy

NUMBER OF PAGES (INCLUDING COVER):

17

CONTACT _____ IF PROBLEMS ARISE.

COMMENTS:

Clean draft of CEQ bill.
Likely to be introduced on Tuesday.
Contains changes requested by Administration plus about a dozen purely technical and cross reference corrections that Leg. Council and I discovered over the weekend.
This is the only copy that I am sending to the Administration. Please provide a copy to JACK or anyone else who may be interested. Thanks.

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108D CONGRESS
1ST SESSION

H. R. _____

IN THE HOUSE OF REPRESENTATIVES

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

A BILL

To abolish the Council on Environmental Quality and to
provide for the transfer of the duties and functions of
the Council.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "National Environ-
5 mental Policy Act Administrative Reorganization Amend-
6 ments of 1993".

2

1 **SEC. 2. ESTABLISHMENT OF OFFICE OF NATIONAL ENVI-**
2 **RONMENTAL POLICY ACT COMPLIANCE.**

3 Sections 201, 202, and 204 of title II of the National
4 Environmental Policy Act of 1969 (42 U.S.C. 4331 et
5 seq.) are redesignated and amended to read as follows:

6 "SEC. 201. (a) There is established in the Executive
7 Office of the President the Office of National Environ-
8 mental Policy Act Compliance. The Office may be referred
9 to as the 'Office of NEPA Compliance'.

10 "(b) The head of the Office shall be the Director of
11 the Office of National Environmental Policy Act Compli-
12 ance, who shall be appointed by the President, by and with
13 the advice and consent of the Senate. The compensation
14 of the Director shall be at the rate of compensation pay-
15 able to the Deputy Director of the Office of Management
16 and Budget.

17 "SEC. 202. (a) The Director shall—

18 "(1) promulgate regulations governing the im-
19 plementation of this Act by all Federal agencies (in-
20 cluding independent regulatory commissions) which
21 include provisions for public review and comment on
22 the detailed statements required by section
23 102(2)(C) and, as appropriate, on other documents
24 prepared pursuant to this Act;

25 "(2) mediate interagency disputes, including
26 recommending to the President, as appropriate, res-

1 olutions of referrals of interagency disagreements
2 under section 203;

3 “(3) monitor Federal agency implementation of
4 this Act and regulations issued under paragraph (1),
5 including—

6 “(A) reviewing and approving regulations
7 issued by other Federal agencies to implement
8 this Act;

9 “(B) determining which Federal agency is
10 the lead agency for purposes of compliance with
11 this Act in cases in which Federal agencies do
12 not agree on which is the lead agency;

13 “(C) developing alternative procedures for
14 complying with this Act in cases in which emer-
15 gency circumstances make it necessary for a
16 Federal agency to take an action with signifi-
17 cant environmental impact;

18 “(D) developing alternative procedures for
19 complying with this Act, in cases in which a
20 change in a proposed Federal agency action or
21 new information relating to the environmental
22 impacts of such an action makes it necessary to
23 supplement existing analysis under this Act;
24 and

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1 “(E) developing and publishing guidance
2 to Federal agencies regarding implementation
3 of title I and regulations promulgated under
4 paragraph (1); and

5 “(4) perform such other functions related to en-
6 vironmental laws, policies, and programs as the
7 President may specify.

8 “(b) Nothing in this Act shall be construed to affect,
9 alter, or limit the independence of independent regulatory
10 commissions under the laws establishing such commis-
11 sions. The policies, practices, and interpretations under
12 this Act and the Environmental Quality Improvement Act
13 of 1970 and other laws applicable to, or adopted by, such
14 commissions or the Council on Environmental Quality be-
15 fore the date of the enactment of the National Environ-
16 mental Policy Act Administrative Reorganization Amend-
17 ments of 1993 shall continue in effect to the extent they
18 are consistent with such independence and carry out the
19 purposes of such Acts.

20 “(c)(1) The Director, subject to paragraph (2),
21 shall—

22 “(A) review and appraise the various programs
23 and activities of the Federal Government in light of
24 the policy set forth in title I for the purpose of de-
25 termining the extent to which such programs and

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

4 "(B) coordinate or facilitate the development of
5 recommendations to the President regarding na-
6 tional policies to foster and promote the improve-
7 ment of environmental quality to meet the con-
8 servation, social, economic, health, and other re-
9 quirements and goals of the Nation; and

10 "(C) coordinate or facilitate the development of
11 such studies, reports thereon, and recommendations
12 with respect to matters of policy and legislation, as
13 the President may request.

14 "(2) The President may transfer to another official
15 in the Executive Office of the President, by Executive
16 order, any function of the Director under this subsection.

17 "(d)(1) The Director, subject to paragraph (2),
18 shall—

19 "(A) assist Federal agencies and departments
20 in appraising the effectiveness of existing and pro-
21 posed facilities, programs, policies, and activities of
22 the Federal Government, and those specific major
23 projects designated by the President which do not
24 require individual project authorization by the Con-
25 gress, which affect environmental quality; and

1 “(B) assist in coordinating among Federal de-
2 partments and agencies those programs and activi-
3 ties which affect, protect, and improve environmental
4 quality.

5 “(2) The President may transfer to another official
6 in the Executive Office of the President or to the head
7 of any Federal agency, by Executive order, any function
8 of the Director under this subsection.

9 “(e) The Director shall keep the appropriate Commit-
10 tees of the Senate and the House of Representatives in-
11 formed of the actions, regulations, policies, and practices
12 of the Office in carrying out the functions and other re-
13 quirements of the Director and the Office under this Act
14 (other than functions of the Director transferred in ac-
15 cordance with subsection (c)(2) or (d)(2)).

16 “SEC. 203. Referrals of interagency disagreements by
17 the head of any Federal agency concerning proposed
18 major Federal actions significantly affecting the quality
19 of the human environment under section 102(2)(C) or
20 concerning matters under section 309(b) of the Clean Air
21 Act shall be made to the Office for mediation and, as ap-
22 propriate, resolution by the President.”.

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1 **SEC. 3. TECHNICAL AND CONFORMING AMENDMENTS TO**
2 **NEPA.**

3 Sections 203, 205, 207, and 208 of the National En-
4 vironmental Policy Act of 1969, as in effect on the date
5 of enactment of this Act, are redesignated in order as sec-
6 tions 204, 205, 206, and 207, respectively; such sections
7 are each amended by striking "Council" and inserting
8 "Office" each place it appears; and section 206 of such
9 Act, as in effect on the day before the date of the enact-
10 ment of this Act, is repealed.

11 **SEC. 4. TECHNICAL AND CONFORMING AMENDMENTS TO**
12 **THE ENVIRONMENTAL QUALITY IMPROVE-**
13 **MENT ACT OF 1970.**

14 The Environmental Quality Improvement Act of
15 1970 (42 U.S.C. 4372 et seq.) is amended—

16 (1) in section 202(c) by—

17 (A) striking "The purposes" and all that
18 follows through "(1) to" and inserting "the
19 purpose of this title is to"; and

20 (B) striking "; and" and all that follows
21 through the end of the section and inserting a
22 period;

23 (2) in section 203, by striking subsections (a)
24 through (d) and the designation for subsection (e);

25 (3) by striking sections 204 and 205;

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1 (4) in section 206(a), by striking "Office of En-
2 vironmental Quality Management Fund" and insert-
3 ing "Office of National Environmental Policy Act
4 Compliance Management Fund";

5 (5) by redesignating section 206 as section 204;

6 and

7 (6) by adding at the end the following:

8 "DEFINITIONS

9 "SEC. 205. In this title, each of the terms 'Director'
10 and 'Office' has the meaning given that term in section
11 3 of the National Environmental Policy Act of 1969."

12 SEC. 5. ASSISTANCE FOR OFFICE OF NATIONAL ENVIRON-
13 MENTAL POLICY ACT COMPLIANCE.

14 The National Environmental Policy Act of 1969 (as
15 amended by section 3) is amended by inserting after sec-
16 tion 207 the following:

17 "SEC. 208. To assist in the timely performance of
18 the functions of the Office, the Director may utilize per-
19 sonnel or otherwise obtain assistance from other entities
20 in the Executive Office of the President or other Federal
21 agencies, by mutual consent with the heads of those enti-
22 ties or agencies, to assist the Director in performing the
23 functions of the Office."

24 SEC. 6. AUTHORIZATION OF APPROPRIATIONS.

25 Section 209 of the National Environmental Policy
26 Act of 1969 is amended to read as follows:

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1 "SEC. 209. (a) There are authorized to be appro-
2 priated to the Director to carry out the functions of the
3 Director under this or any other Act—

4 "(1) \$1,000,000 for fiscal year 1994;

5 "(2) \$1,100,000 for fiscal year 1995;

6 "(3) \$1,200,000 for fiscal year 1996; and

7 "(4) \$1,400,000 for fiscal year 1997.

8 "(b) Amounts appropriated to, or available for the
9 use of, the Office or the Director shall remain available
10 until expended."

11 **SEC. 7. DEFINITIONS.**

12 The National Environmental Policy Act of 1969 is
13 amended by inserting after section 2 (42 U.S.C. 4321)
14 the following:

15 "SEC. 3. In this Act:

16 "(1) The term 'Director' means the Director of
17 the Office of National Environmental Policy Act
18 Compliance appointed under section 201(b).

19 "(2) The term 'Fund' means the Office of Na-
20 tional Environmental Policy Act Compliance Man-
21 agement Fund established by section 208.

22 "(3) The term 'Office' means the Office of Na-
23 tional Environmental Policy Act Compliance estab-
24 lished by section 201(a)."

10

1 **SEC. 8. TRANSFER OF FUNCTIONS TO SECRETARY OF THE**
2 **ENVIRONMENT.**

3 (a) **TRANSFERS.**—There are transferred to the Sec-
4 retary of the Environment—

5 (1) the functions of the Council on Environ-
6 mental Quality under paragraphs (2), (5), (6), and
7 (7) of section 204 of the National Environmental
8 Policy Act of 1969, as in effect on the day before
9 the date of the enactment of this Act; and

10 (2) the functions of the Chairman of the Coun-
11 cil on Environmental Quality (as Director of the Of-
12 fice of Environmental Quality) under paragraphs
13 (3), (4), (6), and (7) of section 203(d) of the Envi-
14 ronmental Quality Improvement Act of 1970, as in
15 effect on the day before the date of the enactment
16 of this Act.

17 (b) **CONSTRUCTION.**—The functions transferred to
18 the Secretary of the Environment by this section or pursu-
19 ant to any executive order issued pursuant to amendments
20 made by this Act shall not be construed by anyone to af-
21 fect, alter, change, or amend any other law or regulation
22 administered by the Secretary or his or her delegate.

23 (c) **ACCOUNTABILITY.**—The Secretary of the Envi-
24 ronment shall be accountable to the appropriate commit-
25 tees of the Senate and House of Representatives for all
26 functions described in subsection (b).

1 (d) AUTHORIZATION OF APPROPRIATIONS.—There is
2 authorized to be appropriated to the Secretary such sums
3 as may be necessary specifically to carry out the functions
4 described in subsection (b) effectively and in a timely man-
5 ner.

6 SEC. 9. TERMINATION OF COUNCIL ON ENVIRONMENTAL
7 QUALITY AND OFFICE OF ENVIRONMENTAL
8 QUALITY.

9 (a) TERMINATION.—The Council on Environmental
10 Quality and the Office of Environmental Quality are ter-
11 minated.

12 (b) REFERENCES.—Reference to the Council on En-
13 vironmental Quality, the Office of Environmental Quality,
14 or any officer or employee of that council or that office
15 in any other Federal law, Executive order, rule, regulation,
16 or delegation of authority, or in any document of or relat-
17 ing to the Council on Environmental Quality—

18 (1) with respect to functions that were vested in
19 that council or office on the day before the date of
20 the enactment of this Act and are vested in the Di-
21 rector of the Office of National Environmental Pol-
22 icy Act Compliance Office by section 202 of the Na-
23 tional Environmental Policy Act of 1969, as amend-
24 ed by section 2 of this Act, is deemed to refer to the
25 Director of the Office of National Environmental

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1 Policy Act Compliance or to such other official to
2 whom such a function is transferred in accordance
3 with section 202(c)(2) or (d)(2) of that Act, as ap-
4 propriate; or

5 (2) with regard to disputes, disagreements, and
6 matters described in sections 202(a)(2) and 203 of
7 that Act, as amended by section 2 of this Act, is
8 deemed to refer to the Director of the Office of Na-
9 tional Environmental Policy Act Compliance or to
10 that office, as appropriate.

11 (c) SAVINGS PROVISIONS.—

12 (1) CONTINUATION OF ORDERS, ETC.—All or-
13 ders, determinations, rules, regulations, agreements,
14 grants, contracts, privileges, and other administra-
15 tive actions—

16 (A) which have been issued, made, grant-
17 ed, or allowed to become effective by the Presi-
18 dent, the Council on Environmental Quality, or
19 the Office of Environmental Quality, in the per-
20 formance of functions of the Council on Envi-
21 ronmental Quality or the Office of Environ-
22 mental Quality, or by a court of competent ju-
23 risdiction with respect to those functions, and

24 (B) which are in effect on the date of the
25 enactment of this Act, or were final before that

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1 date of enactment and are to become effective
2 on or after that date of enactment,
3 shall continue in effect according to their terms until
4 modified, terminated, superseded, set aside, or re-
5 voked in accordance with law by the President, the
6 Director of the Office of National Environmental
7 Policy Act Compliance, any other authorized official,
8 a court of competent jurisdiction, or operation of
9 law.

10 (2) CONTINUATION OF PROCEEDINGS AND AP-
11 PPLICATIONS.—The provisions of this Act shall not
12 affect any proceedings pending before the Council on
13 Environmental Quality on the date of the enactment
14 of this Act, but such proceedings shall be continued.
15 Orders shall be issued in such proceedings, appeals
16 shall be taken therefrom, and payments shall be
17 made pursuant to such orders, as if this Act had not
18 been enacted, and orders issued in any such proceed-
19 ings shall continue in effect until modified, termi-
20 nated, superseded, or revoked by a duly authorized
21 official, by a court of competent jurisdiction, or by
22 operation of law. Nothing in this paragraph shall be
23 considered to prohibit the discontinuance or modi-
24 fication of any such proceeding under the same
25 terms and conditions and to the same extent that

14

1 such proceeding could have been discontinued or
2 modified if this Act had not been enacted.

3 (3) SUITS NOT AFFECTED.—The provisions of
4 this section shall not affect suits commenced before
5 the date of the enactment of this Act, and in all
6 such suits, proceedings shall be had, appeals taken,
7 and judgments rendered in the same manner and
8 with the same effect as if this Act had not been en-
9 acted.

10 (4) SUITS INVOLVING COUNCIL OR OFFICE.—
11 No suit, action, or other proceeding commenced by
12 or against the Council on Environmental Quality or
13 the Office of Environmental Quality, or by or
14 against any individual in the official capacity of such
15 individual as an officer or employee of the Council
16 or that Office, shall abate by reason of the enact-
17 ment of this Act.

18 (5) RULEMAKING.—Any administrative action
19 relating to the preparation or promulgation of a reg-
20 ulation by the Council on Environmental Quality
21 shall be continued by the Director of the Office of
22 National Environmental Policy Act Compliance or
23 the President with the same effect as if this Act had
24 not been enacted.

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H.L.C.

15

1 (6) **ASSETS AND INTERESTS.**—The contracts, li-
2 abilities, records, property, and other assets and in-
3 terests of the Council on Environmental Quality and
4 the Office of Environmental Quality shall, on and
5 after the date of the enactment of this Act, be con-
6 sidered to be the contracts, liabilities, records, prop-
7 erty, and other assets and interests of the Office of
8 National Environmental Policy Act Compliance.

9 (d) **CONTINUING AVAILABILITY OF AMOUNTS.**—
10 Amounts available to the Council on Environmental Qual-
11 ity on the date of the enactment of this Act shall be avail-
12 able for use by the Director of the Office of National Envi-
13 ronmental Policy Act Compliance.

14 **SEC. 10. TECHNICAL AND CONFORMING AMENDMENTS.**

15 The National Environmental Policy Act of 1969 (42
16 U.S.C. 4321 et seq.) is amended—

17 (1) in section 2 (42 U.S.C. 4321)—

18 (A) by inserting “and” after “man;”; and

19 (B) by striking “Nation;” and all that fol-
20 lows through the end of the section and insert-
21 ing “Nation.”;

22 (2) by striking “Council on Environmental
23 Quality” each place that term appears and inserting
24 “Director”;

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16

1 (3) in section 102(2)(B) (42 U.S.C.
2 4332(2)(B)) by striking "established by title II of
3 this Act";

4 (4) in section 102(2)(G) (42 U.S.C.
5 4332(2)(G)) by inserting "and" after the semicolon;

6 (5) in section 102(2)(H) (42 U.S.C.
7 4332(2)(H)) by striking "; and" and inserting a pe-
8 riod;

9 (6) by striking section 102(2)(I) (42 U.S.C.
10 4332(2)(I));

11 (7) in section 205(1) (42 U.S.C. 4345(1)) by
12 striking "the Citizen's" and all that follows through
13 "and with"; and

14 (8) in section 205(2) (42 U.S.C. 4345(2)) by
15 striking "the Council's" and inserting "the Office's".



Center for Marine Conservation

22 October 1993

To Cathy Z
From Will

Mr. Will Stelle
Office on Environmental Policy
The White House
Washington, DC 20500

Dear Will:

As you attempt to develop legislative language regarding those functions of the Council on Environmental Quality that should be retained by statute within the Executive Office of the President, I thought you might be interested in some background on why those functions were enacted into legislation, rather than simply established by direction of the President.

Enclosed are some excerpts from the hearings held in 1969 by Rep. John Dingell, then Chairman of the Merchant Marine and Fisheries Subcommittee on Fisheries and Wildlife, on the House version of the legislation to create CEQ.

In a dialogue with Dr. Lee DuBridge, then Science Adviser to President Nixon, Mr. Dingell skillfully points out that councils and committees established not by statute, but simply by the President's direction, however well-intentioned, are temporary bodies subject to "short-term political considerations." Mr. Dingell argues that the role intended for CEQ is a professional one, analogous to that already being performed by the Council of Economic Advisers and the Office of Science and Technology.

A similar view, emphasizing the need for members of CEQ to be independent of the ongoing pressures and responsibilities of Cabinet officers and their departments, was expressed that same year by Senator Henry Jackson in the Interior Committee's report on the Senate version of the CEQ authorizing legislation. I can provide that text also, if you would like to see it.

I believe both of these concerns are still quite relevant to the current controversy. Please let me know if I can be of any assistance in the effort to reach a mutually acceptable legislative solution to this matter, which continues to be of great concern to the environmental community, members of Congress, the legal profession, federal and state government officials, and other concerned citizens.

Sincerely,

Robert B. Smythe, Ph.D.

cc: Hon. Gerry Studds
Hon. John Dingell



ENVIRONMENTAL QUALITY

HEARINGS

BEFORE THE

SUBCOMMITTEE ON FISHERIES AND WILDLIFE CONSERVATION

OF THE

COMMITTEE ON MERCHANT MARINE AND FISHERIES HOUSE OF REPRESENTATIVES

NINETY-FIRST CONGRESS

FIRST SESSION

ON

H.R. 6750, H.R. 11886, H.R. 11942, H.R. 12077,
H.R. 12180, H.R. 12207, H.R. 12209, H.R. 12228,
H.R. 12264, H.R. 12409

BILLS TO AMEND THE FISH AND WILDLIFE COORDINATION
ACT TO PROVIDE FOR THE ESTABLISHMENT OF A COUNCIL
ON ENVIRONMENTAL QUALITY, AND FOR OTHER PURPOSES

H.R. 12143

A BILL TO AMEND THE FISH AND WILDLIFE COORDINATION
ACT TO ESTABLISH A NATIONAL POLICY FOR THE ENVIRON-
MENT; TO ESTABLISH A COUNCIL ON ENVIRONMENTAL
QUALITY, AND FOR OTHER PURPOSES

MAY 7, 26; JUNE 13, 20, 23, 26, 27, 1969

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(II)

ENVIRONMENTAL QUALITY

WEDNESDAY, MAY 7, 1969

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON FISHERIES AND WILDLIFE
CONSERVATION OF THE COMMITTEE ON
MERCHANT MARINE AND FISHERIES,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to call, in room 1302, Longworth House Office Building, Hon. John D. Dingell (chairman of the subcommittee) presiding.

Mr. DINGELL. The Subcommittee on Fisheries and Wildlife Conservation will please come to order.

For centuries, man has exploited and freely used the resources provided by his natural environment, secure in his belief that nature's bounty would last forever, heedless of any consequences in his headlong rush toward greater power and prosperity.

More recently, Western man's attitude toward his environment has been characterized by an emphasis on economic motives.

The industrial revolution which has provided us with the gift of technology also inaugurated specialization and division of labor as prerequisites for production for profit. In fact, our Nation's wealth was founded on technological progress spurred on by the profit motive.

However, mankind is playing an extremely dangerous game with his environment. Unless we change our ways, mankind faces the very real possibility of extinction from misuse of environment. We have been warned by scientists, citizens' organizations, public officials, and Government agencies of the dangers and consequences of such upsetting agents as air pollution, water pollution, explosion, and over-enthusiastic use of pesticides. We have not yet learned that we must consider the natural environment as a whole and assess its quality continuously if we really wish to make strides in improving and preserving it.

This morning the Subcommittee on Fisheries and Wildlife Conservation of the House Committee on Merchant Marine and Fisheries will begin hearings on a bill which I introduced February 17 of this year, H.R. 6750, which expresses my conviction that we need the vigorous involvement of the Executive Office of the President of the United States in this problem.

My bill would direct the President to submit to the Congress annual reports on the status of our natural resources, coupled with an assessment of the current and anticipated trends of their utilization and the effects of such utilization on the social, economic, and other requirements of our Nation.

(1)

To aid the President in accomplishing this task, my bill would authorize to be created in the Executive Office of the President a Council on Environmental Quality composed of three members who, as a result of their education and training, coupled with experience and personal accomplishments, would be exceptionally qualified to analyze and interpret environmental information, and assess remedial programs and activities in terms of immediate and long-range planning goals.

The Council would thus be the focal point for all new and authoritative data concerning the status and trends in environmental quality. It would interpret these data, analyze their usefulness and importance, and inform the President of their impact on the national ecology as a whole. Based on its findings, the Council would then make appropriate recommendations in its annual report to the President and, in addition, would assist the President in the preparation of his annual report to the Congress.

Thus the Council would provide a top level, independent body, unencumbered by the demands and politics of operating programs and individual interests, free to draw independent conclusions, and to formulate a broad policy which would be of nationwide benefit.

Numerous agencies and departments are now engaged in extensive research, surveys, data collection, and evaluations of ecological phenomena and the results of manmade manipulations of his natural environment. However, I agree with those who maintain that Federal action alone is inadequate. I firmly believe that coordination and close contact must be maintained at all times with State and local agencies, industry, urban planners, agriculture, conservation groups, and the scientific community.

My bill would require the council to consult regularly with all these groups and make the fullest use of their services, facilities, and information of all kinds. We need sustained, wholehearted public support for a program of this magnitude, and there is no better way to accomplish this than to enlist the help and active understanding of every qualified individual.

In order to compile a thorough record, and to hear a broad spectrum of our Nation's leading social and physical scientists, conservationists, ecologists, businessmen, and other outstanding national figures, it is anticipated that extended hearings will be held. Only 1 day of hearings has been scheduled thus far, however, as the committee schedule permits additional hearings will be scheduled and the witnesses will receive as much advance notice as possible.

Before starting with our first witness, I might point out that the subcommittee's basic jurisdiction is over matters relating to fisheries and wildlife, and we would like to ask the witnesses for their particular comments on this aspect of the legislation.

However, we can no longer hide from the fact that fish and wildlife are affected adversely by many other factors, including air pollution, water pollution, and the increasing misuse of pesticides. If we are to accomplish the intended purpose, we must consider the interrelationships of these problems in formulating legislative policy. Therefore, the subcommittee will in the course of its hearings hear testimony covering the broad range of environmental questions.

*DINGELL: Q & A with DuBridge
(asserting Administration's position
that White House environmental office
should be established administratively
and not by legislation.)*

ENVIRONMENTAL QUALITY

FRIDAY, JUNE 27, 1969

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON FISHERIES AND
WILDLIFE CONSERVATION OF THE COMMITTEE ON
MERCHANT MARINE AND FISHERIES,
Washington, D.C.

The subcommittee met at 10:10 a.m., pursuant to recess, in room 1334, Longworth House Office Building, Hon. John D. Dingell (chairman of the subcommittee) presiding.

Mr. DINGELL. The Subcommittee on Fisheries and Wildlife Conservation will come to order.

This is a continuation of the hearings on H.R. 6750 and similar and identical legislation by a number of our colleagues: H.R. 11886 by Mr. Tunney; H.R. 11942 by Mrs. Griffiths; H.R. 12077 by Mr. Ottinger; H.R. 12180 by Mr. Adams; H.R. 12207 by Mr. Price of Illinois; H.R. 12209 by Mr. Sikes; H.R. 12228 by Mr. Sisk; H.R. 12264 by Mr. Farbstein; and H.R. 12409 by Mr. Moss of California.

In addition, a similar bill, H.R. 12143 by Mr. Nedzi, will be also considered this morning by the subcommittee.

Our first witness is Dr. Lee A. DuBridge, Science Adviser to the President.

Dr. DuBridge, we are privileged to have you with us this morning for such statement as you choose to give.

The Chair notes that you have present with you members of your staff. If it would be your pleasure to have them sit at the committee table with you, it would be appropriate, and will you identify them for the record, please?

STATEMENT OF DR. LEE A. DuBRIDGE, SCIENCE ADVISER TO THE PRESIDENT; ACCOMPANIED BY DR. JOHN BUCKLEY, TECHNICAL ASSISTANT, ENVIRONMENTAL QUALITY; FRANK R. PAGNOTTA, EXECUTIVE OFFICER; AND DAVID Z. BECKLER, ASSISTANT TO DIRECTOR, OFFICE OF SCIENCE AND TECHNOLOGY

Dr. DuBRIDGE. Yes; thank you, Mr. Chairman.

I would like to have join me at the table Dr. John Buckley of my staff in the Office of Science and Technology, who is my chief aide in these environmental problems, and Mr. Frank Pagnotta, who is the Administrative Aide in the Office of Science and Technology.

Mr. DINGELL. Gentlemen, you are welcome.

(355)

Dr. DuBRIDGE. These are organizational problems, sir, which possibly you had better get information on from the Bureau of the Budget. Their managerial people would be glad to discuss these problems with you.

Mr. EVERETT. Yes.

Mr. Chairman, that is all the questions I have at this time.

Mr. DINGELL. Doctor, the Chair does wish to express thanks that you could be with us today. The Chair has a number of problems that I would like to discuss with you.

I would like to begin, Doctor, by noting the conclusion of the President's Executive Order: Section 303, entitled "Prior Bodies and Orders":

The President's Council on Recreation and Natural Beauty and the Citizens' Advisory Committee on Recreation and Natural Beauty are hereby terminated and the following are revoked * * *

And then he proceeds to list three executive orders.

Aren't we in the position here with a body that has been created by the President of having something that the Lord giveth and the Lord taketh away, where we might say that at the pleasure of the President this whole matter may function, may not function, or may simply cease to exist?

Isn't that one of the problems we have with an Executive order?

Dr. DuBRIDGE. I suppose that is true of any action.

Mr. DINGELL. It has no lasting existence except the will of the President, am I correct?

Dr. DuBRIDGE. I suppose that is true of any Executive order that the President can change it to strengthen the functions or to weaken them.

Mr. DINGELL. But he can terminate them also.

Dr. DuBRIDGE. He can terminate the Council, you mean, at his pleasure?

Mr. DINGELL. Yes, certainly.

Dr. DuBRIDGE. Of course that is the President's power.

Mr. DINGELL. We find ourselves here in a matter where I am sure that you agree that the Congress has a most intense and abiding interest. The Congress, as I am sure you know, has passed a number of pieces of legislation during the past few years wherein we have expressed our concern over the environment and have attempted, insofar as we have been able, to lay out a national policy on environment, but that national policy has been fragmented into questions of water pollution, air pollution, disposal of wastes.

Doesn't the Congress have a different function in establishing a broad national policy in this area?

Dr. DuBRIDGE. Of course.

Mr. DINGELL. Doesn't H.R. 6750 lay out the mechanism where the Congress can begin to do that?

Dr. DuBRIDGE. Well, the bills provide the policy statements which are certainly important and essential to guide the Congress and the executive branch of the Government. Now the question is what is the organizational mechanism. You suggested that the President could abolish his Council anytime he wishes or another President could and

PRES. WITH AN OFFICE LACKING A STAFF MAY ABANDON

this may be perfectly true. If he did, then the existence in the President's office of a council of environmental advisers wouldn't help any. It would have nothing to do except to advise and report. There would be no action mechanism.

Mr. DINGELL. That is not quite so. I think you are misreading H.R. 6750. If you read it, you will find that the Congress has imposed a number of responsibilities on the agency.

As a matter of fact, the Congress not only imposes responsibilities on the agency, but it also imposes certain responsibilities on the President to assure that we will have a functioning and ongoing mechanism to review, inventory, and analyze Federal programs, to review and analyze and to inventory environmental resources and to do the same thing with regard to the impact of man upon the environment. Isn't that so?

Doesn't H.R. 6750 do this?

Dr. DuBRIDGE. The provisions in this which have to do with the President's responsibility of transmitting to Congress a report and so on do place responsibilities on the President.

Mr. DINGELL. That is right, and they also impose certain responsibilities on the Council on Environmental Quality, do they not?

Let's go through the bill if we may, Doctor.

Note here that the President has the responsibility to "transmit to the Congress annually, beginning June 30, 1970, and Environmental Quality Report." That is on page 2, line 11.

Dr. DuBRIDGE. Yes, I have no objection to that provision.

Mr. DINGELL. Can you tell us where in the Executive order is a similar mechanism for informing the Congress on environmental resources and environmental problems?

Dr. DuBRIDGE. Well, in subparagraph (c) of the Executive order it is stated:

The Council shall assist the President in preparing periodic reports to the Congress on the subjects of this order.

Mr. DINGELL. Now, Doctor, does that impose any responsibility on the President or the Council too, and does that assure that the Congress is going to get reports in an orderly fashion?

Dr. DuBRIDGE. No. I would be in favor of the provision of your bill that requires that the President shall report to the Congress. I raise no objection to that at all. I think that is appropriate to do.

Mr. DINGELL. It is highly necessary.

Dr. DuBRIDGE. The Executive order then says that in doing this job the President shall have the Council to assist him, his Council.

Mr. DINGELL. But it is highly desirable that the Congress receive a report?

Dr. DuBRIDGE. Of course.

Mr. DINGELL. On the environment.

Dr. DuBRIDGE. I agree.

Mr. DINGELL. As a matter of fact, Doctor, during the past few days, just within the last week or so, there was a U.N. gathering where they said we were facing an international problem, and there was a meeting in the Northwest wherein a distinguished group of American scientists pointed out that mankind faces an environmental crisis; did they not?

Dr. DuBRIDGE. I am fully aware of the nature of this problem.

Mr. DINGELL. So I am sure you agree that we need a report to be furnished to the Congress?

Dr. DuBRIDGE. Right.

Mr. DINGELL. Isn't it fair to say that the Congress can look with no assurance beyond the term of the existing incumbent in the White House that such a report will be furnished even upon the best assurances that the President might give that he intends to do this?

Dr. DuBRIDGE. I think it is perfectly proper for the Congress to request such a report and I am in favor of this section of the bill.

Mr. DINGELL. And we should do this by an orderly statutory requirement so that the President may plan and allocate resources to do this?

Dr. DuBRIDGE. Certainly.

Mr. DINGELL. We then come to the fact that the Congress has established a basis under which that report may be submitted in a form and fashion that is suitable to its needs; am I correct?

I am going on now to the bottom of page 2, on line 24, and then coming over into page 3, subsection (2), and going on down into subsection (3), and so forth under (C). Doesn't this establish the basis on which the Congress expects the report to be submitted?

Dr. DuBRIDGE. You direct the President to transmit a report.

Mr. DINGELL. To the Congress?

Dr. DuBRIDGE. To the Congress, and I agree that that is an appropriate provision. But you then tell the President what mechanism he should use for preparing that report, and I think you should leave that to the President.

Mr. DINGELL. Haven't we done that in the case of the Council of Economic Advisers?

Haven't we set out exactly the same mechanism?

Dr. DuBRIDGE. That is true because there was no other agency to handle this work.

Mr. DINGELL. I am sure, Doctor, you are familiar with the functions of the Council of Economic Advisers.

Dr. DuBRIDGE. In a general way, yes.

Mr. DINGELL. And I am sure you took the trouble to familiarize yourself with their functions because you were coming up here.

As a matter of fact, H.R. 6750 utilizes as precisely as possible almost the exact language of the legislation setting up the Council of Economic Advisers, does it not?

Dr. DuBRIDGE. I realize that.

Mr. DINGELL. Hasn't the function of reporting that has gone on under the Council of Economic Advisers been desirable and effective in terms of establishing order from the economic chaos we had at that time?

Dr. DuBRIDGE. Certainly. It has been a great enterprise.

Mr. DINGELL. But it also has been remarkably effective in establishing an orderly program for informing the people, the Congress and the President, am I correct?

Dr. DuBRIDGE. Of course.

Mr. DINGELL. One of the things that the Council of Economic Advisers does is not only to inform the President but to also inform the Congress, am I correct?

Dr. DuBRIDGE. Yes.

Mr. DINGELL. And they also inform the American people, am I correct?

Dr. DuBRIDGE. Yes.

Mr. DINGELL. We have here in this Nation a democratic form of government, one which encourages participation and one which understands that really the Government exists to serve the people and of course to inform the people, do we not? Isn't one of the highly valuable functions that the Council of Economic Advisers performs the actual informing of the American people of economic problems, economic resources, and don't they actually provide a still further more valuable function of looking into the future toward future economic problems and troubles and trials that this Nation will face?

Isn't that the great value of the Council of Economic Advisers?

Dr. DuBRIDGE. Well, it is a very important function to be served by the Executive Office of the President, but the particular mechanism or structure of the Executive Office of the President is something which I would hope that you would let the President have some say about, and, since he believes that the present OST can serve precisely the important functions you mentioned we must provide advice to the President—we must look ahead, we must examine, we must encourage research and report to the Congress and to the President and to the people and do the things that the Council of Economic Advisers does—therefore, since we are directed to do it, you don't need another group to do it.

Mr. DINGELL. What you are saying is that you hope the OST will perform the functions of the Council of Economic Advisers.

Dr. DuBRIDGE. Yes; that is the purpose. To what extent the Congress would like to help us strengthen our ability to perform that function this would be fine. You could assign additional level appointments to OST, provide additional budget provisions to strengthen this function, and we would certainly be delighted.

Mr. DINGELL. Isn't one of your major problems in OST getting sufficient statutory and appropriation support for sufficient staff to do the job that you are expected to do?

Dr. DuBRIDGE. Yes.

Mr. DINGELL. As a matter of fact, under present budgetary stresses I think it would be fair to say that your expectation of achieving an adequate level of support is very slight, am I correct?

Dr. DuBRIDGE. Well, the Appropriations Committee did not fully recommend the budget level that we requested in spite of the fact that we told them that this environmental problem was one of our new functions so that one branch of Congress is apparently interested in expanding environmental work and the other is not.

Mr. DINGELL. Of course we all have problems with appropriations, Doctor. But this business is a very major problem, is it not?

Dr. DuBRIDGE. Of course.

Mr. DINGELL. Am I not fair in saying, Doctor, that one of the more urgent requirements of persons who will advise the American people, the Congress, and the President, is that they be first of all independent? Isn't that a matter of great urgency?

Dr. DuBRIDGE. That is correct.

Mr. DINGELL. Now, secondly, isn't it also true that they should also be prestigious?

Dr. DuBRIDGE. Correct.

Mr. DINGELL. And shouldn't they be able to establish long-range policies, far beyond, let's say, this year or next year or perhaps even the turn of the century because they ought to be looking beyond this into the years, say, 100 years from today or even perhaps 200 or 500 if that is within the ability of people to do? Is that correct?

Dr. DuBRIDGE. That is exactly what OST has been doing in many fields for many years.

Mr. DINGELL. Now, we discussed the fact that they should be independent, but isn't it also so, Doctor, that this group should be free of problems involving other considerations in Government such as whether or not it is going to be politically expedient to do something?

Shouldn't this be so?

Dr. DuBRIDGE. No; I don't think so.

Mr. DINGELL. Are you saying that the Council of Economic Advisers or the Council on Environmental Quality should have as one of its important considerations political feasibility?

Dr. DuBRIDGE. I think when any agency in the Executive Office of the President makes recommendations, it cannot ignore political feasibility problems. It may recommend something in spite of those, but I think it is very important that economic advisers be in touch with all branches of Government that have to do with economic affairs, heavily involved and heavily aware of their problems and difficulties just as OST is aware of the problems of research in the Department of Defense, the Department of Commerce, and all of the others, and our recommendations to the President have to carry an aura of realism.

Mr. DINGELL. I am not talking about lack of realism, Doctor. You are reading things into my words. Aren't we supposed to get a group of men who are going to advise the President on questions involving the future of the environment in a fashion that will be free from political stresses and strains and political limitations?

Isn't the environment too important to mankind to be concerned with temporary political considerations?

Dr. DuBRIDGE. The only way you will implement actions to improve the environment is by the political process.

Mr. DINGELL. Doctor, you are not answering my question. My question was: Isn't the environment too important not only to this generation but also to generations yet to come to have recommendations by a Council on Environmental Quality be limited by temporary political considerations?

Dr. DuBRIDGE. Well, in that sense of course the answer is yes.

Mr. DINGELL. The answer has to be yes?

Dr. DuBRIDGE. Yes.

Mr. DINGELL. Because the very existence of mankind on this planet and in this Nation is dependent upon the quality of the environment, is it not?

Dr. DuBRIDGE. Of course.

Mr. DINGELL. Don't we want then insofar as we are capable of doing it to establish a Council of Environmental Quality and a group of environmental advisers to the President who are going to be free of these short-term political considerations?

Dr. DuBRIDGE. That is the purpose of every staff member in OST.

Mr. DINGELL. I would hope this would be so, Doctor, but I want to be sure that it be so, and I think you agree with me that I want, as

a legislator, to establish a mechanism which will give me the firmest possible assurances that this be so, is that correct?

Dr. DuBRIDGE. I assume that is your intention, and I hope that we can find a way to do it, of course.

Mr. DINGELL. Now, Doctor, you observe the comings and goings and doings of the Council of Economic Advisers. Haven't they provided advice to the President under circumstances that give them the utmost freedom to discuss the economic problems of the Nation dispassionately and free from political questions and so forth?

Dr. DuBRIDGE. The Council of Economic Advisers?

Mr. DINGELL. Yes.

Dr. DuBRIDGE. Of course.

Mr. DINGELL. Hasn't this been one of their great strengths?

Dr. DuBRIDGE. Yes.

Mr. DINGELL. Hasn't this indeed been one of the greatest values of the Council of Economic Advisers?

Dr. DuBRIDGE. And also the Office of Science and Technology.

Mr. DINGELL. Doctor, with all due regard for you, and I have a high regard for you, I am talking about the Council of Economic Advisers. Would you say that the Office of Science and Technology was equal in the Government with the Council of Economic Advisers?

Dr. DuBRIDGE. I always thought so. I wouldn't have taken this position otherwise.

Mr. DINGELL. Doctor, let's move over and talk a little bit about Cabinet level agencies.

Approximately how many committees are Cabinet-level people on? Do you have any way of knowing?

Let's take the Secretary of the Interior or the Secretary of Transportation or the Secretary of HEW. How many Cabinet-level committees would be on?

Dr. DuBRIDGE. I couldn't answer this offhand. I could name some.

Mr. DINGELL. The Chair will direct counsel to secure that information for us from the Library of Congress so that we can have that in the record, but it is a large number, is it not?

Dr. DuBRIDGE. Yes, for some of them.

(The Library of Congress supplied the following information.)

ENVIRONMENTAL QUALITY COUNCIL.

Chairman, President Nixon; vice-chairman, V.P. Agnew.

CABINET MEMBERS

Sec'y of Agriculture, Clifford Hardin, agric. economist, former president, U. of Nebraska.

Sec'y of Commerce, Maurice Stans, banker.

Sec'y of HEW, Robert Finch, attorney, and politician.

Sec'y of HUD, George Romney, businessman, former Gov. of Michigan.

Sec'y of Interior, Walter Hickel, former Gov. of Alaska, businessman, developer, builder.

Sec'y of Transportation, John Volpe, former Gov. of Massachusetts, owns construction business.

In accordance with Executive Order, other department and agency heads and other individuals may attend meetings of the Council as the President directs. (Laurence Rockefeller was invited to attend the first meeting.)

THE WHITE HOUSE

WASHINGTON

November 3, 1993

MEMORANDUM FOR CATHY ZOI

FROM: MARVIN KRISLOV 
Special Counsel to the President

You asked me to examine the issues related to proposed legislation that would allow the President to delegate by Executive Order, certain functions currently performed by CEQ. Specifically, you asked me to determine whether a transfer of certain functions under NEPA to another entity within the Executive Office (such as the Office of Environmental Policy) would give that other entity accountability to Congress (such as requiring testimony at oversight hearings).

My research, which has been confirmed by a Deputy at the Office of Legal Counsel, indicates the following. First, the President has the general authority to delegate functions, although such delegation must be published in the Federal Register and such delegation does not relieve the President of ultimate responsibility for the official's actions. 3 U.S.C. § 301. No statutory or case law requires that if such a delegation took place, the designated office must testify or be otherwise accountable. As drafted, the proposed delegation would be valid since it sufficiently lays down an "intelligible principle" constraining Presidential actions. See, e.g., Touby v. United States, 111 S. Ct. 1752, 1756 (1991).

Moreover, separation of powers doctrine supports the proposition that Congress cannot interfere with Executive Branch decisions such as interpreting and implementing duly enacted statutes unless it chooses to enact legislation constraining the Executive power. See, e.g., INS v. Chadha, 462 U.S. 919, 951 (1983) (striking down legislative veto not presented to both houses of Congress). A 1985 Office of Legal Counsel Opinion discussing limits on Congressional oversight power stated:

To the extent that a committee of Congress attempts to interfere with the President's right to make policy decisions and to manage the Executive Branch pursuant to statutory authorization, the Legislative Branch limits the ability of the President to perform his statutory function.

9 Op. O.L.C. 60, 63-64 (1985). Thus, any effort by a Congressional oversight committee to dictate the identity of the

person sent to testify could be viewed as an incursion on the Presidential power.

Second, there does not appear to be any political custom or practice that would require that a specific official testify unless specifically subpoenaed. Should a subpoena be issued, then of course the political stakes would be raised and it is likely that the President would not wish to refuse to send the requested official. On a limited number of occasions, the Executive Branch has declined to provide information demanded by Congress. These instances, however, usually have involved a request for confidential information that arguably encroaches upon law enforcement, security or other Executive functions. See, e.g., 6 Op. O.L.C. 751-813 (history of Executive Branch refusal to provide information demanded by Congress).

Thus, there may be some risk that this legislation could create a conflict with Congress, particularly if the testifying official cannot or will not provide information. If such a situation occurs, a written response may suffice, but the President might need to make a political judgment regarding the costs of noncompliance. On the whole, however, neither case law nor custom requires that a particular official testify before Congress unless a subpoena is issued.

THE WHITE HOUSE

WASHINGTON

November 3, 1993

MEMORANDUM

TO: Katie McGinty

FROM: Marc Chupka

cc: Cathy Zoi
Will Stelle

SUBJECT: Amendments on EPA Bill

The Johnston Amendment would compel the Secretary of the Environment to certify every regulation from a cost-benefit standpoint. This is not only impractical in many cases, but current economic cost-benefit techniques are incapable of accurately accounting for many types of risk and compliance costs. In those cases where the net economic benefits of the rule cannot be demonstrated, the Secretary of the Environment is required to report such a finding to Congress and to incorporate that finding into the final rule.

If the intent were merely to compel more analysis, the Amendment would be fairly benign. However, the clear intent is (1) to put the Department under increased pressure to issue more lenient rules; and (2) to cow Congressional sponsors of environmental legislation to either provide more discretion or to reduce levels of protection. For these reasons, the Administration strongly opposes the Johnston Amendment.

The proposed Zimmer Amendment, on the other hand, is very benign. It merely articulates a premise that information regarding relative risks and the costs and benefits of reducing risk is important, and directs the Department to concentrate resources on the areas of greatest practicable risk reduction. There are no onerous "certification" requirements, no enforcement mechanism, and the amendment could actually strengthen the hand of the Secretary in deploying resources in ways that maximize risk reduction.

I don't pretend to know the Parliamentary tactics in this area. However, if the Administration needs to support a counter-amendment to Johnston in order to strengthen our position in Conference (rather than opposing any amendment on the House side) then the Zimmer proposal would be an acceptable vehicle.

Let me know if you need more information or analysis of this issue.

Attachments

ages made by this Act.

121. SENSE OF THE SENATE.

It is the sense of the Senate that building the capacity of state and local governments to more efficiently and effectively implement and manage environmental regulations should be a primary mission of the Department of Environmental Protection.

122. OFFICE OF ENVIRONMENTAL JUSTICE.

There is established within the Department the Office of Environmental Justice. The Office of Environmental Justice shall--

(1) develop a strategic plan to ensure equality in environmental protection;

(2) evaluate whether environmental policy is helping individuals who suffer the highest exposure to pollution, and identify opportunities for preventing or reducing such exposure;

(3) compile an annual report on progress in achieving environmental equity;

(4) require the collection of data on environmental health effects so that impacts on different individuals or groups can be understood;

(5) identify environmental high impact areas which are subject to the highest loadings of toxic chemicals, through all media; and

(6) assess the health effects that may be caused by emissions in the environmental high impact areas of highest impact.

JOHN STON

SEC. 123. HUMAN HEALTH AND SAFETY OR THE ENVIRONMENT FINAL REGULATIONS.

(a) In promulgating any final regulation relating to human health and safety or the environment after the date of enactment of this Act, the Secretary of Environmental Protection shall publish in the Federal Register--

(1) an estimate, performed with as much specificity as practicable, of the risk to the health and safety of individual members of the public addressed by the regulation and its affect on human health or the environment and the costs associated with implementation of, and compliance with, the regulation;

(2) a comparative analysis of the risk addressed by the regulation relative to other risks to which the public is exposed;

(3) the Secretary's certification that--

(A) the estimate under paragraph (1) and the analysis under paragraph (2) are based upon a scientific evaluation of the risk to the health and safety of individual members of the public and to human health or the environment and are supported by the best available scientific data;

(B) the regulation will substantially advance the purpose of

protecting the human health and safety or the environment against the specified identified risk; and

(C) the regulation will produce benefits to the human health and safety or the environment that will justify the cost to the Government and the public of implementation of and compliance with the regulation.

(b) In the event that the Secretary cannot make the certification required under subsection (a), the Secretary shall report to Congress that such certification cannot be made and shall include a statement of the reasons therefor in such report and in the final regulation.

(c) The certification required by this section shall not be construed to amend, modify, or alter any statute and shall not be subject to judicial review. Nothing in this section shall be construed to grant a cause of action to any person.

EC. 124. WETLAND DETERMINATIONS BY A SINGLE AGENCY.

In consultation with the Secretary of Agriculture, the Secretary of Environmental Protection, the Secretary of the Army, and the Secretary of the Interior, the President shall, within 90 days of the date of enactment of this Act, make recommendations and report to the Congress on measures to--

(1) provide that a single Federal agency be responsible for making technical determinations, including identification of wetlands, on agricultural lands with respect to wetland or converted wetland in order to reduce confusion among agricultural producers; and

(2) provide that the Soil Conservation Service be the Federal agency responsible for all such technical determinations concerning wetlands on agricultural lands.

TITLE II--ESTABLISHMENT OF THE COMMISSION ON IMPROVING ENVIRONMENTAL PROTECTION

SEC. 201. ESTABLISHMENT; MEMBERSHIP.

(a) Establishment.--There is established the Commission on Improving Environmental Protection (hereafter referred to as "the Commission") whose 13 members including the Chairman shall be composed of experts in governmental organization (with emphasis on environmental organization), management of organizations and environmental regulation and improved environmental governmental service delivery, consisting of--

(1) 7 members to be appointed by the President;

(2) 2 members to be appointed by the Speaker of the House of Representatives;

(3) 1 member to be appointed by the Minority Leader of the House of Representatives;

(4) 2 members to be appointed by the Senate Majority Leader; and

(5) 1 member to be appointed by the Senate Minority Leader.

10/29/93

11:50

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[Discussion Draft]

H.L.C.

[DISCUSSION DRAFT]
PROPOSED ADDITION TO BILL TO ESTABLISH
DEPARTMENT OF ENVIRONMENTAL PROTECTION
OFFERED BY MR. ZIMMER

At the appropriate place in the bill, add the following:

1 SEC. . FINDINGS AND POLICIES REGARDING RISK

2 ASSESSMENT AND REDUCTION.

3 (a) FINDINGS.—The Congress finds that the ability
4 of the Federal Government to reduce risks to human
5 health and the environment requires—

6 (1) accurate, quantitative estimates of the expo-
7 sure of humans and ecosystems to all important risk
8 factors;

9 (2) techniques for accurately predicting the ef-
10 fects of that exposure;

11 (3) adequate understanding of technical, eco-
12 nomic, social, and legal alternatives for achieving re-
13 ductions in that exposure; and

14 (4) accurate estimates of the costs and benefits
15 of alternatives for reducing risks to human health
16 and the environment.

10/29/93

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[Discussion Draft]

H.L.C.

2

1 (b) POLICIES.—It is the policy to the United States
2 that in carrying out environmental protection activities the
3 Secretary of the Environment should—

4 (1) seek to attain the greatest reductions in
5 risks to human health and the environment that are
6 practicable with the resources available;

7 (2) carefully assess and rank relative risks to
8 human health and the environment and the options
9 for managing those risks; and

10 (3) use resources available to the Secretary to
11 reduce those risks to human health and the environ-
12 ment that—

13 (A) are most likely to result in harm to
14 human health or the environment; and

15 (B) relate to such harm that is—

16 (i) of the greatest magnitude; and

17 (ii) most irreversible.

18 (c) NO RIGHT OF ACTION.—This section shall not be
19 construed as establishing any private right of action.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460THIS MESSAGE ELECTRONICALLY TRANSMITTED
ON A CANON FACSIMILE MODEL 770 OR 705.OFFICE OF CONGRESSIONAL
AND LEGISLATIVE AFFAIRS

TO: NAME: Cathy Zoi
OFFICE: _____
PHONE NUMBER: _____
FAX NUMBER: _____

FROM: NAME: Kate Perry ROOM: 803 WT
MAIL CODE: A-103
VOICE MAIL #: _____ ROTARY LINE: _____

COMMENTS: Comments on C&Q language

NUMBER OF PAGES TO FOLLOW: 3
DATE: 11/5/93
TIME: _____

RESPONSES TO THIS FAX: (202) 260-4046
TRANSMISSION NUMBER: (202) 260-4046 (FAX MODEL 770)
VERIFICATION NUMBER: (202) 260-5200

11/03/93

18:04

MERCHANT MARINE & FISHERIES COM

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H.L.C.

5

1 “(A) review and appraise the various programs
2 and activities of the Federal Government in light of
3 the policy set forth in title I for the purpose of de-
4 termining the extent to which such programs and
5 activities are contributing to the achievement of such
6 policy and make recommendations to the President
7 with respect thereto;

8 “(B) coordinate ^{or facilitate} the development of rec-
9 ommendations to the President regarding national
10 policies to foster and promote the improvement of
11 environmental quality to meet the conservation, so-
12 cial, economic, health, and other requirements and
13 goals of the Nation; and

14 “(C) coordinate or facilitate the development of
15 such studies, reports thereon, and recommendations
16 with respect to matters of policy and legislation, as
17 the President may request.

18 “(2) The President may transfer to another official
19 in the Executive Office of the President, by Executive
20 order, any function of the Director under this subsection.

21 “(d)(1) The Director, subject to paragraph (2),
22 shall—

23 “(A) assist Federal agencies and departments
24 in appraising the effectiveness of existing and pro-
25 posed facilities, programs, policies, and activities of

11/03/93

18:04

MERCHANT MARINE & FISHERIES COM

007

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H.L.C.

6

1 the Federal Government, and those specific major
2 projects designated by the President which do not
3 require individual project authorization by the Con-
4 gress, which affect environmental quality, and

5 "(B) assist in coordinating among Federal de-
6 partments and agencies those programs and activi-
7 ties which affect, protect, and improve environmental
8 quality.

9 "(2) The President may transfer to another official
10 in the Executive Office of the President or to the ~~head~~ ^{Secretary of Environ-}
11 ~~of any Federal agency~~ ^{mental Protection} by Executive order, any function
12 of the Director under this subsection.

13 "(e) The Director shall keep the appropriate Commit-
14 tees of the Senate and the House of Representatives in-
15 formed of the actions, regulations, policies, and practices
16 of the Office in carrying out the functions and other re-
17 quirements of the Director and the Office under this Act
18 (other than functions of the Director transferred in ac-
19 cordance with subsection (b)(2) or (c)(2)).

20 "SEC. 203. Referrals of interagency disagreements by
21 the head of any Federal agency concerning proposed
22 major Federal actions significantly affecting the quality
23 of the human environment under section 102(2)(C) or
24 concerning matters under section 309(b) of the Clean Air

11/05/93 18:56
11/05/93 11:43

CHIEF OF STAFF

001

202 260 4046

EPA-OCLA

CHIEF OF STAFF

001



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

THIS MESSAGE ELECTRONICALLY TRANSMITTED
ON A CANON FACSIMILE MODEL 770 OR 705.

OFFICE OF CONGRESSIONAL
AND LEGISLATIVE AFFAIRS

Exec Level 2



TO: NAME: Jack Quinn
OFFICE: _____
PHONE NUMBER: _____
FAX NUMBER: _____

FROM: NAME: Bob Hickmatt + Kate Perry ROOM: 803 WT
MAIL CODE: A-103
VOICE MAIL #: _____ ROTARY LINE: _____

COMMENTS: Comments on CEF language

NUMBER OF PAGES TO FOLLOW: 3
DATE: 11/5/93
TIME: _____

RESPONSES TO THIS FAX: (202) 260-4046

TRANSMISSION NUMBER: (202) 260-4046 (FAX MODEL 770)

VERIFICATION NUMBER: (202) 260-5200

11/23/93

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H.L.C.

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1 “(A) review and appraise the various programs
2 and activities of the Federal Government in light of
3 the policy set forth in title I for the purpose of de-
4 termining the extent to which such programs and
5 activities are contributing to the achievement of such
6 policy and make recommendations to the President
7 with respect thereto;

8 “(B) coordinate ^{or facilitate} the development of rec-
9 ommendations to the President regarding national
10 policies to foster and promote the improvement of
11 environmental quality to meet the conservation, so-
12 cial, economic, health, and other requirements and
13 goals of the Nation; and

14 “(C) coordinate or facilitate the development of
15 such studies, reports thereon, and recommendations
16 with respect to matters of policy and legislation, as
17 the President may request.

18 “(2) The President may transfer to another official
19 in the Executive Office of the President, by Executive
20 order, any function of the Director under this subsection.

21 “(d)(1) The Director, subject to paragraph (2),
22 shall—

23 “(A) assist Federal agencies and departments
24 in appraising the effectiveness of existing and pro-
25 posed facilities, programs, policies, and activities of

11/03/93

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H.L.C.

6

1 the Federal Government, and those specific major
2 projects designated by the President which do not
3 require individual project authorization by the Con-
4 gress, which affect environmental quality; and

5 "(B) assist in coordinating among Federal de-
6 partments and agencies those programs and activi-
7 ties which affect, protect, and improve environmental
8 quality.

9 "(2) The President may transfer to another official
10 in the Executive Office of the President or to the ~~head~~ ^{Secretary of Environ-}
11 ~~of any Federal agency~~ ^{mental Protection} by Executive order, any function
12 of the Director under this subsection.

13 "(e) The Director shall keep the appropriate Commit-
14 tees of the Senate and the House of Representatives in-
15 formed of the actions, regulations, policies, and practices
16 of the Office in carrying out the functions and other re-
17 quirements of the Director and the Office under this Act
18 (other than functions of the Director transferred in ac-
19 cordance with subsection (b)(2) or (c)(2)).

20 "SEC. 203. Referrals of interagency disagreements by
21 the head of any Federal agency concerning proposed
22 major Federal actions significantly affecting the quality
23 of the human environment under section 102(2)(C) or
24 concerning matters under section 309(b) of the Clean Air

11/03/93

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1 SEC. 5. ASSISTANCE FOR OFFICE OF NATIONAL ENVIRON-

2 MENTAL POLICY ACT COMPLIANCE

3 The National Environmental Policy Act of 1969 (as
 4 amended by section 3) is amended by adding at the end
 5 the following:

6 "SEC. 208. (a) *In performing the functions of the Office under the provisions of this law in a timely manner,* The Director may utilize personnel
or otherwise obtain assistance from other entities in the Executive Office of the President

8 or other Federal agencies, by mutual consent with the
 9 heads of those entities or agencies *to assist the Director*

10 ~~in performing the functions of the Office.~~

11 ~~["(b) The Director may request the head of any Fed-~~
 12 ~~eral agency to assist the Director in timely carrying out~~

13 ~~functions of the Director under this or any other law."]~~

14 SEC. 6. AUTHORIZATION OF APPROPRIATIONS.

15 (a) AMENDMENT.—Section 209 of the National Envi-
 16 ronmental Policy Act of 1969 is amended to read as fol-
 17 lows:

18 "SEC. 209. (a) There are authorized to be appro-
 19 priated to the Director to carry out the functions of the
 20 Director under this or any other Act—

21 "(1) \$800,000 for fiscal year 1994;

22 "(2) \$1,000,000 for fiscal year 1995;

23 "(3) \$1,200,000 for fiscal year 1996; and

24 "(4) \$1,400,000 for fiscal year 1997.

**EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503**

SPECIAL

November 18, 1993

LEGISLATIVE REFERRAL MEMORANDUM

LRN #I-1730

TO: Legislative Liaison Officer -

EPA - Thomas C. Roberts - (202)260-5414 - 326

FROM:

JUSTICE

**RONALD K. PETERSON (for)
Assistant Director for Legislative Reference**

**OMB CONTACT: Holly FITTER (395-3233)
Secretary's line (for simple responses): 395-6194
Robert TUCCILLO (395-4993)**

**SUBJECT: Proposed Statement of Administration Policy
RE: HR 3512, National Environmental Policy
Act Administrative Reorganization Amendments
of 1993**

DEADLINE: 10:00 AM November 19, 1993

COMMENTS: HR 3512 may come to the House floor this Saturday, November 20th. Unless you advise otherwise, the Administration will issue a Statement of Administration Policy stating support for HR 3512. Please advise whether you concur in this approach by 10:00 AM Friday, November 19th.

OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

Please advise us if this item will affect direct spending or receipts for purposes of the the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

CC:

**J. Quinn/M. Burton
H. Paster/L. Miller
K. McGinty/K. Zoi**

J. PALMIERI

B. DAMUS

ENVIRONMENT

Bill Elevating EPA to Cabinet Is Left for Next Year

With a key Republican ailing and potential legislative trouble brewing, the House put off until next year a vote on a bill to bring the Environmental Protection Agency into the Cabinet — a delay that could give opponents enough time to defeat the measure.

Meanwhile, the House on Nov. 20 took a step toward resolving a dispute over a White House council that oversees environmental laws, passing by voice vote a separate bill (HR 3512) to eliminate the council as it is now configured. The issue has stalled the EPA Cabinet bill (HR 3425) for nine months.

Despite the separate legislation, it still may prove difficult to keep the fate of the White House Council on Environmental Quality off the EPA Cabinet bill. The measure by Rep. John Conyers Jr., D-Mich., is widely viewed as the legislative vehicle to reorganize the agency.

The House leadership decided late Nov. 19 to pull the EPA Cabinet bill from floor consideration because Rep. William F. Clinger, Pa., the ranking Republican on the Government Operations Committee and the GOP's floor manager of the bill, was in the hospital recuperating from emergency eye surgery.

The EPA bill would create a Department of Environmental Protection, correct some contracting problems, coordinate data collection efforts and create an office that would advise the new secretary about the impact of environmental laws on minorities and minority communities.

The measure has not been rescheduled for consideration, but many lawmakers hope the bill will come up early next year. Environmental groups, however, are unhappy because the bill has taken so long to get out of the House Government Operations Committee, which is chaired by Conyers. The bill was stalled for most of the session because lawmakers could not agree on its scope.

"This is the typical EPA Cabinet story," said Mary Marra of the National Wildlife Federation, one of the groups supporting HR 3425. "The longer it drags on, the tougher it gets."

By Catalina Camia

BOXSCORE

Bills: HR 3425, S 171 — Environmental Protection Agency Cabinet status bill.

Latest action: House floor action postponed Nov. 19. On Nov. 20, House passed by voice vote HR 3512, a related bill to eliminate the White House Council on Environmental Quality as it is now configured.

Next likely action: House floor consideration of HR 3425, no date scheduled.

References: House bill, Weekly Report, pp. 3193, 3044, 2258, 1140; Senate bill, Weekly Report, p. 1140. Background, 1991 Almanac, p. 221; 1990 Almanac, p. 291.

Opposition to the EPA Cabinet bill already was mounting before the measure was postponed. The top three Republican leaders in the House and two conservative Democrats, W. J. "Billy" Tauzin of Louisiana and Charles W. Stenholm of Texas, launched a campaign the week of Nov. 15 to defeat the rule governing debate on HR 3425.

Republicans and conservative Democrats are upset because the Rules Committee quashed two amendments Nov. 17 that would have required the new Cabinet-level department to examine the costs and benefits of new environmental regulations — a potentially costly requirement that bill supporters say could sink the legislation.

The only amendments accepted by the Rules Committee deal with the organizational structure of the proposed Department of Environmental Protection and avoid broad rewrites of environmental policy. The latter have thwarted EPA Cabinet legislation in recent years.

The National Governors' Association and the National Association of Counties joined the fray the week of Nov. 15, lobbying Congress to include cost-benefit analysis requirements in

the EPA Cabinet legislation. States and local governments often are forced to pay billions of dollars annually to comply with environmental regulations.

"The parade of unfunded mandates out of Washington has got to stop or at least take a break while the EPA tells us what we're getting for our money," said Rep. John L. Mica, R-Fla., sponsor of one of the cost-benefit amendments.

The fate of the White House council likely will be hashed out by House and Senate negotiators on the EPA bill. The Senate version (S 171) would abolish the council, while the House measure is silent on the issue, effectively retaining the office.

By voice vote Nov. 20, the House approved the related bill (HR 3512) that would eliminate the council as it is now configured. Under the bill, key council duties regarding oversight and coordination of environmental laws would remain a White House responsibility.

The bill by Merchant Marine and Fisheries Chairman Gerry E. Studds, D-Mass., and Energy and Commerce Chairman John D. Dingell, D-Mich., also would authorize \$4.7 million over four years and a staff of seven professionals for the smaller White House office.

Studds and Dingell moved their bill on a fast track because the Rules Committee barred them from offering the language as an amendment to HR 3425, the EPA Cabinet bill. The committee chairmen wanted to establish a separate legislative path on the White House council in case HR 3425 is not brought back to the House floor.

The Clinton administration supports a smaller White House office to oversee compliance with environmental laws, particularly the 1969 National Environmental Policy Act (PL 91-190), which requires environmental impact studies on new federal projects. President Clinton proposed in February to abolish the council but backed off when environmental groups, Studds and Dingell complained.

Studds' committee has jurisdiction over the council and the environmental policy law, which Dingell helped write.

In related action Nov. 20, the House passed by voice vote a bill (HR 1994 — H Rept 103-376) that would reauthorize the EPA's research and development programs, which have been without a formal authorization since 1982. The bill would authorize \$475.4 million in fiscal 1994 for the programs. The Senate has not acted on a companion measure (S 1545) by Sen. Harry Reid, D-Nev. ■

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET

ROUTE SLIP

TO <u>Cathy Zoi</u>	Take necessary action ☐
	Approval or signature ☐
	Comment ☐
	Prepare reply ☐
	Discuss with me ☐
	For your information ☒
	See remarks below ☐
FROM <u>TJ Glavin</u>	DATE <u>12/29</u>

REMARKS

This is the CEQ
worksheet prepared earlier
by my staff — it's
actually a little high,
because the salary
inflation est. is higher
than our policy guidance —

TJ

CEQ FY 1993 Object Class Breakout
(Dollars in Thousands)

	FY 1993 Approps.	Prop. dec. in FY 1994	Inflation	Approps. FY 1994	Prop. inc. in FY 1995	Inflation	Request FY 1995	Budget Assumes:	FY 1993 FTE	FY 1994 FTE	FY 1995 FTE
Personnel Compensation: Full time Permanent	1535.00	0.28	1.052	458.97	1.26	1.050	605.56	Direct	28.00	7.96	10.00
Civilian Personnel Benefits	350.00	0.28	1.052	104.65	1.26	1.050	138.08	Detailees		0.00	0.00
Travel and Transportation of persons	85.00	0.28	1.027	24.81	1.26	1.029	32.08	Total	28.00	7.96	10.00
Transportation of things	15.00	0.28	1.027	4.38	1.26	1.029	5.66				
Rental Payments to GSA	413.00	0.28	1.027	120.55	1.26	1.029	155.88				
Communications, utilities, and misc.	55.00	0.28	1.027	16.05	1.26	1.029	20.76	Cost per FTE (\$K):			
Printing and Reproduction	35.00	1.00	1.027	35.95	1.00	1.029	36.99				
Consulting Services	0.00	0.00	1.027	0.00	0.00	1.029	0.00		FY 1993	FY 1994	FY 1995
Other Services	40.00	0.28	1.027	11.68	1.26	1.029	15.10	Salary	54.82	57.67	60.56
Supplies and materials	17.00	0.28	1.027	4.96	1.26	1.029	6.42	Benefits	12.50	13.15	13.81
Equipment	15.00	1.00	1.027	15.41	1.00	1.029	15.85	Travel	3.04	3.12	3.21
Total BA	2560.00			797.41			1032.36				

why not 1.6% assumpt? (Econ's Assump't for Pro.)

CEQ FY 1994 FTE Assumed Ramp-up

	Employees SOM	Employees EOM	Monthly Average	Number of Months	FTE
October-November	3	3	3.00	2.00	0.50
December	3	5	4.00	1.00	0.33
January	5	8	6.50	1.00	0.54
February	8	10	9.00	1.00	0.75
March	10	10	10.00	1.00	0.83
April	10	10	10.00	1.00	0.83
May	10	10	10.00	1.00	0.83
June	10	10	10.00	1.00	0.83
July	10	10	10.00	1.00	0.83
August	10	10	10.00	1.00	0.83
September	10	10	10.00	1.00	0.83
Total:				12.00	7.96

$1.26 = 10 / 7.96$ personnel ratio

wt'd avg

produced by OMB — 12/93
(Mark Kramer)

'93 from CEQ staff data
'94 extrapolated based on staffing
'95 of infl. rates

10.0001 OMB/ENVIR
 000
 83816
 The Administration has proposed a new structure for handling environmental issues. The new approach involves the elevation of the Environmental Protection Agency to Cabinet level status, and, as is relevant here, replaces the Council on Environmental Quality with a new White House Office on Environmental Policy funded through the Office of Policy Development.
 VEDP00023
 83813

Object Classification (in thousands of dollars)

Classification code 11-1453-0-1-002	1983 actual	1984 est.	1985 est.
211.1 Personnel compensation full-time permanent			5,815.00
220.1 Suburban personnel benefits			1,400.00
221.0 Travel and transportation of persons			315.00
222.0 Transportation of things			25.00
223.1 Grants payments to EPA			1,000.00
223.3 Communications, utilities, and miscellaneous charges			1,000.00
224.0 Printing and reproduction			325.00
225.2 Other services			25.00
226.0 Supplies and materials			15.00
227.0 Equipment			1.00
228.2 Total obligations			10,600.00

VEDP00024
 83813

Personnel Summary

Classification code 11-1453-0-1-002	1983 actual	1984 est.	1985 est.
1071 Official complementary workweeks full-time equivalent employment			

Mark,
 Remember that I don't know much!
 What does a Senate confirmed Presidential appointed Director make?
 Training what category would that fall under?
 What is use or lose money?
 Rent, still the big question



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

FAX COVER SHEET

NUMBER OF PAGES 1
(excluding cover sheet)

DATE _____

TO: Cathy Jol

Office: _____

Office Phone Number: _____

Fax Number: _____

FROM: Jennifer Palmieri

Agency: OMB Legislative Affairs

Office Phone Number: 395-4790

Office Fax Number: 395-3729

Additional Information: NEW

Following is draft SAP for EPA bill.
I drafted this @ the request of Aoraine
Miller. Please give any comments
ASAP tonight or Wednesday am.
Thanks. This draft reflects Frank Clement's
comments. His proposed edits are underlined.

DRAFTFebruary 1, 1994
(House)

H.R. 3425 - Department of Environmental Protection Act
(Conyers (D) Michigan and 41 others)

The Administration strongly supports H.R. 3425. Elevation of the Environmental Protection Agency (EPA) to Cabinet status will ensure that environmental issues are an integral part of the domestic policy process. The consideration of environmental concerns is imperative for the sustained success of our Nation's economic, social and trade policy.

The Administration strongly opposes amendments to H.R. 3425 affecting environmental policy, such as placing new "risk assessment" requirements on the promulgation of environmental regulations. The purpose of H.R. 3425 is to provide for the structural elevation of the EPA to cabinet status and improve the management of EPA consistent with the recommendations of the Vice President's National Performance Review. It is an inappropriate vehicle for consideration of broader environmental policy issues.

We urge the Congress to reject efforts to provide for such amendments to this bill, to oppose a weakening amendment in the nature of a substitute, and to move quickly to enact this critical legislation.

Pay-As-You-Go Scoring

H.R. 3425 would affect receipts; therefore it is subject to the pay-as-you-go requirements of the Omnibus Budget Reconciliation Act (OBRA) of 1990. This Office estimates the pay-as-you-go effect is zero.

* * * * *



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

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* * * * *

**EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503**

January 13, 1994

LEGISLATIVE REFERRAL MEMORANDUM

LRM #1-1872

TO: Legislative Liaison Officer -

✓ **COMMERCE** - Michael A. Levitt - (202) 482-3086 - 324 *ac K. Brown 1/24*
DEFENSE - Samuel T. Brick, Jr. - (703) 697-1305 - 325
ENERGY - Bob Rabben - (202) 586-6718 - 209
HHS - Frances White - (202) 690-7760 - 328 *ac P. Spang 1/24*
HUD - Edward J. Murphy, Jr. - (202) 708-1793 - 215
INTERIOR - Danny Consenstein - (202) 208-6706 - 329 *g. L. Cohen 1/24*
JUSTICE - Sheila F. Anthony - (202) 514-2141 - 217 *with home counts D. 1/24/94*
LABOR - Robert A. Shapiro - (202) 219-8201 - 330 *ac B. Larson 1/24/94*
TRANSPORTATION - Tom Herlihy - (202) 366-4687 - 226 *ac 1/24 g. DeCall*
NEC - Sonyia Matthews - (202) 456-6722 - 429
CEA - - (202) 395-5036 - 242 *ac R. K. Peterson 1/24*

FROM: RONALD K. PETERSON (for) *Ronald K. Peterson*
 Assistant Director for Legislative Reference

OMB CONTACT: Holly FITTER (395-3233)
 Secretary's line (for simple responses): 395-6194
 Richard MERTENS (395-6931)

SUBJECT: REVISED EPA Proposed Report RE: HR
 1924, Environmental Equal Rights Act of 1993

DEADLINE: 10:00 AM January 24, 1994

OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

Please advise us if this item will affect direct spending or receipts for purposes of the the "pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

CC:

K. McGinty
 B. Damus
 C. Cerda
 J. Gledhill

*Beth -
 again - I take these
 referrals directly.
 They need to go to
 immediately to the
 appropriate person.
 1/27/94
 B. Tuccillo
 C. Gledhill*

01/12/94

18:51

202 260 5185

EPA CONG LIAISON

+++ PETERSON

002/009

JAN 12 1994

DRAFT

Honorable Cardiss Collins
Chairman
Commerce, Consumer Protection,
and Competitiveness Subcommittee
Energy and Commerce Committee
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Collins:

The U.S. Environmental Protection Agency is committed to achieving environmental justice for all Americans. We support your efforts to address this important issue and appreciate the opportunity to comment on H.R. 1924, the "Environmental Equal Rights Act of 1993." We apologize for the delay in responding to your request. We would, however, like to share some of our thoughts on this bill. Attached please find some additional technical comments on the bill not contained in this letter.

As I indicated in my remarks on November 18, 1993, before the Subcommittee on Transportation and Hazardous Materials, H.R. 1924 could allow one citizen the opportunity to prohibit the siting of a facility in a particular community. We believe that community participation and community empowerment are central to any environmental justice legislation. What would occur if a community supports the construction of a facility, but one citizen of that community opposes it? Consequently, we encourage you to consider the presumption the bill creates in favor of the views of one citizen of a particular community and the burden on the rest of the community to overcome that presumption. Perhaps an alternative to this is to modify the siting process to allow a stronger voice for the community. This process should ensure that key questions are answered such as whether alternative locations with fewer environmental risks exist and whether there are already hazardous or solid waste facilities in the area. In this way, we can sponsor a partnership that protects public health and supports economic development.

The definition criteria of an environmentally disadvantaged community contained in the bill may prove problematic in implementation. Based on the income criteria, several states and most rural areas would fall within the definition. Furthermore, almost every community contains a site which fits the bill's criteria since almost every household has released a hazardous substance within the meaning of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). We are also concerned that the two mile radius language would not provide the flexibility to analyze sites consistently with other programs like Superfund.

R. Coronado

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EPA CONG LIAISON *** PETERSON

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The bill also assigns a role to administrative law judges in deciding permit approvals which they may not be in the best position to fulfill. Evaluating "alternative locations" that pose fewer risks to human health could prove both burdensome and difficult. Further, the bill limits the right to petition to persons residing in the state where the new facility will be located. This may inappropriately exclude persons who are located near a facility that is on or close to a state border.

At this time, we have not reached conclusions regarding any changes to existing legislation including those areas addressed in H.R. 1924. An integrated strategy, with legislative and regulatory components, is, we believe, the most effective course. Administrator Browner has directed EPA's leadership to design for her approval both an environmental justice strategic document outlining the goals and objectives to guide Agency operations and a specific action plan to achieve those goals. The first draft of that strategic document is under review and we are developing the action plan based on the involvement of top senior management and senior policy analysts representing all aspects of EPA's programs and regional operations. This action agenda will chart the course for the integration of environmental justice into all of EPA operations including legislative initiatives, regulatory development, grant policies, and geographic information systems. In order to have the benefit of expert views outside the Agency, a recently chartered National Environmental Justice Advisory Committee will soon be formally established to provide EPA with advice regarding our activities.

If you so desire, I am available to meet with you or your able staff to discuss the scope and status of EPA's activities as well as hear from you other areas where we can work together to protect the public health of all citizens.

The Office of Management and Budget advises that it has no objection to the presentation of these views from the standpoint of the President's program.

Sincerely,

DRAFT

Kathleen Aterno

Deputy Assistant Administrator
for Administration and Management

Attachment

- 3 -

ATTACHMENT

The Petition Process

1. First, we have several concerns about the petition process. As drafted, we believe that H.R. 1924 may, in effect, create a moratorium on the siting of hazardous waste facilities in certain areas. Under the bill, once the petitioner establishes that the proposed facility will be located in an "environmentally disadvantaged community," the petitioner must only make one additional showing -- that the proposed facility "may adversely affect" the community's human health or environment. Once the petitioner meets the threshold requirements, the respondent (i.e. the potential permittee) must show that there is "no alternative location" within the State which poses fewer risks to human health and the environment than the respondent's proposed location and must establish that the proposed facility "will not release contaminants" or will not "engage in any activity that is likely to increase the cumulative impact of contaminants on any residents of the environmentally disadvantaged community." Almost all human activity "is likely to increase the cumulative impact of contaminants" in a particular community. Thus, the bill makes it easy to prevent the siting of a particular facility and makes it extremely difficult for respondents to overcome this presumption against siting. Thus, the bill may have the practical effect of creating a ban against facilities in "environmentally disadvantaged communities." This could discourage appropriate and beneficial development in some cases.

In contrast, the conceptual basis for decision-making at EPA calls for consideration of a host of factors, including environmental justice legislative authority, economic dislocation, type and magnitude of environmental risk, projected impacts on sensitive populations (e.g., children), etc. We have learned that giving undue emphasis to any single factor can inadvertently preclude our reaching an optimal decision. For example, rigid adherence to the well-intended Delaney Clause of the Federal Food, Drug, and Cosmetic Act forty years ago has led to decisions regarding food safety today that make little practical sense.

While we agree that we should do more to generate better data on environmentally disadvantaged communities, we also believe that we should generate better data on environmental risks, economic consequences, sensitive subpopulations, etc. Our goal at EPA is to better inform the final decision itself, not to short circuit the process by artificial strictures.

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- 4 -

2. In addition, EPA is concerned about the community participation aspects of the petition process. We believe that H.R. 1924 may, by allowing one citizen to prohibit the siting of a facility in a particular community, prevent the community from making a decision. What if a community supports the construction of a facility, but one citizen of that community opposes it? We believe that community participation and community empowerment are central to any environmental justice legislation. Consequently, we encourage you to consider the presumption the bill creates in favor of the views of one citizen of a particular community and the burden on the rest of the community to overcome that presumption. Rather than setting forth the burdens for granting and denying petitions and thereby potentially giving one citizen's views more weight than those of the community, the bill could require that a petition be filed by more than one citizen of the community and it could require the administrative law judge or state official to make a determination on the petition after notice, comment, and a full public hearing. If this scheme is adopted, it would be important to list factors that the administrative law judge or state official must consider when evaluating petitions. That list might include: 1) whether the facility is likely to substantially increase environmental risks to the community; 2) whether there are already hazardous waste or solid waste facilities in the area; 3) whether alternative locations that might pose fewer environmental risks were considered during the application process; and; 4) whether the community supports the facility.
3. EPA is concerned also that it is not clear under ^{proposed} section 7014(a) of the Solid Waste Disposal Act when a citizen must submit a petition to prevent a proposed facility from receiving an operating permit. The current language could be interpreted to mean that a petition could be filed anytime prior to the issuance of a permit. Since that might require the Agency to expend considerable effort responding to comments after the comment period closes and before a permit is issued, we recommend that the following language be added after "(described in paragraph (2))": "prior to the close of the public comment period..."
- DOJ

- 5 -

4. H.R. 1924 limits the right to petition to persons residing in the state where the new facility will be located. This may inappropriately exclude persons who are located near a facility that is on or close to a state border. Therefore, we recommend that the bill be amended to provide that a citizen in one state may petition another state to prevent the siting of a facility in another state if he or she meets the proximity requirements of the bill. Of course, if the bill is changed to allow petitioners in one state to challenge a permit in another state, there should be a mechanism for resolving potential disputes between citizens of separate states. Further, situations may arise where a polluting facility is economically beneficial to an area but does not leave it significantly environmentally disadvantaged, i.e., incorporating even moderately tall smoke stacks results in air pollutants falling outside of the area in which the potential facility is located.
5. Finally, we want to make clear that petitions under section 7014(a)(2)(B) of the Solid Waste Disposal Act for municipal waste facilities should not be submitted to EPA, which does not permit such facilities. Petitions should instead be submitted to the States.

Definition of Environmentally Disadvantaged Community

1. H.R. 1924's definition of an Environmentally Disadvantaged Community (EDC) is elaborate. First, it defines the community as the area "within 2 miles of the borders of a site on which a facility for the management of solid waste ... is proposed to be constructed." We are concerned that it will be difficult to apply the population and environmental criteria contained in the bill to this 2 mile area because in all likelihood the area will not coincide with the areas for which census data are available. Second, the definition of EDC also includes both population and environmental criteria. Although section (d)(1) of proposed section 7014 defines an environmentally disadvantaged community as one that satisfies the requirements of both sections (d)(1)(A) (population criteria) and (d)(1)(B) (environmental criteria), a citizen of a community which meets the requirements of section (d)(1)(A) of section 7014 ("a site at which a release ... has occurred") would almost always be able to petition to prevent the issuance of a permit to a new solid waste facility. Almost every community contains a site defined under section 7014 (d)(1)(B)(iii) since almost every household has released a hazardous substance within the meaning of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). We believe section 7014(d)(1)(B) was intended to place additional limitations on eligible communities. If that were the intent, we believe section 7014(d)(1)(B)(iii) should be deleted.
2. We are concerned also that one of the triggers for an "environmentally disadvantaged area" is the existence of a facility that reports under the Emergency Planning and Community Right-To-Know Act (EPCRA), 42 U.S.C. 11001 et seq. if

- 6 -

the releases reported are likely to adversely affect the human health of the community or portion of the community. The entity (EPA or the State) that would have to deal with a petition filed under the proposed law would be responsible for determining whether such an adverse effect is likely.

Thus, as part of the petition process, EPA or the State would be required to review all reported Toxic Release Inventory (TRI) releases from all facilities in order to determine whether a community qualifies as an "environmentally disadvantaged community." This would be a burdensome ~~(and controversial)~~ undertaking. Furthermore, EPA believes TRI reporting is generally an inappropriate trigger because it does not relate to the predominant focus of H.R. 1924 -- the relationship between communities and RCRA hazardous waste facilities. A trigger that is tied more directly to waste management facilities would be more efficient. For these reasons, EPA recommends that the bill exclude the TRI report trigger from the "environmentally disadvantaged community" definition.

3. In addition to this concern about the environmental criteria, we are concerned about the population criteria contained in H.R. 1924. Under the bill, an area may only qualify as an EDC if its population satisfies certain low income criteria or if:

(A)(i) The percentage of the population consisting of all individuals who are of African, Hispanic, Asian, Native American Indian, Pacific Island, or Native Alaskan ancestry is greater than either --

(i) the percentage of the population in the State of all such individuals, or

(ii) the percentage of the population in the United States of all such individuals; ...

Because these provisions establish a classification based on race and/or national origin in the application of federal legal protections, they must be evaluated under the equal protection component of the Due Process Clause of the Fifth Amendment of the U.S. Constitution. If H.R. 1924's petition procedure were to result in the total or grossly disproportionate diversion of solid waste disposal facility construction to areas of above-average non-minority populations, constitutional concerns would arise under the equal protection component of the Due Process Clause. In that event, the courts might determine that the race and national origin classifications included in the bill's definition of an environmentally disadvantaged community "impose impermissible burdens on nonminorities." We believe this concern could be obviated by limiting the population criteria in section 7014(d)(1)(A) of the Solid Waste Disposal Act to appropriate factors other than race or national origin.

- 7 -

4. In addition, the population criteria in section 7014 (d)(1)(A) include income criteria. A community can satisfy these income criteria if "twenty percent or more of the population consists of individuals who are living at or below the poverty line," or if "the area has a per capita income of 80 percent or less of the national average." Five states have per capita income less than 80% of the national average. Similarly, most rural areas have incomes substantially less than the national average. Thus, these criteria could prevent the construction of waste facilities in several states and most rural areas. We do not believe that this was the intent of the bill's drafters and we believe this income criteria should be narrowed.

Other Concerns

1. Applicability of H.R. 1924 to Superfund sites -- H.R. 1924 allows petitioners to prevent the issuance of a permit to applicants upon a showing of specified harm to the community. Section 121(e) of CERCLA, 42 U.S.C. 9621(e), provides that federal, state, and local permits are not required for CERCLA response actions. Therefore, petitioners should not be able to use the bill to prevent the construction of a waste management facility on a Superfund site which is designed to treat, store, or dispose of waste materials generated as part of cleanup of that site. However, we believe that the bill should make it clear that it does not apply to Superfund sites to avoid any confusion and litigation over this issue. In addition, the bill should make clear that its requirements do not apply to corrective action management units under RCRA. Finally, the bill should make clear how it would apply to Superfund or RCRA corrective action sites. New provisions should not fundamentally disrupt the cleanup authority and procedures at these sites.
2. Definition of Management -- We believe that the term "management" is defined too broadly. As defined in H.R. 1924, management "means treatment, storage, disposal, combustion, recycling, or other handling of solid waste." "Handling" is not defined. Thus, the bill may apply to any new facility that generates or otherwise handles solid waste. That may include activities that do not pose any risk, such as the management of waste paper in office buildings with recycling programs. We do not believe that this was the bill's intent and we suggest that "or other handling" be deleted to avoid confusion over the applicability of the bill. In addition, the bill should specifically exclude arrangement of wastes within households, and possibly other activities that are exempt from the definition of "hazardous" and/or "solid" waste.
3. Reviewability of the Decision -- H.R. 1924 does not include any provision for appeals of the decision of the administrative law judge or state employee. We

. 8 .

believe the bill should include some provision for administrative ~~or judicial~~ review of these decisions.

4. Notice Provisions -- Although H.R. 1924 requires the entity receiving the petition to hold a public hearing on the petition, the bill does not require notice of the hearing. We presume that notice would be given, but suggest that the bill be amended to make this clear and to indicate when notice must be given. We also encourage you to include some provision for translation of both the notice and hearing for limited-English speakers in the community who will be affected by the permitting decision.

5. Application of H.R. 1924 to Indian Reservations - ^{that} H.R. 1924 does not expressly address issues relating to Indian reservations. Presumably, affected citizens should have the same rights if a tribe is ^{the} siting authority, they would have with a State or Federal siting authority. Similarly, where there is a boundary between a State and a reservation, or between two reservations, the same procedures should apply as when the boundary is between two States.

Again, we are committed to developing policies and programs that promote environmental justice and we thank you for the opportunity to help shape one such program. Although we have listed many concerns with H.R. 1924, we believe in the goals of environmental justice and hope we can work with you to draft legislation that will reduce disproportionate exposure to environmental hazards.

01/26/84

09:30

202 514 3899

OLA

+++ OMB PETERSON

2002

DOJ- D. Novak

COMMENTS ON H.R. 1924 EPA REPORT

1. Given that the comments contained in the attachment to EPA's letter are more than mere technical comments, we suggest the following change in para. 1:

"* * * Below we share some of our thoughts on this bill. Attached please find a comprehensive discussion of the concerns outlined in this letter."

2. We are not sure what EPA means on page 2 of the letter when it states "we have not reached conclusions regarding any changes to existing legislation including those areas addressed in HR 1924." Does this mean that EPA does not have a position on the bill? Isn't it clear that EPA would oppose the bill as currently drafted, but would be willing to help redraft an acceptable bill as stated on page 8? ND
E

3. We suggest inserting the word "proposed" on page 4, para. 3, of the attachment before "section 7014(a)."

4. On page 5, para. 4, last sentence, the i.e. clause does not follow from the first part of the sentence and we recommend deleting it.

5. On page 8, para. 5, we suggest the following change: "* * * if a tribe is the siting authority that they would * * *."

6. It may not be clear on page 4, para. 3, that EPA opposes the use of a petition to halt a project before the comment period has closed.

7. We suggest striking "judicial" from the top of page 8.

8. We suggest deleting "controversial" on page 6, para. 2 (carry-over):

"This would be a burdensome [] undertaking."

9. We had suggested to EPA that the following be included and would like to reinstate that request. We have redrafted to avoid the NIMBY language that may be the source of EPA's concern. This section could be included on page 5 under the EDC section.

"The bill seems to allow certain citizens to prevent the siting of a facility in a particular community if it "may adversely affect" human health or the environment. Under a literal reading of the language, every facility, at least in theory, "may adversely affect" human health or the environment. Thus, citizens who object to a facility for any reason can prevent construction and/or operation of that facility without showing particular harm. We believe this provision of the bill should be modified to address this issue."

THE WHITE HOUSE
WASHINGTON

Katie

This is the memo on CEQ
We have a question about sec
204 paragraph (3) (attached)
Who should this function belong
to? Will felt it would stay
with CEQ; Cathy felt it
should be mentioned under OEP.
I think will wanted to leave
OEP out of getting tasks from
NEPA.

— Thanks
Michael G.

MEMORANDUM FOR Howard Paster

FROM: Cathy Zoi

DATE: September 30, 1993

SUBJECT: **The Fate of CEQ: Critical Issues**

This memo briefly describes the areas of disagreement on the future of CEQ. Attached is an outline of the current White House proposal, which has not yet been presented to Studds or Dingell (although Lorraine Miller had a copy of our proposal as of Wednesday afternoon and may have discussed it with some key staffers). Please keep in mind that none of the following are issues if our *original* proposal (passed by the Senate) -- to move NEPA functions to the Department of the Environment -- is carried forward.

Breadth of Functions

- o **White House proposal:** new CEQ (aka "Office of Environmental Impact Statement (EIS) Review" or "Office of NEPA Compliance") with **responsibilities limited to review of federal EISs, dispute mediation and specific regulations for implementing NEPA** (broad policy functions of NEPA -- including advising the President on environmental issues and coordinating interagency environmental policy development -- would reside in the White House OEP and/or cabinet-level EPA). (see attached proposal for statutory citations)
- o **House proposal:** all NEPA functions reside in the new office replacing CEQ, including providing the President with broad environmental policy advice

Size of Staff

- o **White House proposal:** new CEQ has 3 EOP employees, and agency representatives as necessary to fulfill the statutory obligations summarized above
- o **House proposal:** unspecified, although Hill staff has *implied* that 8-12 full time EOP employees would be satisfactory

[Potential wiggle room -- Roy has authorized increasing the number of EOP employees at the new CEQ **if Congress mandates it and in-so-doing, increases the EOP body count**. From an environmental perspective this would be a great outcome. The White House will not, however, increase the allocation to CEQ if it has to come from somewhere else in the EOP.]

Congressional Accountability of Director

- o **White House proposal:** accountable for testimony, but not senate-confirmed
- o **House proposal:** leaning toward senate-confirmability

THE WHITE HOUSE
WASHINGTON

Tom Kitsos 225-2429