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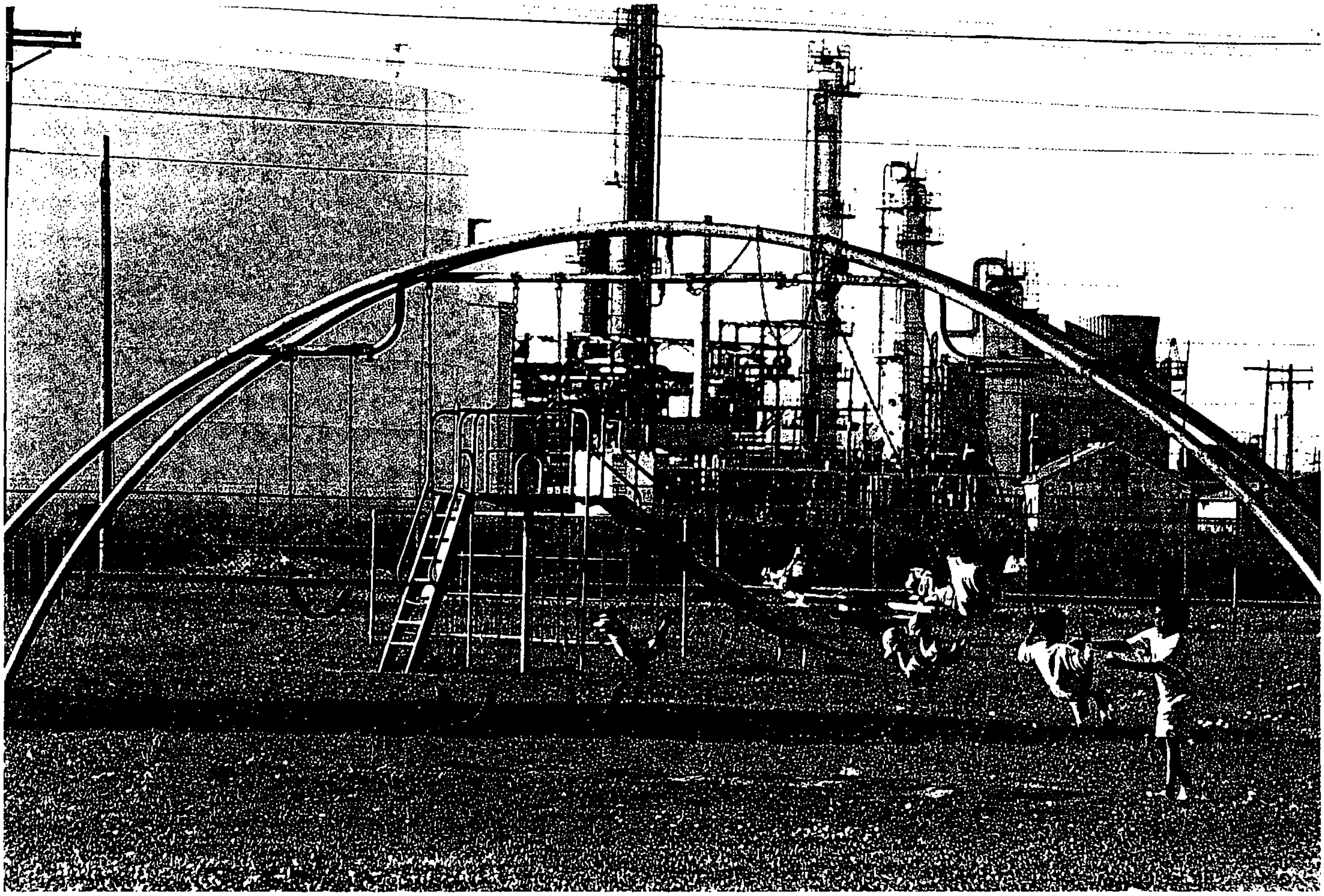

OUR CHILDREN'S WORLD

STEELWORKERS AND THE ENVIRONMENT

Report of the USWA Task Force on Environment
with
The Environmental Keynote Address
at the 25th Constitutional Convention

August 1990

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SELECTED REGULATIONS AFFECTED BY THE REGULATORY MORATORIUM

Updated April 22, 1992

OMB Watch and Public Citizen originally released the following list of regulations on January 24, 1992, in anticipation of the President's 90-day regulatory moratorium. Here is an update of the status of each regulation at the conclusion of the 90-day freeze, as well as the status of additional regulations not included on the original list.

WORKER SAFETY

Occupational Safety and Health Administration (OSHA)

- **Recordkeeping and Reporting Injuries and Illnesses; Fatality/Catastrophe Reporting** – requires employers to report work-related injuries, illnesses, and deaths to the state or federal OSHA. **DELAYED**
- **Permissible Exposure Limits (PELs) to Hazardous Chemicals for Agriculture, Construction, and Maritime** – sets an exposure limit for workers in the agriculture, construction and maritime industries. **DELAYED, WEAKENED**
- **Confined Spaces** – prevents death and injury from work done in confined spaces (such as manholes). Over the past 16 years – the amount of time this standard has been delayed – 560 people have died and 85,000 have been injured working in confined spaces. **DELAYED**
- **Ergonomics** – protects workers from repetitive motion injuries and set standards for a healthy office environment. **DELAYED**
- **Worker Protection from Exposure to Hazardous and Toxic Chemicals** – several regulations would protect workers from chemicals such as Glycol Ethers, Methylene Chloride, Formaldehyde, Asbestos and Cadmium. **DELAYED**
- **Standards for Logging** – sets safety standards for workers in the logging industry. **DELAYED**
- **Respiratory Protection** – update of standard that protects workers from respiratory illness (current standard does not reflect state-of-the-art). **DELAYED**
- **Safety and Health in Longshoring** – protects longshoremen from injury; standard on books now has not been updated since 1960. **DELAYED**
- **Personal Protective Equipment** – would apply to general industry; calls for proper equipment to protect the eyes, face, head, and feet of workers. **DELAYED**
- **Welding in Shipyards** – sets safety standards for shipyard welders. **DELAYED**
- **Storage and Handling of Hazardous Materials** – sets standards for handling of hazardous materials. **DELAYED**
- **Employer Safety Belt Responsibility** – requires employers to provide safety belts in vehicles and helmets for motorcyclists. **DELAYED**
- **Farmworker Safety** – would set requirements for employers to have vehicle liability insurance to cover migrant and seasonal workers. **DELAYED**

- **Protection for Farmworkers from Unfair Labor Practices**—would confirm standards under which agricultural employers may import foreign temporary workers, so that such a practice will not lower US labor standards for things such as housing, transportation, and safety. **DELAYED**

CONSUMER HEALTH AND SAFETY

Food and Drug Administration (FDA)

- **Safe Medical Devices**—these regulations are designed to assure that medical devices entering the market are safe and effective and that the FDA learns quickly about faulty devices and has the authority to remove them from the market. **DELAYED**
- **Over-the-Counter Drugs**—FDA is reviewing over-the-counter drugs, from cold remedies to diaper rash and weight control products, to make sure that ingredients are both safe and effective. **DELAYED**
- **Infant Formula Quality Control, Testing, and Record-Keeping Requirements**—would strengthen existing record-keeping requirements, including the results of testing for microbiological contaminants and consumer complaints. Also, would ensure safer manufacturing practices and testing of infant formula for essential nutrients. **DELAYED**
- **Orphan Drug Amendments**—regulates the production and approval of drugs for the treatment of rare diseases and conditions and provides incentives for companies to develop these drugs, which are expensive to produce. **DELAYED**
- **Salmonella**—would protect consumers from eggs contaminated by salmonella enteritidis. The Center for Disease Control estimates that 80,000 - 800,000 people are stricken with salmonella-associated illnesses every year. **DELAYED**
- **Physical Restraints**—would prohibit use of physical restraints in nursing homes and hospitals without a physician's prescription. **DELAYED**

FOOD SAFETY

U.S. Department of Agriculture

- **Nutrition labeling for meat and poultry**—would require better labeling of foods containing meat and poultry, a policy akin to FDA's massive overhaul of nutrition labeling of all other foods. **DELAYED**

ENVIRONMENTAL PROTECTION

Environmental Protection Agency (EPA)

- **Worker Protection from Agricultural Pesticides**—would protect farmworkers from exposure to dangerous pesticides. **DELAYED**
- **Pesticide Restrictions**—EPA has announced several pending actions on pesticides, including restrictions on the cancer causing EDBCs, widely used on fruits and vegetables. **WEAKENED**
- **Biotechnology**—these regulations, which would set health and safety standards for products of biotechnology, have been delayed for years. **WEAKENED**
- **Pollution Prevention**—would expand the public's 'right-to-know' by requiring manufacturing facilities to report their efforts to reduce hazardous emissions to the EPA. **DELAYED, POSSIBLY KILLED**
- **Ground Water Monitoring**—protects ground water from hazardous waste contamination at hazardous and solid waste landfills. **DELAYED**

- **Industrial Accident Prevention**—would require industry to put in place measures to reduce toxic chemical accidents, which, in 1989, caused more than $700 million dollars in property damage. DELAYED
- **Definitions of Mixed Hazardous Waste**—would ensure that wastes containing hazardous constituents be correctly handled and monitored. WEAKENED, DELAYED
- **Onboard Controls for Motor Vehicles**—under the Clean Air Act, this rule would require auto manufacturers to install a canister in all new cars to catch pollution-causing hazardous vapors that escape into the air during refueling. KILLED

AUTO SAFETY

National Highway Traffic Safety Administration (NHTSA)

- **Newborn Infant Test Dummies**—would improve real world testing for the safety of newborn infants and very young children. DELAYED
- **Seat Belt 'Lockability' to Secure Child Safety Seats**—requires that safety belts lock to hold child seats securely in place. DELAYED
- **Elimination of Defective Seat Positions**—prohibits manufacture and sale of child safety seats that are dangerous when adjusted in certain seat positions. DELAYED
- **Automatic Brake Adjustment for Large Trucks**—to improve truck brake maintenance and operation for trucks and semi-trailers over 10,000 pounds. DELAYED
- **Public Lands Visitor Safety Belt Use**—to require safety belt use on federal recreational lands in states that do not have a mandatory seat belt law. (This regulation is promulgated by Department of Interior.) DELAYED
- **Child Restraints Registrtaion**—would improve communication to parents about defects or recalls of child restraints that they've purchases. DELAYED
- **Daytime Running Lights**—would increase the visibility of cars in low light, at dusk and dawn, or in poor weather conditions. DELAYED
- **Pedestrian Head Impact Protection**—would reduce severity of head injuries to pedestrians struck by motor vehicles. DELAYED

HUMAN SERVICES

Department of Health and Human Services (HHS)

- **Child Care**—regulations implementing two new laws passed by Congress last year. One provides child care subsidies for working families "at risk" of needing welfare; the other sets out standards for day care providers and funding. DELAYED
- **Nursing home reform**—enforces quality of care standards, including resident's rights and nurse staffing. DELAYED
- **Patient Dumping**—would prevent hospitals from denying treatment to patients in emergency conditions and to women in labor because of inability to pay. DELAYED

HOUSING HEALTH AND SAFETY

Department of Housing and Urban Development (HUD)

- **Lead-based paint poisoning prevention**—seeks to eliminate lead-based paint poisoning in HUD-associated housing, which causes detrimental health effects in children. DELAYED

- **Community Development Block Grant Funded Code Enforcement**—federal grants used by localities to ensure the health and safety of housing occupants. DELAYED

PRODUCT SAFETY

Consumer Product Safety Commission (CPSC)

- **Small parts on children's toys**—would require warning labels on certain toys, balloons, marbles, etc. Between 1980 and 1991, 186 children died from complications associated with small toy parts. KILLED

MINING AND ENDANGERED SPECIES

Department of Interior

- **Subsidence Surface Mining**—would prevent mining that causes the ground to cave in, taking homes, water supplies and anything else on it with it. KILLED
- **Endangered Species Act**—to qualify for full protection under this law, the Fish and Wildlife Service must list animal and plant species threatened by extinction, but since the moratorium began, not a single endangered species has been listed. DELAYED

CONSUMER BANKING PROTECTION

Federal Reserve Board:

- **Truth in Savings**—new law designed to properly inform consumers about their savings accounts. For example, requires banks to report accurate interest rates. ISSUED

Federal Deposit Insurance Corporation (FDIC):

- **Replenishing the Bank Insurance Fund**—so that banks, and not taxpayers will be paying for their own bailout, the Federal Deposit Insurance Corporation (FDIC) is drafting a schedule for banks to pay back the $70 billion loan from the government. DELAYED

Office of Thrift Supervision (OTS):

- **Security Sales at S&Ls**—would prohibit sale of securities by S&Ls in order to prevent scandals like the Lincoln Savings & Loan bondholder scam. DELAYED

Comptroller of the Currency:

- **Insider Dealing**—would protect banks and depositors from insider dealing. DELAYED

EDUCATION

Department of Education

- **Vocational Education**—provides guidance to states to ensure that disadvantaged youth have access to vocational education. DELAYED

Sources: *Regulatory Program of the United States, April 1-March 31, 1992;* federal agency and congressional staff; various experts on consumer, health, safety, and environmental issues.

THE WASHINGTON POST TUESDAY, MARCH 17, 1992 A15

THE FEDERAL PAGE

#1

OMB's Logic: Less Protection Saves Lives

Letter Blocking Health Standards for 6 Million Workers Shocks Officials at Labor Dept.

By Frank Swoboda
Washington Post Staff Writer

The Office of Management and Budget has blocked new health standards for more than 6 million workers in the construction, maritime and agricultural industries on the theory that less protection may save more lives than adding regulatory costs to employers.

The novel theory, outlined in a letter from OMB to the Labor Department last week, argues that added regulatory costs could force an employer to either lower wages or cut employment. If this happens, OMB asserts, it could have a negative impact on workers' health because, it says, higher-paid workers tend to take better care of themselves and if they can no longer afford to do so, more may be killed than saved.

The OSHA standards are designed to protect workers from excessive exposure to hazardous substances. OMB wants an analysis of whether the rules would adversely affect wages and employment.

At issue are standards proposed by the Labor Department's Occupational Safety and Health Administration to set permissible exposure limits (PELs) for more than 1,000 substances used in the three industries. The standards, which were approved nearly four years ago for all other industries, are designed to protect workers from excessive exposure to hazardous substances in the workplace.

OMB said it would not consider the proposed regulations until the department completes an analysis showing whether the new rules would have an adverse effect on wages and employment levels in the affected industries. Departmental sources predict such a study could take several years and still would be inconclusive.

The letter has caused an uproar in the Labor Department, where officials warn it could have an impact on all federal regulatory agencies. "If this is the new approach OMB is going to take, it's not going to just affect OSHA," a Labor Department source said.

OMB officials said yesterday the letter represents OMB policy and would apply to all federal regulatory agencies.

Peg Seminario, director of health and safety for the AFL-CIO, called the OMB position "really looney." She said the "analysis they're asking for sort of comes out of thin air and is not required by law. This goes well beyond anything required and it would be impossible to do."

The OMB directive comes as the White House has declared a 90-day moratorium on new federal regulations. It also coincides with an announcement by President Bush during a campaign trip to Detroit last week that the auto industry would not have to build cars that would keep gasoline fumes from escaping during refueling.

A senior department official said OMB has put Labor Secretary Lynn Martin in an "incredibly awkward position." Any showdown with OMB is apt to be a major, public test of how much clout Martin has with Bush. Martin, a 10-year veteran of Congress, often has traded on her close ties to the president in dealing with department issues. "This is going to be hot," a department source said.

OMB last Friday refused a formal department request to withdraw the letter. Yesterday, under Martin's direction, the department was drafting a reply to OMB. It questions OMB's legal authority to force OSHA to weigh safety benefits against economic risks for federal health standards. The Supreme Court ruled in 1981 in a case involving cotton dust standards that cost-benefit analysis was illegal in determining health standards.

The draft, being circulated in the department, also suggests that if OMB wants to create a new policy such as the one outlined in the OSHA letter, it should publish a proposal in the Federal Register and let all the regulatory agencies comment on it.

James B. MacRae Jr., acting administrator of OMB's Office of Information and Regulatory Affairs, wrote: "The positive effect of wealth on health has been established both theoretically and empirically. Richer workers on average buy more leisure time, more nutritious food, more preventive health care and smoke and drink less than poorer workers.

"Government regulations often have significant impact on the income and wealth of workers. To the extent that firms cannot pass on regulatory compliance cost increases to consumers, firms will absorb these costs by cutting wages and by reducing employment."

Therefore, MacRae wrote, "OSHA should estimate whether the possible effect of compliance costs on workers' health will outweigh the health improvements that may result from decreased exposure to the regulated substances." He said he was sending the proposed draft regulations back to the Labor Department for further analysis "to compare the health effects of these income changes to the health benefits that OSHA attributes to reduced exposure."

In requesting the analysis, MacRae cited a recent federal appeals court case involving OSHA and the United Auto Workers union. He cited research asserting that every $7.5 million in additional regulatory expenditures may result in an additional death from lowered worker income. Because the proposed OSHA regulations would add an estimated $163 million in annual employer costs, MacRae argued in his letter, the new rules could result in an additional 22 deaths. Because OSHA estimates the new regulations would save 8 to 13 lives a year, MacRae reasoned, there would be a net increase of 8 to 14 deaths a year.

MacRae's letter came as a complete surprise to top managers at the Labor Department. "It came totally out of the blue," a senior official said.

Other department sources used words such as "bizarre" and "ridiculous" to describe the MacRae letter. "I've never seen anything like it from OMB," said a source. "The majority of the people who looked at it in the department were absolutely shocked."

What worries policymakers at the Labor Department is the fact that MacRae, a career civil servant who has been acting head of his division for nearly four years, has the last say on most federal regulations. "He is essentially the final word," said a department source. Department officials said that under normal circumstances, negotiations between OSHA and OMB are conducted at a lower staff level, with MacRae hearing any appeals when there is disagreement. This time, a department source said, "there were no phone calls from the OMB staff and suddenly there's a letter. There's no indication why anything like this happened."

In an interview yesterday, MacRae said "the letter stands by itself" and represents OMB policy. "I'm not on my own. I do what I'm told to do," MacRae said. He said the analysis requested in his letter to the Labor Department was "certainly something that's worthy of all [regulatory] agencies to take note of."

MacRae said that if OSHA was so concerned about further delay, it would have completed standards for the three industries years ago, shortly after the general industry standards became final. "As far as I'm concerned, it is a valid consideration and we're awaiting a reply from the Department of Labor," MacRae said.

* Point of Prevention - not just Repair

#2

MAR 10 1992

Honorable Nancy Risque-Rohrbach
Assistant Secretary for Policy
Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

Dear Ms. Risque-Rohrbach:

On February 18, 1992, we received a proposed Occupational Safety and Health Administration (OSHA) rule entitled "Air Contaminants Standard in the Construction, Maritime, Agriculture, and General Industries" for review under Executive Order No. 12291. The rule would establish or lower Permissible Exposure Limits (PELs) for 375 substances for the construction and maritime industries, and would for the first time establish 635 PELs for the agricultural sector. In addition, the rule would set PELs for asphalt fumes, fibrous glass, and mineral wool for all industrial sectors, including general industry.

OSHA's regulatory impact analysis omits consideration of the effect of the rule's compliance costs on workers. The analysis is limited to a description of the effects of compliance on firms' sales and profits. OSHA's analysis, however, fails to answer an important question: "How will compliance with the proposed PEL rule affect workers' employment, wages, and therefore, health?"

The positive effect of wealth on health has been established both theoretically and empirically.[1] Richer workers on average buy more leisure time, more nutritious food, more preventive health care, and smoke and drink less than poorer workers. In combination, these factors significantly extend longevity. In fact, a recent opinion by the United States Court of Appeals for the District of Columbia cited research showing that each $7.5 million in additional regulatory expenditures may result in one additional death from lowered incomes.[2]

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[1] For an exposition on this subject, see Wildavsky, A. Searching for Safety. New Brunswick: Transaction Books, 1988.

[2] See International Union, United Automobile, Aerospace, and Agricultural Implement Workers, UAW, et. al. V. OSHA, United States Court of Appeals for the D.C. Circuit, 89-1559; which cites Keeney, R. "Mortality Risks Induced By Economic Expenditures." Risk Analysis. 10:1, pp. 147-160. Also, see Anderson, K. and Burkhauser, R. "The Retirement-Health Nexus: A New Measure of an Old Puzzle." The Journal of Human Resources. 20:3, pp. 315-330. Provides an estimate (although smaller) of the effect of wages on mortality.

#3

Government regulations often have significant impact on the income and wealth of workers. To the extent that firms cannot pass on regulatory compliance cost increases to consumers, firms will absorb these costs by cutting wages, and by reducing employment. If firms do pass on compliance costs to consumers, consumers' real incomes will decline with similar effects on their health. In addition, as regulation increases job safety, there will be a decline in risk premiums paid to workers as compensation for bearing health and safety risks. One researcher estimates that for each unit decline in annual injury-related lost workdays per 100 workers wages fall by 1.5 percent to 3.6 percent.[3]

To illustrate the importance of this effect, we offer the following example. OSHA estimates that the proposed PEL regulation would prevent eight to thirteen deaths annually. However, if we use the finding cited in UAW v. OSHA that each increase of $7.5 million in regulatory expenditures results in one additional statistical death, the $163 million annual cost of the PEL update rule would result in approximately 22 additional deaths per year. If OSHA's analysis accounted for the rule's negative effect on income, and therefore health, **a net increase of about eight to fourteen fatalities per year**, could be expected to result from this rule.

OSHA previously has noted the nexus between income and health in its discussions of the healthy worker effect's impact on the conclusions of epidemiologic studies, but neglected that phenomenon on the cost side.[4] If government regulations force firms out of business or into overseas production, employment of American workers will be reduced, making workers less healthy by reducing their incomes. OSHA should estimate whether the possible effect of compliance costs on workers' health will outweigh the health improvements that may result from decreased exposure to the regulated substances. In addition, the effect of higher compliance costs (and therefore lower incomes) on other members of society also should be taken into account.

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[3] Viscusi, K. and Moore, M. Compensation Mechanisms for Job Risk: Wages, Workers' Compensations, and Product Liability. Princeton: Princeton University Press, 1990. p. 60.

[4] OSHA routinely considers the "healthy worker effect" when evaluating possible workplace hazards. See, e.g., 55 FR 4087 (February 6, 1990).

#4

Responsible policymaking suggests that OSHA analyze all the costs and benefits associated with this rule, and in particular whether this rule will adversely affect wages and employment levels in the affected industries. OSHA should attempt to quantify whether this rule will adversely affect wages and employment levels in the affected industries. Having conducted such an analysis, OSHA should compare the health effects of these income changes to the health benefits that OSHA attributes to reduced exposure. This analysis is required to ensure that this proposed rule complies with sections 2(a) and 2(e) of Executive Order No. 12291. Moreover, the U.S. Court of Appeals' reasoning in UAW v. OSHA made it clear that this type of analysis should be part of OSHA's rulemaking record.

Accordingly, for the reasons set forth above, I am suspending review of the draft proposed rule pending OSHA's completion of this essential analysis. As always, I and my staff are available should you have any questions.

Sincerely,

Original Signed by
James B. MacRae, Jr

James B. MacRae, Jr.
Acting Administrator
and Deputy Administrator
Office of Information
and Regulatory Affairs

/92

VOODOO ACCOUNTING:
The Toll of President Bush's Regulatory Moratorium January-August 1992

August 27, 1992

Nancy Watzman
Public Citizen's
Congress Watch

Christine Triano
OMB Watch

Acknowledgements

Much thanks to Joan Claybrook, president of Public Citizen, and Gary Bass, executive director of OMB Watch, for their direction on this report. Michael McCauley, Pamela Gilbert, Patti Goldman, Leslie Brueckner, Gerry Kuester, and David Vladeck, all of Public Citizen, also contributed to this effort, as did Alair MacLean and Barbara Western of OMB Watch.

Other publications by Public Citizen and OMB Watch on the Quayle Council on Competitiveness include:

All the Vice President's Men: How the Quayle Council on Competitiveness Undermines Health, Safety and Environmental Programs; September 1991.

Conflict of Interest on the Quayle Council on Competitiveness; December 1991.

The Quayle Council on Competitiveness: The Campaign Finance Connection; March 1992, (by Public Citizen only.)

The Hidden Story: What Bush and Quayle Don't Say About the Regulatory Moratorium; April 1992.

Reports are $10 apiece.

To order copies of reports, contact:

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Public Citizen is a national consumer group founded by Ralph Nader in 1971.

OMB Watch is an executive branch watch dog group founded by Gary Bass.

VOODOO ACCOUNTING:
The Toll of President Bush's Regulatory Moratorium; January - August 1992

EXECUTIVE SUMMARY

Stepping off the elevator on the third floor of the Office of Management and Budget (OMB) in Washington, DC, one can't help but notice the guillotine at the end of the hall. This cardboard concoction was apparently created to glorify the now 210-day-old moratorium on federal regulations first announced by President Bush in his January State of the Union address. As the days pass, the guillotine falls; alongside it is the proclamation: "Vive le revolution!"

The cardboard guillotine may be meant as an office joke, likening White House deregulators to the Jacobins of the French revolution, but the allusion to executions actually isn't. The Bush-Quayle administration's 210-day-old regulatory moratorium is costing the nation dearly in human life and a damaged environment. Since the President's announcement of the regulatory moratorium in January[1] and his 120-day extension of it in April, dozens of crucial public health and environmental safeguards have fallen under the "guillotine." From nutrition and toy labeling to worker protection from toxic chemicals, little has escaped the staff of OMB's Office of Information and Regulatory Affairs (OIRA), who carry out the moratorium under the direction of Vice President Dan Quayle's secretive Council on Competitiveness.

Now the President has announced, during the course of his nomination acceptance speech before the Republican National Convention, that he plans to extend his rule freeze *for a full year*. President Bush's choice of venue for this announcement reveals the moratorium for the election-year gambit it is, and raises serious legal questions besides. It is the mission of certain agencies to protect public health and the environment. By calling for a nineteen-month rule freeze the President is effectively preventing these agencies from carrying out their legal responsibilities.

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[1]The terms of the moratorium are spelled out in a January 28, 1992 memorandum President Bush sent to heads of agencies. The moratorium contains a number of exemptions, including regulations under statutory deadlines and those that are required because of "imminent danger" to public health. As this report will show, however, both regulations under statutory deadline and those that pose danger to public health have been held up under the moratorium.

An irony of the Bush-Quayle administration's trumpeting of the moratorium as a boon for business is that the rule freeze, in fact, can *harm* the economy, since businesses face uncertainty about what standards they must comply with. By delaying implementation of regulations, the moratorium places a strain on the capital planning cycles of industry. Due to delayed regulation, for example, companies are not able to plan how to comply with federal laws. Delay of certain regulations can even affect major purchase orders, which in turn can lead to a downturn in sales, and, ultimately, deferment of jobs. The administration constantly decries "burdensome" regulation and its toll on U.S. business, yet it never discusses the net benefits of certain regulations, especially "social" (health, safety, and environmental) regulations. Even conservative economists aver that social regulation has the potential to confer significant benefits on society by addressing specific market failures. In fact, a recent study in the *Yale Journal of Regulation* estimates the net benefits of social regulation at $2 billion annually.[2]

Furthermore, not all businesses think the Quayle Council's backdoor methods are a particularly good thing for business. Businesses for Social Responsibility, a group of over fifty businesses founded in June 1992, has made opposition to the Quayle Council its first priority.[3] The new group believes that the Quayle Council's efforts are short-sighted, focusing on ways to get around regulations rather than on promoting the growth of new, environment-friendly technologies, for example, or better health care policies, which will make the U.S. more competitive in the long run.

From the very start of the regulatory moratorium, the Bush-Quayle administration has presented only distorted explanations of its deregulatory actions and has refused to provide documentation about claims of fantastic "cost savings" to the economy. Over the past 120 days, Public Citizen and OMB Watch have attempted to gather as much information about the moratorium as possible from affected agencies and the White House through Freedom of Information Act (FOIA) requests and other queries. For the most part, the administration has not provided comprehensive answers.

Some agencies supplied incomplete and inadequate information; others neglected to reply to requests at all. Throughout, the White House has been particularly uncooperative. For example, in April Public Citizen and OMB Watch filed a FOIA request for documentation of the administration's claim of $10-20 billion in

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[2]Robert W. Hahn and John A. Hird, "The Costs and Benefits of Regulation: Review and Synthesis," *Yale Journal on Regulation*, Winter 1991, p. 253.

[3]Martha M. Hamilton, "Businesses to Lobby for 'Social Responsibility'" *Washington Post*, June 11, 1992.

savings from the moratorium. The administration refused on grounds of "executive privilege." When asked at a public debate whether the Office of Management and Budget (OMB) could provide a list of regulations affected by the moratorium, OMB officials stated they could not.[4] Several of the agencies claimed that regulations which have, in fact, been delayed during the moratorium, were not delayed because of the moratorium. The administration, however, cannot have it both ways. It cannot claim that the moratorium is working wonders, yet deny it has had any effect on specific rules when asked.

This report documents the continuing story[5] of damage done to public health and the environment by the moratorium. The first section contains some of the most egregious examples of deregulatory damage done during this second part of the moratorium -- the 120 days that have elapsed since April -- as well as examples from the first 90 days of the moratorium. The second part analyzes the responses Public Citizen and OMB Watch received to their Freedom of Information Act (FOIA) requests on deregulatory actions and "cost savings" filed with 24 federal agencies in May 1992.

Taken together, the administration's actions during this 210-day moratorium give rise to a number of disturbing conclusions:

1. *Dozens of health, safety, civil rights and environmental regulations have been stalled, weakened, or eliminated because of the moratorium.* The casualties include regulations specifically targeted by agencies under the moratorium and other actions that fall victim to the general chill of the atmosphere under the moratorium. The President specifically exempted rules with statutory and judicial deadlines and those that address "imminent danger" to public health and safety from the regulatory freeze. Yet time and again, the administration's actions have failed to live up to this claim as health and safety protections, and rules with legal deadlines such as those under the Clean Air Act, have been held up or derailed during the regulatory moratorium. For example:

    •Vice President Quayle took credit for a new, weak FDA policy on genetically altered food. Among the most troubling provisions: consumers won't be able to tell which foods they buy have been genetically altered and industry will decide for itself when a new product warrants safety testing.

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[4]DC Bar, John F. Morrall, OMB, in debate with David Vladeck, Public Citizen, March 30, 1992.

[5]In April, Public Citizen and OMB Watch published a report on the first 90 days of the moratorium, "*The Hidden Story: What Bush and Quayle Don't Say About the Regulatory Moratorium.*"

•The EPA wishes to publish a regulation defining requirements for manufacturers to report adverse effects of pesticides, such as last year's spill of metam-sodium into the Sacramento river, but is holding off because of the moratorium. EPA Assistant Administrator Linda Fisher wrote Public Citizen in June, "You are correct in your understanding that the delay in issuing this [proposed regulation requiring reporting of adverse effects of pesticides] is in response to President Bush's moratorium on new regulations..."[6]

•On May 8, the White House Office of Management and Budget rejected an EPA rule setting maximum levels for 23 different contaminants in drinking water. The EPA was under a court imposed May 11 deadline for putting out this rule, which mainly effects small rural communities. Despite the fact that this rule was under judicial deadline, the White House repeatedly raised the specter of the regulatory moratorium in its letter explaining its disapproval of EPA's proposal, stating, "The current moratorium's goal of assuring that expected costs of regulations do not exceed expected benefits...could be greatly enhanced" if EPA were to take OMB's "suggestions."[7]

2. The moratorium is being implemented largely in secret. On May 19, 1992 Public Citizen and OMB Watch filed Freedom of Information Act (FOIA) requests with 24 federal agencies, asking them for: 1. reports on deregulatory efforts submitted to the President in April; 2. documentation of "cost savings" to the economy from the moratorium announced by the President in April.

•Three months after the FOIA requests were filed, six of the agencies had yet to provide information about the moratorium. Among them were key agencies such as the Nuclear Regulatory Commission, the Department of Housing and Urban Development, and the Department of Justice;

•Of the agencies responding, 15 provided copies of their reports to the president. While the reports vary widely in amount of detail provided, most neglect to explain rationale for recommended deregulatory actions.

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[6]Letter from Linda J. Fisher, Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances, U.S. Environmental Protection Agency, to Patti Goldman, Staff Attorney, Public Citizen Litigation Group, August 4, 1992.

[7]Letter from James B. MacRae, Jr., Acting Administrator and Deputy Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget, to the Honorable William K. Reilly, Administrator, Environmental Protection Agency, May, 1992.

3. The administration's claims of "cost savings" of $10-20 billion are pure voodoo accounting. The White House refused a May 1992 FOIA request from Public Citizen and OMB Watch for background data to support the claim, claiming "executive privilege." Most of the 24 agencies responding to Public Citizen's and OMB Watch's FOIA request for justification of "cost savings" either neglect to provide adequate documentation, or rely on flawed reasoning:

• *Like the Quayle Council, agencies won't supply adequate documentation.* In most cases where economic savings data was provided by federal agencies, it was useless in helping to understand how the Vice President compiled his savings claims. Take, for example, the July letter from the Federal Communications Commission, which discusses the President's claim of $258 million in "cost savings" from deregulatory actions. The letter states that some documents are being provided, but that the agency has not included "predecisional" information.[8] The information provided by the agency proved virtually useless. One 23-page document appeared to be a listing of deregulatory actions with cost estimates. The agency, however, deleted information in 20 sections, claiming it was "predecisional" and in 36 other sections because it was "not in the scope of the FOIA request." Another document provided appears to be a xerox of a page from a pad of paper, covered with handwritten calculations. In the bottom right corner of the page is the handwritten note: "? Can't read but explains."

• *The Quayle Council and agencies do not adequately consider the benefits regulations bring.* Despite the administration's rhetoric, consumer, public health and environmental regulations are not created simply to bury businesses in paperwork. Instead, they are developed because of benefits they will bring to society: cleaner air and water, safer products, a sounder banking system. The benefits of these regulations are rarely part of the Quayle Council's calculus on regulations. For example, the long-term cost of scaling back health and safety standards is not taken into consideration, such as the health care costs incurred by delaying nutrition labeling requirements.

• *The Quayle Council and the agencies rely on extreme, if not spurious, assumptions.* For example, to figure out how much would be "saved" by allowing thrifts to expand across state lines, the Office of Thrift Supervision "assume[d] all thrifts [would] take advantage of the opportunity..." There is no reason to expect that every single one of the 1000 thrifts in the country will take advantage of this new provision. Nor does this estimate take into account the potential *costs* of deregulation: allowing thrifts to expand across state lines

[8] Letter from Robert L. Pettit, General Counsel, Federal Communications Commission, to Nancy Watzman, Public Citizen, July 22, 1992.

is likely to make them less accountable, for example, and therefore more likely to fail. The nation is already paying in the billions of dollars for the savings and loan debacle; surely bank deregulation is not the way to promote the financial industries' soundness.

•*So-called economic "savings" are unlikely to have a profound impact on the economy.* In its report to the President, the Defense Department argues that it is nearly impossible to quantify the savings from the regulatory freeze. About its deregulatory initiatives, the Department comments, "Many of these revisions will not directly translate into savings to the economy or creation of jobs...[R]eliable estimates of long term savings to be realized are not available at this early stage of the process because they are indirect, rather than direct, in nature."

4. The regulatory moratorium creates unnecessary litigation. President Bush and Vice President Dan Quayle have been quite outspoken about the supposed overabundance of litigation in the U.S. But their regulatory moratorium adds to the courts' burden by fomenting otherwise unnecessary litigation. Since the start of the moratorium, citizens' groups have gone to court on at least four cases of stalled regulations: endangered species; record-keeping for workers' exposure to pesticides; missed deadlines under the Clean Air Act, and, as of the date of this report, adverse affects of pesticides. In every case brought to date concerning the moratorium, the courts have either ruled against delay or agencies have been sparked to action:

•The Department of Interior admitted it had stopped listing endangered species because of the moratorium and began doing so again. (Jasper Carlton, *et. al.*, v. Manuel Lujan, Secretary, Department of Interior, and John Turner, Director, Fish and Wildlife Services);

•After a lawsuit was filed, the EPA issued regulations that deal with five of 17 missed statutory deadlines. It has yet to act on 12 mandated regulations. (Henry Waxman and Public Citizen v. Environmental Protection Agency Regulations Implementing the Clean Air Act);

•The EPA issued a regulation on pesticide record keeping to protect farmworkers after citizens groups filed a suit. (National Coalition Against the Misuse of Pesticides *et al.*, v. Edward K. Madigan, Secretary of Agriculture and William K. Reilly, Administrator, Environmental Protection Agency.)

5. The freeze on regulations heightens the power of Quayle's Council on Competitiveness and OMB's stranglehold over the regulatory process. The Quayle Council on Competitiveness, which is in charge of the moratorium, has come under much criticism in recent months for its record of working behind the scenes to gut health, safety, and environmental regulations. Under the Quayle Council's watch, there has been a disturbing centralization of power in the executive branch over the regulatory structure -- all without any accountability to the public or Congress. On July 1, 1992, frustrated by the Quayle Council's secretiveness[9], the House of Representatives voted 236-183 to strip the Quayle Council of its funding[10]. The Senate will consider a similar measure this fall.

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- Worker protection from agricultural pesticides. *Weakened.*
- Hazardous waste guidelines. *Delayed.*
- Environmental rule logjam. *Delayed.*
- Footdragging on ergonomics. *Weakened.*
- Nondiscrimination standards for disabled. *Weakened.*
- Asbestos safety standards. *Weakened.*
- Safety reviews of genetically engineered food. *Weakened.*
- Undercutting civil rights in education. *Weakened.*
- Risk from blood exposure. *Weakened.*
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- Recoupment fees from the defense industry. *Eliminated.*
- Truck safety regulations. *Weakened.*
- Preventing chemical plant explosions. *Delayed.*

II. The First 90 Days: January 1992 - April 1992

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[9]Vice President Quayle had repeatedly refused to testify or send staff to testify before Congressional committees. The administration has also leaned on agencies to prevent them from supplying documents to Congressional oversight committees. On one occasion, the House Subcommittee on Human Resources and Intergovernmental Affairs was forced to subpoena the Food and Drug Administration before agency staff agreed to turn over documents.

[10] In response to questions posed by Rep. David Skaggs (D-CO), chief sponsor of the defunding measure, the Vice President's office defended the Council's secretive ways by stating that the separation of powers doctrine protects the Executive Branch from having to divulge information about its activities to Congress, that it is not subject to FOIA, and that it will not comply with rudimentary public access requirements employed by OMB.

•Nutrition labeling, part two (USDA). *Delayed.*
•Protection from pesticides. *Weakened.*
•Workers' exposure to toxics (OSHA permissible exposure limits rule). *Delayed.*
•Labeling toys to save lives. *Eliminated.*
•Nursing home reform enforcement. *Delayed.*
•Pollution prevention. *Delayed; issued under pressure.*
•Onboard pollution controls for automobiles. *Eliminated.*
•Bank bailout. *Delayed.*
•Real estate appraisals. *Weakened.*
•S&L regulations. *Weakened.*
•The drug approval process. *Weakened.*
•Biotechnology. *Weakened.*
•Surface mining. *Eliminated.*

Part Two: Taking It To The Courts: Litigation Related to the Regulatory Moratorium

•Public Citizen v. Environmental Protection Agency; Pesticide Adverse Effects Reporting Obligations; FILED: August 27, 1992; STATUS: Pending.

•Henry Waxman and Public Citizen v. Environmental Protection Agency; Regulations Implementing the Clean Air Act; FILED: June 5, 1992; STATUS: Five Statutory Deadlines Met Published Since Lawsuit Filed; Agency Has Yet to Meet 12 Statutory Deadlines

•Jasper Carlton, et. al., v. Manuel Lujan, Secretary, Department of Interior, and John Turner, Director, Fish and Wildlife Services; Endangered Species Act; FILED: April 1992; STATUS: Rules Issued After Lawsuit Filed; Agency Officials Admitted Delay Due to Moratorium

•National Coalition Against the Misuse of Pesticides et al., v. Edward K. Madigan, Secretary of Agriculture and William K. Reilly, Administrator, Environmental Protection Agency; Pesticide Record-Keeping to Protect Farm Workers; FILED: April 10, 1992; STATUS: Agency Issued Rule after Citizens Groups filed Lawsuit

•Natural Resources Defense Council v. EPA; Lead Acid Batteries; FILED: 1991; STATUS: U.S. Court of Appeals for the D.C. Circuit ordered EPA to review its 1990 decision allowing lead automobile batteries to be burned in incinerators.

•In Re International Chemical Workers Union; Exposure of Workers to Cadmium; FILED: 1986; STATUS: U.S. Court of Appeals for D.C. Circuit Ordered OSHA to Issue Rule by August 31, 1992
•Cutler v. Hayes; Over-the-Counter Drug Review; FILED: 1981; STATUS: Pending

Voodoo Accounting

FOIA Responses and President's Cost Savings Estimates[1]

Agency	Report Received	Annual Savings Estimated by Bush/Quayle (in millions)	Agency Response to Public Citizen's and OMB Watch's FOIA Request
Dept. of Agriculture	Yes	$79	Provided final drafts of economic analyses used to figure cost savings; not clear where $79 million figure comes from
Dept. of Commerce	Yes	$2	Some background data provided
Dept. of Defense	Yes	$10-20	Notes that many of its deregulatory revisions "will not directly translate into savings to the economy or creation of jobs."
Dept. of Education	Yes	None	No cost savings were claimed in the Department's report
Dept. of Energy	No	$1-20	No report or background data provided
Dept. of Health and Human Services	No	$1600-2700	No report or background data provided; only a brief fact sheet which does not explain cost estimates
Dept. of Housing and Urban Development	No	$100 - 170	No report or background data provided
Dept. of the Interior	No	$63	No report or background data provided
Dept. of Justice	No	None	No report or background data provided
Dept. of Labor	Yes	$1884-3084	Background data provided only deal with part of the savings estimates
Dept. of Transportation	Yes	$121-1200	No information on cost savings provided.
Dept. of the Treasury	Yes	$1554	Information provided only deals with part of savings estimates
Commodity Futures Trading Commission	Yes	$5-8	Information provided does not explain how savings estimates were calculated
Environmental Protection Agency	Yes	$897-3342	Some savings estimates are given in report
Equal Employment Opportunity Commission	Yes	$3	Savings estimate based on reducing government paperwork; including a survey about disabled people in the workforce
Federal Communications Commission	Yes	$258	The FCC deleted information from 20 sections of its response and withheld it in another 36 sections

1. Estimated cost savings resulting from the regulatory moratorium were put out by the White House in early April

Voodoo Accounting

FOIA Responses and President's Cost Savings Estimates (cont'd)

Agency	Report Received	Annual Savings Estimated by Bush/Quayle (in millions)	Agency Response to FOIA Request
Federal Deposit Insurance Corporation	Yes	None	The FDIC estimates that its deregulatory actions will save $29.9 million a year, with the short term loss of 479 jobs; does not consider the costs of potential bank failures resulting from looser rules
Federal Energy Regulatory Commission	Yes	$2600-5900	14 documents backing up savings claims withheld
Federal Maritime Commission	No	$147	Provided some savings estimate background
Federal Reserve Board	Yes	None	No savings claimed in agency's report
Federal Trade Commission	No	None	Only copies of letters to members of Congress responding to questions about FTC's actions under moratorium provided
Interstate Commerce Commission	Yes	$851 - 3301	The ICC notes that the impact of its deregulatory actions on the economy will be "little" to "none"
Nuclear Regulatory Commission	No	$6	No report or background information provided
Securities and Exchange Commission	No	None	No claims of financial savings were made by the SEC
Total: 24 FOIA requests filed	*15 reports received*	*$15 - 20 billion*	***Impossible to verify Bush/Quayle savings claims; information provided shows estimates to based on exaggerated, if not spurious, assumptions***

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PART ONE:

SELECT EXAMPLES OF DEREGULATORY ACTIONS UNDER THE MORATORIUM

I. THE PAST 120 DAYS: APRIL 1992 - AUGUST 1992

ADVERSE EFFECTS OF PESTICIDES. *Delayed.* When a train car filled with metam sodium spilled into California's Sacramento river in July 1991, the manufacturer had already submitted adverse effects of the pesticide on the environment to the EPA.[11] But while the company had turned over information on adverse effects, the EPA had no procedure to incorporate it into the agency's database on the pesticide. Why? Because the EPA has never clarified the statutory requirement to report adverse effects by issuance of an instructional regulation, and therefore the proper procedure for both industry and the agency is unclear. Faced with a regulatory vacuum, many manufacturers simply do not report effects of pesticide accidents or exposure. As a result, the EPA, which is charged with protecting public health from the harmful effects of pesticides, lacks the basic information it needs to carry out its duty.

EPA documents[12] from January 1992 show that the agency planned to issue a proposed regulation clarifying the statutory reporting requirement. Later that same month, President Bush declared the regulatory moratorium. While the EPA continued to work on the rule, once it was sent to the Office of Management and Budget (OMB) progress stopped. On August 4, 1992, EPA Assistant Administrator Linda Fisher wrote Public Citizen, "You are correct in your understanding that the delay in issuing this [proposed regulation requiring reporting of adverse effects of pesticides] is in response to President Bush's moratorium on new regulations..."[13] Fisher added that the EPA had submitted a request on June 22 to the OMB that the regulation be

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[11]"If at any time after the registration of a pesticide the registrant has additional factual information regarding unreasonable adverse effects on the environment of a pesticide, he shall submit such information to the Administrator." Section 6(a)(2), Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. § 136d(a) (2).

[12]See "Dear Registrant Letter from EPA," January 14, 1991; "Notice to Manufacturers, Formulators, Producers & Registrants of Pesticide Products," PR Notice 92-1 (Jan 2, 1992).

[13]Letter from Linda J. Fisher, Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances, U.S. Environmental Protection Agency, to Patti Goldman, Public Citizen's Litigation Group, August 4, 1992.

exempt from the regulatory moratorium because it affects public health and manufacturers would benefit from clear instructions. OMB has yet to respond: the rule on reporting harmful effects of pesticides remains in limbo. (SEE Section III for information about Public Citizen's lawsuit on this case.)

WORKER PROTECTION FROM AGRICULTURAL PESTICIDES. *Weakened.* About 300,000 farmworkers a year are injured from laboring in fields sprayed with toxic pesticides.[14] The EPA itself estimates that "at least tens of thousands of acute illnesses and injuries and a less certain number of delayed onset illnesses occur annually" to farmworkers.[15] In 1988 the Environmental Protection Agency (EPA) published proposed regulations designed to protect workers. The regulations languished until the agency finally published a final version on August 13, 1992. Requirements include training and informational materials for workers on pesticide handling; a 12-48 hour waiting period before workers can work in an area treated by pesticides; and providing workers with water, soap, and towels for emergency decontamination. The EPA estimates that the industry's "annual incremental compliance cost" for the regulation "represents only one tenth of one percent of the total 1987 value of production for all the agriculture sectors" affected by the rule.[16] Unfortunately, however, these regulations are riddled with loopholes. For example, they allow employers a 16-day grace period for training farmworkers. This severely weakens the requirements, since migrant farmworkers often work by the day or even pick an entire crop in two weeks or less. Another glitch is the 12-48 hour waiting period: employers are allowed an exception under which workers may reenter a pesticide-treated area.

HAZARDOUS WASTE GUIDELINES. *Delayed.* Industry is pressuring the EPA to weaken two proposed rules having to do with the storage and classification of hazardous waste, such as landfills. The Office of Management and Budget (OMB) suspended its review of one proposal, "Test Methods for Evaluating Solid Waste," in

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[14]Molly Joel Coye, "The Health Effects of Agricultural Production: I. The Health of Agricultural Workers," *Journal of Public Health Policy*, vol. 6, no. 3, September 1985.

Coye based her estimate by extrapolating for the nation-wide farmworker population from statistics gathered by the State of California, which, unlike the federal government, has stringent reporting requirements for pesticide injuries. Included in the estimate is adjustment for underreporting of pesticide injuries.

[15]*Federal Register*, Vol. 57, No. 163, Friday, August 21, 1992, p. 38105.

[16]*ibid.*

April[17] and another, "Procedures for Planning and Implementing Off-Site Response Actions," in mid-August.[18] Essentially, OMB wants EPA to require less testing of hazardous waste and apply less stringent standards to where waste can be stored than the agency now does. The people who will suffer most: minority communities. According to a 1987 study by the Commission for Racial Justice: "[R]ace proved to be the most significant among variables tested in association with the location of commercial hazardous waste facilities. This represented a consistent national pattern."[19]

ENVIRONMENTAL RULE LOGJAM. *Delayed.* As this report went to press, the Quayle Council and OMB were holding up 47 Environmental Protection Agency rules. In some cases, rules have been held up for more than a year. Of these 47, at least 29 should qualify for exemption from the regulatory moratorium because of statutory deadlines, health concerns, or benefit to business.[20] Freeze victims include two pesticide standards held up since June by OMB, one covering requirements for export of pesticides, and another setting forth requirements for the management and disposal of pesticides recalled by the EPA. Another rule establishing worker protection standards was sent to OMB over 14 months ago (regulatory review time should not take more than 90 days). Also frozen are several Clean Air Act rules (See Section III for information on Public Citizen's lawsuit on this case), including rules designed to reduce acid rain and guidelines for citizens suits under the Clean Air Act. The Clean Air regulations are under statutory deadline and thus, technically, should be exempted from the regulatory moratorium.

FOOTDRAGGING ON ERGONOMICS. *Weakened.* In its report to the President, the Department of Labor discusses health and safety rules that it is proceeding with as exceptions to the moratorium, one such rule being an Advanced Notice of Proposed Rulemaking on an ergonomic standard.[21] This standard will set out ways to reduce repetitive work disorders, such as carpal tunnel syndrome. While the Labor

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[17]Letter to William Reilly, Administrator, Environmental Protection Agency, from James B. MacCrae, Jr., Acting Administrator, OMB's Office of Information and Regulatory Affairs, Apriul 15, 1992.

[18] Letter to William Reilly, Administrator, EPA, from James B. MacCrae, Jr., Acting Administrator, OMB's Office of Information and Regulatory Affairs, August 12, 1992.

[19]"Toxics, Wastes, and Race in the United States," Commission for Racial Justice, United Church of Christ, 1998.

[20]List is based on information complied from sources close to EPA.

[21] *Federal Register,* August 3, 1992, p.34192.

Department kept to the letter of its word by publishing this notice on August 3, this preliminary step to drafting an ergonomics standard offers little substance and fails to set any deadlines for OSHA action on this rapidly growing workplace health issue. Ergonomic disorders accounted for 18 percent of all reported work-related illnesses in 1980; by 1990 that number had skyrocketed to 56 percent[22]. Between 1989 and 1990 alone, there was a 26 percent increase in work-related cumulative trauma disorders, such as carpal tunnel syndrome, a painful disorder caused by doing repetitive motion work that frequently afflicts workers in the meatpacking industry, for example.

NONDISCRIMINATION STANDARDS FOR DISABLED. *Weakened.* The Quayle Council has weakened two important laws meant to prohibit discrimination against the disabled. Earlier this year, members of the Quayle Council's staff secretly met with representatives of the National Association of Home Builders who were unhappy with new requirements under the Fair Housing Accessibility Act, which aims to end discriminatory housing practices, especially in the design and construction of multi-family dwellings.[23] After several meetings with industry representatives, the Quayle Council forced HUD to accept changes to its original proposal, such as permitting sunken living rooms and inaccessible decks and patios, and the option for builders to construct only one wheelchair accessible bathroom in apartments with more than one bathroom[24]. In a separate move, the Equal Employment Opportunity Commission canceled a survey planned under the Americans with Disabilities Act, according to a Commission memo sent to Quayle Council director David McIntosh. The survey was designed to determine the number of disabled people currently in the workforce.

ASBESTOS SAFETY STANDARDS. *Weakened.* On June 8, 1992, the Occupational Safety and Health Administration (OSHA) published a final regulation striking certain asbestos-like substances from coverage under its asbestos standard.[25] The *Federal Register* notice notes that organizations such as the American Lung Association and the National Institute for Occupational Safety and Health (NIOSH) are strongly opposed to the action, but nevertheless concludes that there is not

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[22] "Occupational Illnesses and Injuries in the US by Industry," Vol. 2399, April 1992, Bureau of Labor Statistics.

[23] "Secret Interference by the Vice President's Staff with HUD's Guidelines for Access by Handicapped to Multifamily Dwellings," House Government Operations Committee, June 30, 1992.

[24] Statement of Bill Mitchell, National Association of Protection and Advocacy Systems, before the House Subcommittee on Legislation and National Security, June 30, 1992.

[25] *Federal Register*, Vol. 57, No. 110, June 8, 1992, p. 24310.

enough proof of health risks. (One agency source told OMB Watch that OSHA had simply "caved" to pressure from industry.)

When OSHA first promulgated its asbestos standard in 1972, it covered an array of minerals, including nonasbestiform tremolite, anthophylite, and actinolite, known as AT&A.[26] Workers come into contact with these minerals during mining, particularly talc mining, and construction. Tremolite talc is used in manufacturing paint, ceramics, plastic, and tires, among other things. Children also come in contact with some of these minerals when playing in sand made of ground stone. While these substances do not fit the mineralogical definition of asbestos, as they are mined, milled, or broken up in other ways, they form fibers that have some of the same harmful health effects as asbestos.[27] Findings from a study by NIOSH, for example, show that talc mine workers, who are heavily exposed to tremolite, have a 79 percent greater chance of dying from cancer than average.[28]

Over the years, however, industry opposition to listing these three minerals grew. Leading the crusade to deregulate non-asbestiform AT&A was a Connecticut talc mining company, R.T. Vanderbilt. When OSHA proposed in 1983 to lower the permissible exposure level for asbestos, including non-asbestiform AT&A, Vanderbilt joined forces with the Vulcan Materials Company and the National Stone Association and challenged the move in court. Since then, the ensuing legal battle has resulted in a series of stays blocking the application of OSHA's asbestos standard to non-asbestiform AT&A. Finally, in 1989, OSHA caved in to industry and proposed removing the substances from the asbestos standard.

In 1987 the link between cancer-causing tremolite and children's play sand was discovered when asbestos fibers were found in certain brands of play sand, which is usually composed of ground-up stone rather than real beach sand. At that time the Consumer Product Safety Commission (CPSC) was petitioned to ban play sands, as well as garden and lawn gravel, which contained more than .01 percent of tremolite.

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[26]Rather than identifying one substance, asbestos is a loose term applied to a group of minerals bearing similar characteristics. Asbestos is a human carcinogen.

[27]See William J. Nicholson, Ph.D., professor of community medicine, Mount Sinai School of Medicine, "Health Effects of Non-Asbestiform Fibers," April 23, 1990, p. 23. The study finds that exposure to nonasbestiform fibers causes a cancer risk comparable to asbestos exposure.

[28]The NIOSH study observed 398 talc workers employed between 1947 and 1960. Among this group, there were 19 cancer deaths; the expected average would be 10.6.

CPSC ruled, however, that play sands were "safe."[29] A strong ruling from OSHA could have turned the CPSC ruling around. Instead, OSHA weakened its own standard.

SAFETY REVIEWS OF GENETICALLY ENGINEERED FOOD. *Weakened.* As soon as next year, consumers unknowingly may bite into tomatoes that *look* fresh, even though they'd been sitting on the grocery shelves. On May 26, 1992, Vice President Quayle announced a new Food and Drug Administration (FDA) policy on genetically engineered food as part of the regulatory moratorium. "The policy reflects, among other things, election-year efforts by the White House to provide all industry with as much regulatory relief as possible," reported the *Wall Street Journal* that day.[30]

The new FDA policy will allow Calgene Inc. to market its new FlavrSavr tomato, genetically altered to appear fresher longer, without any safety testing. In fact, there will be no way for consumers to even find out *which* tomatoes are FlavrSavrs, since the FDA policy contains no labelling requirement for genetically altered foods. The new policy essentially gives a green light to the biotechnology industry to use consumers as unwitting guinea pigs to test out genetically altered food products, despite real safety concerns. For example, taking a protein from a flounder and transferring it to a tomato may produce an allergic reaction in people sensitive to the protein: "[I]f the allergins were moved into a variety of a plant species that never before produced that allergen, the susceptible person would not know to avoid food from that variety," notes the FDA policy itself[31]. Nutritional content of the food may also be diminished, new toxicants may be introduced into the food supply, and there may be unexpected side effects for public health and the environment.[32] Another major problem with the policy is that it will allow the industry to police itself: companies will decide when their products warrant further testing. "A trip to the grocery store becomes a game of roulette," noted Margaret Mellon, director of the National Wildlife Federation's Biotechnology Center, about the new FDA policy.

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[29]See David Corn, "Deaths in the Sandbox," *The Nation*, August 27, 1990.

[30]Bruce Ingersoll, "New Policy Eases Market Path for Bioengineered Foods," *Wall Street Journal*, May 26, 1992.

[31]"Statement of Policy: Foods Derived from New Plant Varieties," Food and Drug Administration, U.S. Department of Health and Human Services, *Federal Register*, Vol. 57., No. 104, May 29, 1992.

[32]*ibid.*

UNDERCUTTING CIVIL RIGHTS IN EDUCATION. *Weakened.* Congress passed the Perkins Vocational and Applied Technology Education Act to ensure that federal education funds are only used in vocational programs that provide for equitable participation of special populations. But regulations put out by the Department of Education as part of its deregulatory effort[33] effectively allow agencies receiving federal vocation funds to deny participation to special population students. In essence, the Education Department's guidelines are biased against students who are low-income, low achieving, have disabilities or limited english proficiency, or are in correctional institutions.[34]

RISK FROM BLOOD EXPOSURE. *Weakened.* The Labor Department promulgated its bloodborne pathogens standard earlier this year, which sets out guidelines for handling occupational exposure to blood, which may carry infectious diseases. But two decisions regarding the standard's application raise serious public health concerns. First, the Labor Department decided that the construction industry should not be covered by the standard, despite the fact that the risk of exposure is high in this field[35]. In addition, the Department decided that workers with infrequent exposure to blood, such as emergency relief workers, don't need hepatitis B vaccines *prior* to exposure; all other workers covered by the rule are required as a matter of routine to be vaccinated as a preventive measure.[36]

NUTRITION LABELING, PART ONE. *Delayed.* The Quayle Council has put the Food and Drug Administration (FDA) under tremendous pressure to delay and insert weakening changes into regulations being drafted to implement the Nutrition Labeling and Education Act of 1990. These new labels are needed so that consumers can benefit from the most recent knowledge about nutrition -- the previous label requirements were decades old. A May 27, 1992 memo obtained by the consumer group Center for Science in the Public Interest reveals that the Quayle Council is

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[33] "Report of the Department of Education to the President On His Call for Regulatory Review," April 28, 1992, states that the Perkins Act regulations have been "reviewed in light of the President's memorandum" as part of the Department's 90-day deregulatory actions.

[34] Analysis provided by the Center for Law and Education's VOCED Project, Washington, DC.

[35] According to the "Occupational Safety & Health Reporter," May 20, 1992, an internal OSHA memo at the time stressed that covering the construction industry is "legally defensible" and that "[T]he situations that put worker at risk for occupational exposure to bloodborne pathogens are similar in construction to those in other industries" that are covered.

[36] US Department of Labor News, July 6, 1992.

holding up one nutrition rule pending receipt of a survey sponsored by the food industry. The FDA's own estimates show that the benefits of new labels include avoidance of 13,000 deaths and 40,000 cases of cancer and coronary heart disease over a 20-year period.[37] A delay of even one year could mean 1,858 deaths and 7,552 cases of cancer and coronary heart disease.[38]

SAFE MEDICAL DEVICES. *Delayed.* On June 1, 1992, the Food and Drug Administration (FDA) announced the delay of a new safeguard requiring manufacturers to provide health and safety information about new medical devices.[39] The agency sorely needs such information: for example, had this requirement been in place when silicone breast implants went on the market, manufacturers would have been required to report information that revealed safety concerns. Scheduled to go into effect by the end of May 1992, the FDA has extended the comment period on this provision from June 29, 1992 to August 27, 1992. Manufacturers will not be required to comply until sixty days after a final rule is published -- whenever that may be. The agency decided to delay the safeguard after receiving a petition by an industry group, the Health Industry Manufacturers Association, which requested a longer comment period.[40] It is entirely appropriate, of course, to take the time to collect a broad range of comments and produce a solid regulation. What remains to be seen, however, is just how long the agency intends to delay this important safeguard. The lack of information from manufacturers is exacerbated by another issue: the same legislation that requires manufacturers to provide it also gives the FDA subpoena power for matters having to do with medical devices. (Unlike other health-concerned agencies, such as the EPA, the FDA lacks subpoena power.) Yet the agency is not using this subpoena power because staff feel a regulation would be required to clarify it, and that such a regulation would never get through the OMB.[41]

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[37]FDA estimates from the *Regulatory Program of the U.S. Government*, April 1, 1991 - March 31, 1992, p. 192.

[38]"The Health Benefits of Food Labeling: Re-Evaluation the FDA and USDA regulatory Impact Analysis," Center for Science in the Public Interest and Consumer Federation of America, April 9, 1992.

[39]"Medical Devices; Substantial Equivalence; 510(k) Summaries and 510(k) Statements; Stay of Effective Date and Extension of Comment Period," Food and Drug Administration, Department of Health and Human Services, *Federal Register*, Vol. 57, No. 105, June 1, 1992.

[40]*ibid.*

[41]An FDA source told Public Citizen that fear of OMB opposition was the main reason the agency was not issuing a rule clarifying the subpoena power provision.

RECOUPMENT FEES FROM THE DEFENSE INDUSTRY. *Eliminated.* Defense lobbyists went straight to the Quayle Council with their drive to eliminate most "recoupment fees" on foreign sales of U.S. weapons and defense exports. These fees, like a tax, are meant to recover some of the government's enormous investment in the research and development of weapons programs. Bragged one Council staffer, "It really moved fast once we got on board."[42] The President announced a plan to eliminate the fees on June 19, 1992, a move that, according to the Pentagon, will cut revenue by about $75 million per year.[43]

TRUCK SAFETY REGULATIONS. *Weakened.* A package of deregulatory changes proposed by the Department of Transportation will have the effect of diluting important truck safety requirements. Among those standards targeted by the proposal are regulations requiring records of truck driver violations of traffic laws, the required use of eyeglasses or contact lenses by drivers who need them to see properly, required use of hearing aids for drivers who are hard of hearing, and lighting safety standards for trucks stopped on the road side. The Department of Transportation (DOT) included these provisions in a list of 71 so-called "obsolete and redundant regulations."[44] The agency supplied no explanations for why such important safety provisions are obsolete or redundant.

PREVENTING CHEMICAL PLANT EXPLOSIONS. *Delayed.* In its report to the President, the Labor Department notes that it had won OMB approval for its Chemical Process Safety Standard during the 90-day moratorium. The rule was developed in response to the high rate of chemical plant explosions and accidents, such as the 1989 explosion at Phillips Chemical complex in Pasadena, Texas that killed 23 people and left another 232 seriously injured. Studies have found that the use of untrained, little experienced contract workers jeopardizes chemical plant safety and significantly increases the chance of accidents like the one at Phillips[45]. OSHA's process safety standard sets out guidelines for training contract workers.

While OSHA did manage to put out this rule during the 90-day freeze, the ink was barely dry before it put a stay on its implementation, delaying its effective date until

[42]Peter Stone, "Quayle Council Hands Defense Lobby Fee Windfall," *Legal Times*, July 13, 1992, p.8.

[43]*ibid.*

[44]"Removal of Obsolete and Redundant Regulations," Department of Transportation, *Federal Register*, Vol. 57, No. 98, Wednesday, May 20, 1992.

[45] AFL-CIO News, August 16, 1991.

August 26[46] -- coincidentally timed with the end of the 120-day extension of the regulatory moratorium. Within weeks of the stay of the OSHA rule, an oil refinery explosion in Wyoming led to the death of one worker and left two others critically burned[47]. It is unclear whether the explosion would have been avoided had the process safety standard been in effect, but as Senator Ted Kennedy (D-MA) stressed at a subsequent hearing, "[R]ather than await long-awaited standards at the request of businesses, OSHA must begin living up to its mandate to protect workers."[48]

II. THE FIRST 90 DAYS: JANUARY 1992 - APRIL 1992[49]

NUTRITION LABELING, PART TWO. *Delayed.* The United States Department of Agriculture (USDA) announced in March that the agency would delay for one year new labeling requirements for meat and poultry for the sake of so-called "regulatory relief."[50] Such labels are sorely needed to educate consumers about proportions of nutrients in meat products and other information not now required. These regulations would harmonize USDA standards with food labeling regulations being developed by the FDA as required by the Nutrition and Labeling Education Act (NLEA) of 1990. The public health benefits of nutrition labeling for meat and poultry are vast: consumer groups have estimated that the 12-month delay of the USDA rules will result in 838 deaths and 3,324 cases of cancer and coronary heart disease.[51]

PROTECTION FROM PESTICIDES. *Weakened.* In his April 2 list of supposed regulatory "money savers," Quayle refers to a decision on "broader use of select pesticides" made on February 14, 1992. He does not supply any information beyond that. A look at EPA documents shows that Quayle is referring to a decision on a class of fungicides known as EBDCs. In this decision, the EPA reverses an earlier position calling for the cancellation of this chemical, classified as a "probable human

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[46] US Department of Labor News, May 22, 1992.

[47] "Occupational Safety & Health Reporter," June 10, 1992.

[48] "Statement of Senator Edward Kennedy at the Senate Labor and Human Resources Committee Hearing on OSHA Reform," June 10, 1992.

[49] Portions of these items appeared originally in Public Citizen's and OMB Watch's April 27, 1992 report, "The Hidden Story: What Bush and Quayle Don't Say About the Regulatory Moratorium."

[50] USDA press release, "Madigan Announces USDA Actions to Reduce Regulatory Burdens, Improve Services," March 19, 1992.

[51] "The Health Benefits of Food Labeling: Re-Evaluating the FDA and USDA Regulatory Impact Analysis."

carcinogen[52]" by the agency, on 45 food crops, and instead calls for a halt only on 11 crops. Promptly criticized by environmental groups[53], this decision is based on downgraded cancer risks[54] and on a faulty "market basket" survey supplied by industry groups regulated by the decision. The market basket survey, which supposedly provided data on how much of the pesticide is on food when it actually gets to consumers' plates, relied on erroneous assumptions about consumption. Its data on broccoli, for example, assumes that people always eat the vegetable boiled, a method which removes some of the pesticide. Yet many people eat broccoli raw, or stir-fried, which would not eliminate the pesticide to the same extent.[55] When Public Citizen asked EPA officials involved in developing the EBDC decision how Quayle arrived at his "savings" number -- $332 million -- nobody could provide any documentation.[56]

WORKERS' EXPOSURE TO TOXICS (OSHA Permissible Exposure Limits Rule). *Indefinitely Delayed.* This rule would set permissible exposure limits, or PELs, for over 1,000 hazardous substances used in the construction, maritime and agriculture industries. According to OSHA, these toxics cost 8-13 deaths per year. A similar standard for general industry has been in place for nearly three years. OMB rejected the PEL rule citing a theory never used before in the regulatory review process. OMB claimed that the rule would lead to a cut in wages, and that since rich people are generally healthier than poor people, such a regulation might actually hurt workers more than it would help them. An OMB official claimed, "Richer workers on average buy more leisure time, more nutritious food, more preventive health care, and smoke

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[52]Technically, it is ethylenethiourea (ETU), a common contaminant of EBDC, that has been classified as a probable human carcinogen. ETU causes thyroid tumors in rats and liver tumors in mice. ETU has also been shown to cause both developmental and thyroid toxicity in rat studies. See "Poor Use of "Good Science": EPA Rules on the Carcinogenic EBDC Fungicides," *Journal of Pesticide Reform,* Spring 1992, Vol. 12, No.1; "Ethylene Bisdithlocarbamates (EBDCs); Notice of Intent to Cancel and Conclusion of Special Review," *Federal Register,* March 2, 1992, vol. 57., No. 41.

[53]The National Coalition Against the Misuse of Pesticides and the Northwest Coalition for Alternatives to Pesticides have criticized the decision.

[54]The EPA relied on the same rodent studies it had in its earlier position but reinterpreted them so that the cancer risk is considered lower.

[55]ibid.

[56]Conversations with EPA officials involved with developing the EBDC regulation, April 1992.

and drink less than poorer workers."[57] But rather than push for raising the minimum wage, or improving access to health care, the administration's deregulators have simply taken this opportunity to launch a renewed attack on worker safety standards. Under pressure from the White House, OSHA eventually agreed to solicit comments on this theory in its proposed rule. A July court decision overturning OSHA's PEL rule for general industry rendered this particular issue moot, however, and the agency must start over on setting standards for a number of industries.[58] This new look at standards will give the Quayle Council and OMB deregulators the chance to force this theory, known as 'risk-risk' analysis, on a broader basis.

LABELING TOYS TO SAVE LIVES. *Eliminated.* Over the past decade, at least 186 children have choked to death on small toy parts.[59] Choking, in fact, is the leading cause of toy-related deaths. Warning labels on such toys could save lives. Incredibly, there is no federal requirement for toy manufacturers to warn parents about toys that pose choking hazards. After years of studying the problem, the Consumer Product Safety Commission (CPSC) staff recommended a list of proposals, including warning labels to save children from choking on toys with small parts. Yet on March 18, 1992, nearly two months into the regulatory moratorium, the CPSC killed the proposed rules. The rules in question would have required "choking hazard" labels on balloons, marbles, and toys with small parts designed for children three to five years of age. Another rule would have established a minimum diameter of 1.25 inches for balls intended for children younger than three. When submitting the information to the three CPSC commissioners for their vote, CPSC staff noted that "[B]ased upon a review of the technical literature, a survey of toy labeling, and observations of focus groups, the Commission's Division of Human Factors concluded that labels could effectively communicate information about hazards, their associated risks and what needs to be done to mitigate the hazards....Mandatory labeling and educating consumers to be aware of safety labels on packages, bins, or other containers is expected to save children's lives." Yet the main reason commissioners gave for voting down the rules was lack of data.[60] Quayle conveniently ignored this

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[57] See letter from James B. MacRae, Jr., acting administrator, OMB's Office of Information and Regulatory Affairs, to Nancy Risque-Rohrbach, assistant secretary for policy, Department of Labor, March 10, 1992.

[58] It is not certain whether the decision will be appealed.

[59] CPSC staff memorandum.

[60] See statements of Chairman Jones-Smith, Commissioner Carol G. Dawson, and Commissioner Mary Sheila Gall, Consumer Product Safety Commission, March 18, 1992. Jones-Smith disagreed with her colleagues on the balloon rule; otherwise all votes were 3-0.

ruling when compiling his list of "cost-saving" actions from the regulatory moratorium.

NURSING HOME REFORM ENFORCEMENT. *Delayed.* This proposed rule is designed to insure that nursing home residents receive care that meets government standards by establishing a range of enforcement measures to use when facilities aren't up to par. Given the administration's delay of this rule, nursing home residents will have a long wait before an array of nursing home reforms passed by Congress in 1987 are actually enforced. Delay of the enforcement regulation affects more than the quality of life of residents -- the health care costs of substandard care are substantial[61]:

> •Inadequate staffing results in increased hospital admissions, of which 216,000 -- 48 percent of total resident admissions -- could be eliminated at a savings of $942.5 million yearly.
>
> •$1.2 to $12 billion is spent annually treating preventable pressure ulcers developed by about 300,000, or 20 percent, of nursing home residents.
>
> •The total annual health care bill for incontinence in nursing homes is $3.26 billion -- a cost that could be largely avoided if residents were taken to the bathroom regularly and if the use of physical and chemical restraints were reduced.
>
> •$2.6 billion was spent in 1985 for hospital treatment of 93,291 nursing home residents who suffered hip fractures. Treatment for a single hip fracture runs to approximately $26,400.

POLLUTION PREVENTION. *Delayed; issued under pressure.* Passed by Congress in 1990, the aim of the Pollution Prevention Act (PPA) is to expand information about toxic releases already reported by polluting companies to the Environmental Protection Agency (EPA), and in turn use that information to develop ways to reduce pollution overall. Chemical manufacturers and other companies now report the amount of toxics they release into the air, water, and ground annually. Under the PPA, these companies are required to report the amounts of toxic chemicals in the

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[61]From "Nursing Home Residents Rights: Has the Administration Set a Land Mine for the Landmark OBRA 1987 Nursing Home Reform Law?" a staff report by the Senate Subcommittee on Aging, June 13, 1991.

waste they generate *before* it is released into the environment -- that is, before it is recycled, treated or disposed of in some other way. This would give the public a more accurate picture of how much toxics are actually produced -- not just how much are released. All of this information would be available to the public. The toxics data that is already available is widely used by citizens' groups as a bargaining tool to persuade companies to clean up their act. Using the regulatory freeze for cover, OMB attempted to undermine the PPA. Finding that it would "impose an undue burden" on polluters, last spring OMB rejected the form EPA was hoping to use to collect the new information, effectively turning the whole program on its head. Widespread confusion resulted -- neither affected companies nor the EPA knew how to comply with the law's July 1, 1992 reporting deadline. After industry contacted the White House and OMB staff, OMB went as far as proposing to write its own reporting form -- an unprecedented action. EPA continued to fight hard for its form, and finally won approval after several compromises and much heat from Congress. As a result of OMB's action, industry has missed the July 1 reporting deadline. The PPA victory is a bittersweet one -- OMB only granted approval until shortly after the November elections.

ONBOARD POLLUTION CONTROLS FOR AUTOMOBILES. *Eliminated.* High levels of carbon monoxide and ozone pollution across most of the country are one of the main reasons why Congress passed the Clean Air Act in 1990. This particular rule would require auto manufacturers to install a canister in all new cars. These canisters capture hazardous vapors that contribute to air pollution at the gas pump, where they spew into the air during refueling. But rather than irritate Detroit -- which would have to spend $17 per car to comply -- the Bush Administration decided on a different approach. Now it's gas station owners and other small business owners -- a much less politically powerful group than automakers -- who will have to install new pumps to capture hazardous fumes. Quayle claims this new approach will save $100 million. What he doesn't say is that those savings -- widely viewed as exaggerated -- will settle in the pockets of automakers, while small businesses will suffer. Under the Clean Air Act, states are required to reduce emissions by a certain amount, regardless of any standards set by the federal government. By deciding to nix auto emission controls, and therefore forgoing a pollution reduction source, the administration forces states to find new sources to regulate -- namely small business like auto body shops, dry cleaners, and bakeries.[62] Ironically, on-board canisters is one regulation that the Reagan administration supported.

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[62]According to Bill Becker of the Association of State and Territorial Air Pollution Program Administrators, states will be left little choice but to impose new regulation on small business in the absence of an onboard rule. "Non-decisions [by the federal government] are decisions to go after small business," Becker states. Interview by OMB Watch, April 23, 1992.

BANK BAILOUT. *Delayed.* The board of the Federal Deposit Insurance Corporation (FDIC) delayed an increase in deposit insurance premiums for banks. After stalling for months under industry pressure, the FDIC finally voted an increase on May 7, 1992 -- although the increase won't take place until January 1, 1993, after the election. This delay keeps banks from bearing their fair share of bailout costs. Currently, banks pay 23 cents in premiums to the insurance fund for every $100 they loan out. The new increase will raise the premium to 28 cents. This increase is necessary because, as a result of the many bank failures during the past few years, the bank insurance fund is quickly going bankrupt. A November 1991 $70 billion loan to the fund had been voted by Congress on the condition that it would be paid back with an increase in premiums.

REAL ESTATE APPRAISALS. *Weakened.* Nationwide, the median price for a house is $94,200. In April, as part of the moratorium, the Office of Thrift Supervision (OTS) published a final rule which will exempt all real estate valued under $100,000 -- over half of the homes sold nationwide[63] -- from a requirement to have the property evaluated by a professional appraiser. This means that the majority of Americans buying homes will lack the protection an evaluation by a professional, certified appraiser provides. Loan institutions, too, will suffer by making loans based on bad data that could, in turn, lead to more bank failures.

S&L REGULATIONS. *Weakened.* The Office of Thrift Supervision (OTS) announced regulations to establish interstate branching for S&Ls. During an exhaustive legislative battle in 1991, Congress voted against a provision allowing banks and thrifts to branch across all state lines. Interstate branching will allow large banks and thrifts to vacuum up deposits from communities without also properly fulfilling the credit needs of those communities. In addition, studies[64] show that financial institutions that operate under geographic limits are sounder and more profitable.

THE DRUG APPROVAL PROCESS. *Weakened.* On April 9 the FDA announced the formal adoption of some changes to the drug approval process, part of a package proposed with great fanfare by the Quayle Council last fall. While the Quayle Council pushed the plan as a way to get drugs to sick people faster, consumer groups recognized it as the same warmed over plans that the drug industry has been pushing for years. Instead of beefing up FDA resources and enforcement power, the

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[63] Letter from Patricia J. Marshall, President, Appraisal Institute, to Comptroller of the Currency, March 10, 1992.

[64] "Testimony Before the House Financial Institutions Committee," by Independent Bankers Association of Texas, March 20, 1992. The Association cites a number of studies, including ones done by the Federal Reserve Bank of Minneapolis, Federal Reserve Bank of Atlanta, the House Committee on Banking, Finance, and Urban Affairs, and others.

plan included several provisions that would actually *weaken* health and safety standards. FDA's April announcement included one of the most egregious of these proposals: a plan to allow outside reviewers, instead of FDA staff, to evaluate safety studies. Such a policy opens the door for conflict-of-interest problems, since most people qualified to do drug reviews outside the government have ties to drug companies. The other proposals FDA announced it would adopt -- accelerated approval and parallel track procedures -- are some that have long been in the works, although Quayle has attempted to take credit for them.

BIOTECHNOLOGY. *Weakened.* In his April press conference, Quayle included a reference to the administration's release of a "scope" document on biotechnology as a boon for business. Yet the scope document -- really a general policy statement -- is not the long awaited regulation that would help biotechnology companies get new products to the market quickly. Instead, it's a regurgitation of the philosophy the Quayle Council has long pushed for in the biotechnology arena: assume products of biotechnology are safe until proven dangerous, instead of the other way around. Yet it establishes no specific guidance to the relevant agencies -- the Environmental Protection Agency (EPA), the Food and Drug Administration (FDA), and the U.S. Department of Agriculture (USDA) -- about how to implement this philosophy. Even an editorial in the industry publication *Bio/Technology* states that, "[I]t remains to be seen how these broad principles will actually work in practice."[65]

EPA's 'WEPCO' RULE. *Weakened.* Electric utilities are a major source of air pollution, causing 70 percent of the nation's sulfur dioxide emissions and 33 percent of nitrogen oxide emissions. These emissions in turn cause smog and acid rain. New power plants must be built with anti-pollution controls in place, but utilities often get around this by extensively refurbishing existing structures, instead of building new ones. The White House has long been pressuring EPA to relax regulation of electric utility plants under the Clean Air Act. The final rule was issued in July, which, thanks to the Quayle Council has enough loopholes for even the dirtiest of utilities to leap through.

SURFACE MINING. *Eliminated.* Modern technology has given rise to a form of coal mining known as "longwalling" -- a process which uses a machine that slices coal out from beneath the ground as it moves forward, allowing the ground to collapse into the seven foot void it leaves behind, a phenomenon known as "subsidence." As the use of longwalling has grown -- this year almost one-third of coal mined in the U.S. will be longwalled -- so too have problems above ground. Homes collapse, and in some cases even explode as a result of methane gas leaks, foundations crack, and wells dry up because of this dangerous practice. After meeting with coalfield citizens groups last summer, Interior Secretary Manuel Lujan promised that a rule mandating

[65] *Bio/Technology*, vol. 10, April 1992.

compensation for victims of mining subsidence would be issued within one year.[66] That promise was broken, however, when the Interior Department decided to discontinue the rulemaking entirely.[67]

[66] *Inside Energy*, July 22, 1991.

[67] Letter to Public Citizen and OMB Watch from John E. Schrote, Assistant Secretary for Policy, Management, and Budget, Department of the Interior, April 13, 1992.

PART TWO:
TAKING IT TO THE COURTS

Litigation Related to the Regulatory Moratorium

The Bush-Quayle regulatory moratorium has forced citizens groups to take the government to court over public health and environmental regulations needlessly delayed. To date, at least four cases have challenged agencies' delay of rules under the moratorium. Two other cases, filed before the start of the moratorium, challenge delay of regulations held up further by the rule freeze.

In every case brought to date concerning the moratorium, the courts have either ruled against delay or agencies have been sparked to action:

Public Citizen v. Environmental Protection Agency

Pesticide Adverse Effects Reporting Obligations

FILED: August 27, 1992
STATUS: Pending

This case challenges the Environmental Protection Agency's (EPA's) delay in issuing a proposed regulation spelling out pesticide registrants' obligations to report adverse effects of pesticide use to EPA. EPA decided that it needed to promulgate such a rule because it discovered noncompliance with the statutory reporting obligation, as well as with policy guidance that it had previously issued. EPA has prepared a proposed rule and has resolved all other issues with regard to that proposed rule raised by other federal agencies. However, it has not published its proposed rule in the *Federal Register* solely because of the regulatory moratorium. On June 22, 1992, EPA submitted a request to the Office of Management and Budget (OMB) asking that the proposed rulemaking on adverse effects reporting obligations under Section 6(a)(2) be exempted from the moratorium because it responds to an emergency posing an imminent danger to human health or safety. OMB has not responded to EPA's June 22, 1992 request. Public Citizen filed a lawsuit today challenging EPA's delay in its rulemaking on adverse effect reporting obligations.

Henry Waxman and Public Citizen v. Environmental Protection Agency

Regulations Implementing the Clean Air Act

FILED: June 5, 1992
STATUS: Five Statutory Deadlines Met Published Since Lawsuit Filed; Agency Has Yet to Meet 12 Statutory Deadlines

This case challenges the Environmental Protection Agency's failure to issue, by mandatory statutory deadlines now passed, 17 final regulations to control urban smog, automotive pollution, toxic air pollution, acid rain, and depletion of the stratospheric ozone layer. (On August 26, 1992, Public Citizen filed an amended complaint which named a number of new delayed regulations.) These regulations are required by the 1990 Amendments to the Clean Air Act, which is widely regarded as the most significant piece of environmental legislation ever passed by Congress to control air pollution. EPA's failure to issue regulations along the timeframe required by Congress is compromising the effectiveness of the entire legislation. In many cases, the delays have been attributable to the Office of Management and Budget's refusal to sign off on regulations that have been completed by EPA and are ready for publication. This interference is patently illegal, since the moratorium by its own terms does not apply to regulations that are subject to a mandatory statutory deadline. Since the lawsuit was filed, the EPA has published four of the final regulations cited in the case, as well as another proposed regulation that meets terms of a deadline. The agency has yet to meet 12 of the missed deadlines.

Jasper Carlton, et. al., v. Manuel Lujan, Secretary, Department of Interior, and John Turner, Director, Fish and Wildlife Services

Endangered Species Act

FILED: April 1992
STATUS: Rules Issued After Lawsuit Filed; Agency Officials Admitted Delay Due to Moratorium

To qualify for full protection under the law, an animal or plant species threatened by extinction must be officially "listed" with the U.S. Fish and Wildlife Service (FWS). Before the regulatory moratorium was announced, FWS listed an average of 46 species yearly -- an average of four per month. In fact, the month before Bush declared the regulatory moratorium, the FWS listed five species. After the moratorium was declared, however, the FWS stopped listing species -- this despite a backlog of some 600 species awaiting action. Furthermore, the statute requires the agency to base decisions solely "upon biological criteria and to prevent nonbiological considerations from affecting such decisions[68]" -- a statement clearly meant to prevent the use of trumped up economic justifications for avoiding protection of endangered species. On April 2, 1992, Public Citizen lawyers, along with other lawyers representing animal protection groups, filed a lawsuit in the U.S. District Court of D.C. No injunction was needed, however, because FWS officials admitted that listings had been improperly delayed as a result of moratorium and promised to start listing endangered species again. Here is a clear case of the moratorium forcing regulations into the courts needlessly.

National Coalition Against the Misuse of Pesticides et al., v. Edward K. Madigan, Secretary of Agriculture and William K. Reilly, Administrator, Environmental Protection Agency.

Pesticide Record-Keeping to Protect Farm Workers

FILED: April 10, 1992
STATUS: Agency Issued Rule after Citizens Groups filed Lawsuit

Required by the 1990 farm bill, this regulation requires farmers to keep records of the pesticides they use so that workers have access to this information. Without such records, it is difficult for health professionals to treat workers ill from exposure to pesticides. For example, a certain drug, atropine, is used to treat a class of pesticides known as organophosphates; when used on patients harmed by organochlorine pesticides, however, the drug can exacerbate illness.[69] Yet in most cases, doctors are hard pressed to know what sort of pesticide a worker has encountered in the fields.

The statute requires the EPA and USDA to issue a regulation on record keeping within 60 days of passage -- a deadline which the agency did not meet. After the moratorium was declared, the Farmworker Justice Fund and the National Coalition Against the Misuse of Pesticides filed a lawsuit in U.S. District Court against the government arguing that the regulation should be issued. Soon afterwards, on May 12, 1992, the EPA issued the proposed regulations. Oral arguments on the original lawsuit were scheduled for May 18 -- after the EPA had already issued the proposed rules. The plaintiffs went ahead and argued in court that the agency should publish an interim rule, not just a proposed rule. On June 2, 1991, the Court ruled for the

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[68]H.R. Conf. Rep. No. 835, 97th Cong. 2d Sess. 19 (1982) ("1982 Conference Report."

[69]Morgan, D., *Recognition and Management of Pesticide Poisonings*, Fourth Edition, Washington, DC, U.S. Environmental Protection Agency, March 1989, Publication no. EPA-540/9-88-001.

government, stating that "the delay at issue does not warrant judicial intervention."[70]

Natural Resources Defense Council v. EPA

Lead Acid Batteries

FILED: 1991
STATUS: U.S. Court of Appeals for the D.C. Circuit ordered EPA to review its 1990 decision allowing lead automobile batteries to be burned in incinerators.

The Natural Resources Defense Council filed this suit along with the States of New York and Florida challenging two EPA rules covering air pollution from municipal waste incinerators. When EPA first drafted these rules, it proposed requiring municipal waste incinerator operators to recycle 25 percent of incoming garbage prior to burning. EPA also proposed banning the burning of lead acid car batteries in incinerators. Solid waste disposal is the single largest source of lead emissions to the air; lead batteries from cars and trucks are the source of over 60 percent of all lead found in municipal waste. The Council on Competitiveness intervened with EPA's efforts, however,, and after a closed-door meeting forced the agency to drop both of these provisions from its final rules. In a July 14, 1992 ruling, the U.S. Court of Appeals found that the final decision to drop the ban on lead battery burning had no justification. The ruling requires the EPA to either change its decision or provide better reasons for it.

In Re International Chemical Workers Union

Exposure of Workers to Cadmium

FILED: 1986
STATUS: U.S. Court of Appeals for D.C. Circuit Ordered OSHA to Issue Rule by August 31, 1992

This case, brought by the International Chemical Workers Union (ICWU) and Public Citizen, challenges the nearly six years of delay by the Occupational Safety and

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[70]Order by Stanley S. Harris, U.S. District Judge, U.S. District Court for the District of Columbia, June 2, 1992, on National Coalition Against the Misuse of Pesticides et. al., v. Edward K. Madigan, Secretary of Agriculture and William K. Reilly, Administrator, Environmental Protection Agency, Civil Action No.9 92-975 SSH.

Health Administration in issuing a standard to protect workers from the health risks posed by cadmium. Cadmium is a metal that is used widely throughout U.S. industry; over a quarter of a million workers are exposed to high levels of cadmium every day on the job. In 1986, the International Chemical Workers Union and Public Citizen petitioned OSHA to issue a standard to protect workers from the risks of lung cancer and kidney damage that are now known to be posed by cadmium exposure. After OSHA had sat on the petition for a full year without taking any action, Public Citizen and ICWU brought suit in the United States Court of Appeals for the District of Columbia Circuit. Immediately after the filing of the lawsuit, OSHA responded to the petition by pledging to take "expeditious action" to issue a standard. After additional delays, caused in part by the intervention of the Office of Management and Budget on behalf of the cadmium industry, Public Citizen and ICWU returned to court in 1991, asking the court to set a specific date by which OSHA must complete the rulemaking. In a published opinion, the court agreed and directed OSHA to complete its rulemaking by no later than August 31, 1992. If OSHA fails to meet that deadline, Public Citizen and ICWU will return to court and seek a contempt citation against the agency.

Cutler v. Hayes

Over-the-Counter Drug Review

FILED: 1981
STATUS: Pending

This case challenges delays in the Food and Drug Administration's review of over-the-counter drugs for safety and effectiveness. In 1962, Congress enacted a statute requiring FDA to ensure that drugs are effective, as well as safe. In 1972, FDA initiated its over-the-counter drug review (OTC Review). Public Citizen and others challenged FDA's delay in conducting its OTC review and in ensuring that drug ingredients are safe and effective. Initially, the District Court ruled in favor of the government, but the Court of Appeals reversed and remanded for further consideration of whether there has been an unreasonable delay. In 1987, the government proposed a schedule for completing its OTC Review, but it has fallen behind that schedule. The moratorium is exacerbating FDA's 30-year delay in complying with its statutory duty to ensure the effectiveness of over-the-counter drugs.

PART THREE:
ADVENTURES WITH FOIA

The Results of Public Citizen's and OMB Watch's FOIA Requests on the Moratorium

Soon after Vice President Quayle first voiced the claim of financial "savings" from the regulatory moratorium, Public Citizen and OMB Watch requested through the Freedom of Information Act (FOIA) that the Vice President provide background data for the "savings" claim. The administration refused to provide the information. Later, Public Citizen and OMB Watch followed up with FOIA requests, dated May 19, 1992, to the 24 agencies cited in President Bush's April press conference, asking for background data on the "savings" claims, as well as a copy of the report the agency was required to submit to the President after the first 90 days of the moratorium.

The agencies' responses -- or lack thereof -- demonstrate how difficult it is for citizens to gather information about the regulatory moratorium. While most agencies provided Public Citizen and OMB Watch with the report they were required to submit to the President in April, many of these reports do not describe affected regulations adequately. None of the agencies provided information about "cost savings" in a form even remotely understandable. Often agencies decided such documents constituted "predecisional" material[71] and blocked out large portions of it; in other cases, sheets of paper with hand-scrawled calculations were provided. The fact that information on cost-savings is so spotty and is not accompanied with adequate documentation draws the accuracy of these estimates into question. The Bush-Quayle administration's refusal to provide adequate documentation for its cost-saving estimates makes them appear to be nothing more than fabricated justifications for an attempt to please powerful business interests during an election year.

Another problem with information that the Quayle Council and agencies did provide is that it does not adequately consider the benefits regulations bring. Despite the administration's rhetoric, consumer, public health and environmental regulations are not created simply to bury businesses in paperwork. Instead, they are developed because of benefits they will bring to society: cleaner air and water, safer products, a sounder banking system. The benefits of these regulations are rarely part of the Quayle Council's calculus on regulations. For example, further banking deregulation

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[71]The FOIA includes an exemption of "predecisional" information on the theory that agency staff will not be candid in agency discussions, before final decisions are made, if they know that their work will be disclosed to the public. Agencies should not, however, hide behind the "predecisional" exemption as an excuse for not providing basic, factual information.

is not weighed against the potentially tremendous costs of a new S&L-like crisis.

What follows is a short description of responses to the FOIA requests, agency by agency, along with a chart summarizing those responses.

COMMODITIES FUTURES TRADING COMMISSION

The Commodities Futures Trading Commission responded to Public Citizen's and OMB Watch's FOIA request on June 9, 1992 with a copy of the agency's April 1992 report to the President. To support claims of "$5-8 million in economic savings" from regulatory changes claimed by the President in April, the Commission referred Public Citizen and OMB Watch to four pages within the report. These pages discuss rule changes on reporting requirements for commodity pools, registration procedures for firms, and procedures for option purchasers. While these pages do mention dollar amounts of savings which add up to $5-8 million, there is no adequate explanation of how these numbers were calculated.

DEPARTMENT OF AGRICULTURE

The Department of Agriculture responded to Public Citizen's and OMB Watch's FOIA request on July 2 with a copy of the Department's report to the President and the economic analyses used to generate the cost savings claimed by President Bush on April 29. The Department notes in its response that it considers the analysis used to produce the cost savings estimate to be "predecisional," and thus that it need not provide it under FOIA. The agency goes on to state, however, that in this case it "believes it appropriate to provide the public with an explanation of the announced estimate"[72] and therefore is providing a copy of the last drafts of economic analyses used for estimates of "cost savings." The agency withheld, however, earlier drafts and transmittal correspondence. The documentation provided by the Department of Agriculture is more comprehensive than that given by other agencies queried for this report. It must be noted, however, what the Department did *not* consider in calculating "cost savings"; for example, the benefits of nutrition labeling for meat and poultry, which would help save lives and prevent illness. [See Section One for discussion of meat and poultry rules.]

DEPARTMENT OF COMMERCE

The Department of Commerce supplied its April report to the President to Public Citizen and OMB Watch. The President had claimed "cost savings" of $2 million in his April extension of the moratorium. The agency attached some memoranda and comment letters to a *Federal Register* notice, but none explained the cost estimates.

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[72]Letter from Milton E. Sloane, Office of Public Affairs, USDA to Nancy Watzman and Christine Triano, July 2, 1992.

Some documents from the Patent and Trademark Office included sheets with handwritten calculations amounting to $1.5-1.8 million, but they are not accompanied by any understandable explanation or cited documentation.

DEPARTMENT OF DEFENSE

The Department of Defense (DoD) responded on June 23, 1992 with a copy of an April 28, 1992 memo to the Vice President and copies of a Department analysis of two regulatory programs: the Defense Federal Acquisition Regulation Supplement and the Army Corps of Engineers wetlands regulation. The memo notes that the review of all existing regulations called for by the President resulted in considerable revisions of DoD regulations. These changes, according to the Department, fell into two categories: the consolidation of two or more regulations into one, and the condensation of regulations into briefer or simpler form.

Regarding the economic savings incurred by these changes, the memo tellingly states: "Many of these revisions will not directly translate into savings to the economy or creation of jobs." The Department notes that its regulatory revisions will achieve little beyond making government paperwork easier to fill out. "As time goes on, some avoidance of manpower and paperwork costs should occur, but reliable estimates of the long term savings...are not available at this earlier stage of the process because they are indirect, rather than direct, in nature."[73]

During the moratorium, DoD reports it solicited comments from 21 private organizations, asking which regulations they believed have an adverse effect on the economy. Of this list of 21, there is a fairly equal split between trade associations and industry representatives. *Not one person contacted by DoD represented a citizens, public interest, community, or other type of non-industry group.*

DEPARTMENT OF EDUCATION

The Department of Education's April report to the President, supplied to Public Citizen and OMB Watch on May 26, 1992, is short in useful information. For example, the agency states that it eliminated 13 regulations during the first 90 days of the moratorium but neglects to cite which ones. The report does list 32 rules delayed as a result of the freeze; several are under the Higher Education Act and deal with student loans; one applies to drug prevention programs in higher education. The President made no "cost saving" claims for the Department of Education in April, and the department supplied none.

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[73]Memorandum for the Vice President from the Deputy Secretary of Defense, April 28, 1992.

DEPARTMENT OF ENERGY

As this report went to press, the Department of Energy had yet to supply any information about the regulatory moratorium to Public Citizen and OMB Watch.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

The Department of Housing and Urban Development (HUD) had not provided any information on the regulatory moratorium to Public Citizen and OMB Watch by the time this report went to press.

DEPARTMENT OF LABOR

The Department of Labor (DOL) responded to Public Citizen and OMB Watch's request on August 13, 1992 with a copy of the department's report to the President. The agency included cost information about implementation of the Davis-Bacon "Helper" regulation; an economic analysis of OSHA's asbestos standards; and a paper on regulating non-asbestiform minerals as asbestos. Among actions planned are taking what it calls "a more in-depth look" at several worker health and safety rules -- likely to result in weakening changes. One of the few numbers mentioned in the report is $73.6 million annual savings from striking nonasbestiform AT&A from coverage under OSHA's asbestos standards (See Part One). The agency provided background materials it said justified this cost estimate: an economic analysis of the asbestos standard prepared by a private contractor and a paper by the corporate manager of occupational health for Vulcan Materials Company -- a company strongly in favor of deregulating non-asbestiform AT&A. It is completely unclear from the materials provided where the President derived his April statement of "cost savings" of $1884-3084 million.

ENVIRONMENTAL PROTECTION AGENCY

The Environmental Protection Agency (EPA) responded to Public Citizen's and OMB Watch's FOIA request on June 12, 1992. Much of the report consists of recycled goods: for example, one of EPA's banner deregulatory claims is the implementation of its final WEPCO rule (See Part One), an action initiated almost a year before the President called for his deregulatory freeze. One EPA action listed as serving "the objectives of the President's request" is pollution prevention. EPA contends that this rule will reduce pollution and thus save money. Ironically, the Quayle Council and OMB tried to kill its implementation earlier this year by blocking changes to polluters' reporting requirements. The agency does not address the "cost savings" of $897-3342 million claimed by the President in April. (Some items include cost estimates, but no substantiating data is provided.)

FEDERAL COMMUNICATIONS COMMISSION

On June 18, 1992, the Federal Communications Commission (FCC) provided Public Citizen and OMB Watch with a copy of its April report to the President. A later letter, dated July 22, 1992, discusses the President's claim of $258 million in "cost savings" from deregulatory actions. The letter states that some documents are being provided, but that the agency has not included "predecisional" information.[74] The information provided by the agency proved virtually useless. One 23-page document appeared to be a listing of deregulatory actions with cost estimates. The agency, however, deleted information in 20 sections, claiming it was "predecisional" and in 36 sections because it was "not in the scope of the FOIA request." Another document provided appears to be a xerox of a page from a pad of paper, covered with handwritten calculations. In the bottom right corner of the page is the handwritten note: "? Can't read but explains."

FEDERAL ENERGY REGULATORY COMMISSION

The agency supplied its April report to the President to Public Citizen and OMB Watch on July 22, 1992. Also included were documents the agency claimed supported "cost savings" of $2600-5900 million; however, the agency stated it was withholding 14 such documents stating that they were "predecisional" or because they included names of agency staff.[75] Given the piecemeal nature of the documents provided, it is impossible to ascertain how the agency came up with its "cost savings."

FEDERAL DEPOSIT INSURANCE CORPORATION

The Federal Deposit Insurance Corporation (FDIC) supplied its April report to the president to Public Citizen and OMB Watch on June 2, 1992. In his April announcement to extend the regulatory moratorium, the President made no claims of "cost savings" to the economy from deregulatory actions by the FDIC.

A section in the report, however, "Impact of Regulatory Changes in the Economy," posits a savings of $29.9 million per year, and explains some of the assumptions the agency makes when calculating "savings." The agency estimates that suggested deregulatory changes would result in 997,003 fewer "burden hours." The FDIC estimates that 479 people would lose their jobs in banking because of this

[74]Letter from Robert L. Pettit, General Counsel, Federal Communications Commission, to Nancy Watzman, Public Citizen, July 22, 1992.

[75]Letter from Sanford J. McAllister, Director, Division of Public and Intergovernmental Affairs, to Christine Triano, OMB Watch, July 22, 1992.

deregulation: "In the short run, the economy is likely to experience employment losses as a result of implementing the recommendations, as banking institutions eliminate positions in response to the reduction in regulatory requirements."[76] The agency then goes on to argue that this employment loss would be offset by increased profits by the banking industry. The opposite would be true, however, if deregulation leads to more costly failures of financial institutions -- then the "short term" employment loss to the economy would be worsened by increased costs to taxpayers already shelling out billions for the S&L bailout.

FEDERAL TRADE COMMISSION

The Federal Trade Commission (FTC) stated in a July 19, 1992 letter to OMB Watch that it was providing its April report to the President. Instead of attaching the report, however, the agency sent copies of letters from FTC Chairman Janet Steiger to Representatives John Dingell, Norman Mineta, and Robert Roe, as well as to Senator John Glenn. The President made no claims of "cost savings" by the FTC's deregulatory actions in April, and none were discussed in the agency's congressional correspondence. The correspondence does show, however, that the agency did not read President Bush's announcement of the moratorium carefully. In a letter to Rep. Dingell, the agency states that only one rule would be initiated during the moratorium.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

HHS refused to supply Public Citizen and OMB Watch with its April report to the president on the moratorium, apparently judging the document to qualify for a FOIA exemption for "inter and intra-agency records which are deliberative and contain staff advice, opinion and recommendation to the White House."[77] Considering that most other agencies made their reports available to the public, this seems to be an odd determination on HHS's part. HHS went on to note that material excluded from its response to Public Citizen and OMB Watch included "'regulatory logs' showing the status of proposed regulations. Disclosure of these records could interfere with the decision making process."[78] On the contrary, keeping information from the public only keeps the public in the dark. The only documents on HHS' actions on the moratorium provided were a three-page April 27, 1992 memorandum to the president

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[76] "The Report of the Regulatory Review Committee of the Federal Deposit Insurance Corporation," Washington D.C., April 28, 1992.

[77] Letter from Carl C. Coleman, Director, FOIA/Privacy Act Division, Office of Public Affairs, Department of Health and Human Services, to Nancy Watzman, Public Citizen, June 5, 1992.

[78] *ibid.*

and a fact sheet dated April 30, 1992. These documents provided only superficial information about the agency's actions. HHS nowhere provided justification for President Bush's and Vice President Quayle's claims of "cost savings to the economy" from HHS' actions amounting to $1600-2700 million.

DEPARTMENT OF JUSTICE

At the point this report went to press, the Department of Justice (DOJ) had yet to provide any information about the regulatory moratorium to Public Citizen and OMB Watch. The last letter received from the agency, dated July 15, 1992, gave notice that the FOIA request had been forwarded to the Antitrust division for processing. The President made no claim of "cost savings" from DOJ actions in his April extension of the moratorium.

DEPARTMENT OF INTERIOR

The Department of Interior had not yet provided any information to Public Citizen and OMB Watch at the time this report went to press. A letter dated June 3, 1992 from the agency states that a response would be provided within ten days. Public Citizen and OMB Watch are still waiting.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Public Citizen and OMB Watch received only a partial response from the Equal Employment Opportunity Commission (EEOC) on June 16, 1992: a memo from the agency to Quayle Competitiveness Council Executive Director David McIntosh.[79] The agency based its savings claims on scaling back "paperwork" on two rules. One of those items, however, is a survey designed to determine the number of disabled people currently in the workforce. Yet information is sorely needed about the disabled population -- hardly a pure "paperwork" concern.

FEDERAL MARITIME COMMISSION

On June 4, 1992, the Federal Maritime Commission (FMC) supplied Public Citizen and OMB Watch with documents that the agency stated support the President's claim of $147 million in "cost savings" to the economy. The agency did not include its April report to the President. It is difficult to follow the agency's reasoning on "cost savings" since explanation of altered regulations is minimal. For example, one page

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[79]Memorandum from Thomasina V. Rogers, Legal Counsel, U.S. Equal Employment Opportunity Commission, to David McIntosh, Executive Director of the Council on Competitiveness, April 22, 1992.

simply states: "Part 504, Procedures for Environmental Policy Analysis, Proposed exclusions -- an average of 3 responses a year could be excluded." Calculations follow which estimate that the industry "cost savings" of $903 and FMC "cost savings" of $4,164. The agency, however, does not explain what these exclusions are. Many of the document pages that the agency provides consist of handwritten notes which are difficult to decipher.

FEDERAL RESERVE BOARD

On June 1, 1992, the Federal Reserve Board (FRB) provided Public Citizen and OMB Watch with its report to the President, dated May 1992. In his April announcement, the President made no claims of "cost savings" to the economy from deregulatory actions by the FRB.

INTERSTATE COMMERCE COMMISSION

In April the President claimed that deregulatory actions taken by the Interstate Commerce Commission (ICC) would result in "cost savings" of $851-3301 million. The agency's April report to the President, which it supplied to Public Citizen and OMB Watch on May 27, 1992, contains no explanation of this figure. In fact, the agency states that the economic impact of most suggested rule changes involve "little," "none," or "undeterminable" economic impact. Oddly enough, in February, ICC Chairman Edward J. Philbin wrote House Subcommittee on Oversight and Investigations Chair John Dingell that "I do not anticipate that the suggested moratorium will affect any of our programs...[80]" How can it be possible that there are $851-3301 million in "cost savings" from the ICC's actions if the moratorium has not affected any of the agency's programs?

NUCLEAR REGULATORY COMMISSION

On June 25, 1992, the Nuclear Regulatory Commission (NRC) sent a notice to Public Citizen and OMB Watch stating that the organizations must pay $25.80 to receive the requested information. Not one of the 23 other agencies queried for this report required payment for the materials requested. Part of the purpose of the FOIA is to ensure that information is disseminated to the public. Agencies generally waive fees on FOIA requests by public interest groups and the media, since these groups will then go on to disseminate the information to the public. The fee system is designed not to keep information from people, but to ensure that when the government discloses materials they reach the widest possible audience. The NRC's request for

[80] Letter from Edward J. Philbin, Chairman, Interstate Commerce Commission, to the Honorable John D. Dingell, Chairman, Subcommittee on Oversight and Investigations, Committee on Energy and Commerce, U.S. House of Representatives, February 21, 1992.

fees, therefore, is quite odd. Public Citizen and OMB Watch will appeal the NRC's decision.

SECURITIES AND EXCHANGE COMMISSION

The Securities and Exchange Commission (SEC) supplied a copy of its April report to the President to Public Citizen and OMB Watch on June 8, 1992. Included was a White House factsheet, dated April 28, 1992, which generally discusses deregulatory actions in all the financial agencies. The President made no claims in April of "cost savings" to the economy from SEC actions, and the agency did not supply any.

DEPARTMENT OF TRANSPORTATION

Even before Public Citizen and OMB Watch filed formal FOIA requests for information about the regulatory moratorium, the Department of Transportation (DOT) provided the groups with its April report to the president. The groups' request for background data on claims of "cost savings" of $121-1200 million, however, was met with much confusion. A July 8, 1992 letter from the agency stated that certain portions of the request were the responsibility of the central and northwest regions of the department. A letter written on July 16, however, stated that the records were *not* the responsibility of other regions, but rather of the Washington office; the department also stated this in a phone call to Nancy Watzman of Public Citizen. As this report went to press, no information on "cost savings" had been received from DOT.

DEPARTMENT OF THE TREASURY

The Department of the Treasury supplied its April report to the President to Public Citizen and OMB Watch in June. The agency also included documents that it stated explained claims of "cost savings" of $1554 million from deregulatory actions: some sheets of paper that appear to be notes from calculations done by agency staff (from which names of staff have been blocked out) and a research paper titled "Thrift Industry Cost Structure and Competitive Viability," published by the agency in April 1992.

A look at these materials demonstrates how agencies exaggerate savings from deregulation. For example, to figure out how much would be "saved" by allowing thrifts to expand across state lines, the Office of Thrift Supervision "assume[d] all thrifts [would] take advantage of the opportunity..." There is no reason to expect that every single one of the 1000 thrifts in the country will take advantage of this new provision. Nor does this estimate take into account the potential ~~costs~~ of this action: allowing thrifts to expand across state lines will make them less accountable, and therefore more likely to fail. The nation is already paying in the billions of dollars for the savings and loan debacle; surely bank deregulation is not the way to promote the financial industries' soundness.

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May 19, 1992

Kenneth E. Cohen
Assistant General Counsel
U.S. Department of Agriculture
Rm. 2321, South Bldg.
Washington, DC 20250-1400

RE: Freedom of Information Act Request

Dear Mr. Cohen:

On behalf of Public Citizen and OMB Watch and pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. §552, as amended, we request the following records:

- All records relating to or containing the data used to produce the estimate which President George Bush gave members of the media on April 29, 1992 about "annual cost savings" of $79 million and $330 million of "one-time savings" from actions by the Department of Agriculture during the "90-day regulatory reform initiative." (See attachment A.)

- A copy of the report which President Bush requested of the Department of Agriculture in his January 28, 1992 memorandum on "reducing the burden of government regulation." The report is referenced in point no. 5 of the president's memorandum. (See attachment B.)

We also request a waiver of fees associated with processing this FOIA request and duplicating responsive records. Public Citizen is a nonprofit organization that publishes Public Citizen Magazine and Health Letter, which reach 100,000 subscribers, including universities and libraries that in turn circulate this information to the public. Public Citizen intends to publish the information received pursuant to this FOIA request because to do so would contribute significantly to the public's understanding of the federal regulatory review process.

OMB Watch is a nonprofit organization that monitors federal administrative activities and processes, particularly those that involve the Office of Management and Budget (OMB), and advocates for greater government accountability. When OMB Watch receives the requested materials, it will include them in reports for distribution to its 1000 member groups and individuals and will cover them in its publications, Government Information Insider and The OMB Watcher. OMB Watch has a history of educating the public on federal regulatory matters, and believes the requested information would significantly enhance public understanding of the regulatory process.

We look forward to hearing a response from you within ten working days, as the law provides.

Sincerely,

Nancy Watzman
Public Citizen

Christine Triano
Christine Triano
OMB Watch

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RADIO

APPENDIX TWO:

SAMPLE RESPONSE: SHEET FROM FCC'S HANDWRITTEN RESPONSE

G+A Analysis -

[illegible] at [illegible] O+A and [illegible] from G+A - 1990

% to sales	FM p.65	AM full	AM day	Stand alone AM
Reported G+A [redacted]	43.9	33.5	52.0	
AB G+A - Ind - Dep + Int True G+A	23.6%	23.8 / 19.0	34.6 / Art.2 + 6.4 = 25.9	26.0

	FM	AM	Total
Industry sales	5395 × 23.6%	1612 × .254	7007
True G+A	1,273	419	1,692
→ Profit	453	106	559

— (8%)

rep G+A 574 / 1307 = 43.9?

574
depr -140
int -125
309 ÷ 1307 = 23.1 true

→ 1,692 = Industry G+A

10% = 169 million

Could take π from 559 +170 to 728, or 30%.

[illegible] local [illegible]
e.g., if half the [illegible] - 85 million, [illegible]
[illegible] would increase today's program $ (1721) by 5%, [illegible]
[illegible]
[illegible] since 87.

[illegible] still raise ind π by 15%.

? can't read but explains

LEAVE NO FINGERPRINTS:

How the Quayle Council on Competitiveness Secretly Undermines Health, Safety, and Environmental Programs

What is the Council on Competitiveness?

The Council is made up of Cabinet-level officials, but staffed out of the Vice President's office, which carries out its day-to-day work. The Council is the direct successor to the Reagan-era Task Force on Regulatory Relief, which was directed by then Vice President Bush. The Council's creation was deliberately low-key. An April 1990 press release by the Vice President's office casually announced that President Bush had designated Dan Quayle as the head of a new group called the Council on Competitiveness, providing few details of the Council's mission. The Task Force claimed authority over two controversial executive orders signed by President Reagan in the 1980s—E.O. 12291 and E.O. 12248—which it used to initiate an assault on so-called "social regulation."

Like the Bush Task Force before it, the Quayle Council has a stranglehold on the federal agency rulemaking process. The Vice President's Council oversees the regulatory review functions of the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs (OIRA). Through OIRA, or on its own authority, the Quayle Council can pull any regulation that it dislikes for 'review' and pressure the agency to change it.

How the Council Operates

> "We've had sometimes more visibility that I really want," said Quayle of the publicity surrounding the council. He said he would prefer that most of their interventions...leave no fingerprints." *The Washington Post*, January 9, 1992.

Vice President Quayle captured the essence of his Competitiveness Council when he told Washington Post reporters Bob Woodward and David Broder of his desire for secrecy. Operating outside the open government rules that apply to federal regulatory agencies, the Council's small staff has worked to stall or block health and safety rules, advance deregulation initiatives, and pressure federal agencies to pull back from strong enforcement.

By directly meddling in ongoing regulatory actions, the Quayle Council undermines the entire system of federal regulation. Over the years, Congress has charged expert agencies such as the EPA, the FDA, and OSHA with the task of safeguarding the public's health and safety. These agencies, in turn, are governed by an elaborate legal structure designed to ensure that they are open to the public, that they hear from all sides, and that they base their decisions on complex scientific or technical matters only on substantive merits—principles embodied primarily in the Administrative Procedure Act and the Freedom of Information Act.

By contrast, the Quayle Council invites regulated corporations unhappy about the results of regulation to quietly turn to the White House for relief. Because it acts in utter secrecy, the Quayle Council has set itself up as a channel for improper industry influence in regulatory decision-making.

Hiding behind 'executive privilege.' The Quayle Council refuses to supply even basic information about its staff, budget, communications with non-governmental groups, and the background information it bases its decisions on. The Vice President's office has repeatedly denied Freedom of Information Act requests from citizens' groups, including several made by OMB Watch and Public Citizen. The Council claims that it is not a government agency because it is staffed out of the Vice President's office—and is therefore shielded by 'executive privilege.' A September 1991 federal District Court decision, however, placed this reasoning on shaky ground. Ruling in a FOIA suit filed against the

Council's predecessor, the Bush Task Force, the court found that a government entity is defined by the work it does, rather than where it is housed, even in the case of the Vice President's office. The Administration is currently appealing the decision.

No accountability to Congress. The Competitiveness Council refuses to recognize Congress' broad oversight authority over the federal agencies. In fact, the Vice President has repeatedly refused to appear before Congress or to send a representative from the Council's staff to discuss its work. Even simple requests for information have gone unanswered and the responses that members of Congress have received from the Council have been overwhelmingly inadequate.

Most recently, for example, the Council has been unable to give an accurate answer about how many people work on its staff. In response to an inquiry from Rep. David Skaggs, the Vice President's office responded that no full-time staff are devoted to the Council, and that two staffers devote approximately 70 to 80 percent of their time to supporting the Council. But in a June *New York Times* article, the director of the Council on Competitiveness, David McIntosh, is quoted as saying that the Council has a staff of seven or eight people. Providing yet another figure, on a recent radio show McIntosh referred to the Council as having *six* staff members.

And just last week the Vice President's office has revealed that McIntosh, as well as one other Council staffer, are, in fact, not employees of the Vice President at all, but "non-detailees" from the OMB, which means that the Vice President's office is not reimbursing OMB for these staffers' salaries. It also means that McIntosh, the Council's director, is *not* one of the two employees claimed by the Council. Such piecemeal information is typical of the way the Council responds to Congressional inquiries.

Obstructing Congress' oversight of agencies. The Council has thwarted Congressional requests for information from federal agencies by instructing agency officials to withhold documents. On one occasion, a House Subcommittee was forced to subpoena documents from the FDA; other committees have engaged in similar tussles.

The Secrecy Must End

Cass Sunstein, Constitutional scholar and former counsel to President Reagan, urged adherence to the following legal principles:

"**First**, the reviewing entity must allow the relevant agency head to make the ultimate decision. Congress has vested that decision—whether to issue a rule, what rule to issue—in the agency head, not the Council on Competitiveness...

Second, any reviewing entity must respect applicable legal constraints on communications between (a) private persons and the entity and (b) that entity and the agency. The most significant problem here is secret substantive contacts between interested parties and the Council—such contacts that turn out to influence the Council in its supervision of agency decisions."

For more information, contact:

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May 19, 1992

Kenneth E. Cohen
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Washington, DC 20250-1400

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(3)

12/10

RADIO

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First take out O+A and interest from G+A - 1990

% to sales	FM p.65	AM full	AM day	Standalone AM
Reported G+A	43.9 ✓	33.5 ✓	52.0	
1B G+A - Int - Dep = True G+A	23.6% ✓	23.8 ✓	34.6	26.0
		~~5.8~~ 19.0	Adj. 2 + 8.4 = 25.4	

	FM	AM	Total
Industry sales	5395 × 23.6%	1612 × .254	7007
True G+A	1,273	419	1,692 ?
→ Profit by	453	166	559

– (8%)

→ 1,692 = Industry G+A

rec G+A $574 / 1307 = 43.9$?

574
dep -140
int -125
$309 \div 1307 = 23.6$
True G

10% = 169 million

Could take π from 559 +170 to 728, or 30%.

If look strategic [illegible]
e.g., if half the market – 85 million, market = more + programming,
would increase today's programs $ (172) by 5%, increase
– would keep profits up & profit [illegible] 2%
increase 1% real [illegible] since 87.

would still raise indus π by 15%

? can't read but explains

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How the Council Operates

> "We've had sometimes more visibility that I really want," said Quayle of the publicity surrounding the council. He said he would prefer that most of their interventions...leave no fingerprints." *The Washington Post*, January 9, 1992.

Vice President Quayle captured the essence of his Competitiveness Council when he told Washington Post reporters Bob Woodward and David Broder of his desire for secrecy. Operating outside the open government rules that apply to federal regulatory agencies, the Council's small staff has worked to stall or block health and safety rules, advance deregulation initiatives, and pressure federal agencies to pull back from strong enforcement.

By directly meddling in ongoing regulatory actions, the Quayle Council undermines the entire system of federal regulation. Over the years, Congress has charged expert agencies such as the EPA, the FDA, and OSHA with the task of safeguarding the public's health and safety. These agencies, in turn, are governed by an elaborate legal structure designed to ensure that they are open to the public, that they hear from all sides, and that they base their decisions on complex scientific or technical matters only on substantive merits – principles embodied primarily in the Administrative Procedure Act and the Freedom of Information Act.

By contrast, the Quayle Council invites regulated corporations unhappy about the results of regulation to quietly turn to the White House for relief. Because it acts in utter secrecy, the Quayle Council has set itself up as a channel for improper industry influence in regulatory decision-making.

Hiding behind 'executive privilege.' The Quayle Council refuses to supply even basic information about its staff, budget, communications with non-governmental groups, and the background information it bases its decisions on. The Vice President's office has repeatedly denied Freedom of Information Act requests from citizens' groups, including several made by OMB Watch and Public Citizen. The Council claims that it is not a government agency because it is staffed out of the Vice President's office – and is therefore shielded by 'executive privilege.' A September 1991 federal District Court decision, however, placed this reasoning on shaky ground. Ruling in a FOIA suit filed against the

Council's predecessor, the Bush Task Force, the court found that a government entity is defined by the work it does, rather than where it is housed, even in the case of the Vice President's office. The Administration is currently appealing the decision.

No accountability to Congress. The Competitiveness Council refuses to recognize Congress' broad oversight authority over the federal agencies. In fact, the Vice President has repeatedly refused to appear before Congress or to send a representative from the Council's staff to discuss its work. Even simple requests for information have gone unanswered and the responses that members of Congress have received from the Council have been overwhelmingly inadequate.

Most recently, for example, the Council has been unable to give an accurate answer about how many people work on its staff. In response to an inquiry from Rep. David Skaggs, the Vice President's office responded that no full-time staff are devoted to the Council, and that two staffers devote approximately 70 to 80 percent of their time to supporting the Council. But in a June *New York Times* article, the director of the Council on Competitiveness, David McIntosh, is quoted as saying that the Council has a staff of seven or eight people. Providing yet another figure, on a recent radio show McIntosh referred to the Council as having *six* staff members.

And just last week the Vice President's office has revealed that McIntosh, as well as one other Council staffer, are, in fact, not employees of the Vice President at all, but "non-detailees" from the OMB, which means that the Vice President's office is not reimbursing OMB for these staffers' salaries. It also means that McIntosh, the Council's director, is *not* one of the two employees claimed by the Council. Such piecemeal information is typical of the way the Council responds to Congressional inquiries.

Obstructing Congress' oversight of agencies. The Council has thwarted Congressional requests for information from federal agencies by instructing agency officials to withhold documents. On one occasion, a House Subcommittee was forced to subpoena documents from the FDA; other committees have engaged in similar tussles.

The Secrecy Must End

Cass Sunstein, Constitutional scholar and former counsel to President Reagan, urged adherence to the following legal principles:

"**First**, the reviewing entity must allow the relevant agency head to make the ultimate decision. Congress has vested that decision—whether to issue a rule, what rule to issue—in the agency head, not the Council on Competitiveness...

Second, any reviewing entity must respect applicable legal constraints on communications between (a) private persons and the entity and (b) that entity and the agency. The most significant problem here is secret substantive contacts between interested parties and the Council—such contacts that turn out to influence the Council in its supervision of agency decisions."

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JULY 1992

U. S. SENATOR

MAX BAUCUS

DEMOCRAT - MONTANA

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NEWS RELEASE

FOR IMMEDIATE RELEASE
July 1, 1992

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Baucus Calls Bush Administration Out On Clean Air Act

40,000 Jobs, Entire New High-Tech Industry, and Public Health
Improvements Lost Because of White House Hypocrisy

WASHINGTON, DC -- At a press conference today on Capitol Hill, Senator Max Baucus (D-MT) charged that the Bush Administration is intentionally delaying the implementation of the Clean Air Act, costing America 40,000 new jobs and important improvements in public health.

Baucus, the Chairman of the Environmental Protection Subcommittee, was joined in expressing outrage with Bush's clean air failures at the event by representatives from the American Lung Association, Institute of Clean Air Companies, United Steelworkers of America, State and Territorial Air Pollution Program Administrators, the National Resources Defense Council, and the Sierra Club.

"I must admit that I am astonished by the hypocrisy and betrayal that the President continues to demonstrate on the issue," Baucus said. "In November of 1990, when I attended the signing ceremony at the White House, I did not imagine that the Act would be rewritten and dismantled by the Administration."

In addition to the Administration's failure to implement the act, Baucus also expressed his outrage with Bush's intentional misinformation campaign on the Act. At the press conference, Baucus held up a copy of a glossy pamphlet the White House distributed at Rio which made false claims about the Administration's actions on clean air.

"The White House claims credit for the hazardous organic emissions rules, known as HON, that will control over 1 billion pounds of air toxic emissions annually," said Baucus. "But in reality, the White House has not yet released even a draft of this rule."

Baucus also distributed a list of 52 different rules under the act which are late, and blasted the recent operating permits rule which allows industry to increase emissions without first notifying air regulators.

-more-

"What we need to solve this problem is a real presidential vision and leadership. It is my hope that by focusing political pressure on the President, perhaps he will finally understand the importance of what is at stake."

-30-

NOTE: Attached is a copy of Senator Baucus' statement, a list of the 52 late Clean Air Act rules, and a copy the White House Rio pamphlet and inaccuracies.

Statement of Senator Max Baucus
"The Failure of the Bush Administration
to Implement the Clean Air Act"
July 1, 1992

Today we are beginning to count the costs of the Bush Administration's refusal to implement the Clean Air Act. In November of 1990, when I attended the signing ceremony at the White House, I did not imagine that the Act would be rewritten and dismantled by the Administration.

In the Senate, we labored long and hard with representatives of the Administration to develop a compromise bill. With some modifications, that compromise, and the spirit behind it, carried through the conference and into the final product.

Just before he signed the Clean Air Act, President Bush praised its provisions, and claimed its deadlines were reasonable.

Yet today, a few months short of two years later, the White House is still stalling on dozens of regulations. When the White House finally does allow EPA to act, as it did last week with the operating permits rule, the results are weak, disappointing, and often illegal under the specific terms of the Act.

This continuing trail of delays and distortions poses a clear threat to public health. It also represents the timid and out-dated approach that the current Administration is bringing to the entire issue of jobs and the environment.

Today, you will hear from representatives of a number of different organizations about their estimates of the economic and public health consequences of the Administration's bungling of the Clean Air Act. These are real and serious failures, and the public needs to be made fully aware of the hypocrisy of the self-proclaimed "environmental president."

There's been a great deal of talk recently about how Washington is incapable of addressing serious problems, that our democracy is caught in the stranglehold of special interests. The President has been blaming Congress as the central villain in his re-election campaign rhetoric.

But the Clean Air Act scandal is sitting right in George Bush's lap. I don't know that the American public is ready for the complicated tale of what has happened to this legislation. The Clean Air Act has just mysteriously disappeared somewhere between the White House OMB, the Council on Competitiveness, and the EPA -- what I call the "Environmental Bermuda Triangle."

But I do know that Americans are ready to hear about the realities of health hazards and the loss of potential jobs because of the visionless, short-sighted policies of this Administration.

When George Bush was in Rio, he steadfastly declared that his refusal to commit the United States to strong environmental treaties was because he wanted to protect American families and jobs. This is where he's just dead wrong.

Good jobs are being lost because of the actions of the White House. Environmental goods and services are one of the fastest expanding areas of economic activity in the country. The Clean Air Act can, when implemented, create 40,000 good new jobs.

Health protection and economic expansion can go hand-in-hand. Indeed, the only way to ensure long-term economic growth is with sound environmental policies.

The international market in pollution control is $300 billion. But this is a market in which we will have no share unless we create the domestic demand to stimulate it.

The Germans, the Japanese and others all have recognized the enormous economic opportunity that environmental protection presents. They are prepared to exploit that market, while we turn our backs.

The White House may break its promises, but I and others will make it clear just where the responsibility lies.

I must admit that I am astonished by the hypocrisy and betrayal that the President continues to demonstrate on this issue.

For instance, on page 7 of the President's glossy advertisement he distributed in Rio entitled "U.S. Actions for a Better Environment," the White House claims credit for the hazardous organic emissions rules, known as the HON, that will control over 1 billion pounds of air toxic air emissions annually. But in reality, the White House has not yet released even a draft of this rule. And it seems unlikely that they will be able to do so even within the next year.

No single action that I or the organizations represented here can take will reverse this pattern of betrayal.

What we can do is tell the public that they are being hoodwinked and robbed of their health and of good jobs.

Their health is not protected because the Bush Administration recoils at the thought of asking industry to control its emissions. As a result, emissions of smog-forming and toxic chemicals continue to threaten the health of our children.

In fact, under the recently announced operating permits rules, industry will be allowed to increase emissions without first notifying air regulators. This is unheard of in environmental law. It is not what Congress intended.

All of these failures point to a larger problem: this country is falling behind the rest of the world because of our misguided approach to environmental protection. Instead of seeing new safeguards as an opportunity to both clean the environment and promote economic growth, we are stuck in the past, still clinging to an anachronistic ideology that assumes that environmental laws will somehow hurt the economy.

What we need to solve this problem is real presidential vision and leadership. It is my hope that by focusing political pressure on the President on these issues, perhaps he will finally understand the importance of what is at stake.

The Propaganda vs. The Performance
Setting the Record Straight

When President Bush attended the Earth Summit, he brought along a glossy brochure extolling his Clean Air Act achievements titled "U.S. Actions for a Better Environment". In it, the President claims that the 1990 Clean Air Act Amendments are "patterned after" his legislation. His brochure goes on to claim credit for the "significant air quality improvements" mandated by the Act. But none of these improvements have been realized because the Bush Administration has failed to issue the regulations that put the Act into force.

Bush claims that "implementation has moved forward swiftly", but the record shows that this is not the truth. Currently over 50 regulations that were required to be issued under the law have been tied up by the White House.

A copy of the clean air section from the Bush brochure is attached. It takes credit for the following regulations that have not been issued:

* *Tailpipe emissions:* The brochure claims that there will be rules on bus emissions. These were required for new buses on January 1, 1992 and for retrofits by November 15, 1991. No regulations have been issued.

* *Fuel Volatility:* Bush takes credit for actions many States took years ago. The Clean Air Act superimposes more Federal requirements that have been implemented, but the States led the charge on this one.

* *Reformulated Gasoline:* No final regulations have been issued in part because the regulatory negotiation failed. Meanwhile, the delay means that markets for reformulated gasoline will not develop on time and the air will stay dirty longer.

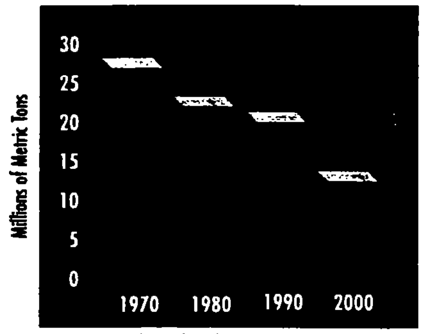
* *Acid Rain:* The President takes credit for a 10 million ton reduction in sulfur dioxide emissions but many of the acid rain regulations necessary to put this program in place are missing. Chief among these are the emissions trading regulations that Bush touts as the great innovation in the Act. In addition, Bush does not mention the 2 million tons of reduction in oxide of nitrogen (NOx) that Congress requires and his representatives agreed to.

* *Hazardous Organics Rule:* This rule is being stalled by the White House. Not even a proposed rule has been released, yet the Bush brochure takes credit for the reductions. Where is the rule?

* *Municipal Waste Incinerators:* This rule is also stalled despite a November 15, 1991 deadline.

From "U.S. Actions For a Better Environment" - Prepared and Distributed by The White House at the Rio Summit

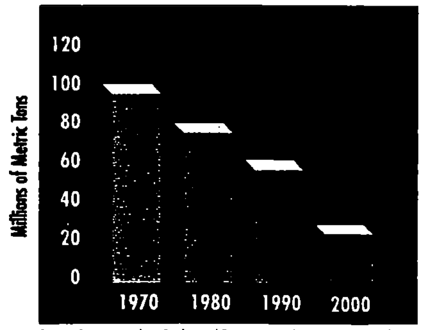
US Progress in Reducing Emissions of Sulfur Dioxide (SO2)



Source: EPA, National Air Quality and Emissions Trends Reports, 1984 and 1991

CHART 8

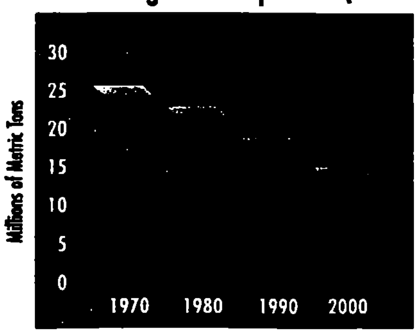
US Progress in Reducing Emissions of Carbon Monoxide (CO)



Source: EPA, National Air Quality and Emissions Trends Reports, 1984 and 1991

CHART 9

US Progress in Reducing Emissions of Volatile Organic Compounds (VOC's)



Source: EPA, National Air Quality and Emissions Trends Reports, 1984 and 1991

CHART 10

CLEANING THE AIR: U.S. PROGRESS IN IMPROVING AIR QUALITY

The United States has made tremendous strides in reducing air pollution. Primary ambient air quality standards to protect public health are set for sulfur dioxide, nitrogen dioxide, carbon monoxide, particulates, ozone, and lead. In the 1980s, average concentrations of particulates fell by about 20 percent, sulfur dioxide by over 24 percent, carbon monoxide by about 29 percent, and lead by 88 percent.

Charts 8 to 11 show the trends in emissions of these pollutants since 1970.

The Clean Air Act of 1990, legislation patterned after that developed by President Bush in early 1989, is designed to finish this monumental air clean-up task. The new Clean Air Act will remove 56 billion pounds of pollution from the air each year. Americans will live healthier and more productive lives in a nation with cleaner air.

Significant air quality improvements mandated by the Act include:

- Greatly reduced emissions of toxic air pollution and acid rain-causing pollutants;
- Attainment of air quality standards nationwide by the year 2010;
- Cleaner cars, fuels, factories, and power plants;
- Less damage to lakes, streams, parks, and forests; and
- Less damage to the stratospheric ozone layer.

Implementation has moved forward swiftly:

◆ *Tailpipe emissions.* Beginning with 1994 cars and light trucks, a two-year program will cut emissions of hydrocarbons by 31 percent, and nitrogen oxides by 60 percent from 1991 levels. Seven other rules, including controls on diesel bus emissions, will alleviate smog and toxic air pollutants even further.

◆ *Fuel volatility.* Rules limiting fuel volatility — the tendency of gasoline to evaporate and pollute the air — will prevent yearly emissions of more than 2.6 billion pounds of ozone-forming hydrocarbons (volatile organic compounds or VOCs).

CASE STUDY: LEAD PHASEOUT

✔ **1982:** Under the leadership of then Vice President Bush, lead phaseout begins, using innovative trading and banking scheme

✔ **1992:** Lead emissions down 96%, Ambient lead concentrations down 95%

◆ *Reformulated gasoline.* Rules governing a new less-polluting generation of automotive fuels will reduce VOCs by about 300 million pounds a year in the nine dirtiest cities by 1995. A 2.7 percent average oxygen content in gasoline rule in 39 cities with carbon monoxide problems will cut emissions by 20 percent in 1993.

◆ *Acid Rain.* Utilities emissions of sulfur dioxide — the major contributor to acid rain — will be cut in half — a permanent reduction of 10 million tons per year. The Acid Rain Program provides flexible market-based incentives, including an Allowance Trading System that enables utilities to buy and sell emissions credits. This will give utilities the flexiblity to take the most cost-effective measures to comply and will provide strong incentives for conserving energy and investing in energy efficiency.

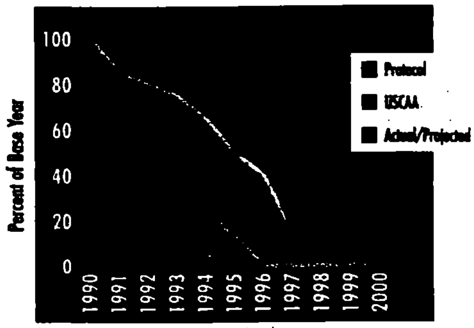
◆ *Hazardous Organics Rule.* Hazardous air pollutants will be reduced by this rule by more than 545,000 tons per year. Volatile organic compounds emissions will be reduced by 1.2 million tons per year.

◆ *Municipal Waste Incinerators.* Incinerator air emissions will be cut by 90 percent, eliminating more than 200,000 tons of pollutants a year. New limits have been set on emissions of particulates (including toxic metals such as lead and cadmium), sulfur dioxide, hydrogen chloride, nitrogen oxides, carbon monoxide, dioxins, and dibenzofurans.

"The Clean Air Act will reduce air pollution each year by 56 billion pounds – that's 224 pounds for every man, woman, and child in America."

President George Bush
November 15, 1990

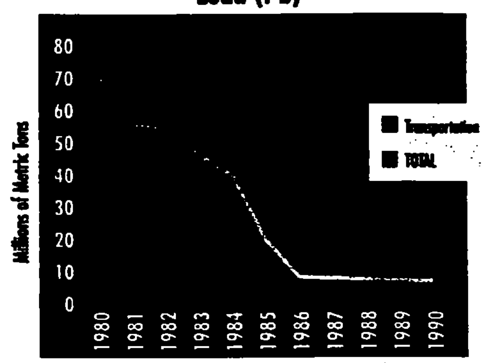
Phase-out of Major CFC's



Source: EPA, Stratospheric Ozone Protection Branch

CHART 13

US Progress in Reducing Emissions of Lead (Pb)



Source: EPA National Air Quality and Emissions Trends Reports, 1984 and 1991

CHART 11

The Clean Air Act Implementation Scoreboard
A List of the Delayed Regulations

The following is a list of the delayed regulations under the Clean Air Act which President Bush signed into law on November 15, 1990. By Executive Order, OMB review is limited to 60 day review for proposals and 30 day review for final rules.

Major Rules

1. Permits: The final rule was released on June 25, 1992. The rule was sent to OMB on October 15, 1991. Section 502(b) of the law requires a final rule be published by November 15, 1991. States are required to have in place a permit program application to EPA by November 15, 1993. The delay means States have 16 months instead of 24 months to prepare their permit programs.

2. Chemical Plant Standards: This rule could eliminate over 1 billion pounds of toxic air emissions annually, and is required under section 112(e)(1)(A) of the law to be issued in final form by November 15, 1992. No proposal has been published making final regulations by the 1992 deadline extremely unlikely.

3. Enhanced vehicle inspection and maintenance: Section 182(a)(2)(A)(ii) of the Act requires regulations be issued by November 15, 1991. EPA circulated the rule for interagency review on February 24, 1992. States are required to have their inspection and maintenance programs submitted to EPA for approval by November 15, 1993. This is one of the most cost-effective ways to reduce motor vehicle emissions.

4. List of Air Toxic Source Categories: Section 112(c)(1) of the Clean Air Act requires EPA to promulgate by November 15, 1992, a list of sources of air toxics that will be subject to the Maximum Achievable Control Technology (MACT) standard. EPA made the list available for review on January 31, 1992.

5. Air Toxics Regulation Schedule: The ***final*** schedule must be published November 15, 1992 under section 112(e)(3), but EPA has not received clearance to publish a proposed schedule. EPA must make the proposed rule available for White House and OMB review on March 9, 1992.

6. General Provisions for Air Toxics Standards: This rule, if promulgated, would set forth the basic structure of Title III air toxics program. The statutory deadline for the ***final*** rule is November 15, 1992. EPA sent the draft rule out for interagecy review on January 7, 1992.

7. CFC Phaseout: The statutory deadline for rules on CFC phaseout was September 15, 1991. EPA sent the rule to OMB and the White House on March 6, 1992.

8. Acid Rain NOx Rule: Under section 407(b) of the law, the final rule must be published by May 15, 1992. The proposal has not been issued.

9. Emissions Standards for Large Municipal Waste Combusters: This rule is required to be promulgated by November 15, 1991. Sec. 129(a)(1)(B). No proposal has been released.

10. Carbon dioxide emissions monitoring regulations: Section 821 of the Clean Air Act Amendments of 1990 require EPA to promulgate regulations requiring utility boilers regulated under the acid rain title to monitor their CO2 emissions. Carbon dioxide is a major greenhouse gas that contributes to climate change. No action has been taken.

Other Significant Rules

Title I: Nonattainment (Smog)

11. Guidance on control of nitrogen oxides due November 15, 1991. Sec. 182(c)(2)(C)

12. NOx and VOC study due November 15, 1991. Sec. 185B

13. Emissions requirements for oil & gas activities on the Outer Continental Shelf (OCS) due November 15, 1991. Sec. 328(a)(1)

14. Conformity criteria (between transportation and air quality planning) due November 15, 1991. Sec. 176(c)(4)(A)

15. Classification of particulate matter nonattainment areas due December 31, 1991. Sec. 188(b)(1)(A)

16. Schedule for issuing municipal waste combustion standards required by May 15, 1992. Sec. 129(a)(1)(E)

17. Requirements for applications of emissions limit by permit required by May 15, 1992. Sec. 112(j)(3)

18. Guidance for best available control measures for particulate matter (urgan fugitive dust, wood stoves, etc.) required by May 15, 1992. Sec. 190

Title II: Motor Vehicle Pollution Controls

19. Final reformulated gasoline regulations due November 15, 1991. Only proposed regulations have been issued. Sec. 211(k)(1)

20. Failure to require on-board vapor recovery. On March 12, 1992 the President announced EPA would terminate the on-board rulemaking which was required by November 15, 1991. Sec. 202(a)(6)

21. Emissions standards for new urban buses due January 1, 1992. Sec. 219(a)

22. Standards for urban bus retrofits due November 15, 1991. Sec. 219(d)

23. Bus test procedures due May 15, 1992. Sec. 219(e)

24. Regulations regarding on-board diagnotics due May 15, 1992. Proposed rule on September 24, 1991 but no final action has been taken. Sec. 202(m)(1)

25. "Anti-dumping" regulations required by November 15, 1991 so gasoline sold in rural areas is not made dirtier as urban gasoline is required to be cleaner. Sec. 211(k)(8)(A)

26. Revisions to motor vehicle test procedures required by November 15, 1991. Sec. 206(a)(4)(A)

27. Oxygen credit guidelines for oxygenated fuels due by August 15, 1991. Proposed guidance issued July 9, 1991 but no action has been taken since then. Sec. 211(m)(5)

28. Control of evaporative emissions regulations due by May 15, 1992 or explanation for the delay. Sec. 202(k)

22. Fleet operator credit incentives due by November 15, 1991. Sec. 246(f)(3)

23. Transportation incentives for clean-fuel vehicles due November 15, 1991. Sec. 246(h)

24. Manufacturer incentives under the California motor vehicle pilot program. Sec. 249(d)(2)

25. Test procedures for lead substitute gasoline additives due November 15, 1991. Sec. 211(j)(2)

26. Study on mobile source-related air toxics due May 15, 1992. Sec. 202(l)(1)

Title III: Controls on Air Toxics

27. Emission standards for municipal waste incinerators due November 15, 1991. Sec. 129(a)(1)(B)

28. Regulations establishing a chemical process safety standard due November 15, 1991. Sec. 304(a) of the Clean Air Act Amendments of 1990.

29. Emergency authority guidance due May 15, 1991. Sec. 112(r)(9)

30. Toxic emissions guidance for States due November 15, 1991. Sec. 112(l)(2)

Title IV: Acid Rain Controls

31. Emissions trading regulations required by May 15, 1992. Rules proposed on December 3, 1991 but no final rule has been issued. Sec. 403(b)

32. NOx alternative emissions limitations regulations due May 15, 1992. Sec. 407(d)

33. NOx averaging regulations due May 15, 1992. Sec. 407(e)

34. Regulations to track trading of allowance required by May 15, 1992. Sec. 403(d)

35. Allowances for qualified renewable and energy conservation measures due May 15, 1992. Sec. 404(f)(4)

36. Regulations establishing Phase I bonus allowance reserve due December 31, 1991. Sec. 404(a)(2)

37. Auction regulations for allowances were due November 15, 1991. Sec. 416(d)(2)

38. List of acidified lakes. Sec. 405 of the Clean Air Act Amendments of 1990.

39. Continuous emissions monitoring regulations due May 15, 1992. Sec. 412(a)

40. Missing emissions data methodology due May 15, 1992. Sec. 412(d)

41. Opt-in for non-affected units regulations, including baseline, due May 15, 1992. Sec. 410(g).

42. Excess emissions penalty regulations due May 15, 1992. Sec. 411(a)

43. Acid rain permits program regulations required by May 15, 1992. Sec. 408(c)(3)

Title V: Permits

see above

Title VI: Stratospheric Ozone Protection

44. CFC production allowance regulations due September 15, 1991. Sec. 607(a)

45. CFC recycling regulations due January 1, 1992. Sec. 608(a)

46. Regulations regarding repair of motor vehicle air conditioners due November 15, 1991. Sec. 609(a)

47. Regulations banning nonessential products that contain CFCs due November 15, 1991. Sec. 610(a)

48. Monitoring and reporting regulations due August 15, 1991. Sec. 603(a)

49. Publication of list of global warming potentials of ozone depleting chemicals due November 15, 1991. Sec. 602(e)

50. CFC labeling requirements due May 15, 1992. Sec. 611(a)

51. CFC Federal procurement regulations due May 15, 1992. Sec. 613

ICAC

INSTITUTE OF
CLEAN
AIR
COMPANIES

NEWS

Contact:
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202-457-0911

Release Date:
July 1, 1992

CLEAN AIR ACT REGULATORY DELAY COSTS U.S. JOBS, EDGE IN INTERNATIONAL MARKETS

Washington, D.C. The debate over the pace of implementation of the 1990 Clean Air Act centers on whether the environmental benefits of clean air rules outweigh the costs to corporate profits and jobs. Right?

Not so, according to the Institute of Clean Air Companies (ICAC), the national non-profit association of companies involved in air pollution control.

Jeffrey C. Smith, ICAC's Executive Director, says "Clean Air Act regulatory delay not only slows attainment of the Act's public health and environmental goals, but costs Americans jobs and handicaps U.S. industry's ability to compete successfully in the world environmental control market -- a market that will likely exceed $300 billion a year by the end of the 1990s."

"Dollars spent in the U.S. to comply with air pollution control rules are not lost, but are merely transferred from polluting industries to a growing, dynamic U.S. pollution control industry."

"Given the inevitability of a 21st Century with a greater premium on less-wasteful, cleaner industrial production, it makes sense to get a fast jump out-of-the-blocks in order to maximize an important U.S. industry's ability to compete globally and thereby boost the U.S. economy. Worldwide environmental protection and clean-up is a challenge. But let's make it an opportunity too. The U.S. air pollution control industry is ready to clean-up our air, create jobs, and contribute to economic growth," Smith added.

I. U.S. JOBS

Air pollution control rules create jobs. Delaying those rules costs jobs.

Government officials have recently estimated that revenue increases to the U.S. air pollution control industry occasioned by the 1990 Clean Air Act Amendments will create 15,000 - 25,000 full-time equivalent positions on average annually during 1992-1995, and an average of 20,000 - 40,000 full-time equivalent positions annually during 1996-2000.[1] These positions include construction workers, engineers, and equipment manufacturing workers.

[MORE]

This estimate of job creation is consistent with others. For example, ICAC has predicted that the acid rain portion of the Act alone could create the equivalent of 4,500 - 15,000 lifetime jobs.[2]

Last year nearly *two million* Americans earned a living cleaning up air pollution and other environmental problems. The U.S.'s environmental companies achieved an estimated $130 billion in sales that year.[3] And the U.S. air pollution control industry has been described by both private and public economists as one of the Nation's most dynamic, diverse, and viable industries.[4]

Unfortunately, there are already many examples where delay of federal rules under the 1990 Clean Air Act has diminished this potential for economic growth. Orders for air pollution control equipment have been held up since no one company wants, for example, to redesign a chemical process or install a toxic emissions control system, until it is sure that its competitors will be required to do the same thing. This regulatory delay also removes incentives for development of new, innovative air pollution control solutions.

But what about the *cost* to the U.S. economy of complying with clean air rules?

The fact is that every dollar spent on air pollution control is transferred to another sector of the U.S. economy.

In addition, many business leaders now see pollution as a symptom of inefficient processes. To the extent air pollution control rules stimulate new technological and management devices to avoid wasteful practices, the regulated industry becomes more efficient and more competitive.

The 1990 Clean Air Act also for the first time allows pollution reductions to have a market value, which can be traded, and which can thereby increase a firm's revenues. And policy proposals appear almost weekly from state air quality regulators who seek to expand trading of emission reductions and other market-based compliance options.

As a result, pollution reductions can now in some cases be seen as a company asset, just like any other asset. But, again, to function properly, these markets must have a clear sense of what federal clean air rules are.

Moreover, regulatory delay creates uncertainty in the regulated industry, and often confounds long-term planning. The plea from regulated industry to federal clean air rule-makers is often "simply and clearly tell us how to comply with the Act, but don't keep us in limbo by inaction!"

[MORE]

Delay in issuing federal clean air rules thus forfeits jobs that would otherwise be created, thwarts the ability of industry to comply quickly and use market-based compliance options, often rewards inefficient companies to their longer-term detriment, and -- as discussed below in Part II -- handicaps U.S. industry in competing successfully in a large and growing global pollution control market.

II. U.S INDUSTRY'S INTERNATIONAL COMPETITIVENESS

The global environmental market has been estimated by U.S. government officials as surpassing $300 billion a year, and offering "unparalleled" opportunities for the U.S. pollution control industry.[5]

Sales figures from the past 20 years in the U.S. show that the growth of the U.S. air pollution industry is heavily dependent on federal air pollution control regulation. Similarly, U.S. government and foreign studies show that those countries with the tightest air rules produce the most internationally-competitive air pollution control industry.[6] In areas where U.S. policy has led the world, U.S. environmental companies have competed well globally. But in areas where other countries first imposed strict pollution control rules, those countries' industries have dominated worldwide.

This point was recently well-stated by the U.S. Office of Technology Assessment:

> "[T]he timing and nature of environmental regulations have greatly influenced the comparative strengths of different nations' environmental industries. U.S. firms have been especially prominent in hazardous waste management technologies, reflecting significant Federal requirements in this area. Japanese strength in stationary air pollution control technologies reflects, in part, legislative requirements adopted there in the late 1970s and early 1980s."[7]

Delaying U.S. clean air rules makes the U.S. pollution control industry less competitive in the global market. This, in turn, wastes an "unparalleled" opportunity for one of our country's most dynamic industries to grow, create even more jobs, and contribute positively to our balance of international trade.

Although federal clean air rules have experienced some delay, others in the federal government are anxious to see the U.S. pollution control industry take advantage of the worldwide growth oppourtunity.

[MORE]

Driven in part by a concern that the U.S. environmental industry compete successfully in this burgeoning global market, a number of Congressional Committees have asked the Office of Technology Assessment to study and report by the Spring, 1993, on how U.S. environmental and trade policy can best promote the potential of American firms to take advantage of this market, and compete successfully against Japanese and European firms.[8]

This concern is well-placed since other countries, such as Japan, are actively assisting their environmental industries to capture a share of the pollution control global market.[9]

As the federal government has itself recognized, a policy of promoting the important and growing U.S. air pollution control industry wordwide must begin with clean air rules at home that match those of our international trade competitors. Such a market is necessary to develop, commercialize, and improve pollution control technologies and processes.

[MORE]

REFERENCES

1. Remarks of Administrator W. Reilly and Assistant Administrator W. Rosenberg, U.S. EPA, at "Clean Air Marketplace Conference", April 22, 1992, Tysons Corner, Virginia.

2. ICAC, "Acid Rain Controls Would Create Thousands of Jobs, Analyses Find," March 16, 1990, pp. 1-2.

3. Wall Street Journal (Silverstein, M.), "Bush's Polluter Protectionism Isn't Pro-Business," May 28, 1992, p. A21.

4. Wall Street Journal, supra n. 3.

5. Office of Technology Assessment (OTA), "OTA Proposal on: American Industry and the Environment: Implications for Trade and U.S. Competitiveness," (undated: Spring 1992?), p. 11.

6. OTA, supra n. 5, at p. 10.

7. Id.

8. Letter, Senators Baucus and Bentsen to J. H. Gibbons, Director, Office of Technology Assessment, October 1, 1991; Letter, Representatives Fascell and Broomfield (for the Committee on Foreign Affairs) to J. H. Gibbons, Director, Office of Technology Assessment, July 1, 1991; Letter, Representative Dingell (for the Comittee on Energy and Commerce) to J. H. Gibbons, Director, Office of Technology Assessment, July 15, 1991.

9. OTA, supra, n. 5, at pp. 4, 10.

# # #

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AMERICAN LUNG ASSOCIATION®
The Christmas Seal People®

Statement of
Alfred Munzer, M.D. President-Elect
American Lung Association

July 1, 1992

I am Alfred Munzer, a physician specializing in diseases of the lung and President-Elect of the nation's oldest voluntary health agency, the American Lung Association.

The American Lung Association is here today because for three Americans out of five, breathing is dangerous. They live in areas where the air is so contaminated by pollutants that it causes coughing, wheezing and shortness of breath. For my patients, patients with lung disease, and for children whose lung defense mechanisms are not yet fully developed, and for the elderly whose lungs may no longer be capable of withstanding a constant assault of poisonous air, summer is not a time to enjoy the outdoors, but to live as shut-ins. To venture outdoors may mean an aggravation of their asthma, chronic bronchitis, or emphysema, and a trip to a hospital emergency room. It does not have be this way.

Over 18 months ago the Clean Air Act was amended and the American Lung Association thought we had in place the framework to clean the air and protect the over 150,000,000 (150 million) Americans who breathe polluted air. The American Lung

Association knew that the clean up would take time, but a ludicrous thing happened along the way. The Bush Administration, has systematically unraveled the intent of the legislation. The Environmental Protection Agency was charged with writing the regulations needed to implement the law, and approached the task with zeal. However, unsolicited and unwarranted assistance and interference from the Council on Competitiveness, the Office of Management and Budget, the Department of Energy, the Department of Transportation, the Department of Justice, and other agencies has crippled EPA's efforts. These intrusions have prevented regulations that would clean the air from being implemented. The meddling was undertaken supposedly to protect the economy. Unfortunately, somewhere along the way, the real purpose of the law -- to protect public health -- was lost.

The American Lung Association estimates that the cost of air pollution is approximately 50 billion dollars in health costs and lost productivity. But, for each of 32,000,000 (32 million) children living in highly polluted areas, the cost is inestimable.

The American Lung Association has sued the EPA for failure to review or revise the NAAQS for ozone. Although the suit is procedural -- merely seeking action by the agency, it was initiated because ALA does not believe the standard is adequate to protect public health. Attached to my comments are tables which demonstrate the extent of the public health problem if we look at a level of ozone where scientific studies have demonstrated that harmful health effects occur.

The laundry list of regulatory disappointment is long, so I will highlight only a few examples. The most blatant may be the disregard for the law by failing to require onboard canisters on vehicles to trap polluting evaporative emissions. Other examples include the failure to issue guidance on Enhanced Inspection and Maintenance. This rule was required by November 15, 1991 and is critical to help states prepare the State Implementation Plans that are required on November 15, 1992. Motor vehicles remain the single largest source of pollution and must be cleaned up. To make sure they stay clean, a strong inspection and maintenance program is essential. We also hear that the administration is considering proposals that would allow only minimalist improvements on existing programs and do not truly reflect the size of the task ahead.

Most who understand air pollution control recognize that it is a zero-sum game. If pollution is not reduced from one source, additional reductions must be obtained from another. The Bush Administration has done the opposite, requiring less reductions from motor vehicles and less from stationary sources. This is not the way to the way to achieve the promise of clean air made by the President when he signed the 1990 Act.

The permit rule, for example, is supposed to regulate stationary source emissions but it gives the regulated industries the authority to significantly increase their emissions with no advance oversight. The regulation imposes a restricted schedule for review, severely limits the ability of states to curtail this pollution, and completely eliminates the opportunity for public comment and participation.

On another front, several regulations which are essential to the implementing the programs necessary to protect public health against the dangers of toxic air pollutants remain languishing at OMB. Included are regulations controlling organic chemical plant emissions, which are a major source of these pollutants.

Finally, the new environmental paradigm of trading pollution between sources, if improperly designed and implemented, may undo the entire intent of the law. If clean air is going to be achieved, real emission reductions must occur. Paper transactions and trades without a true benefit to air quality are not a viable substitute.

The Clean Air Act was enacted to protect public health. It cannot be held hostage by shortsighted economists and political idealogues. The Bush Administration must look at the health impact of polluted air on our citizens and protect them from it. Unfortunately, this currently is not occurring. The delayed and limited implementation of the Clean Air Act to date is not achieving clean air and must not be allowed to continue. The American Lung Association is pleased to join with Senator Baucus today and demand that the administration implement a clean air law true to its name.

TABLE 1

METROPOLITAN STATISTICAL AREAS (MSAS) WITH
>1 "EXCEEDANCE" OF AN 8-HOUR DAILY
MAX (DM) >0.08 PPM AVERAGED OVER 3 YEARS
(1987-1989)*

STATE (1)	METROPOLITAN STATISTICAL AREA	1990 POPULATION	AVE # DAYS (2) >0.08 PPM 8 HR DM
ALABAMA	BIRMINGHAM	907810	11
ALABAMA	• HUNTSVILLE	238912	14
ALABAMA	• MOBILE	476923	2
ALABAMA	MONTGOMERY	292517	20
STATE TOTAL		1916162	
ARKANSAS	• LITTLE ROCK-NORTH LITTLE ROCK	513117	9
ARIZONA	• PHOENIX	2122101	4
CALIFORNIA	ANAHEIM-SANTA ANA	2410556	52
CALIFORNIA	BAKERSFIELD	543477	73
CALIFORNIA	• CHICO	182120	5
CALIFORNIA	FRESNO	667490	97
CALIFORNIA	LOS ANGELES-LONG BEACH	8863164	128
CALIFORNIA	MODESTO	370522	25
CALIFORNIA	OAKLAND	2082914	4
CALIFORNIA	• OXNARD-VENTURA	669016	22
CALIFORNIA	RIVERSIDE-SAN BERNADINO	2588793	153
CALIFORNIA	SACRAMENTO	1481102	24
CALIFORNIA	SANTA BARBARA-SANTA MARIA-LOMPOC	369608	4
CALIFORNIA	SAN DIEGO	2498016	15
CALIFORNIA	SAN JOSE	1497577	7
CALIFORNIA	STOCKTON	480628	9
CALIFORNIA	• VALLEJO-FAIRFIELD-NAPA	451186	2
CALIFORNIA	VISALIA-TULARE-PORTERVILLE	311921	86
STATE TOTAL		25468090	
COLORADO	• BOULDER-LONGMONT	225339	6
COLORADO	• DENVER	1622980	8
STATE TOTAL		1848319	
CONNECTICUT	BRIDGEPORT-MILFORD	443722	30
CONNECTICUT	DANBURY	187867	23
CONNECTICUT	HARTFORD	767841	15
CONNECTICUT	MIDDLETON	90320	24
CONNECTICUT	NEW HAVEN-MERIDEN	530180	23
CONNECTICUT	STAMFORD	202557	23
STATE TOTAL		2222487	
DISTRICT OF COLUMBIA	WASHINGTON	3923574	37
DELAWARE	WILMINGTON	578587	21

NOTE: MSAS IDENTIFIED WITH A • EXCEED A 8-HOUR 0.08 PPM OZONE LEVEL ONLY; ALL OTHER AREAS EXCEED BOTH THE 1-HOUR 0.12 PPM NATIONAL AMBIENT AIR QUALITY STANDARD AND THE 8-HOUR 0.08 PPM LEVEL.

STATE (1)	METROPOLITAN STATISTICAL AREA	1990 POPULATION	AVE # DAYS (2) >0.08 PPM 8 HR DM
FLORIDA	FORT LAUDERDALE-HOLLYWOOD-POMPANO BEACH	1255488	2
FLORIDA	• JACKSONVILLE	906727	8
FLORIDA	MIAMI-HIALEAH	1937094	3
FLORIDA	• ORLANDO	1072748	3
FLORIDA	• PENSACOLA	344406	14
FLORIDA	TAMPA-ST. PETERSBURG-CLEARWATER	2067959	3
STATE TOTAL		7584422	
GEORGIA	ATLANTA	2833511	27
GEORGIA	• COLUMBUS	243072	6
STATE TOTAL		3076583	
IOWA	• DAVENPORT-ROCK ISLAND-MOLINE	350861	7
IOWA	• IOWA CITY	96119	4
STATE TOTAL		446980	
ILLINOIS	• AURORA	356884	8
ILLINOIS	• CHAMPAIGN-URBANA-RANTOUL	173025	7
ILLINOIS	CHICAGO	6069974	19
ILLINOIS	• DECATUR	117206	7
ILLINOIS	• JOLIET	389650	13
ILLINOIS	LAKE COUNTY	516418	15
ILLINOIS	• PEORIA	339172	10
ILLINOIS	• ROCKFORD	283719	11
ILLINOIS	• SPRINGFIELD	189550	12
STATE TOTAL		8435598	
INDIANA	EVANSVILLE	278990	25
INDIANA	• FORT WAYNE	363811	16
INDIANA	GARY-HAMMOND	604526	20
INDIANA	INDIANAPOLIS	1249822	21
INDIANA	SOUTH BEND-MISHAWAKA	247052	16
INDIANA	• TERRE HAUTE	130812	6
STATE TOTAL		2875013	
KANSAS	KANSAS CITY	1566280	10
KANSAS	• WICHITA	485270	5
STATE TOTAL		2051550	
KENTUCKY	LEXINGTON-FAYETTE	348428	20
KENTUCKY	LOUISVILLE	952662	16
KENTUCKY	OWENSBORO	87189	21
STATE TOTAL		1388279	
LOUISIANA	BATON ROUGE	528264	16
LOUISIANA	• LAFAYETTE	208740	10
LOUISIANA	LAKE CHARLES	168134	9
LOUISIANA	• MONROE	142191	9
LOUISIANA	• NEW ORLEANS	1238816	13
LOUISIANA	• SHREVEPORT	334341	16
STATE TOTAL		2620486	

NOTE: MSAS IDENTIFIED WITH A • EXCEED A 8-HOUR 0.08 PPM OZONE LEVEL ONLY; ALL OTHER AREAS EXCEED BOTH THE 1-HOUR 0.12 PPM NATIONAL AMBIENT AIR QUALITY STANDARD AND THE 8-HOUR 0.08 PPM LEVEL.

STATE (1)	METROPOLITAN STATISTICAL AREA	1990 POPULATION	AVE # DAYS (2) >0.08 PPM 8 HR DM
MASSACHUSETTS	BOSTON	2870669	12
MASSACHUSETTS	BROCKTON	189478	11
MASSACHUSETTS	LAWRENCE-HAVERHILL	393516	8
MASSACHUSETTS	NEW BEDFORD	175641	13
MASSACHUSETTS	SPRINGFIELD	529519	11
MASSACHUSETTS	WORCESTER	436905	9
STATE TOTAL		4595728	
MARYLAND	BALTIMORE	2382172	24
MARYLAND	• CUMBERLAND	101643	2
STATE TOTAL		2483815	
MAINE	PORTLAND	215281	7
MAINE	LEWISTOWN-AUBURN	88141	15
STATE TOTAL		303422	
MICHIGAN	ANN ARBOR	282137	13
MICHIGAN	DETROIT	4382299	18
MICHIGAN	• FLINT	430459	12
MICHIGAN	GRAND RAPIDS	688399	28
MICHIGAN	• LANSING-EAST LANSING	432674	7
MICHIGAN	MUSKEGON	158983	25
STATE TOTAL		6375751	
MINNESOTA	• MINNEAPOLIS-ST. PAUL	2464124	5
MISSOURI	• SPRINGFIELD	240593	2
MISSOURI	ST. LOUIS	2444099	28
STATE TOTAL		2684692	
MISSISSIPPI	• JACKSON	395396	2
MISSISSIPPI	• PASCAGOULA	115243	16
STATE TOTAL		510639	
NEBRASKA	• OMAHA	618262	4
NORTH CAROLINA	• ASHEVILLE	174821	2
NORTH CAROLINA	CHARLOTTE-GASTONIA-ROCK HILL	1162093	32
NORTH CAROLINA	FAYETTEVILLE	274566	17
NORTH CAROLINA	GREENSBORO-WINSTON SALEM-HIGH POINT	942091	25
NORTH CAROLINA	RALEIGH-DURHAM	735480	23
STATE TOTAL		3289051	
NEW HAMPSHIRE	MANCHESTER	147809	5
NEW HAMPSHIRE	• NASHUA	180557	8
NEW HAMPSHIRE	PORTSMOUTH-DOVER-ROCHESTER	223578	8
STATE TOTAL		551944	
NEW JERSEY	ATLANTIC CITY	319416	26
NEW JERSEY	BERGEN-PASSAIC	1278440	26

NOTE: MSAS IDENTIFIED WITH A • EXCEED A 8-HOUR 0.08 PPM OZONE LEVEL ONLY; ALL OTHER AREAS EXCEED BOTH THE 1-HOUR 0.12 PPM NATIONAL AMBIENT AIR QUALITY STANDARD AND THE 8-HOUR 0.08 PPM LEVEL.

STATE (1)	METROPOLITAN STATISTICAL AREA	1990 POPULATION	AVE # DAYS (2) >0.08 PPM 8 HR DM
NEW JERSEY	JERSEY	553099	28
NEW JERSEY	MIDDLESEX-SOMERSET-HUNTERDON	1019835	25
NEW JERSEY	NEWARK	1824321	30
NEW JERSEY	TRENTON	325824	34
NEW JERSEY	• VINELAND-MILLVILLE-BRIDGETON	130853	34
STATE TOTAL		5458988	
NEW MEXICO	• LAS CRUCES	135510	2
NEW YORK	ALBANY-SCHENECTADY-TROY	874304	6
NEW YORK	BUFFALO	968532	18
NEW YORK	• ELMIRA	95195	10
NEW YORK	NASSAU-SUFFOLK	2609212	20
NEW YORK	NIAGARA FALLS	220756	20
NEW YORK	NEW YORK CITY	8546846	20
NEW YORK	POUGHKEEPSIE	259462	5
NEW YORK	• ROCHESTER	1002410	15
NEW YORK	• UTICA-ROME	316633	11
STATE TOTAL		14893350	
NEVADA	• LAS VEGAS	741459	2
NEVADA	• RENO (3)	254667	4
STATE TOTAL		996126	
OHIO	AKRON	657575	31
OHIO	CANTON	394106	21
OHIO	CINCINNATI	1452645	28
OHIO	CLEVELAND	1831122	11
OHIO	COLUMBUS	1377419	15
OHIO	DAYTON-SPRINGFIELD	951270	22
OHIO	• HAMILTON-MIDDLETOWN	291479	25
OHIO	• LIMA	154340	10
OHIO	LORAIN-ELYRIA	271126	12
OHIO	STEUBENVILLE-WEIRTON	142523	13
OHIO	TOLEDO	614128	19
OHIO	YOUNGSTOWN-WARREN	492619	14
STATE TOTAL		8630352	
OKLAHOMA	• OKLAHOMA CITY	958839	11
OKLAHOMA	• TULSA	708954	11
STATE TOTAL		1667793	
OREGON	• SALEM (3)	278024	2
PENNSYLVANIA	ALLENTOWN-BETHLEHEM-EASTON	686688	19
PENNSYLVANIA	ALTOONA	130542	17
PENNSYLVANIA	BEAVER COUNTY	186093	20
PENNSYLVANIA	ERIE	275572	10
PENNSYLVANIA	HARRISBURG-LEBANON-CARLISLE	587986	20
PENNSYLVANIA	JOHNSTOWN	241247	16
PENNSYLVANIA	LANCASTER	422822	22
PENNSYLVANIA	PHILADELPHIA	4856881	33
PENNSYLVANIA	PITTSBURGH	2056705	33

NOTE: MSAS IDENTIFIED WITH A • EXCEED A 8-HOUR 0.08 PPM OZONE LEVEL <u>ONLY</u>; ALL OTHER AREAS EXCEED BOTH THE 1-HOUR 0.12 PPM NATIONAL AMBIENT AIR QUALITY STANDARD <u>AND</u> THE 8-HOUR 0.08 PPM LEVEL.

STATE (1)	METROPOLITAN STATISTICAL AREA	1990 POPULATION	AVE # DAYS (2) >0.08 PPM 8 HR DM
PENNSYLVANIA	READING	336523	33
PENNSYLVANIA	SCRANTON-WILKES-BARRE	734175	16
PENNSYLVANIA	SHARON	121003	23
PENNSYLVANIA	YORK	417848	21
STATE TOTAL		11054085	
RHODE ISLAND	PROVIDENCE	654854	17
SOUTH CAROLINA	• CHARLESTON	506875	7
SOUTH CAROLINA	• COLUMBIA	453331	8
SOUTH CAROLINA	GREENVILLE-SPARTANBURG	640861	16
STATE TOTAL		1601067	
TENNESSEE	• CHATTANOOGA	433210	19
TENNESSEE	KNOXVILLE	604816	13
TENNESSEE	MEMPHIS	981747	12
TENNESSEE	NASHVILLE	985026	29
TENNESSEE	• TRI-CITIES	436047	4
STATE TOTAL		3440846	
TEXAS	• AUSTIN	781572	7
TEXAS	BEAUMONT-PORT ARTHUR	361226	12
TEXAS	• CORPUS CHRISTI	349894	2
TEXAS	DALLAS	2553362	19
TEXAS	EL PASO	591610	5
TEXAS	FORT WORTH-ARLINGTON	1332053	13
TEXAS	GALVESTON-TEXAS CITY	217399	9
TEXAS	HOUSTON	3301937	23
TEXAS	• LONGVIEW-MARSHALL	162431	6
TEXAS	• SAN ANTONIO	1302099	6
STATE TOTAL		10953583	
UTAH	PROVO-OREM	263590	3
UTAH	• SALT LAKE CITY-OGDEN	1072227	10
STATE TOTAL		1335817	
VIRGINIA	NORFOLK-VIRGINIA BEACH-NEWPORT NEWS	1396107	15
VIRGINIA	RICHMOND-PETERSBURG	865640	29
VIRGINIA	• ROANOKE	224477	14
STATE TOTAL		2486224	
VERMONT	• BURLINGTON	131439	2
WISCONSIN	• APPLETON-OSHKOSH-NEENAH	315121	7
WISCONSIN	• GREEN BAY	194594	5
WISCONSIN	• JANESVILLE-BELOIT	139510	14
WISCONSIN	• KENOSHA	128121	22
WISCONSIN	• MADISON	367085	9
WISCONSIN	MILWAUKEE	1432149	19
WISCONSIN	RACINE	175034	26
WISCONSIN	SHEBOYGAN	103877	23
STATE TOTAL		2855491	

NOTE: MSAS IDENTIFIED WITH A • EXCEED A 8-HOUR 0.08 PPM OZONE LEVEL ONLY; ALL OTHER AREAS EXCEED BOTH THE 1-HOUR 0.12 PPM NATIONAL AMBIENT AIR QUALITY STANDARD AND THE 8-HOUR 0.08 PPM LEVEL.

STATE (1)	METROPOLITAN STATISTICAL AREA	1990 POPULATION	AVE # DAYS (2) >0.08 PPM 8 HR DM
WEST VIRGINIA	CHARLESTON	250454	19
WEST VIRGINIA	HUNTINGTON-ASHLAND	312529	20
WEST VIRGINIA	PARKERSBURG-MARIETTA	149169	18
WEST VIRGINIA	• WHEELING	159301	15
STATE TOTAL		871453	

		% U.S. POPULATION
UNITED STATES (TOTAL)	158169301	63.7
8-HR EXCEEDANCE AREAS ONLY	31648283	12.8

*SOURCE: US DEPARTMENT OF COMMERCE, ECONOMICS AND STATISTICS ADMINISTRATION, BUREAU OF THE CENSUS: POPULATION OF METROPOLITAN AREAS, 1990 AND 1980.

NOTES

(1) POPULATIONS FOR MULTISTATE MSAS HAVE BEEN ATTRIBUTED TO THE STATE WHICH INCLUDES THE AREA THAT APPEARS FIRST IN THE MSA TITLE. THIS MAY LEAD TO AN OVER ESTIMATION OF EXPOSED POPULATIONS IN SOME STATES. THE OVERALL TOTAL IS NOT AFFECTED.

(2) "EXCEEDANCES" ARE ROUNDED DOWN TO A WHOLE NUMBER; 2-YEAR AVERAGES WERE CALCULATED IF ONE YEAR OF DATA WAS MISSING. THE EXCEEDANCES ESTIMATE IS FROM THE SITE IN EACH MSA THAT HAS THE LONGEST MONITORING RECORD LENGTH, WHICH MAY NOT NECESSARILY BE THE SITE WITH THE HIGHEST NUMBER OF 8-HOUR EXCEEDANCES IN THE MSA. THUS, THE LISTED AVERAGE EXCEEDANCES ARE LOWER BOUND ESTIMATES.

(3) 1987-89 DATA NOT AVAILABLE. EARLIER DATA WAS USED.

STAPPA / ALAPCO

STATE AND TERRITORIAL
AIR POLLUTION PROGRAM
ADMINISTRATORS

ASSOCIATION OF
LOCAL AIR POLLUTION
CONTROL OFFICIALS

S. WILLIAM BECKER
EXECUTIVE DIRECTOR

STATEMENT OF S. WILLIAM BECKER

ON BEHALF OF THE

STATE AND TERRITORIAL AIR POLLUTION PROGRAM ADMINISTRATORS

AND THE

ASSOCIATION OF LOCAL AIR POLLUTION CONTROL OFFICIALS

ON THE

COSTS OF NOT COMPLYING WITH THE CLEAN AIR ACT

JULY 1, 1992

444 North Capitol St. N.W. Washington, D.C. 20001 Tel. (202) 624-7864 Fax (202) 624-7863

STATEMENT OF S. WILLIAM BECKER
ON BEHALF OF THE
STATE AND TERRITORIAL AIR POLLUTION PROGRAM ADMINISTRATORS
AND THE
ASSOCIATION OF LOCAL AIR POLLUTION CONTROL OFFICIALS
ON THE
COSTS OF NOT COMPLYING WITH THE CLEAN AIR ACT

JULY 1, 1992

Good morning. I am Bill Becker, Executive Director of STAPPA and ALAPCO, the two national associations representing air pollution control agencies in the 55 states and territories and over 165 major metropolitan areas across the country. We are responsible for implementing the Clean Air Act at the state and local levels and ensuring healthy air quality for our citizens.

I am here today with Senator Baucus to express our very serious concerns with the inability of the Administration to promulgate the rules and regulations required by the Clean Air Act in a timely manner.

As you know, the Clean Air Act Amendments of 1990 include a carefully crafted air quality control strategy based upon a series of deadlines designed to ensure attainment of the federal health-based air quality standards as well as substantially reduce emissions of acid rain and air toxics. When the amendments were enacted in November 1990, we commended the Administration for supporting legislation that promised the regulatory "tools" we would need to accomplish our goal of providing clean air. A year and a half later, however, we are extremely disappointed to report that our efforts to improve air quality are continually frustrated by the Administration's failure to abide by statutory requirements to publish crucial regulations.

Let me cite just three examples.

First, 75 areas are required by law to have enhanced vehicle emissions inspection programs in place by this November; yet, the federal rule detailing the elements of these programs has not even been proposed and still languishes at the Office of Management and Budget. Second, for over a decade, EPA has been developing regulations to control toxic emissions from chemical plants. The final rules, which will address 149 of the 189 toxic pollutants regulated under the Clean Air Act, also have not been proposed. In fact, the draft has remained at OMB since Christmas Eve. Finally, the operating permit rules, which have many substantive flaws, were issued over seven months past the statutory deadline, primarily due to last-minute changes urged by the White House and the Council on Competitiveness.

This regulatory inaction on the part of the Administration has resounding impacts. Each missed deadline for federal promulgation of a regulation means a missed deadline for state and local implementation of that regulation. And, while the federal government will not be penalized for missing deadlines, state and local governments enjoy no such immunity. We are exposed to citizen suits and are subject to stiff sanctions, including the withholding of potentially billions of dollars in federal highway funds and the imposition of what amounts to a ban on the construction or major modification of industrial facilities. These impending actions, coupled with the uncertainty that surrounds delayed regulations, pose serious planning obstacles for industry.

However, the economic impacts, while significant, are only part of the story. Of primary concern to the members of STAPPA and ALAPCO are the deleterious effects that missed deadlines have on public health and welfare. On November 15, 1990, a promise was made to the citizens of this nation that long-overdue action would be taken to improve our environment. Today, we implore the Administration to make good on its promise and to expedite action to implement the Clean Air Act according to the schedule so carefully laid out by Senator Baucus and his colleagues. We remain adamantly committed to our responsibilities under the Clean Air Act and urge the Administration to share our commitment by making clean air a top priority.

Thank you.

Natural Resources Defense Council

News Release

STATEMENT OF
DEBORAH A. SHEIMAN
RESOURCE SPECIALIST
NATURAL RESOURCES DEFENSE COUNCIL
JULY 1, 1992

I'D LIKE TO TALK ABOUT THE PROMISE AND THE REALITY OF A VERY IMPORTANT PART OF THE CLEAN AIR ACT AMENDMENTS -- THE AIR TOXICS PROVISIONS.

THE 1990 CLEAN AIR ACT AMENDMENTS ESTABLISHED A COMPREHENSIVE PROGRAM TO ADDRESS AIR TOXICS RELEASES -- WHETHER ROUTINE OR ACCIDENTAL, WHETHER EMITTED FROM LARGE SOURCES SUCH AS CHEMICAL PLANTS OR REFINERIES, OR FROM SMALLER AREA SOURCES THAT ARE FOUND IN CITIES.

RELEASES OF TOXIC CHEMICALS TO THE AIR CONTINUE TO POSE A GRAVE THREAT TO PUBLIC HEALTH AND THE ENVIRONMENT.

AS FAR AS THE AIR TOXICS PROVISIONS ARE CONCERNED WE HAVE A CASE OF VIRTUAL <u>NON</u>-IMPLEMENTATION. LET ME BRIEFLY DESCRIBE WHAT THE LAW REQUIRED AND WHAT ACTION HAS BEEN TAKEN TO DATE.

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202 783-7800

THERE IS A THREE-PART PROGRAM TO PREVENT SERIOUS ACCIDENTAL RELEASES. THE PRESIDENT WAS TO APPOINT A CHEMICAL SAFETY AND HAZARDS INVESTIGATION BOARD TO INVESTIGATE ACCIDENTS AND RECOMMEND REMEDIAL PREVENTATIVE MEASURES. COMPANIES WERE TO CONDUCT PERIODIC "SAFETY AUDITS" AND TO PREPARE "RISK MANAGEMENT PLANS," FOR THE MOST ACUTELY TOXIC CHEMICALS. AND EPA WAS TO ISSUE PREVENTION-ORIENTED STANDARDS.

WITH THE EXCEPTION OF THE PROCESS SAFETY MANAGEMENT RULE ISSUED BY OSHA, NOTHING HAS HAPPENED. THERE IS NO CHEMICAL ACCIDENTS BOARD. EPA'S PROPOSED LIST OF EXTREMELY HAZARDOUS SUBSTANCES IS AWAITING APPROVAL BY OMB. THERE IS NO EFFORT TO INTEGRATE ACCIDENT PREVENTION MEASURES INTO THE INDUSTRY-SPECIFIC RULES EPA IS DEVELOPING FOR SO-CALLED "ROUTINE" RELEASES.

WITH THE 1990 AMENDMENTS, CONGRESS SOUGHT TO AVOID THE CONUNDRUM THAT HAD PARALYZED AIR TOXICS REGULATION FOR TWO DECADES. EPA EFFORTS WERE STALLED AS THEY TRIED TO DECIDE WHAT WAS AND WAS NOT A HAZARDOUS AIR POLLUTANT, AND GOT TANGLED UP IN QUANTITATIVE RISK ASSESSMENT EXERCISES. TO AVOID THIS DILEMMA, THE NEW CLEAN AIR ACT IDENTIFIED 189 TOXIC CHEMICALS AS "HAZARDOUS AIR POLLUTANTS" AND DIRECTED EPA TO DEVELOP TECHNOLOGY-BASED STANDARDS FOR THE INDUSTRIES THAT EMIT THEM. THESE STANDARDS WERE TO REFLECT STATE-

OF-THE-ART POLLUTION CONTROLS, AND HAVE COME TO BE KNOW AS "MACT" STANDARDS -- SHORTHAND FOR MAXIMUM ACHIEVABLE CONTROL TECHNOLOGY. STANDARDS FOR 40 INDUSTRIES WERE TO BE ISSUED BY NOVEMBER 15, 1992, WITH THE REMAINDER OF THE STANDARDS SCHEDULED OVER THE NEXT EIGHT YEARS.

IT NOW APPEARS AS IF WE HAVE TRADED IN ONE CONUNDRUM FOR ANOTHER, AS WE NOW CANNOT EVEN GET OMB TO RELEASE THE LIST OF INDUSTRIAL SOURCE CATEGORIES THAT WILL FORM THE BASIS FOR THE STANDARDS DEVELOPMENT SCHEDULE.

AS FOR THE FIRST GROUP OF STANDARDS DUE OUT THIS YEAR, THE ADMINISTRATION HAS ISSUED ONLY <u>ONE</u> PROPOSAL, FOR THE DRY CLEANING INDUSTRY, AND ONLY BECAUSE THEY WERE UNDER A COURT ORDER TO DO SO. THAT PROPOSAL IS SO WEAK THAT IT WOULD REDUCE TOXIC PERCHLOROETHYLENE EMISSIONS BY ONLY 13 PERCENT, ACCORDING TO EPA'S OWN ESTIMATES. IT EXEMPTS MOST SECTORS OF THE INDUSTRY, AND FOR THOSE IT WOULD REGULATE, THE RULE DOES NOT APPROACH STATE-OF-THE-ART CONTROLS BY ANY STRETCH OF THE IMAGINATION. WORSE, PERCHLOROETHYLENE, THE DRY CLEANING SOLVENT, HAS ACTUALLY BEEN MENTIONED AS A TARGET FOR THE ADMINISTRATION'S DEREGULATORY INITIATIVES.

NEGOTIATIONS ARE ONGOING FOR ANOTHER STANDARD FOR COKE OVENS.

THE CHEMICAL PLANT RULE, WHICH WAS TO REGULATE EMISSIONS FROM A BROAD CROSS-SECTION OF THE CHEMICALS INDUSTRY, IS STUCK OVER AT OMB, WHERE IT IS BEING WHITTLED AWAY. THIS RULE HAS BEEN UNDER DEVELOPMENT FOR EIGHT TO TEN YEARS. IT SHOULD REDUCE AIR TOXICS EMISSIONS FROM HUNDREDS OF CHEMICAL PLANTS BY A BILLION POUNDS PER YEAR. YET THIS ADMINISTRATION CANNOT ACT TO CONTROL EMISSIONS FROM CHEMICAL PLANTS, THE LARGEST AND MOST OBVIOUS SOURCE OF EMISSIONS.

TWO OTHER RULES, FOR ELECTROPLATERS AND ETHYLENE OXIDE STERILIZERS, THAT WERE TO BE ISSUED THIS YEAR, HAVE BEEN PUSHED BACK ON THE SCHEDULE.

FINALLY, THE PROGRAM TO IDENTIFY AND CONTROL THE CHIEF CONTRIBUTORS TO THE "URBAN SOUP" OF TOXIC AIR POLLUTION WAS NOT FUNDED, MAKING DELAY OF THIS VITAL PROGRAM VERY LIKELY.

PEOPLE DON'T HAVE A CHOICE IN THE AIR THEY BREATHE. IMPLEMENTATION EFFORTS TO DATE ARE A GRAVE DISAPPOINTMENT TO THOSE THAT THOUGHT THE LAW MEANT WHAT IT SAID -- THAT THE GOVERNMENT WOULD PROTECT THEM FROM HAZARDOUS POLLUTANTS IN THE AIR. WE WILL USE EVERY MEANS AT OUR DISPOSAL TO TO RAISE PUBLIC AWARENESS ABOUT THE EXTENT OF NON-IMPLEMENTATION. WE WILL USE THE CITIZEN SUIT PROVISIONS TO ENFORCE THE LAW AS BEST WE CAN. WE WILL WORK WITH STATE AND LOCAL

CITIZEN GROUPS TO PRESS FOR STRONG FEDERAL STANDARDS, AND WHERE THAT FAILS, ADVOCATE ACTION AT THE STATE AND LOCAL LEVEL TO FILL THE GAPS.

MEMORANDUM

DATE: July 21, 1992

[redacted]

RE: Jobs and Environment Bullets

Renewable Energy

▸In Vermont, electricity from wood-fired plants would generate approx. 21.9 job-years per $million. Wood fuel is indigenous and highly labor intensive translating to about 80% of the expenditures remaining in-state. An additional 75 to 120 MW could be generated using this resource (Employment Impacts of Vermont State Energy Options, Goodman Group, November91).

▸In Vermont, gas-fired cogeneration would produce 2.7 job-years per $million. It is the most inexpensive method but also produces the fewest jobs. While this resource could potentially be used to displace all of the Hydro-Quebec Purchase(HQP) needs, this is not recommended (Employment Impacts of Vermont State Energy Options, Goodman Group, November91).

▸950 jobs in Iowa are associate with ethanol production, (Iowa at the Crossroads: 1990 Iowa Comprehensive Energy Plan, Iowa Dept. of Nat. Res, p 1-10).

▸Total employment and earnings forecasts, of short term or already contracted projects, (1987-1990) of Qualifying Facilities likely to be available (such as cogeneration, wind, solar, small hydro) for PG&E, SCE and SDG&E:
236,078 person-years and $5.427 billion(in 1982 $).
(California Energy Commission Input Output Model; November,88.)

▸Example of effects on employment for PG&E's wind development program, through 1990(in 1982 $), comparing numbers when the machines are 100% produced in the US or 100% produced abroad. Domestic machines would create a net gain of 24,175 jobs and $584 million in earnings as compared to foreign produced machines creating only 6,124 jobs and $131 million in earnings.

▸Since 1975 CA alternative energy industry has generated 30,000 new jobs, 1987 produced $69 billion in revenues. (California Energy Commission, Center For Economic Conversion; Jobs, A Sustainable Economy, And Economic Conversion)

▸With the "Vigorous adoption of energy efficiency measures and accelerated use of renewable energy sources," the U.S. will save $5 trillion in energy costs over the next 40 years. With a projected investment of $2.7 trillion, the report predicts a net accrual of $2.3 trillion to the U.S. economy. In the process CO_2 emissions will be reduced 70% and fossil fuel use by one-third. (CSM; 6/30/92, p.19 as stated in Union of Concerned Scientists report,"America's Energy Choices: Investing in a Strong Economy and a Clean Environment.")

Green Technology

▸Foriegn R&D Institutions Supporting Green Technology:
Japan: RITE - $1 billion budget, sponsered and funded by MITI along with local and private funding. Focused on greenhouse warming technologies. NEDO - $1.8 billion budget developed by MITI, one of four major categories of R&D support. Focused on new energy and industrial technology.
Germany: BMFT - ministry for research & technology, $470 million (5% of R&D budget) budget allocated to four programs focused on environmental tech. STATES - 23% of national R&D total focused on environmental tech.
Netherlands: TNO - research and transfer organization with 10% of budget for environmental applications to industry.
Canada: Technology for Environmental Solutions $100 million budget to focus on demonstration, tech transfer and information networking. (Repetto, Heaton, Sobin; Backs To The Future, June92, WRI, p.23)

▸1991 National R&D allocation was to five major fields, generally neglecting environmental concerns. Defense(60%), health(13%), space(11%), science(4%) and energy(4%) - 92% of the national total. (Backs To The Future, June92, WRI, p.25)

▸It is difficult to translate R & D developments into marketed products. In the chem. industry, for every one dollar spent on R & D, it takes one hundred dollars to bring a new development to market. In addition, even if companies discover new technologies, the choice to market the new technology or product is significantly consumer driven. Nonetheless, technology forcing in Japan and Europe is much stronger than the "best available technology" standard often used in U.S. statutes. (Nat. Journal 4 July 1992)

▸U.S. purchases 70% of its air pollution control or clean-up equipment from other countries. (Worldwatch, Center For Economic Conversion; Jobs, A Sustainable Economy, And Economic Conversion.)

▸Petroleos Mexicanos(Pemex) agreed to purchase advanced technology, for producing cleaner burning unleaded gasoline, from the French Petroleum Institute(FPI). This is a result of a $US385 million development loan from Export-Import Bank of Japan to reduce air pollution in Mexico. Pemex's "Ecological Package" will include constructing 17 new plants. (BATE; Feb92, vol3, #3.)

Defense Conversion

▸Spending $1 billion(1989 $) on guided missile production yields about 12,100 jobs; spending the same amount on air, water and solid waste pollution control equipment yields about 22,000 jobs.

Spending that amount on local transit equipment would create 28,900 jobs. (Worldwatch, Center For Economic Conversion; Jobs, A Sustainable Economy, And Economic Conversion.)

▸If $70 billion more, were spent per year, on civilian investment(based on avg. of 23% saved converting from defense, annually over four years) there would be a net annual gain of 477,000 jobs in environmental protection, infrastructure repair, civilian R&D, education, housing and health . (Employment Research Associates; converting the American economy, p.27, Center For Economic Conversion; Jobs, A Sustainable Economy, And Economic Conversion.)

▸32,000 jobs are created for every $billion spent on public transit, (Washington Post, Outlook Section, "Turning Arms into a Green Dividend," Rifken, Jeremy, April 15, 1990 as cited in Intercity Passenger Transportation, newsletter by Campaign for New Transportation Priorities, p. 11).

Energy Efficiency

▸U.S. industrial energy intensity dropped more than one-third from 1972 and 1975, 60% from energy efficient technology and 40% from structural shifts (America's Energy Choices, p. 59).

▸Predicted investment in energy efficiency and resulting savings (includes an avoided cost of atmospheric pollutants like CO, NOx, etc): $1.2 trillion investment would save a net of $1.9 trillion, $2.1 trillion would save a net of $2.1 trillion, $2.7 trillion investment would save $2.3 trillion, (America's Energy Choices, p. 49).

▸In Iowa, the money multiplier for general energy efficiency is estimated at 3.4 while the multiplier for gasoline consumption expenditures is estimated at 1.3, (Iowa at the Crossroads: 1990 Iowa Comprehensive Energy Plan, Iowa Dept. of Nat. Res., p. 1-10).

▸The New York State Energy Office assessed the employment impacts of several energy options and found that the most effective employment creator was energy efficient lighting at 31.5 job-years/$million (New York State Energy Office, New York Energy Plan Issue 3b: Economic Development, draft report May 18 1989, as cited in The Goodman Group, "Employment impacts of NY State Energy Options," p. B-9).

▸There is not market failure in the energy market, businesses have ample incentive to minimize energy consumption if it makes sense to them (Jerry Taylor at Cato,personal conversation, 14 July 1992)

▸In comparing our energy efficiency to Japan's and Germany's energy efficiency, there are three reasons that the US is less energy efficient. First, the US is larger and requires more energy for transportation, that Japan and German do not require. Second, the US was blessed with ample energy resources and thus attracted energy intensive industry like the chemical and aluminum industry; we have a competitive advantage in the area of energy intensive industries partially because of our cheap and abundant nat. res. Third, the US has a higher standard of living; he cited some fact that Japan had a third as much central heating and cooling as the US. He said that once the IEA controlled for these variables that the analogy of US to Japan or Germany was not to pro-efficiency (Jerry Taylor at Cato, 14 July 1992)

▸Opportunity cost of energy efficiency investments--businesses make the move that will give them the highest rate of return (Taylor at Cato, 14 July 1992)

▸$1 spent on energy efficiency produces four times as many jobs as a new power plant, reducing energy bills allows increases investments. (Council on Economic Priorities, Center For Economic Conversion; Jobs, A Sustainable Economy, And Economic Conversion)

▸Joint Economic Comm. study: investing $115 billion annually in solar and energy conservation activities would increase employment by 3 million jobs. (Rodberg, Worldwatch #104, Center For Economic Conversion; Jobs, A Sustainable Economy, And Economic Conversion.)

▸Each dollar spent on efficiency and renewables creates 2-7 times as many jobs as one spent on traditional fossil fuels or nuclear power, these projects also generate 30 to 80 jobs per million dollars of direct investment. (Lent, Tom. Energy for Employment, Greenpeace,92, Center For Economic Conversion; Jobs, A Sustainable Economy, And Economic Conversion.)

Demand Side Management

▸In 1990, there were 1,300 DSM programs saving 1.3% of the U.S.'s electricity. Utilities spend over two billion per year on DSM and have 13 million customers participate, (Getting Down to Business, U.S. Energy Association, 1992, p. 5).

▸Spending the $1,472,200,000 collected from Exxon for price overcharges after oil price deregulation on low-income weatherization would result in 35,951 direct job-years, 46,463 indirect job-years, (A State by State Analysis of the Employment Impacts of Low-Income Weatherization Programs, Leonard Rodberg, published by the Energy Conservation Coalition, August 1983).

▸The Low-Income Weatherization Program would have created 52 direct and secondary jobs in in weatherization agencies and supporting industries per $million spent, (Robert Gary and Wayne Stevenson, Estimated Employment Effects of the DOE's Weatherization Assistance Program, testimony presented to the Subcom. on Energy Conservation and Power, U.S. HoR, 15 March 1983 as cited in Roderg, August 1983, p. 16).

▸A list of benefits given by Rodberg: (1) Weatherization work under the Low-Income Weatherization Program (LIWP) can begin almost immediately after funds are made available, (2) Weatherization generates jobs efficiently, (3) Weatherization can spur the growth of local businesses manufacturing and installing conservation measures, (4) Weatherization takes place where unemployed workers live, (5) Weatherization offers employment not only to unskilled unemployed, but also to experienced workers who are structurally unemployed, (Rodberg, August 1983, p. 16, 17).

▸Based on a study done by the Center for the Biology of Natural Systems at Queens College in New York, 1.4 to 1.8 million job-years could be created if all low-income housing units were weatherized, ("Saving the Earth, Creating Jobs," in Worldwatch, Jan/Feb 1992, p. 13).

▸DSM programs in the U.S are a $2 billion annual market and Eastern Europe is a potential $20 billion annual market for energy efficiency technology in industry alone ("Energy for the Developing World," in Scientific American, Sept. 1990, p. 111 as cited in Power to Spare II, June 1992, p. 18).

▸Based on Skip Laitner's analysis of NY State energy options, Power to Spare II predicts that about 30,000 jobs would be created in the next decade by DSM programs (Power to Spare II, June 1992, p. 13).

▸In the Pacific Northwest conservation programs would, on net, create two jobs for each million KWH conserved annually while power plant construction reduces regional employment by 31 jobs (Prepared testimony of Skip Laitner before the Wisc. Publ. Serv. Comm., (Advance Plan 6, Docket 05-EP-6), On behalf of : Wisc. Cit. Util. Board, Dec. 30, 1991, p. 22).

▸A 1000-megawatt efficiency scenario will save Louisiana's ratepayers more than 1.1 billion in avoided energy costs over the next 29 years, reduce electric rates between one and two percent, and increase employment by 650 jobs (Economic Res. Assoc., "Energy Investments for a Stronger Louisiana Economy," Eugene, OR, Prepared for Citizens Fund, May, 1991).

▸Investments in energy efficiency would create an estimated two to five times more jobs in Maine than the building of a new coal-fired power plant (The Goodman Group, "A Comparison of the Employment Creation Effects of the Harriman Cover Coal-Fired Generating Station and Maine Demand Side Management," Boston, MA, prepared for Cons. Law Found. and NRDC of Main, Jan. 1992).

▸In New York State, an input/output analysis determined levels of employment creation to be 31.5 job-years/$million for energy efficient lighting, 28.5 job-years/$million for new hydroelectric, and 23.2 job-years/$million for energy efficient refrigerators, (Dean White and Geoffrey Crandall, "Demand Side Management and Economic Development: A Practical Discussion," 1989 energy Program Evaluation Conference, Chicago, IL as cited in The Goodman Group, "Employment impacts of NY State Energy Options," p. B-9).

▸In Alaska, state spending on weatherization creates more jobs per dollar than any other type of capital project, three times as many jobs as highway construction, "Steve Colt, U. of Alaska, Anchorage, "Income and Employment Impacts of Alaska's Low Income Weatherization Program," ISER Working Paper 89.2, for Second Annual Rural Energy conference, Anchorage, AK., October 1989, as cited in Lester Brown et. al., State of the World, 1992).

▸A total of 254, 000 low income housing units in NY state have been weatherized, creating 23,000-30,000 new job-years. Weatherization of all NY state low income households could create 1.4-1.8 million new job-years (Holger M. Eisl et. al., "Investing in the Future: An Economic Analysis of the New York SWtqte Weatherization Program," Center for Biological and Natural Systems, Final Report, Prepared for New York State Department of State, Div. of Economic Opportunity, April 5, 1991, as cited in State of the World 1992, p. 144).

▸In New England, currently planned energy efficiency investments for the 1990s will cut electricity bills by about 6.7 billion (Power to Spare II, June 1992, p. 1).

▸Of the utilities that responded to a American Public Power Assoc. survey (851 responded out of 2,039), 48% have DSM programs in place and 96% of the utilities that responded currently have capacity surpluses or balance, (Demand Side Management in Public Power, by the American Public Power Association, January, 1992, pp. 1, 2).

▸Utilities with DSM include 57% of total retail electricity sales in public power (both publicly owned and privately owned utilities), (Demand Side Management in Public Power, by the American Public Power Association, January, 1992, pp. 1, 2).

▸Hydro-Quebec Purchase vs. DSM, in-state wood fired plants and gas fired co-generation. The HQP would involve no additional in-state employment or growth and an out of state money flow. The in-state alternative has many potential benefits for jobs and growth (Employment Impacts of Vermont State Energy Options, Goodman Group, November91).

▸In Vermont, DSM would create approx. 8.3 job-years per $million. (Many of the jobs related to equipment manufacturing would actually be gained out of state b/c vermont is not highly industrialized.) It is estimated that an additional 75 to 120 MW of conservation could be achieved (Employment Impacts of Vermont State Energy Options, Goodman Group, November91).

▸Success story in DSM: Low Income Weatherization by TVA, (Statement of Richard Freeman, Director of TVA before Subcom. on Energy Conservation and Power of HoR Com. on Energy and Commerce, 15 March 1983).

- ▸The program: free energy audit, interest-free financing for the first $1200 of conservation measures, financing for $3800 at TVA's interest rate, post-installation audit.

▸The scope: audited 700,000 units and installed weatherization to about half of these (plus 20,000 electric heat pumps, 5,000 wood heaters, 3,500 solar water heaters).

▸The money: loaned $325 million to households. Loaned 1.5 million loaned to commercial entities.

▸The money savings result: gained the amount of energy equal to that of a large new nuclear power plant that would cost between 2.5 and 3.5 billion.

▸The employment/job creation result: program involved 1600 private contractors who employed 10,000 people. 340 solar and wood heater installation firms involved and about 700 heat pump dealers involved.

▸Training: provided $600,000 worth of training on weatherization techniques to ensure high quality installation.

▸DSM does not take into account the substitution effect that as energy gets cheaper, people will use more of it. He cited an instance in which handing out effic. refrigerators was defeated because people still use their old refrigerators in addition to the new ones (Taylor at Cato, 14 July 1992)

▸We have to accept the fact that people have short time horizons with large discount rates, so when energy gets cheaper, more is demanded (Taylor at Cato, 14 July 1992)

<u>**Environmental Service Industry and Regulation**</u>

▸About 75% of environmental industry in OECD nations is equipement related. Primarily end of pipe pollution abatement products for land, air and water. The other 25% is the environmental service industry consultants and auditors, technical engineers, installation and management services.("The OECD Environment Industry: Situation, Prodpects And Government Policies", OECD Paris92, P. 5)

▸Small firms employing less than 50 people account for approx. 50% of the output of the individual sectors of this industry. "Most small and medium sized environment enterprises are specialized, owner-managed and offer a limited range of eqiupment and services. In total, there are estimated to be some 30,000 such firms in North America, 20,000 in Europe and 9,000 in Japan."(OECD, P.8)

▸There are approx. 12,000 consulting and engineering firms in the U.S. environment industry, including analytical services firms. In 1990 the three largest U.S. water treatment companies: NALCO, Calgon Carbon and Metcalf & Eddy had an estimated $1.910 billion in revenues. The five largest waste management firms: Waste Management, Browning-Ferris, RWE, Allwaste and Chambers Development, had an estimated $7.630 billion in revenues. The four largest air pollution control firms: General Electric, Engelhard, Wheelabrator and Dresser Industries, had an estimated $2.830 billion in revenues. The five largest service firms: Dames & Moore, Brown & Root, Roy Weston, Huntingdon International and Geraghty & Miller, had an estimated $1.130 billion in revenues. (OECD. PP. 9-12)

▸The service industry is forecasted to have the largest growth by the year 2000. At the moment it's approx. $48 billion of the industries $200 billion total global market. It's expected to grow at a rate of 7.4% to $80 billion of $300 billion total. The entire industry is only expected to grow by 5.5%.(OECD, P. 13)

▸The environment industry is projected to grow from $78 billion of the total global market of $200 billion to $113 billion of the $300 billion market. A rate of 5%. The U.S. currently has about 40% of the world market. Germany accounts for about 30% of Europes market.(OECD p.15-16)

▸Approx 1.7 million employees in OECD environmental equipment and services industry. about 800,000 in the U.S., 250,000 in Germany and 200,000 in Japan.(OECD, P. 21)

▸The U.S. exports about 10% of its products and has a $4 billion trade balance but there is a large import penetration in the air pollution control industry by Asian firms.(26% of consumption). Germany exports approx. 40% of its production and has a $10 billion trade balance. Their import penetration is less than 5%.(OECD, P. 22)

▸The environmental market stands at $200 billion currently. An interesting comparision: the aerospace industry has a market of $180 billion, the chemical industry has a market of $500 billion. This kind of comparison makes the environmental market difficult to ignore, ("The Environment Industry and Renewable Energy," Solar Industry Journal, Second Quarter, 1991, p. 41).

▸Sales of environmental services and equipment have slowed to $119 billion in 1991, a 2% growth over 1990. But from 1989 to 1990, growth ws 10%, and it was 15% the year before, (Environmental Business Journal as reported in the Christian Science Monitor as cited in Clean Air Network Online Today, Monday 20 July 1992).

▸Environmental spending on pollution control was $57.5 billion in 1990 and is expected to grow to $83.1 billion in 1995 and $171 billion in 2000, the huge increases in the future caused by the opening of environmental markets in Eastern Europe, (The Washington Post as cited in The Energy Newsbrief, vol. 7, no. 6, July 2, 1992, p. 1).

▸Over the next two decades, the U.S. could sell about $94 billion worth of power generation equipment to the developing world, ("Opportunities in the Worldwide Overseas Power Geneartion Market," prepared for US AID, Office of Energy by RCG/Hagler Baily Inc. as cited in Fueling Development, p. 279).

▸The Japanese produced and exported about 150,000 million yen of air pollution abatement equipment in 1990, (Japan Society of Industry Machinery Manufacturers as cited in Keiichi Yokobori's presentation to All. to Save Energy conference on 24 Jne 1992).

▸The worldwide market for energy efficient equipment and service is estimated at $252 billion over the next twenty years, with LDCs and Eastern Europe demanding about half of this total, (RCG/Hagler, Baily Inc., Spur the Exports of Energy Technology for the US DoE and AID, Feb. 1991 as cited in Getting Down to Business, U.S. Energy Associationg, 1992, p. 15).

▸Two million Americans earn a living doing some kind of environmental cleanup work. 750,000 directly employed by environmental cleanup companies, the rest are employed by government agencies as regulators, by non-profits, by polluting industries, and by businesses involved in infrastructure-building, (Karen's memo to Carole on Michael Silverstein, 17 June 1992).

▸One article divides the environmental industry into seven categories, each of which have a percentage of all the revenues generated in the whole environmental services market: environmental engineering and consulting (14%), remediation (4%), haz. waste management (7%), wastewater treatment systems (14%), air pollution control systems (4%), laboratory analytical services (1%), and solid waste management (56%). Also noted the need for environmental legal consulting, (Joan Berkowitz, "Outlook for the Industry," in The Environmental Forum, Jan./Feb. 1992, p. 20).

▸Total employment by the top 70 publicly traded environmental companies is 119,000, (John Fried, "Environmental Firms No Longer Are Cleaning Up," The Philadelphia Enquirer, 5 March 1992).

▸Another article give actual numbers of revenues and employment stats: Job statistics from Environmental Business Journal as cited in Phil. Inq. article ("Environmental Firms No Longer Cleaning Up," 5 March 1992). Stats on employment in thousands in first two numbers, stats on revenue in billions (1991 actual, 1995 projected)

	Emp'91	Emp'95	Rev'91	Rev'95
Solid-waste management	185,000	249,000	28 bil.	42 bil.
Resource recovery/recycling	95	178	17	32
Water-treatment equipment	88	128	14	22
Haz waste management	93	168	13	25
Engineering/consulting	120	238	12	25
Private water utilities	55	70	11	14
Pollution/waste-management equipment	62	92	10	16
Air-pollution control	31	62	5	10

▸Growth of market segments: waste management predicted to be highest growth, especially the areas of toxic waste handling, treatment chemicals, biological degradation methods and inceneration equipment; wter and effluents treatment predicted to show slowest growth out of all environmental market segments, about 4%, with groundwater cleanup systems like air injection, aerobic methods, and computer monitoring doing better than average; air quality control predicted to grow by 4.4% per year over the next few years, including particulate emissions collectors and gaseaous emissions control devices (fabric filtration, elctrostatic precipitators, and dry absorbers); equipment and techniques for land remediation is predicted to show strong growth; environmental services expected to grow by 7.5% over next few years and in long run as companies turn away from techno-fixes and more toward pollution prevention in their processes, ("The Environment Industry and Renewable Energy," Solar Industry Journal, Second Quarter, 1991, pp. 41, 42).

▸As a result of the provisions of the Clean Air Act corporate revenues by the year 2000 will increase $60 billion ($4-7 billion each year for next three years and $7-9 billion each year for the five years after that.) Also 45,000 - 60,000 new jobs will be created. (EPA/Smith Barney Harris Upham & Co./ICF Resources Inc. Report as quoted in BNA's Daily Environmental Reporter No.11 AA-1, 1/16/92)

▸A consulting firm projects that the market for response and control for Clean Air Act will increase to $10.2 billion in 1995, up from $5.2 billion in 1990 (note similarity to projections in chart above for Air-pollution control), (Chemicalweek, 15 Jan. 1992, p. 30).

▸Half of today's environmental expenditures are spent on the environmental products and services of the environmental protection industry. The other half of environmental expenditures pay employees in the government and employees working on environmental issues within businesses, (Joan Berkowitz, "Outlook for the Industry," The Environmental Forum, Jan./Feb. 1992, p. 20).

▸Industry spent 19,400 million on toxic and VOC control, testing, and reform under Clean Air Act (Chemicalweek, 5 Feb 1992, p. 32).

▸Environmental expenditures as percentage of capital expenditures for major chemical companies: DuPont, 9.1%; Bayer, 27.1%; BASF, 22.3%; Hoechst, 24.8%; Dow, 8.7%; Monsanto, 11.3%; Union Carbide, 9.3%; Rohm & Haas, 13.1% (Chemicalweek, 15 Jan. 1992, p. 31).

▸"Laws and regulations that force polluters to spend money on cleaning-up the environment do not diminish the wealth of a nation. They transfer this wealth from polluters to polluter-cleaner-uppers and lay a foundation for greater future wealth."(Silverstein; WSJ May 28,1992)

▸1991 65,000 to 70,000 U.S. environmental companies earned $130 billion in sales. 70 largest publicly traded env. corp. earned $30 billion an %18 jump since last year. World market for pollution control products and environmental services reached $370 billion last year. Taiwan plans to spend $20 billion by the end of the decade. "What these policies(the Bush administrations) really do is temporarily insulate inefficient producers from the need to innovate and invest in new equipment, while penalizing an industry that is arguably the most dynamic element of the whole U.S. economy."(Silverstein)

▸Silverstein says that EPAs projected 100 billion dollars on cleanup will never be spent, that instead, encapsulating sites is cheaper than restoration, Phil. Inq. article 3/5/92. Nonetheless, the EPA predicts that by 2000, expenditures to meet environmental standards will hit $260 billion (3% of GNP).

▸Currently planned New England energy efficiency programs will save $1.6 billion in Clean Air Act compliance costs (Power to Spare II, June 1992, p. 2).

▸Primary metals, paper, oil refining, and chemicals use 20% of energy consumed in the U.S. but employ only 3% of the jobs (and they are responsible for 88% of the toxics released by industry), ("Saving the Earth, Creating Jobs," in Worldwatch, Jan/Feb 1992, p. 12).

▸Although coal mining production increased between 1982 and 1990, 100,000 jobs were lost in this industry, ("Saving the Earth, Creating Jobs," in Worldwatch, Jan/Feb 1992, p. 12).

GENERAL:

** The world market for pollution control products and environmental services reached $370 billion in 1991.(US Commerce Dept.)

** There are 65,000 to 70,000 environmental companies in the US. These businesses garnered $130 billion in sales in 1991.(Ibid)

** In 1991, 2 million Americans earned a living cleaning up air pollution and other environmental problems. (Technology News, Summer 1992)

CLEAN AIR

** The 1990 Clean Air Act Amendments will create 20,000-40,000 full time jobs. (Tech News, 1992)

** Every 1 billion dollars spent on air pollution control generates about 15,000 jobs (Asst' EPA Adminstrator, 1991)

** Specific business opportunites from the Clean Air Act amendments of 1990 include:
- production and supply of clean/oxygenated fuels; development and design of clean/alternative fueled vehicles; parts suppliers for motor vehicle emission control devices; manufacture, production and construction of air pollution control equipment; supply and transport modifications for low sulfur coal, natural gas, and lime; CFC substitute development and production; and development of non-CFC containing product substitutes.

WASTE/TOXICS

** 3M Company's "Pollution Prevention Pays" program has saved $482 million since 1975, while eliminating more than 500,000 tons of waste and pollutants and has saved another $650 million by conserving energy.

ENERGY

** Renewable energy creates more jobs than conventional energy industries becaue their capital requiremtns are much more modest and their labor needs greater. Generating 1,000 gigawatt hours of electricity per year requires 100 workers in a nuclear power plant and 116 in a coal fired plant. Generating the same amount in a solar thermal facility takes 248 workers, while 542 employees are needed on a wind farm (WorldWatch Institute)

** Investing in conservation would create 12,600 more jobs in Louisiana compared to conventional powerplant expansion (Economic Research Associates)

PRESS RETURN TO CONTINUE OR ENTER A REQUEST.

243 AP 09-25-92 16:53 EDT 39 Lines.
AM-TX--RTNDA-Turner, Ga Bjt,310<
[redacted]<
By KELLEY SHANNON=
Associated Press Writer=

SAN ANTONIO (AP) Cable television magnate Ted Turner told broadcast executives Friday television news should step up its reporting on the environment and new environmental technologies.

''There's nobody to get the news out like television,'' said Turner, chairman of the board and president of Turner Broadcasting System Inc., which includes Cable News Network.

Turner spoke to the Radio-Television News Directors Association, which is holding its annual convention in San Antonio through Saturday.

In the years to come, CNN will focus on environmental problems and the world's multiplying population, Turner said, and he asked that local newscasters to do the same.

''Let's face it newspapers are going downhill. They have been for a long time. Young people get most of their news from television,'' Turner said.

''People are watching y'all. Y'all have got the good local news to sandwich around this environmental stuff,'' he said.

PRESS RETURN TO CONTINUE OR ENTER A REQUEST.

Turner read from a report produced by environmentalists for Democratic presidential nominee Bill Clinton and running mate Al Gore that said improving the environment will produce jobs.

Turner noted the report states every $1 billion invested in clean water creates up to 50,000 jobs, while ignoring the environment can cost jobs in tourism, fishing and other industries.

Countries that are successful economically, like Germany and Japan, have tougher environmental standards than the United States and are investing in environmental technologies, Turner said.

''We want to have a country that stays competitive, and we want to be into new things. We don't want the technology to go overseas,'' he said.

Those who argue that more attention to the environment could cost jobs are wrong, Turner said.

''Mostly those opponents are in industries or areas of business that have been raping the environment for years,'' Turner said.

** 30,000 jobs in New Enland alone will be created over the next decade through aggressive energy efficiency programs. The jobs will be in such diverse areas as equipment manufacturing, construction, installation, monitoring, research and development, adminstration and support goods and services.(Conservation Law Foundation, 1992)

RECYCLING

** For every million tons of waste generated, approximately 2,000 jobs are created in recycling/sorting. (Sierra Club)

** ALCOA estmates that at least 30,000 people in the US are involved in the recycling of aluminum alone - which is twice the employment in the primary aluminum production industry.

** 3,000 people are now employed in the recyling business in LA alone (LA Times)

** Recylcing pumped an estimated $700 million into the economy of Massachusetts in 1991 and supported 10,000 jobs.(Boston Globe, 7/92)

** In Yellowstone National park, 79% of new jobs andf 65 % of personal income increases int ehpast two decades stemmed form service industries, reliant onthe preservation of natural lands (Wilderness osciety)

** The US loses about four to five jobs for every 1 million board feet of unprocessed logs exported. A ban on shipping raw logs abroad would generate some 15,00 domestic jobs

**

Economics

Times Mirror Essay
By Al Gore
8-18-92

Voo-doo economics is still alive. The current myth -- environmental protection is incompatible with economic growth. The truth: sound environmental policies are a precondition of economic growth, not a brake on it. In forcing this false choice, George Bush and Dan Quayle are threatening our economic future, our environment, and the quality of life our children will enjoy.

Protecting the environment means investing in the future and in a growing economy that will produce new jobs and increase productivity. By protecting our natural resources we preserve the foundation for economic progress. Natural systems support the production of goods and services in every sector of the economy. And, environmental efficiency helps businesses become more competitive. After all, pollution really is waste -- what's left over from the production of goods. Reducing pollution -- economic waste -- increases profits and makes our industries more competitive. A recent report from the chemical industry, for example, shows that investments in pollution prevention pay off -- firms dramatically cut costs by reducing waste, saving energy and streamlining their operations.

Our competitors have gotten the message and they're taking action. The global market for environmental technologies is currently at about $270 billion a year and is growing at 7% a year. Openly proclaiming this to be the biggest opportunity in the history of world business, Germany and Japan are poised to seize the opportunity. Are we?

We do indeed have a choice to make -- but it is not the false choice presented by George Bush and Dan Quayle between jobs and the environment. The real question is whether we will cling desperately to the tired polluting ways of the past or move forward aggressively to strengthen our economy, create jobs, increase productivity, and ensure a healthy environment for our children. Bill Clinton and I think the choice is clear.

MEMORANDUM

TO: **Katie McGinty**
FROM: **Richard Mott**
DATE: **31 August 1992**
RE:

Attached is the "Green Jobs" proposal I sent off to Dan Sakura and Brett Hulce (whose name I may have misspelled) a couple of weeks ago. It's main thrust is to make critical environmental technology a new "mission area" for research and development—on a par with space, defense, and medicine.

Reading the Clinton plan I was struck by how, in talking about the jobs v. environment question, it focuses mainly on how lax protection hurts jobs, and on the fact that market forces exist. There is no effort to actively link environment and jobs in a unified, concrete program or proposal. By making environmental tech a new mission, this proposal seeks to do just that—to bring environment into the "compete and win again" arena.

Attached also is the promised Russ Hoyt piece that nails the US negotiating tack. "Very well researched", according to US officials.

Will be in touch on the NIH piece, probably through TJ.

—Richard

GREEN JOBS COMMISSION

Summary
Despite the core role that advances in technology will play in solving the emerging environmental crisis, the United States currently lacks a coherent policy for promoting development of new environmental technologies at home or for positioning itself competitively in expanding markets for such technologies abroad.

The following proposal seeks to fill a crucial gap in US policy by linking global environmental imperatives with US economic self-interest. It calls for a comprehensive federal initiative to ensure US leadership in environmental technology, by:

- Establishing "critical environmental technology" as a new federal mission area for research and development support—on a par with space, defense, and medicine;

- Appointing a Green Jobs Commission drawn from government, industry, academia, and public interest sectors, to define a research, development, production and deployment strategy in environmental technology aimed at ensuring US technological leadership and economic strength;

- Pursuit of the new mission through innovative industry-government-academic partnerships, revised funding criteria and priorities, an expanded federal research portfolio for environmental technology, institutional restructuring including possible creation of an Environmental Technology Agency, a cross-cutting interagency mandate to speed production and deployment of key technologies, and intensified cooperative relationships with developing countries to implement environmental technologies abroad.

Background
Reconciling the need for future economic advancement with protection of the global environment will require an unprecedented transformation of our current technological base, away from technologies that are materials- and energy-intensive and toward those that are more efficient and minimize environmental costs.

A key objective will be advancement of so-called "critical environmental technologies"—breakthroughs at the precommercial stage, with potentially broad application, aimed at avoiding environmental problems at their source. Promising areas include photovoltaics, superconductivity, recyclable materials, and precision agriculture.

A program to speed transition to these technologies should include expanded, targeted support for scientific research and development in critical areas. It should bring together government, industry, and academic sectors to work toward commercialization of promising new technologies. And it should develop a concerted strategy for marketing and deploying such technologies, both domestically and abroad.

A catalytic role for government at the research and development stage is consistent with past support in other mission areas, such as medicine, space, computers, and defense. It is justified by immediate and long-term social benefits, and is required because, under current market structures, many environmental values are externalized so that economic incentives alone may be inadequate to address them.

At present, the United States lacks a clearly articulated policy or program to stimulate innovation of environmental technologies and to position itself competitively in the world marketplace. The failure of government to identify environmental technology as a priority area for research support has been compounded by a decline in private sector industrial research and development generally. The need is particularly acute to strengthen long-term support for critical environmental technologies.

The costs of continued inaction are likely to be considerable. In addition to social costs arising from diminished environmental quality, current policy risks exacerbating trade imbalances as emerging overseas markets are lost to foreign competitors, and as US domestic markets turn to technologies imported from overseas. The economic implications, moreover, reach beyond the field of environment, since a manufacturing base that is highly polluting, and materials- and energy-intensive will soon become uncompetitive in a global economy.

By contrast, Western Europe and Japan have seized on environmental technology as a potential growth area, launching a number of cooperative government-industry-academic ventures designed to speed development of new technologies. Foremost among these programs is Japan's Research Institute for Innovative Technology for the Earth (RITE) in Kansai Science City. Others include Japan's ERATO (Exploratory Research for Advanced Technology Program in the Science and Technology Agency), Germany's Ministry for Research and Technology, and Italy's Technological Innovation Fund.

The US lag reflects the fact that federal support for R&D here has historically been very decentralized, making a shift more difficult than in the more centralized West European context. Nevertheless, environment remains a disproportionately small component in most federally supported technology research portfolios. Where new relevant institutions have been created, or technology agendas set, environment has been largely overlooked as a focus area. There remains, therefore, an urgent need to establish environmental technology as a priority area for federally funded R&D, and to take a broad range of other actions aimed at getting new technologies into commercial production.

The New Mission

A new federal mission to accelerate development of critical environmental technologies and to increase US competitiveness in markets for them, should employ innovative models of cooperation between government, industry, and academia. To lay the groundwork for a comprehensive strategy, a Green Jobs Commission, with a specified lifespan, could be established to:

- Identify emerging needs for and trends in environmental technology, future priorities and world markets, and US capabilities and comparative advantages in specific fields in environmental technology;

- Prepare recommendations for building new government-industry-academic partnerships, revising federal funding criteria and priorities in R&D, other institutional restructuring including possible creation of new Environmental Technology Agency or institution, and an interagency mandate to speed commercialization and deployment.

Acting on the Commission's recommendations, relevant federal agencies would pursue the new mission by:

- Targeting expanded federal R&D support for environmental areas where US science and industry are placed to lead;

- Revising the mandates of the national laboratories to stress environmental aspects of ongoing research and to establish environmental technology as a freestanding priority area;

- Providing loans, grants, or other financial incentives to companies with a demonstrated ability to bring green technologies to market;

- Ensuring contracts and preferential treatment for environmental technologies throughout the US federal procurement process;

- Promoting expansion of green jobs into regions whose economies have suffered from environmental regulation, reductions in defense spending, or decline in heavy manufacturing;

- Working with nongovernmental groups and overseas development agencies to expand the role of such technologies in the sustainable development process;

- Working with industry and foreign governments to increase US share of emerging overseas markets.

JOBS AND ENVIRONMENT -- Times Mirror Essay

R.ADCOCK/505 words 1PM, August 14, 1992

No single fragment of misinformation is more threatening to the long-term economic health of our nation, and to the quality of life of our children's future, than the cynical proclamation that we cannot have both a robust economy and a clean, safe environment. The assertion that environmental protection is incompatible with economic growth is yet another attempt to divide the country on a crucial issue of our time.

[Isn't it enough that those in power have already mortgaged our children's financial future, by allowing our national debt to explode over the last 12 years? Must they now mortgage our country's natural heritage and long-term economic prosperity, once again leaving our children to suffer the consequences?]

The global market for environmental technologies is worth $270 billion, and growing at 7% annually. During the term of the next Presidency, it will grow to over $400 billion. Compare this to the global aerospace industry -- civilian and military -- which has sales of about $300 billion annually, and the global chemicals industry, whose annual worth is about $500 billion. [NOTE: These are CRS figures that I want to double-check.]

Our competitors, Japan and Germany, have already gotten the message. We helped them rebuild modern economies from the devastation of World War II, with modern, efficient technologies that waste less, and pollute less. Now, they have forged highly effective partnerships between government and industry, between the economy and environment. America needs to follow its own advice, rebuilding our own economy to create the jobs of the 21st Century, protecting our environment as a liveable home for our families, and increasing our competitiveness by educating our children to adapt freely and quickly to change.

The truth today is that the U.S. economy and the nation's environment are both in real trouble. Every American knows that. This is not an issue of environment versus jobs, as those who practice the politics of division would have us believe. This is an issue over the goods and services we encourage our economy to produce. Environmental protection has, and can continue to move industry to produce the high-tech, high-wage, globally competitive goods and services that will guarantee higher output, higher levels of employment, and a healthy environment for our children well beyond the end of the century.

Achieving this means growing out of the old thinking and avoiding the false choices. To win in the post-Cold War world, we must emphasize a return to traditional American values -- thrift in our use of resources, durability and quality in our products, respect for our families and future generations, concern for our communities, and shepherding God's great and bountiful bequest to our country.

By combining new thinking with traditional American values, we can steer our economy toward growth in the quality of our goods and services, while protecting the environment and improving the quality of life for all Americans. With new thinking, we can forge a solid path to the future. We can strengthen our economy, assure our jobs, and protect our natural heritage. The alternative -- the tired old thinking of the past -- will only continue to lead us into the poorhouse.

***

end of file

QUESTION: What is the relationship between domestic economic progress and the protection of this nation's natural resources? Can economic progress and environmental protection co-exist or should we favor one over the other?

REPLY: Sound environmental policies are a precondition of economic growth, not a brake on it. Environmental protection is a~~kin to infrastructure~~ an investment, ~~which~~ that in our future creates jobs ~~directly~~ and enhances ~~the~~ productivity ~~of other~~ e~~conomic endeavo~~rs. Protecting natural resources preserves the foundation for economic progress. Natural systems support many goods and services, such as agriculture and tourism. Protecting the health of our citizens against pollution-related disease can help reduce health care costs, and healthy students and workers provide a substantial edge in economic competition.

Most importantly, a healthy envt. m

Environmental protecting also helps firms become more competitive. Pollution is really waste -- what's left over from the production of goods. Reducing economic waste makes our industries more competitive and profitable. Michael Porter of Harvard has shown how strong environmental laws creates domestic markets for new technologies, which then fosters high-value export industries that provide high-wage jobs for American workers. Japan and Germany have openly proclaimed that environmental technology represents the biggest business opportunity in history. Meanwhile, our economic leadership is eroding: we now import many of the technologies that we once pioneered.

Favoring jobs over environmental protection is a false choice. We must be careful to understand the implications of protecting natural resources, such as endangered species and wetlands, and design policies to give people positive incentives and reward stewardship. Our current system gives a fundamentally sound starting point for constructive change. But the phony choice of jobs vs. the environment is a product of outmoded thinking and uncreative policy. In contrast, the Clinton-Gore Administration will provide creative leadership on these issues.

Issue Briefing Paper:
Jobs, Environment, and the Department of Energy
by
Bob Alvarez
September 2, 1992

Problem

After nearly a half century of nuclear weapons production, the United States Department of Energy (DOE) faces an environmental legacy of enormous proportions. Now spending over 80 percent of all federal facility cleanup funds, DOE's environmental restoration and waste management program is fast becoming the largest public works project in our nation's history. Over the next 30 years, the U.S. General Accounting Office (GAO) estimates that it will cost over $160 billion to address DOE's environmental legacies.

- According to a recent EPA study, DOE has over a third of some 45,000 sites contaminated with radioactivity in the U.S. This estimate does not include several thousand additional weapons labs, reactors, and processing facilities that will be permanently closed over the next decade.

- Vast amounts of radioactive and toxic wastes have been dumped at DOE sites, creating contamination of epic proportions. At the DOE's Hanford site in Washington, over 440 billion gallons of radioactive and toxic liquids were poured into the soil -- enough to create a poisonous lake the size of Manhattan over 80-feet deep;

- About 100 million gallons of intensely radioactive high-level nuclear wastes are stored as unstable liquids at several sites. Waste tanks are leaking into the environment and contain explosive and highly toxic chemicals. A 1978 DuPont study revealed that an explosion from hydrogen or organic vapors in one of the 51 nuclear waste tanks at DOE's Savannah River Plant in South Carolina, could result in serious contamination of offsite farm and urban areas.

The DOE cleanup effort poses an unprecedented challenge. Despite its daunting problems, the federal nuclear program has the potential for creating a new industry that can provide a large number of jobs, educate a new generation of scientists, engineers and help restore America's manufacturing base.

Unfortunately, over the past 4 years, a lot of money has been spent with few results. The transition of DOE's entrenched cold-war bureaucracy from production to cleanup is slow, disjointed and highly wasteful. DOE's "honor system," where its contractors are self-regulating and exempt from financial accountability, is a clear recipe for failure. Unless this situation changes, soon, the opportunity to turn this liability into a national asset will be lost.

History of the Problem

Since World War II, the U.S. nuclear weapons program developed into one of the nation's largest and most polluting industries in the country. Occupying a land base larger than Rhode Island and Delaware combined, the U.S. Department of Energy nuclear arms program consists of thousands of facilities, clustered at 17 sites across the nation. This large industry has operated in secrecy and was exempt from the enforcement federal environmental laws for decades. The production of nuclear weapons resulted in the vast generation of radioactive and toxic wastes. Because of the urgencies of World War II and the Cold War, production of nuclear weapons took priority over environment, safety and health.

The basis for environmental protection at DOE sites is highly primitive and has its origins in the World War II area. For nearly a half century, the environment these facilities occupy were used as a disposal and storage medium for vast quantities of radioactive and hazardous wastes. This is known as the "buffer zone" concept, where large areas within a site are allowed to be contaminated as long as they are diluted to "safe" levels at the site boundary. Unfortunately, the DOE and its predecessor, the Atomic Energy Commission (AEC) failed to get around to defining these "safe" levels for years after the bomb sites went into operation.

Because of the privileged status afforded the DOE bomb program, it was exempted from independent oversight and allowed its contractors to be virtually self-regulating. This situation started to change in the early 1980's when the Reagan Administration embarked on a steep nuclear arms build-up and rushed to expand the output at DOE's deteriorated and contaminated facilities. With the passage of federal environmental laws that gave states enforcement authorities, South Carolina, Ohio, Washington, Colorado, New Mexico, Idaho and Tennessee, under pressure from its citizens, began to challenge DOE's practices.

DOE's arrogant behavior immediately put it on a collision course with the growing environmental ethic of states hosting bomb plants. This led to increased political and legal confrontations that further galvanized citizens, state officials and Congressional delegations. For example, South Carolina blocked the restart of a plutonium production reactor at the Savannah River Site for nearly two years, despite charges by the Reagan White House of harming national security. The state of Tennessee, after joining a lawsuit filed by local and national environmental activists, won a landmark decision that forced DOE to comply, for the first time, with the nation's hazardous waste dumping law -- the Resource Conservation Recovery Act.

By the mid-1980's, the Reagan administration, recognizing the growing trouble brewing at DOE sites, began to make some concessions. However, at the same time, the White House blocked EPA enforcement at DOE sites, and opposed the authority of states to fine DOE for non-compliance. Then came the Chernobyl reactor accident in the Ukraine in 1986.

The Chernobyl accident turned out to be an important political defining event, which has had a profound impact on the DOE nuclear weapons complex. The accident greatly sharpened public discontent the politically conservative regions of the U.S. South and West, that host DOE bomb plants. Chernobyl greatly fueled perceptions, that were shaped by intensive local media coverage about DOE problems, of disturbing similarities between the DOE and Soviet nuclear programs. The tragic accident greatly strengthened a growing belief that DOE bomb plants posed a greater risk that the Soviet military threat. The political consensus that allowed these secret factories and labs to operate without public challenge has virtually unraveled.

Public concerns brought about an unprecedented disclosure about the U.S. nuclear arms production complex and first the first time, drew serious independent technical reviews of DOE's management of environment, safety and health. The process revealed serious deterioration of facilities, made worse by an across-the-board failure to meet modern safety standards and federal environmental laws. Environmental contamination of epic proportions was revealed -- raising the specter of "national sacrifice zones." Large radiation releases raised disturbing questions about the health impacts on workers and nearby communities. For example, cancer increases have been documented in scientific journals among several groups of DOE workers and people living near DOE sites.

As a result the United States stopped producing nuclear weapons materials for the first time since World War II and the DOE bomb complex fell into collapse. The root causes appeared to be isolation, secrecy, self regulation, decentralized management and the extraordinary arrogance that came with the privilege afforded nuclear weapons in our national defense.

Current Status

The U.S. Department of Energy is undergoing a major shift from production to cleanup. With the U.S. nuclear arsenal expected to shrink to about 3,500 weapons by the end of the century, it is clear that no new nuclear weapons will be built. Since 1989, the DOE has created an Office of

Environmental restoration and Waste Management (EM), which is trying to centralize cleanup efforts and establish a new system of contracting and management. However, the rapid downsizing of the nuclear arsenal is created difficulties, as nuclear facilities close, and large amounts of nuclear materials, originally intended for weapons will have to managed as wastes.

The budget for DOE's Office of Environmental Restoration and Waste Management is one of the fastest growing in the U.S. government -- going from $1 billion in Fy 1989 to $5.4 billion for Fy 1993. GAO has found that DOE has poor environmental spending controls and cleanup cost overruns are now at an annual rate of over 50 percent. The EM office lacks sufficient staff to keep track of contractor spending -- a problem made worse by DOE's exemption from federal procurement integrity regulations.

DOE has initiated a new contracting system known as the Environmental Restoration Management Contract (ERMC) at the Fernald site in Ohio. The concept behind ERMC is sound in that it designed to attract qualified environmental business and requires greater contractor financial accountability. However, the GAO has recently reported that DOE has no effective means to judge the performance of the new ERMC system and to assure financial accountability.

DOE has entered into over 80 compliance agreements with states and the EPA, but lacks the necessary federal personnel with environmental skills to oversee the performance of its contractors. With few exceptions, actual cleanup is not taking place. Instead, DOE is in the early stages of site characterization, which is consuming huge sums of money and time. Major long-term nuclear waste projects are bogged down because of engineering problems and lack of pilot-plant knowledge. With a budget of about $300 million for Fy 1993, DOE has the largest environmental research and development program in the U.S. Government. This program has great potential for the development and transfer of innovative environmental technologies to the private sector. But it is not plugged into the regulatory process.

DOE's ability to develop long-term nuclear storage facilities has lost public and scientific credibility. The Waste Isolation Pilot Project in new Mexico, designed to store plutonium-contaminated wastes stored in several states, is bogged down in political, technical and regulatory problems. DOE's effort to carry out the Congressional mandate to characterize the Yucca Mountain, Nevada area for disposal of high-level nuclear wastes from commercial and weapons reactors is in worse shape.

An important issue that is emerging is land-use planning for severely contaminated areas where technologies do not yet exist to return them to safe levels of habitability. However, DOE and all federal facilities lack an overall

EPA regulatory framework that addresses fundamental issues like "how clean is clean?" and the integration of new environmental technologies. While DOE has major problems, the Bush Administration's opposition to environmental regulation, and a lack of EPA priority for federal facility cleanup, makes it all but impossible for a viable regulatory frame work to be established. Without this, the U.S. stands to waste a tremendous amount of money and have little to show for it.

Another important issue is what to do with the tremendous amounts of and materials to come from the decontamination and decommissioning of DOE structures. For example, DOE already has removed over 10,000 tons of contaminated nickel from its uranium enrichment plants. It may be possible to safely cleanup and recycle this material to make steel, for limited end-uses such as bridges and structures. The recycle of materials to make barrels and billets for storage at DOE disposal sites is another possibility. The alternative is to dispose of these materials in landfills.

Although DOE's cleanup spending continues to soar, some 17,000 permanent jobs stand to be lost over the next few years. The extent to which workers have transferable skills or can be retrained remains to be seen. Since DOE lacks the necessary system of environmental, safety and health regulation, retraining for environmental cleanup is an ad hoc affair. It is difficult to fathom how a DOE contractor, which has been found to have hundreds of serious OSHA violations, can effectively retrain its workers to understand new OSHA hazardous waste regulations.

The future status of unions representing thousands of DOE contract employees is a major issue at several communities near DOE sites. To its credit, DOE's Office of Environmental Restoration and Waste Management is attempting to open the DOE system to a broader pool of business talent, by the issuance of new Environmental Restoration Management Contracts (ERMC). The first ERMC was recently awarded for the cleanup of DOE's Fernald plant in Ohio. However, the union workers employed by existing contractors have no guarantees, that the ERMC contractor will offer them jobs or honor their agreements. In response to this Senator John Glenn was successful in convincing DOE to provide this guarantee, and has subsequently co-sponsored legislation with Senators Gore, Wirth, and Gorton to require that this be done at all DOE sites. This legislation, however, is opposed by building and construction unions that are not at DOE sites, on the grounds that it discriminates against them.

Major Probable Events in the Next 60 Days

Congressional Legislation--There will be a significant amount of activity affecting the DOE cleanup program going on when Congress reconvenes next week. This includes:

Administration Policy

DOE Secretary, James Watkins has reorganized the Department to create an Office of Environmental restoration and Waste Management (EM). Since 1989, the EM program has been centralizing all cleanup activities, issuing annual five-year spending plans, striking environmental compliance agreements, and attempting to gain financial and regulatory control over its contractors. This, in turn, has unleashed a major power struggle within the DOE between the nuclear weapons establishment, which is fighting to preserve the status quo and the EM program, which is trying to address DOE's new environmental mission. As a result, Watkins's vaunted "cultural change" is bogged-down in bureaucratic infighting. The only major factor that is forcing change in the DOE, is the dramatic reduction in the U.S. nuclear arsenal.

Of particular concern, is the Bush Administration's lax policies towards financial accountability of DOE contractors and opposition to independent environmental, safety and health regulation. The Administration, through its military establishment, has fiercely resisted independent oversight and environmental, safety and health regulation. DOE, for instance, is exempt from OSHA regulation, and has yet to establish a system of OSHA protection for its workers. Also, DOE has failed to develop a system of fines and penalties against DOE contractors, who violate nuclear safety rules, even though this was required by law, over four years ago.

Those few dedicated DOE health and safety officials, trying to change things are treated like "the enemy from within." Whistleblowers working for DOE contractors who raise safety problems, fare much worse and are usually fired, harassed and intimidated. As a result, contamination at DOE sites is spreading faster than they can clean it up, workers are being injured at an alarming rate, and basic safety violations go unattended.

In terms of financial accountability, DOE's contracts with the entities that run its sites, have been likened to treaties. Non-standard clauses require the U.S. government to be liable for the willful misconduct and gross negligence of DOE contractor. In on major instance, these vague contract clauses have blocked DOE from even recovering hundreds of thousands of dollars that were criminally stolen! Cost overruns go unchecked and giant sums of money are moved around for projects that Congress hasn't approved. DOE contractors command very large overhead and contingency expenses, which even the Office of Management and Budget found to be excessive.

DOE has issued a new rule shifting some financial responsibility to its contractors, but GAO has repeatedly found that DOE has little means to assure these terms are being met. The DOE is exempt from the Federal Procurement Rule and openly spurns the Competition in Contracting Act. DOE's policy of financial accountability, is charitably described by GAO as one of "least interference." For example, GAO found that at DOE's Albuquerque Field Office, which oversees 7 major DOE sites, there are only 5 federal employees responsible for approving over 300,000 contractor procurement requests totalling $2 billion annually.

Recommendations for Dealing with the Problem

The cleanup of the DOE's weapons sites poses one of the most daunting environmental challenges facing this country. There are major opportunities to solve this problem in a way that can provide a large number of jobs, educate a large number of Americans, develop new technologies and help restore our nation's manufacturing base. However, it is clear that these goals cannot be met without some major changes in how the U.S. government does business with its contractors and how the U.S. government regulates environmental protection. A governmental restructuring is needed. With this in mind:

(1) The DOE should undergo major reorganization. For instance:

- The DOE's nuclear weapons program should be transfered to the Defense Department. This would better integrate the nuclear arms program into defense needs and force the military, for the first time, to better manage nuclear stockpile costs. This move creates a clear line of distinction between production and cleanup.

- Environmental restoration and waste management at DOE sites should become the function of a new subcabinet agency that is funded primarily out of the "050 account" from which all federal military spending is made. The new agency should be run by an administrator, much like the EPA and be subject to independent regulation of environment safety and health. This agency would also fall under the Federal Procurement Rule.

- A certain amount of DOE spending should go towards retraining of existing and new workers, as well as for the creation of a federal job service program that would educate scientists, engineers, managers and technicians, in exchange for their work to cleanup DOE sites.

- The federal nuclear cleanup program must operate on a more business-like footing and open its system to a wider pool of talent. The federal government should assume, for the first time, the inherent governmental function of financial accountability, which nuclear contractors have had for nearly fifty years.

- High-risk workers exposed to radiation and hazardous substances should be identified and followed. Medical insurance should be provided to these people, if none is otherwise available.

*The EPA must establish a multi-media regulatory frame-work for the cleanup of federal nuclear sites. This involves developing cleanup standards and accommodating the introduction of new technologies. The first essential step is for EPA to develop radiological cleanup standards.

* The DOE's cleanup R&D program should become a "half-way house" for the development and transfer of new environmental technologies to the private sector. Utilizing the expertise of the DOE's national laboratories should be part of this effort, as well as bringing in the business community. Technologies, such as remote sensing and imaging, now in use for military intelligence, can be used to screen and characterize contamination as well as better understand global environmental problems.

Questions and Answers

1. What are your views about DOE's efforts to store nuclear wastes at the Waste Isolation Pilot Plant in New Mexico?
Answer: I think that this project can only work if it has a strong scientific basis, and adheres to necessary safety and health standards. Unfortunately, the Department of Energy's credibility in these areas is poor, in some instances, with good reason. It's important to understand that there are no "quick fixes" to solving the nation's nuclear waste problem. I believe that we need to take stock of how European nations are handling this problem. Their nuclear industries are paying considerable attention to assuring that nuclear wastes can remain stable and stored safely, until long-term storage solutions can be developed. The WIPP project, if it works, will only deal with a part of DOE's plutonium waste problem. Large amounts of plutonium are comingled in the environment, and piles of plutonium once to be used for weapons are no longer needed. The Bush Administration hasn't even decided how much of their plutonium is waste and how much is not! Without making that fundamental decision, how and where can we even expect these wastes to be treated and stored? If the WIPP project can meet scientific and health and safety requirements, I support its use. However, these remain open questions.

2. You have spoken about how you want to create jobs through improving the environment. Could you be more specific?
Answer: Yes. One important way we can do this is through the cleanup of Department of Energy nuclear sites. As the cold war ends, we now find ourselves with large numbers of contaminated sites across the United States. They are among the daunting environmental challenges our country faces. The scientific know-how that provided for our nuclear deterrence must now be put to work to restore our environment. There are thousands of DOE workers who can be retrained and tens-of thousands of new workers who will be need

over the coming decades to cleanup these sites. DOE 's R&D program can help us find better ways to cleanup the environment. The DOE cleanup program provides us with the opportunity to educate many Americans in the fields of science, engineering and management. The DOE cleanup program should trains and educate jobless Americans in exchange for government service in protecting our environment.

3. For the past several years, the problems of the DOE have been a constant source of news and its not clear that things are changing. How would you deal with this situation?

Answer: The problem facing the DOE is one of transforming national security to domestic security, in terms of protecting the health and environment of Americans who work in or live near DOE sites. This a problem that will not be fixed overnight. Nonetheless, the longer we wait the more costly they will be to fix. The Bush administration has failed to recognize the basic fact that the federal nuclear program must operate under the same rules as everybody else. For example, the DOE needs to be subject to independent environmental, safety and health regulation as are other federal agencies and private business, such as OSHA. It is difficult to fathom how DOE sites where there are numerous OSHA violations, can retrain their workers to understand new OSHA cleanup regulations.

Secondly, DOE needs to operate on a more business-like footing. This means that the Department should be required to comply with the same procurement integrity rules as other federal agencies, like NASA and DOD. The U.S. General Accounting Office (GAO) has repeatedly found that DOE has poor spending controls and is too dependent upon its contractors. For example, GAO reported that DOE's Albuquerque Field Office, which oversees 7 major operations, has only five federal employees responsible for approving over 300,000 contractor spending requests totally $2 billion a year. Now, how can you tell me that DOE can control spending under these circumstances? The Department needs to beef-up its federal spending controls if we are to protect the government from waste, fraud and abuse.

Finally, the Environmental Protection Agency (EPA) needs to establish a comprehensive regulatory framework to cleanup DOE sites. Last year the Congressional Office of Technology Assessment reported that, because of the failure to have standards defining "how clean is clean", DOE has no idea how much it will really cost to cleanup its sites. The EPA, under the Bush Administration, has failed to develop these standards, because of a belief that this is bad for the economy. I'll tell you this much, without cleanup standards, we stand to waste huge sums of money and have little to show for it.

Mr. Alvarez is a Senior Professional Staff Member of the U.S. Senate Committee on Governmental Affairs. The above views are soley his andnot necessarily those of the Committee or its members.

* The Fy 1993 Defense Authorization Bill -- DOE cleanup spending has been modestly increased by both the House and Senate above the $5.4 billion Bush request. Both bills contain provisions, sponsored by Senator's Glenn, Gore, Gorton and Wirth which requires DOE to develop a workforce restructuring plan to retrain and keep existing workers and a requirement for DOE to establish a comprehensive medical surveillance program for exposed workers. Efforts by Glenn, Gore, Wirth and Gorton to extend medical insurance to former exposed DOE workers was opposed by the Bush Administration and failed to be incorporated. These provisions are strongly supported by workers at all major DOE sites and nearby communities.

* The Federal Facilities Compliance Bill -- This is a *cause celebre* for environmental states rights. The bills (a) authorize the EPA to issue administrative orders and penalties against federal agencies that violate federal environmental laws; and (b) allow states to issue fines and penalties against federal facilities for Resource Conservation and Recovery Act violations. It passed both Houses and is in Conference. The Senate added a five-year waiver over RCRA penalties, which is opposed by nearly every of the 20 states that host DOE sites. This legislation is strongly supported by Senator Majority leader Mitchell and Congressional environmental leaders. The Defense and Energy Department's are fiercely working against it, behind the scenes.

* Legislation transfering land from the Interior Department to DOE, to open the Waste Isolation Pilot Project (WIPP) in New Mexico-- The WIPP project began in 1977 and is designed to store plutonium wastes deep underground salt formations at Carlsbad, New Mexico. This legislation helps DOE overcome one of many hurdles necessary to open WIPP for storage. The House and Senate bills have added strings attached which provide for more financial assistance to New Mexico and an EPA regulatory role. The politics of WIPP are complicated. Idaho and Colorado, where large amounts of these waste are stored are pushing hard to open, WIPP, while New Mexico is not. It is not clear if this will pass the Congress this year.

Disclosures—More problems at DOE sites will be revealed by the Congress and DOE. They tend to be well-covered by local and national media. They include:

* Disclosure of a high-rate of worker injuries from toxic vapor exposures, and new evidence of increased explosion risks at DOE's Hanford nuclear waste operations. This information will be released, sometime after Labor Day by Senator Glenn.

* The release of a safety inspection report by the DOE of the Piketon uranium enrichment plant in Ohio. The inspection found over 578 serious OSHA violations.

industry source. This source notes that Domenici's bill is a stand-alone bill being introduced late this congressional session, and thus questions if it will go anywhere. Other sources suggest Domenici will try to attach the bill to the fast-moving energy bill or an appropriations measure.

"Probably they don't know how sweeping their proposal is," says a very concerned environmentalist, commenting that Domenici will probably "back off" once he knows because he "won't want to be known as the champion of cancer for the American people." This source says without some key EPA rules that are not yet promulgated, thousands of cancer cases a year will result.

Key Environmentalist's Letter Demanding Deland's Resignation

The following is a letter from National Wildlife Federation President Jay Hair to White House Council on Environmental Quality Chair Michael Deland urging Deland to resign his post. Deland says Hair's "personal accusations do not merit a response." An aide to EPA chief William Reilly declined to comment on the EPA administrator's reaction, but says Hair's comments "may have been misdirected." An administration source says many who attended the meeting on the Earth Summit — discussed in the letter — feel that Hair's actions do nothing to further its goals.

National Wildlife Federation
Office of the President

June 19, 1992

Mr. Michael R. Deland, Chairman
Council on Environmental Quality
722 Jackson Place, NW
Washington, D.C. 20503

Dear Mike:

Words do not adequately convey the personal and professional disappointment I feel in your failure to provide honorable leadership as the Chairman of the President's Council on Environmental Quality. Your role over the last several months as the "official apologist" for the Bush Administration's anti-environmental policies is embarrassing and disgusting for those of us who knew and admired the "old" Mike Deland. I realize you are expected to be a good soldier, but enough is enough. Blatant lies are especially insulting when they come from someone once considered trustworthy.

Yours and Bob Grady's "Road From Rio" meeting earlier today was a classic example of the disdain the Bush Administration demonstrates towards the environmental community. It is the height of arrogance to give us the bum's rush about "narrowing the differences" after the Earth Summit.

By definition, the Chairman of the Council on Environmental Quality is assigned the duty of conveying critical, accurate messages and sound advice to our nation's Chief Executive about urgent environmental matters. Under your leadership, this crucial link from the public to the President has been conspicuously absent. While there might have been some hope following the Earth Summit that the Administration's global embarrassment would nudge it into at least meaningful discussion, I realized within moments after our meeting began today that this clearly would not be the case.

First, you attempted to present the Administration as an environmental champion when in fact the record shows it is the environment's enemy. Evidence includes supporting wholesale destruction of wetlands and ancient forests, attempts to gut the Endangered Species Act, weakening the Clean Air Act by not enforcing regulations and giving free reign to industry whenever possible to pollute and destroy natural resources. Your consistent deferral to the Council on Competitiveness to dictate environmental policy gives the President a mainline exclusively to industry's concerns -- and excludes public concerns from fully reaching him. Again, in your position you are responsible for bringing these concerns to the President's attention, whether they represent welcomed news or not. You confirmed your refusal to do so when you acknowledged that I and others in the environmental community were not invited to meet with the President because we might disagree with his policies. This exclusionary process, this "only tell them what they want to hear" form of public non-participation is more appropriately credited for such a forum held in Rio -- a meeting of "environmental groups" that included the Chamber of Commerce and the Heritage Foundation.

Second, you let the environmental community know of your personal lack of sincerity by apologizing for the absence of Bill Reilly at today's meeting -- when you knew full well that giving him notice of the meeting as late as last night precluded his attendance.

By attempting to diminish the importance of environmental issues, and allowing their continued politicalization, you are doing a disservice to the President as well as the American public. This has not gone unnoticed in the public eye. Just yesterday Times Mirror released a public opinion poll on the environment conducted by the Roper Organization that confirmed this point: Two-thirds (65 percent) of the American people disagree with the President and his handlers that we are confronting a "jobs versus environment" issue. And "If compromise is impossible, environmental protection is much more important. . .than is economic development" (64 percent vs 17 percent).

If the United States can lead an international effort to defeat a common enemy in war, as evidenced in the Persian Gulf conflict, we should have the vision, courage and ability to lead a global effort to save the Earth, our common friend. We were totally isolated in Rio during the Earth Summit. As one senior diplomat said, "The prestige of the United States has never been at a lower point since the Viet Nam War." The New World Order started there and the United States was not a player.

Because you have not fulfilled your responsibility to be an accurate conveyer of truth or the public will to the President, you have lost the confidence of many in the environmental community. It is apparent to me that it would be in the best interest of this nation's environmental future if you would resign immediately.

Thank you.

Sincerely,
Jay D. Hair

Endangered jobs

It's a long way from the Pacific Northwest to Washington, D.C., especially for men and women who don't have the luxury of flying around on expense accounts. But that's how far some people will go to save their jobs.

Right now those farming, timber and other jobs are at risk because of the Endangered Species Act, a piece of legislation that activist judges and federal agencies have used to put human beings at the bottom of the pecking order. Families that once made their livings providing the rest of the nation with the lumber to build dream homes or agricultural produce to serve at dinner are watching their life's work disappear under ESA regulations purporting to protect the habitat of owls and fish and creepy crawlies. By holding a "Fly in For Freedom" this past weekend, these families hoped to show some of the human suffering this upside-down view of nature has caused.

President Bush appears to have gotten the message. Seeing firsthand the economic wreckage caused by the act, he told crowds in Washington and Oregon that he would veto any extension of the Endangered Species Act that didn't protect jobs and economic growth. "It's time to fight for jobs, families and communities," he said.

In so saying, Mr. Bush distinguished himself clearly from Democratic opponent Bill Clinton. Mr. Clinton seems to believe that there's no problem these people face that a little more government can't solve: more federal controls on U.S. timber exports to Japan, more job training and handouts for displaced workers, more government summits where distant lawmakers and bureaucrats could get together to divvy up the goodies and decide who wins and who loses.

Mr. Clinton says the issue in the Northwest is not jobs vs. owls — that the region can have both. And he's right up to a point, but not because bigger government can provide both. He's right because scientists are discovering that allegedly threatened species like the spotted owl do just fine on logging lands. Writing in these pages recently, James Rice cited zoological findings showing "some of the highest owl densities anywhere" on land managed by a timber company that contains less than 2 percent old-growth forest. But since environmentalists are only hugging the owl because it serves as a proxy for old-growth forests, which are what they really want to see protected, such findings haven't stopped the debate.

Having grasped the problem, Mr. Bush would do well to consider a solution proposed by Idaho Sen. Steve Symms entitled "The Progressive Endangered Species Act of 1992." Among other things, it would attempt to use free-market means to help species that are truly endangered; require the use of sound science throughout the process of listing and delisting species; protect property owners from takings by federal and state agencies; allow elected officials to modify recovery plans that take too high a toll in jobs and human health; and require an analysis of what all this costs taxpayers. The latter is important because right now the act takes taxpayers and their funding for granted.

The Symms bill would go a long way, like those who flew in for freedom, toward helping Mr. Bush get the country's environmental and economic priorities in order again. It would help remove jobs, not just owls, from the endangered list.

Moscow and Tokyo

"Land for peace" — that's the big question in negotiations between Israel and Syria. "Land for money" — that's the sticking point in relations between Russia and Japan. Framing the dispute over the Kurile Islands — which Joseph Stalin snatched from the defeated Japanese in 1945 — in those terms does have a rather less ennobling ring to it.

Yes, Mr. Yeltsin's unceremoneous cancellation of his scheduled trip to Japan, which was to have taken place this week, was not particularly elegant. He did so even as his own advance team was arriving in Tokyo. Con-

Yeltsin has shown himself dedicated to unraveling the imperial Stalinist legacy he inheirited from Mikhail Gorbachev and has so far succeeded in doing so with less bloodshed than could have been expected. But powerful forces are working against him. No doubt about it, the conservative coalition in the Russian parliament and the Russian military are strongly opposed to any land-for-aid deal with the Japanese, and at the moment Mr. Yeltsin is clearly not in a position to defy them on this point. Asking foreigners for help has been bad enough for Russian pride. Selling off land — as giving in to Japanese demands is widely ...

Letter

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