

FOIA MARKER

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

Collection/Record Group: Clinton Presidential Records
Subgroup/Office of Origin: Office of Environmental Initiatives
Series/Staff Member: Roger Ballentine
Subseries:

OA/ID Number: 19509
FolderID:

Folder Title:
Climate Change Hill Riders

Stack:	Row:	Section:	Shelf:	Position:
S	61	7	11	3



Debra Reed

07/19/2000 05:22:33 PM

.....

Record Type: Record

To: See the distribution list at the bottom of this message

cc:

Subject: Senate Interior Approps -- Byrd Colloquy

DEPARTMENT OF THE INTERIOR AND RELATED AGENCIES APPROPRIATIONS
ACT, 2001--CONTINUED (Senate - July 17, 2000)

[Page: S7035] GPO's PDF

KYOTO PROTOCOL RESTRICTIONS

Mr. LEAHY. Mr. President, as the Senate debates the FY 2001 Interior and Related Appropriations Act, I would like to take a moment to ask the distinguished subcommittee Chairman and Ranking Member a clarifying question concerning Section 329 of the bill. That section, as my colleagues know, contains language concerning the implementation of the Kyoto Protocol.

Mr. President, the Senate has clearly expressed its views regarding the Kyoto Protocol in S. Res. 98, the Byrd-Hagel resolution adopted unanimously by the Senate on July 25, 1997. That resolution calls on the Administration to support an approach to climate change that protects the economic interests of the United States and seeks commitments from developing countries to reduce greenhouse gas emissions. The Administration is aggressively engaging developing countries to reduce greenhouse gas emissions through international projects and activities emphasizing market-based mechanisms and environmental technology. Furthermore, the U.S. is currently engaged in climate change negotiations to ensure meaningful participation of developing countries and to ensure that greenhouse gas emissions reductions are achieved in the most cost-effective manner.

Mr. President, I ask my friend from West Virginia if my understanding is correct that Section 329 of the FY 2001 Interior bill is not intended to restrict the Administration from engaging in these international negotiations related to both the Framework Convention on Climate Change, which was ratified by the Senate in 1992, and the Kyoto Protocol to that Convention? Am I also correct in my understanding that Section 329 is not intended to restrict international programs or activities to encourage commitments by developing countries to reduce greenhouse gas emissions?

Mr. BYRD. Mr. President, I appreciate the question from my distinguished colleague from Vermont, whose background in international affairs is well known and impressive, indeed. In response, I say to my friend that his understanding is correct, Section 329 is not intended to restrict U.S. negotiations or the other activities such as he has described. On the contrary, the section is intended to prevent the Administration from implementing the Kyoto Protocol prior to its ratification by the Senate.

Mr. GORTON. Mr. President, I concur with the statement just provided by the Senator from West Virginia.

Daily Executive Briefing

- A House Republican told northeastern states this week that EPA has evaded a Congressional prohibition on implementing the Kyoto Protocol by using local avenues to attack greenhouse gas pollution.
- Ontario Tuesday came into step with other Canadian provinces and territories by agreeing to clean up air emissions five years earlier than its previous plan.
- House Democrats lost a fight to narrow the scope of a

congressional directive barring Kyoto measures

- *Federal Register*.
- Oklahoma officials have found that Ozone transport is not limited to the Northeast.
- Natsource yesterday launched an Environmental Action Desk to facilitate transactions involving non-traditional customers.
- In Brief... Clean Air Trust, Latin American Conference.
- Allowances.

McIntosh: EPA May Have Broken Anti-Kyoto Law

A key House Republican told northeastern states this week that EPA has pushed the development of state and local climate change plans as a means of evading a congressional directive barring the administration from developing measures to implement greenhouse gas cuts called for in the Kyoto Protocol.

Rep. David McIntosh (R-Ind.), chairman of the House National Economic Growth, Natural Resources, and Regulatory Affairs Subcommittee, said in a June 6 letter to the **Northeast States for Coordinated Air Use Management** that the administration "through grants, technical assistance, and 'aggressive education and outreach', surely has had something to do with proliferation of state and local climate change action plans."

At issue is a recent NESCAUM proposal — discussed at a recent **Ozone Transport Commission** meeting and spearheaded by legislation in Connecticut — providing model regulations for carbon dioxide. McIntosh and Rep. Joe Knollenberg (R-Mich) have questioned EPA about whether these northeastern states used agency funding to develop the proposal, the states responding that they did not (AD 5/9/00; 5/31/00). McIntosh and Knollenberg are concerned that the agency is subverting anti-Kyoto language developed by the Michigan legislator, and approved in several fiscal year 2000 spending bills, that prohibits the administration from issuing regulations, policies, or decrees to implement the GHG treaty (AD 5/24/00; 7/2/98).

In a May 26 letter responding to McIntosh's initial concerns about the model CO₂ rule, NESCAUM said it hopes he is "not seeking to intrude upon state prerogatives to encourage energy efficiency and promote coordinated

emissions reduction strategies."

In response, McIntosh reaffirmed his position that the federal government shouldn't impose its will on state governments. "As an advocate of regulatory federalism, I share your conviction that policymakers in Washington, D.C. should not intrude upon state prerogatives," McIntosh said.

But it's well known that "the relationship between EPA and its state counterparts is complicated," McIntosh added. "When state regulatory agencies propose or issue rules addressing national or even global environmental issues like climate change, one should not assume without further ado that the policy is purely home grown."

If EPA provides grants or outreach to assist states in developing climate change plans, is that an intrusion upon state prerogatives or an example of a "creative federal-state partnership," McIntosh asked.

The lawmakers are justified in asking whether EPA provided any funds to OTC or NESCAUM for the rule and whether EPA violated the Knollenberg provision, McIntosh asserted. OTC's consideration of a rule to establish CO₂ standards that reflect Kyoto targets and the fact that both groups receive EPA funding "naturally" prompt these questions, he said.

"Rep. Knollenberg and I also found it odd that OTC, an organization created by Section 184 of the Clean Air Act to help reduce interstate transport of ozone and its precursors, was considering a proposal to regulate CO₂, which is not an ozone precursor and not alleged to cause global warming via global transport," McIntosh said.

McIntosh and Knollenberg are concerned about "EPA's permissive reading of the Knollenberg provision" and McIntosh reiterated his belief that the CAA does not provide

(continued on next page)

EPA with the legal authority to regulate CO₂ (AD 5/12/00).

"Despite your assurances to the contrary, I remain concerned that generation performance standards [in the model CO₂ rule] could become a vehicle for backdoor implementation of the Kyoto Protocol," McIntosh said.

The lawmaker is still awaiting EPA's response.

Briefs

Ontario Accelerates Air Cleanup Plan

The Province of Ontario Tuesday came into step with other Canadian provinces and territories by agreeing to clean up air emissions five years earlier than its previous plan to clean up by 2015. The agreement sets the stage for serious Canadian-U.S.

negotiations on reducing wind-borne pollution moving into and out of Canada (AD 1/24/00).

Ontario had been balking on accelerating its cleanup schedule and agreed to the change only after heavy pressure by environmental officials from the rest of the nation, according to John Bennett, a spokesman for the **OntAIRio Campaign**.

"It's the absolute key," he said, to beginning negotiations with the U.S. on reducing pollutants coming into Canada from the U.S. and into the U.S. from Canada. "We're both a victim and an aggressor," he said. "Depending on where you are in the provinces, about 80% of the pollution is American."

The Canadian government has been discussing the situation with the U.S. for several years, he said, but had nothing to negotiate with due to the lack of solidarity within Canada.

Canada's largest polluter, Ontario plans to cut smog-producing emissions by 45% over the decade, though for now there is no concrete plan on how it will be done. The provinces are responsible for assuring environmental compliance with regulations established by the federal government.

Bennett indicated the cutbacks would be done with a "chicken-soup" approach that would target multiple sources, though Ontario has not given any clear signals on how it will speed up its compliance or which sources would be at the top of the list.

Ontario, however, put a provision in its agreement that it would cut pollution within its borders only if the Canadian government could work out a good deal with the U.S.

House Democrats Lose Climate Change Fight

Late yesterday, House Democrats lost a fight to narrow the scope of a congressional directive barring the Clinton administration from considering actions to implement greenhouse gas cuts under the Kyoto Protocol when House appropriators

approved a fiscal year 2001 EPA spending bill.

The House Appropriations Committee approved the spending bill June 7 by a voice vote after a tense exchange between committee members over an amendment, offered by Rep. Alan Mollohan (D-W.Va.), that would have stripped the report language and inserted similar but less sweeping language adopted by Congress in EPA's FY99 and FY00 spending bills.

Report language is a policy recommendation to an agency. Crafted by Rep. Joe Knollenberg (R-Mich.), the

(continued on next page)

June 8 Federal Register Rules

Air pollution control: state operating permits programs — **Georgia** (65 FR 14166), **Tennessee** (65 FR 14169)

Air quality implementation plans: approval and promulgation; various states; air quality planning purposes; designation of areas: **Arizona** (65 FR 13978)

Air quality implementation plans: approval and promulgation; various states: **California** (65 FR 14173), **Indiana** (65 FR 13839, 13841), **Wisconsin** (65 FR 14175)

Proposed Rules

Air pollution control: state operating permits programs — **Georgia** (65 FR 14167), **Tennessee** (65 FR 14170)

Air quality implementation plans: approval and promulgation; various states: **California** (65 FR 14174), **Indiana** (65 FR 13840, 13842), **Wisconsin** (65 FR 14176)

Notices

Air programs: state implementation plans; adequacy status for transportation conformity purposes — **Delaware** (65 FR 14600), **District of Columbia**, **Maryland**, and **Virginia** (65 FR 14599), **Maryland** (65 FR 14601), **Pennsylvania** (65 FR 14598)

AIR Daily

Editor: Maria Bellos

mbellos@fieldston.com

Editor: Marty Coyne

Contributing Editor: Joe Palenik

Managing Editor: Steven O'Connor

© Copyright 2000 by Fieldston Publications, Inc. (FPI). All rights reserved. (ISSN 0732-8397). Reproduction, retransmission, storage or use of this publication in any form is forbidden without prior written permission from FPI. Authorization to photocopy items for internal/personal use, or the internal/personal use of specific clients, is granted by FPI provided a fee of \$4/page is paid directly to the Copyright Clearance Center, 222 Rosewood Dr., Danvers, MA 01923; (800) 750-8400. Annual subscription rate (245 daily issues): \$647 via e-mail; \$797 via fax in the U.S., Canada and Mexico, add 6.75% sales tax in Washington, DC. For multiple subscription rates and/or site licensing, contact Ron Lippock, (202) 775-0240, x304. For subscriptions, renewals or questions about either, please contact Ron Lippock at (800) 270-2845 or rlippock@fieldston.com.

Views and opinions expressed by contributors do not necessarily reflect the views or analysis of AIR Daily, FPI, Fieldston Consulting, Hagler Bailly or its affiliates or employees nor shall any of them be liable for any damages, incidental or consequential, resulting from the use or content of this publication.

Fieldston Publications, Inc.
1800 Mass. Ave., NW Suite 500
Washington, D.C. 20036-1883
(202) 775-0240 (202) 872-8045 fax
Manager: Peter Ogram

Fieldston Publications, Inc. is a wholly-owned subsidiary of Hagler Bailly, Inc. Hagler Bailly provides professional services to corporations and governments worldwide. The company's focus is on energy, network industries and the environment.



Hagler Bailly

report language in question stipulates that EPA may "conduct educational seminars and activities," but it would prohibit "legislation, regulation, programs, or initiatives" to implement the Kyoto treaty. Knollenberg has been trying for several weeks to broaden his anti-Kyoto language from previous spending bills because of concerns that EPA has tried to circumvent the provisions (AD 5/29/00; 5/9/00).

The old language Mollohan wanted as an alternative prohibited the use of federal funds to take certain actions for the purpose of implementing or preparing to implement the Kyoto Protocol.

In addition, Mollohan wanted the committee to include language recognizing the importance of climate change research, particularly in the area of emissions and energy efficiency, but he stipulated that funds should not be used to implement actions "called for solely under the Kyoto Protocol, prior to its ratification." The Mollohan language also clarified that energy research programs that have a positive effect on energy use and the environment should move forward.

After a heated debate, the committee rejected the Mollohan amendment by a vote of 31-19.

Several times during his defense of the amendment, Mollohan, who agreed with GOP colleagues in opposing the Kyoto Protocol because of its potential domestic economic impact, referred to the new Knollenberg language as a global warming "gag order" on the administration. In a letter to committee leaders, the White House Office of Management and Budget had opposed the Knollenberg provisions.

The report language, said Mollohan, would have a "chilling effect" on research for energy efficiency and would mean that the "government should not engage in [international] discussions on the topic of global warming."

Rep. John Peterson (R-Pa.), who opposed Mollohan's amendment, said the language could not be interpreted that way and he reiterated the claim that the administration had tried to

implement "through the back door" a treaty "bad for American business."

The language could also hinder the development of profitable emissions cleanup technologies, which could be exported to China and other developing countries that will be significantly expanding their energy consumption and presumably increasing GHG emissions, noted Rep. Sam Farr (D-Calif.).

Knollenberg, who offered to continue to work with Mollohan on the language in the future, said the report language was a compromise crafted by VA, HUD, and Independent Agencies Subcommittee Chairman James Walsh (R-N.Y.) and was aimed at preventing the use of CO₂ emissions trading and other "flexible mechanisms" to get GHG reductions.

Initially, Knollenberg wanted specific bill language that would have the force of law, preventing such programs. But congressional observers said fellow Republicans have resisted this approach.

Democrats couldn't be reached to comment on whether they'll fight the Knollenberg report language in debate over the EPA spending bill on the House floor. An administration source said although report language typically isn't amended during floor votes, it's unclear if Knollenberg may seek a rule to possibly toughen the language.

Aside from the controversy on global warming, the committee unanimously adopted by voice vote an amendment by Knollenberg that would insert report language urging EPA to issue a new rulemaking on the agency efforts to control emission of nitrogen oxide.

EPA's call for state implementation plans for NO_x is the subject of ongoing litigation, as are petitions filed by states under Clean Air Act Section 126 which seek to impose NO_x controls on emitters alleged to be dragging their feet on NO_x SIPs.

But Knollenberg and industry officials have long-standing concerns that EPA has different compliance deadlines for the SIP Call and 126 petitions (AD 5/24/00; 5/17/00; 5/3/00). If the federal appeals court considering the NO_x SIP call lifts a stay

on the NO_x SIP call, the report language would direct the agency to issue a rule reconciling the deadlines for the two sets of NO_x control plans. The language also would urge EPA to recognize that states have primary authority for controlling NO_x.

One environmentalist said the report language as it affects NO_x controls was "better than the bill language" that Knollenberg originally sought and did not offer. But the language "is still a delay tactic," this source added.

Ozone Transport: Not Just For The Northeast

Oklahoma officials have found that Ozone transport is not limited to the Northeast.

Air quality monitors placed in three Oklahoma counties next to the Red River, which marks the Texas border, detected exceedances of the eight-hour ozone standard on three days in August — the same three days that monitors in the Dallas/Fort Worth metroplex found high ozone levels in those cities. Strong southeasterly winds prevailed on those days, which suggests that ozone from Dallas-Fort Worth blew into neighboring Oklahoma counties, said Dave Bary, EPA Region VI spokesman.

No part of the three rural counties — Jefferson, Love or Marshall — is in nonattainment for the eight-hour National Ambient Air Quality Standard for ozone, so transported ozone isn't threatening the achievement of attainment status the way it allegedly threatens attainment in the Northeast.

And so far, contrary to published reports, no one's complaining. Oklahoma officials haven't complained to anyone at EPA's Region VI, which encompasses Oklahoma and Texas, reported Bary. The monitors, he said, simply did what they were supposed to do — confirm that transport was taking place. The two states are sharing information and are quite friendly, said Scott Thomas, program director in the air quality division at the Oklahoma Department of Environmental Quality.

Natsource Caters To Retail Crowd

Citing customer demand, Natsource yesterday launched an Environmental Action Desk to facilitate transactions involving non-traditional customers such as individuals, environmental groups or schools.

Charities and environmental organizations sometimes seek to buy emissions allowances in order to retire them, explained several market sources, and Natsource sees nontraditional customers as an emerging market.

"The retail market in emissions trading is vibrant, and organizations view it as a new way to make a statement on the environment," said Jack Cogen, Natsource president. "The Environmental Action Desk caters directly to these groups by leveraging our brokerage expertise in emissions markets and our global reach to create a user-friendly trading structure facilitating retail trades."

The desk will handle small transactions involving SO₂, NO_x, and greenhouse gas credits. GHG credits sell for roughly \$2 each, said Natsource broker David Oppenheimer.

The new desk is primarily a virtual brokerage operated through the Internet. The address is: http://www.natsource.com/environmental/action_desk.asp. Retail trades are conducted on the site either via e-mail or fax and are administered by a retail specialist. Retail trades are executed by the Natsource emissions trading desk. The Environmental Action Desk was inaugurated with two trades, one each in the greenhouse gas and SO₂ emissions markets.

Natsource expects no trouble finding allowances for sale in the small volume it will need, said spokesman Evan Ard. So far, the company has found sellers willing to part with a few allowances at a time. While sellers in the NO_x and SO₂ markets tend to be traditional outlets such as utilities, GHG sellers typically lean toward the nontraditional. Natsource recently transacted a GHG trade with Panamanian seller, Futuro Forestal, which generated credits from a forest sequestration project.

Other market players said all brokerages are capable of catering to the retail market and many of them regularly do, though they don't focus their efforts there. Cantor Fitzgerald has sold allowances to individuals for years for purposes as varied as wedding presents and gifts for visiting dignitaries, said Carlton Bartels. Both Eurobrokers and Tradition Financial Services have facilitated retail transactions, said representatives at those two houses.

In Brief...

The Clean Air Trust's "Villain of the Month" for June is the U.S. Supreme Court. The green group gave the court the dubious distinction for its decision to accept a petition by industry to subject national clean air standards to a cost-benefit test (AD 5/31/00). "If the Supreme Court sides with industry, it would repeal the core premise of the 1970 Clean Air Act: that all Americans have the right to clean air," said Frank O'Donnell, the Trust's director. CAA regs since 1970 have been based on science, not politics, O'Donnell added. Industry groups seek to repeal that fundamental principle and base the air

quality standards on political considerations," he said.

Focusing on the needs of Latin America's energy operators, service companies and suppliers, the e-business for energy Latin America conference will be held July 10-12, on the island of Margarita, off the coast of Venezuela. The conference represents the primary opportunity to examine strategic e-business issues. Delegates will hear case studies on e-commerce implementation from the major players including: Petrobras, Intesa, GE, Shell, Chevron, Enron, Energy Access.com.br, Landmark, Edison International, Ariba, Telefonica, and many others. In addition, the conference includes interactive panel sessions, hands on workshops and the opportunity to network with energy executives and discuss how e-business will change the way the energy sector works in Latin America. For more information contact: Allison Robertshaw, Allison@firstconf.com or Alex Quiroga, alex@firstconf.com. Or visit: www.eyeforeenergy.com

WEDNESDAY'S MARKET

EPA's Allowance Tracking System for June 7 shows relatively few SO₂ allowance transactions: PG&E Energy Trading transferred 5,000 '99s to FirstEnergy Corp. and Arizona Public Service transferred 10,000 current-vintage allowances — 5,000 to Koch Carbon Inc. and 5,000 to Southern Company Energy Marketing. In the NO_x market for June 7, ATS recorded no transactions by press time.

Response to Charges of Violation of the Knollenberg Restriction

General:

- EPA carries out a range of climate change programs and activities that are authorized under existing laws and funded by appropriations enacted by Congress.
- EPA has repeatedly committed not to implement the Kyoto Protocol without Senate advice and consent.
- EPA has complied at all times with the Knollenberg restriction, which bars the use of funds “to propose or issue rules, regulations, decrees or orders for the purpose of implementation, or in preparation for implementation, of the Kyoto Protocol” until the Senate gives advice and consent to ratification.
- None of EPA’s climate change programs or activities violates the Knollenberg restriction. Our voluntary partnership programs – Energy Star, Climate Wise, etc. – are authorized by existing law and are specifically funded in our appropriations legislation. They involve no rulemaking and have no connection to Kyoto.
- EPA, together with the Department of State and other departments and agencies of the Executive Branch, is participating on behalf of the United States in continuing international negotiations to complete development of the flexibility mechanisms and resolve other outstanding issues under the Kyoto Protocol.
- The purpose of these negotiations is to flesh out how the Kyoto Protocol would operate if it should be ratified and enter into force. That is something that both the Administration and the Congress need to understand fully in considering whether to ratify the Protocol.
- None of these international negotiating activities implements the Protocol. The Protocol will be implemented in the U.S. only if the Senate consents to ratification.

Attached one-pagers address specific programs or activities that Reps. Knollenberg, McIntosh, or others have charged violate the Knollenberg restriction or represent attempts at premature or backdoor implementation of the Kyoto Protocol:

<i>Participating in international negotiations</i>	<i>p.3</i>
<i>Meeting with the German government</i>	<i>4</i>
<i>Participating in negotiations over “rules” for flexibility mechanisms</i>	<i>5</i>
<i>Developing a prototype greenhouse gas registry for international emission trading</i>	<i>6</i>
<i>Funding Argentina for greenhouse gas studies</i>	<i>7</i>
<i>Discussing emissions trading with Russia</i>	<i>8</i>

table of contents continued next page

<i>Proposing a Clean Air Partnership Fund</i>	9
<i>Analyzing legislative options for giving credit for early action</i>	10
<i>Signing the 1999 G-8 Environment Ministers' Communique</i>	11
<i>Several rules that regulate emissions of greenhouse gases</i>	12
<i>Authority to regulate carbon dioxide</i>	14

Responses to Specific Charges:

Charge: EPA violates the Knollenberg restriction by participating in international negotiations regarding the Kyoto Protocol.

- EPA, together with the Department of State and other departments and agencies of the Executive Branch, is participating on behalf of the United States in continuing multilateral and bilateral negotiations to resolve remaining issues under the Kyoto Protocol.
- The purpose of these negotiations is to flesh out how the Kyoto Protocol would operate if it should be ratified and enter into force. That is something that both the Administration and the Congress need to understand fully in considering whether to ratify the Protocol.
- None of these international negotiating activities implements the Protocol. The Protocol will be implemented in the U.S. only if the Senate consents to ratification.
- The Administration does not construe the Knollenberg language so as to interfere with the President's Constitutional authority "to engage in the many activities, both formal and informal, that constitute negotiations relating to climate change." (*Signing statement accompanying Consolidated Appropriations Act for Fiscal Year 2000, which applies same Knollenberg language to State Department.*)

Charge: EPA violated the Knollenberg restriction by participating in a February 2000 meeting with the German government on the Kyoto Protocol.

(Note: Rep. Knollenberg has asked EPA's Inspector General to investigate participation in this meeting. IG staff have made preliminary information-gathering inquiries of EPA staff, but to our knowledge, the IG has not made any response yet to Rep. Knollenberg. A response follows in case questions are asked directly to EPA.)

- A member of EPA staff accompanied Under Secretary of State Frank Loy to a bilateral meeting with German government in Berlin on February 2-3, 2000.
- This bilateral meeting was one of many bilaterals that the U.S. is undertaking as an integral part of the continuing international negotiations over unresolved issues related to the Kyoto Protocol.
- Bilateral meetings are an integral part of the international negotiating process. The purpose of all these efforts is to flesh out how the Kyoto Protocol would operate if ratified – something that the Congress and the Administration surely will want to understand when considering whether the U.S. should become a Party.
- None of these international negotiating activities implements the Protocol. The Protocol will be implemented in the U.S. only if the Senate consents to ratification.

(Note: Meeting was entitled the "First German-U.S. Environmental Policy Workshop: Sustainable Climate Protection Policies – Assessing the Costs and Benefits of Completing the Kyoto Protocol." It involved both bilateral intergovernmental discussions and public meetings with representatives of German and American business, academic, and environmental organizations. Topics included "how best to complete [note: not "implement"] the Kyoto Protocol")

Charge: EPA violates the Knollenberg restriction specifically by participating in negotiations over the “rules” for the Kyoto flexibility mechanisms.

- The Kyoto Protocol provides for international emissions trading and other market-based flexibility mechanisms, which would substantially reduce the costs of reducing greenhouse gases.
- EPA, together with other agencies, is participating in negotiations over “principles, modalities, rules and guidelines” that will flesh out how emissions trading and the other flexibility mechanisms would operate if the Protocol is ratified – something the Senate surely will want to understand when considering whether the U.S. should ratify.
- These “principles, modalities, rules and guidelines” are not “rules, regulations, decrees or orders” encompassed by the Knollenberg restriction. EPA believes it is a reasonable interpretation that the language in EPA’s appropriations legislation covers domestic regulatory activity – domestic regulations are, in fact, the only kind of “rules, regulations, decrees or orders” that EPA can “propose or issue.” The principles, modalities, rules and guidelines related to the Kyoto mechanisms are not domestic regulations; they will not be issued by EPA; and they will have no binding effect on the U.S. without ratification.
- The Administration does not construe the Knollenberg language so as to interfere with the President’s Constitutional authority “to engage in the many activities, both formal and informal, that constitute negotiations relating to climate change.” (*Signing statement accompanying Consolidated Appropriations Act for Fiscal Year 2000, which applies same Knollenberg language to State Department.*) Negotiating the principles, modalities, rules and guidelines for the flexibility mechanisms referred to in the Kyoto Protocol is one such activity.

Charge: EPA violated the Knollenberg restriction by developing a prototype greenhouse gas registry for international emission trading.

- As part of the negotiations related to international emissions trading, EPA has developed a computer prototype of a *national registry system*. The prototype, which uses fictitious data, was designed to show other countries a practical way to keep track of emissions trading transactions in an accurate and transparent manner.
- The registry prototype is one of the many ways that the United States is using its expertise in the on-going international negotiations to address legitimate concerns about how the elements of the Protocol would work, and what economic effects they would have, if and when the Protocol is ultimately ratified and implemented.
- In undertaking these discussions, and in developing the registry prototype to support its negotiating position, the Administration is simply carrying out its responsibilities to negotiate international treaties. The work on the prototype involves no rulemaking and does not place any obligations on the U.S.
- If registry requirements are adopted by the Parties, the U.S. would have an obligation to create and maintain an actual national registry only if the U.S. ratifies the Protocol and it enters into force.

Charge: EPA violated the Knollenberg restriction by giving Argentina funds to help that country develop its commitment to reduce greenhouse gas emissions, announced at COP-5 in November 1999.

- EPA established a Cooperative Agreement in fiscal years 1998 and 1999 with the Argentine Department of Natural Resources and Sustainable Development to support technical studies on greenhouse gas emissions that would assist the Government of Argentina to make well-informed decisions to address climate change. *(Total funds amounted to \$750,000.)*
- The support that EPA provided to Argentina was part of the U.S. Country Studies Program. This is a multi-agency program initiated under former President Bush in March 1992 that supports capacity-building work with numerous countries regarding greenhouse gas emission inventories and projections, mitigation options, vulnerability assessments, and adaptation options.
- Congress has appropriated funds to EPA for these activities for each year since 1992. EPA has provided Congress with descriptions of this program in annual submissions of documents that support EPA's budget.
- These activities are a part of the Administration's vigorous diplomatic efforts to broaden developing country participation and commitment to address climate change – a key goal reflected in the Byrd-Hagel resolution.

Charge: Administration discussions with Russia on a pilot emissions trading program constitute implementation of the Kyoto Protocol

- The Administration is working closely in the on-going international negotiations with eight other countries – the “Umbrella Group” – that share our views on how emissions trading and other market-based mechanisms can cost-effectively address climate change if and when the Kyoto Protocol is ratified and implemented. Russia is one of these countries – the others are: Australia, Canada, Iceland, Japan, New Zealand, Norway, Russia, and Ukraine.
- The U.S. continues to work closely with Russian officials, building on cooperative work between the U.S. and Russia that predated the Kyoto conference, to help them develop their country’s emissions inventory and its capacity to reduce greenhouse gas emissions. Emissions trading is a potentially powerful tool for cost-effectively reducing Russia’s emissions.
- EPA, working with the State Department and other agencies, has held discussions with Russian officials on potential pilot trading programs that could build a base of experience to evaluate the prospects for credible, effective emissions trading. Such experience would be valuable whether or not the Kyoto Protocol ever enters into force.
- Any pilot program would involve no U.S. rules or regulations. One possible pilot program would be entirely a domestic Russian program. A possible pilot open to international participation would involve American companies, if at all, only on an entirely voluntary basis. In no case would U.S. taxpayer money be used to buy Russian allowances, and the United States would not be bound to anything.

Charge: Proposing a Clean Air Partnership Fund indicates EPA's intention to engage in backdoor implementation of the Kyoto Protocol.

- The President's FY2001 Budget Request proposes again to create a new Clean Air Partnership Fund. The Fund will provide grants for cities, states, and tribes to demonstrate smart multi-pollutant strategies that efficiently reduce combinations of pollutants: e.g., soot and smog, air toxics, and/or greenhouse gases.
- The Fund will be a catalyst for voluntary local, state, and private partnerships for air pollution reductions.
- The Clean Air Partnership Fund has nothing to do with the Kyoto Protocol. It is widely supported by state and local officials and by the private sector because it makes good environmental and economic sense to find smarter, cheaper ways of cleaning the air, and getting the most environmental bang for the buck.
- As with all grant programs, EPA will take clear steps under OMB's direction to prevent grant recipients from using grant monies for lobbying.

Charge: EPA violates the Knollenberg restriction by analyzing legislative options for giving credit for early action to reduce greenhouse gases.

- Analyzing legislative proposals and making recommendations to the Congress regarding legislative proposals are activities clearly provided for the Executive Branch under the Constitution.
- Bipartisan bills have been introduced in both the House and the Senate providing credit to businesses for taking early action to reduce greenhouse gas emissions.
- EPA has participated in the Administration's efforts to analyze these legislative proposals and develop Administration positions on this issue.
- Possible legislation on credit for early action is not dependent on the Kyoto Protocol, and EPA's analytical efforts involve no rulemaking. Thus the funding restriction is not applicable to these activities.

Charge: By signing a G-8 Environment Ministers' Communique in 1999, Administrator Browner showed that the Administration's Climate Change Technology Initiative programs are really designed to implement the Kyoto Protocol

- The measures mentioned in the 1999 G-8 Environment Ministers' Communique consist of on-going, voluntary efforts to reduce greenhouse gas emissions. EPA Administrator Browner signed the communique only after rebuffing any language that might have implied a commitment to implement Kyoto before ratification.
- The Administration's Climate Change Technology Initiative is part of these efforts and includes EPA's voluntary programs which save energy, cut air pollution, and save money for American businesses and consumers while reducing greenhouse gases. They are good for both our economy and our environment and help fulfill our obligations under the Framework Convention on Climate Change.

(Note: The 1999 G-8 environment communique stated: "We are making an immediate start on developing and implementing the domestic measures necessary to achieve significant reductions in greenhouse gas emissions and to show demonstrable progress by 2005." Rep. Knollenberg charged last year that this sentence shows the Administration really intends the CCTI programs to implement Kyoto.)

Charge: EPA violated the Knollenberg restriction by proposing and issuing several rules that would regulate emissions of greenhouse gases

- EPA does not believe that the Knollenberg language bars regulatory activities that are authorized by, and intended to carry out, *existing environmental laws*, just because they reduce greenhouse gas emissions. EPA takes these actions to carry out existing domestic laws enacted by Congress, not to implement the Kyoto Protocol.
- EPA has in fact proposed or issued rules that directly or indirectly limit some greenhouse gas emissions. The purpose of and authority for these rules are to implement the Clean Air Act, not the Kyoto Protocol.
- For example, we proposed to prohibit the use of HFCs in “self-cooling” beverage cans, because a safer compound is available for this product. HFCs have extremely high global warming potency, and they would have been needlessly vented into the air every time someone popped the top on such a can.
 - Title VI of the Clean Air Act requires the phase-out of chemicals that deplete the stratospheric ozone layer. Title VI also requires EPA to assure that replacement chemicals will not threaten public health or the environment.
- Another example: We have issued regulations to curb emissions of smog-forming chemicals from municipal landfills. A side-benefit of these rules is a big reduction of emissions of methane, another powerful greenhouse gas. This can often be done at a profit, since electricity can be generated from the captured methane gas.
 - Section 111 of the Clean Air Act authorized action to cut landfill emissions of smog-forming gases. It also authorized EPA to take into account energy, economic, and other environmental impacts. In this case, it was just common sense to take into account the energy, economic, and other environmental benefits of reducing methane.
- These were common-sense actions to carry out laws enacted by the Congress to protect the health and well-being of the American people. They were not taken with the purpose or effect of implementing or preparing for implementing the Kyoto Protocol.

(Note: This summary was prepared by OGC and distributed to EPA climate staff in February 1999. It has been given to Reps. Knollenberg, McIntosh, and others.)

Summary of Appropriations Restriction

The FY 1999 VA-HUD and Independent Agencies Appropriations Act establishes the following restriction on EPA expenditure of funds:

Provided further, That none of the funds appropriated by this Act, shall be used to propose or issue rules, regulations, decrees, or orders for the purpose of implementation, or in preparation for implementation, of the Kyoto Protocol . . .

This restriction on the use of funds has two limitations:

- Type of activities it covers -- regulatory only; and
- Purpose of activities it covers -- implementation or preparation for implementation of Kyoto Protocol only.

The restriction only covers activities of the specified type and purpose.

- In terms of the type of activities covered, the restriction is limited to the regulatory activities specifically listed in the Act -- proposing or issuing “rules, regulations, decrees, or orders.” Thus, the restriction does not affect informational and other authorized Agency activities, such as EPA’s voluntary programs to reduce greenhouse gas emissions.
- In terms of the purpose of the activities covered, the restriction is limited to activities for the purpose of implementation or in preparation for implementation of the Kyoto Protocol. The restriction does not bar EPA from carrying out all regulatory activities that would have the effect of reducing or that might in some measure be intended, in implementing existing authorities, to reduce greenhouse gas emissions covered by the Kyoto Protocol.

In summary, EPA may not expend funds to propose or issue a regulation for the purpose of implementing, or in preparation for implementing, the Kyoto Protocol.

EPA may expend funds to propose or issue a regulation for a number of purposes including the reduction of greenhouse gas emissions, as long as the expenditures are in implementation of existing law and not for the purpose of implementing, or in preparation for implementing, the Kyoto Protocol. EPA may also expend funds on authorized nonregulatory activities.

Charge: Even though Congress has yet to pass specific legislation to control greenhouse gases, an EPA “legal opinion” asserts that the agency already has authority to regulate carbon dioxide.

- In response to a request from Congressman DeLay during the FY1999 appropriations hearings, EPA’s General Counsel prepared a legal opinion on the question of EPA’s authority under the Clean Air Act to regulate the four main pollutants from electric power plants: nitrogen oxides, sulfur dioxide, carbon dioxide, and mercury.
- The legal opinion concluded that all four substances, including carbon dioxide, are “air pollutants” under the Clean Air Act and that they could be regulated if EPA made required findings regarding their danger to public health, welfare, or the environment under one or more of the Act’s regulatory provisions.
- The opinion emphasized, however, that carbon dioxide is not yet regulated because EPA has not made such “danger” findings regarding that substance. EPA has not proposed any such findings or regulations.
- In late 1999, a petition to regulate carbon dioxide from motor vehicles was filed by a number of environmental organizations. EPA has made no decision whether to grant or deny the petition. In compliance with its usual practice and requests by members of Congress, EPA will soon publish a notice asking for public comment on the petition.

Further background:

- The existing Clean Air Act provides authority to address not only the air pollutants specifically named in it, but also newly arising problems. Over the years, EPA has issued air pollution control rules for substances that are not specifically named – most prominently, airborne lead – as their dangers became known.
- The Act creates a two-part test before such a substance may be regulated. First, the substance must be an “air pollutant.” Second, EPA must make findings regarding its danger to public health, welfare, or the environment under one or more of the Act’s regulatory provisions.
- The Clean Air Act defines “air pollutant” broadly to include “any physical, chemical, biological, or radioactive substance or matter that is emitted into or otherwise enters the ambient air.” Something emitted into the air by human activities is an air pollutant even if it is also present in the air naturally. Most of the pollutants that are currently regulated are also naturally present in the air in some quantity.
- The EPA legal opinion concluded that each of the substances emitted by power plants, including carbon dioxide, is an “air pollutant.” The opinion continued, however, that an

air pollutant cannot be regulated unless EPA determines that it meets the specific criteria of one or more of the regulatory provisions of the Act. While carbon dioxide is an air pollutant, it is not regulated, because EPA has not determined that it meets the criteria under any of the regulatory provisions of the Act.

Talking Points on Knollenberg Anti-Kyoto Protocol Rider on Foreign Ops & CJS

Background

FY99

In FY99, the “Knollenberg” rider was contained only in the VA-HUD and Independent Agencies Appropriations Act. The provision bars EPA from using funds “to propose or issue rules, regulations, decrees, or orders for the purpose of implementation, or in preparation for implementation, of the Kyoto Protocol” prior to the Senate’s giving advice and consent to its ratification. The appropriations conference report – the result of a bipartisan agreement spearheaded by Senator Byrd (D-WV) - explains that the intent of this language is to prevent funds from being used “to implement actions called for solely under the Kyoto Protocol.” Last year’s agreement was intended to ensure that the restriction does not cover EPA’s voluntary partnership programs to cut energy costs and prevent pollution.

FY2000

This year Representative Knollenberg has added this provision to 6 bills: VA-HUD; Foreign Operations; Commerce, Justice, State; Interior; Energy and Water; and Agriculture.

1. Agriculture, Energy & Water and Interior. All three bills contain the Knollenberg bill with no new legislative history. We continue to state that the provision is unnecessary. Under our current interpretation of this provision, however, it should not have a significant impact and therefore we have not strongly opposed.
2. VA-HUD. The bill contains the same bill language as last year and no report language. Knollenberg attempted but failed to modify the report language from last year to expand the coverage of the prohibition. Because the Conferees adopted no report language, we will continue to interpret the prohibition in the same manner as last year.
3. Foreign Operations & Commerce, Justice, State. Both bills contain the bill language and no report language. Senator Byrd himself and his staff have worked to get this provision out of these bills. Although we have not yet been successful, the Democrats want to continue to work with us in a post-veto strategy to drop the provision. Talking points regarding these two bills follow.

Talking Points

- The Administration has repeatedly pledged to not implement the Kyoto Protocol prior to Senate ratification. The United States also has existing obligations under the Framework Convention on Climate Change to reduce greenhouse gas emissions.
- Applying this prohibition to AID and the State Department has the potential to impact the Administration's ability to conduct international climate change negotiations. The Administration is currently engaged in vigorous climate change international negotiations to promote U.S. national interests and the bipartisan objectives of the Byrd-Hagel resolution – specifically, that international efforts on climate change protect U.S. economic interests and engage developing countries.
- Representative Knollenberg has specifically stated that his intent with respect to these bills is to prohibit the expenditure of taxpayers' money to engage developing countries with respect to the Kyoto Protocol. Furthermore, legal counsel at both the State Department and AID are concerned that this provision could be interpreted to cover the negotiation of international rules and regulations under the Protocol. Both of these activities are critical to advancing the objectives of finding a global, cost-effective solution to climate change.
- The Office of Legal Counsel of the Department of Justice believes that any restrictions on the Administration's efforts to advance these objectives in international negotiations raises Constitutional concerns.
- The Administration position is that this provision should be dropped from both bills.

3 arguments: ① Solely; ② until treaty negotiations; ③ "rules, regulations etc."

Wednesday, February 9, 2000
9:30 a.m. Meeting on Knollenberg Language

ISSUE:

- Knollenberg language was added to FY2000 appropriations bills for (1) agriculture; (2) energy and water; (3) foreign ops; (4) interior; (5) VA/HUD; and (6) CJS. Report language was NOT added to any bills.
- AID is feeling particularly vulnerable to K-language, and State Dept is already being challenged by Knollenberg regarding Loy's travel and participation in international meetings and negotiations (upcoming Berlin meeting).
- Hill briefings on climate change budget are scheduled for Friday and Monday. Before we begin fielding public questions about how we are addressing or interpreting Knollenberg language, we should discuss this as a group, and have a certain comfort level on how to approach this generally.

POINTS TO MAKE:

- We are planning a very **aggressive legislative/hill strategy** this year; we'll be more vocal, and more visible on climate change issues. Rather than run a fire drill each time we are called or challenged by Knollenberg, we want to have a (*verbal*) administrative position, and a shared comfort level with our approach.

(NOTE: State Dept has expressed a need to document guidance to posts.)

- There were apparently multiple discussions on this issue in the past – with the outcome being a sense that foreign policy activities are constitutionally 'safe' from the K-language, but domestic and 'other' activities face a different challenge.
- EPA has a position articulated in a draft McIntosh response letter (which AID has) – we should discuss – may provide cover/position for AID.

Roger, AID may simply be looking for a signal that we will back them in their decision – hard to say. DOE feels this is a 'decided' issue, and is pretty clear cut. My sense is that EPA is also quite comfortable; State, only slightly less so.

Attendees:

AID: Ko Barrett and David Hales
EPA: David Donagher and Jeremy Symons (and Pete Pagano, leg affairs)
DOE: Mark Mazur
State: David Sandalow and Chris Mann
CEQ: Ian Bowles



United States Department of State

*Bureau of Oceans and International
Environmental and Scientific Affairs*

Washington, D.C. 20520

DATE 2-7-00 TIME 2²⁰NUMBER OF PAGES TO FOLLOW 1FAX TO Roger Dallenline, Ian Bowler

TELEPHONE NUMBER _____

FAX NUMBER _____

OFFICE _____

FAX FROM David Sandalan

TELEPHONE NUMBER _____

FAX NUMBER _____

OFFICE _____

MESSAGE: FYI, per our conversations on Kudlenberg.

The inquiry that led to this memo was a
phone call from Kudlenberg staff to the
State IG.



United States Department of State

Washington, D.C. 20520

January 31, 2000

MEMORANDUM

TO: G - Under Secretary Loy

FROM: L - James H. Thessin *JHT*

SUBJECT: Berlin High-Level Joint Workshop on Climate Protection

In response to your request, we have reviewed the invitation you received from the German Federal Minister for Foreign Affairs and the Federal Minister for the Environment, Nature Conservation and Nuclear Safety concerning a high-level joint workshop on climate protection, scheduled to take place in Berlin on February 2 and 3, 2000. We have concluded that your participation, and the participation of other State Department officials, in this workshop does not violate Section 621 of the Departments of Commerce, Justice and State, the Judiciary and Related Agencies Appropriations Act, 2000 and Section 583 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2000 (both of which were enacted in the Consolidated Appropriations Act for FY2000, P.L. 106-113).



White House Climate Change Task Force

Roger —

OMB is circulating the attached EPA draft response to McIntosh for clearance, now. This response contains the "EPA policy" statement, per se, in the Knollenberg language. David Gardiner feels that the response to G2 (on pg 3) captures what AID should adopt as their policy.

I am setting up a 9 or 9:30 meeting in your office tomorrow w/ State, DOE, AID, & EPA, & IOM, to discuss.

Debbie

LRM ID: EHF356

**EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001**

Tuesday, February 8, 2000

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below

FROM: John D. Burnim (for) Assistant Director for Legislative Reference

OMB CONTACT: Robert J. Tuccillo
E-Mail: Robert_J_Tuccillo@omb.eop.gov
PHONE: (202)395-5609 FAX: (202)395-5836

SUBJECT: Environmental Protection Agency Qs and As on Climate Change

DEADLINE: 4:00 PM Wednesday, February 9, 2000

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS:

DISTRIBUTION LIST

AGENCIES:

95-Office of Science and Technology Policy - Jeff Smith - (202) 456-6047
114-STATE - Paul Rademacher - (202) 647-4463
19-Council on Environmental Quality - Judy Jablow - (202) 456-6448

EOP:

Debbie Reed
David Gardiner
Joseph E. Aldy
Rosina M. Bierbaum
Ian A. Bowles

cc: ~~ONE~~ KO BARRETT, AID
216-3174

Honorable David M. McIntosh
Chairman, Subcommittee on National Economic
Growth, Natural Resources and Regulatory Affairs
Committee on Government Reform
U.S. House of Representatives
Washington, DC 20515-6143

Dear Mr. Chairman:

I am writing in response to your letter of December 20, 1999, inquiring about Environmental Protection Agency efforts related to global climate change. Detailed answers to your specific questions are attached to this letter.

EPA has made a diligent, good faith effort to identify the Agency records that are responsive to your request. Nevertheless, no process is foolproof. Accordingly, if at a later date we uncover additional records that are responsive, we will notify you immediately and provide a supplemental response.

If you have any questions for EPA regarding these responses, please contact me or Paul Stolpman (564-9081) of the Office of Atmospheric Programs. Thank you.

Sincerely,

Robert A. Perciasepe
Assistant Administrator for Air and Radiation

cc: The Honorable James Sensenbrenner

Enclosures

**ENVIRONMENTAL PROTECTION AGENCY'S RESPONSES
TO JULY 1, 1999 QUESTIONS FROM CHAIRMAN DAVID M. McINTOSH**

Privileged & Confidential -- February 8, 2000 -- DRAFT

- Q1. The Environmental Protection Agency's (EPA's) July 26, 1999 letter notes that "some of the records are deliberative in nature or contain materials subject to the attorney-client and attorney work privileges, and are so marked." My review of them shows only three documents are stamped "Privileged" (i.e., attachments M, N and O). I, therefore, presume that all others are not subject to your note and, consequently, I intend to make them publicly available.**

As to the three documents in question, I have serious doubts that any of them should be classified as "deliberative in nature" or "material subject to the attorney-client and attorney work privilege." Documents N and O relate to the establishment of an Argentine emissions target; document M, to the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999. That Act is "history" and therefore not deliberative in nature. Argentina, presumably, is not a client of the EPA.

Although the Freedom of Information Act provides for exemptions (e.g., materials classified as secret in the interest of national defense or foreign policy pursuant to an Executive Order, trade secrets, and information compiled for law enforcement purposes), routinely exempting documents from disclosure would defeat the purpose of the Act. I suspect that your staff has overused the term "Privileged."

- a. Therefore, please provide specific reasons why any of these documents deserves the "Privileged" status and should not be made public.**

Document M was appropriately marked "Privileged and Confidential" because it was a draft, pre-decisional document, subject to the attorney-client privilege and the deliberative process privilege. The document recommends how EPA should interpret the scope of the FY99 Appropriations Restriction related to the Kyoto Protocol. Since the document was drafted, EPA has acted consistently with the interpretation contained in the document and has taken public positions based on this interpretation. EPA has not previously released this document publicly. However, EPA believes that public release of this document would not harm the interests protected by the relevant privileges, and EPA does not oppose public release of the document.

Documents N and O are privileged because they are pre-decisional draft documents. Document N was prepared by EPA, and document O. was prepared by the Council of Economic Advisors (CEA). These draft reports were intended as an analysis of whether it was even feasible for a country such as Argentina to take on a target. Additionally, these two documents explored analytically, what analysis must be done in considering a target (regardless of the country involved) as background

DETERMINED TO BE AN ADMINISTRATIVE

MARKING INITIALS: M DATE: 3/4/19

2017-1013-f

for U.S. government negotiators working on international aspects of climate change. Neither EPA nor CEA has released either of these documents to the public, and such release would be contrary to important Administration purposes. These pre-decisional draft documents discuss in detail the U.S. position on what form of a target Argentina could, or in some cases should, adopt. The public release of these documents could impact foreign policy related to climate change, and in particular, the U.S. government efforts to encourage developing countries to adopt greenhouse gas targets. As you are aware, these issues are the topic of sensitive international negotiations, which could be damaged by release of draft documents revealing internal Administration positions and deliberations. Release of these documents could also seriously undermine the Agency's ability to work cooperatively with developing countries on climate change, as we have been doing through the U.S. Country Studies program. Therefore, EPA requests that the Subcommittee honor the privileged and confidential nature of these documents and refrain from releasing them to the public.

- b. Also, Attachment Y includes in the opening paragraph a reference to three documents that apparently were not included in the materials EPA provided. Please provide them to me.

Please see attachments.

- Q2. In response to Question 2, EPA affirmed that its development of an emissions trading registry was within the "bounds" of the Knollenberg funding limitation. Specifically EPA argued that the Knollenberg restriction only "bars expenditures to propose or issue 'rules, regulations, decrees, or orders' for the purpose of implementation or in preparation for the implementation of the Kyoto Protocol" and does not limit EPA participation in "international negotiations" concerning the Kyoto "flexible mechanisms." EPA's response concluded: "Development of the model registry is part of those negotiations and does not involve any rule making activity and does not impose any burdens or mandates on the United States or on any private sector entities. For these reasons, we do not believe this effort poses any issue under the appropriations restriction." I question EPA's legal authority, under the Knollenberg limitation, to participate in such negotiations. The negotiations are preparatory to proposed or interim rulemakings, which would be issued should the U.S. Senate ratify the Kyoto Protocol. I also question the claim that any decisions reached through the negotiations will not "impose any burdens or mandates" on the United States.

As I understand the current status of the "international negotiations" regarding the Kyoto mechanisms of Articles 6, 12, and 17, and other Articles of the Kyoto Protocol, the decisions at Buenos Aires call upon the Parties to the Framework Convention on Climate Change (FCCC) to "prepare for the future entry into force of the Kyoto Protocol" (see particularly Decision 1/CP.4). That decision, among other things, requires negotiations

for the development of relevant “principles, modalities, rules and guidelines” under Article 17, with a “view” of the Parties “taking a decision” on that mechanism and all others at the 6th Session of the Conference of the Parties (COP), which may be scheduled in late 2000 or early 2001. Are not the intended results of those negotiations “rules” of general applicability and future effect? Thus, are not those negotiations rule makings “in preparation for implementation” of the Kyoto Protocol?

EPA, together with the Department of State and other departments and agencies of the Executive Branch, is participating on behalf of the United States in the negotiation of the principles, modalities, rules and guidelines referred to in Decision 1/CP.4 of the Conference of Parties to the FCCC, which relate to the Kyoto flexibility mechanisms. These principles, modalities, rules and guidelines are not domestic rules or regulations. As such, they are not “‘rules’ of general applicability and future effect” as those terms are used in domestic administrative law. A plain reading of the Knollenberg language, in EPA’s appropriations legislation, indicates that it covers domestic regulatory activity; domestic regulations are, in fact, the only kind of “rules, regulations, decrees or orders” that EPA “propose[s] or issue[s].” Thus, EPA’s assisting in the negotiation of the principles, modalities, rules and guidelines related to the Kyoto mechanisms does not involve “propos[ing] or issu[ing] rules, regulations, decrees or orders” within the meaning of the Knollenberg language.

This interpretation of the Knollenberg restriction is supported by statements from the legislative history of the restriction as it applies to EPA’s use of appropriated funds. *See, e.g.*, 144 Cong. Rec. 8425, 8434 (daily ed. July 17, 1998) (Statement of Sen. Bond) (“Our only goal here is to prevent the issuance of federal regulations designed solely for the purpose of Kyoto Protocol implementation.”).

Further, as stated in President Clinton’s signing statement accompanying the Consolidated Appropriations Act for Fiscal Year 2000 (which applies the same Knollenberg language to the State Department), the Administration construes this language so as not to detract from the constitutional authority of the President to conduct the foreign affairs of the United States, including the authority “to engage in the many activities, both formal and informal, that constitute negotiations relating to climate change.” Negotiation of the principles, modalities, rules and guidelines for the flexible mechanisms referred to in the Kyoto Protocol is one such activity. As we have previously indicated, these negotiations will flesh out how the Kyoto mechanisms will operate should the Protocol enter into force. That undoubtedly will be an important issue in connection with future consideration by the Senate of advice and consent to U.S. ratification of the Protocol.

In response to Science Committee Chairman F. James Sensenbrenner, Jr., the State Department, in a May 4, 1999 letter said: “A2.1. Both of the articles in the Protocol cited in your question [i.e., Articles 6 and 12] indicate that the Parties intended that the details would be worked out by the COP/MOP. Thus, paragraph 2 of Article 6 provides that the COP/MOP shall ‘elaborate guidelines.’ Similarly, paragraph 7 of Article 12 provides that the COP/MOP shall ‘elaborate modalities and procedures.’ The absence of the word

'rules' does not mean that the COP/MOP lacks the power to develop rules, procedures and the like to which parties would need to adhere." The same letter also said: "A2.3. In the case where authority has been granted to the COP or COP/MOP to decide on the manner in which a particular mechanism is to operate, it will be up to the language of the decision itself whether its contents (or part of its contents) are to be legally binding or advisory. For example, under Article 17, the COP could decide certain aspects of the emissions trading regime should be mandatory and that others should simply be recommendatory." Again, are not the intended results of EPA's negotiation of rules of general applicability and future effect in preparation for implementation of the Kyoto Protocol?

Under Decision 1/CP.4, the principles, modalities, rules and guidelines to be adopted by the COP at its 6th Session are intended to flesh out how the flexible mechanisms envisaged by the Kyoto Protocol will operate, should the Protocol be ratified and enter into force. Whether these provisions will be legally binding or advisory on countries that become Parties to the Protocol will depend upon the language of the provisions and of the decisions by which they are adopted. They will then become applicable, whether binding or advisory, only to those countries that become Parties, and then only if the Protocol enters into force. As explained in answer to question 2.a above, these international principles, modalities, rules, and guidelines would not be "rules of general applicability and future effect" as those terms are used in domestic administrative law.

It is my understanding from reading correspondence between the State Department and Chairman Sensenbrenner that COP/MOP "rules, procedures and the like" will be binding on the United States. If that is true, what is the basis for the EPA statement that "international negotiations surrounding development" of the Kyoto mechanisms "does not involve any rule making activity"? What is your definition of a "rule" in this context? Isn't it a binding requirement for all Protocol Parties? Again, are not these negotiations rule makings in preparation for implementing the Kyoto Protocol?

Please see answers to question 2.a and 2.b, above.

- Q3. In response to Question 4, EPA states that the Emissions Marketing Association (EMA) and the Environmental Defense Fund (EDF) "are working together on a project called the Emissions Trading Education Interactive" and that EPA has provided a grant of \$175,000 to EMA. Also, the letter explains that EPA has "active grants with EDF and with a few of EMA's associated organizations...on matters related to the prototype."**

[Note: Responses to Question 3 are undergoing final review from EPA's grants office, and may be revised]

The EMA/EDF project is the Emissions Trading Education Initiative.

The July 26, 1999 response to question 4 said that "EPA does, however, have active grants or contracts with EDF and with a few of EMA's associated organizations...on matters unrelated to the prototype" (emphasis added). As explained in the July letter, the registry prototype is not part of the Emissions Trading Education Initiative, and neither EMA nor EDF was involved in the development of the registry prototype.

- a. **Was the \$175,000 grant competitively awarded? If not, why not? If so, what other organizations applied for this grant? What were their bids? Please provide me with copies of their applications.**

The cooperative agreement that EPA awarded to EMA was not awarded competitively. As the Congressional General Accounting Office recognizes, the Federal Grant and Cooperative Agreement Act (FGCAA) encourages, but does not require, competition in assistance programs. Because EMA were uniquely qualified to carry out this project, the cooperative agreement with EMA was not awarded competitively. This is consistent with Agency policy on competition for assistance agreements. EMA is the only US-based trade association representing industry members engaged in emissions trading. They have made strong efforts to facilitate the SO₂ and NO_x markets and are positioned to understand in a first-hand sense what information the public needs.

A copy of documents related to the cooperative agreement are attached for your reference.

- b. **Please provide the details and status of the Emissions Trading Education Interactive project and the grant, including a copy of all letters, notes, memoranda, reports, contracts and other materials in EPA files regarding each, and the identity, purpose, and amount of such grants and contracts with EDF and the EMA organizations.**

The original funding period for the project was September 1, 1998 through August 31, 1999. On June 4, 1999, EMA requested and was granted a no-cost six-month extension in order to finalize work on the project. Several products have been developed, copies of which are included. EPA expects that all work will be completed by the end of the extension.

All letters, notes, memoranda, reports, contracts and other materials related to the Emissions Trading Education Initiative are attached. No other grants or contracts exist with EMA, EDF, or any of EMA's associated organizations that relate to the Emissions Trading Education Initiative.

- c. **If EMA and EDF are "working together," are both recipients of this grant? If not, what do you mean by the words "working together?"**

EMA applied for and received the cooperative agreement. EDF served as a Technical Consultant for the Emissions Trading Education Initiative, and EDF staff served on the Emissions Trading Education Initiative workgroup. See the attached documents for additional details.

- d. **Please also provide more details about the development, with the above grant, of “public information and industry education materials” and explain how they will be used. Who will use these materials? What is EPA’s role in regard to their content, production, or dissemination? What are the grant conditions?**

Materials developed under this Initiative include a brochure intended for the general public, which explains cap and trade using examples of real world programs and a video entitled “Cap and Trade: An Innovative Partnership for a Cleaner Environment.” The Emission Trading Education Initiative has also produced a handbook for participants in allowance and credit trading (this is the main “industry education” product alluded to in the July letter). There is also a Web site located at www.etei.org. The brochure, video, and handbook are included in the attachments.

EMA entered into a cooperative agreement with EPA. The FGCAA authorizes EPA to be “substantially involved” in activities carried out under cooperative agreements. In accordance with OMB and EPA guidance on compliance with the FGCAA, substantial involvement can include collaboration with EMA with regard to the scope of the project, and joint participation in the project. Also included in the documentation is information about the Emission Trading Education Initiative workgroup. The workgroup is comprised of two individuals from EMA and two from EDF with EPA staff acting as advisors to the workgroup. Throughout development of the products of the project, EPA has provided technical input on the project. The technical input has been primarily related to the EPA experiences gained through development and implementation of the US Acid Rain Program under Title IV of the Clean Air Act, as well as the assistance and guidance EPA has provided to the Northeast Ozone Transport Commission (OTC) in developing and implementing the OTC NOx Budget Program under Title I of the Clean Air Act.

As authorized by 40 CFR 30.36, EPA has copies of the final products that the Emission Trading Education Initiative has produced, but has not and does not plan to actively distribute these documents outside the Agency. All products are available through the Emission Trading Education Initiative Web site.

The assistance agreement contains Terms and Conditions that the recipient is subject to. Many are standard for all (or most) assistance agreements. The full Terms and Conditions of this assistance agreement are found in the Assistance Award document found in the attachments.

Terms and Conditions that are specific to this project include:

- The requirement for twice monthly contact with the EPA Project Officer to collaborate on the development of the outreach materials. This includes EPA input on the content of the public information kit, brochure and emissions trading handbook.

- That a minimum of two copies of the public information kit, brochure and emissions trading handbook be provided to the EPA Project Officer.
- That the recipient use the EPA Project Officer or other EPA employees as reviewers of draft materials throughout the development process.

List of Attachments related to Question 3

- DMemo from EMA's David Baumann regarding the ETEI Emissions Trading Handbook (October 8, 1999)
- Fax memo from EMA's David Baumann regarding the handbook (September 20, 1999)
- Email from Evan Ard regarding ETEI handbook--last edits (September 13, 1999)
- Email from Evan Ard regarding ETEI handbook--last installment (September 7, 1999)
- Emissions Trading Education Initiative Emissions Trading Handbook draft (version 4, September 7, 1999)
- Email from EDF's Sarah Wade regarding ETEI handbook (comments on draft; August 10, 1999)
- Draft of a portion of the ETEI handbook, Section IV. (B.)
- Fax memo from EMA's David Baumann regarding ETEI Working Group Meeting (August 9, 1999)
- Emissions Trading Education Initiative (ETEI) Contact Information (Rev. July 19, 1999)
- Fax memo from EMA's David Baumann regarding 6-month extension of Assistance Agreement (June 4, 1999)
- Letter from EPA's Grants Administration Division regarding Closeout of Assistance Agreement (May 21, 1999)
- Memo from EMA's David Baumann regarding Assistance ID No. CX 82666 7-01-0 (September 24, 1998)
- Draft memo from EMA's David Baumann regarding Administration and Implementation of the EPA grant for the Emissions Trading Education Initiative (ETEI) (August 5, 1998)
- Memo from EMA's David Baumann regarding background materials on the EPA grant to fund the Emissions Trading Education Initiative (July 29, 1998)
- EPA Assistance Agreement award (July 21, 1998)
- EPA Assistance Funding Order (June 1998)
- EPA Decision Memo regarding Emissions Trading Education Initiative (June 11, 1998)
- EPA Peer Review Memo regarding Emissions Trading Education Initiative (June 5, 1998)
- Fax memo from EMA's David Baumann regarding draft grant proposal (June 5, 1998)
- EPA Commitment Notice (June 1998)
- Fax memo from EMA's David Baumann regarding draft grant Proposal (May 18, 1998)
- Application for Federal Assistance (May 14, 1998)
- Fax memo from EMA's David Baumann regarding EPA grant (May 8, 1998)

- Memo from EMA's David Baumann regarding outline (draft 3) of EMA/EDF Grant Proposal (May 1, 1998)
- Fax memo from EMA's David Baumann regarding draft grant proposal (April 24, 1998)
- Fax memo from EMA's David Baumann regarding EMA/EPA Projects (March 30, 1998)
- Handwritten notes regarding ETEI project

ETEI Products

- Video entitled "Cap and Trade: An Innovative Partnership for a Cleaner Environment"
- Brochure entitled "Real World Results"
- Flyer advertising the Emissions Trading Handbook
- Emissions Trading Education Initiative Emissions Trading Handbook

Q4. The reply to Question 5 reports that EPA has made grants to Argentina of \$750,000. Attachment II from the Grants Administration Division shows that the Project Title is: "Working Plan for the adoption of Argentine GHGs Emission Targets – To produce the necessary technical information to enable the country of Argentina to assume goals for greenhouse gas emissions (GHG) for the 2008-2012 period." The reference to "goals" is puzzling, because I was under the impression from statements by former Under Secretary Stuart Eizenstat that Argentina was going to adopt a "legally binding target." Indeed, in a May 4, 1999 reply to Chairman Sensenbrenner, the State Department reiterated that such a pledge was made. However, the Department added that Argentina "does not intend to join Annex I" of the FCCC "or Annex B" of the Protocol, which, of course, raises the question of how Argentina plans to carry out the pledge.

It appears from Attachment II, Attachment JJ, which includes a "Working Plan for the Adoption of Argentine GHGs Emission Targets," and Attachment P that Argentina was to announce a target or goals for 2008-2012 using 1997 as the baseline year "due to the economic depression suffered in Argentina in 1990," as Argentine officials "feel that by 1997 the economy has more or less recovered from the 1990 crisis."

In fact, Argentina's so-called "commitment" announced at Bonn in November at COP-5 in reality is only a voluntary, non-binding plan of greenhouse gas reduction. This being the case, please explain why the U.S., through the EPA, made grants to Argentina of \$750,000 for a goal or target that will be not legally binding. Is this to be a precedent for other developing countries? If so, how is it consistent with the Byrd-Hagel Resolution, S. res. 98?

EPA established a Cooperative Agreement with Argentina to support the building of data, expertise and other capacity that would assist the Government of Argentina to make well-informed decisions to address climate change. The EPA provided funding to Argentina to produce technical information for its

own use. This was not a contractual arrangement, and the U.S. EPA could not have legally required the Government of Argentina to make a specific policy decision.

The support EPA provides to developing countries is part of the continuing capacity building program. This program was initiated under former President Bush in March 1992 (U.S. Country Studies Program), and Congress has appropriated funds to EPA for these activities for each year since then. EPA has provided Congress with descriptions of this program in annual submissions of documents that support EPA's budget. The Cooperative Agreement with Argentina is consistent with EPA's other capacity building efforts to date. EPA believes that its capacity building efforts are consistent with the objectives of the Byrd-Hagel Resolution, S. Res. 98, regarding the desirability of action on climate change by developing countries..

Q5. Since the December 1997 meeting in Kyoto, has EPA made, or does it plan to make, grants to other developing countries? If yes, please provide the details of each grant and its associated funding and terms.

We understand use of the word "grants" in question Q5 to refer to Cooperative Agreements, through which the EPA provides financial and technical assistance to another qualifying entity, and specifically here to cooperative agreements with other sovereign governments on climate change topics.

Since the December 1997 meeting in Kyoto, the EPA has established Cooperative Agreements on climate change with Argentina, Chile and Mexico. GAD could not locate a grant no. with Chile at the \$ amount below. The details are summarized in the table below. Also, descriptions of the projects contained in the respective funding packages are appended to this response.

Recipient Country	Year/Amount	Agreement Number	Scope Funded
Argentina	FY98 \$225,000 FY99 \$275,000	X 827319-01-0	GHG inventory, scenarios, mitigation options, economic analysis
Mexico	FY99 \$289,000	X827851-01-0???	GHG inventory, regional land use change, policy analysis and capacity building, economic modeling, co-benefits and public education

Chile	FY98 \$225,000	DE-FC02- 94PO10140 This is not a grant number!!!!	GHG scenarios, co-benefits analysis, project assessments, outreach
-------	-------------------	--	--

In FY2000, consistent with the appropriations to EPA for this purpose, EPA plans to provide additional resources to Argentina, Mexico and Chile to continue to improve their capacities. EPA will also consider establishing a new Cooperative Agreement with the Republic of Korea and possibly with the Philippines. As in other cooperative agreements, the scope, output and terms of the arrangement must be negotiated with the recipient. EPA aims to provide assistance on topics potentially including: preparation of analysis that assists the recipient's policy decisions on GHG targets; preparation and improvement of the recipient's GHG inventories; mitigation options; projections and mitigation scenarios; economic analysis; co-benefits analysis; public education; support for use of markets in mitigating emissions; business-driven technology diffusion; and assessment of vulnerabilities and adaptation to climate change.

United States Senate

WASHINGTON, DC 20510



403233

October 22, 1999

The President
The White House
Washington, DC 20500

Dear Mr. President:

We are writing to express our concern over language regarding the Kyoto Protocol on Climate Change contained in the conference reports on both the Foreign Operations and Commerce, Justice, State and Judiciary FY 2000 Appropriations bills.

The language on its face prohibits implementation of the Kyoto Protocol without Senate ratification. However, the language could also be read to prevent U.S. diplomatic efforts to address developing country participation, an issue which the Senate highlighted in the 1997 Byrd-Hagel Resolution.

Your Administration is currently participating in international climate change negotiations pursuant to its obligations under the 1992 United Nations Framework Convention on Climate Change, which has been ratified by the United States. Within the context of these negotiations, the U.S. shares information with other countries on U.S. strategies for using market mechanisms as a tool for curbing pollution and offers technical assistance to developing countries in order that they may build their capacity to effectively limit their own emissions. The next conference of the parties will be held next week in Bonn, Germany.

These activities do not "implement" the Kyoto Protocol, but instead foster cost-effective international solutions to climate change. Any meaningful solution to global climate change will ultimately require global participation, and it is important that the U.S. take a leadership position in shaping and implementing such a solution.

U.S. Climate Change diplomacy should not be restricted and, in fact, such restrictions would appear to raise Constitutional concerns. In negotiations over the bills, we urge you to take a strong position against this language.

Sincerely,

12/19/99

Patricia Leahy

John F. Leahy

Patty Murray

Bob Cratman

Robert H. Ryan

Barbara Payer

Tom Vachle

Ron Wyden

Janet Christen

Max Baucus

Jeff Bingaman

Tom Rostenkowski

Jack Reed

Charles Schumer

Paul Wellstone

Al Franken

Carl Levin

105 1 Levin

Chin. DM

Mass Fitzgerald

J. L. L.

J. Kerry

Tom Harkin

Paul Kennedy

Jack Durbin

Harry Reid

Jim Jeffords

Jon Johnson

Herb Kohl

Robert A. Taft

Paul L. Sarbanes

Max Cleland

United States Senate
WASHINGTON, DC 20510

October 22, 1999

The President
The White House
Washington, DC 20500

Dear Mr. President:

We are writing to express our concern over language regarding the Kyoto Protocol on Climate Change contained in the conference reports on both the Foreign Operations and Commerce, Justice, State and Judiciary FY 2000 Appropriations bills.

The language on its face prohibits implementation of the Kyoto Protocol without Senate ratification. However, the language could also be read to prevent U.S. diplomatic efforts to address developing country participation, an issue which the Senate highlighted in the 1997 Byrd-Hagel Resolution.

Your Administration is currently participating in international climate change negotiations pursuant to its obligations under the 1992 United Nations Framework Convention on Climate Change, which has been ratified by the United States. Within the context of these negotiations, the U.S. shares information with other countries on U.S. strategies for using market mechanisms as a tool for curbing pollution and offers technical assistance to developing countries in order that they may build their capacity to effectively limit their own emissions. The next conference of the parties will be held next week in Bonn, Germany.

These activities do not "implement" the Kyoto Protocol, but instead foster cost-effective international solutions to climate change. Any meaningful solution to global climate change will ultimately require global participation, and it is important that the U.S. take a leadership position in shaping and implementing such a solution.

U.S. Climate Change diplomacy should not in be restricted and, in fact, such restrictions would appear to raise Constitutional concerns. In negotiations over the bills, we urge you to take a strong position against this language.

Sincerely,

Handwritten signatures of Robert C. Byrd and Frank R. Lautenberg.

Sep.22. 1999 11:42AM

No.0597 P. 2/6

Congress of the United States

Washington, DC 20515

September 21, 1999

**The Honorable Bill Young, Chairman
The Honorable David Obey, Ranking Member
House Appropriations Committee
H-218, The United States Capitol
Washington, DC 20515**

Dear Chairman Young and Congressman Obey:

We are writing to draw your attention to an important issue in the upcoming conference on both the Foreign Operations and the Commerce, Justice State FY2000 Appropriations bills.

Both the House Foreign Operations and Commerce, Justice, State Appropriations bills contain a provision – known as the “Knollenberg rider” – which on its face would merely prohibit “implementation” of the Kyoto Protocol prior to the Senate’s advice and consent to ratification. We are concerned, however, that the provision could prevent the U.S. from engaging in diplomatic efforts to ensure a global, cost-effective solution to the global problem of climate change.

The Administration is currently engaged in vigorous international climate change negotiations. These negotiations include sharing information with other countries about the United States’ successful experiences with market-based mechanisms as a tool for fighting pollution; working with other countries to find ways that these lessons could be applied to address greenhouse gas emissions; and providing technical assistance to developing countries so that they may build the capacity to more effectively limit greenhouse gas emissions.

In no way, do these activities “implement” the Kyoto Protocol. Rather, through these negotiations the Administration is promoting U.S. national interests and the bipartisan objectives of the Byrd-Hagel resolution – specifically, that international efforts on climate change protect U.S. economic interests and engage developing countries. Moreover, any restrictions on the Administration’s efforts to advance these objectives in international negotiations raises Constitutional concerns. House sponsors have specifically stated that the provision is intended to restrict the Administration’s ability to engage developing countries.

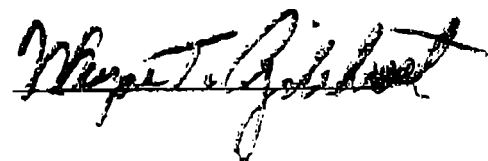
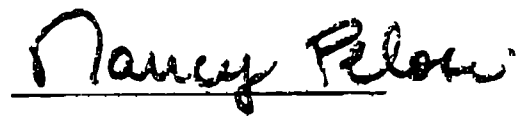
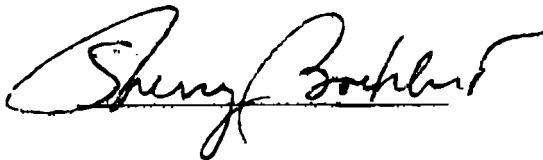
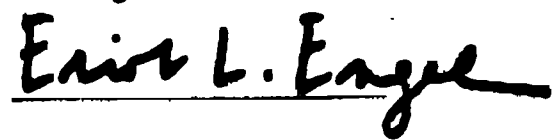
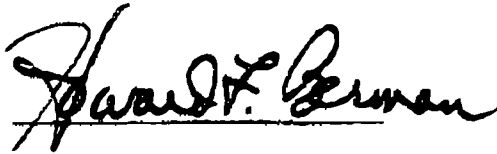
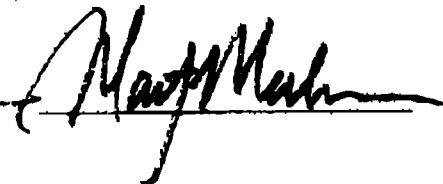
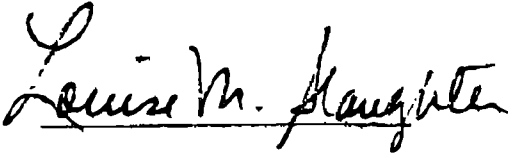
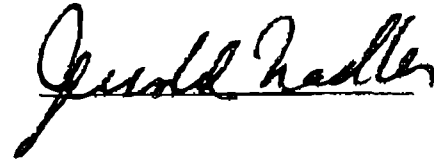
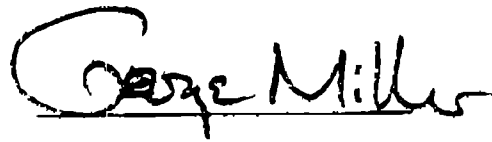
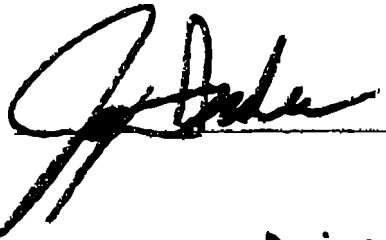
Sep. 22, 1999 11:43AM

The Honorable Bill Young and David Obey
Page Two

September 21, 1999

As mentioned above, the Senate has recognized the importance of engaging developing countries in the Byrd-Hagel Resolution. We should not place U.S. climate change diplomacy in a straightjacket that would be detrimental to our national interests. We believe that the Senate approach to this issue is the prudent approach and we ask that you recede to the Senate position with respect to this rider.

Sincerely,



Sep. 22, 1999 11:43AM

The Honorable Bill Young and David Obey
Page Three

September 21, 1999

Alfred L. Hastings Hayden

Jim Lynch

Edward J. Markey

Christie Sings

Robert T. Mink

James L. McDuff

Ron Barrett

Ron Kind

[Signature]

David Price

Russ Holt

Liz Capps

[Signature]

Tommy Baldwin

Mark Udall

Sep. 22. 1999 11:43AM

The Honorable Bill Young and David Obey
Page Four

September 21, 1999

Tom Lee

James R. ...

Frank Rely

Sam M. C. ...

Gregory W. ...

James J. ...

John F. Hapalitus

William Delaband

Michael E. Capuano

Joe Schatowski

Rosa L. J. ...

John ...

Howard ...

Anna G. Eskoo

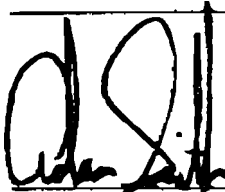
Albert F. ...

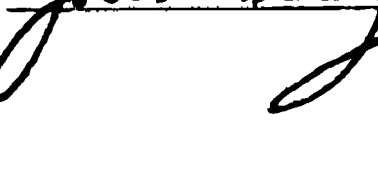
Pete Stark

Sep. 22. 1999 11:44AM

The Honorable Bill Young and David Obey
Page Five

September 21, 1999

Robert A. Underwood


John F. King


cc: The Honorable Harold Rogers
Chairman, House Appropriations Subcommittee on Commerce, Justice, State and
the Judiciary

The Honorable José Serrano
Ranking Member, House Appropriations Subcommittee on Commerce, Justice,
State and the Judiciary

The Honorable Sonny Callahan
Chairman, House Appropriations Subcommittee on Foreign Operations

The Honorable Nancy Pelosi
Ranking Member, House Appropriations Subcommittee on Foreign Operations

United States Senate

WASHINGTON, DC 20510

September 21, 1999

Dear Chairman Gregg and Ranking Member Hollings:

We are writing to draw your attention to an important issue in the upcoming conference on the Commerce, Justice, State, and the Judiciary FY2000 Appropriations bill.

Both the House Foreign Operations and Commerce, Justice, State Appropriations bills contain a provision – known as the “Knollenberg rider” – which on its face would prohibit “implementation” of the Kyoto Protocol prior to the Senate’s advice and consent to ratification. However, due to the ambiguity of the rider language, we are concerned that the provision could prevent the U.S. from engaging in diplomatic efforts to ensure a cost-effective, international solution to the problem of global climate change.

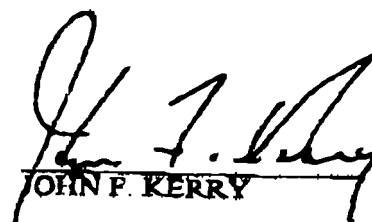
The Administration is currently engaged in vigorous international climate change negotiations pursuant to its obligations under the United Nations Framework Convention on Climate Change, which has been ratified by the Senate. These negotiations include sharing information with other countries on the United States’ successful experiences with market-based mechanisms as a tool for fighting pollution; working with other countries to find ways that these lessons could be applied to address greenhouse gas emissions; and providing technical assistance to developing countries so that they may build their capacity to more effectively limit greenhouse gas emissions.

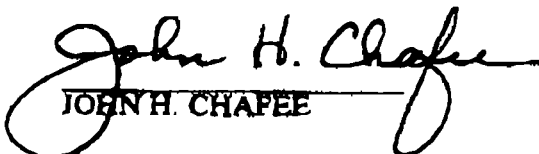
In no way do these activities “implement” the Kyoto Protocol. Rather, through these negotiations the Administration is promoting U.S. national interests and the bipartisan objectives of the Byrd-Hagel Resolution – specifically, that international efforts on climate change protect U.S. economic interests and engage developing countries. Because the Knollenberg rider states that none of the funds shall be used “in preparation for implementation of the Kyoto Protocol,” we are concerned that it would thwart the common sense objectives of the Byrd-Hagel Resolution. Moreover, any restrictions on the Administration’s efforts to advance these objectives in international negotiations raises Constitutional concerns.

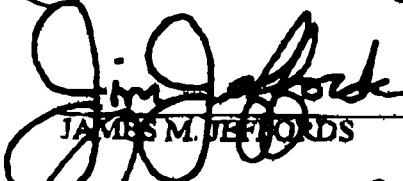
The Senate has recognized the importance of engaging developing countries in the effort to address global climate change. U.S. climate change diplomacy should not be constrained by ambiguous rider language that would be detrimental to our national interests. We believe that the Senate approach to this issue in the Commerce, Justice, State Appropriations bills is the prudent approach, and ask that you insist on the Senate position with respect to this rider in conference.

Sincerely,

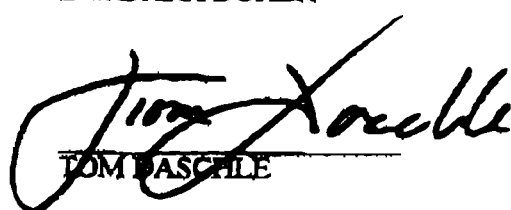

JOSEPH I. LIEBERMAN


JOHN F. KERRY


JOHN H. CHAFEE


JAMES M. JEFFORDS

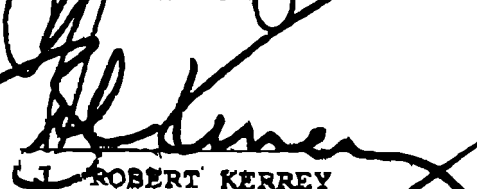

BARBARA BOXER


TOM DASCHLE

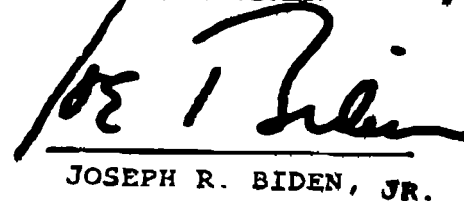

DANIEL PATRICK MOYNIHAN

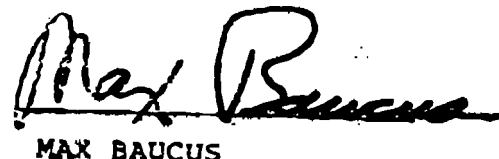

FRANK R. LAUTENBERG


JEFF BINGAMAN


ROBERT KERREY


PATRICK J. LEAHY


JOSEPH R. BIDEN, JR.


MAX BAUCUS

United States Senate

WASHINGTON, DC 20510

September 21, 1999

Dear Chairman McConnell and Ranking Member Leahy:

We are writing to draw your attention to an important issue in the upcoming conference on the Foreign Operations FY2000 Appropriations bill.

Both the House Foreign Operations and Commerce, Justice, State Appropriations bills contain a provision – known as the “Knollenberg rider” – which on its face would prohibit “implementation” of the Kyoto Protocol prior to the Senate’s advice and consent to ratification. However, due to the ambiguity of the rider language, we are concerned that the provision could prevent the U.S. from engaging in diplomatic efforts to ensure an cost-effective, international solution to the problem of global climate change.

The Administration is currently engaged in vigorous international climate change negotiations pursuant to its obligations under the United Nations Framework Convention on Climate Change, which has been ratified by the Senate. These negotiations include sharing information with other countries on the United States’ successful experiences with market-based mechanisms as a tool for fighting pollution; working with other countries to find ways that these lessons could be applied to address greenhouse gas emissions; and providing technical assistance to developing countries so that they may build the capacity to more effectively limit their greenhouse gas emissions.

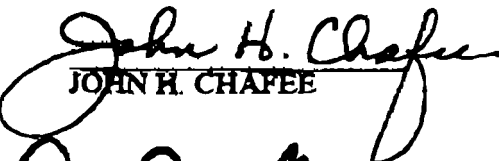
In no way do these activities “implement” the Kyoto Protocol. Rather, through these negotiations the Administration is promoting U.S. national interests and the bipartisan objectives of the Byrd-Hagel Resolution – specifically, that international efforts on climate change protect U.S. economic interests and engage developing countries. Because the Knollenberg rider states that none of the funds shall be used “in preparation for implementation of the Kyoto Protocol,” we are concerned that it would thwart the common sense objectives of the Byrd-Hagel Resolution. Moreover, any restrictions on the Administration’s efforts to advance these objectives in international negotiations raises Constitutional concerns.

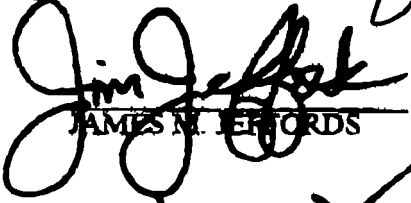
The Senate has recognized the importance of engaging developing countries in the effort to address global climate change. U.S. climate change diplomacy should not be constrained by ambiguous rider language that would be detrimental to our national interests. We believe that the Senate approach to this issue in the Foreign Operations and Commerce, Justice, State Appropriations bills is the prudent approach, and ask that you insist on the Senate position with respect to this rider in conference.

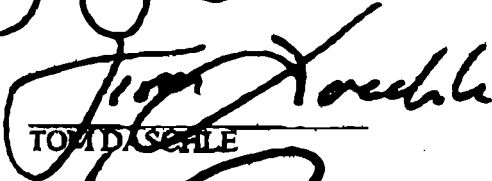
Sincerely,

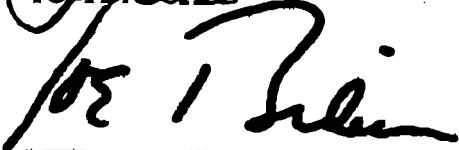

JOSEPH I. LIEBERMAN


JOHN F. KERRY


JOHN H. CHAFEE

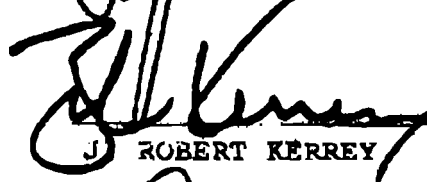

JAMES M. JEFFORDS

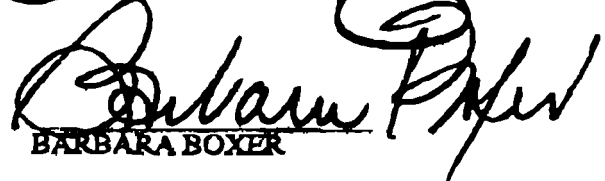

TOM DASCHLE


JOSEPH R. BIDEN, JR.


FRANK R. LAUTENBERG


JEFF BINGAMAN


J. ROBERT KERREY


BARBARA BOXER


DANIEL PATRICK MOYNIHAN


MAX BAUCUS



United States Department of State

Washington, D.C. 20520

AUG 13 1999

9915157

ACTION MEMORANDUM

S/S

95 10 13 8401

SENSITIVE BUT UNCLASSIFIED

TO: G - Frank Loy
FROM: H - Barbara Markin
SUBJECT: Strategy to remove the Knollenberg amendment from appropriations bills

ISSUE FOR DECISION

Whether to pursue an aggressive strategy to ensure that language potentially restricting the Administration from pursuing its international climate change objectives is removed from various appropriations bills during the House/Senate conference on those bills.

Essential Factors

Rep. Joe Knollenberg (R-MI) has attached an amendment that prohibits the use of funds provided in the bill "to propose or issue rules, regulations, decrees, or orders for the purpose of implementation, or in preparation for the implementation, of the Kyoto Protocol" to all but one FY 2000 appropriations bills that have passed the House thus far. The full text of the amendment is attached at tab A. The amendment has also been attached to the VA-HUD appropriations bill, which was reported by the Appropriations Committee but not considered by the full House prior to the August recess. The only appropriations bill to pass the House thus far without the Knollenberg language is the Treasury, Postal Service bill. No similar language has been included in any Senate-passed appropriations bills.

Identical language was enacted last year on the VA-HUD appropriations bill. This language was interpreted by the Administration only to apply to activities of a regulatory nature and this view is supported by the legislative history of the provision. However, Mr. Knollenberg has included language in the report accompanying the FY 2000 VA-HUD bill (attached at tab B) that makes it clear that he now intends the provision to apply to non-regulatory activities in support of the Kyoto protocol as well. Although no language has been attached to other House reports in this appropriations cycle, this broadening of the

SENSITIVE BUT UNCLASSIFIED

Congressional interpretation of "Knollenberg" is borne out in numerous letters and hearings held by Kyoto opponents such as Reps. David MacIntosh and James Sensenbrenner, and Sen. Chuck Hagel. In addition, during floor debate of the Commerce, Justice, State appropriations bill, Rep. Knollenberg stated, in reference to his amendment:

"[I]f we were to expend monies to help the developing nations come into the picture, and I think that may be what they want, we are in violation of the very wording, the very language we have here."

The apparent intention of Knollenberg to restrict international activities is particularly problematic for the Administration's efforts to encourage meaningful participation by developing countries and to ensure that emissions reductions by Annex I countries can be achieved without economic disruption. First, if this language is intended to restrict our ability to negotiate with foreign countries on climate-related matters, it raises substantial concerns of infringement on the Executive Branch's constitutional prerogative to make foreign policy. Second, restrictions on activities by AID, EPA, DOE, and other agencies to encourage meaningful participation of developing countries in the reduction of greenhouse gas emissions is a significant obstruction to complying with the will of the Senate, as expressed by the Byrd-Hagel resolution, and the President's commitment to secure such participation prior to submitting the Kyoto Protocol to the Senate for advice and consent.

Even if such a broad reading of Knollenberg is on shaky legal ground, it is clear that opponents of Kyoto will continue to use this provision as a political stick to beat the Administration on its climate change program. Congressional opponents of the Kyoto Protocol appear to be trying to create a Catch-22 for the Administration. On the one hand, we must achieve substantial commitments from key developing countries or the Senate will not give advice and consent to the Kyoto Protocol; yet the "new" Knollenberg language seeks to prevent us from engaging in the very activities that are most likely to produce that participation.

Although the Knollenberg restrictions may be tolerable for domestic, regulatory programs, it is an unacceptable limitation on non-regulatory programs, particularly international activities that are vital to achieving eventual Senate advice and consent to the Kyoto Protocol. Further, even for State Department and some AID programs that may be protected under the foreign policy authority, the Congressional interpretation of Knollenberg would

SENSITIVE BUT UNCLASSIFIED

have a chilling effect and should not be allowed to remain in the Commerce, Justice, State and Foreign Operations Appropriations bills. We intend to make these points to Congress in OMB's Statements of Administration Policy on these bills.

In seeking to have Knollenberg removed from certain appropriations bills, or at a minimum to clarify that it does not restrict voluntary and international activities, the support of the Senate is critical. Senator Byrd's staff believe that he may be receptive to separation of powers arguments and the need for the Administration to have the flexibility to attempt to comply with the terms of the Byrd-Hagel resolution.

RECOMMENDATIONS

1. That you contact key Members of Congress, either through personal meetings or telephone calls, to urge rejection of restrictions on voluntary and international activities related to climate change. H will work closely with you and the White House to determine issues of timing and appropriate level of contact.

Approve _____ Disapprove _____

2. That you inform your contacts in the NGO community of the impact on the prospects for Senate advice and consent to ratification of the Kyoto Protocol if the Knollenberg amendment, as it is currently being interpreted by Congress, is enacted on FY2000 appropriations bills, particularly the Commerce, Justice, State and Foreign Operations Appropriations bills.

Approve _____ Disapprove _____

3. That you develop a public affairs strategy to articulate to the public the negative impacts of the enactment of the Knollenberg language on the United States' efforts to find a global solution to the climate change problem. This strategy may include meetings with editorial boards, the submission of op/ed pieces under your signature, and other means of public outreach.

Approve _____ Disapprove _____

Attachments:

- Tab A - Full text of Knollenberg amendment
- Tab B - Report language interpreting the Knollenberg amendment from the report accompanying the FY 2000 VA-HUD appropriations bill

**Response to Charges of EPA
Backdoor Implementation of the Kyoto Protocol
In Violation of the VA-HUD Restriction**

Charge: EPA's analysis of legislative options for credit for early action to reduce greenhouse gases constitutes implementation of the Kyoto Protocol

- Analyzing legislative proposals and making recommendations to the Congress regarding legislative proposals are activities clearly provided for the Executive Branch under the Constitution.
- Bipartisan bills providing credit to businesses for taking action now to reduce greenhouse gas emissions have been introduced in both the House and the Senate this session.
- EPA participates in the Administration's efforts to analyze the credit for early action legislative proposals and develop Administration positions on this issue.
- This legislation is not dependent on the Kyoto Protocol, thus the funding restriction is not applicable to these activities.

Charge: EPA's development of a prototype greenhouse gas registry constitutes implementation of the Kyoto Protocol

- EPA has developed a computer prototype of a *national registry system*. The prototype, which uses fictitious data, was designed to show other countries a practical way to keep track of emissions trading transactions in an accurate and transparent manner.
- This prototype is one of the many ways that the United States is using its expertise in the on-going international negotiations to address legitimate concerns about how the elements of the Protocol would work, and what economic effects they would have, if and when the Protocol is ultimately ratified and implemented.
- In undertaking these discussions, and in developing the registry prototype to support its negotiating position, the Administration is simply carrying out its responsibilities to negotiate international treaties.

Charge: A G-8 Environment Ministers' Communique, signed by EPA Administrator Browner, shows that the Administration's climate change programs are designed to

implement the Kyoto Protocol

- The measures mentioned by EPA Administrator Browner in the G-8 communique consist of on-going, voluntary efforts to reduce greenhouse gas emissions. EPA Administrator Browner signed the communique only after rebuffing any language that might have implied a commitment to implement Kyoto before ratification.
- The Administration's Climate Change Technology Initiative is part of these efforts and includes EPA's voluntary programs which save energy, cut air pollution, and save money for American businesses and consumers while reducing greenhouse gases. They are good for both our economy and our environment and help fulfill our obligations under the Framework Convention on Climate Change.

Charge: Administration discussions with Russia on a pilot emissions trading program constitute implementation of the Kyoto Protocol

- The Administration is working closely in the on-going international negotiations with seven other countries that share our views on how emissions trading and other market-based mechanisms can cost-effectively address climate change if and when the Kyoto Protocol is ratified and implemented (Australia, Canada, Iceland, Japan, New Zealand, Norway, Russia, and Ukraine).
- Discussions with Russia on a potential pilot trading program build on cooperative work between the U.S. and Russia predating the Kyoto conference. The program would build a base of experience to evaluate the prospects for credible, effective emissions trading. Such experience would be valuable whether or not the Kyoto Protocol ever enters into force.
- A pilot program would involve no rules or regulations. Participation by American companies would be entirely voluntary. No U.S. taxpayer money would be used to buy Russian allowances and the United States would not be bound to anything.

Charge: Proposals for a Clean Air Partnership Fund constitute backdoor implementation of the Kyoto Protocol

- The President's FY2000 Budget Request proposes a new Clean Air Partnership Fund. The Fund will provide grants for cities, states, and tribes to demonstrate smart multi-pollutant strategies that reduce greenhouse gases, air toxics, soot and smog.
- The Fund will be a catalyst for voluntary local, state, and private partnerships for air pollution reductions.
- As with all grant programs, EPA will take clear steps under OMB's direction to prevent grant

recipients from using grant monies for lobbying.

Charge: EPA expenditure of funds to the nation of Argentina for the purpose of helping Argentina devise its commitment to reduce emissions under the Kyoto Protocol constitutes implementation of the Protocol

- Under the Country Studies Program – an interagency program established in 1992 under the Bush Administration – EPA has supported capacity-building work with numerous countries regarding greenhouse gas emission inventories and projections, mitigation options and vulnerability assessment and adaptation options.
- As part of the Country Studies Program, EPA has provided Argentina with some funds in fiscal years 1998 and 1999 to support technical studies on climate change and greenhouse gas emissions by the Argentine Department of Natural Resources and Sustainable Development.

ADMINISTRATION INTERNATIONAL ACTIVITIES AND THE KYOTO PROTOCOL

In October 1997, President Clinton articulated two essential elements for any international agreement on climate change. These are:

- first, mechanisms that allow countries and businesses to find **cost-effective emission reductions**, and
- second, **the meaningful participation of key developing countries.**

The Administration is now engaged in a full court press in international negotiations to ensure that these elements are fully incorporated into the Kyoto Protocol and any related agreements before the treaty is submitted to the Senate.

These negotiations include:

- vigorously advancing US interests;
- sharing with other countries the United States' successful experiences with market-based mechanisms as a tool for fighting pollution;
- working with other countries to find ways that these lessons could be applied to address greenhouse gas emissions; and
- providing technical assistance to developing countries so that they may build the capacity to more effectively limit greenhouse gas emissions.

These actions promote the U.S. national interest and will promote the goals of the Byrd-Hagel resolution.

- Climate change is a global problem that requires a global solution. We can't solve this problem alone.
- Developing countries must be engaged. But many are unfamiliar with market-based mechanisms.
- The U.S. Senate recognized the importance of engaging developing countries in the Byrd-Hagel resolution. Byrd-Hagel called on the President to support an international approach to climate change that protects the economic interests of the United States and engages developing countries.
- The Administration actions listed above are essential to help pursue the goals of the Byrd-Hagel resolution.

In no way do these actions "implement" the Kyoto Protocol.

- These actions advance the foreign policy objectives and interests of the United States. The actions have no domestic impact.
- They will have no domestic impact unless the Protocol and any related agreements receive the Senate's advice and consent to ratification.
- No federal agency is proposing or issuing any rule, regulation, order or decree. As Senator Bond stated in connection with the "no implementation" language contained in last year's VA-HUD appropriations bill, "Our only goal here is to prevent the issuance of federal regulations designed solely for the purpose of Kyoto Protocol

implementation.”

- The actions listed above are solely concerned with improving the Protocol through diplomacy, not enforcing it domestically.
- As the Administration has stated on numerous occasions, it has no intention of implementing the Protocol without the advice and consent of the U.S. Senate.

Reducing costs and engaging developing countries are bipartisan objectives.

- The Administration should be encouraged to continue advancing these objectives in international negotiations.
- Any restrictions on the Administration’s efforts to advance these objectives in international negotiations would raise serious Constitutional concerns.
- Even if such restrictions were constitutionally permissible, they would be highly undesirable. Such restrictions could provide considerable assistance to countries (such as China) advancing views contrary to US interests in the international negotiations.

8/25

Fiscal Year 2000 Appropriations Bills - status of climate change bill & report language -

Appropriations Bill	House Action	Senate Action	Conf. Goals
1. Agriculture (H.R. 1906, H. Rpt. 106-157 & S. 1233, S. Rpt. 106-80)	Knollen. bill / no report language (Passed out of House - 6/8)	None - (Passed out of Senate - 8/4)	
2. Energy and Water (H.R. 2605, H. Rpt. 106-253 & S. 1186, S. Rpt. 106-58)	Knollen. bill / no report language (Passed out of House - 7/27)	No bill / Other report language consistent with FY'99 language (Passed out of Senate - 6/16)	VA-HUD lang.
3. Foreign Operations (H.R.2606, H. Rpt. 106-254 & S. 1234, S. Rpt. 106-81)	Knollen. bill / Senate's bill language from FY '99 / no report language (Passed out of House - 7/3)	Other bill and report language consistent with FY'99 language (Passed out of Senate - 6/30)	Delete Knoll. language
4. Interior and related agencies (H.R.2466, H. Rpt. 106-222 & S. 1292, S. Rpt. 106-99)	Knollen. bill / no report language (Passed out of House - 7/15)	Knollen. report language (Before full Senate)	VA-HUD lang.
5. Treasury / General Government (H.R. 2490, H. Rpt. 106-231 & S. 1282, S. Rpt. 106-87)	None (Passed out of House - 7/15)	Knollen. report language (Passed out of Senate - 7/1)	OK (expected)
6. VA/HUD/Ind. Agencies (H.R. 2684, H. Rpt. 106-286 & S. ____, S. Rpt. 106-__)	Knollen. bill / New Knollen. report language / Emerson science rider (Before full House)	[Knollen. bill and report language] (Committee markup in September)	VA-HUD lang.
7. Commerce, Justice, State (H.R.2670, H. Rpt. 106-283 & S. 1217, S. Rpt. 106-76)	Knollen. bill / no report language / Emerson science rider (Before full House)	None (Passed out of Senate - 7/22)	Delete

Bill - Knollenberg bill language agreed to in the FY '99 conference bill
Report - Knollenberg report language agreed in the FY '99 conference bill
Other - Other bill or report language consistent with FY '99 language

CJS - If don't get it out, we'll sign and say we won't follow it.
ForOp - Fast track. AID will take view that language will not limit activity.
maybe get Leahy to get it out.
CJ - Make const. argument?

Kyoto House Conference Report Language FY99/Kyoto House Full Committee Report Language FY 2000

~~The conferees have also adopted new~~ Committee has also again this year included bill language which prohibiting prohibits the use of funds to take certain actions for the purpose of implementing or preparing to implement, the Kyoto Protocol, ~~instead of language proposed by the House.~~ The conferees note that this restriction of the use of funds shall not apply to the conduct of education activities and seminars by the Agency. The Committee is concerned with reports that, during the past year, the Agency may have strayed across the fine line separating education from advocacy. Although the Agency may under the current prohibition continue to conduct educational seminars and activities, it should ensure balance in those programs. Balance does not mean merely that there is an acknowledgment of viewpoints different from those of the Administration, but that qualified representatives of those viewpoints are included in the programs and in numbers roughly equal to the participants representing the Administration's positions. One dissenting voice in what is otherwise an obviously stacked or biased program does not constitute balance

~~The conferees note that several programs funded through this Act conduct science and technology research that are associated partly with global climate changes. To the extent that the conferees have funded this work, they have done so based on each program's individual merits of contributing to issues associated with domestic energy production, national energy security, energy efficiency and cost savings, related environmental assessments, and general energy emission improvements.~~ The bill language is intended to prohibit funds provided in this bill from being used to implement actions called for solely under the Kyoto Protocol, prior to its ratification. Based on an identical provision in the 1999 Appropriations Act, the bill language prohibits the development of rules, regulations, decrees, orders, and non-regulatory actions, such as programs or initiatives, for the purpose of implementing, or in preparation of implementation, the Kyoto Protocol.

The Byrd-Hagel Resolution which passed in 1997 (S. Res. 98) which passed with a vote of 95-0 in July 1997, remains the clearest statement of the will of the Senate with regards to the Kyoto Protocol, and the conferees are committed to ensuring that the Administration not implement the Kyoto Protocol without Congressional consent. Through the prohibition contained herein, the Committee is committed to ensuring that the Administration not implement the Kyoto Protocol without prior Congressional consent, including approval of any implementing legislation, regulation, programs or initiatives. The conferees recognize, however, that there are also longstanding energy research programs which have goals and objectives that, if met, could have positive effects on energy use and the environment. The conferees do not intend to preclude these programs from proceeding, provided they have been funded and approved by Congress.

To the extent future funding requests may be submitted which would increase funding for climate change activities prior to Senate consideration of the Kyoto Protocol (whether under the auspices of the Climate Change Technology Initiative or any other initiative), the Administration must do a better job of explaining the components of the programs, their anticipated goals and objectives, the justification for any funding increases, a discussion of how success will be

~~measured, and a clear definition of how these programs are justified by goals and objectives independent of implementation of the Kyoto Protocol. The conferees expect these items to be included as part of the fiscal year 2000 budget submission for all affected agencies.~~

Ohkyoto



White House Climate Change Task Force

734 Jackson Place, N.W. • Washington, DC 20503

FACSIMILE TRANSMISSION SHEET

To	Roger	From	Julie Anderson
Office		Date	7-29-99
Fax Number	6-1736	Fax Number	395-2311
Office Number		Office Number	395-2310

Comments:

As promised

Pages: 3, including this cover sheet.

IF TRANSMITTAL IS INCOMPLETE, PLEASE PHONE

about Brownfields, urban sprawl, empowerment zones, and redevelopment. In addition, there was little if any opportunity prior to the release of the guidance for any public or stakeholder input. Therefore, the Committee provided in the fiscal year 1999 Appropriation Act that no funds be used to implement the interim guidance. Identical bill language to continue this prohibition has also been included in the fiscal year 2000 Act.

At this point, there does not appear to be a clear strategy to resolve this issue. A FACA Committee was established and has met on several occasions, but has not appeared to have resolved any of the major issues on how the Agency should handle Title VI complaints. Currently, the Agency is in the process of establishing a new stakeholder process for input on some of these same contentious issues. In addition, in testimony before the Committee, the Administrator indicated that the Agency intends to promulgate a rulemaking. However, at the same time, other Agency officials have indicated that EPA intends to promulgate only guidance. Still other agency officials have expressed desire to promulgate two different sets of guidance—one internally and one externally. The Committee is deeply concerned that there may be conflicts between the internal and external guidance that will make it difficult to resolve complaints in a fair and efficient manner. Equally important, developing internal guidance before final guidance has been subjected to full public comments conflicts with Congressional intent.

On January 20, 1999, the General Counsel of the United States General Accounting Office issued an opinion (B-281575) that EPA's Interim Guidance clearly affects the rights of non-Agency parties and constitutes a "rule" under the Small Business Review and Enforcement Fairness Act (SBREFA), which is subject to Congressional review. If the Agency intends to promulgate guidance rather than a rulemaking, procedural requirements of a rulemaking should be followed including input from the small business community, sufficient time for notice and comment, published response to comments provided to the agency, interagency review, and analysis of any unfunded mandates on State and local governments. The Committee is very concerned that there be sufficient time for review of any new guidance given the lack of stakeholder review prior to the release of the Interim Guidance last year. In addition, the Committee requests that EPA examine successful State and local programs as model programs, and look at the possibility of delegating initial review and resolution of Title VI claims to States with such established model programs.

The Committee has also again this year included bill language which prohibits the use of funds to take certain actions for the purpose of implementing or in contemplation of preparing to implement the Kyoto Protocol. The Committee is concerned with reports that during the past year the Agency may have strayed across the fine line separating education from advocacy. Although the Agency may under the current prohibition continue to conduct educational seminars and activities, it should ensure balance in those programs. Balance does not mean merely that there is an acknowledgment of viewpoints different from those of the Administration, but that qualified representatives of those viewpoints are included in the programs and in numbers roughly equal to the participants.

RECEIVED
JUL 1 1997

representing the Administration's positions. One dissenting voice in what is otherwise an obviously stacked or biased program does not constitute balance.

The bill language is intended to prohibit funds provided in this bill from being used to implement actions called for under the Kyoto Protocol, prior to its ratification. Based on an identical provision in the 1999 Appropriations Act, the bill language prohibits the development of rules, regulations, decrees, orders, and non-regulatory actions, such as programs or initiatives, for the purpose of implementing or in contemplation of implementing, directly or indirectly, the Kyoto Protocol.

The Byrd-Hagel Resolution (S. Res. 98), which passed with a vote of 95-0 in July 1997, remains the clearest statement of the will of the Senate with regard to the Kyoto Protocol. Through the prohibition contained herein, the Committee is committed to ensuring that the Administration not implement the Kyoto Protocol without prior Congressional consent, including approval of any implementing legislation, regulation, programs or initiatives.

It has come to the attention of the Committee that the Agency is proposing to add 40 new ambient air toxics monitors during fiscal year 2000 to the 19 monitors which have already been funded. Because of the potential significance of the information to be gained from this monitoring program and the potential investment needed, the Committee believes that it is important for the Agency to have a well developed plan in place to direct the installation and operation of any new monitors. As a result, the Committee directs EPA to develop a comprehensive plan to guide the Agency's efforts in establishing a monitoring program for air toxics. The plan should describe in detail the overall goals and objectives of the monitoring program, including whether the data generated will be used to: (1) characterize ambient concentrations and the public's exposure to air toxics at the national, regional or local level; (2) quantify public health risks at the national, regional, or local level; (3) guide regulatory decisions; (4) evaluate and improve emissions inventories; (5) validate dispersion models; and/or (6) help identify sources of emissions.

Once the objectives and goals have been determined, the plan should provide information on: (1) the number of monitors and measurements that will be needed to satisfy these goals; (2) the specific pollutants to be measured and the ability of the present technology to make measurements for the specific pollutants; and (3) the approximate level of investment needed over time to meet the program's goals and objectives. It is important that the plan include a realistic assessment of the amount of data likely to be generated given existing and anticipated budgetary expenditures, a timeline for when the data will be available for analysis, and an assessment of the likely usefulness of the data in drawing statistically valid estimates of the public's exposure to air toxics on a national or regional level.

If the data generated from the monitoring program are expected to support regulatory decisions, the plan should list the specific regulatory programs impacted or expected to be impacted and describe in detail how the data will be used to guide decisionmaking. Given the likely strengths and limitations of the data, the plan

VA-HUD: Knollenberg Rider

- During consideration of VA-HUD last year, we debated the need to prohibit EPA from implementing the Kyoto Protocol prior to Senate ratification of the climate change treaty.
- Last year, the House and the Senate agreed to language that would ensure that the Agency does not implement the Protocol while also clearly ensuring that the prohibition did not undermine EPA's voluntary programs or existing authorities to protect public health and the environment.
- The report language in today's bill breaches last year's agreement. Once again, attempts are being made to prevent activities that limit greenhouse gas emissions even if such activities are part of a voluntary program – such as Greenlights – or are fully authorized under existing law.
- These activities have many benefits, including reducing energy costs and helping fulfill the United States' obligations under the UN Framework Convention on Climate Change. I hope we can work with the Majority and the Senate in conference to maintain the careful balance that was reached last year.

Committee on Energy and Natural Resources

UNITED STATES SENATE

312 Dirksen Senate Office Building
Washington, D.C. 20515
(202) 224-4103
FAX (202) 224-9026

TO: Roger Ballentine
FAX#: 456 - ~~6466~~ 7929
FROM: Shirley Neff
RE:

You should receive 12 pages, including this cover sheet.
If you do not receive all of the pages, please call (202) 224-6689.

NOTES:

SITE VERSUS SOURCE MEASUREMENTS OF ENERGY USE UNDER FEDERAL LAW

I. INTRODUCTION

On June 3, 1999, the White House issued Executive Order 13123, entitled "GREENING THE GOVERNMENT THROUGH EFFICIENT ENERGY MANAGEMENT." The Executive Order cites as authority for its issuance, among other things, the National Energy Conservation Policy Act, 42 U.S.C. §8252 *et seq.*, as amended by the Energy Policy Act of 1992 ("EPACT"). The Preamble to Executive Order 13123 states that it "builds on work begun under EPACT and previous Executive orders." The general thrust of the Executive Order is to impose various measures by which federal agencies are to reduce energy consumption, energy costs and emissions of greenhouse gases associated with federal buildings.

Section 206 of Executive Order 13123, which bears the heading "Source Energy," states as follows:

The Federal Government shall strive to reduce total energy use and associated greenhouse gas and other air emissions, *as measured at the source*. To that end, agencies shall undertake life-cycle cost-effective projects in which source energy decreases, even if site energy use increases. In such cases, agencies will receive credit toward energy reduction goals through guidelines developed by DOE.

Executive Order 13123 (emphasis added).

This Executive Order mandate raises the issue of how Congress intended for DOE to measure energy consumption for purposes of assessing federal agencies' compliance with energy reduction goals. Specifically, it raises the issue whether energy use is to be measured in terms of "site energy" or "source energy." Measurements of "site energy" account for the energy consumed directly at the point where the energy is delivered and put to use, i.e., at the site. Measurements of "source energy" purport to capture the energy resources consumed in

generating, processing and transporting the energy to the site.¹ Attempts to account for source energy involve multiplying the site energy consumption by a conversion factor. One conversion factor used for electricity is approximately 3.4, meaning that an electricity *site* energy measurement is multiplied by 3.4 to derive electric *source* energy. Under Executive Order 13123, federal agencies would use this (or some other) conversion factor for electricity in determining compliance with federal energy management goals.

II. SUMMARY

Congress, while long aware of the difference between source-based and site-based approaches to measuring energy consumption, has invariably selected the site-based method. In some cases, Congress has issued this legislative mandate expressly, in no uncertain terms, by defining "energy use" and "energy efficiency." Not once has Congress suggested, even implicitly, that a source-based approach is permitted, much less required. Examination of statutory provisions governing a host of energy-management programs reveals that the site-based approach is always implicit in the statutory language and integral to the legislated program, even when it is not expressly called for in the statutory language. Moreover, the Department of Energy ("DOE") itself has interpreted its mandate under the federal buildings energy conservation program and other energy-management programs as requiring a site-based method for measuring energy consumption. Even previous Executive Orders dealing with energy conservation in the government have accepted the site-based methodology. Executive Order 13123 directly contradicts the legislative preference, the agency interpretation of the law, and previous Executive-branch interpretations of the law.

¹"Source energy" is sometimes referred to as "primary energy."

The site-based approach is thus interwoven throughout the legislative framework that constitutes this country's national energy policy. Easily measurable and based on commercial reality, it has long provided the common yardstick for measurements used to compare products, facilities, and year-to-year progress in energy conservation. It has also provided the underpinning for long-term financial and contractual commitments. Use of the controversial source-based approach for assessing compliance with energy reduction goals will not only raise a multitude of issues concerning how to estimate source energy, it will eliminate consistency among federal programs for measuring energy consumption and energy cost, it will prevent intelligible comparisons among energy conservation strategies, and it will completely disrupt existing strategies and commitments.

III. STATUTORY AND REGULATORY PROVISIONS

A. 42 U.S.C. §8252 et seq. (Energy Policy and Conservation Act)

These statutory provisions, under the heading "Energy management requirements," establish energy performance requirements for federal buildings and energy management requirements for federal agencies. Included among the requirements is the use of life cycle cost methods and procedures. Life cycle cost analysis intrinsically relies on the site-based approach to measuring energy usage, since that approach--by measuring electricity consumed at the site-- is used to determine the *cost* of the electricity to the government. In other words, different buildings in the same area that consume the same amount of electricity will pay the same price and have the same "cost" for that electricity, regardless of whether it might require more "source" energy to deliver the electricity to some of the buildings than to others. This basic concept is reflected in the statutory term "life cycle cost," which is defined as "the total costs of owning, operating, and

maintaining a building over its useful life (including such costs as fuel, energy, labor, and replacement components) determined on the basis of a systematic evaluation and comparison . . .” 42 U.S.C. §8259(7). Because the cost of energy to the federal government is strictly a function of the energy consumed at the site, a source-based approach to life-cycle costing is fundamentally incompatible with these energy management requirements, or similar ones that might be contemplated by Executive Order 13123.

The Energy Policy and Conservation Act also required reductions in “energy consumption per gross square foot” in federal buildings from a specified baseline. Although the phrase “energy consumption” is not statutorily defined,² DOE itself has interpreted the requirement as mandating reductions in “net Btu.” According to DOE, “Net Btu reflects *the amount of energy delivered to the point of use and is used to measure agency performance toward the mandated goals.*” Federal Energy Management Program, Annual Report to Congress, p. 51 (emphasis added). Moreover, in a discussion of the difference between source-based and site-based methods, DOE has defined the term “energy use” as “the energy that is used at a federal building or facility and measured in terms of the energy delivered to the building or facility” and has stated that “the rate of consumption by the end-user on site [] will be used for measuring performance.” DOE Memorandum, “Reporting Guidance for FY 1998 Annual Report to Congress on Federal Government Energy Management and Conservation Programs,” August 21, 1998. It could hardly be clearer that DOE itself interprets federal law as requiring a site-based methodology for

² However, as discussed in the next two subsections, Congress has defined the term “energy use,” as applied to consumer products and industrial facilities, unmistakably in terms of the site-based approach. There is no indication that Congress intended “energy consumption” in one part of the law to mean something completely different from “energy use” in another part of the law.

measuring compliance with federal energy management goals and requirements. Since it is the agency charged with responsibility for administering the law, DOE's interpretation of the statutory mandate is entitled to great deference.

B. 42 U.S.C. §6291 et seq. (Energy Policy and Conservation Act)

These sections establish energy conservation standards, test procedures and labeling requirements for consumer products. Two statutory definitions are critical. First, the term "energy use" means "the quantity of energy *directly consumed by a consumer product at the point of use . . .*" 42 U.S.C. §6291(1)(emphasis added). Second, the term "energy efficiency" means "the ratio of the useful output of services from the consumer product *to the energy use of such product . . .*" 42 U.S.C. §6291(2)(emphasis added). Thus, both energy consumption and energy efficiency are statutorily mandated to be measured at the site. Recognizing this, DOE's implementing regulations define the phrase "Estimated annual operating cost" as "the aggregate *retail cost* of the energy . . ." 10 C.F.R. §430.2 (emphasis added). Reference to *retail cost* of energy simply has no meaning except in the context of site-based measurements.

C. 42 U.S.C. §6311 et seq. (National Energy Conservation Policy Act)

These are closely parallel statutory provision for industrial equipment. The term "energy use" is defined as "the quantity of energy *directly consumed by an article of industrial equipment at the point of use . . .*" 42 U.S.C. §6311(4)(emphasis added). The term "energy efficiency" is defined as "the ratio of the useful output of services from an article of industrial equipment *to the energy use* by such article . . ." 42 U.S.C. §631 (3)(emphasis added). Again, the Congressional directive to use the site-based approach for measuring energy use and energy efficiency is explicit

and unmistakable.³

D. 42 U.S.C. §6834 et seq. (Energy Policy Act of 1992)

These provisions require DOE to establish building energy efficiency standards for new federal buildings, both residential and commercial. According to the statute, those standards must "contain energy saving and renewable energy specifications that meet or exceed the energy saving and renewable energy specifications of CABO Model Energy Code, 1992 (in the case of residential buildings) or ASHRAE Standard 90.1-1989 (in the case of commercial buildings) . . ."⁴ Both CABO and ASHRAE express their standards in terms of energy consumption at the site. Incorporation of these private standards thus amounts to Congressional adoption of the site-based approach for new federal buildings.

E. 42 U.S.C. §8287 et seq. (National Energy Conservation Policy Act)

These provisions authorize the heads of federal agencies to enter into contracts for the purpose of achieving energy savings. Known as "Energy Savings Performance Contracts," these statutorily authorized agreements contemplate that the contractor will incur costs for implementing energy savings measures, including conducting energy audits, installing equipment, and training personnel, and will thereafter share in the energy savings. Such contracts inherently rely on the site-based approach, which measures the reduction in energy reflected in the agency's utility payments. As stated in §8287(a)(1)(B), "Aggregate annual payments by an agency to both

³ Of the various federal statutory provisions dealing with energy management, the definitions used in the legislation for consumer-product and industrial-facility standards are the clearest explicit statements of the Congressional will concerning the approach to be used in measuring energy.

⁴ "CABO" is the acronym for the Council of American Building Officials. "ASHRAE" stands for American Society of Heating, Refrigerating and Air-Conditioning Engineers.

utilities and energy savings performance contractors, under an energy savings performance contract, may not exceed the amount that the agency *would have paid for utilities* without an energy savings performance contract . . .” (emphasis added). To similar effect, the term “energy savings” is defined as “ a reduction in the *cost of energy*, from a base cost established through a methodology set forth in the contract . . .” 42 U.S.C. §8287c (emphasis added). Since the cost of electric energy is measured by the amount of electricity used at the site, it is clear that Congress intended for the program of energy savings performance contracts to measure electric energy usage based on the site approach. Moreover, Congress expressly permitted agencies to enter into energy savings performance contracts having terms of up to 25 years. The prospect that energy measurement would shift from site-based to source-based would make such long-term agreements virtually impossible. 42 U.S.C. §8287(a).

DOE confirmed its understanding of Congressional intent in its implementing regulations. For example, the agency added a definition of “Energy cost savings” to supplement the statutory definitions, explaining that “Energy cost savings” is “the defined term for savings measured *in dollars*.” 60 Fed. Reg. 18327(April 10, 1995)(emphasis added). Only site energy is measured in dollars--indeed, only site energy has any commercial reality. DOE’s definition of “Energy baseline,” which refers to “historical metered data” and “submetering of buildings,” also makes it clear that consumption at the site is the heart of the program. Id. at 18335. Needless to say, there is no metering for source energy. Not surprisingly, there is no mention whatsoever of the source-energy approach.⁵

⁵ One of the primary objections to the use of source energy is that there is no agreement on how to measure it. In implementing the Energy Savings Performance Contract program, DOE (continued...)

F. Relationship among Congressional Programs

These various programs legislated by Congress all rely, either explicitly or implicitly, on the concept of measuring energy usage at the site. The programs do not stand alone, however, but rather are interrelated in an overall approach to energy conservation. Thus, a federal agency will examine the products it purchases, the industrial equipment it employs, and the contractors it selects in light of these various energy-management programs. It would be nonsensical to apply different measurement criteria to these different aspects of an agency's energy-reduction strategy.

For example, it would be at best exceedingly complex and unwieldy to apply the site approach to products and industrial equipment while applying a source approach to other conservation measures. In fact, the two approaches could be in direct conflict. An agency's industrial equipment will be measured by the site approach according to the express statutory language. But if a contractor under an energy savings performance contract were compelled to employ a source approach, the contractor could be driven to select different industrial equipment that fares better under that method. Worst of all is what Executive Order 13123 portends: agencies making life-cycle cost decisions and entering into energy savings performance contracts in order to effect site-energy savings under current law, and then being evaluated under a new source-energy concept of the Executive Order.

It cannot be presumed that Congress acted in such cavalier fashion, selecting the site-energy approach for some programs and the source-energy approach for others, thereby creating

⁵(...continued)
declined to address "soft savings" such as increased worker productivity and extended equipment life, stating that such "soft savings" are "too subjective and difficult to measure accurately." 60 Fed. Reg. 18327.

conflicting incentives. On the contrary, it must be assumed, absent some clear indication to the contrary, that Congress acted consistently. Even where Congress has not spoken expressly on the issue of site measurements versus source measurements, the presumption must favor site measurements, *because whenever Congress has spoken, it has mandated site measurement.*

IV. PREVIOUS EXECUTIVE ORDERS

Executive Order 13123 follows several prior executive orders addressing the issues of energy conservation and management. Consistently throughout different Administrations, and even in the current Administration, use of the site-based approach for measuring energy consumption has been taken for granted, consistent with the statutory mandates and their implementation by federal agencies.

In the Carter Administration, Executive Order 12003, issued on July 20, 1977, employed the definition of "life-cycle cost" that closely tracked the statutory definition contained in 42 U.S.C. §8259(7). As noted, the definition requires assigning the site-based retail price of energy as the cost, with no provision for measuring source energy. As DOE's own regulations state (under "Methodological assumptions"), "Each Federal agency shall assume that the price of energy . . . is the *actual price charged for energy . . . delivered to the Federal building . . .*" 10 C.F.R. §436.14 (c)(emphasis added). This was strictly a site-based approach.

President Bush issued Executive Order 12759 on April 17, 1991 in connection with the energy efficiency goals of 42 U.S.C. §8253 *et seq.* The Executive Order could not have been clearer in incorporating the site-based approach, as shown in the definition of "energy use":

Sec. 14. Definitions. For the purpose of this order--

(a) the term "energy use" means the energy that is used at a building or facility and measured in terms of energy delivered to the building or facility . . .

This definition comports completely with the statutory approach; indeed, it is the definition that DOE uses for its annual reports to Congress.

President Clinton issued Executive Order 12902 on March 8, 1994. Entitled "ENERGY EFFICIENCY AND WATER CONSERVATION AT FEDERAL FACILITIES," it implicitly acknowledges the use of site energy as the measurement tool in several respects, including its incorporation of the familiar life-cycle cost methodologies and its references to the *site-based* 1985 baseline calculation of federal agencies' energy use. Perhaps most significantly, however, it contains the following directive in Section 309:

Sec. 309. Report on Full Fuel Cycle Analysis. DOE shall prepare a report on the issues involved in instituting life cycle analysis for Federal energy and product purchases that address the full fuel cycle costs, including issues concerning energy exploration, development, processing, transportation, storage, distribution, consumption, and disposal, and related impacts on the environment. The report shall examine methods for conducting life-cycle analysis and implementing such analysis in the Federal sector and shall make appropriate recommendations. The report shall be forwarded to the President for review.

What this directive to study and make recommendations demonstrates is that, prior thereto, *there had been no federal method* for conducting life-cycle analysis on the basis of a source-energy concept. This confirms that the approach selected by Congress, as implemented by DOE, has been exclusively a site-energy approach. Although President Clinton's 1994 Executive Order demonstrates executive-branch interest in source-energy measurements, it obviously cannot serve to rewrite the then-existing statutory requirements. The same must be said about the most

recent Executive Order--it cannot change federal legislation, which mandates the measurement of energy according to the site approach.

V. CONCLUSION

Executive Order 13123 moves beyond directing studies of source-energy measurement to an Executive-branch order purporting to change the basis for compliance with the law. Because Congress has legislated that compliance with energy-reduction requirements shall be based on site-energy measurements, the Executive has authority only to implement, not to change, that approach.



June 25, 1999

REMARKS BY THE PRESIDENT TO THE PRESIDENTIAL SCHOLARS

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

June 25, 1999

REMARKS BY THE PRESIDENT
TO THE PRESIDENTIAL SCHOLARS

Gaston Hall
Georgetown University
Georgetown, Washington, D.C.

10:58 A.M. EDT

PRESIDENT CLINTON: Thank you very much. Danielle, you did a fine job. Didn't she do a good job? I thought she was great. Thank you. (Applause.)

I'd also like to thank my good friend, Father O'Donovan, for allowing me to come back to my alma mater to make this speech and to be with you. And Bruce Reed, for the superb use he has made of the Presidential Scholarship he got -- he does a wonderful job in our office. I hope you got the joke he made about how he looks younger than you. We all rag him about how young he looks. Actually, when I was his age, I looked young, too. And then it just overcame me. (Laughter.)

I want to congratulate the Presidential Scholars, the teachers, parents who are here. I am delighted to have this chance to be with you. Because I have been on an extended trip to Europe, I actually want to take a few moments to give a serious talk about where we are in Washington today, and where we are in America, and to talk to you a little bit about the whole nature of our public life in politics.

Nearly eight years ago, as Bruce said, I came to this hall, where I sat many times as a student, to ask America to join me on a journey, to go beyond what were then the competing ideas of the old political establishment in Washington that dominated the entire decade of the 1980s. People, on the one hand, said government was bad and we should get it out of everybody's life and leave people alone to fend for themselves -- or on the other hand, said government was good and could solve most of our problems if it were just free to do so.

I asked the American people instead to embrace a new way -- something I called a New Covenant between America and its

government; an agreement with the citizens and their government that we would jointly pursue opportunity for all Americans, responsibility from all Americans, and a community of all Americans. I believed it would bring America back to prosperity.

Over the years since I became President, I have come back to this hall several times to discuss in more specific terms the progress we have made in building that New Covenant and the opportunities still to be seized, the responsibilities still to be shouldered, the pillars of community still to be built.

Washington is pretty far away from most of American's lives most of the time. It is tempting for people in public life here, who are so far away from you, to fall into easy rhetoric and positioning themselves against their opponents. But politics at its best is about values, ideas and action. When it is that, it becomes public service and it is a noble endeavor.

Let me give you some examples of the ideas we've had here. When I came here, our administration believed we could balance the budget and increase our investment in education, in technology, in research, in training people for the future. Those ideas, turned into action, have given us 18.6 million new jobs, the lowest unemployment in 30 years, the highest home ownership ever, the longest peacetime expansion in history. And along the way we have virtually opened the doors of college to all Americans with the HOPE scholarship, the other tuition tax credit, improvements in the student loan program, a million work-study positions. We're well on our way to connecting every classroom in the country to the Internet by the year 2000.

We believed that we could reform welfare and make it good for work and for families. That idea, turned into action, has cut the welfare rolls in half, while maintaining health and nutrition benefits for poor children and increasing our investment in child care for lower-income workers.

We believed we could make our streets safer by putting more police on the streets and taking guns out of the hands of people who shouldn't have them. Those ideas, put into action, have given us a 25-year low in the crime rate.

We believed we could grow the economy and improve the environment. That idea, put into action, has given us cleaner air, cleaner water, millions of acres of land set aside from the California redwoods to the Florida Everglades. It has allowed us in the field of public health to have safer food and, for the first time in history, 90 percent of our children immunized against serious childhood diseases. And the economy has gotten better, not worse, as we have taken steps to advance the environment and public health.

We believed that young people in our country, if given the chance, would serve in their communities, and that they ought to be given a chance to earn some education credit. That idea, put into practice, produced AmeriCorps, our national service program, which in just five years has already had over 100,000 young people working in communities all across America, a milestone it took the Peace Corps 20 years to reach.

And we believed America could be the world's leading force for peace and freedom and prosperity and security. Those ideas, turned into action, have given us over 250 trade agreements; new partnerships for America with Latin America and Africa; new initiatives against terrorism and weapons of mass destruction;

progress on peace in Northern Ireland and the Middle East; a stand against ethnic cleansing in Bosnia and now in Kosovo, where with our allies we have said that when innocent civilians are uprooted or slaughtered because of their race or their religion, if we can stop it, we will do so.

We still have a lot of work to finish the job in Kosovo. We still have many challenges abroad, from peace in Northern Ireland and the Middle East to our continuing efforts to help relieve the debt burdens of poor nations, to our efforts to stabilize the global economy. But I came back to Washington after my trip to Europe with a renewed energy for the domestic agenda. And I'd like to talk to you about it today; about the things we can do here, today, that will affect your communities today and very much affect your futures tomorrow.

With our present prosperity, we actually have a rare opportunity to meet the remaining large challenges facing our country on the brink of a new century. But to do it, both parties must work together. There will be plenty of time for politics in the year and a half ahead; but this summer must be a season of progress.

Just think how far we've come in the last decade. When I came here to speak in 1991, America was drifting toward a new century without direction. Now, our people, working with common purpose, have brought the nation back to a position of unprecedented strength, with greater prosperity, greater safety, more social healing, more national leadership for the United States around the world.

Our economy is perhaps the strongest in our history, and something you may know more about than I do, it is increasingly clear that it is being empowered in large measure by a once-in-a-lifetime technological revolution. For example, the high-tech sector accounts for only 8 percent of our economy, but for fully one-third of the growth we've had over the last six and a half years.

We are now seeing an explosion of technology -- and productivity along with it -- from the Internet that links offices around the world to computers used to track warehouse inventories. You will have the chance, thanks to technology, to work in jobs that have not been created yet, in industries that have not yet been imagined. But right now we are benefitting immensely for it.

Just this morning we learned that in the last quarter, our economy grew at the brisk rate of 4.3 percent, with virtually no inflation. If we can keep that going, that's very good for your future.

I think that those of us who work here now will be judged, however, primarily by whether we choose to seize this opportunity to ensure your future -- not just the short-term, but the long-term -- or will it be squandered with petty arguments and animosities and special interest politics.

I regret to say that the atmosphere in Washington has become increasingly poisoned by bitter partisanship. I don't understand exactly why, since we keep doing better and better and better in America. It may be that some people believe they have the luxury in engaging in short-sighted partisanship because the country is doing so well. I think that is a bad misreading of reality.

Moreover, it is clear to me that in the last few weeks our nation has come together in an unprecedented consensus of conscience and common sense on issues like gun violence, where the Congress, unfortunately, buckled under to special interest pressure. Partisanship has even paralyzed the basic work of writing our spending bills, something we have to do here every year. Let me give

((

you an example.

Not very long ago, I issued an order saying that the United States government would cut our greenhouse gas emissions coming out of our buildings by 30 percent over the next few years to meet our responsibility to deal with the challenge of global warming. Now, you have to understand, this doesn't cost you anything. This saves you money. We're going to reduce our energy use so that we reduce our greenhouse gas emissions coming out of our facilities by 30 percent. It's a no-brainer. It's no money, nothing. The only people that lose are the people that won't be pumping electricity to us.

Unbelievably enough, just yesterday, a Senate committee voted to largely block my executive action to cut the government's emissions by 30 percent -- an action that would save you \$750 million a year.

Now, I think I can stop that. But it's an example of what happened when adults with responsibility fall into small-time wrangling and even want to stop things that are 100 percent good and not controversial.

Now, I say again, the interesting thing to me is if you look at all the surveys or just go out and talk to people, or if we would sit down and talk, you would see that across party lines, across regional lines, across income lines, there is actually quite a remarkable consensus emerging in America on a number of issues -- outside Washington. But the American people have to depend on those of us who work in Washington to take the consensus ideas they have embraced and turn those ideas into action.

Remember what I said at the beginning -- politics at its best involves values, ideas, and action, and the balancing of all those things in ways that change lives.

Now, some other people here really believe that because the presidential season has already started, the battle for Congress has already started, even though it's a year and however many months away, that the best politics is just to run out the clock and wait until the next election, and hope that the country is doing so well and we enjoy the lazy days of summer so much, nobody will notice. I don't agree with that, either.

And I would like to say to you, as young people, there are an awful lot of very good people in public life who don't think that way, who want to get things done. And I hope someday many of you will be among them. But you will find that all of your life one of the greatest struggles you have to embrace is against being small, against being defensive or angry or combative for the sake of it, or thinking about some slight that someone imposed on you yesterday, instead of some good thing you can do today and tomorrow.

And we have to break out of that now. This country has not had an opportunity like this, with this level of prosperity and this level of progress on social problems, in decades. And there actually is quite a lot we can do.

For example, there are things, believe it or not, that both parties agree on here. We should certainly act on them. (Laughter.) And then there are things on which we have honest disagreements. On those, we should seek to find honorable compromise. The American people give us these jobs to get things done. In the weeks and months ahead, I will do all I can, working with Congress, taking executive action, summoning citizens to deal with these challenges. But first let's start with what we agree on. You might be surprised by the list.

To make sure that Americans should never have to choose

between going to work and paying their medical bills, we must pass the proposal to let disabled Americans keep their Medicaid health insurance when they take a job. Believe it or not, people who normally who get Medicaid lose their insurance if they take a job. The problem is a lot of disabled people can't get any other insurance. Their bills may be \$40,000-\$50,000 a year. But all of us are better off if those folks can go to work. They are more fulfilled; they are living their lives better; they also become tax-paying citizens. And whatever their medical bills are, they would be paid, regardless, by Medicaid.

So we now have a bill that solves a huge problem. And believe it or not, almost everybody agrees on it -- Republicans and Democrats alike. So let's start with that, the easy one -- and a very good one -- that will help untold numbers of Americans and their families. Congress should pass it, and I will sign it.

To honor work and strengthen our families, we should raise the minimum wage. There are still too many people who work 40 hours a week whose children are in poverty. Democrats and many, many Republicans agree that we should do this. So Congress should pass it, and I will sign it.

To renew our elections and stem the rising tide of campaign spending, we must pass strong campaign finance reform. Finally, after years, it appears that a majority of lawmakers in both parties, in both the Senate and House, agree. But the leaders of the Republican majority are blocking the bill. Instead, they ought to let the Congress vote, everybody votes his or her conscience. But if it passes -- and I believe it would -- I would certainly sign it.

To protect the interest of 160 million Americans who use managed care, we should pass a strong, enforceable and bipartisan patients' bill of rights. Now, you all probably know what the problems are here -- more and more Americans are going into managed care, and managed care has done a lot of good in our country to slow the rise in health care costs. But we should not ask people to sacrifice quality of care.

Our patients' bill of rights would simply say that if you're in an HMO, or any other kind of health care plan, you wouldn't lose a right to see your specialist, if you needed; you wouldn't give up the right to go to the nearest emergency room if you were hurt in an accident -- believe it or not, some people do in their plan. You couldn't be forced to give up your doctor in the middle of a treatment -- for example, if you were six months pregnant and your employer changed health care providers, you couldn't be required to change doctors; or if you were in the middle of a chemotherapy treatment and your employer changed health care providers, you wouldn't give it up. And you would have a right to protect yourself to make sure these rights were enforceable.

Now, these problems have been evident now for the last few years. Yesterday, we learned that it had gotten so bad, that doctors are so angry that the doctor-patient relationship is being breached by insurance company accountants' meddling, that they're even organizing a union to bargain with the HMOs.

Now, again, I've seen survey after survey after survey -- there is no partisan issue here -- Republicans and Democrats and independents all get sick. (Laughter.) Right? I mean, they do -- there's not a partisan issue here. (Applause.) Most doctors are Republicans, most nurses are Democrats. (Laughter.) So what? This is not a big deal. (Applause.) This is not a partisan issue anywhere in the whole country but Washington, D.C.

Over 200 medical and consumer organizations have endorsed this patients' bill of rights, and one has opposed it -- the health insurance companies. Now, if we get a vote on this -- because

out in America doctors, nurses and patients agree, and Democrats and Republicans will agree -- it will fly like a hot knife through butter. But, again, the leadership of the Congress is trying to find a way to block the bill. It's not right. So I say again, just let everybody vote his or her conscience. And if they send it to me -- and they will -- I will sign it.

Now, these are measures awaiting action that could be enacted quickly. And if America will send a signal to Congress that they want action, we can pass them.

There are some, however, broader, more fundamental and, frankly, more difficult issues that I hope we can resolve this year. First, I believe, as I said in my State of the Union address, that we have a duty to you to use the bulk of this surplus over the next 15 years to solve the long-term challenges of Social Security and Medicare, and to do it in a way that pays down our national debt.

Now, why? Because that means that future generations will have guaranteed income and health care in their retirement years. And it means as we pay down the debt we will keep interest rates low, investment high, and guarantee when you get out of college there will be lots of good jobs available because we'll have a stronger and stronger and stronger economy. We can actually get rid of America's debt over the next 18 years if we will do this.

So I hope, even though we have honest, here, honest philosophical differences about what the best way to reform Medicare is, what the best way to reform Social Security is, the point is we ought to be able to proceed in a spirit of honorable compromise because the goals are so important and the stakes are so high, and because, frankly, the choices are a lot easier when you have a surplus than when you have a big deficit.

Next week I will propose a detailed plan to strengthen Medicare, to cut its costs, to modernize its operations, to use competition and innovation, to strengthen the core guarantee of quality care for all Americans who are elderly and eligible. I will also, for the first time, propose a way to help senior citizens with their greatest growing need, affordable prescription drugs. It is a huge issue out there for seniors.

Now, finding agreement on Social Security and Medicare will be hard. Finding agreement on tax cuts will be hard, although I hope the Congress will at least adopt targeted tax credits for long-term care and child care that I proposed. But we can do it. Now, regardless, Congress has to pass a budget this year. We must decide on how to use the surplus. So I hope we can work together to make progress on these goals.

Second, we ought to continue to advance our economy by doing more for the education of our people. As we have balanced the budget and cut the size of the federal government -- listen to this -- we have cut the size of the federal government to the same size it was when I was your age. The federal government now is the same size it was in 1962. That was a long time ago. (Laughter.) Anyway, as we have done that, we have nearly doubled our investment in education and training. Why? Because, as was said in my introduction, the Information Age will be the Education Age.

Last year, at my urging, with school populations in our country at record highs, Congress passed a budget that began to hire 100,000 new teachers to reduce class size in the early years. Unbelievably to me, in the budget the majority is now writing, they repeal their pledge to finish the job of hiring those teachers. I just want Congress to keep its word. I think when you tell people something in an election year you ought to still be for it the next year, when there is no election. (Applause.)

I have also sent Congress an ambitious education reform plan because this is a year, as we do every five years, we have to reauthorize the general program under which we give money to schools all over America. And I believe we should dramatically change it to hold schools and school districts and states more accountable for results, and to give them more funds for after-school, summer school programs, and to target and turn around failing schools.

It is controversial. But it is based on what is working in the states that are having success in lifting all their schools in student achievement. Again, I say, there may be those who disagree with me philosophically -- we ought to have an open debate about this and come to an honorable compromise. We do not have to continue to spend money in the same old way when we know we can spend it more effectively based on what we have seen in our schools.

Third, let me say something that I hope will be important to all of you and has, doubtless, been experienced by some of you. We've got the strongest economy on record, all right, but there are still too many poor neighborhoods and rural communities where prosperity is something you read about, not experience. And I believe we should be committed to going into this new century leaving no one behind. This is not only a good thing to do ethically, it is also good economics.

I keep thinking every day, now, how can we continue to grow this economy, how can we drive unemployment even lower, create even more jobs, without having inflation? One way is to find new investment in America. So I say to you, we've spent a lot of time seeking new markets abroad, but our most important new markets are right here at home.

Two weeks from now, for four days, I will lead an unprecedented trip across America so our country can see the places I'm talking about. I'll go to the hills and hollows of Kentucky, to the Mississippi Delta, to a poor community in the Midwest, to the Pine Ridge Indian Reservation in South Dakota, to Phoenix, to inner-city Los Angeles. I'll be joined by distinguished corporate leaders and political leaders of both parties. Again, this is something that should not be a political issue at all. We want to shine a spotlight on the pockets of poverty that remain in America, and on the potential they have for new investment, new jobs, new hope, new opportunity.

I will ask Congress to do its part by passing my New Markets Initiative. It provides for tax incentives and loan guarantees for people to invest in these areas -- the same kind of incentives we give people today to invest in emerging economies abroad. I think that whatever we encourage people to do abroad, we ought to give the same encouragement to do at home, to give our people those kinds of chances. (Applause.)

Finally, I think we ought to do more to protect our young people from violence, to redeem the awful sacrifice of the children of Littleton, of the other school shootings, of the 13 American children we lose every single day to gun violence.

After Littleton, our whole nation came together in grief and determination. We know there are many causes of youth violence and, therefore, there must be many solutions. Hillary and I are launching a national campaign against youth violence to bring all kinds of people from all sectors of our communities together. We have done this before -- like Mothers and Students Against Drunk Driving dramatically reduced drunk driving in America, just for one example. And we can do that.

Of course, more must be done at home. Young people can have a greater influence on each other. Schools, houses of worship,

other places where children gather can do better. The entertainment community must do more to stop marketing violence to children. (Applause.) I wonder if that's coming more from the adults or the young people. (Laughter.)

I feel very strongly about this. I'm proud that theater owners agreed that from now on young people will be carded for R and PG-13 movies. I'm glad, thanks to the Vice President and Mrs. Gore, that next year, TVs will have the v-chip in half of all new TVs sold; and that Internet and video game companies are helping with ratings and blocking technologies. We have our differences with various sectors of the entertainment community from time to time, but they have actually done quite a lot with the TV rating systems, the video game rating systems, the blocking technologies in the last few years and they deserve credit for what they have done, as well as urging to do more.

But we have to face the fact that if you have more children spending more time alone -- and let me say that one big difference between the time when I was your age, or even Bruce was your age, and today, in America as a whole, the average -- average -- young person spends 22 hours per week less with his or her parents than 30 years ago -- from birth through age 18. That's over two years less time that the average young person spends with his or her parent. Over two years. You don't notice it so much, it's just a few hours a day.

Why is that? More single parents, more working parents, more people living in suburbs spending more time going to and from work. Everybody is busy, busy, busy. And most of you are turning out just fine and most of your parents are doing the best they can and doing a fine job. But we shouldn't minimize the fact that when this happens, the most vulnerable children among us will be even more vulnerable.

And that is why this whole entertainment culture counts -- not because of you, but because there are among us always vulnerable people. And there will be more of them and they will be more vulnerable. And that's why the access to guns matters. (Applause.)

I heard this -- I got a letter the other day from a really nice person that I admire. It said, Mr. President, we've got all these laws on the books, and if somebody wants a gun they can get it. Now, if you say that, it seems self-evident, since there's way over 220 million guns in the country. It seems self-evident. But let's look at the facts here.

Since we passed the Brady law, over the strenuous objections of the gun lobby, who then said that no criminal ever gets a gun from a gun store -- just since we passed the Brady law in 1993, we have put a stop to some 400,000 illegal gun sales, without stopping one legitimate sportsman or woman from buying a gun. And you cannot convince any reasonable person in law enforcement that those 400,000 stops didn't have something to do with the fact that we have a 25-year low in the crime rate and an even bigger plummet in many areas of gun-related violent crime.

Now, in the wake of the shootings after Littleton, I asked the Senate to pass a common-sense measure to help prevent youth violence by doing more in this vein to keep guns out the hands of criminals and children. For one thing, we should close the loophole that lets a criminal turned away from a gun dealer go to a gun show or a flea market in a city and buy a gun without a background check. The technology is there now for these background checks to be done without great burden to people who run gun shows and flea markets. But today they can buy a gun there, no questions asked.

Now, the same people who said in 1993 that no criminals

buy their guns at gun stores, they buy them other places, say that we should not have background checks at the other places. I think we should. (Applause.) I think we should require that safety locks be sold with every handgun. We should ban the importation of large-capacity ammunition clips. We should say violent juveniles should not own guns when they become adults.

It took a pivotal vote by Vice President Gore to break a tie in the Senate so that the Senate did the right thing in closing the gun show loophole. Unfortunately, as most of you probably know, two weeks ago, the Republicans in the House of Representatives -- with some Democrats, but not many -- shot down America's best hope for common-sense gun control -- in the face of strong public demand, clear public need and, again I say, out in the country, no partisanship.

The House filled the proposal full of high-caliber loopholes. And now they say they want to watch it die. The majority even pushed measures to weaken current law -- for example, letting criminals store their guns at pawnshops, even if the reason they need to store it is because they're taking a sabbatical in prison. (Laughter.) They say if they come back to get the gun there shouldn't be a background check. (Laughter.) We've had a pawnshop background check for a good while now. They want to get rid of that, as if that is somehow terribly burdensome to people.

Well, I think we can do better than that. But I don't know how we can expect you to stand up to youth violence if the Congress won't stand up to the gun lobby. We have got to -- (applause.)

So again, I say, it's not too late. The House and the Senate will now appoint conferees on this bill, because they have passed two different bills. Those people can put the provisions the Senate passed into the bill, send it to the House and the Senate, pass it, and I'll sign it. It's important that we strengthen, not weaken, our laws that make it easier for criminals to get and keep guns.

Okay, so let's go back and review the bidding here. We have a raft of bipartisan bills -- health care for the disabled; the minimum wage; campaign finance reform; the patients' bill of rights. We have big issues on which there are disagreements, but where honorable compromise is possible -- long-term reform of Social Security and Medicare; paying down the debt. We have a clear case where Republicans and Democrats should join together to mobilize private capital to give new life to our poorest communities; legislation to hire more teachers and to raise educational standards; sensible, but vital steps to protect our children from violence.

These are big things. These are things worthy of a great nation and its elected representatives. I will work day and night to achieve this agenda. I hope you will support it -- again, without regard to party. And I hope you will believe that good citizenship and public service are worth your time and effort.

Many times when I have come here, and many times around the country, I have referred to a professor I had here, who I talked about in 1991, who taught Western Civilization. He said, our civilization was unique in the belief of what he called "future preference." That is, the idea that the future can be better than the past, and that every individual has a duty to make it so.

Now, you obviously believe that or you wouldn't be here. I'm about to give you all your medal, and we're going to take pictures, and it's a whole monument to years and years and years of your effort believing in tomorrow. Right? It is. You wouldn't be here if you didn't. And that belief has had a lot to do with your

nation's success over the last 220-plus years. It has driven my public life. And it was validated again a few days ago by the pain and the hope I saw in the faces of the children of Kosovo.

The more we think about tomorrow, the more energy, determination and wisdom we have for the challenges of today.

I believe in your future. I believe America's best days lie in the new millennium. I ask Congress to help me make it so.

Thank you very much. (Applause.)

END

11:35 A.M. EDT



To comment on this service: feedback@www.whitehouse.gov



Department of Energy

Washington, DC 20585

OFFICE OF THE ASSISTANT SECRETARY
ENERGY EFFICIENCY AND RENEWABLE ENERGY

Facsimile Cover Sheet

To: Roger Ballentine From: Joan Ghickman
Office: 456-6468 Date: _____
Fax Number: _____ Fax Number: 202/586-9260
Phone Number: _____ Phone: 202/586-9220

Number of pages (including cover): 2

Comments: I look forward to your comments.
Thanks - Joan
(ALSO SENT you an explanatory email)



DRAFT DRAFT DRAFT

Dear Senator Cochran:

I am writing to address concerns you raised about Executive Order 13123 during the Senate Committee on Appropriations' mark-up of the Interior Appropriations bill. In particular, I would like to explain language in that Order concerning site and source energy use.

The Order sets a new site energy reduction goal of 35 percent by 2010 and thereby encourages Federal agencies to reduce energy at the site. The Order also acknowledges that the Federal government should strive to reduce source energy use – that is, the total amount of energy used at a site and consumed in producing and delivering energy to a site. In no way does the Order advantage or disadvantage any conventional energy source; rather, agencies are simply encouraged to implement cost-effective options.

The Order does allow agencies to get credit toward their site energy reduction goals for cost-saving projects that reduce source energy use. However, agencies must continue to measure site energy use and report their usage annually to demonstrate progress in meeting site energy reduction goals for 2000, 2005, and now 2010.

Most importantly, the Order calls for Federal agencies to implement life-cycle cost effective projects that will save taxpayer dollars and at the same time reduce energy use. In fact, throughout the Order, and in the sections referring to site and source energy reductions, the Order explicitly states that agencies shall reduce energy use through life-cycle cost-effective projects. In other words, agencies will deliver energy cost savings for our nation's taxpayers.

In the National Energy Conservation Policy Act (42 U.S.C. 8251) and other statutes, Congress repeatedly has insisted that the Federal government implement lifecycle cost-effective measures to reduce energy costs. The Order is entirely consistent with existing law.

On a separate concern, let me assure you that my Department will not support any attempt at backdoor implementation of Kyoto. The Order does not seek to implement a treaty not yet ratified by Congress. Reductions in greenhouse gas emissions, like reduced air pollution and reduced dependence on foreign oil, simply result from cost-effective energy improvements that save taxpayer dollars.

I certainly hope that we can continue to work together to save precious taxpayer dollars in powering the Federal government. If you have any further questions or comments, please contact me or have your staff contact John Angell, Assistant Secretary for Congressional and Intergovernmental Affairs, at 586-5450.

Sincerely,
Bill Richardson
cc. ?????



Department of Energy

Washington, DC 20585

OFFICE OF THE ASSISTANT SECRETARY
ENERGY EFFICIENCY AND RENEWABLE ENERGY

Facsimile Cover Sheet

To: Roger Ballentine From: Joan Ghickman
Office: 456-6465 Date: _____
Fax Number: _____ Fax Number: 202/586-9260
Phone Number: _____ Phone: 202/586-9220

Number of pages (including cover): 4

Comments: ~~I look forward to your comments.
Thanks - Joan
(ALSO SENT you an explanatory email).~~

Roger - Here's the legal interpretation of potential
effects of COCHRAN AMENDMENT.

- Joan 586-5607



IMPACT OF COCHRAN AMENDMENT ON DOE PROGRAMS

On June 8, 1999, the U.S. Senate passed S. 1292, the Department of the Interior and Related Agencies Appropriations, 2000, which will restrict the implementation of certain Government rules or guidelines related to energy use, energy purchases and energy efficiency, funded by appropriations under that legislation. Section 341 of S. 1292 provides as follows:

No funds shall be used to study, develop, or implement procedures or policies to establish energy efficiency, energy use or energy acquisition rules or guidelines other than those based upon the provisions of the Energy Conservation Policy Act (ECPA) of 1975.

Because of the way the limitation is worded, it would appear that the funding restriction is related to the establishment of "rules or guidelines" as opposed to direct programmatic funding. The Committee Report accompanying S. 1292, S. Rep. No. 106-99, 106th Cong., 2nd Sess. 113 (1999), provides, in reference to section 341, as follows:

Prohibits the use of funds to study, develop, or implement procedures or policies to establish energy efficiency, energy use or energy acquisition rules or guidelines other than those based upon the provisions of the Energy Conservation Policy Act (ECPA) of 1975.

This language may bar expenditure of funds to develop or implement various policies and procedures related to energy efficiency, energy use, or energy acquisition. Affected activities may include, but may not be limited to, the study, development, and implementation of policies, procedures, and rulemaking under the following programs funded by Interior Appropriations: Weatherization Assistance Program for Low-Income Persons, State Energy Program, Federal Building Energy Efficiency Code Program, Federal Energy Management Program, Alternative Fuel Transportation Program, Consumer Appliance and Commercial Products Programs, Clean Coal Technology Program, certain Fossil Energy Research and Development Programs, certain Energy Conservation Programs, the Strategic Petroleum Reserve Program and the Energy Information Administration Program.

*How is this
a "rule or
guideline"?*

Finally, Section 341 refers to the provisions of the "Energy Conservation Policy Act (ECPA) of 1975." There is no law with that title. We are uncertain, therefore, as to the applicability of the exception.

Contact: Mark S. Schwartz
Deputy General Counsel
for Energy Policy
Department of Energy
(202) 586-3410



Department of Energy
Washington, DC 20585

July 8, 1999

NOTE FOR JOAN GLICKMAN

FROM: MARK SCHWARTZ
DEPUTY GENERAL COUNSEL
FOR ENERGY POLICY

SUBJECT: DRAFT IMPACT STATEMENT OF COCHRAN
AMENDMENT ON DOE PROGRAMS

A revised Impact Statement which is inclusive of all DOE programs as they may relate to the amendment by Senator Cochran is attached. It expands on the impact statement memo provided last week which related to EE Programs.

I also want to respond to your proposal to revise and expand the Impact Statement that I provided to you last Friday, July 2, 1999. I have reviewed your draft and have the following comments.

You suggest a construction that would expand the potential applicability of the Cochran amendment to other agencies, as opposed to only those funded under the Department of the Interior and Related Agencies Appropriation. I must adhere to the construction in our earlier (and revised) document. The language as contained in section 341 of S. 1292 (the "Cochran" amendment) can be soundly construed only to apply to appropriations for the agencies covered by S. 1292.

Section 341 is a general provision contained in S. 1292 which restricts the availability of the appropriations that are the subject of this Interior appropriations bill. In addition to making appropriations, appropriations acts frequently contain a variety of provisions either restricting the availability of the appropriations or making them available for some particular use. Such provisions come in two forms: (a) "provisos" attached directly to the appropriating language, and (b) general provisions. A general provision may apply solely to the act in which it is contained ("No part of any appropriation contained in this Act shall be used..."), or it may have general applicability during the fiscal year in question ("No part of any appropriation contained in this or any other Act shall be used...") See, G.A.O. Principles of Federal Appropriations Law, Vol. I, Ch., 2-28 (1992). The Interior Appropriations is one of thirteen appropriations bills, and usually

does not restrict or limit the appropriations in the other twelve unless so specified.

Section 341 uses neither of the quoted phrases and is accordingly ambiguous. Title III of S. 1292, of which section 341 is a part, is subject, however, to the prefatory language at the beginning of the bill which states:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the Department of the Interior and related agencies for the fiscal year ending September 30, 2000, and for other purposes, namely:

The fact that the prefatory phase ends with a colon is significant. If it had ended with a period, an argument could be made that section 341 has broader applicability. Because of the colon, however, everything that follows in the bill is subordinated to the prefatory phase.

The proper interpretation of the phrase "no funds may be used...." in section 341 is that it refers back to sums appropriated in the prefatory language. Accordingly, section 341 is considered to be a limitation on the expenditure of funds for that purpose. Thus, it would be in error to interpret section 341 to apply to any appropriations other than those in S. 1292.

Please advise me if you require additional information.

Question:

Does Executive Order 13123 violate any statutory constraints or exceed Presidential authority?

Answer:

We have found no statutory provisions that contravenes Executive Order 13123. Further, E.O. 13123 does not exceed any authority vested in the President.

Executive Orders may be issued pursuant to Article II of the United States Constitution. The goals proposed by the President in E.O. 13123 apply only to the Executive Branch, and the President is authorized by 3 U.S.C. Sec. 301 to delegate functions by designating and empowering the head of any department or agency in the Executive Branch.

Further, there appear to be no statutory constraints which would bear upon the goals as contained in the Order. In particular, the National Energy Conservation Policy Act, (NECPA) 42 U.S.C. Sec. 8253 et. seq., establishes minimum standards but in no way precludes the further actions as taken by the President in E.O. 13123.

Concur: Mark Schwartz
Deputy General Counsel
For Energy Policy (GC-70)
Department of Energy

mes
7.1.99

**Physicians for Social Responsibility
Environmental Defense Fund
Friends of the Earth
Sierra Club
Greenpeace**

**Center for International Environmental Law
Coalition for Sensible Energy
Coalition on the Environment and Jewish Life
Union of American Hebrew Congregations
Natural Resources Council of Maine**

July 14, 1999

The Honorable Thad Cochran
United States Senate
Washington DC 20510

Dear Senator Cochran,

We strongly urge you to reconsider your amendment to the FY2000 Interior Appropriations Bill regarding federal energy efficiency policy and procedures. We understand that your intent was to block the implementation of President Clinton's recent Executive Order 13123, but the effect of your amendment, according to the Department of Energy General Counsel, would be much broader. It would cripple a whole range of successful federal energy efficiency programs that have longstanding, bipartisan support and which have saved taxpayers \$6.3 billion since 1985. Your amendment amounts to an order to waste taxpayer money and needlessly pollute the environment.

Furthermore, your opposition to the Executive Order on grounds that it is an attempt to implement portions of the Kyoto Protocol is misplaced. The Executive Order explicitly directs agencies to undertake only energy efficiency improvements that are life-cycle cost effective – it is primarily about reducing the federal government's \$8 billion annual energy bill, saving taxpayers money, and reducing the tremendous environmental impact of federal energy use. These are commendable goals, which deserve bipartisan acclaim and support; not riders designed to torpedo the effort.

The recent Presidential Executive Order was only the latest in a series of efforts aimed at making the federal government a national example of sound fiscal and environmental stewardship in its energy management practices. This kind of leadership, particularly when environmental gains are an added benefit of common-sense policies and practices that save money, is crucial. Once again, we strongly and respectfully urge you to reconsider your amendment.

Cc: The Honorable Slade Gorton
The Honorable Ted Stevens
The Honorable Robert Byrd

DRAFT
Questions and Answers

Question: Does the new Executive Order offer preferential treatment to natural gas over electricity providers by encouraging source energy reductions?

Answer: The Order sets a new site energy reduction goal of 35 percent by 2010 and thereby encourages Federal agencies to reduce energy at the site. At the same time, the Order acknowledges that the Federal government should also strive to reduce source energy use. Most importantly, the Order calls for Federal agencies to implement life-cycle cost effective projects that will save taxpayer dollars and at the same time reduce energy use – whether at the site, the source, or both.

Question: Does the Order allow back-door implementation of the Kyoto Protocol?

Answer: No. The Order sets a greenhouse gas reduction goal for the Federal government of 30 percent by 2010. However, like the energy reduction target, this is a goal not a requirement. Furthermore, reductions in greenhouse gas emissions are a secondary benefit, like reduced air pollution and reduced dependence on foreign oil – all of which result from cost-effective energy improvements that save taxpayer dollars.

Energy efficiency makes sense for the bottom line and that's what the Order call for. At the same time, smart energy management results in reduced emissions.

The Federal government has already reduced greenhouse gas emissions attributed to its building energy use by 14 percent since 1990. So, the Order is not calling for “back-door” implementation since the Federal government has already exceeded the 7 percent reduction included in the Kyoto Protocol. Finally, the Rio Convention, which calls for voluntary steps to reduce greenhouse gas emissions to 1990 levels, has already been ratified by the United States. Therefore, voluntary reductions are appropriate.

Question: Does the Executive Order exceed statutory authority?

Answer: No. Like other executive orders, the Order directs the executive branch of the Federal government to implement executive policies and use effective management tools. The Order simply sets new goals related to energy management in Federal buildings. In addition, the Order provides a number of management strategies and tools – many of which rely on private sector investment – to assist agencies in reducing their energy costs.

As an element of his constitutional responsibilities as President of the United States, the President issued Executive Order 13123 which contains nothing more than the establishment of goals for performance by executive branch agencies. The President did not purport to – nor would he have the authority to – impose these goals on the civilian economy without explicit authority.

OR

Executive Order 13123 contains nothing more than goals for the performance of executive branch agencies – which is an element of the President's constitutional responsibilities.

CLIMATE CHANGE

House Action: *The VA-HUD appropriations bill contains an anti-environment rider which states that no funds can be used to “develop, propose or issue rules, regulations, decrees, or orders for the purpose of implementation of, or in contemplation of implementation, of” the Kyoto Protocol. The Committee further directs the Environmental Protection Agency (EPA) and the Council on Environmental Quality (CEQ) “to refrain from conducting educational outreach or informational seminars on policies underlying the Kyoto Protocol until or unless the Protocol is ratified by the Senate.”*

This language would not only curtail the Administration’s ability to carry out cost-effective, voluntary programs that reduce greenhouse gas emissions, but even bar educational discussion involving the issue of climate change or perhaps even other Administration initiatives which in any way touch upon climate change and the Kyoto Protocol. ***The Congress should not allow “back door” repeal of measures like the Clean Air Act; likewise, the Congress should not stifle valuable debate on important environmental issues.***

IMPACTS ON PUBLIC DEBATE

This language would effectively stifle informed debate on global warming. This is an unprecedented restriction on the ability of agencies to communicate information with the public, scientists, businesses, state and local governments, environmental organizations, other nations, other agencies, and the Congress itself. The Administration has and will continue to engage academics, citizens, public leaders, and others on a host of important topics that may include discussions of climate-related matters. Does the Congress really wish to prohibit these discussions with the American people about matters such as El Nino, catastrophic floods, droughts, and fires and how climatology might play a role?

This language is not necessary to prevent some inappropriate “lobbying campaign” by the Administration. Existing anti-lobbying laws prevent the use of appropriated funds for certain grassroots lobbying activities. This bill reaches far beyond existing law in an attempt to place a gag order on the exchange of information and ideas on any issue related to global climate change since that is what the Kyoto Protocol is all about.

Specifically, the bill could prevent:

- EPA and CEQ from giving the public general information about global warming.

Example: EPA’s Global Warming Web Site gets approximately 100,000 hits each month. This site, which won an award from the Dow Jones Business Directory, contains information on climate change science, impacts, news, greenhouse gas inventories,

speeches etc. EPA could be required to discontinue this valuable educational tool.

- EPA scientists from participating in conferences, workshops, seminars or symposiums on climate change.
- EPA and CEQ from participating in outreach to developing countries or briefings conducted as part of the international negotiations.

Example: EPA support for the U.S. Country Studies Program has helped more than 50 developing countries build capacity to increase their participation in the international effort to fight global warming. Developing country participation is critical to solving the problem of global warming. This bill could prohibit EPA from providing important technical, policy and scientific expertise necessary to successful international negotiations.

- EPA and CEQ from conducting educational and informational briefings on climate change for the Congressional Kyoto Observer Group and the Congress generally.
- EPA, CEQ and the White House Climate Change Task Force from accepting invitations to speak about climate change.

Example: Recent invitational speaking engagements have included: the Nuclear Energy Institute, the National Cattlemen Beef Association, the Farm Journal, the Coalition for Advancement of Sustainable Energy, the Electric Power Supply Association, Edison Electric Institute and the Aspen Institute's Energy Forum on Climate Change.

Example: International invitational speaking engagements have included: Presentations to Malaysia, Russia, England, Canada, Australia and New Zealand on the success of emissions trading. This outreach is essential to convincing other nations that the U.S.-pioneered market-based, flexible approaches embodied in the Kyoto Protocol are the smart, cost-effective way to address the challenge of global climate change.

- The President from using the resources of his office to explore critical issues facing the American people.

Hypothetical: Suppose the President, concerned about the enormous and

devastating rash of weather-related disasters of 1998 (floods, drought, tornadoes, fires) calls together the best minds from EPA, CEQ, and FEMA and asks them to work together and with the best scientists and climatologists in the country to help determine why we have experienced such extreme problems this year, *and to consider all possibilities -- including, perhaps global warming --* and to report back on what he might be able to do, by executive order or otherwise, to help FEMA anticipate and deal with these disasters. **Under this bill, he could not do this.**

PROGRAM IMPACTS

The President has clearly stated that the Administration will not circumvent the Congress and implement the Kyoto treaty before it is ratified. This broadly worded language, however, goes well beyond ensuring that agencies adhere to the President's directive. It would block EPA from taking common sense actions under existing law to protect the health and welfare of the American people from air pollutants that cause global warming.

This bill could also roll back on-going, bipartisan supported initiatives -- such as programs to enhance energy efficiency -- that have benefits in addition to limiting greenhouse gases. The effort to promote energy efficiency has been a long standing priority of this and previous administrations, and has enjoyed bipartisan support in Congress. In October 1992, the Senate ratified the Framework Convention on Climate Change which the Bush Administration had agreed to several months earlier in Rio, formally endorsing the goal of limiting our greenhouse gas emissions.

Specifically, the bill could prevent:

- EPA from considering greenhouse gas emissions during rulemaking, even though such consideration was authorized by law and even though such emissions may pose a threat to the public health or welfare.

Example: EPA issued a rule under the Clean Air Act to cut landfill emissions of methane (a potent greenhouse gas) by half, the equivalent of eliminating the greenhouse gas emissions from 20 million cars -- while recovering enough usable fuel to meet the energy needs of 2 million homes. Under this bill, these benefits could not have been achieved if EPA were prevented from considering the greenhouse gas impacts of the rule.

- EPA from continuing its highly successful voluntary programs which have relied on educational outreach and the provision of information to consumers and businesses to help them save money, save energy and reduce pollution.

Example: Through the Green Lights program, EPA has established partnerships with over 2,600 businesses, state and local governments, universities and hospitals. By providing these partners with information and by recognizing the achievements of partners, the program has been able to leverage over \$1.5 billion in private investments in energy efficiency which, in 1997, has saved over \$500 million in annual energy bills and prevented the emissions of more than one million tons of carbon. If EPA is prohibited from providing information to partners, this program will be severely hindered.

- Agencies from working on executive orders to improve the federal government's own use and procurement of energy.
- the Administration from drafting rules or regulations that would be necessary to send the Protocol to the Senate for advice and consent. The Administration, in connection with submitting the treaty to the Senate, must be able to show how the Protocol would be implemented.

Repeal of environmental laws should not be conducted through the back door. The American people deserve an open debate on any efforts to strip existing authority to protect public health and the environment.

May 18, 1999

MEMORANDUM

To: Chairman Nickles, and Members, Committee on Energy and Natural Resources

From: Colleen Deegan, Counsel [4-7933]

Re: May 20, 1999 Joint Oversight Hearing re: Administration's FY 2000 Climate Budget and Compliance with FY 1999 Appropriations Language

A joint hearing has been scheduled before the Senate Energy Research, Development, Production and Regulation Subcommittee and the House Committee on Government Reform Subcommittee on National Economic Growth, Natural Resources and Regulatory Affairs for May 20, 1999 to receive testimony and conduct oversight on the Administration's FY2000 budget request for climate change programs and compliance with various statutory provisions in FY1999 appropriations acts requiring detailed accounting of climate change spending and performance measures for each requested increase in funding.

The hearing will commence at 2:30 in room SD-366. Attached to this memorandum is a draft witness list, and copies of the testimony received so far.

Background

The Kyoto Protocol — On December 11, 1997, the Parties to the United Nations Framework Convention on Climate Change (FCCC) concluded the negotiation of what is commonly called the Kyoto Protocol. The Protocol imposes legally binding emissions limits for greenhouse gasses on the industrialized nations. Reductions average 6%-8% below 1990 levels between the years 2008-2012. The United States' Kyoto target is 7% below 1990 levels. Under the terms of the Berlin Mandate, governing Protocol negotiations, Developing Countries, including China, India, Brazil, and approximately 130 others, are not subject to the new emissions controls, nor are they obligated to accept any new commitments.

Critics of this approach argue that emissions controls will increase energy prices in the United States and other nations subject to controls, resulting in a massive shift of industrial production and jobs from the industrial nations to the developing nations. Moreover, actual global emissions would not decrease — only their points of origin would change. Indeed, because industrial processes in industrialized nations are generally more energy efficient than those found in most developing nations, global carbon emissions per unit of production might actually increase. In other words, the United States and the leading industrial nations might suffer domestic economic pain, without realizing global environmental gains.

Byrd-Hagel — In July of 1997, the United States Senate adopted, by a vote of 95-0, Senate Resolution 98, commonly known as the Byrd-Hagel resolution. The resolution was to provide guidance to the Administration and its global climate negotiating team as they entered negotiations in Kyoto. The resolution stipulates two conditions that must be met before the United States can become a signatory to any international agreement on climate change: (1) the agreement must include developing countries; and (2) cannot result in serious harm to US economy.

Issues for the May 20 Hearing

The Administration's FY 2000 budget request for climate change totals \$4.449 billion dollars, an increase of \$1.031 billion over the FY 1999 enacted levels. Attached is a breakdown by Appropriation Account/Line Item taken from the April 20, 1999 report submitted by the White House in response to a requirement in FY 1999 appropriations language (discussed below.)

Last Fall, to assist Congress in understanding what the Administration's funding requests for climate change would achieve, Congress required that the President provide a detailed account of all Federal agency obligations and expenditures by line item (appropriations account) in the Budget Appendix as part of the President's FY 2000 budget submission (February 1, 1999) and that each requested increase in funding for climate change include a discussion of how success will be measured. The President provided some of the required information on April 20th, well into Congress' consideration of the FY 2000 budget. The EPA report went to the Appropriations

The Administration's FY 1999 request was \$6.3 billion dollars in climate change funding, meant to be part of a larger five-year climate change initiative.

Committee on April 8, and the DOE report has not come to the Hill yet.

The focus of this hearing is to receive testimony on the Administration's compliance with language from various FY 1999 Appropriations bills regarding the above-mentioned reports, and restrictions on climate change spending. Two particular provisions are at issue — the Knollenberg Amendment in VA-HUD, and the performance measure language from the Foreign Operations bill (included in the Omnibus Appropriations Act). In addition, the Government Performance and Results Act (GPRA), enacted in 1993, requires Federal agencies to improve Federal Program effectiveness by "promoting a new focus on results."

The Knollenberg Amendment (FY 1999 VA-HUD)

"...none of the funds appropriated by this Act shall be used to propose or issue rules, regulations, decrees or orders for the purpose of implementation, or in preparation for implementation, of the Kyoto Protocol..."

Conference Report Language (FY 1999 VA-HUD)

"...this restriction on the use of funds shall not apply to the conduct of education activities and seminars by the Agency."

"...several programs funded through this Act conduct science and technology research that are associated partly with global climate change. To the extent that the conferees have funded this work, they have done so based on each program's individual merits of contributing to issues associated with domestic energy production, national energy security, energy efficiency and cost savings, related environmental assessments, and general energy emission improvement."

"The bill language is intended to prohibit funds provided in this bill from being used to implement actions called for solely under the Kyoto Protocol, prior to its ratification."

"To the extent future funding requests may be submitted which would increase funding for climate change activities prior to Senate consideration of the Kyoto Protocol (whether under the auspices of the Climate Change Technology Initiative or any other initiative), the Administration must do a better job of explaining the components of the programs, their anticipated goals and objectives, the justification for any funding increases, a discussion of how success will be measured, and a clear definition of how these programs are justified by goals and objectives independent of

implementation of the Kyoto Protocol. The conferees expect these items to be included as part of the fiscal year 2000 budget submission for all affected agencies.”

Foreign Operations Appropriations (included in FY 1999 Omnibus Appropriations Act)

Contains a requirement for a detailed account of all agency obligations and expenditures for climate change programs and activities for FY 1998, FY 1999 and any plan for FY 2000 and “related to the furtherance of” the Kyoto Protocol, including expenditures by agency by line item in the Budget Appendix.

TALKING POINTS

OPPOSING CRAIG AMENDMENT NO. 648 TO S. 1186

BACKGROUND

Senator Craig is proposing a second degree amendment to the Jeffords amendment to the energy and water appropriations which would bar the Department of Energy from obligating new funds for solar and renewable energy programs until 30 days after the Secretary of Energy submits a report responding to a critique from the Energy Information Agency of the administration's Climate Change Technology Initiative and estimating the costs per ton of the greenhouse gas emissions displaced by solar energy research and development.

– We do not oppose the opportunity for the Department of Energy to respond to the Energy Information Agency (EIA). The failings of the EIA report are well known, and the Congress would benefit from hearing them in more detail from the Department. EIA's analysis is incomplete. Not only did it fail to examine the effectiveness of some of DOE's most effective renewable energy programs, such as biomass, it also ignored many other government efforts under way to promote the commercialization of these new technologies. It also made pessimistic assumptions about how businesses and consumers would respond to opportunities to purchase clean technologies.

– The Craig amendment is fundamentally flawed because it asks the wrong question about the effectiveness of government research for solar and renewable energy. The Craig amendment asks only about the costs of reducing greenhouse gases. It completely ignores all the other benefits of solar and renewable energy. These technologies are in the national interest because they:

- * reduce our dependence on imported oil
- * give consumers more choices about their source of electricity
- * reduce smog and soot pollution as well as greenhouse gases, and
- * help America compete and win in the booming international market in solar and renewable energy.

– The right questions to be asking in assessing the effectiveness of research and development programs for solar and renewable energy, or for any other energy source, are to examine the full range of benefits the programs provide to consumers, to the environment, to our national security, and to our economy.

FAX-IT NOTES

Date

6/16/99

Time

Page

of

3 pages

TO:

Name:

DAVE GARDNER

Company:

EPA

Location:

DC

Fax Number:

202 260 0275

Telephone Number:

Comments:

OPTIONAL FORM 99 (7-90)

FAX TRANSMITTAL

of pages 3

To

Roger Ballantine

From

David Gardner

Dept./Agency

Phone #

260-4332

Fax #

456-6468

Fax #

260-0275

NSN 7540-01-317-7388

5099-101

GENERAL SERVICES ADMINISTRATION

© 1989 Radio Direct, Inc.

Align with
top of
document

AMENDMENT NO. _____

Calendar No. _____

Purpose: To require Department of Energy response to criticisms of solar and renewables programs and to require certification by the Secretary of Energy that there are no impacts to safety or national security as a result of reductions in contractor travel.

IN THE SENATE OF THE UNITED STATES—106th Cong., 1st Sess.

Amendment No. 648 to S. 1186

Making appropriations for energy and water development for the fiscal year ending September 30, 1999, and for other purposes.

Referred to the Committee on _____
and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. CRAIG

VIZ:

- 1 On page 3 of the amendment, line 2, strike, "." and insert the
- 2 following, ", *Provided*, That none of the amount derived from
- 3 accounts for which this Act makes funds available for Department
- 4 of Energy contractor travel shall be available for obligation for solar
- 5 and renewable programs until 30 days after the Secretary of Energy

both (1) certifies to Congress that there are no adverse

- 7 consequences to either safety or national security caused by such
- 8 funding reduction in contractor travel and (2) submits a report
- 9 responding to the program shortcomings identified in the Energy

1 Information Administration report, SR/OLAF/99-01, Analysis of
2 the Climate Change Technology Initiative, April 1999, and
3 including the cost on an annual basis of solar and renewable energy
4 research and development per metric ton of displaced greenhouse
5 gas emissions for each solar and renewable energy source."

-0045888.88

Page 19

Americans, but because of the low update and specific budget neutrality provisions of the Balanced Budget Act of 1997, the blending of rates to create greater equity for rural and other lower payment areas was not implemented in 1998 or 1999.

(b) Sense of the Senate.—It is the sense of the Senate that the functional totals underlying this concurrent resolution on the budget assume that funding the blending of local and national payment rates pursuant to the Balanced Budget Act of 1997 should be a priority for the Senate Finance Committee this year within the budget as established by this Committee.

SEC. 310. SENSE OF THE SENATE ON LONG-TERM CARE.

(a) Findings.—The Senate finds that our Nation is not financially prepared to meet the long-term care needs of its rapidly aging population and that long-term care needs threaten the financial security of American families.

(b) Sense of the Senate.—It is the sense of the Senate that this concurrent resolution on the budget assumes that the National Bipartisan Commission on the Future of Medicare should, as part of its deliberations, describe long-term care needs and make all appropriate recommendations including private sector options that reflect the need for a continuum of care that spans from acute to long-term care. This is not a specific recommendation that any new program be added to Medicare.

SEC. 311. SENSE OF THE SENATE ON CLIMATE CHANGE RESEARCH AND OTHER FUNDING.

It is the sense of the Senate that the assumptions underlying the functional totals in this resolution assume the following:

(1) To the extent that funding is made available through grants or other Federal expenditures to reduce emissions of carbon dioxide or other greenhouse gases or to increase sequestration of carbon to offset such emissions, such funding shall be made available through competitive, merit-based awards designed to select cost-effective methods for reducing, sequestering, or mitigating such emissions. Such awards shall consider all technologies, methods, and research for reducing, sequestering, or mitigating emissions, including sustainable agricultural practices and forest management and conservation strategies. Funding criteria shall be comprehensive in scope, not limited to specific technologies or industries, awarded on a nondiscriminatory basis, and target cost-effectiveness in reducing, sequestering, or mitigating carbon dioxide and other greenhouse gases through natural resource management programs or products. In considering the cost-effectiveness of various reduction, sequestration, or mitigation technologies, other environmental benefits should be considered.

(2) To the extent any tax credits or other tax incentives are created to stimulate the adoption of technologies or practices that reduce, sequester, or mitigate emissions of carbon dioxide and other greenhouse gases ("emissions tax

Wyden

TOTAL P.04

Page 20

incentives"), such emission tax incentives shall also be available to any person that employs an alternative technology or practice that reduces, sequesters, or mitigates emissions of carbon dioxide or other greenhouse gases as effectively as those technologies or practices for which a tax credit or other incentive is provided. Only payments for technologies or in support of practices not legally required when payment is made shall qualify for tax incentives.

SEC. 312. SENSE OF THE SENATE ON INCREASED FUNDING FOR THE CHILD CARE AND DEVELOPMENT BLOCK GRANT.

(a) Findings.--The Senate finds that--

- (1) 54 percent of women in the labor force have children under 13 and are either single parents or have husbands who earn less than \$30,000 per year;
- (2) in 1995, 82 percent of women with children younger than age 6, and 77 percent of women with children ages 6-17 were in the labor force, and 59 percent of women with children younger than 3 were in the labor force;
- (3) a 1997 General Accounting Office study found that the increased work participation requirements of the welfare reform law will cause the need for child care to exceed the known supply;
- (4) a 1995 study by the Urban Institute of child care prices in 6 cities found that the average cost of care for a 2-year-old in a child care center ranged from \$3,100 to \$8,100;
- (5) for an entry-level worker, the family's child care costs at the average price of care for an infant in a child care center would be at least 50 percent of family income in 5 of the 6 cities examined;
- (6) 40 percent of children under the age of 5 are taken care of at home by 1 parent;
- (7) a large number of low- and middle-income families sacrifice a second full-time income so that a parent may be at home with the child;
- (8) the average income of 2-parent families with a single income is \$20,000 less than the average income of 2-parent families with 2 incomes;
- (9) the recent National Institute for Child Health and Development study found that the greatest factor in the development of a young child is "what is happening at home and in families"; and
- (10) increased tax relief directed at making child care more affordable, and increased funding for the Child Care and Development Block Grant, would take significant steps toward bringing quality child care within the reach of many parents, and would increase the options available to parents in deciding how best to care for their children.

(b) Sense of Senate.--It is the sense of the Senate that the levels in this resolution and legislation enacted pursuant to this resolution assume--

- (1) that tax relief should be directed at parents who are struggling to afford quality child care, including those who

"Any limitation on funds in this Act for the EPA or the CEQ shall not apply to:

- (a) conducting educational outreach or informational seminars,
- (b) developing rules, regulations, decrees or orders prior to proposals or issuance,
- (c) the use of Brownfields funds,
- (d) regulatory determinations for mercury from utilities,
- (e) utilizing dredging as a remediation tool,
- (f) implementation of the Food Quality Protection Act,
- (g) establishment of Visibility Transport Commissions, or
- (h) cleanup requirements from NRC licensed facilities,

where such activities are authorized by law.

VA-HUD APPROPRIATIONS

SECOND DEGREE AMENDMENT TO THE WAXMAN AMENDMENT

In section (b), after “orders”, add the following:

“(other than rules, regulations, decrees or orders called for solely under the Kyoto Protocol prior to its ratification)”

CLIMATE CHANGE GAG ORDER

The FY99 VA-HUD appropriations bill contains an anti-environment rider which states that no funds can be used to "develop, propose or issue rules, regulations, decrees, or orders for the purpose of implementation of, or in contemplation of implementation, of" the Kyoto Protocol. The Committee further directs the Environmental Protection Agency (EPA) and the Council on Environmental Quality (CEQ) "to refrain from conducting educational outreach or informational seminars on policies underlying the Kyoto Protocol until or unless the Protocol is ratified by the Senate."

STIFLING INFORMED DEBATE ON GLOBAL WARMING

Specifically, the bill could:

- Prevent EPA and CEQ from giving the public general information about global warming.

Example: EPA's Global Warming Web Site gets approximately 100,000 hits each month. This site, which won an award from the Dow Jones Business Directory, contains information on climate change science, impacts, news, greenhouse gas inventories, speeches etc. EPA could be required to discontinue this valuable educational tool.

- Stop EPA scientists from participating in conferences, workshops, seminars or symposiums on climate change.
- Halt EPA and CEQ from participating in outreach to developing countries or briefings conducted as part of the international negotiations.

Example: EPA support for the U.S. Country Studies Program has helped more than 50 developing countries build capacity to increase their participation in the international effort to fight global warming. Developing country participation is critical to solving the problem of global warming. This bill could prohibit EPA from providing important technical, policy and scientific expertise necessary to successful international negotiations.

- Undermine EPA's and CEQ's ability to conduct educational and informational briefings on climate change for Congress, other agencies, other nations, businesses, and state and local governments.
- Prevent EPA, CEQ and the White House Climate Change Task Force from accepting invitations to speak about climate change.

Example: Recent invitational speaking engagements have included: the Nuclear Energy Institute, the National Cattlemen Beef Association, the Farm Journal, the Coalition for Advancement of Sustainable Energy, the Electric Power Supply Association, Edison Electric Institute and the Aspen Institute's Energy Forum on Climate Change.

Example: International invitational speaking engagements have included: Presentations to Malaysia, Russia, England, Canada, Australia and New Zealand on the success of emissions trading. This outreach is essential to convincing other nations that the U.S.-pioneered market-based, flexible approaches embodied in the Kyoto Protocol are the smart, cost-effective way to address the challenge of global climate change.

ROLLING BACK EXISTING PROGRAMS

The President has clearly stated that the Administration will not circumvent the Congress and implement the Kyoto treaty before it is ratified. This broadly worded provision, however, goes well beyond ensuring that agencies adhere to the President's directive. It would block EPA from taking common sense actions under existing law to protect the health and welfare of the American people from air pollutants that cause global warming.

This bill could also roll back on-going, bipartisan supported initiatives -- such as programs to enhance energy efficiency -- that have benefits in addition to limiting greenhouse gases. The effort to promote energy efficiency has been a long standing priority of this and previous administrations, and has enjoyed bipartisan support in Congress. In October 1992, the Senate ratified the Framework Convention on Climate Change which the Bush Administration had agreed to several months earlier in Rio, formally endorsing the goal of limiting our greenhouse gas emissions.

Specifically, the bill could:

- Prevent EPA from considering greenhouse gas emissions during rulemaking, even though such consideration was authorized by law and even though such emissions may pose a threat to the public health or welfare.

Example: EPA issued a rule under the Clean Air Act to cut landfill emissions of methane (a potent greenhouse gas) by half, the equivalent of eliminating the greenhouse gas emissions from 20 million cars -- while recovering enough usable fuel to meet the energy needs of 2 million homes. Under this bill, these benefits could not have been achieved if EPA were prevented from considering the greenhouse gas impacts of the rule.

- Undermine EPA's highly successful voluntary programs which have relied on educational outreach and the provision of information to consumers and businesses to help them save money, save energy and reduce pollution.

Example: Through the Green Lights program, EPA has established partnerships with over 2,600 businesses, state and local governments, universities and hospitals. By providing these partners with information and by recognizing the achievements of partners, the program has been able to leverage over \$1.5 billion in private investments in energy efficiency which, in 1997, has saved over \$500 million in annual energy bills and prevented the emissions of more than one million tons of carbon.

- Stop agencies from working on executive orders to improve the federal government's own use and procurement of energy or from collecting climate-related information to potentially improve our anticipation of and response to weather related disasters.
- Restrict the Administration from drafting rules or regulations that would be necessary to send the Protocol to the Senate for advice and consent. The Administration, in connection with submitting the treaty to the Senate, must be able to show how the Protocol would be implemented.

226-0939

July 8, 1998

VA-HUD Limitation Necessary to Prevent Backdoor Implementation of Protocol

The VA-HUD appropriations bill FY 1999 includes a provision that prohibits the use of funds "to develop, propose, or issue rules, regulations, decrees, or orders for the purpose of implementation, or in contemplation of implementation, of the Kyoto Protocol" prior to Senate advice and consent for ratification. The Committee report states that this language is included because of "sincere concerns that, lacking support for Senate ratification, the Administration is attempting to force binding greenhouse gas emission reductions through "back door" regulatory action and through greatly expanding existing programs."¹

What the Funding Limitation Does Not Do:

The funding limitation would not prevent the use of funds for:

- Voluntary programs, such as EPA's Energy Star or Green Lights programs.
- Other existing programs and ongoing activities to carry out the United States' voluntary commitments under the 1992 Climate Change Convention.
- Legitimate climate science research activities or studies.
- Funding of research and development.

What the Funding Limitation Does:

The limitation in the VA-HUD bill prohibits only certain, discrete categories of regulatory activities that have the purpose of, or are in contemplation of, the implementation of the Kyoto Protocol without Senate advice and consent including:

- Drafting, preparation or development of a proposed rule, regulation, order or decree.
- Collection of information or studies conducted to justify a rule, regulation, order, or decree.
- Drafting of preambular or other language to justify a rule, regulation, order or decree.
- Publication or advance notice of rulemaking or issuance of a regulation, order or decree.
- Finalization, promulgation, or issuance of a rule, regulation, order or decree.

The words "in contemplation of" are necessary to address the apparent position of some Administration officials that today's regulatory activities do not and cannot "implement" the Protocol because it is not yet in effect and will not become legally binding until 2008-2012.

Examples of Programs that Would Not be Funded:

Specific EPA activities that appear to be in contemplation of implementation of the Kyoto Protocol and would therefore be prohibited by the VA-HUD limitation include:

- EPA's modification of an earlier consent decree concerning the alleged failure to list certain Hazardous Air Pollutants (HAP) from electric utility steam to include a commitment by EPA to analyze emission reductions to be achieved through strategies to control carbon dioxide, a

¹ See House Appropriations Committee Full Committee Print, attached.

July 8, 1998

substance that has not been identified as a HAP, and was not involved in the underlying lawsuit²

- EPA's funding of state programs to reduce greenhouse gas emissions, justified by EPA in its FY 1999 Justification of Appropriations Estimates for the Committees on Appropriations" as necessary to "accomplish [EPA's] expanded implementation efforts." The purpose of the program is apparently to develop state recommendations to reduce greenhouse gas emissions "consistent with the U.S. target adopted in Kyoto. . ."³

Why the Limitation is Necessary:

Under Secretary of State Stuart Eizenstat has unequivocally stated that the Administration "has no intention through the backdoor or anything else, without Senate confirmation, or trying to impose or take any steps to impose what would be binding restrictions . . . unless and until the Senate of the United States says so."⁴ Notwithstanding this and other assurances:

- The Administration committed the U.S. to "make Kyoto a reality" by undertaking "domestically the steps necessary to reduce significantly greenhouse gas emissions. . ."⁵
- EPA has stated that "Annex I parties must now begin designing policies and programs to meet [the Kyoto Protocol] reduction goal." The EPA activities described above are specific examples of EPA's efforts to design and implement such programs.

Effect of Committee Report Language re Public Education and Outreach:

The Committee report accompanying the VA-HUD bill also expresses other concerns with the Administration's climate policies and activities including a concern that the Environmental Protection Agency and the Council on Environmental Quality "may be engaging in activity that is tantamount to lobbying in an effort to build public support for implementation of the Protocol." The report directs EPA and the CEQ to "refrain from conducting educational outreach or informational seminars on policies underlying the Kyoto Protocol until or unless the Protocol is ratified by the Senate." This directive, while providing a clear indication of what the Appropriations Committee considers appropriate with respect to use of federal funds for public education on the climate change issue, would not, in and of itself, affect funding for any particular programs.

² See June 9, 1998 Ltr. from Rep. Dingell and June 25, 1998 Ltr. from Rep. Sensenbrenner to EPA Administrator Browner.

³ See February 20, 1998 Ltr. from the State of Massachusetts.

⁴ See Feb. 11, 1998 Testimony of Under Secretary Eizenstat before the Senate Foreign Relations Committee.

⁵ See May 17, 1998 Group of Eight Summit Communique, at ¶ 11.

5 3729
6 6546

3/12

body

DRAFT

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

July 23, 1998

STATEMENT BY THE PRESIDENT

I am pleased that the House of Representatives today rejected an unwise and unwarranted attempt to deny the American people the facts about global warming.

With much of the country suffering a stifling heat wave, and with each month so far this year setting a new record for global temperature, the American public expects and deserves a fair, honest and informed debate on the issue of climate change. Some in Congress would have stifled that debate by effectively imposing a gag order on federal agencies. Thankfully, this language was stripped from the VA-HUD Appropriations bill in the House.

in a bipartisan vote,

Unfortunately, the bill still contains other provisions that would restrict our ability to move forward with cost-effective steps to reduce the greenhouse gases that cause global warming. And appropriations bills moving through Congress would cut nearly by half my proposed research and tax incentives for energy efficiency and clean energy technologies -- measures that would reduce energy costs for American families while curbing greenhouse gases.

Americans have demonstrated time and again that we can protect our environment while growing our economy. We can and must meet the challenge of climate change in the same way. I urge Congress to join us in this critical endeavor.

CLIMATE CHANGE GAG ORDER

The FY99 VA-HUD appropriations bill contains an anti-environment rider which states that no funds can be used to "develop, propose or issue rules, regulations, decrees, or orders for the purpose of implementation of, or in contemplation of implementation, of" the Kyoto Protocol. The Committee further directs the Environmental Protection Agency (EPA) and the Council on Environmental Quality (CEQ) "to refrain from conducting educational outreach or informational seminars on policies underlying the Kyoto Protocol until or unless the Protocol is ratified by the Senate."

STIFLING INFORMED DEBATE ON GLOBAL WARMING

Specifically, the bill could:

- Prevent EPA and CEQ from giving the public general information about global warming.

Example: EPA's Global Warming Web Site gets approximately 100,000 hits each month. This site, which won an award from the Dow Jones Business Directory, contains information on climate change science, impacts, news, greenhouse gas inventories, speeches etc. EPA could be required to discontinue this valuable educational tool.

- Stop EPA scientists from participating in conferences, workshops, seminars or symposiums on climate change.
- Halt EPA and CEQ from participating in outreach to developing countries or briefings conducted as part of the international negotiations.

Example: EPA support for the U.S. Country Studies Program has helped more than 50 developing countries build capacity to increase their participation in the international effort to fight global warming. Developing country participation is critical to solving the problem of global warming. This bill could prohibit EPA from providing important technical, policy and scientific expertise necessary to successful international negotiations.

- Undermine EPA's and CEQ's ability to conduct educational and informational briefings on climate change for Congress, other agencies, other nations, businesses, and state and local governments.
- Prevent EPA, CEQ and the White House Climate Change Task Force from accepting invitations to speak about climate change.

Example: Recent invitational speaking engagements have included: the Nuclear Energy Institute, the National Cattlemen Beef Association, the Farm Journal, the Coalition for Advancement of Sustainable Energy, the Electric Power Supply Association, Edison Electric Institute and the Aspen Institute's Energy Forum on Climate Change.

Example: International invitational speaking engagements have included: Presentations to Malaysia, Russia, England, Canada, Australia and New Zealand on the success of emissions trading. This outreach is essential to convincing other nations that the U.S.-pioneered market-based, flexible approaches embodied in the Kyoto Protocol are the smart, cost-effective way to address the challenge of global climate change.

ROLLING BACK EXISTING PROGRAMS

The President has clearly stated that the Administration will not circumvent the Congress and implement the Kyoto treaty before it is ratified. This broadly worded provision, however, goes well beyond ensuring that agencies adhere to the President's directive. It would block EPA from taking common sense actions under existing law to protect the health and welfare of the American people from air pollutants that cause global warming.

This bill could also roll back on-going, bipartisan supported initiatives -- such as programs to enhance energy efficiency -- that have benefits in addition to limiting greenhouse gases. The effort to promote energy efficiency has been a long standing priority of this and previous administrations, and has enjoyed bipartisan support in Congress. In October 1992, the Senate ratified the Framework Convention on Climate Change which the Bush Administration had agreed to several months earlier in Rio, formally endorsing the goal of limiting our greenhouse gas emissions.

Specifically, the bill could:

- Prevent EPA from considering greenhouse gas emissions during rulemaking, even though such consideration was authorized by law and even though such emissions may pose a threat to the public health or welfare.

Example: EPA issued a rule under the Clean Air Act to cut landfill emissions of methane (a potent greenhouse gas) by half, the equivalent of eliminating the greenhouse gas emissions from 20 million cars -- while recovering enough usable fuel to meet the energy needs of 2 million homes. Under this bill, these benefits could not have been achieved if EPA were prevented from considering the greenhouse gas impacts of the rule.

- Undermine EPA's highly successful voluntary programs which have relied on educational outreach and the provision of information to consumers and businesses to help them save money, save energy and reduce pollution.

Example: Through the Green Lights program, EPA has established partnerships with over 2,600 businesses, state and local governments, universities and hospitals. By providing these partners with information and by recognizing the achievements of partners, the program has been able to leverage over \$1.5 billion in private investments in energy efficiency which, in 1997, has saved over \$500 million in annual energy bills and prevented the emissions of more than one million tons of carbon.

- Stop agencies from working on executive orders to improve the federal government's own use and procurement of energy or from collecting climate-related information to potentially improve our anticipation of and response to weather related disasters.
- Restrict the Administration from drafting rules or regulations that would be necessary to send the Protocol to the Senate for advice and consent. The Administration, in connection with submitting the treaty to the Senate, must be able to show how the Protocol would be implemented.

**Colloquy Between Senators Chafee and Bond
FY 1999 VA, HUD and Independent Agencies Appropriations Bill**

Mr. Chafee. Mr. President, page 71 of the committee report accompanying the fiscal year 1999 VA, HUD and Independent Agencies Appropriations bill states that, "[n]one of the funds provided to the EPA are to be used to support activities related to implementation of the Kyoto Protocol prior to its ratification." I want to try to get a clarification on this report language from the distinguished chairman of the VA, HUD and Independent Agencies Subcommittee, Senator Bond. I would agree that the EPA should not use appropriated funds for the purpose of issuing regulations to implement the Kyoto Protocol, unless and until such treaty is ratified by the United States.

I would like to point out, however, that the United States is a full, participating signatory nation to the 1992 Framework Convention on Climate Change. Under the 1992 Framework Convention, which was agreed to in Rio de Janeiro by President Bush and later consented to by the U.S. Senate, the United States pledged to carry out a wide variety of voluntary initiatives aimed at reducing greenhouse gases. These initiatives, being implemented by the EPA, the Department of Energy, and other agencies, are in place today. The Congress has funded these initiatives for several years now, indeed, long before the December 1997 climate conference in Kyoto, Japan. These initiatives; the Climate Challenge program, the Program for a New Generation of Vehicles, Green Lights, Energy Star, and others, have to varying degrees reduced greenhouse gas emissions by increasing energy efficiency across a broad range of domestic industrial sectors. They make sense for other reasons, Mr. President. We have found with these programs and others that our companies and American consumers benefit economically. When we conserve resources and reduce energy consumption in a sensible way, we save money. When we research, manufacture and market new energy efficient goods and services, we create export opportunities and jobs. We also increase U.S. energy security by reducing our dependence on imported oil, natural gas and coal. Finally, when we find cost effective ways to reduce greenhouse gases, we oftentimes reduce other air pollutants like mercury, nitrogen oxide, and sulfur dioxide.

So, I want to make sure that the committee report language that I cited previously does not interfere with these important and worthwhile efforts. I would ask my friend from Missouri if these ongoing energy conservation and climate-related programs and initiatives, which are not intended to directly implement actions called for under the Kyoto Protocol, would go forward under this bill?

Mr. Bond. Indeed they would, Senator Chafee. Our only goal here is to prevent the issuance of federal regulations designed solely for the purpose of Kyoto Protocol implementation. We have funded these EPA programs for the upcoming fiscal year and expect the agency to spend the money in an effective and appropriate manner.

Mr. Chafee. I thank the Senator.

R. B.

**Colloquy between Senators Byrd and Bond
FY 1999 VA, HUD and Independent Agencies Appropriations**

Mr. Byrd. Would the Senator from Missouri yield for a question on the appropriation of funding for the Environmental Protection Agency (EPA) and its energy and environment related programs? I note that on pages 74 and 75 of the Committee's Report that the Committee addresses the issue of the EPA's compliance with the Government Performance and Results Act and the EPA's submission of a report on activities related to these ongoing programs. Is it the Senator's understanding that the committee report reminds the EPA that it is to fully comply with the Government Performance and Results Act?

Mr. Bond. The Senator is correct. The language in the report requires full compliance with the Government Performance and Results Act.

Mr. Byrd. Is it the intent of the Senator to create additional legal requirements in this area beyond those required by the letter and spirit of the Government Performance and Results Act?

Mr. Bond. No, not at all. I would say to my friend from West Virginia that all we are asking here is for a more comprehensive explanation by the EPA of the components of its energy and environment programs, any justifications for funding increases, and a clear definition of how these programs are justified by the EPA's goals and objectives independent of the implementation of the Kyoto Protocol.

Mr. Byrd. I thank the Senator from Missouri. I would also note that the Committee Report expects the EPA to submit a report to the Committee by December 31, 1998, with a follow-up analysis by the General Accounting Office ninety days later. As the Senator may know, Senator Craig and I submitted language to the Interior Appropriations bill directing the Department of Energy (DOE) to submit a similar report, but this report is to be submitted in conjunction with DOE's Fiscal Year 2000 budget submission. Given the short period between the likely enactment of this Act and the December 31 deadline, would the Senator agree that it might be more reasonable for the EPA to also submit its report along with its Fiscal Year 2000 budget submission?

Mr. Bond. Yes, I believe that is a more appropriate time for the EPA to fulfill the reporting requirement as outlined in the Committee Report language.

Mr. Byrd. I thank the distinguished Senator. The EPA should provide a more detailed plan for better evaluating its programs, but I believe this is a more appropriate date to require such a report. It would not be wise to arbitrarily cap funding for vital energy and environment programs that encourage domestic energy efficiency, decrease costs, and

promote domestic energy security. These programs should be evaluated on their own merits. The federal government serves a vital catalytic role in supporting and developing cutting edge research programs that the private sector can then take into the marketplace. The true benefits of these technologies and programs may not be evident for a number of years. Through these efforts, the United States has a tremendous opportunity to profit from new technologies, both at home and abroad, while at the same time reducing greenhouse gas emissions.

PROPOSED AMENDMENT

“Any limitation on funds in this Act for the EPA or the CEQ shall not apply to developing rules, regulations, decrees or orders (other than rules, regulations, decrees or orders designed solely for the purpose of implementation of the Kyoto Protocol prior to its ratification) prior to proposal or issuance, where such activities are authorized by law.”

PROPOSED AMENDMENT

2

"Any limitation on funds in this Act for the EPA or the CEQ shall not apply to developing rules, regulations, decrees or orders (other than rules, regulations, decrees or orders designed solely for the purpose of implementation of the Kyoto Protocol prior to its ratification) prior to proposal or issuance, where such activities are authorized by law."

~~XXXXXXXXXXXXXXXXXXXX~~
To: ~~XXXXXXXXXXXXXXXXXXXX~~
Roger Ballentine

CLIMATE CHANGE RIDER AND REPORT LANGUAGE ON VA-HUD

Rider. The VA-HUD appropriations bill contains an anti-environment rider which states that no funds can be used to “*develop, propose or issue*” rules, regulations, decrees, or orders for the purpose of implementation of *or in contemplation of implementation of* the Kyoto Protocol.”

- The President has clearly stated that the Administration will not circumvent the Congress and implement the Kyoto treaty before it is ratified. This broadly worded provision, however, goes well beyond ensuring that agencies adhere to the President’s directive. It could be read to roll back on-going activities to limit greenhouse gases -- for example, through enhancing energy efficiency.
- The effort to promote energy efficiency has been a long standing priority of this and previous administrations, and has enjoyed bipartisan support in Congress. In October 1992, the Senate ratified the Framework Convention on Climate Change which the Bush Administration had agreed to several months earlier in Rio, formally endorsing the goal of limiting our greenhouse gas emissions.
- Activities undertaken to fulfill these obligations, NOT the Kyoto Protocol, could be prohibited under this bill. For example, this language could be read to prevent agencies from working on executive orders to improve the federal government’s own use and procurement of energy.
- Furthermore, under this language, EPA could have been prevented from considering the greenhouse gas impacts of the landfill methane rule. That rule has cut methane emissions by half, the equivalent of removing the emissions from 20 million cars.

Report language. The report language states that “[EPA] and the CEQ are thus directed to refrain from conducting educational outreach or informational seminars on policies underlying the Kyoto Protocol until or unless the Protocol is ratified by the Senate.”

- The American people want and deserve a fair and accurate debate on the issue of climate change. This language effectively imposes a gag order on agencies on the subject of future action to address the challenges of climate change.
- The language could even result in the exclusion of the public and the business community from the debate over how to address climate change because agencies could be prevented from conducting meetings to discuss their concerns about climate change science, policies, or on-going international negotiations.
- The Administration must be able to communicate with citizens and businesses in order to effectively engage in international negotiations on behalf of the American people.

THE WHITE HOUSE

WASHINGTON

June 27, 1998

7-7-98

MEMORANDUM FOR THE PRESIDENT

FROM: TODD STERN *TOS*
SUBJECT: Climate Change Weekly Report

Copied:
Stern
COS

Podesta Foley
Lew Callahan
McGinty
Stein
Spaulding

Congressional

*Mult
get*
It was another busy, difficult week on the appropriations front. The most contentious development was language proposed by Rep. Knollenberg (R-Mich.) as a rider to the VA-HUD bill and in the VA-HUD Committee Report. The rider would, in essence, bar EPA, CEQ and OSTP from developing, proposing or taking any executive action "for the purpose of implementation of or in contemplation of implementation" of the Kyoto Protocol. That is bad enough, but the report language is worse. It would bar EPA and CEQ from engaging in "educational outreach or informational seminars" on issues underlying the Kyoto Protocol -- which would seem to cover most anything related to global warming. Rep. Fazio offered an amendment to modify the bill language and strike the report language, but it failed despite an active effort to push it. While this was disappointing, the language is such an obvious overreach that we should be able to take advantage of it. We will try to do that during the next two weeks.

Wrap up on the three appropriations bills:

Energy and Water: Bill passed by House on June 22. Cuts the total increase (about \$100M) requested in our budget for solar and renewable energy. Reps. Fazio, Cook, and McDade expressed support for working with Senate to find additional R&D funding for renewables. Recall that Senate bill includes \$70 million of your request.

Interior: House and Senate Appropriations Committees reported out bills, which are now ready for floor action after recess. House bill cut our entire requested increase (about \$193M) for DOE's energy efficiency portfolio, and could be read to cut \$25M more. Senate bill cut program by \$160M (\$30M increase from FY98 levels). Both bills contain report language stating that none of funds are to be used to implement Kyoto, but we worked successfully with Senator Byrd's staff to make the language harmless.

VA-HUD: House bill cuts your energy efficiency request for EPA by about \$106M (a \$10M increase from FY98 levels), and includes Knollenberg language discussed above. Both House and Senate bills are now ready for floor action.

Hearing. Rep. McIntosh held another hearing focussed on the coal and utility industries. The witnesses consisted of Senator Enzi (R-WY), a panel of coal and utility industry and labor folks, and DOE Undersecretary Ernie Moniz. The Chairman questioned DOE about their performance measures for climate change programs and about baselines for evaluating the performance of these programs. Senator Enzi and the industry panel were all adamantly opposed to the Kyoto Treaty. Representatives Tierney (D-MA) and Kucinich (D-OH) once again defended the Administration's climate change budget request as well as the Administration's efforts to respond to the voluminous McIntosh oversight requests.

Press Coverage

On Thursday, *The Washington Post* ran a story in the business section about GMAC's agreement to provide more favorable financing of solar energy systems in new and existing homes. On Friday, *The New York Times* ran a piece on the Knollenberg rider and report language.

cc: Vice President
Erskine Bowles
John Podesta
Ron Klain
Jack Lew
Katie McGinty
Gene Sperling
Jim Steinberg
Janet Yellen

Sen 1: Is the Senator aware that there is language in the report which states that "none of the funds provided to EPA are to be used to support activities related to implementation of the Kyoto Protocol prior to its ratification?"

Byrd? Byrd: The Senator is correct

Sen 1: Does the Senator agree that this language is meant to ensure that the Kyoto Protocol is not implemented prior to the Senate's ratification?

Byrd? Byrd: The Senator is correct

Sen 1: Does the Senator further understand that this language is NOT meant to prohibit EPA from expending funds pursuant to legal authority other than the Kyoto Protocol for programs ~~that~~ meant to enhance energy efficiency, promote renewable energy, or protect public health and the environment?

Byrd: The Senator is correct

Sen 1: Is it the Senator's further understanding that the Committee report reminds the EPA that it is to fully comply with the Government Performance and Results Act? [Rpt pp. 74-75].

Byrd: The Senator is correct

Sen 1: Finally, is it the Senator's understanding that this language in the report is not meant to create additional legal requirements in this area beyond those required by the letter and spirit of the Government Performance and Results Act?

Byrd: The Senator is correct.

Sen 1: I thank the Senator.

Sen 1: Is the Senator aware that there is language in the report which states that "none of the funds provided to EPA are to be used to support activities related to implementation of the Kyoto Protocol prior to its ratification?"

Byrd?: The Senator is correct

Sen 1: Does the Senator agree that this language is meant to ensure that the Kyoto Protocol is not implemented prior to the Senate's ratification?

Byrd?: The Senator is correct

Sen 1: Does the Senator further understand that this language is NOT meant to prohibit EPA from expending funds pursuant to legal authority other than the Kyoto Protocol for programs that meant to enhance energy efficiency, promote renewable energy, or protect public health and the environment?

Byrd: The Senator is correct

Sen 1: Is it the Senator's further understanding that the Committee report reminds the EPA that it is to fully comply with the Government Performance and Results Act? [Rpt pp. 74-75].

Byrd: The Senator is correct

Sen 1: Finally, is it the Senator's understanding that this language in the report is not meant to create additional legal requirements in this area beyond those required by the letter and spirit of the Government Performance and Results Act?

Byrd: The Senator is correct.

Sen 1: I thank the Senator.

Climcol

Revised Knollenberg
58

Option 2, amended as shown

Option 1: Strike all

1 remain available through September 30, 2007 for liquidat-
2 ing obligations made in fiscal years 1999 and 2000: *Pro-*
3 *vided further*, That none of the funds appropriated by this
4 Act shall be used to ~~develop, propose, or~~ issue rules, regu-
5 lations, decrees, or orders for the purpose of implementa-
6 tion, ~~or in contemplation of implementation~~, of the Kyoto
7 Protocol which was adopted on December 11, 1997, in
8 Kyoto, Japan at the Third Conference of the Parties to
9 the United Nations Framework Convention on Climate
10 Change, which has not been submitted to the Senate for
11 advice and consent to ratification pursuant to article II,
12 section 2, clause 2, of the United States Constitution, and
13 which has not entered into force pursuant to article 25
14 of such Protocol.

OFFICE OF INSPECTOR GENERAL

16 For necessary expenses of the Office of Inspector
17 General in carrying out the provisions of the Inspector
18 General Act of 1978, as amended, and for construction,
19 alteration, repair, rehabilitation, and renovation of facili-
20 ties, not to exceed \$75,000 per project, \$31,154,000, to
21 remain available until September 30, 2000: *Provided*,
22 That the obligated balance of such sums shall remain
23 available through September 30, 2007 for liquidating obli-
24 gations made in fiscal years 1999 and 2000.

1
2 For c
3 teration, e
4 or for us
5 \$60,948,0
6
7
8 For r
9 sive Envir
10 ity Act of
11 tions 111
12 9611), an
13 tion, and
14 per proje
15 \$650,000
16 lic Law 1
17 this head
18 (of whic
19 Septemb
20 until ex
21 ized by
22 Reautho
23 Public
24 from ge
25 fund as

VA-HUD Rept: Proposed Deletion

58

the Committee. Within the amounts provided for the Clean Water Action Plan, no less than \$7,500,000 is intended to be used to expand local government activity in groundwater and source water protection through the groundwater/wellhead protection program. The expansion of this program in this manner will provide over 100 additional technicians for in-the-field work and will virtually guarantee that 2000 or more communities will adopt new groundwater/source water ordinances targeted to the highest risk watershed areas in each state.

The Committee expects that the National Environmental Education and Training Foundation will be funded at a level no less than \$780,000. Additionally, the Committee urges the Agency to provide at least \$3,000,000 to carry out the purposes of the Clean Air Act Amendments relative to the Great Waters program.

The Committee has again provided full funding to continue efforts to ensure smooth implementation of notification of lead-based paint hazards during real estate transactions. This program is a joint effort between EPA, the Departments of Health and Human Services and Housing and Urban Development, and the National Association of Realtors, and is, in the Committee's judgment, a prime example of how cooperative efforts can produce excellent results. The Committee continues to applaud EPA, HHS, HUD and the Realtors for their joint efforts and expresses its support for continued outreach to ensure that housing consumers get good information about lead hazards, which can help prevent many poisonings.

Last year, the Committee noted the value of and encouraged the Agency to submit a budget request for the Office of Small Business Ombudsman. The Committee continues to support this Office and the important bridge it represents to the small business community, and has therefore included within available funds in this account up to \$500,000 for the staffing and operations of this office. Bill language has been included which limits expenditures for certain activities relative to the Kyoto Protocol to the United Nations Framework Convention on Climate Change. This language was included in part because of sincere concerns that, lacking support for Senate ratification, the Administration is attempting to force binding greenhouse gas emission reductions through "back door" regulatory action and through greatly expanding existing programs. The bill language is intended to prohibit the expenditure of funds for implementation of the Kyoto Protocol in any manner until it has been ratified by the Senate.

Beyond this language, the Committee remains concerned with the apparent inequity of the Protocol, which places binding greenhouse gas emission reductions on the United States and 31 other nations while at the same time exempting 132 developing nations, including China, India, Brazil, and Mexico. These four nations alone are expected to emit more than 50 percent of the world's greenhouse gases by the year 2050. Last year, the United States Senate passed by a vote of 95-0 a resolution expressing the sense of the Senate that the United States should not be a signatory to any protocol regarding climate change in Kyoto that would place the United States at a competitive disadvantage. It would seem

this resolution was summited in Kyoto.

Finally, the Committee among others, may be engaged in lobbying in an effort to bring the Protocol. While the Committee is educating the public on the fine line between education and the CEQ are thus educational outreach or information the Kyoto Protocol until the Senate.

As was noted during the budget submission, the Committee is moving forward with a national out adequately completing (CAA), such as the obligation visibility improvements and sections of the CAA. In addition, from participation in a visibility search and monitor visibility and the cost-effectiveness achieve reasonable progress on a firm statutory basis commends that funding of provided by the Agency for a group of states comes forward.

Each such VTC should implementation of appropriate goal of completion by March to the Congress for completing the plan, a schedule the results of the plan and a year-by-year project sure that the regional hazard Federal mandate on the Senate the Committee monthly oning this directive.

Despite efforts over nearness to be a problem in the 1996 approximately 39 million concentration of ozone at ground levels allowed under the Standards. Under the new American citizens are expected, many uncertainties technical information is being used by them.

The Agency is therefore conducting a study that independent information most of EPA's actual use of such and verifying regulatory

to be used to extend groundwater and source water head protection program. The plan will provide over 100 jobs and will virtually guarantee to adopt new groundwater/ the highest risk watershed

OCLEA EPA
this resolution was summarily ignored by the United States negotiators in Kyoto.
Finally, the Committee is concerned that the Agency, the CEQ, among others, may be engaging in activity that is tantamount to lobbying in an effort to build public support for implementation of the Protocol. While the Committee recognizes the importance of educating the public on environmental issues, there can be a very fine line between education and advocacy of an issue. The Agency and the CEQ are thus directed to refrain from conducting educational outreach or informational seminars on policies underlying the Kyoto Protocol until or unless the Protocol is ratified by the Senate.

As was noted during the Agency hearings on the fiscal year 1999 budget submission, the Committee is concerned that EPA is moving forward with a nationally applicable rule on regional haze without adequately completing its obligations under the Clean Air Act (CAA), such as the obligation to update the report to Congress on visibility improvements achieved through implementation of other sections of the CAA. In addition, most states have not benefited from participation in a visibility transport commission (VTC) to research and monitor visibility impairment, and assess its sources and the cost-effectiveness of any additional measures needed to achieve reasonable progress. To re-establish the regional haze program on a firm statutory footing the Committee strongly recommends that funding of up to \$500,000 for up to eight VTCs be provided by the Agency from within available funds whenever a group of states comes forward as a VTC.

Each such VTC should use these funds to prepare and begin the implementation of appropriate, comprehensive work plans, with a goal of completion by March 1, 1999. Each such plan should be provided to the Congress for review, and should include a schedule for completing the plan, a schedule for each state serving on a VTC to use the results of the plan in its visibility implementation plan, and a year-by-year projection of the Federal funding required to ensure that the regional haze program will not result in an unfunded Federal mandate on the States. The Agency is directed to report to the Committee monthly on the progress made towards accomplishing this directive.

Despite efforts over nearly 30 years, ozone at ground level continues to be a problem in the United States. EPA estimated that in 1996 approximately 39 million people lived in areas where the concentration of ozone at ground-level was greater than the concentrations allowed under then-existing National Ambient Air Quality Standards. Under the new 1997 standards for ozone, many more American citizens are expected to be in that same situation. Nevertheless, many uncertainties remain regarding what scientific and technical information is most needed in the ozone abatement efforts of EPA and state agencies and how such information is actually being used by them.

The Agency is therefore directed to work with the NAS to conduct a study that independently evaluates such scientific and technical information most needed by EPA's air regulatory office, and EPA's actual use of such information in developing, implementing, and verifying regulatory strategies for ground-level ozone. The

ional Environmental Education funded at a level no less than the Agency to the purposes of the Clean Water program.

at funding to continue efforts of notification of lead-based actions. This program is a joint effort of Health and Human Services, and the National Committee's judgment, as can produce excellent results. EPA, HHS, HUD and presses its support for consumers get good information can help prevent many

due of and encouraged the Office of Small Business to support this Office and the small business community available funds in this act. Operations of this office. Limits expenditures for the protocol to the United Nations Change. This language concerns that, lacking support, the Agency is attempting to reduce through "back" expanding existing programs. The expenditure of the protocol in any manner until

remains concerned with such places binding green-landed States and 31 other, 132 developing nations, etc. These four nations 0 percent of the world's year, the United States is expressing the sense that not be a signatory to Kyoto that would place advantage. It would seem

6-18-1998 12:59PM FROM

H.L.C.

P. 1

AMENDMENT TO H.R. ____, AS REPORTED
OFFERED BY MR. POMBO OF CALIFORNIA

Page ____, after line ____, insert the following new
section:

1 SEC. ____ None of the funds made available by this
2 Act may be used to issue final regulations supported by
3 scientific data, unless the acquisition, interpretation, in-
4 corporation, and application of all such scientific data is
5 subject to peer review by at least 2 but not more than
6 5 individuals recommended by the National Academy of
7 Sciences. For purposes of this section, the term "peer re-
8 view" means identifying technical or scientific deficiencies
9 of a proposal, assessing whether the methodology and
10 analysis supporting a proposal conform to the standards
11 of the academic and scientific community, and determin-
12 ing whether a proposal is supported by sufficient credible
13 evidence.

P
I
C
P
E

likely to be
added to many
bills —
incl. Ag &
E & W
first —

"Knollenberg
language"
on Kyoto

~~DRAFT~~

June 11, 1998

~~Draft~~ Climate Change Appropriations Language

None of the funds appropriated by this Act shall be used to (1) initiate, develop, or carry out education and information advocacy programs, or (2) develop, propose, or issue rules, regulations, decrees, or orders, for the purpose of implementation, or in contemplation of implementation, of the Kyoto Protocol which was adopted on December 11, 1997 in Kyoto, Japan at the Third Conference of the Parties to the United Nations Framework Convention on Climate Change, which has not been submitted to the Senate for advice and consent to ratification pursuant to Article II, Section 2, Clause 2, of the United States Constitution, and which has not entered into force pursuant to Article 25 of said Protocol.

"Knollenberg
language"
on Kyoto

~~DRAFT~~

June 11, 1998

~~Draft Climate Change Appropriations Language~~

~~None of the funds appropriated by this Act shall be used to (1) initiate, develop, or carry out education and information advocacy programs, or (2) develop, propose, or issue rules, regulations, decrees, or orders, for the purpose of implementation, or in contemplation of implementation, of the Kyoto Protocol which was adopted on December 11, 1997 in Kyoto, Japan at the Third Conference of the Parties to the United Nations Framework Convention on Climate Change, which has not been submitted to the Senate for advice and consent to ratification pursuant to Article II, Section 2, of the United States Constitution, and which has not entered into force pursuant to Article 25 of said Protocol.~~

#1

"Knollenberg
language"
on Kyoto

DRAFT

June 11, 1998

~~Draft~~ Climate Change Appropriations Language

None of the funds appropriated by this Act shall be used to ~~(1) initiate, develop, or carry out education and information advisory programs or (2) develop, propose, or issue rules, regulations, decrees, or orders, for the purpose of implementation, or in contemplation of implementation, of the Kyoto Protocol which was adopted on December 11, 1997 in Kyoto, Japan at the Third Conference of the Parties to the United Nations Framework Convention on Climate Change, which has not been submitted to the Senate for advice and consent to ratification pursuant to Article II, Section 2, Clause 2, of the United States Constitution, and which has not entered into force pursuant to Article 25 of said Protocol.~~

#2

"Knollenberg
language"
on Kyoto

DRAFT

June 11, 1998

~~Draft~~ Climate Change Appropriations Language

None of the funds appropriated by this Act shall be used to (1) initiate, develop, or carry out education and information advocacy programs, or (2) develop, propose, or issue rules, regulations, decrees, or orders, for the purpose of implementation ~~as is contemplation of~~ implementation of the Kyoto Protocol which was adopted on December 11, 1997 in Kyoto, Japan at the Third Conference of the Parties to the United Nations Framework Convention on Climate Change, which has not been submitted to the Senate for advice and consent to ratification pursuant to Article II, Section 2, Clause 2, of the United States Constitution, and which has not entered into force pursuant to Article 25 of said Protocol.

#3

Interior Rider Wastes Taxpayers' Money And Promotes Energy Inefficiency

The FY 2000 Senate Interior Appropriations bill contains an anti-energy efficiency, anti-environment rider which states that no funds can be used to "study, develop, or implement procedures or policies to establish energy efficiency, energy use or energy acquisition rules or guidelines other than those based upon the provisions of the Energy Conservation Policy Act of 1975."

Blocks President's New Energy Efficiency Executive Order

On June 3, 1999, President Clinton issued a new Executive Order to dramatically improve energy efficiency in Federal buildings. The Order requires agencies to reduce their energy consumption by extending current energy efficiency goals and setting new goals for greenhouse gas reductions, renewable energy use, and water conservation.

Specifically, the Order requires Federal agencies to achieve by 2010:

- 35% greater energy efficiency in buildings relative to 1985 levels; and,
- 30% cut in greenhouse gas emissions from building-related energy use.

The Senate Interior Appropriations bill undermines Executive Order 13123 thereby:

- **Jeopardizing \$750 million annually in taxpayer savings** by 2010;
- **Promoting energy inefficiency** – and preventing cost-effective actions to significantly reduce air pollution and cut greenhouse gas emissions; and
- **Eliminating opportunities for business** – particularly for energy service companies, utilities, renewable energy technology companies and others.

Blocks Previous Energy Efficiency Orders and Statutes

Not only does the bill block implementation of the new Executive Order, it could also **overturn decades worth of policies and goals embodied in statutes and Executive Orders of Presidents Bush and Clinton**. These statutes and orders have already resulted in significant benefits to our nation's taxpayers, our economy and our environment, including:

- 17 percent reduction in energy use in Federal buildings since 1985; and
- \$1 billion annually in energy cost savings.

House Panel Clears 10-Year Tax Cut Of \$863.9 Billion on Party-Line Vote

By GREG HITT

Staff Reporter of THE WALL STREET JOURNAL

WASHINGTON—The House Ways and Means Committee approved a 10-year, \$863.9 billion tax cut, as top Republican leaders maneuvered to shore up support for the package.

The party-line, 23-13 vote capped a day of rancorous debate that began with a series of deals aimed at softening some of the bill's conservative edges. The trade-offs expanded popular tax credits supporting construction of low-income housing and the hiring of low-income workers, and were paid for by curtailing one of Ways and Means Committee Chairman Bill Archer's most coveted initiatives: lowering the top corporate capital-gains tax to 25% from 35%.

Meanwhile, Speaker Dennis Hastert, over the Texan's objections, intervened to introduce the Medicare prescription-drug issue into the tax debate.

With the Illinois Republican's blessing, a provision was added to the bill that would make deductible the cost of prescription-drug insurance coverage. The proposal was loaded with conditions, however, and hinged on the uncertain prospect of an agreement between Congress and the White House to overhaul Medicare, the federal health-insurance program for the elderly and disabled. Nevertheless, the move allowed Republicans to come down on behalf of a proposal that so far this year has been defined as a Democratic issue.

"What you're doing is putting a bumper sticker on a balloon that's sure to burst," complained Rep. Sander Levin (D., Mich.). Democrats unsuccessfully countered with a prescription-drug proposal modeled on Mr. Clinton's own initiative. "If this is going nowhere," GOP Rep. Jim Nussle of Iowa said, "why are you doing us the big favor?"

With Republicans controlling the House by a scant six-seat majority, any one wing of the party has tremendous leverage. And

the GOP leadership—which hopes to ram the tax-cut bill through the House with a floor vote next week—is under pressure from not just moderates, but all sides.

Social conservatives are lobbying for full repeal of the marriage-tax penalty, not the modest scale-back embodied in Mr. Archer's bill. Anything less, warned Rep. David McIntosh (R., Ind.), "will divide the base." And fiscal conservatives are raising concerns about the bill's long-term impact on the budget. Indeed, the Congressional Budget Office said the bill, if enacted as is, would reduce the amount of debt reduction built into the federal budget over the next decade and result in \$154.6 billion in additional interest costs.

"Right now, there are enough people raising questions that they don't have the votes," said Rep. Michael Castle (R., Del.), who is urging the leadership to consider a much smaller tax-relief package. "I'm concerned about the size of it."

Rep. Greg Ganske (R., Iowa), echoed similar thoughts on the House floor. "I cannot support an \$870 billion tax cut," he said. "I think it would be much more reasonable for us to sit down, reach across the aisle, reach down Pennsylvania Avenue, and come to an agreement."

Mr. Archer has privately voiced concern about the bill's fate in a floor vote, aides said. Yesterday he was publicly upbeat, but added: "We're not a monolithic party." An Archer ally, GOP Rep. J.D. Hayworth of Arizona, predicted that all House Republicans eventually would coalesce. "It's the paradox of the six-seat margin," he said. "When it comes to the big questions, it transcends the social conservatives and the moderates."

GOP shakiness over taxes is also evident in the Senate, where Rhode Island Republican John Chafee of the Finance Committee doubts the wisdom of pursuing a huge tax package in the face of a Clinton veto threat. "If that's true, we've got to get adjusted now," he said.

AT&T to Appeal Florida Internet-Access Ruling

By KATHY CHEN

Staff Reporter of THE WALL STREET JOURNAL

WASHINGTON—AT&T Corp. Chairman C. Michael Armstrong, told Congress that local governments lack the authority to require cable-television companies to open their lines to rival Internet service providers.

Mr. Armstrong, testifying before the Senate Judiciary Committee, said AT&T will appeal Tuesday's decision by Broward County, Fla., to impose such a condition on cable companies. AT&T already is fighting a similar decision by authorities in Portland, Ore.

Portland commissioners had decided earlier this year that AT&T must open its cable lines to competitors as a condition of approving the company's acquisition of cable company Tele-Communications Inc. AT&T sued Portland, and a federal court last month upheld the city's decision. AT&T is appealing.

Mr. Armstrong argued that open access

should be addressed at the national level and that Broward County's requirement violates AT&T's contracts with the county, the cable company and AT&T's Internet service provider, Excite At Home Corp. He contended that the AT&T cable system is open, and that users can access a number of Internet service providers, known as ISPs.

Not true, said Ivan Seidenberg, chairman of Bell Atlantic Corp. He told the panel that "AT&T and cable are telling consumers: If you want our high-speed transport, you have to buy our ISP, too."

The Florida and Oregon actions raise the possibility of a crazy quilt of regulations across the U.S. Several other localities, including San Francisco and Miami-Dade County in Florida, are contemplating similar measures. Also, hundreds of cities will soon be deciding whether to approve AT&T's purchase of another cable company, MediaOne Group Inc., and might try to attach open access conditions.

AT&T has unleashed a huge lobbying

effort at the local level to persuade officials and consumers that open-access requirements are a bad idea. It has hired dozens of lobbyists and organized groups to write letters in Florida.

In California, the long-distance company has bombarded consumers with phone calls, run full-page advertisements in major newspapers, and aired television commercials alleging that American Online Inc., GTE Corp. and other rivals are asking localities to slow down competition. One media buyer familiar with the campaign estimated the airtime for the TV ads alone cost roughly \$500,000.

Many of AT&T's steps have been undertaken through Hands Off the Internet, a pro-deregulation group it helped found and helps finance.

AT&T has committed \$140 billion to buying cable companies, including TCI and MediaOne, in a bet that cable lines will eventually serve as the primary pipeline for video, telephone and Internet services.

THE WALL STREET JOURNAL

THURSDAY, JULY 15, 1999

Plan to Cut Federal Electric Bill Sparks an Odd Flap

By JOHN J. FIALKA

Staff Reporter of THE WALL STREET JOURNAL

WASHINGTON—In what appears to be the "Case of the Too-Hasty Lobbyists," the Senate Appropriations Committee wants to pull the plug on one of President Clinton's least controversial programs: an executive order to save taxpayers as much as \$1 billion a year by trimming the federal government's \$8 billion electricity bill.

An amendment attached to the annual appropriations bill for the Interior Department by Sen.



Sen. Thad Cochran

Thad Cochran condemns the federal energy-efficiency program—which costs the government nothing. The Mississippi Republican calls the program a "not-well-disguised effort" to implement the Kyoto treaty on curbing global warming before the Senate has ratified it.

One of the electric-utility lobbyists who persuaded Sen. Cochran's staff to introduce the measure says the industry only wanted to eliminate one small section of

the program because it seemed to favor natural-gas companies. "In large measure, we are delighted by the president's order," says Mike McGrath, an official of the Edison Electric Institute, which represents privately owned utilities.

Hastily Crafted Position

But the lobbyists mistakenly cited a 1975 law thought to bar the program, an error that wound up in the amendment. Mr. McGrath concedes that the utilities' position was hastily drawn up after President Clinton announced his energy-efficiency order on June 3. "It had to be done very, very quickly," in time to catch the Senate's appropriations process, he says.

The resulting flap, which has drawn a counterattack and veto threats from the White House, has gotten somewhat out of control, Mr. McGrath says.

Sen. Cochran says he didn't meet with lobbyists from Edison Electric and Southern Co., the Atlanta-based giant that operates one of the nation's largest networks of coal-fired power plants. "I was told about the matter by a member of my staff," he says, and was convinced that the program interfered with a law giving Congress the right to legislate in the area.

The Senate panel approved the measure on June 24. A day later, President Clinton fired back in a speech at George-

town University. "It's a no-brainer," he said of the program. "It's no money, nothing. The only people that lose are the people that won't be pumping electricity to us."

"But it's an example of what happen[s] when adults with responsibility fall into small-time wrangling and even want to stop things that are 100% good and not controversial," he added.

Initiative From '80s

Until now, the program has experienced almost no wrangling. Based on a series of White House initiatives started in 1985, it offers local utilities and other energy contractors part of the energy savings if they can find ways to make the heating, cooling and lighting of sprawling military bases and some 500,000 federal buildings more efficient. According to the Energy Department, the program currently saves about \$1 billion a year.

The president's order would expand the program, pushing for an additional 18% cut in federal energy consumption by 2010. However, one paragraph of the 19-page order caught the eye of utility lawyers. It recommends that federal managers also consider the source of their energy as part of their move toward greater efficiency.

According to Energy Department officials, the paragraph was intended to encourage managers to use, for example, gas-fired water heaters because in the long run they may be more efficient, even if they cost more. This was heresy to utility-industry officials. Mr. McGrath says they worry that the gas industry "sometimes takes little shots at us to advance their business."

"Nobody's taking shots at anybody," replies Charles Fritts, vice president of government relations for the American

Gas Association. He says his association did ask White House efficiency planners to consider that "70% of electricity is lost between the mine mouth and the point of consumption."

Once the utilities made their move with Sen. Cochran, other lobbyists were drawn into the fray. "It's a crazy reading of the executive order, and a response that is completely inappropriate," says David M. Nemtsov, president of the Alliance to Save Energy, which represents companies that sell insulation, thermostats and other materials used to tighten the federal government's energy demands.

Environmental groups were mobilized, backed up by Energy Secretary Bill Richardson, who fired off a round of letters to Capitol Hill. "Look, simply because there is a turf fight between the electricity industry and the gas industry, are we going to allow this to eliminate our ability to save taxpayers \$1 billion through reduced energy costs?" the secretary asks.

It isn't clear where all this will end. Sen. Cochran says he expects "President Clinton will get somebody to strike" his amendment when it reaches the Senate floor. A White House official says that if the Senate passes it, the president could well veto it, setting off a scramble for a new appropriations bill before the Interior Department runs out of money.

As for Mr. McGrath, he says the utility industry would be happy if the one objectionable paragraph of the order would simply disappear. "There has been a lot of positioning on this," he says, "but I think all of the parties know in their hearts that we're all very much in favor of the same thing, which is encouraging energy efficiencies in ways that make business sense."

THE WALL STREET JOURNAL

THURSDAY, JULY 15, 1999