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Appropriations - VA [Veterans Affairs], HUD [Housing and Urban Development] [2]

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FAX TRANSMISSION

U.S. ENVIRONMENTAL PROTECTION AGENCY

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FAX: 202-260-4852

To: Julie Anderson

Date: July 9, 1998

Fax #: 395-2342

Pages: 6, including this cover sheet.

From: William N. White

Subject: concerns

COMMENTS:

Here is the latest version

Concerns with House Appropriations bill and report language
- DRAFT -

Report language imposes a gag order on EPA; stifles informed public debate; severely restricts outreach in voluntary programs; undercuts U.S. commitments under Rio Treaty

"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."

By imposing a gag order on the Agency and the CEQ, this language could stifle any informed debate on global warming. The Administration has a long and successful history of open consultations with the public, scientists, businesses, state and local governments, environmental organizations and other nations. Activities that could be shut down by this language include:

Industry consultations - in his October announcement, President Clinton promised to provide appropriate rewards for firms taking early action to reduce emissions. Foregoing EPA's extensive experience and proven track record in forging successful voluntary partnerships with industry to reduce emissions and save energy would be a serious setback to these efforts.

Negotiation briefings - as part of the U.S. delegation to the international negotiations, EPA provides critical technical, policy and scientific expertise to briefings for business and environmental groups before, during and after negotiating sessions.

Developing Country Outreach - recognizing the importance of developing country participation to solving the problem of global warming, EPA plays a central role in bilateral dialogues, fostering projects by U.S. businesses to reduce emissions in developing countries, and helping developing countries complete greenhouse gas inventories and emissions reduction plans. For 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.

State and Local Governments - EPA's State and Local Outreach Program is helping more than 30 states develop greenhouse gas emissions inventories, and helping more than 20 states develop mitigation plans to reduce greenhouse gas emissions. EPA also supports the Cities for Climate Protection Program, which so far has helped 48 cities make local commitments to reduce greenhouse gas emissions and identify and implement cost-effective practices to reduce emissions, especially in buildings, transportation, and waste management.

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Invitational speaking/dialogues - EPA frequently accepts invitations from businesses, trade associations, environmental organizations and other groups to discuss the Kyoto Protocol, and policies and programs related to reducing greenhouse gas emissions.

EPA also accepts invitations to speak internationally on the extremely successful, market-based, flexible and cost-effective approaches the Agency pioneered, such as emissions trading and voluntary programs. Recently, EPA has given such presentations in Malaysia, Russia, England, Canada, Australia and New Zealand. This outreach has been essential to convincing other nations that the market-based, flexible approach embodied in the Kyoto Protocol is superior to mandatory international policies such as carbon taxes and fuel economy standards favored by some nations.

EPA's Global Warming Web Site gets approximately 100,000 hits each month. The site contains information on climate change science, impacts, news, actions, greenhouse gas inventories and speeches. The site won a select site award from the Dow Jones Business Directory, a guide to high quality business web sites.

EPA Regional Workshops - Designed to inform participants about the potential impacts of climate change, identify solution-oriented strategies to reduce the risks associated with climate change, and provide information on federal programs, new technologies and success stories from business and government.

National Assessment workshops look at current stresses and issues for the region; the expected consequences of climate change and variability and how will these interact with existing stressors; the priority research and information needs; coping options that can build resilience and possibly assist the climate change problem. EPA has coordinated three regional workshops, the Great Lakes region, the Gulf Coast region and the Mid-Atlantic region, in supporting USGCRP leadership on the national assessment.

Curtailing these important outreach efforts could not only stifle informed public debate, it could also seriously undermine the U.S. commitment under the Framework Convention on Climate Change - ratified by the Senate on October 15, 1992:

“[to] Promote and cooperate in education, training and public awareness related to climate change and encourage the widest participation in this process, including that of non-governmental organizations,” (UNFCCC, Article 4.1(I))

This broad and subjective language could also be read to severely restrict outreach in almost every program at EPA aimed at improving energy efficiency and reducing greenhouse gas emission - both key policies underlying the Kyoto Protocol. Since their inception under the Bush Administration, EPA's voluntary programs have relied on educational outreach and the provision of information to consumers and businesses to achieve the dual goals of preventing the pollution that causes global

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warming and saving energy.

For example, EPA's highly successful *Green Lights* program, with more than 2000 partners, might be asked to censor references to greenhouse gas emissions reductions in technical information and software tools now provided to program partners, since this could be characterized as educational outreach on policies underlying the Kyoto Protocol. In addition, the language could bar EPA from recognizing the pollution prevention achievements of current partners, and from even discussing expected greenhouse gas reduction benefits with potential future partners.

Since recognition for pollution prevention is an important incentive for many program partners, this language could cause program participation to drop off. In addition, the language could force the Agency to renege on its commitment, spelled out in thousands of signed MOUs with program partners, to provide information to program partners to help them save money, save energy, and reduce pollution.

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Concerns with House Appropriations bill and report language
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Bill Language: prevents common sense regulation, suspends existing law authority

"None of the funds appropriated by this Act shall be used to 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 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 such Protocol."

This is another "back door" attempt to use appropriations riders to repeal Clean Air Act authorities that have been in place since as long ago as 1970. The rider language would block the Environmental Protection Agency 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.

The Administration has clearly stated that it will not implement the Kyoto Protocol until the Senate gives advice and consent to its ratification. The rider language, however, goes much farther than simply barring the implementation of the Protocol unless it is ratified. The proposed "purpose" and "contemplation" standards appear to be designed to block any regulatory action that has the effect of reducing the greenhouse gases addressed by the Protocol, no matter how clearly authorized that action is under existing law and no matter how clear the threat to public health or welfare.

The rider language would block common-sense, cost-effective regulatory actions like these:

- Landfill methane. EPA issued air pollution control regulations under the Clean Air Act that will cut landfill emissions of methane (a potent greenhouse gas) by half --the equivalent of eliminating the greenhouse emissions of 20 million cars --while recovering enough usable fuel to meet the energy needs of 2 million homes. Those benefits could not have been achieved if EPA had been prevented by this rider from considering the greenhouse gas impacts of its rule.
- Self-chilling cans. EPA used its Clean Air Act authority to block the introduction of a self-chilling soda and beer can that would have emitted hydrofluorocarbons (HFCs), extremely potent greenhouse gases. If these cans had captured just 5% of the 90 billion can U.S. market by the year 2000, they would have more than offset all the greenhouse gas reductions achieved by the Administration's voluntary programs. If EPA had not had the legal authority to regulate these global warming chemicals, this dangerous product would already be on the market. As a result, a new and safer design has been brought to market.

The rider would have the absurd effect of leaving EPA with less authority to take actions

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related to greenhouse gases under existing law after the adoption of the Kyoto Protocol than the agency possessed before the Protocol was adopted.

This is another attempt at "back door" repeal of environmental laws through the appropriations process. If Members of Congress want to rescind the Agency's existing authority over an entire class of pollutants and strip existing authority to protect public health and the environment from global warming pollutants, they should make such proposals in the open and through the front door, using the normal legislative process.

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VA-HUD-Independent Agencies Appropriations Climate Change Language

- The VA-HUD-Independent Agencies Appropriations Subcommittee's bill includes anti-environment language that could roll back current efforts to protect public health and the environment. The broadly written language could be read to impede the Administration's ability to develop domestic programs and policies that serve the American public -- by increasing our energy efficiency as we seek to meet the challenge of global climate change.
- Specifically, the language seeks to limit the Administration's ability to "carry out education" on climate change. The American people want and deserve a fair and accurate debate on the issue of climate change. A fair debate is only possible if the Administration can provide the American people with accurate and scientifically-based information on the challenges the nation faces.
- Further, this language could preclude the Administration from continuing successful private/public partnerships that decrease energy costs for American families and businesses, increase our economic competitiveness, lower our dependence on foreign oil, and protect our environment through improved air quality and reduced emissions of 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.
- It is clearly in our interest to move forward on pro-environment, pro-business, pro-consumer measures to promote energy efficiency. This language ignores what is in the best interests of America -- increasing our energy efficiency and a fair and honest debate on the issue of climate change.

Knollenberg Climate Change Rider and Report Language on VA-HUD

Background

- **Rider.** Knollenberg rider (attached) says 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.”
- This language could be read to restrict EPA’s, CEQ’s or OSTP’s ability to do initial policy work on things like the shape of an ultimate emissions trading system or, more immediately, the shape of a system to give companies early emissions credits that could be banked for use in an ultimate trading system. Similarly, it could be read to prevent these agencies from working on an executive order to improve the federal government’s own use and procurement of energy.
- This language ought to be deleted altogether. As a fall back, the italicized words should be deleted. While we are not seeking to implement the Kyoto Protocol prior to ratification and have no intention of doing so, the language is way over broad.
- **Report language.** The Knollenberg report language (attached) says “[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.”
- This language is outrageous, amounting to a climate change gag order on the government. It seeks to terminate EPA’s and CEQ’s ability to do much of anything public on climate change, and would arguably cripple the White House Task Force on Climate Change, which is a CEQ Task Force that gets material contributions from EPA and is engaged in regular outreach and educational activities.
- This language has to go.

Summary

- The rider and report language together amount to another dose of the overreaching, anti-environmental extremism that the public has repeatedly rejected. The notion that we should be barred from discussing climate change issues with the public is barely even worthy of a response. The public has every right to hear about this issue.

The notion that our agencies should be barred from taking actions like promoting energy efficiency in the federal government or doing preliminary policy work on credit for early action regime is similarly ridiculous.

- GNG rule

- Common sense regulation

-

- We would be prevented from considering
the GNG benefits in any rulemaking
taken under existing statutory auth.
- Make decisions that would be
worse for the environment

-

**AMENDMENT TO H.R. 4194, AS REPORTED
OFFERED BY MR. WAXMAN OF CALIFORNIA**

At the end of the bill before the short title insert:

- 1 Sec.———. Any limitation on funds in this Act for
- 2 the Environmental Protection Agency or the Council on
- 3 Environmental Quality shall not apply to activities that
- 4 ~~are required by the Constitution or~~ authorized by law.

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- 4 ~~are required by the Constitution or~~ authorized by law.

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White House Climate Change Task Force

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

facsimile

TRANSMITTAL

TO: Wes Warren	FROM: Julie Anderson
OFFICE: CEQ	DATE: 7-13
FAX NUMBER: 6-2710	202/395-2342
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EDITORIALS

Mugging the Environment

Since sweeping into Washington in 1995, the Contract-With-America Republicans have tried every legislative trick in the book to undermine the nation's environmental laws. Heroic efforts by moderate House Republicans and timely Presidential vetoes have held them off. But the G.O.P. contractors are a patient bunch, and after lying around in the weeds for a while, they have now loaded up two big appropriation bills with nearly 20 anti-environmental riders. None of these riders challenge any basic law, but collectively they threaten the nation's struggle to clean its air and water, restore important fisheries and protect its public lands. The moderates must try to sanitize these bills. If that fails, Clinton should veto them if they reach his desk in anything like their present form.

The rider that most offends the White House was attached by the House Appropriations Committee to a bill providing funding for the Environmental Protection Agency. It would bar the agency from spending any money to carry out the global warming agreement negotiated in Japan last year until the Senate approves the treaty. Read literally, this provision could prevent the Administration from encouraging industry to take purely voluntary steps to reduce carbon dioxide before the treaty becomes binding. This is truly retrograde thinking, not least because it would discourage energy-saving measures that would make sense even if global warming did not exist.

Most of the other riders fall into the category of regional mischief-making, an area in which Alaska's Congressional delegation is the undisputed champion. Senators Ted Stevens and Frank Murkowski and Representative Don Young have burdened the Interior Department spending bill with provisions that would increase logging in the Tongass National Forest, prevent the National Park Service from phasing out commercial fishing in Glacier Bay National Park and authorize new road construction through the Chugach National Forest and the Izembek National Wildlife Refuge.

The Izembek road has assumed talismanic significance to both sides. Environmentalists say it would be the first road built through a designated wilderness area in 34 years, and thus a terrible precedent.

The Alaska delegation says the road is needed to transport isolated villagers to modern hospitals. There may be room for argument here, but Stevens, the feared chairman of the Senate Appropriations Committee, seemed in no mood for deliberation when he warned his colleagues that he would not easily forget a vote against the bill.

Other Westerners have inserted provisions that would delay modest but useful efforts to improve the health of the national forests and minimize harmful grazing and mining practices on Federal lands. But the worst rider of all comes from Senator Slade Gorton, a Washington Republican who always seems to be in the vicinity of bad ideas. It would require specific Congressional approval for any changes in the operation of any dam, public or private, in the Columbia River watershed -- effectively overriding all other environmental protections and dealing a huge blow to efforts to restore salmon runs in the Pacific Northwest.

Gorton's audacity would never survive a separate vote, so he hopes to sneak it through as part of a larger spending bill.

If Gorton succeeds, President Clinton must intervene. The Gorton rider alone is worth a veto.
END

Switzerland's Unpaid Debt

Time is running out for Switzerland and its banks to compensate elderly Holocaust survivors for the sickening profits Swiss institutions made from financing the Nazi war machine and holding on to funds deposited by Holocaust victims. But efforts by Switzerland's leading commercial banks and Jewish organizations to negotiate a fair settlement have broken down, largely because the Swiss Government refuses to contribute adequately to a compensation package. The breakdown has led New York City and other American municipal and state governments to threaten a series of escalating financial penalties on the banks, beginning Sept. 1.

The proposed penalties, which include denying Swiss banks the chance to bid for municipal and state deposits and underwriting fees, are misconceived. They would mainly punish the commercial banks, when in recent months the main obstacle to a settlement has been the Swiss Government. Further, by injecting local governments into a foreign-policy issue, the sanctions will make it harder for Washington to persuade the Swiss Government to pay its fair share.

Swiss financial institutions helped Nazi Germany convert the gold it stole from individuals and conquered countries into foreign exchange for buying war supplies. Most of these gold transactions were done by Switzerland's central bank, but the commercial banks were also involved. Swiss commercial banks also shamelessly betrayed the trust of Europe's doomed Jews, keeping for themselves the money left behind by depositors who died in the Holocaust. For decades, the banks made no serious effort to find family members or other survivors. Only recently, and in response to outside pressure, have the banks even discussed reasonable compensation. The Swiss Government lags badly behind.

For the past year, a commission led by Paul Volcker, the former Federal Reserve chairman, has been reconstructing the records of prewar Swiss bank accounts to determine how much money, in current dollars with interest, is owed to Holocaust victims and their families. An authoritative estimate is expected by the end of this year and the Swiss banks have committed themselves to pay in full. Meanwhile, Swiss banks, the Swiss Government and other Swiss institutions have paid \$200 million into a special compensation fund for aging and destitute Holocaust survivors.

The current dispute concerns a so-called rough justice fund to compensate Holocaust survivors for Switzerland's financial transactions with the Nazis, like gold conversions and loans to factories employing slave labor. The two main Swiss banks in America, UBS and Cr dit Suisse, have offered to make combined payments of an additional \$530 million to settle these claims. The Swiss Government refuses to make any further contributions.

New York City's Comptroller, Alan Hevesi, leads the group of local financial officers who are now planning to impose sanctions. They have no easy ways of pressuring the Swiss Government directly and hope that by putting pressure on the commercial banks, they can somehow produce a more generous settlement. But the better way to do that would be through continued negotiations, backed up by diplomatic pressure from Washington and the threat of legal action in American courts.

END

**Department of Defense Appeal
FY 1999 Defense Authorization Bill**

Subject: Kyoto Protocol

Language/Provision: The House, in a floor amendment, included a provision that would prohibit the Kyoto Protocol to the United Nations Framework Convention on Climate Change, or any regulation issued pursuant to the Protocol from restricting the procurement, training, or operation and maintenance of the United States Armed Forces (section 1210 to title XII). The Senate did not include a similar provision.

DoD Position: Once the Senate has provided advice and consent for the Kyoto Protocol, the Administration's implementation policy, as it relates to DoD, would ensure DoD operations and training are not adversely affected. We do not object to this provision to the extent that it enacts Administration policy into law. However, we believe the provision goes beyond Administration policy and could be interpreted as (1) prohibiting expenditures on energy conservation and (2) relieving DoD contractors from complying with environmental laws.

First, the broad wording of the provision goes beyond Administration policy and could be interpreted as prohibiting expenditures on a broad range of desirable measures, such as energy conservation, whether or not they are intended primarily to reduce greenhouse gas emissions. We believe that the Department should maintain its ability to undertake otherwise appropriate actions, such as improving energy and material management through increased efficiency and waste minimization, that would have an ancillary effect of reducing greenhouse gases. Such actions are designed to strengthen our military posture, and, indeed, our national security.

Secondly, the provision could also be interpreted to relieve DoD contractors from complying with environmental laws. We believe defense contractors should not receive a waiver from the requirements of otherwise applicable environmental laws and regulations, because such a waiver is not required to ensure the availability of necessary goods and services for the Department.

Comptroller Internal Control Notes:

Submitter: Holly Kaufman/6041630

Page/Section References:

Reviewing directorate/analyst:

Director's recommendation/rationale:

1 List of Members
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2 List of members to
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June 23, 1998

MEMORANDUM FOR THE CHIEF OF STAFF

FROM: TODD STERN

SUBJECT: Potential Climate Change Events/Announcements

Below are several ideas for climate change announcements and events for the President:

Combined Heat and Power. Pepco and a company called Trigen (CEO Tom Kasten has been very supportive on climate change) are ready to move forward on a fascinating project that would capture the wasted energy from a major Pepco power station and use it to heat much of the federal government. Work will need to be done by GSA and DOE to assess feasibility, but assuming we get a green light, a Presidential announcement that the federal government was going to be heated through recaptured energy would be a striking example of federal leadership in energy efficiency.

Meet with CEOs of Industries Who Agree to Voluntary Reduction Goals and Action Plans. Sectoral CEO meetings will be taking place at the White House during the summer. Meetings with aluminum (July 8), steel (July 16) and forest products (July 23) have been set, and discussions are underway with airlines, bulk chemicals, semi-conductors/electronics, glass, metal casting, and gas pipelines. Our aim is to get industries, by the fall, to (1) agree to inventory and monitor their emissions; (2) agree to do a bottoms-up review of their energy practices; (3) announce a stretch goal for reducing emissions; and (4) agree to develop an action plan for achieving their goal. Assuming we get a critical mass of industries prepared to do these things, a White House meeting with the President and Vice President announcing the agreements would be a powerful statement of government/business cooperation, both for the domestic and international audience.

Announcement of Federal Energy Plan. The federal government has a critical role to play both in setting an example of energy efficiency and in accelerating the introduction of new technologies that help reduce emissions. The President could announce a federal energy plan including the following elements: (1) a directive to promote greater use of Energy Savings Performance Contracts; (2) an executive order setting minimum standards for the federal purchase of renewable energy; (3) an executive order to encourage procurement of energy efficient products; (4) a campaign to promote the government's use of highly efficient compact fluorescent bulbs; (5) a similar campaign to promote the government's use of highly energy efficient windows; (6) electrifying the federal postal fleet; (7) completing DOD base-by-base energy audits by the end of FY 2000; (8) constructing all new government buildings after FY 2000 using sustainable design to achieve 30-50 percent energy savings; (9) a directive to require agencies to

report annually to the President on the actions they have taken to reduce their emissions of greenhouse gases. We are also trying to work up an idea on saving emissions from the federal vehicle fleet. At least two or three elements should be ready to be rolled out at the time of the announcement.

Release a Report, Prepared by EPA, Detailing What Business and Others Are Already Doing to Reduce Emissions, on a Sector-by-sector Basis. There are significant success stories out there -- many that have resulted from EPA and DOE programs undertaken pursuant to our 1993 Climate Change Action Plan. This would be an opportunity to highlight the best practices of companies and that are already reducing greenhouse gas emission and to challenge others to get moving. Along with release of this report, in an effort to highlight the common-sense, cost-effective nature of these programs, the President could announce a new significant voluntary action, such as Coca-Cola's leadership in making vending machines 50% more energy efficient; or an EPA & DOE partnership with Sears to market Energy Star products; or the energy efficiency efforts at the Olympic village in Salt Lake City, Utah where the Mayor is constructing the village with sustainable building practices and installing Energy Star products.

Announce a New Partnership with Local Governments to Combat Climate Change. The President could recognize and encourage energy-saving efforts by cities and counties that reduce greenhouse gas emissions and save taxpayers money. A growing number of municipalities are adopting climate change plans that produce real savings by, for instance, switching to more efficient bulbs in traffic lights. By visiting one of these cities or inviting relevant mayors to the White House, the President would highlight concrete efforts being taken at local initiative to fight climate change. This would take the issue out of Washington, while sending a message back to Congress that local officials -- who will have to contend directly with extreme weather, heat-related illness, and other impacts of climate change -- take the issue seriously and are responding. We could facilitate these efforts by announcing a new program of technical assistance to local governments in drawing up and implementing these plans.



White House Climate Change Task Force

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

TO: CLIMATE CHANGE CONGRESSIONAL LIAISONS-ADDRESSEE LIST BELOW

FR: JULIE ANDERSON

RE: CLIMATE CHANGE conference call

There will be a conference call on Wednesday, July 15 at 4 pm to discuss the status of Hill activity with respect to climate change. Please be prepared to update the status of your agency's responses to Congressman McIntosh. The call in numbers are (202) 456-6755 or 456-6766. The code is 8535.

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Draft testimony

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To: Paul Rusby

FR. Julie Anderson

Muzzling the Climate Change Debate

This week the U.S. House of Representatives is expected to consider the VA-HUD appropriations bill. The bill contains an anti-environment rider that states 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 Appropriations 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 effectively imposes a gag order on the Administration, stifling any 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.
- Global climate change is a serious issue that deserves a serious response, not efforts to stifle debate or cut off the kind of constructive activity that can help us find solutions. The threats posed by climate change -- such as increasingly frequent and severe storms and droughts, potential increases in respiratory and infectious diseases and rising sea levels -- are too serious to ignore.
- Indeed, many scientists believe that the kind of severe weather the nation has experienced this year under the influence of El Niño may be a precursor of the warmer, wetter world that global warming is projected to bring. Dr. James Baker, head of the National Oceanographic and Atmospheric Administration, has made exactly that point.

Impact on Public Debate

- This language seeking to bar even educational discussion on the issue of climate change could:
 - Prevent EPA and CEQ from giving the public general information about global warming;
 - Restrict 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;
 - Undermine EPA and CEQ's ability to conduct educational and informational briefings on climate change for the Congressional Kyoto Observer Group and the Congress generally; and
 - Prevent EPA, CEQ and the White House Climate Change Task Force from accepting invitations to speak about climate change.

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June 25, 1998

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 U. S. Environmental Protection Agency
 401 M Street, SW
 Washington, DC 20460

Dear Administrator Browner:

The June 2, 1998 *Federal Register* (63 FR 29991) includes a request for public comment on a "Proposed Settlement Agreement, Clean Air Act Suit", which was lodged with the United States Court of Appeals for the District of Columbia by the EPA on April 15, 1998, to address a lawsuit originally filed by the National Resources Defense Council (NRDC) in 1992. The NRDC lawsuit concerns among other things, EPA's alleged failure to list, and to determine whether to regulate hazardous air pollutant emissions from, electric utility steam generating units under section 112 of the Clean Air Act. Under the proposed settlement, EPA agrees to "Undertake and publish on [or before February 28, 1999] the results of, an analysis of the emissions reductions of SO₂, NO_x, CO₂, and mercury (and the effect of mercury removal costs) that would be achieved through an array of strategies to control SO₂, NO_x, CO₂ and mercury. . ."

As you know, CO₂ is one of several greenhouse gases covered by the recently adopted Kyoto Protocol, which has not been submitted to the Senate for advice and consent to ratification and which has not yet entered into force pursuant to its terms. As I believe you also know, Under Secretary of State Stuart Eizenstat has on several occasions committed to Congressional Committees, including this Committee, that the Administration would not undertake actions to implement the Kyoto Protocol before it is ratified and entered into force. This agreement, which is dated April 15, 1998, is a step toward such implementation and appears inconsistent with this commitment. It should not be finalized.

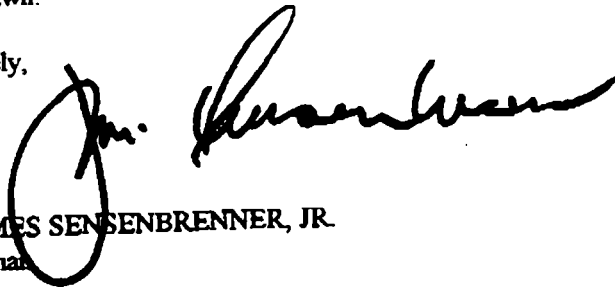
Moreover, to my knowledge, Congress, in enacting section 112 of the Clean Air Act, did not list CO₂ as a hazardous air pollutant and I do not believe that EPA has amended that list to include CO₂. For that matter, SO₂ and NO_x are not listed hazardous air pollutants under section 112, but are pollutants regulated under other provisions of the Act. Thus, I know of no duty imposed by section 112 on EPA that requires regulations for any of these substances. Also, while mercury is listed under section 112, it was subject to a study under section 112(n)(1)(B) (which was performed), I understand that section 112(n)(1)(B) does not mandate any regulation based on the study.

The Honorable Carol M. Browner
June 25, 1998
Page two

In addition, a review of the proposed settlement indicates that it is a modification of an October 26, 1994 consent agreement that did not refer to CO₂ or any of these substances. That consent agreement predates not only the Kyoto Protocol, but also the first meeting of the Conference of the Parties to the United Nations Framework Convention on Climate Change. I therefore find it difficult to believe that a 1994 consent decree is relevant to any greenhouse gas emissions subject to the Convention or the Kyoto Protocol, particularly since EPA never recognized CO₂ as a pollutant in 1994 for purposes of section 112.

I, therefore, strongly urge that EPA and the Justice Department withhold consent to the modification on the bases that it is inappropriate and improper in light of Under Secretary Eisenstat's commitments to the Congress on behalf of the Administration and because it is inconsistent with the requirements of the Clean Air Act in that CO₂, NO_x, and SO₂ are not subject to section 112 of that Act. In addition, I request your reply to the enclosed questions before EPA or the Justice Department acts pursuant to section 113(g), unless, of course, that action conforms with any request that the proposed settlement agreement be withdrawn.

Sincerely,



F. JAMES SENSENBRENNER, JR.
Chairman

FJS/hlw

Enclosure

cc: Hon. Stuart E. Eizenstat, Under Secretary of State for Economic, Business and Agricultural Affairs
Richard H. Vetter, Emissions Standards Division, Office of Air Quality Planning & Standards
Hon. Lois J. Schiffer, Assistant Attorney General, Environment and Natural Resources Division

JUL-13-1998 11:27

HON HENRY WAXMAN

202 225 4099 P. 02/02

2204 RAYBURN HOUSE OFFICE BUILDING
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(213) 651-1040

RANKING MEMBER
COMMITTEE ON GOVERNMENT
REFORM AND OVERSIGHT
MEMBER
COMMITTEE ON COMMERCE
DEMOCRATIC STEERING COMMITTEE

Congress of the United States
House of Representatives
Washington, DC 20515-0529

HENRY A. WAXMAN
29TH DISTRICT, CALIFORNIA

July 12, 1998

Via facsimile 260-3384

The Honorable Carol M. Browner
Administrator
Environmental Protection Agency
401 M Street, S.W.
Mail Code 1101
Washington, DC 20460

Dear Administrator Browner:

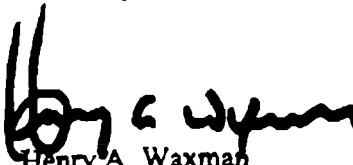
I am writing to request your views on H.R. 4194, the VA-HUD Appropriations bill, and an amendment I am considering offering to that bill on the floor.

As in years past, the VA-HUD Appropriations bill contains objectionable language in both the bill and the report which would hinder our efforts to protect the environment under existing successful programs. Specifically, there is language which would prevent the Administration from developing proposals to curb-- or even educate the public about-- the dangers of global warming, defund our energy efficiency programs, prevent the cleanup of PCB contaminated sediments, restrict the use of Brownfields funds, stall implementation of the Food Quality Protection Act, and block the cleanup of dangerous mercury air pollution.

In order to prevent a rollback of our important and popular environmental programs, I am considering offering an amendment which would exempt activities currently authorized by law from all of these limitations.

H.R. 4194 is expected to be considered on the House floor on Wednesday July 12, 1998, so I would greatly appreciate receiving your thoughts on this bill and my amendment before then. Thank you for your assistance with this critically important issue.

Sincerely,



Henry A. Waxman
MEMBER OF CONGRESS

TOTAL P.02

395-2342

Landfill Methane Control

EPA rules and guidelines issued under the Clean Air Act in 1996 require large landfills to control emissions that lead to the formation of ozone smog. The same control measures will also cut landfill emissions of methane (a potent greenhouse gas) by more than half -- the equivalent of eliminating the greenhouse emissions of 20 million cars -- while recovering enough usable fuel to meet the energy needs of two million homes.

Key Points:

- EPA's actions were taken primarily to protect the American people from ozone smog. The rules and guidelines, issued under Section 111 of the Clean Air Act, are focused on controlling volatile organic compounds (VOCs) that contribute to unhealthy levels of ozone smog. Landfill control measures will reduce emissions of VOCs, as well as toxic air pollutants and offensive odors, by more than half (more than 90,000 tons per year).
- Methane is also formed from decomposing garbage. Landfill methane emissions are captured and destroyed along with the other chemicals. Landfill methane emissions present a well-documented danger of fires or explosions.
- Methane is also a powerful greenhouse gas. The landfill methane emissions captured and destroyed by these EPA actions are equivalent to eliminating the greenhouse emissions of 20 million cars. Captured landfill methane can be used cost-effectively to generate enough electricity to meet the energy needs of two million homes.
- These common-sense actions under existing law are helping to protect the American people from dangerous urban smog while at the same time reducing the risks of global warming. They were not an attempt at "back door" implementation of the Kyoto Protocol. But these clear benefits for public health and the environment could not have been achieved if EPA had been prevented from acting by a misplaced anti-Kyoto rider.

Doc. 3:1998-37281 EPA DORHAM, NC NO. 597 P. 4/5

Proposed Settlement Agreement on Mercury Emissions

What the proposed stipulation says:

"EPA shall undertake ..., an analysis of the emission reductions of SO₂, NO_x, CO₂ and mercury (and the effect on mercury removal costs) that would be achieved through an array of strategies to control SO₂, NO_x, CO₂ and mercury, ..."

Key Points

- EPA has made no decision to regulate CO₂ from electric power plants, and this is not an attempt at "back door" implementation of the Kyoto Protocol. The Administration is committed not to implement the Kyoto Protocol until the Senate has given advice and consent to its ratification.
- The stipulation is contained in a proposed revision to a settlement agreement in a lawsuit brought by the Natural Resources Defense Council. The revised settlement agreement delays the date by which EPA must meet its obligation under §112 of the Clean Air Act to determine whether it is appropriate and necessary to regulate emissions from electric utility steam generating units of specific air pollutants, including mercury, that are listed as "hazardous" under the Act. EPA has identified mercury as the hazardous air pollutant of primary concern in the emissions of electric utility steam generating units.
- The analysis called for in the proposed revision to the settlement agreement is specifically intended to inform EPA's decision whether, and if so, how to regulate mercury emissions from coal-fired electric power plants. Multiple pollutant analysis makes sense because efforts to reduce any one of these pollutants has an effect on the others. EPA routinely uses a widely-accepted computer model, called the Integrated Planning Model (IPM), to undertake these multiple pollutant analyses.
- EPA has conducted multi-pollutant analyses like this for electric power plants for more than two years, with broad stakeholder involvement and support. In 1996, EPA conducted the Clean Air Power Initiative (CAPI), a stakeholder process involving utilities, fuel suppliers, labor, and environmental organizations, using the IPM model to look at the interaction of control strategies for various pollutants from electric power plants.
- In the CAPI process and in subsequent advisory committees, EPA has been repeatedly urged by utilities, the United Mine Workers, and environmental groups to include CO₂ in these IPM analyses. The present analysis is intended solely to inform the decisions EPA is required to make under the Clean Air Act regarding mercury emissions from electric steam generating units.
- Multiple pollutant analyses are called for in the Clean Air Act. For example, §103(g)(1) calls for analyses of "[i]mprovements in nonregulatory strategies and technologies for preventing or reducing multiple air pollutants, including sulfur oxides, nitrogen oxides, heavy metals, PM-10 (particulate matter), carbon monoxide, and carbon dioxide, from

stationary sources, including fossil fuel power plants."

Self-Chilling Cans

EPA used its authority under the Clean Air Act to block the introduction of a self-chilling soda and beer can that would have emitted *hydrofluorocarbons* (HFCs), extremely potent greenhouse gases. In response, the product's inventors came up with a safer design, using another cooling agent. The new design will soon go to market, with EPA approval.

Key Points

- As part of the phase-out of chemicals that deplete the stratospheric ozone layer, the 1990 Clean Air Act requires EPA to review the health and environmental effects of replacement chemicals and products. Section 612(c) requires EPA to block the introduction of any replacement that may present adverse effects to human health or the environment, if there is an available alternative that *"reduces overall risk to human health and the environment."* Section 608(c) also makes it illegal to knowingly vent or release a replacement refrigerant from a product into the air, unless EPA determines that it *"does not pose a threat to the environment."*
- Self-chilling cans work by releasing a refrigerant substance when opened. The expansion and escape of the refrigerant cools the can. The first self-chilling can design would have used HFCs as the refrigerant -- chemicals that have 140 to 1,300 times the warming power of carbon dioxide. Releasing these chemicals from the cans would have posed new environmental risks not associated with traditional refrigeration.
- If self-chilling cans using one of these chemicals (HFC-134a) had captured just 5% of the 90 billion can U.S. market by the year 2000, they would have more than offset all the greenhouse gas reductions achieved by the Administration's voluntary programs. At a 25% market penetration, their emissions would have equalled nearly one-third of the greenhouse gases coming from all electric power generation in the U.S.
- In response to EPA's action, the product's inventors came up with a new design that uses a safer refrigerant. The new product will have no more impact on the environment than traditional refrigeration. It will soon be on the market, with EPA's approval.
- These common-sense actions under existing law have protected the American people from new and unnecessary dangers as ozone-depleting chemicals are replaced. They were not an attempt at "back door" implementation of the Kyoto Protocol. They are, however, the kind of common-sense public health protection Americans will lose if misplaced anti-Kyoto legislation is enacted.

e Committee. Within the amounts provided for the Clean Water 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. 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/urce 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 \$750,000. Additionally, the Committee urges the Agency to provide at least \$3,000,000 to carry out the purposes of the Clean Water 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 fine 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 Development. 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 report up to \$500,000 for the staffing and operations of this office.

Bill language has been included which limits expenditures for activities relative to the Kyoto Protocol to the United Nations Framework Convention on Climate Change. This language is included in part because of sincere concerns that, lacking support for Senate ratification, the Administration is attempting to take 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 its sense that the United States should not be a signatory to the protocol regarding climate change in Kyoto that would place

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

* - \$10,000,000 from the climate change technology initiative. The amount provided represents a \$20,000,000 increase over the enacted level. This increase will allow for the acceleration of EPA's efforts in support of the Partnership for a New Generation of Vehicles.

- \$3,750,000 as a general reduction, subject to normal re-programming guidelines.

The Committee notes that the National Academy of Sciences recently issued a report on particulate matter (PM) research as directed by the House and Senate Appropriations Committees. The NAS panel, which included a diverse group of scientists from a variety of backgrounds, reported that EPA's allocation of PM research dollars was misdirected. "EPA should devote more funds to studying the types of particles most likely to be harmful to human health, the ways particles cause damage, and the levels of exposure people actually receive." The panel further found, "Given the potential magnitude of public health consequences associated with exposures to particulate matter and the potential economic costs of implementing the new PM standards, it is essential that policymakers and the American public have confidence that sufficient, high-quality scientific and technical information is available to reduce the risks effectively and efficiently. Proceeding in the absence of such information could lead policymakers to focus on standards and controls for PM that are not of the highest public health priority."

The Committee fully expects EPA will refocus its research agenda consistent with the NAS recommendations. EPA is to work closely with NAS in ensuring limited PM research dollars are allocated to the highest priority areas, particularly in view of the short timeframe leading to the next national ambient air quality standards (NAAQS) review.

With respect to the PM monitoring network, NAS recommended EPA reevaluate the network. NAS reported "The agency should consider more fully the possibility that future research results might indicate that the expensive monitoring program is not measuring the most biologically important aspects of particulate matter. Such an inconsistency would undermine the credibility and effectiveness of future control strategies and underprotect vulnerable subpopulations." While the Committee has fully funded the administration's request for the PM monitoring network, EPA is expected to follow the NAS recommendation to have the monitoring network peer reviewed. EPA should involve NAS in this effort.

EPA is urged to fund the hazardous substance research centers at current levels.

The Committee fully supports EPA's budget request of approximately \$35,600,000 for drinking water research, and the Committee expects that microbial contamination will be given a high priority within that budget. The Committee also supports no less than the full budget request for the Environmental Technology Verification Program.

The Committee urges EPA to study the potential health effects of the following chemicals: boric acid, decabromodiphenyl oxide, hexabromocyclododecane, antimony trioxide, tris phosphate, urea, phenol isopropylated phosphate, ammonium bromide, phosphorothioic acid, phosphonic acid, ammonium polyphosphate, ammo-

JOSEPH K. KNOLLENBERG
11TH DISTRICT, MICHIGAN

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15439 MIDLERBELT
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734-426-7557

Congress of the United States
House of Representatives
Washington, DC 20515-2211

August 11, 1998

COMMITTEE ON APPROPRIATIONS

SUBCOMMITTEES:
ENERGY AND WATER
FOREIGN OPERATIONS
VA-HUD

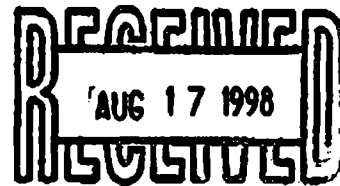
COMMITTEE ON EDUCATION AND THE
WORKFORCE

SUBCOMMITTEE:
VICE-CHAIRMAN
EMPLOYER-EMPLOYEE RELATIONS

COMMITTEE ON STANDARDS OF
OFFICIAL CONDUCT

Paul F. Welday
CHIEF OF STAFF

ROBERT C. BYRD



UNITED STATES SENATE

The Honorable Robert Byrd
United States Senate
1019 Federal Building
500 Quarrier Street
Charleston, West Virginia 25301

Dear Senator Byrd:

As you know, global climate change is on everyone's mind during this district work period. Most recently, the Administration has even used this summer's weather conditions as an excuse to proclaim the perils of "global warming."

This topic will gain even more importance when Congress convenes in September. As soon as we return, conferees will likely meet to iron out the differences between the House and Senate versions of the FY 1999 VA-HUD Appropriations Bill. Included in the House version of the bill is a very important provision which prohibits any funds from being used to develop, propose, or issue rules, regulations, decrees, or orders designed to implement the fatally flawed Kyoto Protocol unless it is ratified by the Senate. It is crucial that this language is retained in the final Conference Report.

As you travel through your districts during this month, you may encounter questions regarding the alleged impact of so-called "global warming." I have compiled an information packet on this subject for your reference. I hope you find these materials useful as you respond to constituents, colleagues, and the local media on global climate change.

If you have any additional questions on this topic, please feel free to contact me or my staff at (202) 225-5802.

Sincerely,

Joe Knollenberg
Member of Congress

Climate Change Technology Initiative

(Budget Authority; in millions of dollars)

	1998 Estimate	1999 Request	Latest House Action	Latest Senate Action
DOE				
- Energy & Water Bill (renewables)	272	409	286	377
- Interior Bill (efficiency & conservation)	457	651	472	493
Subtotal - DOE	729	1,060	758	870
EPA				
- VA/HUD Bill	90	205	99	114
USDA				
Agriculture Bill	--	7	0	0
Interior Bill (Forest Service)	--	3	0	0
Subtotal - USDA	--	10	0	0
HUD				
VA/HUD Bill	--	10	10	0
DOC/NIST				
Commerce/State/Justice Bill	--	7	0	0
Total	819	1,292	867	984
Change from 1998	--	473	48	165

Extraneous Climate \$

TVA + Senate Commission

Prioritized bullets =>

- End of this week

- Reichen/Reichs

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COMMITTEES:
COMMERCE
GOVERNMENT REFORM AND OVERSIGHT

PHILIP M. SCHLIRO
ADMINISTRATIVE ASSISTANT

Congress of the United States
House of Representatives
Washington, DC 20515-0529

HENRY A. WAXMAN
29TH DISTRICT, CALIFORNIA

June 24, 1998

The Honorable Bob Livingston
Chairman
Committee on Appropriations
U.S. House of Representatives
Washington, DC 20515

The Honorable David R. Obey
Ranking Minority Member
Committee on Appropriations
U.S. House of Representatives
Washington, DC 20515

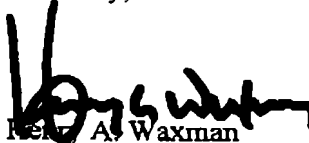
Dear Chairman Livingston and Ranking Member Obey:

I am writing to bring to your attention a dangerous anti-environmental "rider" on the VA-HUD appropriations bill. Rep. Knollenberg has inserted a rider that prohibits agencies from efforts "to develop, propose, or issue rules, regulations, decrees, or orders for the purpose of implementation, or in contemplation of implementation, of the Kyoto Protocol." This rider could block funding for even the most fundamental task -- developing plans for dealing with global warming, one of the most significant, long-term environmental challenges.

What's more, Rep. Knollenberg's report language could have far reaching implications. In effect, it is a gag rule. It prevents agencies from informing the public about the potential risks of global warming, and conducting outreach strategies to develop sensible policies to address the problem.

Last week, the Vice President announced that the Administration will not tolerate riders that "do unacceptable harm to our environment or threaten public health." This rider would do just that. The Kyoto Protocol and other environmental laws should be debated in public and on their own merits, not weakened with behind-the-scenes riders. I urge you to oppose this and other stealth attacks on our environmental laws.

Sincerely,


Henry A. Waxman
Member of Congress

cc: Members of the Committee on Appropriations

OPTIONAL FORM 99 (7-90)

PAGE 2

FAX TRANSMITTAL

of pages 4

To <i>Julia</i>	From <i>315 2342</i>
Dept./Agency	Phone #
Fax #	Fax #

2028832521- 33

: # 2/ 2

NSN 7540-01-317-7368

5099-101

GENERAL SERVICES ADMINISTRATION

*page
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.

-

>I have heard that the following draft climate change appropriations language
>has been prepared by Rep. Joe
>Knollenberg (R-MI):
>
>"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, C use 2, of the United States
>Constitution, and which has not entered into force
>pursuant to Article 25 of said protocol."
>
>It is expected that Rep. Knollenberg will try to attach this language to the
>VA-HUD Appropriations bill in the House. He
>is on the VA, HUD, and Ind. Agencies Subcommittee.
>
>
>xxxxxxxxxxxxxxxxxxxx
>

Campaigne, Alys

From: Campaigne, Alys
Sent: Tuesday, June 16, 1998 3:36 PM
To: Barnett, Phil
Subject: FW:

Here's a draft of what the Knollenberg language now looks like (we think). I definitely think it warrants a fight. No \$ for education about the issue??!

--
>I have heard that the following draft climate change appropriations language
>has been prepared by Rep. Joe
>Knollenberg (R-MI):
>
>"None of the funds appropriated by this Act shall be used to (1) initiate,
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>VA-HUD Appropriations bill in the House. He
>is on the VA, HUD, and Ind. Agencies Subcommittee.
>
>
>xxxxxxxxxxxxxxxxxxxx
>



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

JUN 17 1998

OFFICE OF
AIR AND RADIATION

The Honorable Henry A. Waxman
U.S. House of Representatives
Washington, DC 20515-0529

Dear Congressman Waxman:

I am writing in response to your letter requesting the Environmental Protection Agency's (EPA's) views on how H.R. 3807, the "American Economy Protection Act," would impact EPA's existing authority under the Clean Air Act. You also inquired as to the precedent for exempting specific pollutants from existing regulatory authority. Although H.R. 3807 has broad implications for our programs beyond those issues, this letter only addresses the specific questions you raise.

The Agency is very concerned that H.R. 3807 would repeal existing Clean Air Act authority. In particular, we are concerned that the bill would withdraw the authority under various existing Clean Air Act provisions to regulate a specific pollutant even if the Administrator were to determine that emissions were reasonably anticipated to cause or contribute to adverse effects on public health.

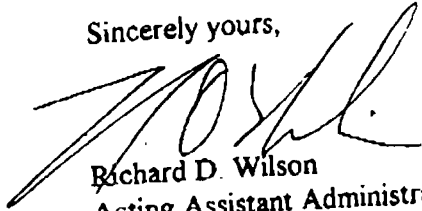
EPA is also concerned that H.R. 3807 would create dangerous precedent that would undermine the Agency's ability to protect the public health by carving out pollutant-by-pollutant exceptions to the Clean Air Act. I am not aware of any Clean Air Act precedent for taking away all existing authority to regulate a specific air pollutant regardless of its public health or environmental consequences. Opening up the Clean Air Act to this type of amendment would likely encourage numerous requests by special interest groups to seek blanket regulatory exemptions for their specific pollutant.

The Agency is concerned that H.R. 3807 effectively is a back-door attempt to amend the Clean Air Act to repeal existing authority to protect public health and the environment. As the Administration has repeatedly indicated, we do not intend to implement the Kyoto Protocol in advance of Senate ratification. H.R. 3807, however, has implications far beyond the concern about premature implementation of the Kyoto Protocol.

The Office of Management and Budget advises that there is no objection to the submission of this report from the standpoint of the President's program.

Thank you for the opportunity to provide assistance on this matter.

Sincerely yours,

A handwritten signature in dark ink, appearing to read 'R. D. Wilson', is written over the typed name.

Richard D. Wilson
Acting Assistant Administrator
for Air and Radiation

"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.

Dick Lawson
- President & CEO
Natl. Mining Assn.
202-463-2647

"Knollenberg
language"
on Kyoto

~~DRAFT~~

June 11, 1998

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Questions on the Knollenberg Amendment to FY99 VA-HUD Appropriations

1. Would the gentleman's amendment curtail in any way EPA's ongoing programs to educate and inform the public of opportunities to reduce energy consumption and avoid the emission of conventional pollutants as well as greenhouse gases, such as the Energy Star program?
2. Would the gentleman's amendment prevent the initiation of any new EPA programs under current authorities that have as their goal the avoidance of emissions of conventional pollutants as well as greenhouse gases by means of improvements in energy efficiency?
3. Would the gentleman's amendment preclude EPA in any way from conducting research or preparing analyses used in the development and support of the negotiating position of the United States at future Conferences of Parties to the Framework Convention on Climate Change negotiated in Rio de Janeiro in 1992?
4. Does the gentleman's amendment restrict any EPA programs that are being funded by the bill now before the subcommittee?

VA-HUD-Independent Agencies Appropriations Climate Change Language

- The VA-HUD-Independent Agencies Appropriations Subcommittee's bill includes language that represents anti-environmental extremism at its worst. The broadly written language could be read to impede the Administration's ability to develop domestic programs and policies that serve the American public -- by increasing our energy efficiency as we seek to meet the challenge of global climate change.
- Specifically, the language seeks to limit the Administration's ability to "carry out education" on climate change. The American people want and deserve a fair and accurate debate on the issue of climate change. A fair debate is only possible if the Administration can provide the American people with accurate and scientifically-based information on the challenges the nation faces.
- Further, this language could preclude the Administration from continuing successful private/public partnerships that decrease energy costs for American families and businesses, increase our economic competitiveness, lower our dependence on foreign oil, and protect our environment through improved air quality and reduced emissions of 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.
- It is clearly in our interest to move forward on pro-environment, pro-business, pro-consumer measures to promote energy efficiency. This language ignores what is in the best interests of America -- increasing our energy efficiency and a fair and honest debate on the issue of climate change.

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- It is clearly in our interest to move forward on pro-environment, pro-business, pro-consumer measures to promote energy efficiency. This language ignores what is in the best interests of America -- increasing our energy efficiency and a fair and honest debate on the issue of climate change.

Oppose the Knollenberg Amendment

- The Knollenberg amendment to the VA, HUD and Independent Agencies Appropriations bill is anti-environmental extremism at its worst. The amendment ignores what is in the best interests of America -- increasing our energy efficiency and use of renewables, and a fair and honest debate on the issue of climate change.
- This amendment could be read to preclude the Administration from continuing work on technology and market incentives that are central to improving our energy independence and to the President's climate change plan.
- Better efficiency and greater use of renewables make sense in their own right. They will decrease energy costs for American families and businesses, increase our economic competitiveness, lower our dependence on foreign oil, and protect our environment through improved air quality and reduced emissions of greenhouse gases.
- The effort to promote energy efficiency and renewable energy 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.
- Further, the amendment is broadly written and could be read to impede the Administration's ability to develop domestic programs and policies that serve the American public, including activities such as conducting scientific analyses on climate change.
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- It is clearly in our interest to move forward on pro-environment, pro-business, pro-consumer measures to promote energy efficiency and renewables. This amendment is anti-environment, anti-business and anti-consumer. Oppose the Knollenberg amendment.



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

June 24, 1998

THE DIRECTOR

The Honorable David R. Obey
Committee on Appropriations
U.S. House of Representatives
Washington, D.C. 20515

Dear Representative Obey:

The purpose of this letter is to provide the Administration's views on the Veterans, Housing and Urban Development, and Independent Agencies Appropriations Bill, FY 1999, as approved by the House Subcommittee. As the Committee develops its version of the bill, your consideration of the Administration's views would be appreciated.

The Administration appreciates efforts by the Subcommittee to accommodate certain of the President's priorities within the 302(b) allocation. However, the allocation is simply insufficient to make the necessary investments in programs funded by this bill. As a result, critical programs are not funded or underfunded, in particular, key Presidential priorities such as funding for National Service, Superfund and climate change. Furthermore, the Administration is very concerned that the Committee has included problematic language regarding the Kyoto Protocol and other issues. If the bill were presented to the President in its current form, the President's senior advisers would recommend that he veto the bill.

The only way to achieve the appropriate investment level is to offset discretionary spending by using savings in other areas. The President's FY 1999 Budget proposes levels of discretionary spending for FY 1999 that conform to the Bipartisan Budget Agreement by making savings in mandatory and other programs available to help finance this spending. In the recently enacted Transportation Equity Act, Congress -- on a broad, bipartisan basis -- took similar action in approving funding for surface transportation programs paid for with mandatory offsets. We want to work with the Congress on mutually agreeable mandatory and other offsets that would be used to increase high-priority discretionary programs, including those funded by this bill.

Below is a discussion of our specific concerns with the Subcommittee bill. We look forward to working with you to resolve these concerns as the bill moves forward.

Corporation for National and Community Service

The Administration strongly objects to the termination of the Corporation for National and Community Service, one of the Administration's top priorities. Eliminating funding for the Corporation would deny more than 49,000 Americans the opportunity to serve as AmeriCorps members in projects such as America Reads, the Administration's effort to raise student literacy

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Department of Housing and Urban Development

The Administration is concerned about the funding levels provided for key programs within the Department of Housing and Urban Development, particularly for welfare-to-work vouchers and other programs, such as the Community Empowerment Fund, that would expand job opportunities.

The Administration appreciates the Committee's decision to fund 17,700 incremental "Welfare-to-Work" housing vouchers. In light of recent studies that show historically high unmet housing need among very low-income Americans, however, the Administration believes it is critical for the Congress to fund the entire 50,000 welfare-to-work housing vouchers provided for in the President's request. Welfare-to-work housing vouchers will support implementation of welfare reform by assisting those welfare recipients who need housing assistance to get or keep a job.

The Administration also encourages the Congress to fund fully the President's request for \$400 million for an Economic Development Initiative Community Empowerment Fund to generate jobs in distressed communities. The Committee has provided only \$50 million, as a set-aside within the existing CDBG program.

The Administration appreciates the Subcommittee's decisions to fund a number of programs at the levels requested, including the Partnership for Advancing Technologies in Housing (PATH) initiative, and to renew all expiring Section 8 contracts. Additionally, the Administration is encouraged that the Committee has provided funding for half the President's request for Regional Opportunity Counseling, a voluntary effort to expand the housing and employment opportunities available to low-income families. We urge full funding of the President's request for this program. We are also pleased by the Committee's decision to provide \$80 million for the Office of Lead Hazard Control, to reduce the risk of childhood lead poisoning and other health hazards. The Administration encourages the Congress to fund fully a number of other areas -- Homeless Assistance, Brownfields, and Regional Connections--and to end the ninety-day delay in reissuing of Section 8 certificates/vouchers on turnover.

The Administration is pleased with the Committee's decision to support an audit-based enforcement initiative for the Fair Housing Initiatives program. We urge the Congress to fund fully this critical fair housing initiative in order to reduce the level of housing discrimination.

The Administration urges the Congress to adopt the Administration's proposal to reform HUD's single-family property disposition program, which would produce substantial savings by improving the efficiency of FHA's property disposition processes, and would permit the Committee to provide additional resources to critical Subcommittee programs. In addition, we support providing greater homeownership opportunities by increasing the FHA loan limit to the GSE "conforming" limit. We believe that this appropriations bill is an appropriate arena in which to enact such a change.

Council on Environmental Quality

The Administration appreciates the modest increase over the FY 1998 level provided for the Council on Environmental Quality (CEQ). However, we strongly believe that in order to allow CEQ to carry out its environmental mission and reinvention efforts, the full requested level should be provided.

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The Administration strongly urges the Committee to fund the Community Development Financial Institutions Fund at the requested level. The Committee's decision to reduce the request by \$45 million would severely reduce the Fund's ability to leverage investments, loans, and financial services in the country's most distressed communities.

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The Administration is concerned by the Subcommittee's reductions to the requests for the International Space Station, Space Shuttle, and Earth Science programs. Further, the Administration is particularly concerned about language prohibiting the use of funds for the Triana project. Triana offers a unique opportunity to educate and engage students in all phases of the mission. Its observations could potentially be used in meteorology and environmental monitoring, as well as for commercial purposes. With respect to the Space Station, full funding in FY 1999 is critical as the United States and our International Partners are in a peak period of development and integration, and proceeding toward First Element Launch later this year. The Administration will work with the Congress to enable restoration of funding for these priority programs as the bill proceeds. The Administration is also concerned over the large number of unrequested, site-specific earmarks, which would have the effect of circumventing the competitive, peer review process and are paid for with serious reductions to priority programs.

Federal Emergency Management Agency

The Administration appreciates the level of funding provided by the Subcommittee for the Federal Emergency Management Agency. However, we believe that the \$20 million reduction to the President's request for pre-disaster mitigation grants is shortsighted. These grants would help reduce the cost of future disasters by leveraging local and private-sector support for enhanced mitigation efforts at the State and community level. We urge the Committee to fund fully the President's request for this important initiative. In addition, we urge the Committee to approve our recent request for funding to help States and communities prepare for potential terrorist incidents involving chemical and/or biological weapons.

National Science Foundation

Given the budget constraints facing the Subcommittee, the Administration appreciates the effort to provide a \$199 million increase over the FY 1998 level for the National Science Foundation (NSF). Nevertheless, the Administration is concerned by the reduction to the request

for education and human resources and the elimination of funds for the proposed Polar Cap Observatory and NSF funds for the GLOBE program. The Administration is firmly committed to NSF's research and education activities, which not only promote scientific advancement but also contribute to economic development. We strongly urge the Congress to provide the full increase requested for NSF for its research, equipment, and education activities.

Neighborhood Reinvestment Corporation

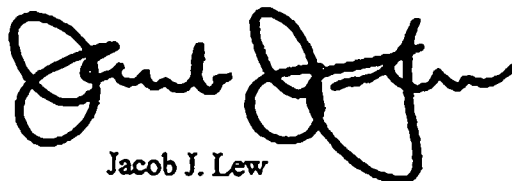
The Administration is pleased by the Subcommittee's decision to provide the President's full request for the Neighborhood Reinvestment Corporation (NRC). The NRC has a proven, successful record of leveraging private sector resources to promote homeownership and helping strengthen Americas communities. This funding would provide an additional \$25 million for a homeownership initiative that seeks to create 10,000 new homeowners through FY 2000.

Potential Amendment Related to Peer Review

The Administration strongly opposes an amendment that may be offered mandating peer review of "scientific data" supporting final regulations. The Administration is committed to using the best possible science and peer review for rule-making. However, this amendment is unnecessary, inappropriate and wasteful. Peer review is currently incorporated in the Government-wide rule-making process where it is needed through extensive outreach, public comment, and scientific advisory boards. This amendment as drafted mandates a one-size-fits-all requirement that would serve only to delay important government action, in particular, rules designed to protect health safety and the environment. It would impose a costly additional step in the regulatory process and could cover a large heterogeneous set of rules, as diverse as meat and poultry inspection rules, airplane and automobile safety standards, FDA drug and device approvals, and rules to ensure safe drinking water and clean air. This would impose an undue burden on numerous final rules by requiring substantial personnel and other resources and could result in significant delays on important public health and safety rules.

We look forward to working with the Committee to address our mutual concerns.

Sincerely,



Jacob J. Lew
Acting Director

Identical Letter Sent to The Honorable Bob Livingston,
The Honorable David R. Obey, The Honorable Jerry Lewis,
and The Honorable Louis Stokes



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

OFFICE OF CONGRESSIONAL AND
INTERGOVERNMENTAL RELATIONS

MEMORANDUM

To Wesley Warren
From Joe Crapa

Date: July 17, 1998

Subject: Potential and known Senate and House riders on the FY 99 VA-HUD and Independent Agencies Appropriations bill

Time and Location of House Mark up and Senate Floor Consideration

House Subcommittee-- Thursday, June 18, 1998, 5pm Capitol Room H-140
Senate Floor -- Not the week of June 15. Date has not been set.

Potential and Known Riders

H Hobson --Delay in Submitting Risk Management Plans -- Section 112(r) of Clean Air Act requires EPA to publish regulations focusing on the prevention of chemical accidents. This was written into law after the Bhopal accident. Propane dealers, and the Chemical Manufacturers Association (CMA) want to delay for one year the requirement that facilities submit their risk management program electronically by June 20, 1999. These risk management programs would be placed on the Internet. EPA is working with the CIA, the FBI and DOD to generate safeguards or "speed bumps" on the Internet to prevent someone from using this data for terrorist efforts. Our FACA voted 9-1 in favor of including the data on the Internet with safeguards. The lone dissenter was the CMA representative.

H Knollenberg-- Climate Change: The rider would prohibit funds from being used to initiate, develop or carry out education and information advocacy programs, develop, propose or issue rules, regulations, decrees or orders for the purpose of implementation or in contemplation of implementation of the Kyoto protocol.

H Knollenberg --CO2 and CCTI: The rider would prohibit the use of Federal funds to implement the Kyoto Protocol to the United Nations Framework Convention on Climate Change unless or until the Senate has given its advice and consent to ratification of the Kyoto Protocol and to clarify the authority of Federal agencies with respect to the regulation of the emissions of carbon dioxide.

H -- Food Quality Protection Act (FQPA): Members have raised concerns that EPA is not sufficiently using sound science in withdrawing products from the market. Some members, including Price (D-NC) and Walsh (R-NY) maintain that the Agency's resources should focus instead on the registration of more environmentally safe products. The Senate dropped language that would have required EPA to undergo the formal rulemaking process.

H Solomon -- Dredging: The FY '98 VA-HUD and Independent Agencies House Appropriations report directed EPA to assess risks posed by PCBs in the upper Hudson River including an assessment and comparison of the risks to human health and the environment presented by alternative remedial measures, including natural recovery, source control, and dredging, capping, and disposal of contaminated sediments. The language, sponsored by Congressman Solomon (R-NY) further directed EPA to have the National Academy of Science complete a study by April 1, 1999. ISTEA conferees failed to adopt a Solomon amendment which would have prohibited the dredging of toxic waste-laden sediments until studies were completed regarding PCBs. This language could reappear as a rider on the House appropriations' bill.

H Knollenberg--Title VI and Pollution Control Permits: House appropriations staffers have been approached with concerns regarding the interim guidance that EPA issued for processing Title VI administrative complaints regarding the issuance of pollution control permits. Mayor Dennis Archer from Detroit is concerned that EPA's desire to protect minorities from industrial exploitation could kill the city's economic recovery. A rider could prohibit the agency from using the interim guidance. Report language that has been circulated would require that "EPA in consultation with Congress, should promulgate programs, practices or policies which address environmental equity issues in environmental permitting programs."

H Regional (Northeast and Midwest) NOx Reduction Program: ISTEA Conferees failed to adopt an amendment (similar HR 3690, a bill sponsored by Congressman Wise (D-WV)) that would have delayed EPA's regional NOx reduction program, which required 22 States and the District of Columbia to submit plans to reduce the regional transport of ozone. Nox is a precursor to ozone and often emitted by utilities. This program is the subject of a proposed rulemaking and a key component of the July 1997 President's clean air implementation directive. A rider could delay the implementation of this program.

H Underground Injection Wells: Lobbyists from British Petroleum and the Chemical Manufacturers Association have approached authorizing committee staff with language to amend the Emergency Planning and Community Right-to-Know Act (EPCRA) and the Pollution Prevention Act (PPA) with respect to the toxic chemicals managed by the Class I injection. The lobbyists would like Class I injection wells have their own reporting category. The lobbyists the statute amended so that underground injection wells do not constitute a "release" into the environment. A rider could prohibit the agency from including Class I underground injection wells as a release.

H Methyl Bromide: The Montreal Protocol participants agreed to phase out by 2005 methyl bromide, an ozone depletion substance that is used as a pesticide to control insects, weeds and

rodents. California and Florida are big users of methyl bromide because it is heavily used in the production of strawberries and tomatoes. The US is required to reduce the baseline production by 25% in 1999 and 50% by 2001. A rider could delay the implementation of the phase out.

H Volatile Organic Compounds(VOCs) in Paints: The ISTEA conferees did not adopt an amendment that would have stopped both EPA and the States from regulating the VOCs (a precursor to ozone) in paints. Most of the paint industry supports issuance of EPA's rule, and twenty States are relying on these rules to help them meet the ozone air quality standards. A rider could prohibit the agency from including VOC's from paint as a method for states to meet their requirements under the Clean Air Act.

S Harkin-- Animal Fats and Vegetable Oils: Harkin plans to offer a rider prohibiting the use of funds to enforce regulations regarding animal fats and vegetable oils. Report language would require EPA to have separate requirements for animal fats and vegetable oils.

S Craig--Superfund: Senator Craig raised an amendment at full committee that both Senator Stevens and Bond said had the effect of authorizing on an appropriations' bill. Craig raised the "Bunker Hill" superfund site as an example of EPA needing some limits on the size of a superfund site. He said that the superfund site was more than 1500 square miles. It appears that he wanted to offer a rider restricting the size of a superfund site.

H Neumann-- National Priority Listing for Superfund Sites: The National Governors Association has sent a letter to all the members of the Appropriations Committee asking that "the EPA appropriations bill accord each Governor the right of concurrence on EPA's decision to place new sites on the National Priority List."

H and S -- Brownfields: Last year's rider on Brownfields is expected to be included in this year's bill as well. The rider prohibits the use of Brownfields funds to be used to fund revolving loan funds to clean up Brownfields sites.

S Hutchison-- Endangered Species Act (ESA) and the National Pollutant Discharge Elimination System: Senator Hutchison may offer an amendment regarding NPDES and compliance with the ESA. Earlier this year the Homebuilders had recommended that

H Endangered Species Act (ESA) and the National Pollutant Discharge Elimination System: Congressman Sessions' bill (HR 3238) be offered as report language that would prevent a gap in issuing new general permits for NPDES. The Homebuilders mentioned that the ESA was an issue too.

S Mikulski --EPA Certification for Shipbreaking in Foreign Countries: Senator Mikulski is concerned that the Maritime Administration announced its intention to sell two ships to foreign countries to be dismantled. Bill language was included in the Senate mark which prohibits the use of funds to enter into an agreement for the export of government owned ships to be dismantled in foreign countries unless EPA certifies that the environmental standards imposed by law and enforced in which the ship is to dismantled are comparable to US standards or laws.



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

June 24, 1998

THE DIRECTOR

The Honorable David R. Obey
Committee on Appropriations
U.S. House of Representatives
Washington, D.C. 20515

Dear Representative Obey:

The purpose of this letter is to provide the Administration's views on the Veterans, Housing and Urban Development, and Independent Agencies Appropriations Bill, FY 1999, as approved by the House Subcommittee. As the Committee develops its version of the bill, your consideration of the Administration's views would be appreciated.

The Administration appreciates efforts by the Subcommittee to accommodate certain of the President's priorities within the 302(b) allocation. However, the allocation is simply insufficient to make the necessary investments in programs funded by this bill. As a result, critical programs are not funded or underfunded, in particular, key Presidential priorities such as funding for National Service, Superfund and climate change. Furthermore, the Administration is very concerned that the Committee has included problematic language regarding the Kyoto Protocol and other issues. If the bill were presented to the President in its current form, the President's senior advisers would recommend that he veto the bill.

The only way to achieve the appropriate investment level is to offset discretionary spending by using savings in other areas. The President's FY 1999 Budget proposes levels of discretionary spending for FY 1999 that conform to the Bipartisan Budget Agreement by making savings in mandatory and other programs available to help finance this spending. In the recently enacted Transportation Equity Act, Congress -- on a broad, bipartisan basis -- took similar action in approving funding for surface transportation programs paid for with mandatory offsets. We want to work with the Congress on mutually agreeable mandatory and other offsets that would be used to increase high-priority discretionary programs, including those funded by this bill.

Below is a discussion of our specific concerns with the Subcommittee bill. We look forward to working with you to resolve these concerns as the bill moves forward.

Corporation for National and Community Service

The Administration strongly objects to the termination of the Corporation for National and Community Service, one of the Administration's top priorities. Eliminating funding for the Corporation would deny more than 49,000 Americans the opportunity to serve as AmeriCorps members in projects such as America Reads, the Administration's effort to raise student literacy

through the use of tutors to supplement the school day activities. In addition, over one million students of all ages would forego the chance to participate in service learning activities in their schools and neighborhoods. The funding level in the Subcommittee bill for the Corporation for National and Community Service is unacceptable.

Environmental Protection Agency

The Administration has several major concerns with the Subcommittee's mark for the Environmental Protection Agency. In particular, the Administration strongly objects to the \$593 million, or 28 percent, reduction to the President's request for Superfund, which would delay cleanups at sites nationwide and needlessly jeopardize public health. In addition, the Administration opposes the \$16 million, or 18 percent, reduction to the request for brownfields funding as well as restrictive bill language that would hamper achievement of brownfield cleanups by preventing their use for removals, cleanups, and revolving loan funds. Congress is strongly urged to restore Superfund to the requested level and to delete the restrictive brownfields language.

The Administration strongly opposes the Subcommittee's \$106 million reduction in EPA funding for the Climate Change Technology Initiative. This high priority program should be funded fully to cut energy usage, save consumers money, and reduce greenhouse gas emissions. We will work with the Congress to restore requested funding as the bill moves forward.

The Administration strongly opposes bill and report language relating to the Kyoto Protocol. While the Administration does not intend to implement the Protocol until it is ratified, the bill language could be interpreted broadly to prevent activities that limit greenhouse gases -- for example, through enhancing energy efficiency -- but that are not undertaken to implement the Kyoto Protocol. The report language also inappropriately purports to bar educational and informational outreach activities related to climate change. The Administration opposes this and other riders because they abuse the legislative process by denying the public and Members of Congress the opportunity to examine and debate these proposals openly.

The Administration appreciates the Subcommittee's providing full funding for the President's Clean Water Action Plan, which is designed to prevent pollution run-off and protect public health. The Administration urges the Committee to provide the full \$50 million request to help improve water quality in Boston Harbor and prevent beach closings.

The Administration is concerned with the large number of unrequested, earmarked projects in the Subcommittee mark for EPA, particularly when the Subcommittee has reduced several other high-priority Administration initiatives, including right-to-know programs, Montreal Protocol, GLOBE, and Mexican border wastewater treatment funding.

Department of Housing and Urban Development

The Administration is concerned about the funding levels provided for key programs within the Department of Housing and Urban Development, particularly for welfare-to-work vouchers and other programs, such as the Community Empowerment Fund, that would expand job opportunities.

The Administration appreciates the Committee's decision to fund 17,700 incremental "Welfare-to-Work" housing vouchers. In light of recent studies that show historically high unmet housing need among very low-income Americans, however, the Administration believes it is critical for the Congress to fund the entire 50,000 welfare-to-work housing vouchers provided for in the President's request. Welfare-to-work housing vouchers will support implementation of welfare reform by assisting those welfare recipients who need housing assistance to get or keep a job.

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Neighborhood Reinvestment Corporation

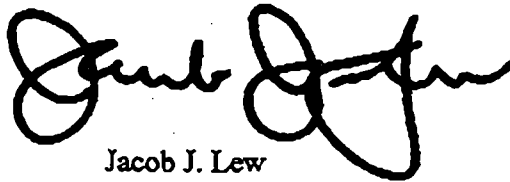
The Administration is pleased by the Subcommittee's decision to provide the President's full request for the Neighborhood Reinvestment Corporation (NRC). The NRC has a proven, successful record of leveraging private sector resources to promote homeownership and helping strengthen America's communities. This funding would provide an additional \$25 million for a homeownership initiative that seeks to create 10,000 new homeowners through FY 2000.

Potential Amendment Related to Peer Review

The Administration strongly opposes an amendment that may be offered mandating peer review of "scientific data" supporting final regulations. The Administration is committed to using the best possible science and peer review for rule-making. However, this amendment is unnecessary, inappropriate and wasteful. Peer review is currently incorporated in the Government-wide rule-making process where it is needed through extensive outreach, public comment, and scientific advisory boards. This amendment as drafted mandates a one-size-fits-all requirement that would serve only to delay important government action, in particular, rules designed to protect health safety and the environment. It would impose a costly additional step in the regulatory process and could cover a large heterogeneous set of rules, as diverse as meat and poultry inspection rules, airplane and automobile safety standards, FDA drug and device approvals, and rules to ensure safe drinking water and clean air. This would impose an undue burden on numerous final rules by requiring substantial personnel and other resources and could result in significant delays on important public health and safety rules.

We look forward to working with the Committee to address our mutual concerns.

Sincerely,



Jacob J. Lew
Acting Director

Identical Letter Sent to The Honorable Bob Livingston,
The Honorable David R. Obey, The Honorable Jerry Lewis,
and The Honorable Louis Stokes

Comm Action
Tally Pts

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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, 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.
- 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.

CLIMATE CHANGE RIDER AND REPORT LANGUAGE ON VA-HUD

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Concerns with House Appropriations bill and report language

Report language imposes a gag order on EPA; stifles informed public debate; severely restricts outreach in voluntary programs; undercuts U.S. commitments under Rio Treaty

"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."

By imposing a gag order on the Agency and the CEQ, this language could stifle any informed debate on global warming. The Administration has a long and successful history of open consultations with the public, scientists, businesses, state and local governments, environmental organizations and other nations. Activities that could be shut down by this language include:

Industry consultations - in his October announcement, President Clinton promised to provide appropriate rewards for firms taking early action to reduce emissions. Excluding EPA would severely hamper efforts to reward companies for actions already taken in Agency voluntary programs, and remove the greatest concentration of expertise in the government on voluntary partnership programs and market-based regulatory efforts.

Negotiation briefings - as part of the U.S. delegation to the international negotiations, EPA provides critical technical, policy and scientific expertise to briefings for business and environmental groups before and during and after negotiating sessions, which could be excluded by this language.

Developing Country Outreach - recognizing the importance of developing country participation, EPA plays a central role in bilateral dialogues, developing emissions reducing projects by U.S. businesses in developing countries, and helping developing countries complete greenhouse gas inventories and emissions reduction plans. The U.S. Country Studies Program has helped more than 50 developing countries build capacity to step up their participation in the global effort to fight global warming.

State and Local Governments - EPA's state and local outreach program is helping more than 30 states develop greenhouse gas emissions inventories and helping more than 20 states develop mitigation plans to reduce greenhouse gas emissions. EPA also supports the Cities for Climate Protection Program, which has so far helped 48 cities make local commitments to reduce greenhouse gas emissions and identify and implement cost-effective practices to reduce emissions, especially in buildings, transportation, and waste management.

Invitational speaking/dialogues - EPA frequently accepts invitations from businesses,

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trade associations, environmental organizations and other groups to discuss the Kyoto Protocol, and policies and programs related to reducing greenhouse gas emissions. EPA also accepts invitations to speak internationally on the extremely successful, market-based, flexible and cost-effective approaches the Agency pioneered, such as emissions trading and voluntary programs. This outreach has been essential to convincing other nations that the market-based, flexible approach embodied in the Kyoto Protocol is superior to mandatory international policies such as carbon taxes and fuel economy standards favored by some nations.

EPA's Global Warming Web Site gets approximately 100,000 hits each month. The site contains information on climate change science, impacts, news, actions, greenhouse gas inventories and speeches. The site won a select site award from the Dow Jones Business Directory, a guide to high quality business web sites.

EPA Regional Workshops - Designed to inform participants about the potential impacts of climate change, identify solution-oriented strategies to reduce the risks associated with climate change; and provide information on federal programs, new technologies and success stories from business and government.

National Assessment workshops look at current stresses and issues for the region; the expected consequences of climate change and variability and how will these interact with existing stressors; the priority research and information needs; coping options that can build resilience and possibly assist the climate change problem. EPA has coordinated three regional workshops, the Great Lakes region, the Gulf Coast region and the Mid-Atlantic region, in supporting USGCRP leadership on the national assessment.

Shutting down these important activities would not only stifle informed public debate, it would also seriously undermine the U.S. commitment under the Framework Convention on Climate Change - ratified by the Senate on October 15, 1992:

"[to] Promote and cooperate in education, training and public awareness related to climate change and encourage the widest participation in this process, including that of non-governmental organizations;" (UNFCCC, Article 4.1(f))

This broad and subjective language could also be read to severely restrict outreach in almost every program at EPA aimed at improving energy efficiency and reducing greenhouse gas emission - both key policies underlying the Kyoto Protocol. Since their inception under the Bush Administration, EPA's voluntary programs have relied on educational outreach and the provision of information to consumers and businesses to achieve the dual goals of preventing the pollution that causes global warming and saving energy.

For example, EPA's highly successful *Green Lights* program, with more than 2000 partners,

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might have to censor references to greenhouse gas emissions reductions in technical information and software tools now provided to program partners, since this could easily be characterized as educational outreach on policies underlying the Kyoto Protocol. In addition, the language could bar EPA from recognizing the pollution prevention achievements of current partners, and from even discussing expected greenhouse gas reduction benefits with potential future partners.

Since recognition for pollution prevention is an important incentive for many program partners, this language could cause program participation could drop off. In addition, the language could force the Agency to renege on its commitment, spelled out in thousands of signed MOUs with program partners, to provide information to program partners to help them save money, save energy, and reduce pollution.

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Bill Language: prevents common sense regulation, suspends existing law authority

"None of the funds appropriated by this Act shall be used to 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 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 such Protocol."

This is another "back door" attempt to use appropriations riders to repeal Clean Air Act authorities that have been in place since as long ago as 1970. The rider language would block the Environmental Protection Agency 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.

The Administration has clearly stated that it will not implement the Kyoto Protocol until the Senate gives advice and consent to its ratification. The rider language, however, goes much farther than simply barring the implementation of the Protocol unless it is ratified. The proposed "purpose" and "contemplation" standards appear to be designed to block any regulatory action that has the effect of reducing the greenhouse gases addressed by the Protocol, no matter how clearly authorized that action is under existing law and no matter how clear the threat to public health or welfare.

The rider language would block common-sense, cost-effective regulatory actions like these:

- **Landfill methane.** EPA issued air pollution control regulations under the Clean Air Act that will cut landfill emissions of methane (a potent greenhouse gas) by half --the equivalent of eliminating the greenhouse emissions of 20 million cars --while recovering enough usable fuel to meet the energy needs of ____ homes. Those benefits could not have been achieved if EPA had been prevented by this rider from considering the greenhouse gas impacts of its rule.
- **Self-chilling cans.** EPA used its Clean Air Act authority to block the introduction of a self-chilling soda and beer can that would have emitted hydrofluorocarbons (HFCs), extremely potent greenhouse gases. If these cans had captured just 5% of the 90 billion can U.S. market by the year 2000, they would have more than offset all the greenhouse gas reductions achieved by the Administration's voluntary programs. If EPA had not had the legal authority to regulate these global warming chemicals, this dangerous product would already be on the market. As a result, a new and safer design has been brought to market.

The rider would have the absurd effect of leaving EPA with less authority to take actions related to greenhouse gases under existing law after the adoption of the Kyoto Protocol than

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the agency possessed before the Protocol was adopted.

This is another attempt at "back door" repeal of environmental laws through the appropriations process. If Members of Congress want to rescind the Agency's existing authority over an entire class of pollutants and strip existing authority to protect public health and the environment from global warming pollutants, they should make such proposals in the open and through the front door, using the normal legislative process.

- DRAFT -

Julia Koston -
fyi
serena

DRAFT June 29, 1998

Comments on Knollenberg Amendment to VA and HUD Appropriations Bill, 1999
concerning Pre-Implementation of the Kyoto Protocol

- The Administration has stated consistently that it has no intention of circumventing Congressional prerogatives by "pre-implementing" the Kyoto Protocol. The Kyoto Protocol is a treaty which requires advice and consent by ✓ the Senate in order for the United States to become a party. Implementation will also require legislation which will need to be enacted by the Congress.
- The proposed prohibition on the use of certain appropriated funds applies to a ✓ vague, but possibly expansive, category of activities. The prohibition's vague drafting gives insufficient guidance to agencies and individuals of what conduct is prohibited.
- For example, the Amendment appears to prohibit a broadly defined array of activities that are "in contemplation of implementation" of the Protocol. This phrase is unmanageably vague. Under an expansive interpretation of the language, virtually any attempt to develop or propose rules or regulations that could have the direct or indirect effect of reducing greenhouse gas emissions is prohibited. Some might attempt to interpret the vague language of the Amendment to preclude permissible activities, such as ones in connection with implementation of the Framework Convention on Climate Change (to which the United States is a party) and initiatives designed to improve energy efficiencies for the benefit of all Americans.
- ✓ • Ironically, one could argue that the provision prohibits 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 Protocol to the Senate, needs to be able to show how the Protocol would be implemented, and to do so would need to develop in advance proposed legislation and regulations. We assume that Congress would expect the Administration to have completed this groundwork before submitting the Protocol to the Senate for advice and consent.
- Some might also attempt to interpret the language to prevent or inhibit US efforts to work with other governments to develop the international "rules and regulations" needed for the so-called flexibility mechanisms, such as emissions trading, which should be developed now, prior to the advice and consent process.

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 on the issue of climate change.

IMPACTS ON PUBLIC DEBATE

Effectively stifles 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.

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: 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.

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 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 ____ 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 from global warming pollutants.

GAG ORDER

The report contains highly objectionable language that would prevent EPA and CEQ from communicating with any person or group concerning climate change. This would be an unprecedented restriction on the ability of agencies of the Executive Branch to communicate information or any other matter with other agencies, the Congress or the public. It would prevent EPA scientists from attending a technical conference on climate change, communicating with other scientists, testifying before Congress on climate change or even talking about it in their offices with colleagues. No such sweeping gag order or censorship has ever been imposed on government officials. Existing anti-lobbying laws prevent the use of appropriated funds for certain grassroots lobbying activities. This prohibition goes far beyond existing law on the regulation of lobbying and instead would stifle the exchange of information and ideas. The provision is contrary to the basic premises of open and free communication upon which our government is based.



Congress of the United States
House of Representatives
Washington, DC 20515-3223

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HOUSE PERMANENT SELECT COMMITTEE
ON INTELLIGENCE

U.S. DELEGATION, NORTH ATLANTIC ASSEMBLY
CHAIRMAN, NORTHEAST AGRICULTURE CAUCUS
CHAIRMAN, MINOR LEAGUE BASEBALL CAUCUS

July 17, 1998

**DON'T BE FOOLED BY DOUBLE-SPEAK:
SUPPORT THE GREENWOOD AMENDMENT**

Voting for Greenwood does not mean you support the Kyoto Protocol

Dear Colleague:

Here's the climate change issue before us in the VA-HUD Appropriation: What should you do if you don't support the Kyoto Protocol in its current form, but believe that we ought at least to be thinking about how to attack climate change? After all, most scientists tell us that the threat of climate change is real and that we need to start thinking about how to reduce emissions now if we are ever to have any impact -- because of how long carbon dioxide persists in the atmosphere.

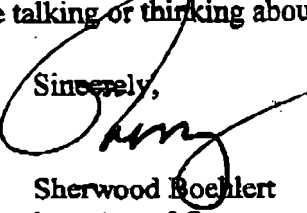
The Knollenberg language could prevent any planning relating to climate change or any plans to encourage voluntary reductions in carbon dioxide. That goes far beyond blocking "back door implementation of Kyoto" -- a prohibition we support. The Knollenberg language is a gag order.

The backers of the Knollenberg amendment have alternated between claiming that their language would do no such thing, and explaining precisely how it blocks EPA activities. They can't have it both ways. If the backers of the Knollenberg language did not actually intend to interfere with legitimate EPA activities, they would be supporting the Greenwood amendment. Instead, they are attacking the amendment and touting that their amendment would block an EPA agreement that simply involves measuring carbon dioxide emissions.

The Knollenberg language is a gag order, pure and simple. It says that EPA cannot even plan or "contemplate" anything related to greenhouse gas emissions. The Knollenberg language could, for example, block planning for credits for early reduction of greenhouse gases -- something industry wants. And that's just one example. The report language shows the real intent -- it blocks EPA from even putting information out about Kyoto-related matters.

Let's not stick our heads in the sand and pretend that climate change is not a potential threat. The Kyoto Protocol has plenty of problems and should not be implemented before ratification. But that doesn't mean we shouldn't even be talking or thinking about ways to attack climate change.

Sincerely,


Sherwood Boehlert
Member of Congress

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**AMERICAN FARM BUREAU FEDERATION***

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Internet: <http://www.fb.com/>

July 17, 1998

Dear Representative:

The House of Representatives will vote this afternoon on amendments to the FY 99 Veterans Affairs and Housing and Urban Development and Independent Agencies appropriations bill.

Farm Bureau is opposed to an amendment by Rep. Waxman to strip from the bill language that prevents the Environmental Protection Agency (EPA) from spending money to implement the Kyoto Protocol on climate change. Farm Bureau opposes this amendment.

Farm Bureau also opposes a Waxman amendment that would strip from the bill language to prevent EPA from implementing the Food Quality Protection Act (FQPA). We support report language accompanying the bill which sets forth the proper criteria for implementation of FQPA.

In addition, Farm Bureau opposes a Waxman amendment to strip from the bill language to prevent EPA from implementing a regional haze program. We are concerned that EPA is moving forward with a national rule on regional haze without adequately completing its obligation under the Clean Air Act.

Sincerely,

Dean Kleckner

President

KEY VOTE ALERT!



For more information, please contact:
 U.S. Chamber of Commerce
 1400 K Street, N.W.
 Washington, D.C. 20004
 Tel: 202/462-6000

202/463-5600

July 16, 1998

TO MEMBERS OF THE U.S. HOUSE OF REPRESENTATIVES:

The U.S. House of Representatives will soon begin consideration of H.R. 4194, the fiscal year 1999 VA-HUD and Independent Agencies appropriations bill. The bill and its Committee report contain important provisions barring the U.S. Environmental Protection Agency (EPA) and the U.S. Council for Environmental Quality (CEQ) from spending taxpayers' money to implement the Kyoto Protocol Climate Change Treaty until it is ratified by the Senate as required by the Constitution of the United States. The bill also bars EPA and CEQ from holding so-called 'educational seminars' on alleged global warming since these agencies – under the guise of 'educational' outreach and grants to the states – have been attempting to take actions to implement the treaty.

The U.S. Chamber of Commerce, the world's largest business organization representing a federation membership of more than three million businesses of every size, sector and region, strongly urges your support of this language and your opposition to any attempt to delete or weaken it.

On prior occasions, the Chamber has called your attention to several post-Kyoto economic analyses that conclude that the protocol would needlessly cost U.S. consumers billions of dollars and millions of jobs and threaten our nation's sovereignty. But the provisions included in the VA-HUD Appropriations bill address an even larger issue: the sanctity of the U.S. Constitution and the role of the Senate in ratifying treaties that will have the force of law. The United States Senate as required under Article II of the United States Constitution has not ratified the Kyoto Protocol. The Protocol has not even been signed or submitted by President Clinton to the Senate for ratification, probably because the Protocol utterly fails to meet the conditions unanimously approved by the Senate last year. The Congress simply cannot permit implementation of the Kyoto Protocol prior to its ratification by the Senate.

The appropriations provisions will not prevent the use of funds for voluntary energy conservation programs, research and data collection to improve climate science, or programs to comply with the 1992 Climate Treaty, *which was duly ratified*. Rather, it will deny funding of rules, regulations, guidance documents and other attempts to implement the Protocol prior to its ratification.

Accordingly, we urge your opposition to any effort to eliminate these important provisions included in H.R. 4194. Please be aware that we will use the vote in connection with these provisions for inclusion in our annual *How They Voted* vote guide for 1998.

Sincerely,

R. Bruce Josten

JOHN E. PETERSON
5TH DISTRICT, PENNSYLVANIA
(202) 225-5121

EDUCATION AND THE WORKFORCE
RESOURCES

Congress of the United States
House of Representatives
Washington, DC 20515-3805

"THERE YOU GO AGAIN!"



JULY 16, 1998

Dear Colleague:

Mr. Waxman makes several false and misleading statements in his July 14 edition of Climate Change "Facts," which he circulated on Capitol Hill. Worse, his over-reliance on the latest (1995) report from the UN Intergovernmental Panel on Climate Change (IPCC) puts him three years out-of-date on global warming research.

A rate of warming over the last century greater than anything seen in 10,000 years? Warmer temperatures than at any time in the last 600 years? The first point is disputed by numerous studies. The second is purely a factor of his starting date.

Studies of tree rings, ice cores, and ocean sediment cores show that 1000, 3000, and 6000 years ago it was significantly warmer than it is today. This is widely known and accepted. (For example, see the graph accompanying "The Little Ice Age: When Global Cooling Gripped the World," Washington Post, Horizons Section, August 13, 1997). Civilizations not only survived during these warmer periods—and with far fewer resources than today—they thrived.

A study published in 1996 in the prestigious journal Science (L.D. Keigwin, "The Little Ice Age and the Medieval Warm Period in the Sargasso Sea, vol. 274, pp. 1504-1508) show rates of climate change over the past 3000 years that are larger and more rapid than any currently forecast.

Finally, the year 1400 marked the onset of a 450-year period of much colder temperatures called The Little Ice Age, which the Earth did not begin to recover from until around 1850. In short, saying the last century was the warmest in 600 years is like claiming "global warming" by starting your temperature measurements in January and ending in July. It's a phony.

RECENT TRENDS IN TEMPERATURE AND PRECIPITATION:

Two rainy El Nino-induced months in 1998 do not a global warming make. Dramatic news coverage of deluged towns might suggest that floods in the United States have become larger and more frequent over the past few years. But that perception is all wet. Most flood experts see no abnormal climatic patterns emerging. Detailed records from river gauges support that view, according to hydrologist Harry Lins and mathematician James Slack of the U.S. Geological Survey. In a study they presented on December 9, 1997, at the annual meeting of the American Geophysical Union, they showed that since 1914 there had been no increasing trend in flooding in the United States.

I would also point out that Lins and Slack based their conclusions on actual observations, not IPCC computer "models."

EXTREME WEATHER:

Weather happens. The IPCC report cites FEWER and less intense hurricanes over the last 50 years. As for severe storms, tornadoes, brush fires, etc., as reporter Ed Walsh notes in the Washington Post ("The Weather Report: Big Storms, Bigger News," July 2, 1998), much of the increase in the number of those being reported is simply a factor of better detection and improved communication. Today everyone has a cell phone. Says Walsh, "The weather itself has not changed as dramatically as the intensive reporting and attention might suggest."

The day Mr. Waxman issued his "facts," Dr. John Christy of the Earth System Science Laboratory in Huntsville, Alabama, issued a statement of his own questioning NOAA's National Weather Service local temperature data, which public affairs was feeding to the news media. After hearing news reports that June 1998 was the hottest ever in Huntsville, Dr. Christy researched the local records at the Alabama State Office of Climatology. He found that there were six years—1914, 1921, 1936, 1943, 1952, and 1953—that had warmer Junes than 1998. What's going on here?

Dr. Christy speculated that the National Weather Service was relying on computerized data banks that were incomplete. When the Birmingham office of the NWS was contacted, they admitted their records only went back to 1958. Indeed, we noticed that the July 14 Associated Press coverage of the Dallas heatwave included this qualifier—that Dallas was experiencing the warmest temperatures "since 1980."

EL NINO:

More and warmer El Ninos in the last twenty years? In the journal *Nature*, (May 28, 1998, page 319: "Global Warming Intensifying El Nino?") Richard H. Grove of the Institute of Advanced Studies, Australian National University,

Canberra, Australia, points to several El Nino events occurring before 1880 that "had effects at least as intense and wide-ranging as those associated with the current event," including the years 1685-88, 1789-93, and 1877-79.

Bad weather does, on occasion, have very unusual consequences. The summer of 1816 was chilly and rainy all over Europe. (Some places it actually snowed.) As a result, the poet Lord Byron, and Percy and Mary Shelley, who were vacationing in Switzerland, were forced to stay indoors most of the time, where they amused themselves by relating ghost stories and, finally, writing their own. One result was Mary Shelley's "Frankenstein."

Now, because of a warm spring, unsubstantiated speculation, and out-of-date science, Mr. Waxman would have us collaborate on another "Frankenstein." This one is called the Kyoto Protocol, and this time the nightmares would be only too real.



JIM TALENT
Member of Congress

Warmly,



JOHN E. PETERSON
Member of Congress

JUL-17-1998 16:56

HON HENRY WAXMAN

202 225 4099 P. 04/06

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COMMITTEES:
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Congress of the United States
House of Representatives
 Washington, DC 20515-3805

Dear Colleague:

July 16, 1998



**The Gore-Waxman Official Weather
 Forecast Legend**

(prepared by NOAA-paid scientists)

Hot = global warming	Windy = global warming
Cool = global warming	Calm = global warming
Rainy = global warming	Humid = global warming
Dry = global warming	Less Humid = global warming
Clear = global warming	No Humidity = global warming
Cloudy = global warming	Snow = global warming
Sleet = global warming	Hail = global warming
El Nino = global warming	Low Crop Yields = global warming
La Nina = global warming	High Crop Yields = global warming
La Bamba = global warming	Earthquake = global warming
Traffic jam = global warming	Volcanic eruption = global warming
Tornado = global warming	Seinfeld Canceled = global warming
Sunrise = global warming	High Tide = global warming
Sunset = global warming	Low Tide = global warming
Lightning = global warming	Low SAT Scores = global warming
France Wins World Cup = global warming	



POUCH!
 It's Hot!


J.D. HAYWORTH
 Member of Congress

Warmly,


JOHN E. PETERSON
 Member of Congress

Congress of the United States
House of Representatives
 Washington, DC 20515-3805

"THERE YOU GO, AGAIN"
 (Part II)



Dear Colleague:

July 16, 1998

Editorial From today's Washington Times.

Al Gore warms up

Is there any misfortune, disaster or otherwise unwelcome phenomenon out there that Vice President Al Gore can't blame on alleged global warming? Last time it was the forest fires in Florida. Next time he may hold it responsible for the heartbreak of psoriasis. For the time being, however, it's the heat wave in the South.

"The evidence of global warming keeps piling up, month after month, week after week," he said at a White House news conference. "How long is it going to take before these people in the Congress get the message? People are sweltering out here."

Mr. Gore acknowledged that he couldn't actually prove global warming was to blame for the heat wave, which is rather the point after all. What he did do was release a global temperature analysis which purported to show that this was the hottest June on record. The mean temperature for the month was about one degree hotter than the monthly average and about 0.4 degrees above the previous high for June in 1994.

Before anyone starts house hunting in Iceland, it's worth noting that about the same time Mr. Gore was issuing his apocalyptic warnings, a scientist in Alabama was issuing a press release of his own, playing down the heat wave. The problem, said Dr. John Christy of the University of Alabama's Earth System Science Laboratory in Huntsville, is that reports of record high temperatures in the United States may be based on incomplete records from the National Weather Service. Those records, he said, often don't go back as far as records kept at the local level, which can date back a century or more.

Mr. Christy makes no reference to Mr. Gore's remarks. His findings are still notable. Although June

1998 was indeed a warm one in Huntsville, it was by no means the warmest. Mr. Christy said 1914, 1921, 1936, 1943, 1952 and 1953 were all hotter.

"We realize the timely nature of media services and the temptation to report a particular event as the hottest, coldest, most, least, wettest, driest, etc.," he said. "We will begin soon to digitize all of Alabama's weather records so we can offer a more expeditious and representative picture of today's 'extremes' in terms of over 100 years of Alabama's climate. In the mean time, when old timers say, 'aw shucks, it was worse back in '52, '53 and '54,' believe them."

Hot as it isn't, Mr. Gore is still sweating the politics of the matter. The Kyoto climate protocols, the vice president's obsession, are in serious trouble. The accord seeks to limit possibly climate-changing greenhouse emissions, except of course in 132 countries including China, India, Brazil and Mexico. But a follow-up meeting in Bonn, Germany, last month failed to resolve disagreements over the plan.

Meanwhile U.S. lawmakers, who think the plan would put the country at a competitive disadvantage given all the exemptions for other countries, have declined to finance the administration's \$6.3 billion initiative to limit emissions by promoting research on energy-efficient technology. And they are threatening to pass legislation that would block the administration from taking steps to implement the protocols before they are ratified by the Senate.

Hence Mr. Gore's highly publicized campaign to fend off such legislation by claiming that there are links between climate change and heat waves, forest fires, tornadoes and anything he can find at hand. When will lawmakers get the message? The bad news for Mr. Gore is that it appears they already have.

John E. Peterson
 JOHN E. PETERSON
 Member of Congress

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ONE HUNDRED FIFTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

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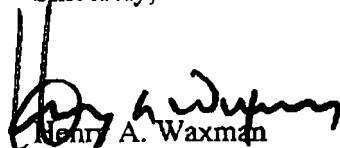
July 14, 1998

Dear Colleague:

Numerous severe weather events and attendant natural disasters have been documented over the past year. Many of them may be evidence of global climate change. Just this month, while visiting fire-scorched cities in Florida, the President identified a connection between natural disasters and global warming, stating that "If the world does not move to curb greenhouse gases, the United States will have to deal with more natural disasters like the raging wildfires that consumed so much of Florida in recent weeks." Today's fact sheet, "Weather, Climate Change, and El Niño," describes the relationship between a warming climate and weather events.

I hope that you find this information useful and informative. If you have questions or would like more information please contact me or Alys Campaigne (5-5420).

Sincerely,


Henry A. Waxman
Ranking Minority Member

OPTIONAL FORM 90 (7-90)

FAX TRANSMITTAL		# of pages ▶ 11
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CLIMATE CHANGE FACTS

Issue 9

U.S. House of Representatives

July 14, 1998

Minority Staff, Committee on Government Reform and Oversight

Weather, Climate Change & El Niño

Many people wonder about the relationship between climate change and the weather. On a particularly hot or cold day, one often hears comments about the presence or lack of a global warming trend. This year's El Niño event sparked a great deal of discussion about weather and global warming. While no specific weather event is an indicator of global warming, trends in regional temperature, precipitation, and weather events over centuries have generated greater understanding of the impacts of global climate change.

Climate and weather are closely related phenomena, the main difference between them being a matter of time scale. Weather is generally studied at a localized scale over short time spans. Climate is the study of regional patterns in weather over longer time spans. The combination of direct and indirect climate records indicates a rate of global warming over the last century that is greater than anything seen in nature in the past 10,000 years.

Recent Trends in Temperature & Precipitation. According to the National Oceanic and Atmospheric Administration (NOAA), global temperatures for the first five months of 1998 set new all time highs. Combined land and ocean temperatures for January to May exceed the previous record by nearly half a degree Fahrenheit. To put this in context, global temperatures rose about 1 degree over the preceding century. Overall, this century's temperatures have been warmer than anything seen in the past 600 years.

This year has also brought record levels of precipitation to the U.S. Records kept for the past 104 years show there has not been a wetter and warmer January and February than this year. According to William Brown at NOAA's National Climatic Data Center, "During the period January-February the national average temperature was 37.5 degrees Fahrenheit compared with a normal of 32.1 degrees. The previous record was 37.0 in 1990. 6.01 inches of precipitation fell, compared with a normal of 4.05 inches."

Extreme Weather. According to the Intergovernmental Panel on Climate Change (IPCC), a warming climate can cause serious changes in weather extremes. Warmer temperatures lead to a more vigorous hydrological cycle, causing more severe droughts and floods in some regions. For instance, the IPCC finds that "Several models indicate an increase in precipitation intensity, suggesting a possibility for more extreme rainfall events." The IPCC further finds that "a changing climate's near term effects on ecological and socio-economic systems most likely will result from changes in the intensity and seasonal and geographic distribution of common weather hazards such as storms, floods and droughts."

There is evidence that the U.S. is experiencing more extreme weather. According to Dr.

Easterling, a meteorologist at NOAA, three and seven-day rainstorms in the United States have increased about 3% per decade since the 1930s. Dr. Thomas Karl, also at NOAA, further documented that since 1910, precipitation has increased by about 10% across the contiguous United States. Scientists at NASA, and the Goddard Institute for Space Studies found that, "in much of the middle and high latitudes, precipitation has increased systematically during the 20th century."

El Niño. El Niño is a disruption of the ocean-atmosphere system in the tropical Pacific having important consequences for weather around the globe. During El Niño events, a change in surface wind patterns in the Pacific Ocean generates a warm ocean current that typically appears around Christmas time (hence the Spanish name, meaning Christ Child), and lasts several months. The warm ocean surface water in the tropical eastern and Central Pacific subsequently alter global weather patterns.

According to NOAA, new data and analysis suggests that global warming is exacerbating the effects of El Niño. While not directly caused by global warming, El Niño events have become more frequent and warmer over the past century. During the recent El Niño, temperature and precipitation records were broken in the United States, and a series of severe tornadoes has killed 122 people so far this year-- a figure matching the annual record set in 1984. An El Niño driven drought in Central America has intensified the effects of regional forest fires that are the most devastating wildfires seen in 70 years. El Niño events, which are marked by a warming of the tropical Pacific, alternate with cold La Niña events. Historically, these events alternated every three to seven years. For the past twenty years, however, there have been more warmer El Niño events.

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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.

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July 8, 1998

substance that has not been identified as a HAP, and was not involved in the underlying lawsuit.²

- 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.

**WHITE PAPER DISCUSSION OF
REASONS FOR, AND UNDERSTANDING OF,
LIMITATION ON FUNDS RE: IMPLEMENTATION
OF KYOTO PROTOCOL IN VA-HUD
APPROPRIATION BILL, H.R. 4194, AND RELATED REPORT
LANGUAGE AS REPORTED BY THE FULL
COMMITTEE ON APPROPRIATIONS**

On July 8, 1998, the House Committee on Appropriations reported the VA-HUD bill, H.R. 4194, for FY 1999. The reported bill includes, at page 58, a limitation on the use of funds appropriated thereunder re: the recently adopted Kyoto Protocol. Also, the Committee Report (H. Report 105-610) provides reasons and concerns about Administration efforts to implement the Protocol. It does not interpret the limitation.

The comments below are based on the reported bill and Committee Report. The comments are primarily prepared for industry, labor, and agriculture representatives interested in the Kyoto Protocol. They may or may not represent the views of the Committee.

Background and Reasons for Limitation

The Kyoto Protocol was adopted last December by the Conference of the Parties to the 1992 Framework Convention on Climate Change. Before the Protocol can be ratified by the President, all agree, based on the Senate Committee's Report on advice and consent to ratification of the Convention in 1993, that the Protocol must be submitted to the Senate for advice and consent to such ratification. The Protocol does not enter into force for any country until it is ratified by the requisite Convention Parties in accordance with Article 25 of the Protocol.¹

Since December, concern has been expressed in Congress on a bipartisan basis that efforts appear to be underway in the Executive Branch to implement the Protocol before it is ratified by the United States after Senate advice and consent.

To allay these concerns, Under Secretary of State Stuart Eizenstat, on several occasions, has said that the Administration will not try to implement the Protocol before Senate advice and consent and Presidential ratification. He expressly testified before the House Commerce Committee on March 4, 1998 to that effect. Further, in response to a question posed at a House Science Committee hearing in March by Representative Philip S. English, he said "in terms of binding obligations, we do not intend to in any way, shape, or form, through the back door, the

¹ Often treaties, etc., (a) are not even submitted to the Senate before the Administration has some assurances that corresponding legislation will be enacted and (b) will not be ratified by deposit in the U. N. in New York until that legislation is obtained. For example, the Basel Convention has been given Senate advice and consent, but has not been ratified, reportedly because of a lack of implementing legislation.

front door, the side door, or any other efforts, to bind this country, or any other sectors of this country, until the Senate has acted in a constitutional manner."

In an April 1998 response to questions from Senators Helms and Hagel, the Under Secretary said:

"The 1999 budget does not contain any programs or budget requests to implement the Kyoto Protocol." (ques. 4)

* * * * *

"The Administration will not seek to impose binding restrictions on U.S. business before the U.S. Senate ratifies the Kyoto Protocol." (ques. 4)

"The Administration will implement its obligations under the Convention, which already exist and predate the Kyoto Protocol. This does not circumvent the Senate's Constitutional authority to ratify Kyoto before its binding requirements can come into force. (ques. 8.1)

* * * * *

"We have not yet conducted an assessment of domestic laws and regulations but we look forward to working with the Congress at the appropriate time." (ques. 20.1)

* * * * *

"The United States would only become a Party to the Protocol with the necessary domestic legislation in place. (ques. 18.1)

Despite these assurances by the Under Secretary, certain actions by the Environmental Protection Agency (EPA), suggest that EPA has not paid full attention to the Administration's policy as reflected in the Under Secretary's statements.

The EPA actions appear to have origins reflected in a May 31, 1994 EPA staff memorandum that predates the Kyoto Protocol. The memorandum lists thirty-nine "proposed additional actions for the Climate Change Action Plan." Those actions included: establishment of hazardous air pollutant standards for greenhouse gases "as a backstop for the Action Plan", tighter CAFE standards through rulemaking authority, "Market driven CAFE", levy a \$.50/gallon fee on gasoline, energy tax, and cap on utility greenhouse gas emissions.

More recently, in a document for FY 1999 entitled "Justification of Appropriation Estimates for The Committees on Appropriations", EPA states:

(+\$5,400,000 EPM) Domestic and International Implementation. Emissions from developing countries are growing rapidly and are projected to exceed those of developed countries within the next fifty years. To be effective, any concerted effort to find a global solution to

climate change must involve both developed and developing countries. Recognizing this, EPA will work to secure meaningful participation from developing country Parties in the recently negotiated Kyoto Protocol by assisting key developing countries in their efforts to reduce greenhouse gas emissions and address global climate change. EPA will also expand its work [with] states, which are integral players in efforts to reduce greenhouse gas emissions. To accomplish our expanded implementation efforts, EPA will require this investment. (Emphasis Supplied)

Since then, the Ranking Member of the House Commerce Committee, Mr. Dingell, and the Chairman of the House Science Committee, Mr. Sensenbrenner, have written on June 8 and June 25, 1998, respectively, to the EPA about a regulatory action, a study, and a consent decree that, as noted by them, clearly appear to be inconsistent with Mr. Eizenstat's assurances on implementation of the Protocol. Those letters are attached.

In regards to Congressman's Sensenbrenner's June 25, 1998 letter concerning an April 15, 1998 consent decree between EPA and the Natural Resources Defense Council (NRDC), an article in the July 8, 1998 edition of the Washington Times quotes Mr. Dan Lashoff of the NRDC as confirming that the consent agreement was aimed at implementing the Protocol. The Article states:

The move to bar funding for treaty activities comes after the EPA announced plans last month to study ways of controlling power plant emissions of the main heat-trapping gas - carbon dioxide - as part of a consent decree settling a lawsuit brought by the Natural Resources Defense Council.

The EPA would publish the study by next February, with the goal of helping power plants develop strategies for cutting carbon dioxide emissions along with three other pollutants already regulated by the EPA, said Dan Lashoff of the defense council.

The EPA denies that the study is an attempt to start implementing the Kyoto treaty, but Mr. Lashoff said it is one. It would help businesses prepare for the steep emissions cuts they will be required to achieve under the treaty ten years from now, he said.

"It's intended to look ahead to emissions reductions of carbon dioxide [and other pollutants] that may be required to achieve national objectives as established by the treaty," he said.

"It's only common sense to take action to reduce greenhouse gas pollution beginning as soon as possible," given the stiff requirement to cut emissions 7 percent below 1990 levels in the treaty, he said.

These EPA actions have occurred despite assurances by the Under Secretary in his April reply to Senators Helms and Hagel that no Executive Branch agency has a duty to implement the Protocol. Specifically, he said:

"To date, no agency or interagency body has been given responsibility to develop potential proposals for legislation or regulation that would be intended to comply with the Kyoto Protocol if it were to become binding on the U.S. There is a great deal of work to be done between now and then to flesh out some of the mechanisms and methodologies in the Protocol, and to ensure that we have greater developing country participation in the global solution. If we are successful in getting the additional elements we need and the Kyoto Protocol is ratified by the Senate and enters into force, the Administration will work closely with Congress to consider and develop means by which the U.S. can comply with our resulting commitment." (Underlining Supplied)

Discussion of Limitation Provision

The Appropriation Committee's limitation provision is included under the EPA's environmental programs and management funding provisions and, according to the Committee Report (p. 121), "limits use of funds." The Committee's Report further discusses the limitation as follows (p. 59):

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.

The limitation precludes use of money appropriated by the bill to "develop, propose, or issue rules, regulations, decrees, or orders" that have the "purpose" of either implementing or of contemplating implementation the Protocol which has not been either signed or ratified by the U.S.

The limitation is narrowly crafted to address only rules, regulations, orders, and decrees. It does not apply to EPA programs. Nothing in the limitation, however, would appear to affect, for example, research, development, and demonstrations or studies in general. Also, the

limitation does not affect existing voluntary programs intended to meet the non-binding aims of the Climate Convention.²

The word "develop" would appear to cover actions taken or needed to, for example, prepare a proposed rule. That would include not only the preparation of the actual regulation, but also the preamble which explains the proposal and provides the justification. Any such rule-making must also meet statutory requirements, such as those relating to small businesses and unfunded mandates. In some cases, EPA begins with an advance notice of proposed rulemaking. It would appear that EPA could not spend funds in fiscal year 1999 to perform such functions.

The word "propose" would include the publication of a rule, regulation, including an advanced notice of rulemaking, or decree and order. To "issue," would be to promulgate or finalize the rule, etc.

The term "contemplating implementation" would appear to include actions like the consent decree that is referenced in Chairman Sensenbrenner's letter. The subject of that letter is an EPA consent decree calling for analysis of emission reductions of CO₂ that could be achieved under of an array of regulatory strategies under the Clean Air Act. Such an analysis could undoubtedly qualify as part of the development of a rule or regulation in contemplation of implementation.

The letter to EPA from Congressman Dingell refers to a regulatory action by EPA and to a study funded by EPA of options for legislation for a future emission trading system. The study, unlike the regulatory action, would not seem to be covered by the limitation. However, included in the options are provisions for energy efficiency standards for the appliance and transportation industries that are clearly regulatory in nature. It is conceivable that such a regulatory study

² Congress has not, as yet, enacted implementing legislation for the Convention. In 1993, the Administration announced its Climate Action Plan in furtherance of the Convention. That plan, in general, provides for voluntary, not regulatory, actions. According to EPA's above-mentioned "Justification" for the Appropriation Committees, in October 1997, the President "announced a new Climate Change Plan, which responds to the scientific consensus that global climate change threatens human health and the environment." Referring to EPA's Climate Change Technology Initiative (CCTI), EPA said:

Under the 1997 Kyoto Protocol, industrialized countries have agreed to make significant greenhouse gas reductions by 2008-2012. The decade preceding the reduction target provides an important opportunity to develop and deploy the technologies that can enhance U.S. competitiveness and productivity. The CCTI is designed to make sure that opportunity is not wasted and will catalyze the deployment of highly efficient technologies throughout the economy as today's equipment is naturally replaced through normal stock turnover.

could be part of the development of a rule relative to implementation of the Protocol. As noted above, EPA's 1994 memorandum called for such regulation.

In the case of mercury, EPA proposed on April 9, 1998 a regulation under section 114 of the Clean Air Act aimed at collecting information, through monitoring and otherwise, in contemplation of rulemaking to control mercury emissions by utility facilities under section 112 of the Clean Air Act. Such a similar use of section 114 in the case of greenhouse gases would seem to be covered by the limitation.

Despite the reference to the Kyoto Protocol in the EPA Justification for FY 1999, the various programs and activities specifically funded by this appropriation bill would not be affected, unless, of course, EPA planned to use those funds for the matters specifically covered by the limitation.

Discussion of Committee Report

The Committee Report states (p 59):

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.

According to the Committee's bill and Report, the EPA and CEQ are funded by this appropriation bill. The limitation, while included in the portion of the bill addressing EPA functions, refers to "funds appropriated by this Act" which would appear to include the CEQ. However, the laws under which CEQ operates would not appear to authorize rules, regulations, orders, or decrees to "implement" the Protocol.

The Committee's Report, which speaks for itself, appears to admonish these two agencies to "refrain" from activities such as just mentioned that may be considered "tantamount to lobbying." That could stem from experiences some have had in observing some of the regional informational workshops and seminars that EPA has held or sponsored prior to, or after, Kyoto. There apparently were concerns that they were not balanced and that they were engaged in advocacy, not dialogue or information gathering.

It appears, however, that the report language is independent of the limitation in the reported bill, H.R. 4194. The limitation is squarely applicable only to rules, regulations, decrees or orders related to the implementation of the Protocol or leading to such implementation. It

does not affect information, education, research, demonstrations, development, grants, contracts, studies, the CCTI, or other EPA or CEQ activities that are not rules, regulations, decrees, or orders. The Committee Report, similarly, does not prevent such activities. It applies only to information and education "seminars on policies underlying" the Protocol that are conducted or funded by EPA or CEQ.

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MICHAEL E. BROWN, TEXAS
DAVE SCHNEIDER, COLORADO
JOE BARTON, TEXAS
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**U.S. House of Representatives
Committee on Commerce**

Room 2125, Rayburn House Office Building
Washington, DC 20515-6115

June 9, 1998

JAMES E. BRENNAN, CHIEF OF STAFF

The Honorable Carol M. Browner
Administrator
Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

Dear Administrator Browner:

When Under Secretary of State Stuart Eizenstat testified before the Subcommittee on Energy and Power on March 4, 1998, he assured us that there would be no efforts by the Administration to implement the Kyoto Protocol, until it was submitted to the Senate for advice and consent to ratification. The Administration was wise in providing such assurances and in repeating them to others in Congress both before and after that hearing. A subsequent letter from Budget Director Raines has further clarified the matter by stressing that the Administration's fiscal year 1999 \$6.3 billion budget for its climate change initiatives separate from any Kyoto implementation effort.

Since then, it has come to my attention that the Environmental Protection Agency (EPA) initiated two actions which appear inconsistent with those assurances. One is of a regulatory nature, the other is of a legislative character.

As to the first action, EPA proposed on February 3, 1998, a rule under section 612 of the Clean Air Act for "restrictions or prohibitions on substitutes for ozone depleting substances." (63 F.R. 5491, February 3, 1998). However, the proposal has nothing to do with depleting substances. Instead EPA "assessed the possible contribution of self-chilling can technology to U.S. emissions of global warming gases when HFC-134a and HFC-152a are used" and concluded that the use of such gases for this type product would result in "unacceptable" greenhouse gas emissions. EPA reached this conclusion even though the agency was unable to discern any "actual market penetration" because "the product has not yet been introduced" into the marketplace. Nevertheless, the proposed rule would ban the use of these substances for these purposes. There is no assertion in the notice that this action is needed to protect the stratospheric ozone, which is the purpose of title VI of the Clean Air Act.

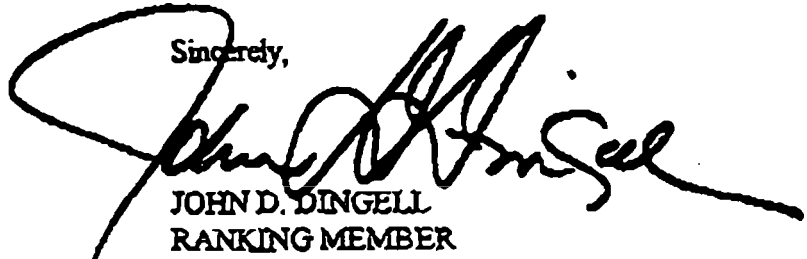
The Honorable Carol M. Browner
Page 2

In the second matter, I understand that the EPA is funding a study with the H. John Heinz III Center for Science, Economics and the Environment entitled "Limiting Greenhouse Gas Emissions Through Emissions Trading." The assumptions used, presumably as the basis for the contracted study, include that the U.S. will ratify the Kyoto Protocol and that there is some but limited international trading. It also apparently assumes that legislation would be required to establish a domestic carbon dioxide emissions trading system and that the design of such a system could be based on several options. The options targeted for study, moreover, include some based on regulatory energy efficiency standards for the appliance and transportation industries, such as corporate average fuel economy (CAFE) requirements.

In addition, I note that the Heinz Center includes a number of so-called "Research Collaborators", many of whom are present or former EPA personnel. Except for the natural gas and aluminum industry, none of these collaborators represents the other industries likely to be affected by the study, nor do they appear to represent labor, agriculture, small business, or the general public.

In light of Mr. Eizenstat's assurances, I request that you explain why the EPA has undertaken such actions apparently designed to meet thus far unmandated requirements and that you provide the Agency's statutory basis for doing so.

Sincerely,



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June 25, 1998

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The Honorable Carol M. Browner
 Administrator
 U. S. Environmental Protection Agency
 401 M Street, SW
 Washington, DC 20460

Dear Administrator Browner:

The June 2, 1998 *Federal Register* (63 FR 29991) includes a request for public comment on a "Proposed Settlement Agreement, Clean Air Act Suit", which was lodged with the United States Court of Appeals for the District of Columbia by the EPA on April 15, 1998, to address a lawsuit originally filed by the National Resources Defense Council (NRDC) in 1992. The NRDC lawsuit concerns among other things, EPA's alleged failure to list, and to determine whether to regulate hazardous air pollutant emissions from, electric utility steam generating units under section 112 of the Clean Air Act. Under the proposed settlement, EPA agrees to "Undertake and publish on [or before February 28, 1999] the results of an analysis of the emissions reductions of SO₂, NO_x, CO₂ and mercury (and the effect of mercury removal costs) that would be achieved through an array of strategies to control SO₂, NO_x, CO₂ and mercury..."

As you know, CO₂ is one of several greenhouse gases covered by the recently adopted Kyoto Protocol, which has not been submitted to the Senate for advice and consent to ratification and which has not yet entered into force pursuant to its terms. As I believe you also know, Under Secretary of State Stuart Eizenstat has on several occasions committed to Congressional Committees, including this Committee, that the Administration would not undertake actions to implement the Kyoto Protocol before it is ratified and entered into force. This agreement, which is dated April 15, 1998, is a step toward such implementation and appears inconsistent with this commitment. It should not be finalized.

Moreover, to my knowledge, Congress, in enacting section 112 of the Clean Air Act, did not list CO₂ as a hazardous air pollutant and I do not believe that EPA has amended that list to include CO₂. For that matter, SO₂ and NO_x are not listed hazardous air pollutants under section 112, but are pollutants regulated under other provisions of the Act. Thus, I know of no duty imposed by section 112 on EPA that requires regulations for any of these substances. Also, while mercury is listed under section 112, it was subject to a study under section 112(n)(1)(B) (which was performed). I understand that section 112(n)(1)(B) does not mandate any regulation based on the study.

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202 260 2458	Error on page 12	12	Received	Jul-20	12:35P	00:05:09	021502030000413

Fazio Amendment
(failed 27-18)

No

Aderholt
Bonilla
Callahan
Cramer
Cunningham
DeLay
Dickey
Frelinghuysen
Hobson
Istook
Knollenburg
Latham
Lewis
Livingston
Miller
Mollohan
Nethercutt
Neuman
Northup
Parker
Regula
Rogers
Skeen
Tiarht
Visclosky
Walsh
Wolf

Aye

DeLauro
Dicks
Edwards
Fazio
Hefner
Hoyer
Kaptur
Lowey
Moran
Obey
Olver
Pastor
Pelosi
Porter
Price
Sabo
Skaggs
Stokes

SUPPORT THE GREENWOOD AMENDMENT

The FY99 VA-HUD appropriations bill contains an anti-environment rider that states 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.

- This broadly worded provision goes well beyond ensuring that agencies do not engage in backdoor implementation of the Kyoto Protocol. It would block EPA from taking common sense actions under existing law to protect the health and welfare of the American people from global warming.

The Greenwood amendment prevents the issuance of federal regulations designed *solely* to implement the Kyoto Protocol while ensuring that authority to protect public health and the environment under existing law is not rolled back.

Without the Greenwood amendment the bill would:

- 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.

- Stop agencies from working on executive orders to improve the federal government's own use and procurement of energy.
- Restrict the Administration from drafting rules or regulations that would accompany the Kyoto Protocol to the Senate for advice and consent.
- Prevent agencies from collecting climate-related information that could be used in an executive order or directive to improve our anticipation of and response to weather-related disasters.

With the Greenwood amendment the bill would:

- Prevent EPA from issuing regulations *solely* for the purpose of implementing the Kyoto Protocol.
- Permit planning, research, debate or contemplation of common sense efforts related to green house gas emissions, provided such activities are authorized by law.
- Prevent the roll back of existing authority to protect public health and welfare.

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**AMENDMENT TO H.R. 4194, AS REPORTED
OFFERED BY MR. GREENWOOD OF PENNSYLVANIA**

Page 58, line 25, insert before the colon the following: ", except that this proviso shall not apply to any action authorized by law".

July 18, 1998 (11:08 AM)



The Joseph Company

July 20, 1998

Dr. Druisilla Hufford
Director
Stratospheric Protection Division
US Environmental Protection Agency
401 M. Street, SW
Washington, DC 20460

Re: Commercial Launch of the Chill Can®

Dear Dr. Hufford:

This letter is to follow up on your recent inquiry about the status of The Joseph Company's development of the Chill Can®. As you are aware, The Joseph Company obtained approval under the EPA's SNAP program for the development and sale of self-chilling cans using CO₂ as the coolant gas. The Joseph Company has spent millions of dollars in cooperation with several partners to perfect a CO₂-based self-cooling can. The Joseph Company has begun licensing this technology to major beverage companies around the world as we expect the commercial introduction of the technology later this year.

From the beginning of its efforts, The Joseph Company was committed to ensuring that the introduction of the Chill Can® will be achieved in the most environmentally benign manner possible. When The Joseph Company was testing HFC 134a and other gases in the Chill Can®, we were committed to offsetting any impact from the release of those gases and we had identified many greenhouse gas reduction projects to achieve that goal. The Company also continued to research other gases.

The Joseph Company now has developed the ability to use recycled CO₂ as the coolant gas in its technology. Consequently, it has completely abandoned its efforts to use HFC 134a and other, high-GWP gases. The Joseph Company will not use, nor will it allow any of its licensees to use, HFC 134a in connection with its technology anywhere in the world. The new technology is based on CO₂ and that is the only gas that will be used with our technology. As a result, it is our belief that wide-spread use of the Chill Can® in many parts of the world will produce significant environmental benefits by reducing reliance on old, inefficient refrigeration that uses ozone depleting coolants and consumes large quantities of electricity.

CORPORATE OFFICES

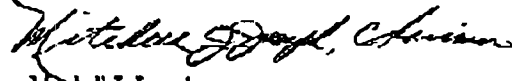
28207 Cabot Road, Suite 310 • Laguna Niguel, CA 92677 • Phone: (714) 347-7765 • Fax: (714) 347-7769

2/2 PAGE 8822 268 912-01 3100H VBR 03 H23305 2M1-N085 15-28 88-12-100

Dr. Druella Hufford
July 20, 1998
Page 2

I hope this provides you with information that you need. If you have any other questions,
please do not hesitate to contact me.

Sincerely yours,


Mitchell J. Joseph
Chairman/CEO

RON PACKARD
60th DISTRICT, CALIFORNIA

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Congress of the United States

House of Representatives

May 29, 1998

PLEASE REPLY TO:
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SUITE 305
VISTA, CA 92081
(619) 591-1264
☐ 629 CAMINO DE LOS MANES
SUITE 204
SAN FRANCISCO, CA 94013
(415) 498-2343
<http://www.house.gov/packard/>

Ms. Nonna Hughes
District Representative, Stratospheric Protection Division
U.S. Environmental Protection Agency
401 M Street, SW (60257)
Washington, DC 20460

Re: Nomination for Environmental Award

Dear Ms. Hughes:

It is my understanding that you are currently considering candidates for the award for Stratospheric Ozone Protection. I would like to direct your attention to The Joseph Company. Ms. Amy Taketomo of the Monterey Bay Unified Air Pollution Control District recently brought this award to my attention. Based on her knowledge of ozone protection, Ms. Taketomo feels that The Joseph Company is deserving of commendation for its voluntary, cooperative demonstration of environmental responsibility in the marketplace.

The Joseph Company has been developing the Chill Can for the last eight years. The Chill Can is a self-chilling beverage can (about the size of a sixteen-ounce can) that cools approximately twelve ounces of product by thirty degrees Fahrenheit in less than three minutes.

This new technology is not only revolutionary in application; it is unique in proactively addressing environmental issues. The Joseph Company radically reinvented its Chill Can technology to ensure that rather than releasing HFCs, which are thought to contribute to global warming, it now utilizes a carbon/CO2 system. This system has been thoroughly researched by the University of Surrey Centre for Environmental Strategy, which conducted a Life Cycle Analysis. The Analysis demonstrated that the new Chill Can technology may actually reduce greenhouse emissions from conventional refrigeration under certain conditions.

The Joseph Company was fully prepared to launch with the HFC technology last summer and had legally secured the rights to release HFCs in Brazil, South Africa, and Israel. Instead, due to surfacing concerns about the use of HFCs, The Joseph Company immediately and voluntarily postponed financial rewards and invested its total resources toward developing an alternative, environmentally responsible product.

The Joseph Company has been publicly commended by United Kingdom Environment Minister Michael Meecher, who stated that the company's decision to develop an environmentally responsible product "sends a positive message to other companies that profits do not necessarily have to be sacrificed to save the environment." If you concur, I encourage you to consider The Joseph Company for the Stratospheric Ozone Protection award.

Sincerely,

Ron Packard
Member of Congress

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JUN-01-1998 17:03

P.002



"The **Chill Can®** contains your favorite beverage and chills it ANYTIME, ANYWHERE. Can't get to a refrigerated vending machine on a HOT day? Just pop open a **Chill Can®** on the beach, on the golf course, or during any outdoor activity where refrigerated beverages are not available. Simply press the button on the bottom of the **Chill Can®**, and in about 2 minutes your beverage temperature drops by 30 °F! Pop the **Chill Can®** top and enjoy a cool refreshing drink anywhere! Never hassle with bulky ice chests again! The **Chill Can®** will be introduced in a standard 50 cL beverage can holding approximately 330 mL of liquid.

**APPROVED!**

The United States **EPA** has approved The Joseph Company **Chill Can®** as an acceptable substitute for ozone depleting substances. Keep watching for our Life Cycle Analysis, conducted by the University of Surrey Centre for Environmental Strategy.



The **Chill Can®** is environmentally responsible. It's completely recyclable and uses ozone friendly, non-toxic materials. Furthermore, it reduces the ozone depleting emissions from leaky old refrigerators and dirty portable generators in developing countries.



Brand name owners interested in purchasing a license to use the Chill Can® to add value to their packaging should contact Enrico Diaz or Chuck Lee at:

license@chillcan.com

or

The Joseph Company, Inc.
World Wide Headquarters
28202 Cabot Road
Suite 310
Laguna Niguel, CA 92677
Phone (714) 347-7766

Proposed Settlement Agreement on Mercury Emissions

EPA has a legal obligation under the Clean Air Act to determine whether it is "necessary and appropriate" to regulate the emission of mercury from fossil fuel fired electric power plants. EPA was sued by environmental groups seeking a deadline for the agency to make its decision whether to regulate mercury. A settlement agreement was reached in 1994.

EPA has been negotiating extensions of this decision-making deadline since 1996. On April 15, 1998, EPA negotiated an agreement to extend the deadline again and allow more time for making the mercury regulatory determination, on condition that EPA update a multi-pollutant analysis of utility emissions that was first undertaken, with broad stakeholder involvement, more than two years ago.

Specifically, the proposed extension agreement says:

"EPA shall undertake ..., an analysis of the emission reductions of SO₂, NO_x, CO₂ and mercury (and the effect on mercury removal costs) that would be achieved through an array of strategies to control SO₂, NO_x, CO₂ and mercury, ..."

Key Points

- This is not an attempt at "back door" implementation of the Kyoto Protocol. EPA has no plans to regulate CO₂ from electric power plants. The Administration is committed not to implement the Kyoto Protocol until the Senate has given advice and consent to its ratification.
- EPA has the responsibility under the Clean Air Act to decide whether to regulate mercury emissions from coal-fired electric power plants. Mercury exposure is associated with serious neurological and developmental effects in humans. The multi-pollutant analysis called for in the proposed agreement is specifically intended to assist EPA in making decisions on mercury.
- Multi-pollutant analysis makes sense because efforts to reduce any one of these pollutants has an effect on the others. Multi-pollutant analysis is nothing new. EPA has been conducting multi-pollutant analyses like this for electric power plant emissions since 1996, using a widely-accepted computer model called the Integrated Planning Model (IPM).
- That effort, called the Clean Air Power Initiative, involved utilities, fuel suppliers, labor, and environmental organizations, using the IPM model to look at the interaction of control strategies for various pollutants from electric power plants. The CAPI analyses have been posted on the World Wide Web for two years. (www.epa.gov/capi)

- **The inclusion of carbon dioxide in these analyses has been supported by a broad range of stakeholders, including utilities, the United Mine Workers, and environmental organizations.**
- **Multiple pollutant analyses are called for in the Clean Air Act. For example, §103(g)(1) calls for analyses of "[i]mprovements in nonregulatory strategies and technologies for preventing or reducing multiple air pollutants, including sulfur oxides, nitrogen oxides, heavy metals, PM-10 (particulate matter), carbon monoxide, and carbon dioxide, from stationary sources, including fossil fuel power plants."**

Response to Concerns About Setting National Ambient Air Quality Standards for CO₂

Some Members of Congress appear to be concerned that EPA might be planning to issue a "national ambient air quality standard" for carbon dioxide under the Clean Air Act.

Key Points:

- The Administration has no plans to issue a national ambient air quality standard for carbon dioxide. EPA has not taken a single step to begin the long scientific and regulatory process to set such a standard.
- If a standard were ever issued, Congress would have the opportunity to review and invalidate it under the Congressional Review Act before it becomes effective
- At the same time, the Administration strongly opposes "back door" attempts to use appropriations riders to repeal our existing legal authority under the Clean Air Act to protect the health of the American people and the quality of their environment.
- If Congress wants to amend the Clean Air Act or other environmental laws, it should do so through the normal legislative process, with proper hearings and public debate.

Background:

- Setting a national ambient air quality standard is a long process that involves more than a dozen separate steps over at least four years, including many rounds of scientific peer review and public comment. None of these steps have been started.
- The process would have to start with a determination as to whether the legal test under the statute for listing CO₂ as a criteria air pollutant has been met.
- After that, EPA could not proceed without completing a comprehensive scientific review called a criteria document. Criteria documents typically go through multiple drafts, with each draft subject to public comment and review by a scientific peer review committee (called the Clean Air Science Advisory Committee). This process can take several years entails detailed review of the criteria document by EPA's scientific review committee.
- Next EPA would prepare a staff paper on the main scientific conclusions and options for standards. This document also would go through several drafts and review by the scientific review committee.

- Only then would the EPA Administrator, after Administration review coordinated by OMB, propose a national ambient air quality standard for CO₂. This would be followed by public hearings and opportunity to comment.
- A final standard could be set only after full review of all comments, and another round of Administration review.
- Congress would then have another review opportunity under the Congressional Review Act and could vote to invalidate the standard.
- The Administration has no plans to issue a national ambient air quality standard for carbon dioxide. EPA has not taken a single step to begin the long scientific and regulatory process to set such a standard.

Self-Chilling Cans

EPA used its authority under the Clean Air Act to block the introduction of a self-chilling soda and beer can that would have emitted *hydrofluorocarbons* (HFCs), extremely potent greenhouse gases. In response, the product's inventors came up with a safer design, using another cooling agent. The new design will soon go to market, with EPA approval.

Key Points

- As part of the phase-out of chemicals that deplete the stratospheric ozone layer, the 1990 Clean Air Act requires EPA to review the health and environmental effects of replacements chemicals and products. Section 612(c) requires EPA to block the introduction of any replacement that may present adverse effects to human health or the environment, if there is an available alternative that *"reduces overall risk to human health and the environment."* Section 608(c) also makes it illegal to knowingly vent or release a replacement refrigerant from a product into the air, unless EPA determines that it *"does not pose a threat to the environment."*
- Self-chilling cans work by releasing a refrigerant substance when opened. The expansion and escape of the refrigerant cools the can. The first self-chilling can design would have used HFCs as the refrigerant -- chemicals that have 140 to 1,300 times the warming power of carbon dioxide. Releasing these chemicals from the cans would have posed new environmental risks not associated with traditional refrigeration.
- If self-chilling cans using one of these chemicals (HFC-134a) had captured just 5% of the 90 billion can U.S. market by the year 2000, they would have more than offset all the greenhouse gas reductions achieved by the Administration's voluntary programs. At a 25% market penetration, their emissions would have equalled nearly one-third of the greenhouse gases coming from all electric power generation in the U.S.
- In response to EPA's action, the product's inventors came up with a new design that uses a safer refrigerant. The new product will have no more impact on the environment than traditional refrigeration. It will soon be on the market, with EPA's approval.
- These common-sense actions under existing law have protected the American people from new and unnecessary dangers as ozone-depleting chemicals are replaced. They were not an attempt at "back door" implementation of the Kyoto Protocol. They are, however, the kind of common-sense public health protection Americans will lose if misplaced anti-Kyoto legislation is enacted.

101 Todd Stern

For. Ops

language

SO2: 5-1998 5-28-11 EPA DURHAM, NC NO. 597 P. 4/5

Proposed Settlement Agreement on Mercury Emissions

What the proposed stipulation says:

"EPA shall undertake ..., an analysis of the emission reductions of SO₂, NO_x, CO₂, and mercury (and the effect on mercury removal costs) that would be achieved through an array of strategies to control SO₂, NO_x, CO₂ and mercury, ..."

Key Points

- EPA has made no decision to regulate CO₂ from electric power plants, and this is not an attempt at "back door" implementation of the Kyoto Protocol. The Administration is committed not to implement the Kyoto Protocol until the Senate has given advice and consent to its ratification.
- The stipulation is contained in a proposed revision to a settlement agreement in a lawsuit brought by the Natural Resources Defense Council. The revised settlement agreement delays the date by which EPA must meet its obligation under §112 of the Clean Air Act to determine whether it is appropriate and necessary to regulate emissions from electric utility steam generating units of specific air pollutants, including mercury, that are listed as "hazardous" under the Act. EPA has identified mercury as the hazardous air pollutant of primary concern in the emissions of electric utility steam generating units.
- The analysis called for in the proposed revision to the settlement agreement is specifically intended to inform EPA's decision whether, and if so, how to regulate mercury emissions from coal-fired electric power plants. Multiple pollutant analysis makes sense because efforts to reduce any one of these pollutants has an effect on the others. EPA routinely uses a widely-accepted computer model, called the Integrated Planning Model (IPM), to undertake these multiple pollutant analyses.
- EPA has conducted multi-pollutant analyses like this for electric power plants for more than two years, with broad stakeholder involvement and support. In 1996, EPA conducted the Clean Air Power Initiative (CAPI), a stakeholder process involving utilities, fuel suppliers, labor, and environmental organizations, using the IPM model to look at the interaction of control strategies for various pollutants from electric power plants.
- In the CAPI process and in subsequent advisory committees, EPA has been repeatedly urged by utilities, the United Mine Workers, and environmental groups to include CO₂ in these IPM analyses. The present analysis is intended solely to inform the decisions EPA is required to make under the Clean Air Act regarding mercury emissions from electric steam generating units.
- Multiple pollutant analyses are called for in the Clean Air Act. For example, §103(g)(1) calls for analyses of "[i]mprovements in nonregulatory strategies and technologies for preventing or reducing multiple air pollutants, including sulfur oxides, nitrogen oxides, heavy metals, PM-10 (particulate matter), carbon monoxide, and carbon dioxide, from

stationary sources, including fossil fuel power plants."

- The original settlement agreement was entered into in 1994. Since 1996, EPA has been negotiating extensions of its deadline to make a decision about whether to regulate mercury. Last year discussions began on including an update of EPA's multi-pollutant analysis. The proposal that was placed in the F.R. in April, extends EPA's mercury deadline to Nov & provides for this analysis.
- The comment period on the agreement closed on July 2 & EPA is reviewing the comments.
- EPA, if it signs the agreement, would update its info on CO₂ emissions. However, EPA has clearly stated that it has no ~~current~~ plans to regulate CO₂ at this time.
- If EPA does not conduct this analysis, NADP will force the Agency to make a decision on mercury.

Landfill Methane Control

EPA rules and guidelines issued under the Clean Air Act in 1996 require large landfills to control emissions that lead to the formation of ozone smog. The same control measures will also cut landfill emissions of methane (a potent greenhouse gas) by more than half -- the equivalent of eliminating the greenhouse emissions of 20 million cars -- while recovering enough usable fuel to meet the energy needs of two million homes.

Key Points:

- EPA's actions were taken primarily to protect the American people from ozone smog. The rules and guidelines, issued under Section 111 of the Clean Air Act, are focused on controlling volatile organic compounds (VOCs) that contribute to unhealthy levels of ozone smog. Landfill control measures will reduce emissions of VOCs, as well as toxic air pollutants and offensive odors, by more than half (more than 90,000 tons per year).
- Methane is also formed from decomposing garbage. Landfill methane emissions are captured and destroyed along with the other chemicals. Landfill methane emissions present a well-documented danger of fires or explosions.
- Methane is also a powerful greenhouse gas. The landfill methane emissions captured and destroyed by these EPA actions are equivalent to eliminating the greenhouse emissions of 20 million cars. Captured landfill methane can be used cost-effectively to generate enough electricity to meet the energy needs of two million homes.
- These common-sense actions under existing law are helping to protect the American people from dangerous urban smog while at the same time reducing the risks of global warming. They were not an attempt at "back door" implementation of the Kyoto Protocol. But these clear benefits for public health and the environment could not have been achieved if EPA had been prevented from acting by a misplaced anti-Kyoto rider.

Concerns with House Appropriations bill and report language
- DRAFT -

Report language imposes a gag order on EPA; stifles informed public debate; severely restricts outreach in voluntary programs; undercuts U.S. commitments under Rio Treaty

"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."

By imposing a gag order on the Agency and the CEQ, this language could stifle any informed debate on global warming. The Administration has a long and successful history of open consultations with the public, scientists, businesses, state and local governments, environmental organizations and other nations. Activities that could be shut down by this language include:

Industry consultations - in his October announcement, President Clinton promised to provide appropriate rewards for firms taking early action to reduce emissions. Foregoing EPA's extensive experience and proven track record in forging successful voluntary partnerships with industry to reduce emissions and save energy would be a serious setback to these efforts.

Negotiation briefings - as part of the U.S. delegation to the international negotiations, EPA provides critical technical, policy and scientific expertise to briefings for business and environmental groups before, during and after negotiating sessions.

Developing Country Outreach - recognizing the importance of developing country participation to solving the problem of global warming, EPA plays a central role in bilateral dialogues, fostering projects by U.S. businesses to reduce emissions in developing countries, and helping developing countries complete greenhouse gas inventories and emissions reduction plans. For 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.

State and Local Governments - EPA's State and Local Outreach Program is helping more than 30 states develop greenhouse gas emissions inventories, and helping more than 20 states develop mitigation plans to reduce greenhouse gas emissions. EPA also supports the Cities for Climate Protection Program, which so far has helped 48 cities make local commitments to reduce greenhouse gas emissions and identify and implement cost-effective practices to reduce emissions, especially in buildings, transportation, and waste management.

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Concerns with House Appropriations bill and report language
- DRAFT -

Invitational speaking/dialogues - EPA frequently accepts invitations from businesses, trade associations, environmental organizations and other groups to discuss the Kyoto Protocol, and policies and programs related to reducing greenhouse gas emissions.

EPA also accepts invitations to speak internationally on the extremely successful, market-based, flexible and cost-effective approaches the Agency pioneered, such as emissions trading and voluntary programs. Recently, EPA has given such presentations in Malaysia, Russia, England, Canada, Australia and New Zealand. This outreach has been essential to convincing other nations that the market-based, flexible approach embodied in the Kyoto Protocol is superior to mandatory international policies such as carbon taxes and fuel economy standards favored by some nations.

EPA's Global Warming Web Site gets approximately 100,000 hits each month. The site contains information on climate change science, impacts, news, actions, greenhouse gas inventories and speeches. The site won a select site award from the Dow Jones Business Directory, a guide to high quality business web sites.

EPA Regional Workshops - Designed to inform participants about the potential impacts of climate change, identify solution-oriented strategies to reduce the risks associated with climate change; and provide information on federal programs, new technologies and success stories from business and government.

National Assessment workshops look at current stresses and issues for the region; the expected consequences of climate change and variability and how will these interact with existing stressors; the priority research and information needs; coping options that can build resilience and possibly assist the climate change problem. EPA has coordinated three regional workshops, the Great Lakes region, the Gulf Coast region and the Mid-Atlantic region, in supporting USGCRP leadership on the national assessment.

Curtailing these important outreach efforts could not only stifle informed public debate, it could also seriously undermine the U.S. commitment under the Framework Convention on Climate Change - ratified by the Senate on October 15, 1992:

“[to] Promote and cooperate in education, training and public awareness related to climate change and encourage the widest participation in this process, including that of non-governmental organizations;” (UNFCCC, Article 4.1(I))

This broad and subjective language could also be read to severely restrict outreach in almost every program at EPA aimed at improving energy efficiency and reducing greenhouse gas emission - both key policies underlying the Kyoto Protocol. Since their inception under the Bush Administration, EPA's voluntary programs have relied on educational outreach and the provision of information to consumers and businesses to achieve the dual goals of preventing the pollution that causes global

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Concerns with House Appropriations bill and report language
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warming and saving energy.

For example, EPA's highly successful *Green Lights* program, with more than 2000 partners, might be asked to censor references to greenhouse gas emissions reductions in technical information and software tools now provided to program partners, since this could be characterized as educational outreach on policies underlying the Kyoto Protocol. In addition, the language could bar EPA from recognizing the pollution prevention achievements of current partners, and from even discussing expected greenhouse gas reduction benefits with potential future partners.

Since recognition for pollution prevention is an important incentive for many program partners, this language could cause program participation to drop off. In addition, the language could force the Agency to renege on its commitment, spelled out in thousands of signed MOUs with program partners, to provide information to program partners to help them save money, save energy, and reduce pollution.

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Concerns with House Appropriations bill and report language
- DRAFT -

Bill Language: prevents common sense regulation, suspends existing law authority

"None of the funds appropriated by this Act shall be used to 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 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 such Protocol."

This is another "back door" attempt to use appropriations riders to repeal Clean Air Act authorities that have been in place since as long ago as 1970. The rider language would block the Environmental Protection Agency 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.

The Administration has clearly stated that it will not implement the Kyoto Protocol until the Senate gives advice and consent to its ratification. The rider language, however, goes much farther than simply barring the implementation of the Protocol unless it is ratified. The proposed "purpose" and "contemplation" standards appear to be designed to block any regulatory action that has the effect of reducing the greenhouse gases addressed by the Protocol, no matter how clearly authorized that action is under existing law and no matter how clear the threat to public health or welfare.

The rider language would block common-sense, cost-effective regulatory actions like these:

- Landfill methane. EPA issued air pollution control regulations under the Clean Air Act that will cut landfill emissions of methane (a potent greenhouse gas) by half --the equivalent of eliminating the greenhouse emissions of 20 million cars --while recovering enough usable fuel to meet the energy needs of 2 million homes. Those benefits could not have been achieved if EPA had been prevented by this rider from considering the greenhouse gas impacts of its rule.
- Self-chilling cans. EPA used its Clean Air Act authority to block the introduction of a self-chilling soda and beer can that would have emitted hydrofluorocarbons (HFCs), extremely potent greenhouse gases. If these cans had captured just 5% of the 90 billion can U.S. market by the year 2000, they would have more than offset all the greenhouse gas reductions achieved by the Administration's voluntary programs. If EPA had not had the legal authority to regulate these global warming chemicals, this dangerous product would already be on the market. As a result, a new and safer design has been brought to market.

The rider would have the absurd effect of leaving EPA with less authority to take actions

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Concerns with House Appropriations bill and report language
- DRAFT -

related to greenhouse gases under existing law after the adoption of the Kyoto Protocol than the agency possessed before the Protocol was adopted.

This is another attempt at "back door" repeal of environmental laws through the appropriations process. If Members of Congress want to rescind the Agency's existing authority over an entire class of pollutants and strip existing authority to protect public health and the environment from global warming pollutants, they should make such proposals in the open and through the front door, using the normal legislative process.

- DRAFT -

Waxman Amendment to VA-HUD Appropriations Bill

SEC. ____ Any limitation on funds in this Act for the Environmental Protection Agency or the Council on Environmental Quality shall not apply to:

- (a) conducting educational outreach or informational seminars;
- (b) developing rules, regulations, decrees or orders prior to proposal or issuance;
- (c) the use of Brownfields funds;
- (d) regulatory determinations for mercury emissions from utilities;
- (e) utilizing dredging as a remediation tool;
- (f) implementation of the Food Quality Protection Act;
- (g) implementation of the Regional Haze Program; or
- (h) cleanup requirements for facilities licensed by the Nuclear Regulatory Commission,

where such activities are authorized by law.

OPTIONAL FORM 99 (7-90)

FAX TRANSMITTAL

of pages 1

To

Dept./Agency

Fax #

395-2342

From

Phone #

Fax #

GENERAL SERVICES ADMINISTRATION

NSN 7540-01-317-7368

5099-101

**AMENDMENT TO H.R. 4194, AS REPORTED
OFFERED BY MR. WAXMAN OF CALIFORNIA**

At the end of the bill before the short title insert:

- 1 Sec.———. Any limitation on ^{the use of} funds in this Act for
2 the Environmental Protection Agency or the Council on
3 Environmental Quality shall not apply to activities that
4 are ~~required by the Constitution or~~ authorized by law.

* OSTP -

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DRAFT

Possible Alternative Language

SEC. ____ Any limitation on funds in this Act for the Environmental Protection Agency or the Council on Environmental Quality shall not apply to:

- (a) conducting educational outreach or informational seminars,
- (b) developing rules, regulations, decrees or orders prior to proposal or issuance,
- (c) the use of Brownfields funds,
- (d) regulatory determinations for mercury emissions 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 for NRC licensed facilities,

where such activities are authorized by law.

To: Julie Anderson
Fr: Greg Dotson

To: Gary Guzy
Bill White

Fr: Julie Anderson

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JUL-1 JUL. 16. 1998: 1:33PM

CLEAN AIR COUNCIL

NO. 8654 P.P. 2

H.L.C.

67-15-98 11:04 From

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**AMENDMENT TO H.L. 4184, AS REPORTED
OFFERED BY MR. GREENWOOD OF PENNSYLVANIA**

Page 58, line 25, insert before the colon the following: " , except that this proviso shall not apply to any action authorized by law".

OPTIONAL FORM 99 (7-90)

FAX TRANSMITTAL

of pages ▶

To <i>Julie</i>	From
Dept./Agency	Phone #
Fax # <i>295-2342</i>	Fax #

NSN 7540-01-317-7368

5099-101

GENERAL SERVICES ADMINISTRATION

Possible Alternative Language

SEC. ____ Any limitation on funds in this Act for the Environmental Protection Agency or the Council on Environmental Quality shall not apply to:

- (a) conducting educational outreach or informational seminars,
- (b) developing rules, regulations, decrees or orders prior to proposal or issuance,
- (c) the use of Brownfields funds,
- (d) regulatory determinations for mercury emissions from utilities,
- (e) utilizing dredging as a remediation tool,
- (f) implementation of the Food Quality Protection Act,
- (g) implementation of the Regional Haze Program pursuant to the Clean Air Act, or
- (h) cleanup requirements for NRC licensed facilities,
- (i) implementation or administration of interim guidance relating to the Civil Rights Act of 1964

where such activities are [consistent with existing authorities] authorized by law.

*for
except r, r, d, or o
called for solely under
the Rights Act.*

**AMENDMENT TO H.R. 4194, AS REPORTED
OFFERED BY MR. WAXMAN OF CALIFORNIA**

At the end of the bill before the short title insert:

- 1 Sec.———. Any limitation on ^{the use of} funds in this Act for
2 the Environmental Protection Agency or the Council on
3 Environmental Quality shall not apply to activities that
4 are ~~required by the Constitution or~~ authorized by law.

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