

THE WHITE HOUSE

WASHINGTON

ACTION

March 5, 1974

MEMORANDUM FOR: THE PRESIDENT
FROM: KEN COLE
SUBJECT: Clean Air Act Amendments

In response to your directive that we develop a legislative package to remove environmental constraints to increasing energy supplies, we have worked with OMB, the Federal Energy Office and EPA on a package of amendments to the Clean Air Act -- the major and pervasive energy-constraining law.

The amendments on which all concerned agree are:

1. Extending for two years the 1975 interim automobile emission standards.
2. Giving EPA authority to extend for periods up to ten years the deadline for meeting air quality standards in metropolitan areas where controls on transportation are necessary to meet standards.
3. Giving EPA authority to extend compliance dates beyond current statutory deadlines for stationary sources (e. g., power plants) which cannot meet current deadlines.
4. Authorizing assessment of civil penalties for non-compliance (Act now provides criminal penalties only).
5. Authorizing FEO to direct reconversion from oil to coal of selected power plants and other facilities that have the capability to burn coal reasonably available.

ISSUES

Russ Train does not support several additional proposals which are discussed in detail at Tab A:

1. Rescind requirement that EPA promulgate regulations that will insure that air in "clean" regions does not deteriorate significantly.
2. Require explicitly that economic (including energy), social and non-air environmental considerations be taken into account.
3. Limit assessment of civil penalties to the courts -- not permitting assessment by EPA.
4. Permit indefinite use of intermittent control strategies which rely on dispersal of pollutants (rather than reduction) --such as tall stacks and fuel switching.
5. Authorize Federal (EPA) preemption of State emission limitations and deadlines when not enough clean fuel is available to meet State requirements (e. g. , when combined effect of State requirements results in a clean fuels deficit).

Roy Ash, Bill Simon and I believe all these proposals should be submitted both because we believe substantively that their passage would permit the maximum favorable energy impact and because we recognize that the Congress may well not be disposed to accommodate all of our concerns and that we therefore want to go for the maximum position for bargaining purposes.

Russ Train feels most strongly about issues 2 and 4. His memo is at Tab B.

MEETING WITH RUSS TRAIN

Both because the Clean Air Act is EPA's basic responsibility, and because the support of Train for the Administration package is in my judgment important to its success on the Hill, I recommend

that you meet briefly with Train to share with him your substantive and political reasons for making these decisions, and to ensure his personal support for the Administration package on which he will have to have the lead. The timing of this meeting is critical because we need to have these amendments on the Hill as soon as possible after your veto of the energy emergency bill.

RECOMMENDATIONS

1. That you direct that all the proposed changes be submitted.

APPROVE _____ DISAPPROVE _____

2. That you agree to an early meeting with us and with Train and Chairman Russell Peterson to discuss your decisions and our tactics in pushing for these amendments.

APPROVE _____ DISAPPROVE _____

Clean Air Act Amendment Issues

1. Significant Deterioration. Should the Clean Air Act be amended to rescind the requirement that EPA promulgate regulations which will insure that the quality of the air in regions cleaner than required by Federal law not be permitted to deteriorate significantly?

Arguments for the Amendment (Commerce, FEO, FPC, CEQ)

- a. Non-degradation requirements have potentially severe, but largely unknown impacts on the distribution and level of economic activity.
- b. The Clean Air Act already permits the States to have cleaner air than mandated by Federal standards.
- c. While EPA plans to issue regulations to attempt to minimize these impacts it is uncertain whether these regulations will survive court challenge.

Arguments against the amendment (EPA)

- a. The policy, under proposed EPA regulations, merely requires that the States address the issue, it does not require any particular substantive result beyond what the Act otherwise requires.
- b. EPA proposes to present its proposed regulations to Congress and seek its guidance, candidly laying out the pro's and con's thereby avoiding emotional reaction against the Administration.

Submit the Amendment: Yes _____ No _____

2. Economic and Social Impact. Should the Clean Air Act be amended to require explicitly that economic (including energy), social and non-air environmental impacts be taken into account in implementing the Act?

Arguments for the Amendment (Commerce)

- a. The Department of Commerce states that EPA probably has power to give attention to economic, social and non-air environmental considerations, but in fact it has failed to do so.
- b. EPA frequently defends such failure on the grounds that the Act and especially the legislative history preclude consideration of such impacts.
- c. Even assuming adoption of all the amendments now being proposed EPA would still lack explicit authority to consider such impacts in the following areas:
 - . setting primary ambient air quality standards.
 - . setting secondary ambient air quality standards.
 - . setting auto emission standards (other than NO_x).
 - . setting aircraft emission standards.
 - . reviewing and approving state implementation plans.
 - . setting hazardous emissions limitations.

Arguments against the Amendment (EPA)

- a. EPA has already taken such considerations into account and has an economic impact staff specifically assigned this responsibility.
- b. This amendment was presented to EPA for the first time less than 24 hours before completion of this paper and requires detailed legal analyses in order to assess its impact on existing standards and programs. All other proposed amendments were available and discussed weeks in advance.
- c. Current law and the amendments in this package will collectively take economic and social factors into account without "red flag" language such as this.

Submit the Amendment: Yes _____ No _____

3. Courts vs. EPA Assessment of Civil Penalties. The Act is to be amended to provide civil penalties. Should the Act be amended to provide that such penalties be assessed directly by EPA in lieu of the courts?

Arguments for assessment by EPA (EPA, CEQ)

- a. Gives EPA greater clout in enforcing the Clean Air Act.
- b. Increases the credibility of the entire package.
- c. Provides for more prompt enforcement.
- d. Is essential to the exercise of the considerable enforcement discretion that EPA proposes to exercise. Going to court on a multitude of enforcement orders will be very difficult.
- e. Due process for industry is preserved by their ability to obtain court review of any EPA ordered penalties.

Arguments against EPA assessment of civil penalties (Commerce, FEO)

- a. EPA already has ample authority by administrative order, criminal penalties, and civil injunctive relief, with penalties available for contempt of court.
- b. Would bypass existing judicial mechanism and create new quasi-judicial enforcement authority.
- c. Would greatly increase EPA's coercive power to force accession to compliance schedules without objective balancing of equities.
- d. Would shift burden to defendant to bring court action to overturn administrative judgment.

Limit civil penalty assessment to courts: Yes _____ No _____

4. Intermittent Control Strategies. Should the Act be amended to explicitly permit the indefinite use of tall stacks, fuel switching and other measures such as intermittent control systems (ICS) for the dispersion of pollutants--rather than reducing emissions through stack gas scrubbers or low sulfur fuel?

Arguments for the amendment (FEO, Commerce, FPC, CEQ)

- a. Provides for the attainment of air quality standards with minimal capital expenditures.
- b. Permits use of high sulfur fuel and assists in relieving coal deficit.
- c. Can be implemented more rapidly than other control measures.
- d. EPA's proposed alternative would increase power consumption at certain individual plants by 4-6% with a national impact of 1-2%.
- e. Legal question whether Act presently allows EPA to approve ICS.

Arguments against the amendment (EPA)

- a. EPA's position is to allow widespread interim use of such measures until continuous emission controls (scrubbers) can be phased in where needed. EPA plans to issue regulations, permissible under current law, that will allow widespread interim use of SCS, with an ultimate commitment to permanent controls where needed and feasible. This will permit just as much use of high sulfur coal.
- b. Proposal of this amendment could result in the premature promulgation of standards to cover other pollutants in addition to those controlled by the six existing national air quality standards. The most likely pollutant to be covered is sulfates with a possible result that an additional constraint would be placed on energy generating facilities.

- c. Over the long term, the only reason for indefinite use of ICS is the economic cost to utilities.
- d. Other amendments in this package permit widespread interim use of ICS (into the 1980's).

Submit the amendment: Yes _____ No _____

5. Preemption. Should the amendments provide authority for Federal preemption of State emission limitations and deadlines as they apply to a pollution source:

- . If the source cannot get the clean fuel it needs to meet the State-imposed requirements; or
- . When there is a clean fuels deficit and the State emission limitations are more rigorous than necessary to meet national primary air quality standards?

Arguments for preemption (Commerce, FEO, FPC)

- a. Necessary to override rigid requirements by some States which have the effect of preventing other States from reaching even the primary (health) standards.
- b. Permits prompt action--compared to the current approach where States must decide to relax requirements, then get EPA approval.
- c. Allows Governors to escape the political heat of rolling back excessive requirements--which were established before the current fuel shortage and during a period of environmental fervor.
- d. Allows national setting of priorities and deadlines when clean fuels are in short supply.

Arguments against preemption (EPA)

- a. Runs counter to New Federalism.
- b. Even though temporary, runs counter to the philosophy of the Clean Air Act that states should be able to require cleaner air than would be provided by the national standards.
- c. Not necessary since states will have no incentive during a fuel shortage to enforce requirements more rigid than those established by the Federal Government.
- d. Other amendments already agreed to already take Governors off the hook.

Provide for preemption: Yes _____ No _____



United States
Environmental Protection Agency
Washington, D.C. 20460

March 1, 1974

The Administrator

MEMORANDUM FOR THE PRESIDENT

SUBJECT: Clean Air Act Amendments

EPA supports wholeheartedly your efforts to meet the critical energy needs of the Nation. We fully recognize our responsibility to insure that the programs which we administer do not create undesirable obstacles to meeting this objective.

We have taken the initiative of developing and submitting to OMB a number of amendments to the Clean Air Act and have supported several proposals of the Federal Energy Office.

I am personally convinced that the proposals which we have forwarded, together with those we support, provide a strong and positive strategy for bringing greater flexibility to the Clean Air Act while maintaining the integrity of our Nation's commitment to cleaning up the air. These proposals would allow ample use of our domestic coal resources. Indeed, they would provide a level of certainty with respect to environmental requirements that should encourage the use of coal.

While I have raised objections to a number of proposals submitted from other agencies, I am strongly opposed to the proposal to allow permanent use of so-called "intermittent control systems" and to the proposal to include an "economic and social" test, across-the-board in the exercise of EPA's standard setting authorities under the Clean Air Act.

Under the proposals that EPA has submitted or endorsed, widespread interim use of intermittent control systems would be permitted, allowing for an orderly phasing in of permanent control systems where they are needed. My concern with the permanent use of intermittent control systems is that they clearly will not be adequate to protect health from sulfates, for

which EPA will be required to set an air quality standard, and hence will require future costly refitting of the control systems of many power plants. Additionally, permanent use of intermittent control systems will in no way enable us to achieve a greater use of coal.

With respect to the "economic and social" test, we have tried under both current authorities and in our new proposals to insure consideration of such factors where appropriate. The proposed amendment would create a public impression, unnecessarily, that economic considerations are being given new and undue emphasis and indicate that such considerations will now apply to the setting of standards designed to protect the public health, an extension I consider highly inappropriate. The proper way to take such factors into account lies in the setting of timetables for achieving the standards. We should not create the impression that we put dollars above human health and lives.

I believe the proposals we have made or endorsed will allow the Nation to use its domestic coal resources. Most importantly, I believe that they provide a credible approach with a good chance of passage in the Congress. In short, I strongly believe that these proposals are not only a reasonable way to balance environmental and energy considerations at this time but also are the most likely to receive broad public and Congressional support.


Russell E. Train
Administrator