The original documents are located in Box 1, folder "Air Quality - Meeting with the President and Republican members of the Senate Public Works Committee, June 8, 1976" of the James M. Cannon Files at the Gerald R. Ford Presidential Library.

MEETING WITH PRESIDENT AND
REPUBLICAN MEMBERS OF SENATE
PUBLIC WORKS COMMITTEE
Tuesday, June 8, 1976
2:30 p.m.
Cabinet Room (30 minutes)

Re: Clean Air

* P — look at — How economy — How much better — Is it, overall balance, acceptable?

When was Schedule?

SEA — Assembly line — spot checking & emission controls

THE WHITE HOUSE

WASHINGTON

June 8, 1976

MEMORANDUM FOR THE PRESIDENT

FROM: WILLIAM F. GOROG

SUBJECT: Meeting with Minority Members of the Senate Public Works Committee concerning Clean Air Amendments, ~~2:00~~ 2:30 p.m., June 8, Oval Office.

PURPOSE

To meet with Senator Buckley, ranking Minority member, Senate Public Works Committee, in order to discuss the significant deterioration and auto emissions sections of the Clean Air Amendments.

PARTICIPANTS

Senators Buckley, Stafford, McClure, Domenici, Baker.

Frank Zarb, John Hill, Russell Train, Jack Marsh, Jim Lynn, Bill Kendall, Joe Jencks, Bob Wolthuis, Jim Cannon, Max Friedersdorf, Bill Gorog, Elliot Richardson, Bill Seidman.

BACKGROUND

Senator Buckley and the other Minority members of the Senate Public Works Committee are essentially in agreement with the Senate Clean Air Amendments as they are now written. Your decisions, as reflected in the Clean Air Amendments options paper of May 11, indicate differences of opinion with the Senate Minority members, particularly regarding signification deterioration and auto emissions.

Attached at TAB A is a background paper with detailed information on these issues.

TALKING POINTS

A. Auto Emission Standards

DOT-EPA-FEA recently completed a study analyzing health benefits, fuel costs, and economic effects of the Senate Bill versus your original request for a five year freeze and the new Dingell-Broyhill Amendment (Train's original March proposal).

You feel that this study justifies your original request for a five year freeze; but a pragmatic view of the situation indicates that such a position does not have a chance from a legislative standpoint. You therefore have decided to back the Dingell-Broyhill Amendment (Three years at current standard ... then two years at present California standard).

The DOT-EPA-FEA Study shows no appreciable health benefit advantage for more stringent standards. It shows significant fuel loss and cost to the consumer.

B. Significant Deterioration

I am opposed to the significant deterioration section as it is now written for several reasons:

- mandatory imposition of Class I areas decreases State authority and flexibility
- uncertainty over size and impact of buffer regions
- abolition of State discretion to designate Class III areas decreases State authority and flexibility
- mandated use of BACT at least as stringent as current New Source Performance Standards negates value of case-by-case review

Other concerns:

- numerous Governors have echoed considerations mentioned
- FEA concerned over impact on refinery, synthetic fuel, and electric power facility development. Studies are not complete
- Interior concerned over effect on new surface mines
- industry is uncertain about impact on job creation/ capital formation

There are too many doubts raised by responsible individuals. This is not a time to risk additional uncertainty regarding jobs.

TAB A

CLEAN AIR AMENDMENTS

A. Significant Deterioration:

In 1972, the Supreme Court affirmed the decision of a lower court that significant deterioration of air quality in any region of the country was contrary to the intent of the 1967 Air Quality Act to "protect and enhance" air quality. As a result of this decision, EPA promulgated regulations allowing the States to designate regions with air quality better than national standards in one of three categories:

Class I -- pristine areas when practically any air quality deterioration would be considered significant;

Class II -- areas where deterioration in air quality that would normally accompany moderate growth would not be considered significant;

Class III -- areas where concentrated industrial growth is desired, and where deterioration of air quality to National Ambient Air Quality Standards levels would be allowed.

EPA originally designated all areas of the country as Class II, effective January 6, 1975. The States have been allowed in the intervening period to redesignate areas either as Class I or as Class III. In addition, the Federal Land Managers (Secretaries of Agriculture of Interior) have been allowed to propose redesignation of federal lands under their jurisdiction to Class I. To date, there have been no redesignations by States or by Federal Land Managers.

Under current EPA regulations, the States notify the EPA of all areas exceeding national standards for sulfur dioxide and total suspended particulates. All other areas become classified as Class II. Redesignations can be made as outlined above. The States are then responsible for filing State Implementation Plans to indicate how they will act to prevent significant deterioration. Upon receipt of EPA approval of the overall plan, the States are responsible for proper implementation. EPA, however, assures this through the use of a source-by-source preconstruction review system, with which development plans for industrial facilities in any of the specified source categories are reviewed to determine if the source would violate any of the appropriate increments.

Emission limitations are currently based on New Source Performance Standards (NSPS) for those sources covered

by a standard. In other cases, limitations are set at the discretion of the EPA Administrator, after consideration of costs, siting, and fuel availability.

In summary, with the present system, EPA has tremendous potential authority, with flexibility in the use of such authority. Costs and feasibility are major considerations in the determination of emission limitations. Finally, Federal Land Managers provide advisory comment only in connection with the preconstruction review system.

Changes Contemplated in Senate Bill

Under the Senate Bill, the States would submit to EPA lists of areas with air quality better than current standards. Each State would then submit a State Implementation Plan which categorizes these areas into Class I or Class II. National Parks, International Parks, National Wilderness Areas, and National Memorial Parks greater than 5,000 acres must be designated Class I. This provision would presently cover 131 areas, constituting 1.3% of the total U.S. land area.

States are given the option to redesignate Class II areas to Class I status, however, mandatory Class I areas may not be redesignated. Additionally, States would have to require each new major emitting source to apply for a permit before construction. Such permits would be granted only if:

1) Best Available Control Technology (BACT) is used, as determined by the State on a case-by-case basis, taking into account energy, environmental, and economic impacts and costs. (In no case could the application of BACT result in emissions exceeding those allowed under NSPS).

2) In the case of a protest notice from the Federal Land Manager, the Governor of another State, or the EPA, the source demonstrates to the State that the emissions from that source would not contribute to a significant change in air quality.

In addition, the State must deny a permit, regardless of increment violation, if the Federal Land Manager can demonstrate to the State that emissions from a source will have an "adverse impact" on air quality. Conversely, if the Federal Land Manager is convinced that a source will have no adverse impact, regardless of increment violations, the State may issue a without further review by EPA.

Major Differences

The Senate Bill does not provide for Class III designations, which would allow for deterioration up to National Ambient Air Quality Standards.

The Senate Bill provides for more stringent control technology, mandating the use of BACT. The Bill is unclear in this area, and seems to include some contradictory language. The Committee Report states that the Bill "requires that large new sources use the best available technology to minimize emissions, determined by each State on a case-by-case basis." BACT is then defined to mean:

> "an emission limitation based on the maximum degree of reduction of each pollutant subject to regulation under this Act emitted from or which results from any major emitting facility, which the permitting authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable ..."

However, another section of the Bill states that the EPA Administrator or a Governor may seek injunctive relief to prevent permit issuance or facility construction if such facility "does not conform to the requirements" of BACT provisions. This appears to leave substantial control authority in the hands of the EPA Administrator, should he wish to override the decision of a State on what constitutes BACT.

Finally, the Senate Bill would mandatorily establish 131 Class I areas, removing voluntary authority to do so from the States.

Your Position

In your decision on the significant deterioration question, you indicated a desire to adhere to the Administration's original position that the Clean Air Amendments should be amended by deleting the significant deterioration provision. You further indicated the desire to retain flexibility to move to support of the Moss Study Amendment or to support of the Senate provision if Class III areas are allowed.

The Moss Amendment would authorize submission of the significant deterioration/BACT question to a one year study by an Air Quality Commission established by the Bill. During the one year period, the existing EPA regulations described previously would remain in effect.

The Minority Members' Position

In drafting the air pollution control strategy outlined in the 1970 Clean Air Act, the Congress gave careful consideration to the need for improving air quality in more polluted areas. Consideration of a strategy for the protection of cleaner air regions was largely overlooked. The Committee feels it has worked diligently to develop a suitable strategy for dealing with the problem of significant deterioration in cleaner air regions. The Committee held 45 markup sessions on the Clean Air Amendments during this and the previous session of Congress. Much of this time was spent dealing with the significant deterioration provisions.

They suggest that the Senate Bill is preferable to the existing regulations for several reasons:

1) The Committee Bill limits mandatory Class I designations to major parks and wilderness areas, while EPA regulations allow any federal area to be designated Class I at the sole discretion of the Federal Land Managers.

2) The Committee Bill rejected arbitrary buffer zones (areas around Class I regions where development would be predictably curtailed to protect the Class I sector) around Class I areas, while the EPA regulations effect buffer zones. In addition, the Committee Bill bases buffer protection of Class I areas on a case by case basis.

3) The Committee Bill would turn the EPA permit program over to the States with direction that economic and energy impacts be given appropriate consideration.

Discussion

While the Members claim that the above considerations are valid, and that the Senate Bill will allow more State control, greater flexibility, and clarity of application, the Administration's analysis of the Bill indicates contrary results.

First, State control over Class I designations would be decreased by the mandatory imposition of some Class I designations. To date, no federal lands have been voluntarily redesignated to Class I by the Federal Land Managers or by the States. The Senate Bill would automatically impose on the States designation of 131 Class I, amounting to 1.3 percent of total U.S. land area.

Second, the Committee Bill would require a programmatic approach to buffer zones. For example, EPA has already estimated probable buffer distances for various types of industrial facilities.

Third, while the permit authority would be turned over to the States, State authority would be diminished due to the removal of the right to designate areas to Class III. This removes from the States the authority to allow deterioration up to the National Ambient Air Quality Standards. Furthermore, the mandated use of BACT, as decided by the States on a case by case basis, still requires that regardless of economic or energy considerations, emissions could not exceed those allowed under the current New Source Performance Standards.

The statements of numerous Governors echo the concern over the contention that the States would receive greater authority and flexibility under the Bill. This concern has been raised most often regarding the difficulity in determining the effects of buffer areas, and the lack of flexibility to provide for less stringent emissions limitations where needed.

Perhaps the most compelling argument against the imposition of the changes contemplated in the Bill arises from the uncertainty of its final effects on industrial growth. By the estimation of OMB, the Bill is more restrictive than current EPA regulations. There are serious concerns within the Administration and industry alike that the bill would have adverse effects on future economic development, and that it bears a close relationship to Federal land use planning.

As examples, Interior is concerned about the adverse impact on new surface mining operations; and FEA expects adverse effects on the development of refineries, synthetic fuel plants, and electric power generating facilities. Various sectors of industry, in addition to those mentioned above, believe the impact of the Bill would be such as to impose serious constraints on job creation and capital expansion.

B. Auto Emissions

In a message to the Congress on June 27, 1975, you asked that the Clean Air Act of 1970 be amended to extend the current automobile emission standards from 1977 to 1981. This position in part reflected the fact that auto emissions for the 1976 model autos have been reduced by 83% compared with uncontrolled pre-1968 emission levels (with the exception of NOx), and that further reductions would be increasingly expensive to obtain. Both Chambers of the Congress have held extensive hearings on this matter, and the respective Committees on each side have reported Bills that include far more stringent emissions standards than you requested. The present law, without amendment, would establish standards beginning in 1978 that are even more stringent than those contained in the Senate or House Bills.

In light of legislative considerations and evidence compiled by EPA, as well as DOT-EPA-FEA in a joint study, you decided to shift to backing of an amendment to be offered by Congressman John Dingell on the House floor. The same position narrowly failed on a vote in Committee. The Dingell Amendment, which reflects the position of Russell Train at the conclusion of EPA's March 1975 Auto Emissions Suspension Hearings, compares to the Senate position as follows:

	DINGELL ADMENDMENT			SENATE BILL		
	HC	CO	NOx	HC	CO	NOx
	(units=grams/mile)			(units=grams/mile)		
1977	1.5	15.0	2.0	1.5	15.0	2.0
1978	1.5	15.0	2.0	1.5	15.0	2.0
1979	1.5	15.0	2.0	.41	3.4	2.0*
1980	.9	9.0	2.0	.41	3.4	1.0
1981	.9	9.0	2.0	.41	3.4	1.0
1982	.41	3.4	Waiver			

(*1.0 for 10% of light duty vehicles produced)

A recent interagency report by DOT, FEA, and EPA estimated increased total lifetime cost per vehicle ranging as high as $540 and fuel economy losses ranging as high as 4.64 billion gallons, per model year fleet, resulting from imposition of the current Senate Bill rather than the Dingell Amendment. Health and air quality benefits from the Bill's provisions are limited.

Your position in support of the Dingell Amendment as opposed to the Senate Bill is predicated on the limited health benefits and their relation to substantially increased costs due to:

- additional fuel consumption
- higher consumer purchase price
- higher maintenance and replacement costs

W F Gorog

CLEAN AIR KEY ISSUES

The Senate Minority Members will argue that their Bill Amendments return authority to the States. THIS IS NOT THE CASE

1) The Bill eliminates the State option to authorize industrial construction up to present health standard limits. (Class III areas under present EPA Regs)

2) The Amendments requires establishment of Class I (pristine) areas rather than permitting State option.

3) The President's position is the only position that returns authority to the States. (Deletion of Significant Deterioration language fron present Bill)

The EPA has argued that "extensive analysis" has been accomplished to show minimal impact on industrial expansion. We have not been able to obtain copies of such work; and question that sufficient information is available. There clearly is great disagreement as to how the new amendments would impact such expansion. Some work has been done on plant siting for utilities. Even this work avoids discussing the economic feasibility of smaller plants or alternative sites.

The DOT-EPA-FEA Auto Emissions Study shows nog significant health benefits would be derived from standards more stringent than Dinegll-Broyhill. Fuel cost and consumer cost differentials are very significant.