The original documents are located in Box 1, folder "Air Quality (2)" of the James M. Cannon Files at the Gerald R. Ford Presidential Library.

[June 1976]

THE WHITE HOUSE

WASHINGTON

MEMORANDUM FOR: BILL SEIDMAN

FROM: JIM CANNON

SUBJECT: CLEAN AIR ACT ISSUES

We have reviewed the two papers attached to your June 11, 1976, memorandum and believe the papers should be revised substantially before being submitted to the President. A number of suggested changes are outlined in the attachment to this memorandum.

If you agree that changes are needed, I suggest that a drafting group be assembled consisting of staff from OMB, your staff, and Domestic Council -- with consultation with White House Counsel, EPA, FEA, Interior and Commerce as necessary.

I would prefer not voting on either matter until the alternatives and their implications are spelled out more clearly. If you believe the memos must go ahead without revision, I would like to be recorded as follows:

- Reexamination of House Clean Air Bill - Option A (Maintain the present position on the House bill, in opposition to any Federal Requirement for significant deterioration.) I don't believe it would be desirable to signal a change in position until the implications of such a change are better understood.

- EPA's proposed Selective Enforcement Audit (SEA)- Option B (No Action) at least until the question of propriety and merits are better understood.

I understand that no action is expected this week on either the Senate Floor or in the House Commerce Committee on the Clean Air Act Amendments.

Attachment

COMMENTS ON AND SUGGESTIONS FOR CHANGE
IN THE DRAFT CLEAN AIR MEMORANDA

I. Significant Deterioration - Reexamination of the House bill

A. This memorandum should be revised to provide information that would place the alternatives in a better context for decision. Specifically, information should be included on:

1. The acceptability of the remainder of the bill, if either of the proposed alternatives is accepted. There are serious problems with other aspects of the bill that will have to be evaluated in a decision on its acceptability. Attachment A outlines some of these problems.

2. The likely content of the bill that will be presented to the President, as events are now unfolding.

3. The chances of heading off any legislation this session dealing with stationary sources.

4. The status of court cases involving significant deterioration, particularly the impact, if any, of the case described in Mr. Buchen's June 10, 1976, memorandum.

B. The significance of the proposed changes in the House provisions would be easier to evaluate if there was included with each a brief statement of the practical impact if the change is or is not adopted.

C. It would also be helpful if the memorandum described briefly the strategy that will be followed in dealing with the Clean Air Amendments if the President accepts either of the two options presented.

II. EPA's proposed Selective Enforcement Audit (SEA) regulation (Assembly Line Vehicle Testing)

A. Apparently, Mr. Train raised this matter in terms of whether the President may have interfered improperly with Train's regulatory responsibilities when the President concluded that EPA's SEA regulations were not warranted. The question of

propriety should be thought through and the White House Counsel consulted before any decision memo is presented to the President. Perhaps the options of "instructing EPA not to promulgate. . ." should not be offered in the memo if it is of questionable propriety.

B. Hindsight now suggests that the SEA issue was not presented to the President very clearly in the previous decision memo. Specifically, that memo did not present (1) a good evaluation of the SEA question, (2) an indication that EPA is now proposing a substantially revised program compared to that proposed in 1974 and (3) any reference to the fact that a regulatory decision may be involved.

C. The memo now proposed does not evaluate clearly the merits of EPA's latest proposal. For example, it does not show the costs, benefits, and incidence of costs that would result from EPA's proposal compared to alternatives.

Cannon FYI
Air Quality
[June 1976]

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Clean Air

[June 1976]

DRAFT

Not sent

File

MEMORANDUM FOR THE PRESIDENT

FROM: JIM CANNON

SUBJECT: Independent Action by Russell Train

In recent months, there has been wide criticism that the Ford Administration permits Cabinet secretaries and agency heads to speak on their on on policy matters and not in coordination with Presidential policies.

Most of this criticism is unjustified. But here is a case where an agency head did not coordinate a policy statement to Congress, and I believe it is a very serious matter.

After the three clean air meetings which you held on June 8, Bill Seidman promptly set in motion a series of discussions to carry out your directions to

a)

b)

Conner memo attached

Later that day, Russ Train teleponed me that he was sending over a draft of a letter which he had prepared before the meeting and proposed to send to Senator Moss. He indicated that it was urgent because the Senate was going to take up the Clean Air Amendments the following day, June 9.

I checked with Max Friedersdorf and learned that the Senate would not take up Clean Air until the week of June 14.

On the morning of June 9, I talked with Russ and told him that I had turned the letter over to OMB, that it could not be sent until it had been cleared by OMB, and that Senate action was not imminent.

Subsequently I learned _____ and OMB had discussed it with _____ of Train's office and affirmed this decision.

Despite the understanding which I felt that Train and I had that the letter would not be sent until cleared by OMB, Train sent the letter today. In the meantime, Bill Seidman and a group, including OMB, Domestic Council, FEA, and others, under your direction, have been working on just this issue.

Train knew this work was going on. It is my judgment that he sent this letter out deliberately to make his position public even though it might not be in accord with the Administration's position.

The issue is not whether Train's recommendation is right or wrong, but whether an agency should be responsive to your direction of last Tuesday.

In view of this, I recommend that Russell Train be dismissed.

To: Jim Cannon - This is the draft I had in my pocket - I will call you on this first thing in the morning. Russ Train 4/9/76 5:22 pm

Dear Senator Moss:

This letter is in response to your April 15, 1976 request for my comments on your proposed amendment to the significant deterioration section of S. 3219, the 1976 Senate amendments to the Clean Air Act.

I share the concerns expressed by President Ford that the Clean Air Act Amendments be developed with full regard for the need to develop energy resources and for economic recovery. I do not believe your amendment provides the best approach to these goals. It has always been my position that it is vitally important that we take positive action directed to the prevention of significant deterioration of air quality in areas of the country where the air is still relatively clean. I believe that a balanced non-deterioration policy can provide an effective means for protecting the clean air areas of our country and at the same time accommodate future economic development. In my view, this policy will not stop growth, but rather will insure clean growth.

Your amendment would eliminate any statutory approach, leaving in effect the EPA regulations promulgated about one year ago pursuant to order of the Federal courts which, absent statutory action by the Congress, I must vigorously implement. It is my strong belief that a statutory approach is preferable to the Administrative approach which we would be left to under your amendment. Under the latter, there will be strong and continuing uncertainty as the

issue is litigated through the courts. I see no resolution of the litigated issues for at least one year and probably substantially longer. As you know, our regulation is being attacked in Federal Court by both industry and environmentalists -- on the one hand, for being too strong and, on the other, for being too weak. ~~As you know,~~ Furthermore, our regulation limits the application of the significant deterioration policy to certain specified kinds of industrial activities and certain specified pollutants. ~~I believe that~~ There is a risk that in the course of litigation ~~that~~ the Courts may determine that we must substantially expand the coverage of the regulation to other kinds of activities and other pollutants. There is no way to avoid this risk except by clear statutory specification of the activities and pollutants to be covered.

EPA's present regulations on signficiant deterioration provide much more of a role for EPA in the process than I would prefer. In view of the fact that we are proceeding under Court Order, it is impossible to shift responsibility for decision-making to the States to the degree I would find desirable. I do believe we have gone about as far in our regulations in this direction as we could without having the regulations overturned in the Courts. At the same time, both the House and Senate bills effectively remove EPA from the review and permitting process which I consider far preferable to the approach of our regulations. ~~I do not consider it~~

~~desirable for an administrative agency to be making the kinds of social and economic judgments, often essentially political in nature, which the prevention of significant deterioration involves.~~ Moreover, I strongly believe that, given the tremendous diversity of conditions and needs in this country, it is important that maximum responsibility be given to the States in implementing the program.

While the Senate Public Works Committee has done a really remarkable job of addressing a very complex set of issues, S. 3219 would be improved by the addition of a limited "Class III" option, such as those found in both EPA's regulations and H.R. 10498, or, alternatively a limited variance provision achieving the same effect. EPA analyses indicate that virtually all anticipated development over the next decade can be accommodated under the Class II as defined in S. 3219, and that the Class I designations for certain major national parks and wilderness areas where they apply. However, added flexibility to accommodate the major concentrated development that may be desired in the long run in certain areas would be provided--consistent with the existing air quality standards--by a Class III or limited variance option.

While I appreciate that this letter may not address all of the issues, I also understand the urgency for providing a response without further delay. I hope that these ~~views~~ views will prove helpful,

Sincerely,

cc: Schleede, Humphreys

THE WHITE HOUSE

WASHINGTON

June 9, 1976

MEMORANDUM FOR: JIM CANNON
JIM LYNN
BILL SEIDMAN

FROM: JIM CONNOR

SUBJECT: FOLLOW-UP TO MEETING WITH THE PRESIDENT

Yesterday, following the session with the Minority members of the Senate Public Works Committee, the President met with Russ Train.

The following are the two action items which require appropriate follow-up:

1. President agreed with Russ Train's suggestion that he (Train) should advise appropriate members of Congress that there should be some perfecting amendments clarifying the significant deterioration situation, which has resulted from the Supreme Court case mandating EPA regulations in this field. The President said that Train should indicate serious reservations about the way some want to go in this area, and that Train should specifically decline to support the Senate bill.

   We should take another look at the House bill and see whether or not we can support it with, perhaps, some amendments.

2. The President wants another decision memo on the subject of Selective Enforcement Audits for the pollution devices on automobiles. This issue was brought to the President's attention as a part of a bigger package earlier, but he wants to re-look at the issue.

Because the EPB has had the action on the Clean Air Act Amendments, I suggest that Bill Seidman take the lead on following up on both these items. Max Friedersdorf should be consulted prior to Train communicating with the Hill. The President should receive his decision paper on the SEA issue by close of business, Friday, June 11.

cc: Schleede, Humphreys

Clean Air

THE WHITE HOUSE

WASHINGTON

June 9, 1976

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cc: Schleede
Humphreys

Environment
Air Quality

THE WHITE HOUSE

WASHINGTON

June 10, 1976

MEMORANDUM FOR: JIM CANNON
BILL SEIDMAN

FROM: PHIL BUCHEN

SUBJECT: Proposed amendments to the Clean Air Act

After participating with you in the recent meetings on this subject, I would like to call your attention to the pending petition before the U.S. Court of Appeals in the District of Columbia Circuit in American Petroleum Institute, et al. v. Environmental Protection Agency. This petition is for review of regulations by EPA that were issued to impose Federal non-degradation standards on the states. These regulations were issued as a result of the decision in Sierra Club v. Ruckelshaus, 344 F. Supp. 253, affirmed per curiam, by the Court of Appeals which, on review by the Supreme Court, was undisturbed because of an equally divided vote of that court as reported in 412 U.S. 541 (1973).

In the pending petition by the American Petroleum Institute and others, the argument has been made that a more recent decision of the Supreme Court in Train v. NRDC, 421 U.S. 60 (1975), has changed the holding in the Sierra Club case.

If the presently proposed legislation passes with the Moss amendment included, the pending litigation will continue, and petitioners in the pending court case have urged that we support the Moss amendment. Petitioners are quite confident of prevailing, if not in the Circuit Court of Appeals, then in the Supreme Court when the present case reaches that court.

I got the impression from our meeting that no one was particularly willing to recommend to the President that the pending Clean Air Act amendments would be acceptable if the Moss amendment were included, but you may want to reconsider this position in light of the pending petition brought by the American Petroleum Institute and others.

I have copies of the briefs filed by the petitioners in the present court case if you would like to see them.

cc: Frank Zarb

THE WHITE HOUSE

WASHINGTON

June 11, 1976

MEMORANDUM FOR: JAMES CANNON
JOHN MARSH
MAX FRIEDERSDORF
PAUL O'NEILL
RUSSELL TRAIN
RICHARD DARMAN
JOHN HILL

FROM: L. WILLIAM SEIDMAN LWS

SUBJECT: Clean Air Act Issues

In response to a Presidential request, two draft memorandums have been prepared by an interagency group on EPA's proposed selective enforcement audit regulation and on the significant deterioration provisions in the Clean Air Act amendments.

I would appreciate your comments and recommendations on the attached memorandums by c.o.b. Monday, June 14.

Attachments

THE WHITE HOUSE

WASHINGTON

June 11, 1976

Unanswered Questions:
What are Re merits of EPA's
Be current SEA proposal?
Is it a good, fair one?

ACTION

MEMORANDUM FOR THE PRESIDENT

FROM: L. WILLIAM SEIDMAN

SUBJECT: EPA's Proposed Selective Enforcement Audit (SEA) Regulation (Assembly-line Vehicle Testing)

This memorandum responds to your request for a reconsideration of the SEA issue. This issue was included in an early memorandum on the Clean Air Act, a copy which is attached.

BACKGROUND

Legal Authorities - Authorization for a discretionary SEA program is contained in the 1970 Clean Air Act. SEA is one of several mechanisms provided in the Clean Air Act of 1970 for reducing auto pollution. Others include:

Emission standards
Certification (prototype testing)
Recall - (Manufacturer corrects deficient model lines)
Warranties - (Manufacturer corrects deficient cars)
Inspection and Maintenance Programs - (at State or local option)

Purpose of SEA

Test data generated by industry indicates that 95% of production line cars would meet emission standards. EPA questions this data and also believes that industry will turn out dirty cars unless there is the threat of a Federal SEA program. Two reasons supporting the EPA belief are (a) industry's action several years ago to get around emission controls by installing override devices -- which were then removed when challenged; and (b) the extra incentive which industry will have to get around emissions controls in the years ahead -- in order to meet mandatory fuel economy standards which are backed up by tough penalties.

EPA's Initial Proposal - EPA proposed on December 31, 1974 to institute an assembly line test requirement, titled Selective Enforcement Audit (SEA). These regulations would have resulted in a de facto tightening of emission standards for certain cars, because 90% of every model line tested would have had to meet emission standards. In effect, this proposal would have required manufacturers to design all cars to a target cleaner than the standards mandated in the Clean Air Act.

EPA's New Proposal - Following comments by industry and government agencies, EPA developed a revised proposal. Under the new proposal EPA estimates that 800 vehicles will be tested annually. These tests would be performed by the manufacturer under the supervision of EPA. This regulation no longer requires that every car meet the standards. No enforcement action would be taken if at least 60% of the cars tested in a model line pass the test.

Congressional Action - The House Committee has not dealt with this issue, but the Clean Air Act amendments reported by the Senate Public Works Committee require that EPA implement an assembly line test program. If this provision is enacted into law, the requirement would be significantly harsher than EPA's current proposal because the Committee report specifies that every car must pass the test. This could result in a significant de facto tightening of emission standards.

Whether the Senate would delete the provision if EPA's regulations are promulgated is not known. However, Administrator Train is willing to try to convince the Senate to delete the provision if EPA's new regulatory proposal is promulgated.

OPTIONS

Option A: Instruct EPA not to promulgate its revised SEA regulation

Pros:

- Not needed. Manufacturers' test data indicate that 95 of 100 vehicles manufactured currently meet EPA's regulatory requirements.

- Not cost-effective. Virtually no air quality or health benefits would flow from the regulation.

- Is inconsistent with Administration's public commitment against initiating marginal regulatory programs; SEA is a discretionary action.

- EPA should bear the burden of proving that the auto industry is not building cars which meet auto emission standards prior to initiating a test program.

Cons:

- Risks criticism of Presidential interferrance with activities of a regulatory agency.

(2) - Would impair Federal government's credibility with consumers.

- Would retard development of state and local mandatory maintenance inspection programs because of lack of assurance that production line cars actually meet established standards.

(3) - Opens door to unfair competition among auto makers in the marketplace.

(1) - Precludes a cost-effective approach to public health protection.

- Absent regulations, Congress may mandate EPA production line testing and the courts may interpret this requirement as mandating de facto reduction in emission standards. This would have a much harsher impact than EPA's proposed regulation.

Option B: No action; allow EPA to promulgate its revised SEA regulations; work to eliminate mandatory EPA production line testing in Senate bill ? how?

Option C: Instruct EPA to re-propose its SEA regulation and solicit additional public comment prior to promulgation; work to eliminate mandatory EPA production line testing in Senate bill

Option D: Submit a $4 million Budget amendment to provide EPA with resources to verify industry generated production line data

RECOMMENDATION

Approve Option A

Concur:

Dissent:

DECISION

Option A _____

Option B _____

Option C _____

Option C _____

Attachment

THE WHITE HOUSE

WASHINGTON

June 11, 1976

MEMORANDUM FOR THE PRESIDENT

FROM: L. WILLIAM SEIDMAN

SUBJECT: Re-examination of House Clean Air Bill

line missing

In a letter to Chairmen Randolph and Staggers on May 28, 1975, you recommended that the Congress should amend significant deterioration provisions until sufficient information concerning final impact can be gathered. Following your meeting on June 8 with the Senate Minority Leadership you indicated that you wanted a memorandum discussing possible amendments to the House Clean Air Act amendments as reported by the House Committee on Interstate and Foreign Commerce.

I. BACKGROUND

Significant deterioration amendments, as well as current EPA regulations, deal with areas of the Nation which are already "cleaner" than needed to meet EPA established health standards.

Although the House and Senate significant deterioration provisions are somewhat similar in the specific procedural mechanisms and their delegation of authority to State governments in many instances, the two approaches are quite unique. They are both, however, very different from EPA regulations.

Current EPA regulations, promulgated pursuant to action by the Courts in 1973, provides for the States to divide "clean" areas of the Nation -- areas where the quality of the air currently present no health threat -- into three geographical classes -- those which must remain pristine (Class I), those which would be permitted moderate but well controlled growth (Class II), and those areas which would be allowed heavy industrial growth so long as the health standards were not violated (Class III). Reliance upon EPA regulations is somewhat tenuous as the regulations are currently under legal attack by all sides. The outcome

as to the ultimate configuration of the regulations is therefore quite uncertain. Until final judicial review, there could be continued uncertainty in the application of the regulations for both the regulated industries as well as the regulators without clarifying legislation.

The major Senate significant deterioration provisions provide:

- Only for Class I and Class II. There is no provision for Class III which would permit States to select certain areas for heavy industrial growth as long as the national ambient air standards were not violated;

- That best available control technology be applied by the States to major sources on a case by case basis. It is a clear signal that more stringent control than current EPA's new source performance standards is required. This would mean scrubber-like technology.

- That all national parks and wilderness areas greater than 5,000 acres be designated mandatory Class I areas.

The major House significant deterioration provisions provide:

- For a Three Class system similar in overall structure to EPA regulations.

- More stringent increments for pollution increases through arbitrary percentage limitations. For instance the Class III allowable increments are only one-half that permitted in EPA regulations.

- The most stringent definition of best available control technology yet proposed by the House or Senate to be applied by EPA. The definition would require scrubber like technology without any flexibility.

- Makes significant deterioration applicable not only for emissions of sulfur dioxide and particulates as in current EPA regulations but also for the other four pollutants which have national ambient standards.

- Would require that all major sources (rather than sources listed as in the Senate bill and EPA regulations) be covered by the significant deterioration provisions.

- That all national parks and wilderness areas greater than 25,000 acres be designated mandatory Class I areas.

II. SUGGESTED MODIFICATIONS TO THE HOUSE PROVISIONS

The first six amendments below have been examined at the staff level by Commerce, FEA, Interior, and EPA. All the agencies, except EPA, feel that the six amendments are necessary for an acceptable bill. EPA, does not object to the amendments but would not oppose the House bill without them. The six recommended modifications of the House bill are:

- Delete the House allowable increment numbers in their entirety (including the overall 90 percent limitation) and substitute the appropriate increments from EPA regulations. This would ensure flexibility in Class II and III in terms of industrial siting and would permit certain areas to increase their pollutant levels up to the national standards rather than some arbitrary lower level.

- Delete the House provisions requiring that all major sources be covered. Substitute the Senate bill's provisions which would limit the coverage to a list of sources specified in the legislation.

- Delete the House provision that requires the expansion of the current coverage of EPA's significant deterioration regulations from particulates and sulfur dioxide to all pollutants (six) that have national ambient air quality standards. Substitute the Senate provisions which would require examination of the need to include the other pollutants and authority to include them if the Administrator deems it necessary.

- Exempt surface mining operations from the significant deterioration provisions. This will clarify the intent of the House report in a critical area.

- Amend the House bill to indicate that the ambient standards can be violated no more than once a year rather than never. This would provide needed flexibility in light of technical limitations that might, under the current law, result in very limiting conditions on industrial siting and growth.

The major unresolved issue is the use of best available control technology. Commerce, FEA, and Interior, at the staff level, would continue to oppose the requirement for best available control technology. In that instance, EPA's new source performance criteria would remain effective. EPA supports either the House or the Senate definition of best available control technology. Although the agencies state they are willing to evaluate a modification to the House bill, progress toward development of an acceptable approach has not been substantial.

III. COMPARISON OF POSITIONS

A comparison of the House bill as modified above in relation to the option of no new legislation (i.e., leave EPA regulations in effect) would reveal the following:

- If best available control technology were deleted from the House bill, the House provisions for significant deterioration would be very similar in content and impact to EPA regulations.

- If best available control technology remained in the House bill and were enacted, there would be additional capital and energy costs most heavily impacting the electric utility industry.

IV. OPTIONS

Option A: Maintain your present position on House Bill - oppose any Federal requirement for significant deterioration

Pros:

- Reinforces your position that Federal government should stay out of local level-use decisions.

- Provides no quantifiable health benefits since air quality in significant deterioration areas is already cleaner than needed to protect public health and welfare.

- Minimizes the risk of retarding energy development and curtailing industrial growth.

- Could force the Congress to act only on auto emissions since there would be a greater lack of consenus on significant deterioration.

- States already have authority to establish and implement stricter air quality standards if they wish.

- Give you greater bargaining power at a more appropriate time, perhaps after full Senate action.

Cons:

- Could result in getting a bill you should veto.

- Will be opposed by environmentalists, Republican members of the Senate Public Works Committee and Administrator Train.

- Could lead to visual pollution at some National Parks.

- Could result in no legislative clarification of this issue with the resultant effect that the issue would continue to be litigated in the courts and compound uncertainty associated with industrial investment decisions.

Option B: Submit Amendments to the House Bill which enact the significant deterioration program presently Administered by EPA

Pros:

- Places you in a position of not opposing significant deterioration.

- Permits the states to pollute up to the level needed to protect public health.

- Reduces potential energy losses relative to the House and Senate Bills.

- Reduces the uncertainties that might cause retardation of industrial growth due to continued litigation.

Cons:

- Makes it a role of the Federal government to prevent significant deterioration.

- Signals the Congress, prior to going to Conference, that you will accept a significant deterioration provision - could weaken your future bargaining position on this issue.

- Will retard industrial growth and energy development.

V. RECOMMENDATIONS

Agencies favoring Option A:

Agencies favoring Option B:

VI. DECISION

Option A _____

Option B _____

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

The Administrator

June 11, 1976

MEMORANDUM FOR THE PRESIDENT

SUBJECT: Clean Air Act Amendments

I appreciated greatly the opportunity to discuss certain Clean Air Act issues with you on June 8. Consistent with our discussion of the significant deterioration matter, I enclose a copy of a letter I have sent today to Senator Moss stating my position on his amendment. He requested this statement by me almost two months ago. I provided a draft of my letter to Jim Cannon and OMB June 9th and, in view of the imminent Senate consideration of the Clean Air Act, believe I should not further delay transmittal of my views.

Russell E. Train

Enclosure

cc: Jim Lynn
Jack Marsh
Jim Cannon
Bill Seidman

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

The Administrator

June 11, 1976

Dear Senator Moss:

This letter is in response to your April 15, 1976 request for my comments on your proposed amendment to the significant deterioration section of S. 3219, the 1976 Senate amendments to the Clean Air Act.

I share the concerns expressed by President Ford that the Clean Air Act Amendments be developed with full regard for the need to develop energy resources and for economic recovery. I do not believe your amendment provides the best approach to these goals. It has always been my position that it is vitally important that we take positive action directed to the prevention of significant deterioration of air quality in areas of the country where the air is still relatively clean. I believe that a balanced non-deterioration policy can provide an effective means for protecting the clean air areas of our country and at the same time accommodate future economic development. In my view, this policy will not stop growth, but rather will insure clean growth.

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determine that we must substantially expand the coverage of the regulation to other kinds of activities and other pollutants. There is no way to avoid this risk except by clear statutory specification of the activities and pollutants to be covered.

EPA's present regulations on significant deterioration provide much more of a role for EPA in the process than I would prefer. In view of the fact that we are proceeding under Court Order, it is impossible to shift responsibility for decision-making to the States to the degree I would find desirable. I do believe we have gone about as far in our regulations in this direction as we could without having the regulations overturned in the Courts. At the same time, both the House and Senate bills effectively remove EPA from the review and permitting process which I consider far preferable to the approach of our regulations. I strongly believe that, given the tremendous diversity of conditions and needs in this country, it is important that maximum responsibility be given to the States in implementing the program.

While the Senate Public Works Committee has done a really remarkable job of addressing a very complex set of issues, S. 3219 could be improved. One such major improvement, in my view, would be the addition of a limited "Class III" option, such as those found in both EPA's regulations and H.R. 10498, or, alternatively a limited variance provision achieving the same effect. EPA analyses indicate that virtually all anticipated development over the next decade can be accommodated under the Class II as defined in S. 3219, and that the Class I designations for certain major national parks and wilderness areas will not preclude essential development in the very limited areas where they apply. However, added flexibility to accommodate the major concentrated development that may be desired in the long run in certain areas would be provided--consistent with the existing air quality standards--by a Class III or limited variance option.

While I appreciate that this letter may not address all of the issues, I also understand the urgency for providing a response without further delay. I hope that these views will prove helpful.

Sincerely,

Russell E. Train

Honorable Frank E. Moss
United States Senate
Washington, D.C. 20510

THE WHITE HOUSE

WASHINGTON

June 11, 1976

MEMORANDUM TO: JIM CANNON

FROM: GLENN SCHLEEDE

SUBJECT: Russell Train's Letter to Senator Moss

In conversations with Roger Strelow and Train's Assistant, Kerry Clough, right after our last conversation, I learned that Russ Train had put the letter to Senator Moss in final form and signed it.

Apparently he has sent a copy of the letter to the President with a cover memo indicating that he believes the letter is consistent with his recent discussion with the President. I asked, in your name, that the letters not be delivered to the Hill. My request may have been too late because the letters had already left Train's office.

I will let you know if I learn more.

At 1:00 p. m., Mr. Clough called to indicate that the letter to Senator Moss had been delivered over an hour ago and that copies of the letter and the memo to the President had been delivered to the White House Mail Room. I will get a copy to you as soon as I get hold of it.

Quite apart -

THE WHITE HOUSE

WASHINGTON

June 14, 1976

TO: JIM CANNON

FROM: GLENN SCHLEEDE

SUBJECT: CLEAN AIR

Package attached, including recommended response to Bill Seidman.

I don't have George Humphreys' comments on this yet.

SIGNATURE

THE WHITE HOUSE

WASHINGTON

June 14, 1976

MEMORANDUM FOR: JIM CANNON

FROM: GLENN SCHLEEDE

SUBJECT: CLEAN AIR

As you directed last Thursday, I have looked over the Clean Air Act amendment situation and attempted to get up to date on the issues and outlook. I have also reviewed the two decision papers circulated for comment by Mr. Seidman.

Briefly, my observations on the situation are as follows:

1. The Significant Deterioriation issue now being raised for reconsideration cannot be dealt with intelligently unless treated in a broader context of:
   - Acceptability of the rest of the amendments.
   - Practical implications of the various alternatives.
   - Chances of getting amendments accepted.
   - Chances of forestalling action on stationary source amendments this session.
   - Outlook and implication of pending court cases.

2. There is little chance of success on significant deterioriation of other desired changes in the bill unless there is a well-coordinated approach managed on a day-to-day basis from the Executive Office. Such an effort should draw upon all appropriate elements of the Executive Office and White House -- as well as staying in direct touch with Committees, agencies and others sharing Administration concern -- much like any other complex issue is handled when the conflicting interests of several agencies are involved. At this point, the chances of keeping an unacceptable bill from reaching the President's desk looks bleak even if a coordinated effort begins.

3. The memoranda circulated for comment by Mr. Seidman are far too incomplete to warrant conclusions. They are particularly weak in terms of analysis of whether a particular clean air requirement makes sense on its merits.

4. I am still unclear as to whether Messrs. Seidman, Gorog, Metz and Andrews are prepared to let Domestic Council staff participate in developing positions, coordination and drafting papers on a full partnership basis. Unless they are, this could be a very time consuming operation. In order to stay in touch with the agencies and others from which information must come, we'd have to maintain a parrallel operation to theirs on this issue. Agencies will, understandably, be confused as to who is in charge. Even then it would be difficult to stay informed because, if the past is an example, they hold numerous meetings at various levels without inviting anyone from the Domestic Council staff.

Recommendation

In view of the above, I recommend that you sign the attached memorandum to Mr. Seidman, in response to his request for comments on the two draft decision papers. Briefly, this memo:

- Urges that the two decision papers be revised and improved.
- Indicates your preference not to vote until better papers are available but, if revision doesn't occur, asks that you be recorded as favoring:

  - maintaining current position on significant deterioriation. (Principal reasons: consistency with a defensible position taken in the past; uncertainty that a change will put the President in any better position.)

  - taking no action on EPA's proposed Selective Enforcement Audits(SEA) -- i.e., assembly line testing -- thus allowing EPA to proceed. (Principal reasons: Until better information is available on the merits of the alternatives and Buchen's office advises on the legality of the alternatives, no other position is defensible.)

Other Actions

I plan to continue collecting information on the issues involved and will attempt to get involved in the development of the papers.

THE WHITE HOUSE

WASHINGTON ACTION

June 15, 1976

MEMORANDUM FOR: JIM CANNON

FROM: GEORGE W. HUMPHREYS

SUBJECT: Clean Air Act

I recommend that you suggest to Bill Seidman a rewrite of both papers. As they now stand, the President has very little factual basis for a decision. The discussions of the issues contain a great deal of subjective judgment. (See attachment).

If this is not practical, I recommend the following positions:

-- Re-examination of House Clean Air bill - Option B - (Submit amendments)

I think it would be a very poor stance to be opposed to a Clean Air bill. The perception of "responsible corrections" is much more productive than blanket opposition. We should fight the objectionable portions on the merits, rather than try to kill the bill entirely.

-- Selective Enforcement Audits - Option B - (No action)

The option paper is deficient in a number of assertions as well as being of questionable propriety. There is no basis for arguing that the SEA's are not needed or that they are exorbitantly costly. The government does have a responsibility to the people to ensure compliance with the laws; and, the fear of over-regulation notwithstanding.

I believe we must maintain our responsibility in this instance.

I would be concerned further about the President's directing the Administrator in a regulatory matter. We should look much more closely at this option if another alternative is chosen.

Attachment

cc:
Dr. Cavanaugh
Mr. Quern
Mr. Schleede

ATTACHMENT

CLEAN AIR ACT

Specific Points to be Reviewed

SEA Regulations

Page 2, Option A. -- I would eliminate "not needed" under the "pros". The test data supporting this is hotly disputed, if not reputed, by examination and analysis of the original report claiming 95 percent compliance.

Page 2, Option A -- With a total cost (public and private) of $20 million, to assert "not cost effective" is questionable.

Page 3, Option A -- "The burden of proof" point rests entirely on assertions by the industry which have been shown erroneous. EPA's conclusions show that the manufacturers are not in compliance.

Air

THE WHITE HOUSE

WASHINGTON

June 17, 1976

TO: JIM CANNON
MAX FRIEDERSDORF
BILL GOROG

FROM: GLENN SCHLEEDE

SUBJECT: CLEAN AIR AMENDMENTS

Here are three more additions for your Clean Air Act file:

- An article from Air and Water Pollution Report which:
  - summarizes the President's meeting with minority members of Senate Public Works Committee.
  - quotes from an alleged draft of a letter from Mr. Train (which letter has not surfaced).

- A Dear Colleague letter favoring the Moss amendment signed by Senators Tower, Goldwater, Bartlett, Garn, Thurmond and Helms.

- A letter to Senator Scott in support of the Public Works Committee Bill, signed by Senators Baker, Stafford, Domenici, Buckley and McClure.

cc: Jim Mitchell

COURT HOLDS U.S. FACILITIES NEED NOT COMPLY WITH STATE AIR, WATER PERMIT RULES

In two 7-2 decisions handed down last week, the U.S. Supreme Court held that neither the Clean Air Act nor Federal Water Pollution Control Act requires that Federal facilities obtain pollution control permits issued by the states in which they are located. While both laws require compliance with substantive provisions of state air and water laws, Justice Byron White wrote for the majority, neither contains any "clear and unambiguous" statement of Congressional intent to require compliance with procedural rules.

In *Hancock v. Train*, the state of Kentucky sought to require Tennessee Valley Authority, U.S. Army and Atomic Energy Commission facilities to obtain air pollution control permits under Kentucky's state implementation plan. Neither the district court in that case nor the U.S. Court of Appeals for the Sixth Circuit agreed with Kentucky that Section 118 of the Clean Air Act required such permits. In *Alabama v. Seeber*, however, the Fifth Circuit court took the opposite position, prompting the Supreme Court to resolve the conflict.

In *EPA v. State Water Resources Control Board*, both California and Washington argued that Section 313 of FWPCA authorized states with National Pollutant Discharge Elimination System permit programs, approved by Environmental Protection Agency, to require Federal dischargers to obtain state permits. The Ninth Circuit court agreed, and EPA successfully petitioned for Supreme Court review.

Requires 'Clear Congressional Mandate'

Rejecting Kentucky's argument in *Hancock*, White cited "fundamental principles" of law shielding Federal activities from state regulation and insisted that only a "clear Congressional mandate" to contrary could justify such regulation. "We are unable to find in Section 118, on its face or in relation to the Clean Air Act as a whole, or to derive from the legislative history of the amendments, any clear and unambiguous declaration by the Congress that Federal installations may not perform their activities unless a state official issues a permit.

"Nor can Congressional intention to submit Federal activity to state control be implied from the claim that, under Kentucky's EPA-approved implementation plan, it is only through the permit system that compliance schedules and other requirements may be administratively enforced against Federal installations," White said. "Should this nevertheless be the desire of Congress, it need only amend the act to make its intention manifest." White used much the same argument to reverse the Ninth Circuit decision in *EPA v. State WRCB*. Justices Potter Stewart and William Rehnquist dissented in both cases.

President's Meeting

FORD STANDS FAST ON CLEAN AIR POSITION; TRAIN, MUSKIE REGISTER DISSENTING VIEWS

Despite an effort by Senate Public Works Committee Republicans to change his mind, President Ford last week held to his previously announced positions on nondegradation and auto emissions control provisions in Clean Air Act amendments now pending before Congress (A/WPR, June 7, 1976, p. 221), according to sources attending a White House meeting with the Senators, Environmental Protection Agency Administrator Russell Train, Commerce Secretary Elliot Richardson, Federal Energy Administrator Frank Zarb, and Office of Management and Budget Director James Lynn.

Sources told A/WPR that Train was "surprisingly outspoken and aggressive" in his support of the Senate legislation, at least partly because Ford made his views known on the issue without consulting Train. Sources said the EPA chief did win Ford's permission to issue a public dissent, in the form of a personal letter, which was being drafted as A/WPR went to press. "Although I share the desire of the President to avoid adverse impacts on employment and the economy," an early draft of the Train letter states, "I don't believe the Senate and House bills will have adverse effects. They won't stop growth, but ensure that further growth takes place in an environmentaliy acceptable manner."

As for other Administration officials, sources told A/WPR that Zarb made his "million barrels of oil savings pitch" in opposition to nondegradation provisions; Lynn emphasized costs versus benefits and lost capital investment arguments; and Richardson, after admitting he was not up to speed on the bill, voiced opposition to several provisions. Ford himself, sources said, demonstrated a lack of understanding about the legislation, mentioning the proposed Dingell amendment on auto emissions as if it were part of the current law. He also mentioned a possible veto, one source said, "which shows he doesn't have a grasp of the situation, because if he vetoes it, he's stuck with a worse bill," predicated on the Supreme Court nondegradation decision and EPA regulations.

(Continued on following page)

Clean Air Act Debate Continues (Cont.)

Republican Senators, on the other hand, took the "unyielding stance" that it would be the "height of irresponsibility for Congress not to address the nondegradation issue" after it has already been taken up by the Supreme Court. Sen. James McClure (R.-Idaho), in particular, emphasized that amendments such as that offered by Sen. William Scott (R.-Va.) to delete nondegradation provisions altogether "don't stand a snowball's chance in hell" of passage. The Republicans also told Ford that they do not expect to support any amendments which would make the bill more stringent.

On the Democratic side of the aisle, Sen. Edmund S. Muskie (D.-Me.) wasted no time in charging that President Ford's Clean Air Act position will lead to uniformly dirty air across the country and increase pollution-related illness. "President Ford stands firmly for environmental degradation," he said, asserting that Ford has "asked the Congress to reverse the course of national clean air policy set in place in 1967 and 1970."

Ford's proposal concerning nondegradation "abandons the resources of clean areas to the whims of polluters," Muskie charged. "By his own admission, the President did not seek the information available on nondegradation before attempting to reach his decision.... The President shows no concern about the potential adverse effects on national parks and wilderness areas, damage to water resources and vegetation by acid rain, harm to crops, and damage to other values protected by nondegradation provisions.

Muskie Cites 'Phony Job Scare' Approach

"President Ford's approach implies that, in the absence of conclusive information, environmental damage should be allowed to continue," Muskie said. "The only fair interpretation of this position is that the President is opposed to protecting clean air." Muskie went on to charge that the President "is attempting to use a phony job scare approach to defeat the Senate bill. His information is wrong," Muskie said, citing Council on Environmental Quality's estimate that pollution controls created a million new jobs in 1975 and a Federal Energy Administration study which concluded that the Senate nondegradation provision is "unlikely to inhibit economic development..."

On auto emission control, Muskie said Ford's proposal to postpone required reductions in auto emissions until 1982 "would expose 83-million Americans in the most polluted urban areas to 20% greater auto pollution in the 1980s" than under the Senate bill. And the Senate bill could result in as much as 1.5- to 2-billion gallons of fuel savings over cars which would be produced to the Ford... standards."

Muskie also pointed out that the Ford proposal would merely delay for two years the "moderate cost increase associated with pollution control," and said the delay would result in added medical costs due to the higher level of emissions permitted. "The National Academy of Sciences," he said, "found that the annual benefits [of the auto cleanup timetable] may be in the range of $2.5- to $10-billion."

Moss Defends Emphasis on Jobs

Muskie's primary antagonist in the nondegradation debate, Sen. Frank Moss (D.-Utah), defended his emphasis on economic issues, charging that supporters of the Public Works bill have unfairly tried to simplify the issues at stake by stating their arguments in terms of "clean air," "pristine areas," and "air purity." Said Moss, "If it were a simple matter of voting for or against clean air, we could all easily vote for it and go home, patting ourselves on the back for a good day's work. Unfortunately, the issues are more complex. They require a sophisticated economic analysis which goes right to the heart of the continuing problems of energy and jobs.

"The economic implications of the committee bill," Moss said, "are clear enough to those of us deeply involved in this matter, but for the average citizen or the casual observer, the issue is clouded. The temptation for the proponents to simplify and call it a simple environmental matter is almost overwhelming, but it is also unfair and misleading."

On the auto emission control issue, American Automobile Association last week added its voice to the chorus supporting the Dingell amendment to phase-in more stringent standards over a six-year period. AAA said the amendment would save consumers $22.3-billion over the cost of the House Commerce Committee bill's more stringent schedule; and, "when inflation is considered, those savings would rise to $30-billion." According to AAA's John de Lorenzi, "the amendment would also permit the auto industry to adopt more innovative, less inherently polluting power sources."

JOHN TOWER
TEXAS

COMMITTEES:
ARMED SERVICES
BANKING, HOUSING AND URBAN AFFAIRS
JOINT COMMITTEE ON DEFENSE PRODUCTION

United States Senate
WASHINGTON, D.C. 20510

June 4, 1976

Dear Colleague:

Recently the minority Members of the Senate Committee on Public Works sent you a letter urging your support for the nondeterioration provisions (section 6) of S. 3219, the Clean Air bill, scheduled to come to the floor in early June.

Among the reasons advanced for support of section 6 were that it automatically and permanently classifies existing National parks and wilderness areas of 5,000 acres in size as Class I areas in which little or no deterioration of air quality would be permitted. All National parks and wilderness areas established after enactment, regardless of size, would be automatically designated as Class I. In our view, this is a deficiency in the bill. Since one square mile encompasses 640 acres, existing areas as small as nine square miles would be automatically designated as Class I. Potential sources of pollution sixty or more miles away from such areas could be prevented from development if their emissions might violate Class I increments. Therefore, the total area limited by a small Class I area's increment could be more than eleven thousand square miles. Hence, classification of such areas should be considered on a case-by-case basis.

In our view, the preferable course would be to avoid imposition of any policy of nondeterioration pending completion of a thorough study to determine its effects. However, the EPA regulations implementing nondeterioration are already in effect. Although we are not convinced that Congress ever intended that such regulations be implemented under the existing Clean Air Act, they do provide the flexibility necessary to allow their continued effectiveness during the period that a study would be under way.

Among other points advanced in the letter for support of section 6 is that the bill shifts responsibility for protecting air quality to the states from EPA. However, under section 6, the Federal Government has, in effect, a veto power over the granting of any permit for construction of a facility if the Federal Land Manager or the Administrator of EPA merely alleges that emissions from a proposed major emitting facility may cause or contribute to a change in air quality in a Class I area. The burden of proof is on the owner or

operator of such facility to demonstrate that emissions of particulate matter and sulfur dioxide will not violate the infinitesimally small increases in pollution allowed in Class I areas. How the "negative" burden of proof may be met is not explained.

Another reason cited for support of section 6 is that EPA, under the existing Clean Air Act, approves Class I designations proposed by Federal Land Managers. The letter states that, "The Committee bill shifts these responsibilities to the individual states where they belong." However, under the bill, Class I areas are mandatory whereas under the EPA regulations all Class I areas are discretionary. Under the EPA regulations, the state may submit a proposal to redesignate areas as Class I or Class III providing certain procedures are followed. The advantage that the procedure provided in section 6 allows the states is not apparent.

The letter states that nondeterioration affects only new, major industrial sources and that it does not cover shopping centers, residential development or most types of industry. Although the review process to determine whether construction may commence only affects "large industrial sources," construction of other facilities for which a permit is not required will still affect the air quality in the region by "using up" a portion of the available increment. This means that the "next" applicant for a construction permit would have even less of a margin between existing air quality and the limits imposed by the increment.

The letter further states that arbitrary buffer zones are not created around Class I areas. Although buffer zones under section 6 are not mandatory, they are a very real possibility since, as explained above, section 6 requires Federal Land Managers to take affirmative action to prevent the issuance of a permit for any proposed source, regardless of distance from a Class I area, if he determines that the proposed facility may cause or contribute to a change in the air quality in such area.

In summary although we do not necessarily endorse the EPA nondeterioration regulations, vis-a-vis section 6 of S. 3219, it is important to recognize that this proposal is not the well thought out, easily implemented, costless environmental protection measure it is represented to be either by its proponents or in the Committee Report on the bill. Many questions regarding this policy including its relationship to restrictions and development in areas currently not

meeting the national ambient standards are unanswered. Congress should not give its blessing to any such far-reaching policy, the effects of which are largely speculative. We have a responsibility to ensure that the total quality of life of the citizen is not unduly burdened by any single, costly criterion, even the criterion of air cleaner than that required by the national ambient air health standards.

Hence, we have opted to support Senator Moss' amendments to S. 3219 which would delete section 6 and have the National Commission on Air Quality, established under section 37, conduct a thorough and objective study of the whole issue of nondeterioration.

As discussed above, we recognize that this will leave in effect the EPA regulations already promulgated. Although they also have serious defects, we cannot see the logic in possibly compounding such defects by enacting this policy blindly into substantive Federal law. It will be far easier to amend these administrative regulations, if necessary, pending the outcome of the study, than to drag this matter through the Congress again.

We urge your support of the Moss amendments.

Sincerely,

John Tower — Clifford Hansen

Wallace Bennett — Jake Garn

Barry Goldwater — Dewey Bartlett

Jesse Helms — Strom Thurmond

TENNESSEE

United States Senate

WASHINGTON, D.C. 20510

April 29, 1976

The Honorable Hugh Scott
United States Senate
Washington, D. C.

Dear Hugh:

On May 4, the Senate is scheduled to begin deliberations on S. 3219, the Clean Air Act Amendments of 1976. For the most part, this bill adjusts various deadlines for improving air quality established by the 1970 Clean Air Act. These include necessary time extensions for the automobile industry, industrial sources, and for cities in achieving the Act's goals

The Committee's amendments to the Clean Air Act also establish a mechanis to prevent the significant deterioration of air quality in areas of the nation where that quality is cleaner than present federal standards, providing extra protection for national parks and national wilderness areas over 5,000 acres in size. This provision reflects our concern for protecting the clean air resources of the nation from pollution burdens approaching levels indentified as hazardous to public welfare and safety.

As the minority members of the Senate Committee on Public Works, we belie the Committee bill represents a significant contribution to focusing the concept of significant deterioration toward a reasonable goal of environmental protection compatible with expected and needed industrial growth.

Because of the controversy and misunderstanding surrounding this significant deterioration provision, we would call the following specific points to your attention:

1) The Committee bill shifts the responsibility for protecting air qualit to the States from EPA. Under present law and regulations, EPA has author to issue construction permits and determine whether a particular major sou shall be built in a clean-air area. EPA also approves Class I designation proposed by Federal Land Managers. The Committee bill shifts these respon bilities to the individual States, where they belong.

2) The significant deterioration test affects only new, major industrial sources. It does not cover shopping centers, residential development, or most types of industry. The review process in the committee bill is limit to large industrial facilities, such as power plants and steel mills, whos construction sets the character of an area.

3) Arbitrary "buffer zones" are not created around Class I areas. The extra protection provided in the Committee bill only for national parks and national wilderness areas does not preclude growth in adjacent areas.

If a proposed source would exceed the Class I pollution increments, it may still be built if the source can show that its emissions will not damage the air quality values of the park or wilderness area. This determination is made on a case-by-case basis. If it can be shown the source would damage the air quality values of a national park, we believe the source should be built elsewhere.

Despite our efforts to develop a flexible, state-oriented procedure, it is argued that the committee language should be deleted in favor of a study. While we agree that the parameters of this significant deterioration progra should, as the Committee provided for, remain under continuing review, we feel the amendments seeking to postpone Congressional action on significant deterioration are ill-advised.

The Committee's amendments are a response to repeated requests from industry environmentalists, and the Executive Branch that Congress clarify the requirement of significant deterioration, now defined in EPA regulations pursuant to the Court's interpretation of the Clean Air Act of 1970. Those regulations, which provide for an EPA-administered permit program and for virtually unlimited Federal Class I designations, have been in effect since December of 1974. These regulations, which would remain in effect under the amendment offered by Senator Moss, have been under litigation since their promulgation. The Committee provision would provide clarity and definition to the concept of significant deterioration and end the lawsuits over administrative authority which will otherwise continue to frustrate decisions regarding construction of major facilities in clean air areas.

We hope that you will vote as we will to support the Committee position on significant deterioration.

Sincerely,

Howard H. Baker, Jr.

James L. Buckley

Robert T. Stafford

James A. McClure

Pete V. Domenici

cc: Schleede
Humphreys

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

July 19, 1976

The Administrator

MEMORANDUM FOR THE PRESIDENT

SUBJECT: EPA Auto Emissions Testing

On June 8, I had the opportunity to discuss with you EPA's proposed regulation to establish assembly line emission testing requirements for auto vehicles (referred to as the SEA regulations). The regulation was proposed in December 1974, was modified substantially on the basis of agency and public comments, and was sent to interagency review this past January. It has been held up since, primarily because of OMB objections to the general concept.

Meanwhile, the Senate Clean Air Act Amendments include a provision which mandates assembly line testing, instead of the approach of existing law which leaves such a regulation and its scope to the discretion of the EPA Administrator. (It is my understanding that the amendment has the support of the entire committee.) The Senate amendment, if it becomes law, could require EPA to develop a far more extensive and demanding assembly line test procedure than that provided in our proposed regulation. It is presumably for this reason that at least one major auto maker (Ford) has urged promulgation of regulations as soon as possible.

The absence of EPA action on a final regulation has provided the major impetus for the Senate amendment. It has also led to inquiries from the Moss Subcommittee on Oversight and Investigations (House) and a recent letter from Senator Muskie highly critical of our inaction.

I am committed to opposing the Senate amendment as unnecessary when and if our regulations are promulgated. I would have no credibility in opposing the amendment under any other circumstances. Time is running out. The Senate has scheduled the Clean Air Act for next Monday, July 26. In order for me to have any opportunity for effectively opposing the amendment now in the bill, it is essential that EPA's regulation be promulgated immediately. Six weeks have already elapsed since our meeting on the subject and there is no resolution of the basic differences between EPA and OMB.

In order to resolve the matter, I propose to sign the regulation and send it to the Federal Register at noon, July 20th, unless I have direct instructions from you not to do so. (I am leaving that afternoon for a meeting of the International Joint Commission at Windsor, Ontario, and for a Great Lakes clean-up inspection.)

I believe this course of action is essential both to dealing with the Senate bill and also to avoiding what could be a major political embarrassment.

Russell E. Train

cc: Mr. James Lynn
Mr. James Cannon
Mr. William Seidman

cc: Schleede, Humphreys

THE WHITE HOUSE

WASHINGTON

July 20, 1976

ADMINISTRATIVELY CONFIDENTIAL

MEMORANDUM FOR: WILLIAM F. GOROG

FROM: JAMES E. CONNOR JEC

SUBJECT: Selective Endorcement Audit (SEA) Procedures

The President has reviewed your memorandum of July 19th on the above subject and has approved your recommendation not to object to issuance of the SEA program, but to direct Russell Train to combine the certification and SEA programs to prevent bureaucratic duplication. He further approved the recommendation to advise the Administrator to do an analysis of the results of the SEA program after it has been in effect for twelve months, the purpose being to establish the basis for either discontinuing the SEA program or commencing phase out of the certification program.

Please follow-up with the necessary action.

cc: Dick Cheney
Bill Seidman
Jim Cannon

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

July 19, 1976

The Administrator

MEMORANDUM FOR THE PRESIDENT

SUBJECT: EPA Auto Emissions Testing

On June 8, I had the opportunity to discuss with you EPA's proposed regulation to establish assembly line emission testing requirements for auto vehicles (referred to as the SEA regulations). The regulation was proposed in December 1974, was modified substantially on the basis of agency and public comments, and was sent to interagency review this past January. It has been held up since, primarily because of OMB objections to the general concept.

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I believe this course of action is essential both to dealing with the Senate bill and also to avoiding what could be a major political embarrassment.

Russell E. Train

cc: Mr. James Lynn
Mr. James Cannon
Mr. William Seidman

cc: Humphreys
Schleede

Env Air

THE WHITE HOUSE

WASHINGTON

July 26, 1976

ADMINISTRATIVELY CONFIDENTIAL

MEMORANDUM FOR: WILLIAM F. GOROG

FROM: JAMES E. CONNOR jec

SUBJECT: Clean Air

Confirming a phone call to your office, the President has reviewed your memorandum of July 22 on the above subject and has approved your recommendation that we accept Senator Baker's suggestion that the changes be withheld at this point. And if the Senate Bill passes, you should then work with Congressman Broyhill to improve the House version.

cc: Dick Cheney
Bill Seidman
Jim Cannon

cc: Humphreys
Schleede

INFORMATION

THE WHITE HOUSE

WASHINGTON

September 9, 1976

MEMORANDUM FOR THE PRESIDENT

FROM: WILLIAM F. GOROG WFG

SUBJECT: Status of Clean Air Act Amendments

Last month, the Senate finished action on the Clean Air Act Amendments, generally leaving that legislation in the form reported out of the Public Works Committee. Included in the Senate Bill are two sections that are particularly objectionable: an overly stringent set of auto emissions standards that we believe does not balance energy, economic, and environmental needs; and a section dealing with deterioration of air quality in areas cleaner than national standards, which we find to be restrictive of future economic growth.

The House is presently in the midst of consideration of the Clean Air Amendments. Throughout the last three weeks, Congressmen Jim Broyhill and John Dingell had been attempting to work out with Paul Rogers a compromise bill that would have been suitable to environmental and industrial groups. When these efforts broke down, the Bill was brought to the floor. Broyhill and Dave Satterfield began a process aimed at 1) amending the Bill on the floor to bring it into a more acceptable position, or, failing in that effort, 2) killing the Bill by offering over 100 amendments on the floor.

On the first test vote for this strategy, Broyhill and Satterfield lost on an attempt to preclude the imposition of the significant deterioration sections of the Bill until a study of the effects of such sections could be completed. While Broyhill and Satterfield will today offer two or three more test amendments to see if they have the strength to amend the Bill further or to kill it, the chances are that these efforts will fail. This will leave us with a House Bill that contains sections on significant deterioration and other areas which, while different from those of the Senate Bill, are equally objectionable.

Dingell and Broyhill will offer an amendment to substitute less stringent auto standards (a position supported by the Administration), and it appears that this amendment will carry, perhaps by enough votes to ensure movement in conference away from the stringent Senate position.

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While we had continually monitored the possibility of bringing about a Bill that dealt only with changes in the auto standards, this possibility is virtually dead. It is almost certain that we will be faced with a Bill out of conference in late September or early October. The auto standards in such a Bill will probably be acceptable to the Administration and industry, however, on the stationary source issues, we can expect strong pressures from industry to veto the Bill due to the restrictive measures regarding economic development in areas where air quality is better than national standards, and in areas where standards are in violation.