The original documents are located in Box 14, folder "Environment (5)" of the James M. Cannon Files at the Gerald R. Ford Presidential Library.

Copyright Notice

The copyright law of the United States (Title 17, United States Code) governs the making of photocopies or other reproductions of copyrighted material. Gerald Ford donated to the United States of America his copyrights in all of his unpublished writings in National Archives collections. Works prepared by U.S. Government employees as part of their official duties are in the public domain. The copyrights to materials written by other individuals or organizations are presumed to remain with them. If you think any of the information displayed in the PDF is subject to a valid copyright claim, please contact the Gerald R. Ford Presidential Library.

Digitized from Box 14 of the James M. Cannon Files at the Gerald R. Ford Presidential Library

Subj - Environment

THE WHITE HOUSE

WASHINGTON

ACTION

July 9, 1975

MEMORANDUM FOR THE PRESIDENT

FROM: JIM CANNON

SUBJECT: OIL SPILL LEGISLATION

In your Cincinnati speech, you announced that you would transmit to Congress proposed legislation to protect against oil spills.

Attached for your signature is a Message to Congress transmitting the "Comprehensive Oil Pollution Liability and Compensation Act of 1975". It has been edited by Paul Theis and cleared for substance by Phil Buchen, Max Friedersdorf, Bob Hartmann, Jack Marsh and Bill Seidman.

I recommend that you sign the Message for transmittal today. A Fact Sheet will be released by the Press Office.

Approve ___________ Disapprove ___________

TO THE CONGRESS OF THE UNITED STATES:

I am transmitting today proposed legislation entitled the "Comprehensive Oil Pollution Liability and Compensation Act."

This legislation would establish a comprehensive and uniform system for fixing liability and settling claims for oil pollution damages in U.S. waters and coastlines. The proposal would also implement two international conventions dealing with oil pollution caused by tankers on the high seas.

I consider this legislation to be of high national importance as we seek to meet our energy needs in an environmentally sound manner. Those energy needs require accelerated development of our offshore oil and gas resources and the increased use of tankers and deep water ports. This proposal would provide a broad range of protection against the potential oil spills necessarily associated with these activities.

In recent years, we have taken significant steps to limit and control oil pollution in the waters of the United States. Yet, in 1973 alone, there were 13,328 reported oil spills totalling more than 24 million gallons. One-third of the oil spilled is from unidentified sources, where compensation cannot be obtained under existing law. The ability of claimants damaged by spills to seek and recover full compensation is further hampered by widely inconsistent Federal and State laws. Various compensation funds have been established or proposed, resulting in unnecessary duplication in administration and in fee payments by producers and consumers.

This legislation would help protect our environment by establishing strict liability for all oil pollution damages from identifiable sources and providing strong economic incentives for operators to prevent spills. Equally important, the bill will provide relief for many oil-related environmental damages which in the past went uncompensated. For example, State and local governments will be able to claim compensation for damages to natural resources under their jurisdiction.

This legislation would replace a patchwork of overlapping and sometimes conflicting Federal and State laws. In addition to defining liability for oil spills, it would establish a uniform system for settling claims and assure that none will go uncompensated, such as in cases where it is impossible to identify the source of the spill. The legislation provides for a fund of up to $200 million derived from a small fee on oil transported or stored on or near navigable waters.

This legisation would also implement two international conventions -- signed in 1969 and 1971 -- which provide remedies for oil pollution damage from ships. These conventions provide remedies for U.S. citizens under many circumstances where a ship discharging oil that reaches our shores might not otherwise be subject to our laws and courts. Protection of the international marine environment is basically an international problem since the waters, currents, and winds that spread and carry ocean pollution transcend all national boundaries.

In proposing implementation of the conventions, I am mindful of the fact that the Senate has not yet given its advice and consent to either of them. I urge such action

GERALD R. FORD LIBRARY

without further delay. The 1969 convention came into force internationally on June 19, 1975, without our adherence, and the continuing failure of the United States to act on such initiatives may weaken or destroy the prospects of adequate international responses to marine pollution problems.

THE WHITE HOUSE,

EMBARGOED FOR RELEASE
UNTIL 12:00 NOON (EDT) July 9, 1975

Office of the White House Press Secretary

THE WHITE HOUSE

FACT SHEET

Comprehensive Oil Pollution Liability
and Compensation Act

The President is today transmitting legislation to Congress which would: (1) establish a domestic fund to cover claims for oil spill damages, (2) create a uniform nationwide system of strict liability for oil spill damages and settlement of claims, and (3) implement two international conventions dealing with oil pollution caused by tankers on the high seas.

BACKGROUND

Three major changes in the way oil is produced and transported may increase the possibility of oil spills affecting seacoasts, bays and harbors:

-- The beginning of tanker shipments between the terminal of the Trans-Alaskan Pipeline at Valdez, Alaska, and the West Coast.

-- Construction of deep water ports to accommodate supertankers.

-- Expansion of drilling in the Outer Continental Shelf.

Existing and prospective legal arrangements designed to provide compensation to parties damaged by a spill include two international conventions and three Federal laws, all of which limit the liability of certain polluters and establish separate funds to pay clean-up costs and damages not paid by the polluter. In addition, various State laws provide differing degrees of liability and compensation for offshore drilling operations and for vessels within their coastal waters.

These arrangements provide a patchwork of differing and sometimes conflicting [illegible]; [illegible] significantly, various types of discharges of oil and various types of damages are not covered, resulting in a situation in which a damaged party may find recovery impossible; further, a number of compensation funds, each based on a tax on oil, have been established or proposed, resulting in an unnecessary burden on consumers and the oil industry.

A. OBJECTIVES OF THE PRESIDENT'S PROPOSAL

1. Insure that any damaged party (including individuals or governments) will be compensated regardless of the source of the oil spill.

[illegible] liability for an oil spill and the appropriate producing or transporting company.

[illegible]

(OVER)

To meet these objectives, this legislation specifies the types of damages that would be recognized and the procedures to be followed in obtaining recovery. A claimant could recover from a discharger, but if the amount of the claim exceeded the discharger's liability, or if the discharger were not known, the claimant could be paid from a fund of up to $200 million which is derived from a tax of one to three cents on each barrel of oil produced or transported on or near navigable waters.

From the standpoint of the barge, tanker, pipeline or drilling platform owner, the proposal establishes the basis for liability and limits it to specific maximum amounts. Penalties in the form of interest payments and fines would be imposed on dischargers who fail to accept responsibility for prompt settlement of claims in cases where liability is later found to exist.

The claims settlement system and the fund would be administered by the Department of Transportation (Coast Guard).

International Conventions

The two international conventions deal with the liability of tanker owners for damages caused within the territorial sea of any Nation which is a party to the conventions. They were negotiated under the auspices of the International Maritime Consultative Organization, a specialized agency of the United Nations, in 1969 and 1971. The two conventions were submitted for advice and consent of the Senate in 1970 and 1972, respectively.

The 1969 convention, signed but not yet ratified by the United States, enters into force on June 19 without the U.S. as a party. The President's statement calls on the Senate to give its advice and consent to the two conventions.

B. SPECIFICS OF THE PRESIDENT'S PROPOSAL

The Proposed Legislation:

1. Establishes a domestic fund.

   - Having a $200 million ceiling.

   - Financed by a fee not to exceed 3¢ per barrel on certain oil, the amount of the fee to be at the discretion of the Secretary of Transportation.

more

2. Provides specific damages recoverable by broad classes of claimants.

- Damages recoverable:

  -- oil removal costs;

  -- injury to or loss of use of real or personal property;

  -- injury to or loss of use of natural resources;

  -- loss of earnings,

  -- loss of tax revenue for one year.

- Claimants eligible to file:

  -- any agency of the U.S. Government, for oil removal cost;

  -- the President, or any Governor, as trustee for natural resources;

  -- any U.S. citizen who incurs removal costs, damages to property or significant economic loss because of an oil spill;

  -- any State or political subdivision for loss of one year's tax revenue;

  -- certain foreign claimants in limited situations.

3. Establishes strict liability for the discharger with varying limits and limited defenses.

- Limits of liability:

  -- vessels and ships -- the lesser of the $150 per gross ton or $20,000,000;

  -- onshore or offshore facility -- not to exceed $50,000,000, to be determined by the Secretary of Transportation;

  -- in cases of gross negligence or willful misconduct, liability would be unlimited.

- Discharger's defenses:

  -- act of war, civil war, or insurrection;

  -- act of God;

  -- any combination thereof.

(OVER)

4. Sets up a uniform system of claims settlement and appeal, using procedures established by the Secretary of Transportation.

   - Secretary formally designates discharger, if known.

   - Claimant files initial claim against designated discharger.

     -- discharger has 90 days to make settlement; or

     -- he can deny designation.

   - If settlement is not obtained from designated discharger, claimant may:

     -- sue discharger in U.S. District Court; or

     -- file claim against fund.

   - If no discharger is designated or claim falls within scope of 1969 or 1971 international conventions, claimant files against fund:

     -- fund has 90 days to make settlement;

     -- failure to settle claim in requested amount can be appealed administratively;

     -- in some cases, appeal may be made to U.S. District Court.

5. Allows fund to subrogate claims.

   - Fund collects from discharger if found liable:

     -- the damages paid;

     -- administrative cost of claims settlement; and

     -- interest.

   - Fund collects all claims payments damages from any liable third party.

   - Fund collects all claims payments under international conventions.

more

C. SPECIFICS OF THE INTERNATIONAL CONVENTIONS

1. Implements International Convention on Civil Liability for Oil Pollution Damage.

   - Signed by almost 40 countries, including the United States, at Brussels on November 29, 1969.

   - Enters into force without the U.S. as a party on June 19.

   - Establishes strict liability for tanker owners for damages caused within the territory or territorial sea of a contracting party.

   - Limits the shipowners' liability under most circumstances to not more than $15 million. However, in cases where damages result from the actual fault of the owner, there is no limitation of liability.

   - Provides a clear legal remedy for oil pollution damage in many cases where U.S. Courts would otherwise not be able to acquire jurisdiction over a discharger.

2. Implements International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage.

   - Concluded at Brussels on December 18, 1971, as a companion to the 1969 convention.

   - Limited to Nations which are also parties to the 1969 convention.

   - Not yet ratified by the United States, or by a sufficient number of Nations to bring into force.

   - Establishes an international fund -- paid for by charges on oil received within a Party Nation.

   - The international fund can be sued in the courts of Nations Parties to the Convention, and will provide compensation in cases where there is no shipowner liability under the 1969 convention or damage exceeds limits in the 1969 convention.

   - The total amount of compensation available under the 1969 and 1971 conventions can be up to $32,400,000 per incident, and may be further increased up to $64,800,000 by the Fund Assembly, a body created by the convention.

3. Repeals existing Federal liability statutes and funds.

   - Federal Water Pollution Control Act $35 million fund, as it relates to oil spills.

   - Trans-Alaska [illegible]

   - Deepwater Ports Act liability and $100 million fund.

[illegible] proposal.

THE WHITE HOUSE

WASHINGTON

June 18, 1975

MEMORANDUM FOR PHIL BUCHEN
MAX FRIEDERSDORF
ROBERT HARTMANN
JACK MARSH
BILL SEIDMAN
PAUL THEIS

FROM: JIM CANNON

SUBJECT: OIL SPILL LEGISLATION

Attached is a memorandum from Jim Lynn seeking the President's approval for: (1) proposed oil spill liability legislation and (2) a Message to Congress transmitting the legislation and recommending the Senate approve a 1969 international convention fixing limited liability for owners of bulk oil carriers and a 1971 convention establishing an oil spill liability fund.

The 1969 convention comes into effect on June 19, although without U.S. participation, because the Senate has not acted.

The proposed legislation is likely to be perceived as pro-environment, although some will undoubtedly argue that it doesn't go far enough.

May I please have your comments and votes on the issues raised in Jim Lynn's memo (See Tab A):

(1) Should the Administration submit the proposed legislation?

(2) Should the President urge early Senate approval of the 1969 and 1971 conventions?

(3) Should the President transmit the bill or just issue a Message and let the agencies send it up?

On the question of timing, please let me have your views on Lynn's recommendation that it go up on or about Thursday, June 19, the day the convention comes into force. We are planning to send the crime Message up that day, so I recommend we hold off on the oil spill package until next Monday.

Also, may I please have your reaction to the draft Message at Tab B.

I will need your comments by 3:00 p.m. Thursday. Thanks very much.

THE WHITE HOUSE

WASHINGTON

June 18, 1975

MEMORANDUM FOR PHIL BUCHEN
MAX FRIEDERSDORF
ROBERT HARTMANN
JACK MARSH
BILL SEIDMAN
PAUL THEIS

FROM: JIM CANNON

SUBJECT: OIL SPILL LEGISLATION

Attached is a memorandum from Jim Lynn seeking the President's approval for: (1) proposed oil spill liability legislation and (2) a Message to Congress transmitting the legislation and recommending the Senate approve a 1969 international convention fixing limited liability for owners of bulk oil carriers and a 1971 convention establishing an oil spill liability fund.

The 1969 convention comes into effect on June 19, although without U.S. participation, because the Senate has not acted.

The proposed legislation is likely to be perceived as pro-environment, although some will undoubtedly argue that it doesn't go far enough.

May I please have your comments and votes on the issues raised in Jim Lynn's memo (See Tab A):

(1) Should the Administration submit the proposed legislation?

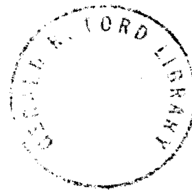
(2) Should the President urge early Senate approval of the 1969 and 1971 conventions?

(3) Should the President transmit the bill or just issue a Message and let the agencies send it up?

On the question of timing, please let me have your views on Lynn's recommendation that it go up on or about Thursday, June 19, the day the convention comes into force. We are planning to send the crime Message up that day, so I recommend we hold off on the oil spill package until next Monday.

Also, may I please have your reaction to the draft Message at Tab B.

I will need your comments by 3:00 p.m. Thursday. Thanks very much.



Tab A

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

JUN 16 1975

MEMORANDUM FOR THE PRESIDENT

FROM: JAMES T. LYNN (Signed) James T. Lynn

SUBJECT: Proposed Oil Spill Liability Legislation

This paper describes proposed Administration oil spill liability legislation which is being finalized and recommends that the proposal be transmitted to Congress, preferably on June 19, the day a related international convention is to come into force. As pointed out below, material will be ready either for direct transmission by you or for joint agency transmission in conjunction with a message from you to the Congress.

This legislation carries out your commitment to Coastal governors last November to the effect that the Administration would propose and work for the enactment of a comprehensive oil spill liability bill. The proposed bill would (1) create a uniform, nationwide system of strict liability for oil spill damages and settlement of claims, (2) establish a domestic fund to pay claims for which the damaged party would not otherwise be compensated, and, (3) implement two international conventions dealing with oil pollution damage by vessels.

BACKGROUND

Three major changes in the way oil is produced and transported will take place in the next few years. Each of these developments will increase the possibility of major oil spills affecting seacoasts, bays and harbors:

- expansion of drilling on the Outer Continental Shelf;

- the beginning of tanker shipments between the terminal of the Trans-Alaskan Pipeline at Valdez, Alaska, and the West Coast; and

- construction of deep water ports to accommodate supertankers.

Legal arrangements designed to provide compensation to parties damaged by a spill include two international conventions and three Federal laws, all of which limit the liability of certain polluters and establish separate funds to pay clean-up costs and damages not paid by the polluter.

The increasing number and size of oil spills, and especially the widespread damage caused by the grounding of the _Torrey Canyon_ in 1967, stimulated the international community to develop a comprehensive approach to oil carriers' liability. The resulting 1969 International Liability Convention fixed strict, although limited, liability for owners of bulk oil carriers, and the 1971 Fund Convention augmented the limited protection in the 1969 convention by providing a supplemental source of funds for the payment of damages caused by tankers. The Senate, concerned about the limited compensation available under these conventions in the event of a catastrophic incident, has not yet taken any action to approve either one even though the 1969 convention comes into force internationally on June 19.

The three domestic laws, all enacted since 1969, are:

1) the Water Pollution Control Act, which covers vessels and offshore and onshore facilities in coastal and inland waters;

2) the Deep Water Ports Act, which covers supertankers and other tankers unloading at such ports as well as the port structures; and,

3) the Trans-Alaskan Pipeline Act, which covers vessels carrying TAPS oil and oil going through the pipeline.

Each of these domestic and international arrangements establishes limits on liability for oil spills and creates separate funds to compensate for damages.

In addition, various State laws provide differing degrees of liability and compensation for offshore drilling operations and for vessels within their coastal waters, and the Federal Outer Continental Shelf Lands Act defers to State law in this respect.

Taken as a whole, these arrangements provide a patchwork of differing and sometimes conflicting compensation for damages; just as significantly, various types of discharges of oil and various types of damages are not covered, resulting in a situation in which a damaged party may find recovery impossible; further, the proliferation of compensation funds, each based on a tax on oil, results in an unnecessary burden on consumers and the oil industry.

In recognition of this situation, Congress included a provision in the Deep Water Ports Act calling for a study of oil spill issues by Justice and a number of other agencies. The interagency group which has been drafting the Administration bill has also participated in the study so that the present proposal will be fully consistent with the study report when it is sent to Congress by the July 3 statutory deadline.

Prior to the congressional mandating of the Justice study and in view of the prospect of a growing number of spills from vessels, the inadequacy and confusion of existing laws, and the need for improved protection in connection with accelerated leasing of Outer Continental Shelf drilling, (all of which gave rise to your commitment to the governors), the Executive Branch launched an interagency effort in the Fall of 1974 to draft legislation that would provide a comprehensive, uniform, quick and equitable arrangement for handling damage claims and be compatible with the international conventions.

<u>ADMINISTRATION PROPOSAL</u>

The bill, which would be administered by the Department of Transportation:

- covers all oil damages including damages to natural resources and loss of earnings;

- requires financial responsibility (insurance, bond, etc.) for all major oil carriers, terminals, and producers of offshore oil;

- establishes a fund with a $200 million ceiling financed by a tax of up to 3¢ per barrel to pay for damages not otherwise covered;

- generally replaces the oil spill liability provisions, funds, and taxes contained in the Water Pollution Control Act, the Deep Water Ports Act, and the Trans-Alaskan Pipeline Act;

- preempts State oil spill laws;

- contains provisions to implement the two international conventions (these provisions are the same as implementing legislation submitted by the previous Administration to the 92nd and 93rd Congresses).

Tab A provides a more detailed description of the proposed legislation.

While the proposed bill is not an environmental protection law in the traditional sense, by establishing strict liability for all oil pollution damages it will provide a strong economic incentive for operators to take all reasonable precautions to prevent oil spills. Equally important, the bill's effect will be to assure compensation for many oil-related damages which in the past went uncompensated. For example, governments will be able to claim for provable damages to natural resources under their jurisdiction. Monies received as compensation will be available for mitigating the environmental harm which resulted from a spill.

During the drafting of the proposal, a number of significant issues were raised by the agencies. It was decided that the Justice study group would be the appropriate forum to examine those issues in detail and make recommendations for their disposition. Agreement has been reached amongst the agencies on all major issues.

The three most significant areas debated were the nature and extent of damages which should be recoverable, the role of the administering agency in overseeing and processing claims, and the source of oil which should be taxed for the fund. Tab B outlines the issues and options considered.

CONGRESSIONAL SITUATION

Senators Magnuson, Jackson and others introduced an oil spill liability bill on May 15 (S. 1754), much of which appears to have been taken from an early draft by the inter-agency group. This bill does not include nor provide for compatibility with the international conventions. No comparable bill has been introduced in the House.

It appears likely that hearings will begin in the Senate by late summer. This will allow Senate committees an adequate opportunity to consider the Administration's proposal and the interrelated recommendations of the Justice study, a study which grew out of the recommendation of a special joint Senate committee representing the Interior, Commerce and Public Works Committees that reported out the Deep Water Ports bill in the Senate.

RECOMMENDATION

We recommend submission of the bill to Congress along with your strong endorsement of early Senate approval of the 1969 and 1971 conventions. As already noted, we suggest that this be done on or about June 19 in recognition of the coming into force internationally of the 1969 convention.

Our recommendation is concurred in by the Departments of Transportation, State, Interior, Treasury, Justice, Commerce and by the Council on Environmental Quality, the Federal Energy Administration, Environmental Protection Agency and the Federal Maritime Commission.

We propose that you either transmit the bill directly with accompanying material explaining it and urging early action on the conventions or that you send a message to Congress

on the matter, leaving transmission of the bill to an agency or agencies. If you choose this latter course, then the four agencies representing the primary interests involved (CEQ, DOT, State and Interior) would like to transmit it jointly. We are separately preparing the necessary materials for both alternatives and will work with White House staff to finalize them.

Either of the foregoing approaches will provide you with a highly visible vehicle to state your strong support for the conventions and provide leadership by proposing legislation with significant environmental overtones, which should facilitate and complement the Administration's energy program.

☐ Approved for Presidential transmission

☐ Approved for Presidential message and joint agency transmission

☐ See Me

SUMMARY OF PROPOSED LEGISLATION

TITLE I - DOMESTIC OIL POLLUTION LIABILITY, COMPENSATION, AND FUND

A. General

Basically, this title establishes a comprehensive fund to cover removal costs and damages resulting from all oil spills in or on the navigable waters and in or on the high seas, and on the shoreline. Such incidents may involve vessels, onshore facilities or offshore facilities such as drilling platforms on the Outer Continental Shelf. Authority to administer the fund is vested in the Secretary of Transportation. Requirements and procedures are designed to be compatible with the international compensation agreements, and the domestic fund may serve as a first line of recovery for U.S. citizens in oil pollution incidents involving foreign vessels.

B. Fund Administration and Financing

The fund (of not to exceed $200 million) will be constituted from a tax of up to 3¢ a barrel on all oil transported into ports or on navigable waters, all offshore oil, and all oil carried in interstate pipelines in the proximity of navigable waters. Additional monies will be provided through the subrogation of claims and through the payment of civil or criminal penalties assessed under this bill.

C. Fund Liability

The domestic fund will cover claims beyond an insured discharger's liability or ability to pay, claims where there is no known discharger or where there is a dispute over the designation or a conflict over settlement, and claims where the mechanisms provided by the international conventions do not provide full recovery.

Damages for which compensation may be recovered include:

1. oil removal costs;

2. injury to real or personal property;

3. injury to natural resources;

4. loss of use of real or personal property or natural resources;

5. loss of earnings resulting from injury to real or personal property or natural resources;

6. associated loss of tax revenue for one year.

Claims may be filed, consonant with the particulars described in this bill, by the following:

1. any agency of the U.S. Government, for oil removal costs;

2. the President, or a governor, as trustee in the case of natural resources;

3. any U.S. citizen who incurs recognized oil removal costs, damages, or significant economic loss because of an incident;

4. any State or political subdivision for recognized loss of tax revenue;

5. certain foreign claimants in limited situations.

D. Owner/Operator Liability

Strict liability is applied for all damages except where the discharge was caused by an act of God and/or an act of war. Total liability of a vessel or ship is limited to the lesser of $150 per gross ton, or $20 million; total liability of an onshore or offshore facility would not exceed $50 million. In cases of gross negligence or willful misconduct of the owner or operator, liability would be unlimited. If gross negligence or willful misconduct on the part of the claimant contributed to the damages, no liability would exist.

E. Financial Responsibility

In general, owners are required to present evidence of the ability to meet the extent of applicable liability by such means as adequate insurance, bonds, or demonstrable self-insurance capability.

F. Notification and Advertisement

Any person causing a discharge incident would be required to notify the Secretary of Transportation. Upon the Secretary's designation of the responsible person or organization, that person or organization would be required to advertise the designation and the procedures by which claims are to be presented. The legislation provides guidelines and time limits for these procedures.

G. Claims Settlement Procedure

(1) Filing of claims - whenever possible, claims shall be filed with the discharger (or guarantor). When the alleged discharger is unknown or denies the designation of discharger, claims are filed directly with the fund. The attached chart illustrates both procedures. Generally, the fund acquires through subrogation the right to recover certain costs from the discharger.

(2) Penalties - incentives are provided for prompt, equitable settlements through time constraints, fines, requirements for payment of expenses, fees, and/or interest.

H. Preemption

This legislation would preempt the existing domestic funds and State laws for oil spill liability.

TITLE II - INTERNATIONAL CONVENTION ON CIVIL LIABILITY FOR OIL POLLUTION DAMAGE

This Title would enact into domestic law the authority needed to carry out the 1969 convention and authorize the President to delegate administration to agencies designated by him.

The 1969 convention provides for strict liability for owners of bulk oil carriers for any pollution damage caused by oil which has escaped or been discharged from the ship. The convention is limited to damages occurring within the territory or territorial sea of a party to the convention.

Liability is subject to stated limitations (expressed in francs, but amounting to approximately $15 million at about the time the convention was negotiated) and limited defenses (act of war, act of God, third party cause, negligence of government authority). Liability is exclusive, i.e., no claims for damage can be made against the owner other than in accordance with the convention. To limit liability in this manner, the discharger or guarantor must establish a fund equal to the limit of liability; claims are then processed through this fund. The convention provides certification and enforcement procedures.

TITLE III - INTERNATIONAL CONVENTION ON THE ESTABLISHMENT OF AN INTERNATIONAL FUND FOR COMPENSATION FOR OIL POLLUTION DAMAGES

This Title similarly enacts into domestic law the substantive provisions of the 1971 convention and provides for Presidential delegation.

The 1971 fund convention was developed to supplement the 1969 liability convention by establishing a fund -- financed by levies on crude and fuel oil received by a participating nation -- to provide compensation to persons suffering and proving pollution damage where there is no liability under the 1969 convention; where the owner is financially incapable of meeting his obligations; or where the owner's limitation of liability is exceeded. Maximum liability of the fund would not exceed approximately $32,000,000 at exchange rates in effect about the time this convention was being negotiated.

TITLE IV - APPORTIONMENT OF CLAIMS AND SUBROGATION, EXCLUSIVE REMEDY, EFFECTIVE DATE, CONFORMING AMENDMENTS

Implementation of the liability convention requires that an owner's fund be distributed to claimants in proportion to established claims. It also provides for any country party to the convention to require by subrogation the rights of any person it has itself compensated for the pollution damage in the incident at hand.

MAJOR ISSUES DISCUSSED BY THE JUSTICE STUDY GROUP

1. Should damages for which the discharger is liable be only those established by the courts (injury to persons and property, with only limited recovery for economic losses and injury to natural resources) or should this proposal follow the trend of recently-enacted statutes such as the Deep Water Ports Act and create liability for additional types of damages, including economic losses and natural resources?

The group felt that recognized damages should clearly go beyond those for which compensation is provided under traditional tort law. After considering all possible types of direct and indirect damages, it was concluded that, in addition to traditional liability, compensation should also be provided in cases involving damage to publicly-owned natural resources, certain types of losses of earnings, and loss of tax revenues. However, such expanded coverage would be applicable only in the case of catastrophic incident, as determined by the Secretary of Transportation.

2. Should the bill require that the administering organization must oversee the processing of all claims from the start or should it provide for the damaged party to turn to the administering organization only after he or she has attempted to settle with private insurers?

The group concluded that the damaged party should look first to a known polluter for recovery first, but, at the same time, felt that there should be available procedures to avoid undue settlement delays (the fund, of course, would provide compensation when the polluter was not known or when damages exceeded his liability or resources). To this end, the bill provides the designation by the Secretary of Transportation of identified polluters who are required to settle claims up to the limit of their liability. Should a designated polluter refuse to settle, the fund will pay the claim, with the designated polluter, if subsequently found liable, being subjected to financial penalties in the form of interest and fines.

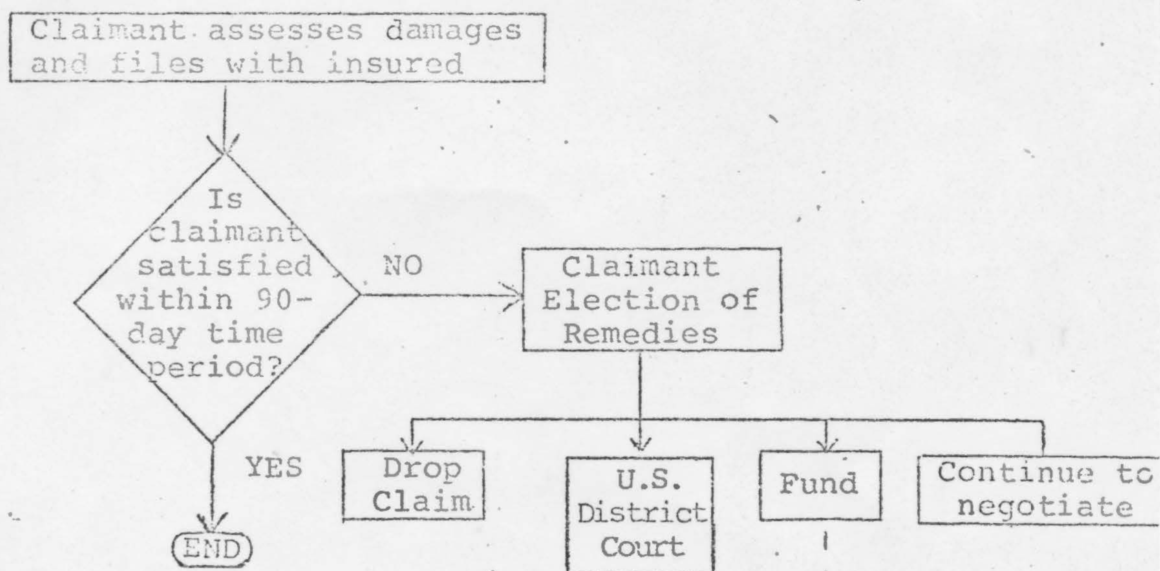
3. Should all sources of oil be assessed or only that oil which is more likely to be involved in a major spill?

The group agreed that all imports should be taxed, but the area of disagreement centered around whether all domestically produced oil should be taxed or only that domestic oil produced from the Outer Continental Shelf, oil shipped by tanker or barge, and oil stored or transported in significant amounts near large bodies of water. It was agreed that the latter, more limited approach should be adopted to provide a direct relationship between the source of money for the fund and likely sources of oil pollution.

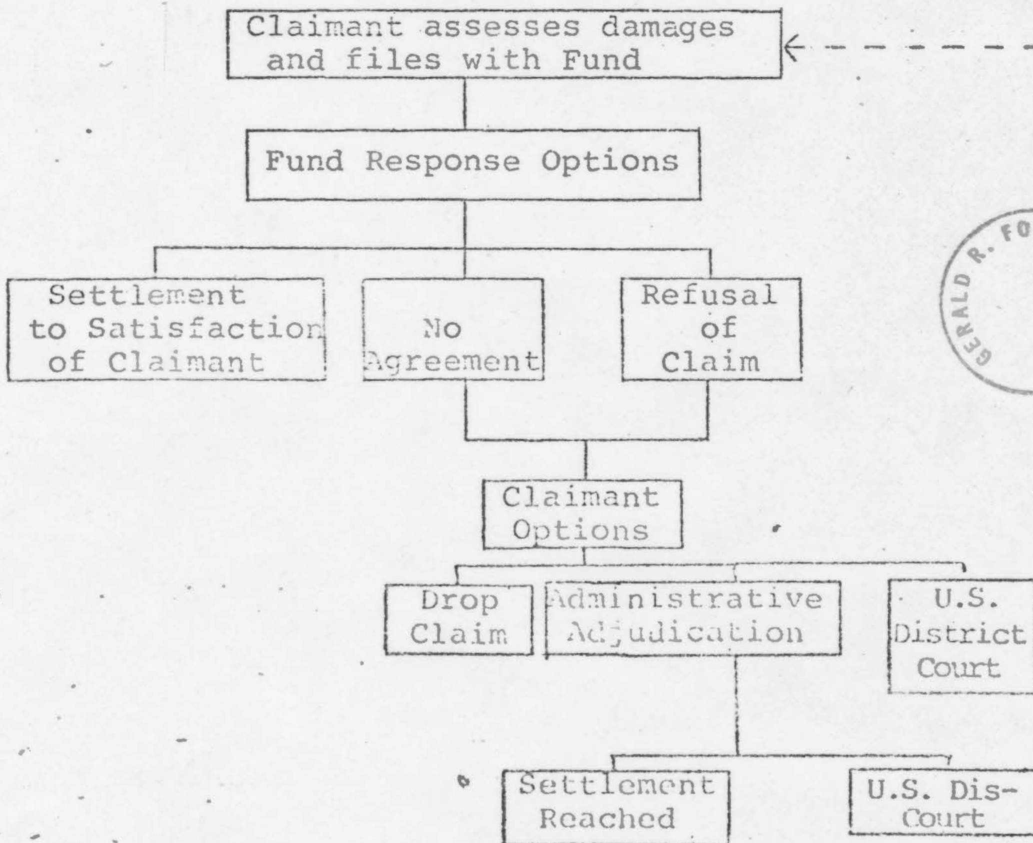
FORD LIBRARY

DOMESTIC OIL POLLUTION
FUND CLAIMANT PROCEDURES

The following chart illustrates the claimant's procedure when the discharger is known:



If the discharger is unknown or a designated discharger denies that designation within 5 days, the claimant files directly with the fund:



Tab B

DRAFT OMB/DUVAL 6/17/75

TO THE CONGRESS OF THE UNITED STATES

I am transmitting herewith to the Congress proposed legislation entitled the "Comprehensive Oil Pollution Liability and Compensation Act."

This legislation would establish a comprehensive and uniform system for fixing liability and settling claims growing out of oil pollution damages in U.S. waters and coastlines. The proposal would also implement two international conventions dealing with oil pollution caused by tankers on the high seas.

I consider this proposal to be of high national importance in connection with our determination to meet our energy needs in an environmentally sound manner. Those energy needs require accelerated development of our offshore oil and gas resources and the increased use of large tankers. This proposal seeks to provide a broad range of protection against the potential oil spills necessarily associated with these activities.

In recent years we have taken significant steps to limit and control oil pollution in the waters of the United States. Yet, in 1973 alone, there were 13,328 reported oil spills totaling more than 24 million gallons. One-third of the oil spilled is from unidentified sources, where

GERALD R. FORD LIBRARY

compensation cannot be obtained under existing law. The ability of claimants damaged by spills to seek and recover full compensation is further hampered by widely inconsistent Federal and State laws. Various compensation funds have been established or proposed, resulting in unnecessary duplication in administration and in fee payments by producers and consumers.

This legislation will help protect our environment ~~Environmentally~~, by establishing strict liability for all oil pollution damages, ~~the bill would~~ which will provide strong economic incentives for operators to prevent spills. Equally important, the bill's effect will be to provide relief for many oil-related environmental damages which in the past went uncompensated. For example, governments will be able to claim for damages to natural resources under their jurisdiction. ~~with monies received as compensation available for mitigating the harm which took place.~~

Based on a Congressionally mandated study by the Attorney General, my proposal replaces a patchwork of overlapping and sometimes conflicting Federal and State laws. In addition to defining liability for oil spills, the bill would establish a uniform system for settling claims and assure that none will go uncompensated by providing a fund of up to $200 million derived from a small fee on oil transported or stored on or near navigable waters.

As I have already noted, the proposed legislation would also implement two international conventions -- signed in 1969 and 1971 -- which provide remedies for oil

pollution damage from ships. These conventions provide remedies for U.S. citizens under many circumstances where a ship discharging oil that reaches our shores might not otherwise be subject to our laws and courts. Protection of the international marine environment is basically an international problem as the waters, currents, and winds that spread and carry ocean pollution simply do not respect national boundaries. In proposing implementation of the conventions, I am mindful of the fact that the Senate has not yet given its advice and consent to either. I urge such action without further delay. The 1969 convention ~~has come~~ [came] into force internationally [last week] without our adherence, and continuing failure of the U.S. to act on such initiatives may weaken or destroy the prospects of adequate international responses to marine pollution problems.

THE WHITE HOUSE

June , 1975

OFFICE OF
THE SECRETARY OF THE INTERIOR

August 18, 1975

TO: Jim Cannon

F.Y.I.

Kent Frizzell

noted
~~noted~~ Jim

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

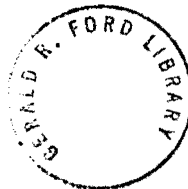
AUG 18 1975

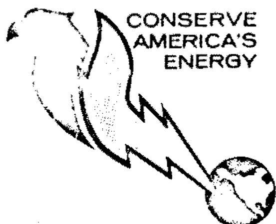
Dear Mr. President:

Following your inquiry at a recent Cabinet meeting concerning the status of the construction of the Trans-Alaska Pipeline System, I have undertaken measures to ascertain whether the construction will be completed on schedule. Mindful of the critical impact on our Nation's energy supplies of any delay in completion of the Trans-Alaska Pipeline System, the Department of the Interior is continuously monitoring the status of the project. Our review focuses not only on the environmental aspects of construction, but also the schedule of construction, and the diligence of the owners in meeting or improving that schedule.

Right-of-way permits were granted to the applicants on January 23, 1974. Construction of the pipeline started in April 1974. At that time, the initial through-put of oil was estimated to occur in mid-1977. Since that estimate, circumstances have occurred which might delay the scheduled completion of the pipeline. The original estimate of the total cost of the pipeline was $4.5 million. The owners' estimate of the total cost is now $6.5 billion. Recently, the owners have terminated the services of Bechtel Corporation, their principal construction manager, and assumed the management role themselves. During the first six months of calendar year 1975, progress was greatly hampered by late deliveries of construction equipment, poor camp facilities, and an inexperienced working force.

In order to assist the owners in expediting completion, the Department last year sought and obtained priorities assistance under the Defense Production Act. This assistance has been most beneficial to construction progress.


GERALD R. FORD LIBRARY

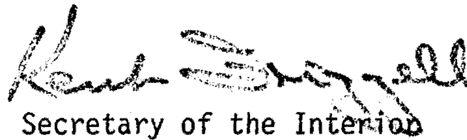


The owners still state that the mid-1977 completion date is attainable. However, due to the unique construction methods required in the Arctic, a delay of only a few months in one of several components of the system may have a substantial effect on the completion date of the project.

To assess the probability of such delays, and to undertake measures to prevent them, I have invited the owners of the pipeline to meet with me to informally discuss our concern that there be no delays in the completion of the project. This meeting has been tentatively scheduled for the last week of August.

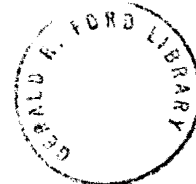
I will keep you apprised of any changes which may occur in the project's construction schedule.

Sincerely yours,



Secretary of the Interior

The President
The White House
Washington, D.C. 20500


GERALD R. FORD LIBRARY

Environment

THE WHITE HOUSE

WASHINGTON

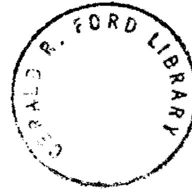
October 28, 1975

MEMORANDUM FOR: GEORGE HUMPHREYS
DICK PARSONS

FROM: JIM CANNON

Would you give me brief comments--a page or two--on this report on EPA?

Many thanks.



Requested

Los Angeles, California
October 13, 1975

James M. Cannon, Executive Director
The Domestic Council
The White House
1600 Pennsylvania Avenue
Washington, D.C.

Dear Jim:

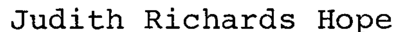
I am enclosing my preliminary report on the scope of the mandate of the Environmental Protection Agency. As you will see, and as we have already discussed, my conclusion is that their mandate is even broader than the area in which EPA now operates, and that it was intended to be so by President Nixon and by Congress.

We are finishing our work here, and will be moving to Washington next week. I look forward to seeing you there on the 27th of this month.

If you have questions or suggestions on this report prior to that time, please feel free to call.

Best personal regards.

Very truly yours,



Judith Richards Hope

MEMORANDUM FOR: JAMES CANNON

FROM: JUDITH RICHARDS HOPE

DATE: OCTOBER 13, 1975

SUBJECT: THE SCOPE OF THE WRIT OF EPA

1. CONCLUSIONS.

EPA was created by Executive Order in 1970, in response to the environmental movement of the 1960's. Its initial broad mandate was quickly enlarged by legislation governing Air, Water, Noise, Pesticides and Solid Wastes. An avalanche of lawsuits resulted in Court decisions which have stretched the agency's authority even further: in many areas EPA's actions have been held to be mandatory, not discretionary.

In a number of instances, EPA has sought to compel states to regulate - for example, in connection with transportation controls - but recent Federal Court decisions have struck down these attempts, thus returning regulatory responsibility to Washington.

EPA has been criticized by Environmentalists (for delays and failures to regulate), by manufacturers (for over regulation), by labor (for threatening jobs), and by scientists and land use planners (for a lack of openness in decision-making and a failure to take an interdisciplinary approach to environmental problems).

EPA, aware of these criticisms, has recently adopted procedures aimed at streamlining the agency and ranking its priorities. In addition, a number of EPA's critics have made recommendations, ranging from investment tax credits to "Phase II-type Revenue Sharing" to improve the functioning while lessening the interference of EPA in the daily lives of citizens. Whether the legislative changes necessary to implement such recommendations will be forthcoming is, however, speculative.

2. ESTABLISHMENT OF THE EVIRONMENTAL PROTECTION AGENCY.

EPA, a recommendation of President Nixon's Advisory Counsel on Executive Organizations, was established pursuant to Reorganization Plan No. 3 of 1970.[1] Various environmental functions of other Federal agencies were transferred to EPA, including those of the Department of Interior, the Federal Quality Administration, the Environmental Health Service, the Bureau of Solid Waste Management, and the Bureau of Radiological Health.[2]

EPA was a hybrid organization from the beginning. Unlike an independent regulatory commission, EPA is an executive agency. Its administrator, appointed by the President, serves at his pleasure. On the other hand, subsequent Congressional enactments gave the Administrator great independence, making his position more akin to that of the head of an independent commission. It has, therefore, become extremely difficult to determine questions of independence versus control over EPA.

President Nixon's message of July 9, 1970 to the Congress recommending the establishment of EPA envisioned a "broad mandate" for EPA.[3] EPA's stated purpose was:

> "To make a coordinated attack on the pollutants which debase the air we breathe, the water we drink, and the land that grows our food. Indeed, the present governmental structure for dealing with environmental pollution often defy effective and concerted action."

GERALD R. FORD LIBRARY

The Presidential message envisioned not only a transfer of principal functions from numerous Federal agencies, but also the development of ecological research, the establishment of standards, and the enforcement of these standards. "The EPA would be charged with protecting the environment by abating pollution."[4] The President stated in conclusion:

> "Ultimately, our objective should be to insure that the nation's environmental and resources protection activities are so organized as to maximize both the effective coordination of all and the effective functioning of each."[5]

The scope of the problems contemplated, and the absolute terms used in the Executive Order establishing EPA, form the basis for the extensive mandate which EPA was given and continues to have at the present time.

The EPA mandate is no less strong because of establishment through executive reorganization rather than Congressional action. Executive reorganization is a powerful tool for "the better execution of laws, the reduction of expenditures, and the increase of Government efficiency".[6]

The extent of EPA's writ must also be viewed in light of the political climate at the time it was proposed. The National Environmental Policy Act (NEPA) had been proposed by Senator Jackson in the summer of 1969 and it went into effect January 1, 1970.[7] That Act spoke in the broadest terms:

GERALD R. FORD LIBRARY

"To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the nation; and to establish a Council on Environmental Quality."

GERALD R. FORD LIBRARY

When EPA was established by Executive Order, EPA was viewed as a "line" organization on the environment, while the Council on Environmental Quality (CEQ) was viewed as a top level advisory group.[8] Although EPA was given certain responsibilities of the CEQ, notably in the areas of ecological systems and research, EPA was not subject to the Environmental Impact Statement (EIS) requirement of the NEPA.[9] This anamolous situation - that the Federal agency most concerned with the protection of the environment was not subject to the Environmental Impact reports required from all other agencies - - has now basically been corrected. The Government Accounting Office, while admitting that the Courts were not demanding it, recommended that EPA should be subject to the EIS requirements, except for the water permit program (discussed below) where the legislation clearly required it.[10] EPA then decided to publish "environmental explanations" for its proposed standards, requlations and guidelines.[11] Eventually, without admitting any legal duty, EPA has abandoned its "environmental explanations" and has begun to prepare EIS's for the broad variety of its actions.[12]

EPA also participates in the EIS program in another way:

it extensively reviews the impact statements of all other agencies. Indeed, the Denver Regional Office of EPA spends the majority of its time reviewing environmental statements and commenting upon them.[13] It is not surprising that there have, therefore, been criticisms of EPA delays considering that from 1970 through June 30, 1975, 6,465 drafts and final Environmental Impact Statements have been filed with the Council on Environmental Quality by the Federal agencies.[14] Moreover, it is important to point out the breadth of subjects covered by these Environmental Impact Statements: they are required, not only in connection with the traditional problems of air, water and noise pollution and solid waste disposal, but in other areas such as: coyote disposal; the destruction of hordes of blackbirds on Southern military bases;[15] requirements by the SEC that corporations disclose compliance with environmental laws when filing a prospectus;[16] the construction of housing facilities by the Post Office Department;[17] and the abatement of flies on the rivers of Maine.[18] On the other hand, when expeditious action is necessary, as was the case with the Price Control Commission, Courts have held that the Environmental Impact Statement requirements may be dispensed with.[19]

Although EPA initially had no enforcement powers, two

1899 statutes dealing with navigable waterways were resurrected and stretched to give EPA power to issue permits regulating the discharge of pollutants into United States waters.[20] The administration of the permit program was authorized by President Nixon's Executive Order No. 11574.[21] When the permit program was challenged in the Courts on the basis that the statutes' purpose was merely the protection of navagability, the Courts refused to strike down the permit program. They regularly held that <u>overriding societal interests</u> in the preservation of a clean and healthy environment required these statutes to be read broadily "in the public interest".[22] The use of the permit program continued until 1972 when the Federal Water Pollution Control Act (FWPCA) was enacted.

3. <u>CURRENT AREAS OF AUTHORITY: EPA</u>.

As of June 1, 1975, EPA administers seven separate statutes, has taken charge from other agencies of four additional areas, and has been given authority pursuant to Executive Orders over an additional eleven areas.[23] The GPO publishes a <u>one inch thick index</u> to the statutes, regulations of, Executive Orders and delegations of authority to the EPA. The <u>major legislative mandates</u> of EPA are found in six major areas: air, water, noise, pesticides, solid waste and radiation.

(A) Basic scheme of Federal Air Quality Control Legislation.

One year after NEPA was enacted, a companion environmental juggernaut, the Clean Air Amendments of 1970, were enacted.[24] Proposed primarily by Senator Muskie of Maine, the Air Act was a response to the states' failure under earlier acts to produce and enforce standards for clean air.[25] Although that legislation reaffirmed that "each State shall have the primary responsibility for assuring air quality within the entire geographic area comprising such State . . ." (42 U.S.C. §1857(c)-2(a)), the Clean Air Act reflects the view that air pollution is a national problem and attempts to achieve a compromise between the desire for effective national control and the need to meet state and local needs. The Act provided for Federally imposed ambient air quality standards[26] and for state-prepared State Implementation Plans ("SIPS") which, in turn, were required to be promulgated by the EPA Administrator if the states failed to submit their plans within the prescribed time.[27] Similarly, the EPA Administrator was to promulgate plans if the SIPS did not meet Federal requirements[28] or if the state did not revise their SIPS in conformance with the EPA Administrator's recommendations.[29] The EPA Administrator could also intervene to enforce the SIPS if the state failed to enforce them effectively.[30]

Without going into the subesequent, voluminous amendments to the Air Act, and the multitude of lawsuits which have been filed against EPA requiring EPA to promulgate regulations

and to take over in areas where the states have failed to act, suffice it to say that Congress and the Courts have increasingly required EPA to regulate and to enforce.[31] By November 25, 1971 EPA had promulgated and amended regulations setting forth requirements for the separation, adoption and submission of SIPS.[32] These regulations governed everything from transportation controls to auto emissions to factory smokestack discharges to the construction of parking facilities. And, at every stage in this Federal take over, EPA has insisted that it has no desire to do so.

The theory of the Air Act is that EPA has ultimate power - we shall have clean air and the states may not be allowed to stand in the way[33] - but EPA need do nothing but approve a plan in the state which shows it has the capability to meet the clean air standards by the time set and maintain them thereafter. The theory is that EPA does not have to require and deny a broad spectrum of permits <u>if</u> the states perform their responsibilities, but it can and must if the states do not.

The result in practice has been that EPA's authority has expanded in all areas. Under the Air Act, as amended, regulations have been promulgated governing, for example, indirect sources of air pollution. These regulations, the so-called "indirect source rules" were to govern such things

as the building of new parking lots and Federally-mandated car-pooling.[34] The outcry against these rules from Congress, the states, and the general public was deafening. Early in 1974,[35] the provisions were withdrawn, one example of successful political and public pressure cutting back on the exercise of EPA's lawful authority.

Recent Court decisions continue to reaffirm the notion that EPA must act where states do not. Brown vs. EPA is a case in point.[36] EPA had attempted to impose sanctions against California for the state legislature's failure to enact certain clean air statutes as against the municipalities and subdivisions within California. The Court of Appeals held that the Clean Air Act of 1970 did not authorize EPA to force state legislatures to legislate and to punish them if they failed to do so. The Court found that such authority, if granted to EPA, would violate basic Federalism concepts of the United States Constitution. Although at first glance the Brown decision appears to be a judicial cut back on EPA's authority, in fact the reverse is true: if EPA can not compel the states to act, it must increasingly "legislate" from Washington. (A petition for certiorari in connection with this case is now pending before the United States Supreme Court.)

The question of the Constitutionality of the Air Act itself has been the subject of recent debate. In testimony

before the Senate Commerce Committee in connection with amendments to the Air Act,[37] Attorney General Levi expressed doubts about the Constitutionality of an Act which empowers the Federal Government, through EPA, to force States to take affirmative legislative action. On the other hand, former Solicitor General Erwin Griswold, testifying before the Senate Judiciary Committee on no-fault legislation, urged that the Air Act is Constitutional in this respect, that Congress has the power to require the States to take action and that this power can be delegated to EPA.

States do have some leeway in setting localized standards under the Air Act. The recent Supreme Court case of Train vs. Natural Resources Defense Council,[38] upheld an EPA interpretation of the Act whereby Georgia was permitted to make individual variances from certain state air pollution requirements. EPA's okay to Georgia had been challenged by NRDC which asserted that no such exemptions even for a limited period of time would be allowed. But, although the state may set limited individual standards in this area, the basic standards are established and enforced by EPA as a matter of both legislative and judicial mandate.

(B) Basic Scheme of the Federal Water Pollution Control Act.

The Water Pollution Control Act (FWPCA) is largely

administered by EPA, just as the Air Act is.[39] This Act directs the EPA to establish research programs and also provide for grants for research and development and for pollution control programs. The amounts provided for such grants, however, are modest when compared with the massive funds for construction of publicly-owned treatment works, for which EPA makes 75% grants.[40] Just as with the Air Act, much of the Federal power is willingly delegated to any state which is able to administer a program which meets the Federal requirements such as emission for effluent standards and ambient standards. Indeed, the ambient standards are set by the state and can and do vary from state to state.[41]

The Water Act was passed over a Nixon veto. When, thereafter, the President sought to limit funds granted pursuant to this Act to localities, the City of New York brought suit to release the funds. In the unanimous opinion of the Supreme Court, in the case of Train vs. City of New York,[42] the Supreme Court held that funds authorized under the Water Pollution Control Act must be available for spending and could not be impounded by Executive Order.

As with the Air Act, under the Water Act a combination of a very broad legislative mandate and the Courts construing this mandate in light of the strong public interest observed, results in enormous responsibilities being thrust upon EPA and these responsibilities are mandatory, not discretionary.

(C) The Noise Control Act of 1972.

Several weeks after the Water Act became law the Noise Pollution Control Act was added to the environmental federalization process.[43] The basic thrust of the Noise Act is that EPA must set noise emission limits for new products that produce considerable noise: for example transportation vehicles, construction equipment and other kinds of motors and engines. As in the case of the Air and Water Acts, emission limitations that apply nationwide are subject to questions as to whether the states or the Federal Government should have the prime responsibility here.

A strange anomaly is occuring in this area. At a recent budget examination, for example,[44] the Department of Transportation was urging a national standard because their constituency and that of the Department of Commerce (the transportation industry) would then have to comply with only one set of standards and the local governments could not set any tighter standards. EPA lawyers, on the other hand, contended that EPA did not want to set national standards because they did not want to preclude the localities from doing it in accordance with their own particular needs and requirements. EPA lawyer Dick Denny stated: "Contrary to popular belief, EPA does recognize some limitations on its jurisdiction."

(D) and (E) Pesticides and Solid Wastes.

Control over pesticides was given to EPA pursuant to the Federal Insecticide, Fungicide and Rodenticide Act as amended.[45] Jurisdiction over solid waste disposal was granted by means of the Resource Recovery Act of 1970.[46] Each of these Acts state the formula for Federal compliance somewhat differently from other pollution laws: that is, Federal agencies are required to comply with Federal guidelines, and planning grants are made available, for those who comply. In the case of pesticides, the burden of proof is put on the manufacturer to prove that products are safe, rather than on the Federal Government to prove that they are not safe. Although these are important areas of responsibility for EPA, they have not been in the forefront of EPA activities as have the air and water regulations.

(F) Radiation Controls.

Pursuant to Reorganization Plan No. 3, of 1970, certain provisions of the 1964 Atomic Energy Act, as amended, were transferred to EPA.[47] The reason for the transfer was that the Atomic Energy Commission, formerly responsible for radiation controls, was also a strong advocate of nuclear power. Therefore, in environmental terms, it was felt that the controls should be transferred to an agency where there would be no "conflict of interest," namely EPA.[48] Now, however, AEC's responsibilities are divided between ERDA, (development

of nuclear energy) and the Nuclear Regulatory Commission (NRC), (radiation control). It has been strongly suggested that EPA could and should withdraw from radiation regulations, and transfer their authority to the Nuclear Regulatory Commission.[49] Such a transfer would avoid Federal overlaps and might save money.

4. <u>EPA-CRITICISMS AND RECOMMENDATIONS</u>.

This analysis of EPA's "broad mandate" from President Nixon and of the even broader specific mandates of the Air, Water, Noise and Solid Waste Acts indicates that EPA's current actions are fully supported by executive and legislative authority. As noted, this conclusion has been regularly affirmed by the Federal Courts. While EPA has made invaluable contributions to cleaning up our environment, it has also been subject to sharp criticism from both the left and the right. A number of specific recommendations, from streamlining its Federal operations to increased state responsibility for pollution-solving, have been made. For example:

(A) <u>EPA itself</u> acknowledges that (1) there are overlaps within the agency and (2) that it is physically impossible for EPA to meet all of the requirements which have been legislatively mandated, particularly under the Air and Water Acts.[50]

FORD LIBRARY

Al Alm, EPA's Assistant Administrator for Planning and Management, states that one solution (and one which has been EPA's priority for the last three years) has been an attempt to

obtain and issue more grants to the states to have them take over EPA's job of regulation and enforcement. This would cut down on EPA's direct staff and budget, according to Alm, but would require additional grant funds. For example: under the Water Program there is $40,000,000 now allocated for a state grant program; Alm sould like $60,000,000. Under the Air Pollution Program, $51,000,000 is allocated; he suggests $80,000,000. Under the Drinking Water Program there is now $10,000,000 allocated; Alm suggests $32,000,000. Alm suggests that these changes are part of the "new Federalism": EPA believes that all states should take over prime responsibilities in these three areas and become fully involved in regulatory environmental policy making. He notes that EPA has recently established three committees (on Air, Water and Drinking Water) which have one representative from each region and hold regular meetings in Washington.

EPA couples these recommendations and requests for additional funds with a desire to reduce the number and complexity of regulations they are now administering. John Quarles, Jr., Deputy Director of EPA, states that EPA's efforts in this direction are required to improve the agency's performance.[51] Criticism of EPA efforts at reduction was immediate from conservationists and from certain Congressional staffers, including Leon Billings, senior staff member of the Senate

Subcommittee on Environmental Pollution, and a prime draftsman of the Air and Water Acts.

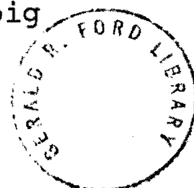
(b) Conservationists have been critical of EPA because of agency delays and agency grants of waivers and extensions of time in which to meet pollution deadlines. (E.G.: auto emission standards.) They suggest that the delays are the product of industry who are using such devices as the Environmental Impact Statement requirements to continue "to keep profits up while polluting our environment".[52]

Congressional criticism of EPA comes not only from the Muskie and Jackson forces, criticizing the agency's delays in complying with legislative demands, but also from conservative Congressmen such as Del Latta (Republican, Ohio), who feel that EPA's regional offices are "totally out of hand". Latta notes EPA action in Antwerp, Ohio, where a regional staffer applied Federal waste disposal standards so strictly that instead of being able to obtain the requested 75% money to construct a modern sewerage system, Antwerp was left with open cess pools.[53]

On June 21, 1975 the House Appropriations Committee criticized EPA's organization in similar terms: "The Agency appears to some degree to operate more as fifteen separate entities rather than as a centrally-directed organization working toward a common goal."[54] (The House Committee recommended that EPA apoint an Assistant Administrator for field operations.)

(C) Land use planners have criticized not only EPA but the whole NEPA set-up as taking an unduly restrictive view of environmental problems. Professor Don Hagman of UCLA, for example, stresses that EPA is not "comprehensive" and that there are no linkages between actions which the agency takes in connection with air, water and waste disposal. Thus, for example, waste disposal needs and permits often conflict with air quality standards and permits and may also conflict with drinking water requirements.[55] Moreover, Hagman contends that EPA and the EIS process "double-weight" the environment: this is the only factor which all agencies must consider before taking any action. Hagman suggests a comprehensive approach (akin to the A-95 process established by OMB) to attempt to secure better coordination of Federal EPA programs.

(D) Labor is sharply critical of EPA, contending that the strong push for environmental controls is threatening jobs throughout the country.[56] On the other hand, Russ Peterson, Chairman of the Council on Environmental Quality, points to new jobs being created in the environmental industry. His survey shows that although a maximum of 19,500 jobs have been lost through environmental regulations, over 1,000,000 jobs have been created in such areas as providing steel for sewage treatment plants and developing scrubbers for manufacturers' smokestacks.[57] Peterson's view is this: free enterprise can do the job if given adequate incentives. For example, if producing cool air (air conditioning) is big


GERALD R. FORD LIBRARY

business, then producing clean air could also be big business, particularly when the Government "whip" is added to investment or tax incentives.[58]

At least one labor representative shares this view. Versia Metcalf, an international representative for the UAW, as well as a dedicated "conservationist" (as distinguished by her from "environmentalist") recommends that a sort of "Phase II revenue sharing" be set up to be administered by EPA. Once EPA has set uniform national standards for air and water quality, Metcalf urges that EPA should then merely administer grants to states and localities having plans for meeting these standards. The standards would be enforced at the local level.[59] Her present view of EPA: "EPA stinks."

The Council on Environmental Quality has added some recommendations in this area. Russ Peterson, testifying before the House Subcommittee on Fisheries on September 26, 1975, recognized two specific problems which affect both NEPA and EPA: (1) the enormous length of Environmental Impact Statements and (2) the delays resulting from the processing of these statements. He suggests legislative or administrative rules requiring short EISs, a recommendation also made by Dick Fairbanks, a former Associate Director of the Domestic Council.

(E) <u>The National Conference of Governors</u> (1975 to 1976 Policy Positions Report) also sets forth a number of guidelines for Congressional consideration in amending EPA's duties under

the Air and Water Acts. Among these are:

1. Legislatively approved grants of waivers for air pollution control technology. This suggestion would preclude EPA from setting absolute national standards without some state and local government agreement.

2. An increase in civil penalties for violations from $5,000 per day to $25,000 per day.

3. With respect to the Water Act, EPA should abolish the three-step, time-consuming construction grant application program and replace it with a simplified one-step process.

4. Finally, the Governors supported HR-2175 which would amend the Federal Water Act to authorize the states themselves to administer the construction grants program.

(F) The National Association of Manufacturers has been extremely critical of EPA, and a recent NAM publication shows a "negative effect" on industrial growth resulting from EPA's non-degradation regulations.[60]

The September, 27, 1975 issue of The Nation, reported on EPA's activities in connection with the increase in transit fares from thirty-five to fifty cents in New York City. EPA estimated that the increase would result in a 10% ridership reduction, 95,000 additional vehicles entering Manhattan each day, and concomitant increase in air pollution. Henry Ford criticized EPA's activities, and proposed instead that

the Federal Government freeze emission standards for the next five years. EPA could then deal, not with car emissions, but with alternatives to the car as a means of transportation. He proposed: "foot power, sidewalk widening, mini-vehicles, and streets that would be open to delivery trucks only a limited number of hours."

(G) The National Academy of Sciences has made recommendations regarding EPA, particularly with respect to regulating chemicals in the environment.[61] Their Committee recommends:

(1) Formalize the decision-making process to ensure increased openness and receptivity to the knowledge, expertise and considered judgments of the non-Federal public directly involved. This would include, at a minimum, a process described and published in the Federal Register for various steps in the decision-making process.

(2) Prior to new regulations taking effect, Federal officials could consult again with a broad variety of the non-Federal public at two levels: (a) when regulatory action is first considered; and (b) after marshalling of pertinent facts, but before final decision.

(3) Continuing education of the general public on upcoming decisions by EPA was considered crucial. An affirmative education program was recommended.

(4) The education of the EPA decision makers was

also strongly urged.

In summary, the National Academy of Sciences recommended that EPA make its decision-making more planned and less reactive to outside events through the use of committees of experts and through the employment of a generic rather than an ad hoc procedure.

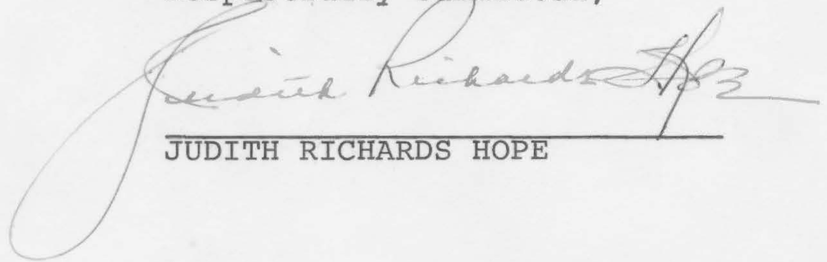
(H) A number of experts have suggested economic incentives to encourage localities and businesses to clean up the environment "voluntarily". The present EPA complex of statutes and Executive Orders is full of "sticks" with very few "carrots". Many of the people interviewed by this writer felt that the Federal regulation could be decreased and the size of the EPA lessened if, for example: investment tax credits were provided for the transition from polluting to non-polluting clean devices. A "small claims court" for the small manufacturer or small town could be established wherein challenges to EPA directives and to delays in the EIS process could be raised inexpensively and expeditiously. A heavy tax might be imposed upon polluters in "bad air" areas, a less heavy tax on polluters in "clean air" areas. (This proposal, of course, would have the disadvantage of encouraging "dirty" industries to move to "clean air" areas.)

The already-noted concepts of "Phase II-type revenue sharing," and increased state grants with a concomitant with-

drawal by EPA from enforcement are additional economic tools which might be employed.

All of these incentives and recommendations would, however, require legislative changes. Whether the present Congress would enact such changes is doubtful.

Respectfully submitted,



JUDITH RICHARDS HOPE

FOOTNOTES

F

1. 42 U.S.C.A. §4321 (note).

2. A complete listing of the functions transferred can be found in Reorganization Plan No. 3 of 1970, 42 U.S.C.A. §4321 (note).

3. *See*: Nixon message 42 U.S.C.A. §4321 (noted at p. 405).

4. *Ibid.*, at 407.

5. *Ibid.*, at 409.

6. "Executive Reorganization" Powers are delegated by Congress to the President at 5 U.S.C.A. §§901-903 (Sept., 1966, based on Acts passed in 1938 and 1949).

7. Pub. L. 91-190, 83 Stat. 852, 42 U.S.C.A. §4321, *et seq*.

8. Nixon Message of July 9, 1970, at 42 U.S.C.A. §4321 (note, p. 407).

9. *See, for example*, *Anaconda v. Ruckelshaus*, 482 F.2d 1301 (10th Cir. 1973), and *Portland Cement Assn. v. Ruckelshaus* 158 U.S. App. D.C. 308, 496 F.2d 375 (1973).

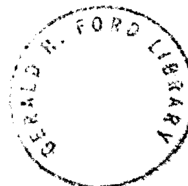
10. GAO report, B-170, 186 (1973).

11. 38 Fed. Reg. 15653 (1973).

12. 39 Fed. Reg. 16186 (1974).
    39 Fed. Reg. 37119 (1974).

13. Interview with Leon Billings, Sally Walker and Karl Braithwaite, Staff Assistants for Senate Sub-Committee on Environmental Pollution [Senator Muskie, Chairman], October 3, 1975.

14. Remarks of Russell W. Peterson before the Sub-Committee on Fisheries and Wildlife and the Environment, House Committee on Merchant Marine and Fisheries, September 26, 1975, p. 19.



15. Society for Animal Rights v. Schlesinger, 7 E.R.C. 1686 (February 13, 1975).

16. National Resources Defense Council v. S.E.C., 7 E.R.C. 1199 (District of Columbia, December 9, 1974).

17. Chelsea Neighborhood Assns. v. U.S. Postal Service (S.D.N.Y., February 2, 1975).

18. As reported in L.A. Times, September 5, 1975.

19. Cohen v. Price Commission, 337 F.Supp. 1236 (S.D.N.Y., 1972).

20. See: 33 U.S.C.A. §§403 and 407.

21. 33 U.S.C.A. §407 (note).

22. U.S. v. American Cyanamid Co., 480 F.2d 1132 (2d Cir. 1973); U.S. v. Pennsylvania Indus. Chemical Corp., 411 U.S. 655 (1973); cf: U.S. v. U. S. Steel Corp., 356 F.Supp. 556 (S.D. Ill. 1973).

23. The following compilation of statutory, regulatory, and executive order authority was furnished by James L. Mitchell, OMB:

Statutes:

1. The Clean Air Act, as amended, 42 U.S.C. §1857 et seq.

2. The Federal Water Pollution Control Act, as amended, 33 U.S.C. §1251 et seq.

3. The Marine Protection, Research, and Sanctuaries Act, 33 U.S.C. §1401 et seq.

4. The Solid Waste Disposal Act, as amended, 42 U.S.C. §3251 et seq.

5. The Federal Insecticide, Fungicide and Rodenticide Act, as amended, 7 U.S.C. §§135-135k, 136-136y.

6. The Noise Control Act of 1972, 42 U.S.C. §4001 et seq.

7. The Safe Drinking Water Act, PL 93-523, 42 U.S.C. 300f et seq.

8. Other provisions of law as set out in Reorganization Plan No. 3 of 1970, 5 U.S.C. Appendix--Reorg. Plan No. 3 of 1970 (1970), including:

   a. Certain provisions of the National Environmental Policy Act of 1969, 42 U.S.C. §4321 _et seq_.

   b. Certain provisions of the 1954 Atomic Act, as amended, 42 U.S.C. §2011 _et seq_.

   c. Certain provisions of the Public Health Service Act, as amended, 42 U.S.C. §201 _et seq_.

   d. Certain provisions of the Federal Foot, Drug and Cosmetics Act, as amended, 21 U.S.C. §301 _et seq_.

Executive Orders administered by EPA, under which EPA has sole or primary responsibility for administration:

E.O. 11735 of Aug. 3, 1973, Assignment of Functions under Section 311 of the Federal Water Pollution Control Act, as amended (38 F.R. 21243, Aug. 7, 1973).

E.O. 11738 of Sept. 10, 1973, Providing for Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans (38 F.R. 25161, Sept. 12, 1973).

There are also Executive Orders administered by EPA under which EPA does not have the sole or primary responsibility for administration, including:

E.O. 11246 of Sept. 24, 1965, as amended, Equal Employment Opportunity (30 F.R. 12319, Sept. 28, 1965, as amended by E.O. 11375, 32 F.R. 14303, Oct. 17, 1967; E.O. 11478, 34 F.R. 12985, Aug. 12, 1969).

E.O. 11296 of Aug. 10, 1966, Evaluation of Flood Hazard in Locating Federally Owned or Financed Buildings, Roads and other Facilities, and in Disposing of Federal Lands and Properties (31 F.R. 10663, Aug. 11, 1966).

E.O. 11514 of Mar. 5, 1970, Protection and Enhancement of Environmental Quality (35 F.R. 4247, Mar. 7, 1970).

E.O. 11643 of Feb. 8, 1973, Environmental Safeguards on Activities for Animal Damage Control of Federal Lands (37 F.R. 2875, Feb. 9, 1972) (This executive order was modified after June 1, 1975).

E.O. 11644 of Feb. 8, 1972, Use of Off-road Vehicles on the Public Lands (37 F.R. 2877, Feb. 9, 1972).

E.O. 11667 of Apr. 19, 1972, Establishing the Presidents Advisory Committee on the Environmental Merit Awards Program (37 F.R. 7763, Apr. 20, 1972).

E.O. 11752 of Dec. 17, 1973, Prevention, Control and Abatement of Environmental Pollution at Federal Facilities (38 F.R. 34793, Dec. 19, 1973).

E.O. 11807 of Sept. 28, 1974, Occupational Safety and Health Programs for Federal Employees (39 F.R. 35559, Oct. 2, 1974).

E.O. 11821 of Nov. 27, 1974, Inflation Impact Statements (39 F.R. 41501, Nov. 29, 1974).

24. Approved Dec. 31, 1970; 42 U.S.C.A. §§1857-58a, Amending the Air Quality Act of 1967, 42 U.S.C.A. §§1857-57(1).

25. For a full analysis of the Legislative History of the Air Act, see: "The Courts and the Clean Air Act", Monograph 19, 5 BNA Environment Reporter, July 12, 1974.

26. Establishment of the air quality standards had formerly been a responsibility delegated to the states under the Air Quality Act of 1967.

27. 42 U.S.C. §1857c-5(c)(1)(A).

28. 42 U.S.C. §1857c-5(c)(1)(B).

29. 42 U.S.C. §1857c-5(c)(1)(C).

30. 42 U.S.C. §1857c-8(a)(2).

31. For a full discussion of the history and development of EPA authority under the Air Act, see: Hagman, "Urban Planning and Land Development Control Law", Chapters 20 & 21 (West Pub. Co. 1975).

32. 40 C.F.R. §51,
36 Fed. Reg. 22398,

as amended by 36 Fed. Reg. 24002, Dec. 17, 1971; 36 Fed. Reg. 25233, Dec. 30, 1971; 37 Fed. Reg. 26310, Dec. 9, 1972; 38 Fed. Reg. 15194, June 8, 1973; 38 Fed. Reg. 15834, June 18, 1973; 38 Fed. Reg. 15958, June 19, 1973; 38 Fed. Reg. 20832, Aug. 3, 1973; 38 Fed. Reg. 22025, Aug. 15, 1973; 38 Fed. Reg. 27286, Oct. 2, 1973; 39 Fed. Reg. 16122, May 7, 1974, effective June 6, 1974; May 8, 1974, 39 Fed. Reg. 16343; 39 Fed. Reg. 34533, Sept. 26, 1974; 40 Fed. Reg. 7042, Feb. 18, 1975.

33. In Pennsylvania v. EPA, F.2d 246 (2d Cir. 1974) the court held that the Commerce clause was a basis for EPA power to order Pennsylvania to undertake specific transportation control measures, for example.

34. See, e.g.: 38 Fed. Reg. 31247, Nov. 12, 1973, proposing 40 C.F.R. §52.263; see also: 40 C.F.R. 52.248.

35. 39 Fed. Reg. 1848 (Jan. 15, 1954).

36. 8 ERC 1053 (9th Circ. Aug. 15, 1975). The 4th Circ. ruled in much the same fashion on September 19, 1975. In Md. v. EPA, EPA's regulations governing transportation controls were found to have "very doubtful constitutional validity".

37. Testimony of June 5, 1975.

38. 43 U.S. Law Week 4467 (April 16, 1975).

39. 33 U.S.C.A. §1251 et seq.

40. 33 U.S.C.A. §1281-87.

41. 42 U.S.C.A. §4901 (eff. date: October 27, 1972).

42. Decided Feb. 18, 1975.

43. Held October 2, 1975, in the NEOB.

44. 7 U.S.C. §§135-135k, 136-136(y).

45. 42 U.S.C.A. §3251 et seq.

46. 42 U.S.C.A. §2011 et seq.

47. Interview with Richard Fairbanks, Esq., former Associate Director of The Domestic Council, Environment; October 2, 1975.

48. Ibid.

49. Interview with Alvin Alm, EPA Assistant Administrator for Planning and Management, October 3, 1975.

50. See: Article "Conservationists Assail E.P.A. Rules Cutback", N.Y. Times, September 27, 1975.

51. Interview with Dorothy Green, rep. of Common Cause and "Women For", August 20, 1975; Interview with Gay Lord, a founder of Consumer Action Now (CAN), September 2, 1975.

    See also: Memorandum from Leon Billings, September 2, 1975 to the National Commission on Water Quality.

52. Interview with Congressman Latta, September 4, 1975. Citation by him is to a situation he is aware of in Antwerp, Ohio.

53. See comments in connection with H. R. 15472, in appropriating moneys for specified environmental programs.

54. Interview with Professor Donald G. Hagman, UCLA Professor of Land Use and Environmental Law, September 23, 1975.

55. See: Hagman, op. cit supra, pp 582-583.

56. See, e.g.: UAW's publication "Ammunition", Vol. 16, No. 8, August, 1975.

57. Interview with Russell Peterson, October 2, 1975.

58. Ibid.

59. Interview with Versia Metcalf, UAW International Representative for Region 6, October 10, 1975.

60. See: BNA Environmental Law Reporter, Current Developments, August 29, 1975.

61. "Decision Making for Regulating Chemicals in the Environment", National Academy of Sciences Publication, 1975.

FORD LIBRARY