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Collection/Office of Origin: Chief of Staff, White House Office of
Series: Sununu, John, Files
Subseries: Issues Files

OA/ID Number: 29148
Folder ID Number: 29148-006

Folder Title:
Clean Air (2 of 3) (1990) [5]

Stack:	Row:	Section:	Shelf:	Position:
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Withdrawal/Redaction Sheet

(George Bush Library)

Document No. and Type	Subject/Title of Document	Date	Restriction	Class.
01. Report	Legislation pending in Senate and House (35 pp.)	1/90	P-5	

Collection:

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Open on Expiration of PRA
 (Document Follows)
 By JP (NLGB) on 5/12/05

Date Closed: 12/8/2004	OA/ID Number: 29148-006
FOIA/SYS Case #: 1998-0004-F[1]	Appeal Case #:
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P-2/P-5 Review Case #:	Disposition Date:
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AR Disposition:	MR Disposition:
AR Disposition Date:	MR Disposition Date:

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

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CLEAN AIR ACT

The President proposes a permanent 10 million ton reduction in SO₂, a 2 million ton reduction in NO_x, emission trading, mobile and stationary sources controls (for sources 100 tons or more) to reduce Urban smog, an alternative fuels program, best available technology to reduce air toxics with administrative discretion to require further reductions, enhanced permitting and enforcement provisions.

	HOUSE	SENATE
Status	The House Subcommittee completed mark-up on a modified version of the Administration's bill on October 11. Compared to the Administration's original bill, the House bill contains stronger tailpipe standards and a weakened alternative fuels provisions. IT is now pending before the full committee. No full committee hearings have been scheduled as Dingell will likely await some Senate action before moving ahead. Rep. Sharp plans to hold a mark-up, Feb. 7 before the Feb. 9 recess, on alternative fuels and cost sharing. Dingell has floated a cost-sharing proposal, based on a fee, in attempts to appease Midwesterners and some Democrats (influenced by AFL	The Senate Committee proposal in pro-environment bill opposed by the oil, gas, utility, manufacturing, and auto industries. It is tougher than the Administration's bill in nearly every respect and almost doubles the cost. It contains no alternative fuels provision, but far stronger tailpipe requirements, including a CO₂ tailpipe standard which translates to 40 mpg. It has no cost sharing but stronger NO_x provisions which could force plant shutdowns. Senator Mitchell plans to take up the bill on January 23rd. An alternative fuel

CIO) whose votes he feels he needs to defeat strengthening amendments. Conversations with Dingell's staff on 1/19/90 indicate he will take up the bill in full committee sometime in March with Floor action sometime after Earth Day and conference in early summer. Strengthening amendments on tailpipes, air toxics and stationary source non-attainment could likely be adopted on the House floor.

amendment will likely be offered, but not in lieu of stricter tailpipe standards. Senator Byrd has a cost-sharing proposal targeting 20 plants and offering incentives (deadline extensions) for those who use scrubbers (to protect high sulfur coal markets.) Mitchell wanted to cut a deal last November with the Administration, but would not agree to 107 plants in the first phase. He may cut a deal on a cost-sharing proposal similar to Byrd's proposal.

CAPITAL GAINS

The President will be proposing a capital gains tax rate reduction in the State of the Union.

	HOUSE	SENATE
Status	A capital gains tax rate reduction passed the House by a wide margin in the last session.	Rate cut failed to survive cloture votes in the last session.
Outlook	Bright. The Speaker ways that he anticipates favorable action.	Bright. Majority leader expects favorable action although he is personally opposed.

Dole/Caucus on Tuesday

SAVINGS INCENTIVES

The Administration will be proposing a Family Savings Plan to provide tax relief to savers. Other plans, including a re-expansion of the Individual Retirement Account, are currently under consideration.

	HOUSE	SENATE
Status	No action pending.	Finance Chairman Bentsen has announce that he will be proposing a tax package which includes savings incentives.
Outlook	Expansion of IRAs defeated as part of an alternative to a capital gains tax cut in the last session. This action committed Democrat leadership to say mice thins about IRA-type proposals.	Could be bloody.

SOCIAL SECURITY TAX CUT

Senator Moynihan has proposed a reduction in the tax which funds the Social Security system. Some feel that this is just an attempt to force an increase in other taxes while others feel it might be fiscally irresponsible. Still others think that a reduction in the tax on working Americans would be beneficial.

	HOUSE	SENATE
Status	No action pending.	Moynihan chairs relevant subcommittee.
Outlook	Uncertain.	Uncertain.

CRIME PACKAGE

Last Spring the President sent a violent crime package to the Hill. Although the money aspects of the measure were dealt with last fall, the substantive provisions have not been addressed on the floor of either house. The remaining provisions of the President's crime package relate to the death penalty, habeas corpus reform, reform of the exclusionary rule, enhanced sentencing and restrictions on the size of gun magazines.

	HOUSE	SENATE
Status/Outlook	There has been little action in the House to date nor is there likely to be until after the Senate acts. The House Judiciary Committee is regarded as generally hostile to the death penalty and habeas corpus and exclusionary rule reform.	Pursuant to a unanimous consent agreement, six issues are scheduled for floor debate the week of February 7 - death penalty, firearms regulation, habeas corpus, exclusionary rule, Department of Justice reorganization, and international money laundering. In addition to the President's bill, S.1225, there are several other bills that will be considered in the debate - S.1970, a Biden bill likely to be the underlying bill for debate, S. 1972, Biden's own crime bill, S. 1971, a Thurmond crime bill (which does not have the gun magazine provisions of S. 1225), S.32, the Thurmond death penalty

bill which includes a
killer amendment relating
to race, S. 747, the
DeConcini assault weapons
bill, and the Brady
waiting period bill

BUSH'S EDUCATION INITIATIVES

HOUSE

SENATE

H.R. 1675

S. 695

Status

In subcommittee

Floor vote expected in February.

Outlook

Hawkins has expressed a willingness to move the bill if Merit Schools is amended to apply to poor schools only, and the Magnet Schools provision is dropped. Hawkins has stated that he will postpone action on other education legislation until child care is resolved.

Big issue is the Natl. Board for Professional Teaching Standards (NBPTS) add on. The Hill is receiving mixed signals from DOE's statement of "preference" for Kassabaum's amendment. This is being interpreted as a retrenchment from opposition on principle. Conservative members are calling for a vigorous push from the White House opposing the NBPTS on the grounds that it conflicts with the President's proposal for alternative certification of teachers. It is unlikely the NBPTS provision will be attached to the House bill.

Helm problem

NOTE: The rumor on the Hill is that the President plans to incorporate additional concrete proposals from the Education Summit in the FY 1991 budget.

	HOUSE	SENATE
Vocational Education	H.R. 7	S. 1109
Status	Passed	Floor vote expected late early February.
Outlook	House bill differs with Senate on grant formula, within state allocation, and concentration grant. Committee staff indicate they do not have major disagreement with Senate provisions and do not anticipate a contentious Conference.	Two issues that will receive floor consideration include the split between secondary and postsecondary schools (Durenberger) and lowering the minimum on the basic state grant.

ISSUE**HOUSE****SENATE****Literacy****H.R. 3132 (Sawyer)****S. 1310 (Simon)****Status****Pending in 3 subcommittees****Passed full Committee****Outlook**

High on agenda -- likely to be first issue for Committee after Child Care resolved. Hawkins and Goodling are cosponsors.

Likely to brought to floor in February and passed. Success of this bill is considered very important for Simon's reelection campaign.

NOTE: There is bipartisan support for literacy bills in both Houses. Absent an Administration initiative, Republican members have cosponsored legislation.

ISSUE

HOUSE

SENATE

Teachers -- Omnibus
legislation

H.R. 3548, 3549 (Hawkins)

S. 1675, 1676

Status

Pending in subcommittee -- no
hearings scheduled.

Pending in subcommittee -
- only one hearing to
date, none scheduled.

Outlook

Largely a Democrats bill,
although Goodling has
expressed interest in minority
teacher provisions. Minority
teachers also a priority for
Secretary Cavazos.

Not likely to move fast,
although has generated
significant bipartisan
support.

ISSUE

Education Flexibility

Status

Outlook

NOTE: This issue involves one of the commitments made in Charlottesville to seek greater flexibility in using funds in exchange for accountability. A working group has been considering possible legislative strategies. A meeting on this issue involving the White House, Governors, and Hill members is planned for January 22.

H.R. 3347 (P. Smith)

HOUSE

One hearing to date. Chairman Hawkins has agreed to hold two more field hearings on Peter Smith's bill, and will hold a hearing in Washington (tentatively scheduled for January 30) on how States can give greater flexibility to local districts.

The concept has received widespread support. Legislation of some form may be possible. Amending existing law to include waiver authority offers another strategy.

SENATE

No companion

Peter Smith will be seeking Senate support for a companion to his bill.

ISSUE

HOUSE

SENATE

Equitable Education
Funding

Status

Hawkins plans to introduce legislation, "The Fair Chance Act," when the Congress resumes. A hearing is scheduled for February 19.

No comparable bill.

Outlook

Hawkins feels strongly about this issue. The bill would prohibit a State from receiving any Federal funds to support public schools after January, 1995 unless the Secretary certifies that funding for education is equalized in the state.

Senate interest not clear.

CHILD CARE

Different approaches exist on how to care for the nation's children. The Administration and many in Congress favor direct grants to parents. Others would channel money through state agencies. Still others seek an expansion of the public school system to care for younger children.

Status

HOUSE & SENATE

Both houses passed Child Care legislation in the last Congress. Legislation now sits before a conference committee. The Senate legislation is a mixture of Dodd's ABC approach and a child health tax credit favored by Bentsen. In the house, competing versions of H.R. 3 approved by Ed and Labor and Ways and Means.

Outlook

Democratic leadership must force a compromise between the competing interests of Dodd, Hawkins, and Downey.

DRUGS

ISSUE

Drug Abuse

HOUSE

Chairman Rangel, Select Committee on Narcotic Abuse and Control, is expected to hold hearings on "causes" of drug abuse (lack of education, poverty, etc.)

SENATE

Senator Biden is expected to announce a drug plan, possibly in February in response to President's Strategy II. It is anticipated that there may be an Omnibus Drug Bill this year.

Director Bennett may testify early next year on President's Drug Strategy.

CAMPAIGN FINANCE REFORM

ISSUE

Campaign Finance Reform

Status

HOUSE

President's legislation introduced by Michel; no hearing currently scheduled.

Bipartisan task force, led by Swift and Vander Jagt, met last summer; produced agreement on minor issues; currently negotiating larger issues.

Republican Conference produced 25-point proposal; will be introduced if unable to negotiate agreement with Democrats.

Democrats do not yet have package; Gephardt tasked by Foley to assemble one.

Several related bills introduced in 1989; viewed by analysts as posturing and pet projects.

SENATE

President's legislation introduced by Dole; Rules Committee planning additional hearings (no date set).

Dole and Mitchell have spoken, but taken no formal action.

Boren's bill is current Democratic alternative to President's plan; calls for voluntary spending limits and partial public financing.

Hollings introduced constitutional amendments that would allow spending limits; many (including Republicans) expected to sign on to it.

Several related bills introduced in 1989; viewed by analysts as posturing and pet projects.

Outlook

Democrats likely to assemble package with strict limits and some form of public financing in the next few weeks.

Michel announced willingness to consider proposals calling for spending limits.

Democrats will try to shift focus from competitive elections to spending limits and public funding.

Foley promises floor vote this session.

"Keating Five" and other ethics scandals have stimulated intense interest in issue.

Rudman recently announced willingness to consider proposals calling for spending limits.

May be sufficient Republican opposition to filibuster Democratic initiatives.

Mitchell named this his top priority this session.

AMERICANS WITH DISABILITIES

Congress is expected to complete action on the Americans with Disabilities Act which would provide to 43 million disabled protections comparable to those provided to minorities and women under the Civil Rights Act of 1964.

	HOUSE	SENATE
Status	H.R. 2273 passed the Labor and Education Committee November 4. It must still be considered by Energy and Commerce, Judiciary and Public Works and Transportation.	The Senate passed S.933 on September 7 with administration support.
Outlook	Rep. Dingell is expected to propose numerous amendments some of which may be inconsistent with the negotiations of the administration with the Senate.	

FARM REAUTHORIZATION

The nation's agriculture programs designed to assist farmers by supporting prices are due for reauthorization during 1990. Complicating the proceedings are the Uruguay round of trade negotiations now taking place.

	HOUSE	SENATE
Status	Hearings have already begun.	Hearings have begun, but markup is not expected until late spring.
Outlook	Speedy House Agriculture Committee action is expected.	Expect little change from the 1985 farm bill.

NATIONAL SERVICE LEGISLATION

The administration eventually will seek enabling legislation to implement fully the President's Points of Light Initiative Foundation. In both the House and the Senate legislation is pending to encourage volunteer and "paid volunteer" service.

	HOUSE	SENATE
Status /Outlook	The House Education and Labor Committee is likely to consider its own bill at hearings in February. IT is unlikely to be as expensive as the S.1430.	Senator Kennedy's bill, S.1430, is tentatively scheduled to be brought up on the floor on February 5. As currently drafted it is a minimum \$300 million per yearr bill for a four year authorization period. It also embraces concepts of stipends and vouchers for "volunteer" service that are inconsistent with the President's concept of volunteerism.

PRODUCT LIABILITY

The Administration is fully supporting efforts by Senator Kasten and others to modify the nation's product liability laws. These laws may produce a chilling effect on the introduction of new products and may retard our international competitiveness.

	HOUSE	SENATE
Status	No action pending.	Kasten bill is still pending in Committee.
Outlook	Judiciary Committee extremely hostile. is in the pockets of the trial lawyers.	Chance for hearings early in session is quite high. Key issue is when markup will occur.

LEGAL IMMIGRATION

Congress will probably enact legislation this year to revise the allotments for the different categories of legal immigration.

	HOUSE	SENATE
Status	The House Judiciary Committee's subcommittee on Immigration, Refugees and International Affairs is working on a bill proposed by its Chairman, Rep. Berman.	The Senate passed S. 358 on July 13 by a vote of 81-17.
Outlook	The subcommittee is expected to mark up a bill in the spring.	

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POLING

CIVIL RIGHTS OVERRIDE LEGISLATION

Civil Rights community supporters are likely to introduce legislation early in the second session to reverse some, but not all, of the Supreme Court's 1989 civil rights decisions. February is "Black History Month" so introduction may be tied to that.

	HOUSE	SENATE
Status/Outlook	Early hearings in the Senate Labor and Human Resources Committee can be expected. The prime sponsors of the bill will probably be Kennedy and Brooks or Edwards unless the Democratic leadership chooses to make it a leadership initiative.	Early hearing in the House Judiciary can be expected.

TELECOMMUNICATIONS AND THE RBOCs

Presently, jurisdiction over the Regional Bell Operating Companies (RBOCs) lies with the courts. The courts have limited the ability of the RBOCs to engage in certain practices most notably to enter the telecommunications manufacturing business. Some in Congress seek to overturn specific restrictions, others to remove jurisdiction from the courts and turn it over to the FCC.

	HOUSE	SENATE
Status	Swift-Tauke, H.R. 2140, is lead vehicle. Currently in Commerce Committee's Telecommunication's Subcommittee chaired by Markey.	No action so far.
Outlook	Hearings are quire likely. Markey and Dingell are quite supportive of some loosening of restrictions of the RBOCs.	Hollings recently announced that he might be favorably disposed to some loosening of RBOC restrictions.

CABLE T.V. RE-REGULATION

Some in Congress are concerned that local cable stations represent natural monopolies which should be re-regulated. The FCC has held that no such re-regulation is needed as long as there exist at least 3 over-the-air stations in the area.

	HOUSE	SENATE
Status	Hearings expected, focus on sports moving off "free" T.V. onto "pay" cable as a hot issue.	Senator Danforth's S. 1880 is leading candidate as a markup vehicle.
Outlook	Depends crucially on links with telecommunications restrictions.	Quite likely that Commerce Committee will favorably report some re-regulation legislation.

MANDATED LEAVE

Would require employers to give unpaid time off to parents of newborn or sick children.

	HOUSE	SENATE
Status	Sequential approval by Ed and Labor, Post Office and Civil Service and Administration committees occurred during last session of congress.	Senate Labor and Human Resources Committee approved S 345 during last session.
	Bill approved: H.R. 7770.	House expected to move first.
Outlook	This is priority bill as soon as Child Care legislation clears.	

PENSION REVERSIONS

Employers who run defined benefit pension plans may end up with an overfunded plan after a run up in the stock market. Firms in this situation who are reorganizing frequently have the excess contributions revert to the company to help it in transition. Some in Congress are seeking to prevent this.

	HOUSE	SENATE
Status	Education and Labor attached its version (H.R. 1661) of pension reversion to reconciliation. Ways and Means approved a more moderate bill as part of tax-reconciliation (H.R. 3229).	Senate Labor and Human Resources approved S. 685 (Metzenbaum).
Outlook	Division remains between the hawks on Ed and Labor and the more reasonable views of Ways and Means. House sponsors hope to move a pension reversion bill as separate legislation. Unlikely to succeed. Will probably end up attached to reconciliation again.	Expect another attempt to attach this to reconciliation.

HATCH ACT REFORM

Bills are pending in both house to overhaul substantially the Hatch Act to permit more activity by federal employees. The administration is opposed to such legislation.

	HOUSE	SENATE
Status	H.R. 20 passed the House on April 17, 1989 by a vote of 297-90.	S. 135 was reported by the Senate Fovernmental Affairs Committee on October 17.
Outlook		It may come up for floor consideration early in the second session. Although there is some opposition by Senate Republicans, because the depth of the administration's opposition is unknown to them, it is difficult to judge how strongly the will oppose the bill. Senator Cohen is likely to have amendments relating to the intelligence community.

HOUSING REAUTHORIZATION

Disagreement exists between those who would like to focus on providing subsidies to housing construction and those who would focus on providing subsidies to the poor to foster home ownership.

	HOUSE	SENATE
Status	Hearings are scheduled before the Banking, Finance, and Urban Affairs Subcommittee on Housing and Community Development shortly after House reconvenes.	Hearings before the Banking, Housing, and Urban Affairs will take place in February.
Outlook	Large authorizations are typical. Budget discipline is left to appropriations.	Chairman Riegle and lead sponsors Cranston and D'Amato are all under investigation. This is bound to slow progress.

UNRELATED BUSINESS INCOME TAX (UBIT)

The UBIT is applied to non-profit organization which engage in for-profit activities in areas not related to their tax-exempt purpose. An example would be a travel agency owned by a university.

	HOUSE	SENATE
Status	Principal interest is by Congressman Pickle who has promised UBIT action.	No action pending.
Outlook	Pickle was thought to be willing to accept whatever Treasury proposed. Recent signals out of Treasury's Office of the Tax Legislative Counsel about endowment taxes have significantly muddled this issue.	Deferral to House.

NATIONAL TRANSPORTATION POLICY

DOT is planning to release its Statement of National Transportation Policy in February.

	HOUSE	SENATE
Status	The Public Works Committee has expressed an interest in holding hearings on the Statement.	The Environment and Public Works Committee and the Commerce Committee have expressed an interest in holding hearing on the contents of the Statement shortly after it is released.
Outlook	Nothing has been scheduled.	No hearings scheduled.

AIRLINE ACQUISITIONS

Pre-acquisition review by the Department of Transportation for airline mergers and acquisitions.

	HOUSE	SENATE
Status	H.R. 3443 passed, a similar bill introduced by Congressman Oberstar.	S.1277 reported out of Commerce Committee.
Outlook		Bill should reach the floor this year.

INDEPENDENCE OF THE FEDERAL AVIATION ADMINISTRATION

Making the FAA independent of the Department of Transportation.

	HOUSE	SENATE
Status	Congressman Oberstar has introduced a companion to the Senate.	Senator Ford has introduced S. 1600.
Outlook	Hearings planned for early this year.	Hearings and plans to hold hearings on the bill early this year.

RURAL DEVELOPMENT

This category of programs is designed to expand social services and public infrastructure in rural areas.

	HOUSE	SENATE
Status	An Agriculture subcommittee passed a rural development bill, but it did not pass full committee. English (D-OK) and Coleman (R-MO) have leading bill.	S. 1036 Authorized spending \$1.5 billion of new Rural Development spending over next 5 years.
Outlook	Best chance is as part of farm bill.	Best chance is as part of farm bill.

OVERTURNING BETTS DECISION

The Betts decision held that the Age Discrimination in Employment Act of 1967 exempted all employee benefit plans unless the plaintiff can demonstrate that the plan was intended to discriminate in a non-benefit aspect of employment. Elderly advocacy groups are seeking to overturn the decision as it makes age discrimination suits more difficult to win. On the other hand, it is almost impossible to design any employee benefit that has exactly the same value to individuals of different ages.

	HOUSE	SENATE
Status	Hearing held last session before joint meeting of Labor Management and Employment Opportunities subcommittees on H.R. 3200. No Markup scheduled.	S. 1511 approved by Subcommittee for full Committee, no date set for markup.
Outlook	Some talk of a more moderate bill being considered.	Some talk of a more moderate bill being considered.

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THE WHITE HOUSE
WASHINGTON

January 18, 1990

MEMORANDUM FOR GOVERNOR SUNUNU

FROM: ROGER B. PORTER *RBP*
SUBJECT: Clean Air

This morning following our meeting refining the proposed letter from the President to Senator Mitchell outlining our "five tests" on the Clean Air Act I had a long discussion with Bill Reilly who indicated that you had asked him to call Senator Mitchell the previous day.

He and Mitchell had exchanged calls all day and had not yet spoken. Reilly was seeking my advice about how to approach Mitchell in light of the letter.

I suggested that he begin the conversation by inquiring if there was any substance to the rumors we had heard about a "deal" between Mitchell and Senator Byrd on acid rain. He should then follow that by making the following points:

1. The President is committed to enactment of clean air legislation.

2. He is equally committed to the concept that any Clean Air bill appropriately balance environmental benefits and economic costs.

3. He is very concerned that the legislation emerging in the Congress imposes high additional economic costs without achieving substantial additional benefits.

4. We thought we had an "understanding" with Mitchell on the acid rain portion of the bill that included: (a) 10 million ton SO₂ reduction; (2) no cash cost sharing; (3) a full emissions trading system including 107 plants in phase I; and (4) a permanent cap to preserve the environmental benefits. We also agreed that we would not oppose a 4 million ton NO_x reduction which we had estimated at 2.7 million tons.

Reilly subsequently called Mitchell and reported back the following:

1. Mitchell very much wants a Clean Air Bill. He does not believe it is a sure thing by any means.

2. Mitchell indicated he had made a proposal to Midwest

Senators including Senator Byrd for a acid rain reduction scheme that would focus on 20 plants and provide 2:1 credits for phase I reductions. They responded negatively to Mitchell and said that they didn't feel the 20 plant proposal would help them that much or "do the trick."

3. Mitchell indicated that all "they" need is 41 votes to sustain a filibuster. The "they" could include a coalition of those opposed to the acid rain portions (Midwestern Republicans and Democrats), air toxics, and nonattainment.

4. He suggested that Durenberger is the big problem on moving to what the administration wants on air toxics. Mitchell told Reilly that he was not worried about what the administration wanted on air toxics and said: "Your problem is not with me. You need to get to Durenberger." Apparently, Reilly has also spoken with Henry Waxman about the air toxics portion and Waxman is willing to move toward the administration's position of a study in phase II and eliminating the "bright line" requirement. Mitchell repeated that, "if it is good enough for Waxman it is good enough for me. As far as I am concerned we don't need a bright line." He added that a call to Durenberger from the President could do a lot of good.

5. He believes that the coalition for clean air in the Senate is fragile and that he could live with anything from 20 plants to 107 plants.

6. Not least, he said that he could not conceive of the President vetoing the legislation simply on the basis of 107 plants versus 20 plants.

7. He said that the Environment and Public Works Committee is full of people who want a much stiffer Phase II nonattainment tailpipe standard. He (Mitchell) said that he could personally go along with the compromise worked out by Dingell and Waxman, but that he has a different view on that than he senses among most of the Senate Environment and Public Works Committee members.

8. He added that if there is substantial opposition by the administration and others to the nonattainment provisions in the Senate Committee bill, coupled with opposition to the air toxics provisions that Durenberger continues to defend, and opposition by the Midwesterners to the acid rain provisions, that the bill could easily be stalemated.

9. In response to Reilly informing him that a letter with five tests was coming, probably tomorrow, Mitchell said that he questioned the advisability of sending the letter at this point and that it could do more harm than good.

Reilly also raised with me the question of cabinet status for EPA. He asked if I knew anything about it and that he had heard rumors that it might be in the offing. He indicated that he had done everything he could to discourage such speculation within EPA and that he was genuinely in the dark about it.

He added that if the administration was going to do something on this front that it would be useful to give some of the credit to Chafee and other Republicans who have championed the idea rather than to Glenn and the Democrats.

I said that I would do some checking but that he should continue to discourage any talk about it within EPA or elsewhere. I gave no indication whatsoever that I thought there was any movement on this within the administration.

8/

file

THE WHITE HOUSE

WASHINGTON

December 15, 1989

MEMORANDUM FOR GOVERNOR SUNUNU

FROM: ROGER B. PORTER *RBP*
NANCY A. MALOLEY *nam*

SUBJECT: Clean Air Act Status

When the Senate reconvenes, Senator Mitchell plans to take up clean air legislation as early as January 23.

Before the recess, the Senate Committee reported out a Clean Air bill to the Floor which resembles the Administration bill on acid rain, but is far tougher than is our proposal on a number of proposed measures affecting both mobile and stationary source non-attainment and air toxics.

The House Subcommittee completed mark-up of the Administration's bill which will come before the Full Committee largely intact, but with several notable changes. However, Committee staff fully expect adoption of several strengthening amendments for air toxics and non-attainment, either in Full Committee or on the Floor, identical or very similar to the Senate Committee proposal. Dingell also has proposed a cost-sharing approach based on a fee. Below are the major issues of concern:

SENATE

NON-ATTAINMENT

- o Sanctions - The Senate bill makes the highway funding and construction ban sanctions mandatory as opposed to discretionary in our bill, for areas failing to submit, implement, or achieve reductions. Failure to attain the standard also triggers additional fees and may trigger a lower definition of source.
- o Mandatory FIP's - The Senate bill retains a mandatory duty for EPA to propose a FIP if States do not respond to sanctions. The Senate bill is silent on the status of existing EPA obligations under court orders in places like Los Angeles and Chicago (the Administration bill lifts these obligations in favor of the new statute).

- o New Source Review - The Senate bill imposes tighter controls and offset requirements on smaller new sources (those emitting 25 tons or more, and requires modified individual units at existing plants to meet tighter controls without regard to reductions at other units at the same plant. The Administration bill cut-off is 100 tons or more. The Senate bill, therefore, subjects more sources to requirements.
- o Consumer/Commercial Products - The Senate bill sets a mandatory control requirement and minimum target for VOC reduction from consumer and commercial products. The target is 3% of nationwide VOC emissions from all sources within 7 years of enactment. It may not be possible to meet this target.
- o Changing Non-attainment Area Definitions - The Senate bill gives EPA more authority to set presumptive non-attainment boundaries for ozone.

MOBILE SOURCES

- o Onboard - The Senate bill requires onboard gasoline vapor recovery controls as well as Stage II controls. The Administration bill requires only Stage II (though an onboard provision was added in the House Subcommittee markup of the Lent substitute).
- o Tailpipe Emissions Standards - Unlike the Waxman/Dingell compromise, the Senate bill requires tighter second-phase tailpipe standards to go in automatically, rather than after a study to determine their feasibility and cost-effectiveness. The Senate bill tightens NO_x to 0.4 in the first phase and has fixed post-2003 NO_x and HC standards. It also expands the scope of the automobile inspection and maintenance program by 34 areas, and contains a tough CO₂ standard. The Senate bill also includes a NO_x standard for heavy duty diesel vehicles that EPA believes is infeasible.
- o Alternative Fuels - The Senate bill includes no provisions. The Committee plans to hold a hearing in mid-January. Mitchell and Baucus are not anxious to sacrifice stricter tailpipe standards for an alternative fuels program.

AIR TOXICS

- o Regulations On All Source Categories - The Senate bill would require EPA to set MACT regulations for all source categories listed. The Administration bill requires regulation only on the worst 50% of categories, with discretion to regulate others.

- o Residual Risk - The Senate bill sets up a mandatory maximum individual risk target of 1 in 10,000, with a goal of 1 in 1 million, for control under the residual risk provisions. The Administration bill relies on an "unreasonable risk" provision.
- o Monitoring of Toxics - The Senate bill requires extensive monitoring of air toxics emission points which is potentially extremely costly for industry.
- o Accidental Release - The Senate bill contains a much more extensive provision on accidental releases than the Lent substitute, with mandatory hazard assessments by companies and an independent Chemical Safety and Hazard Investigation Board.

ACID RAIN

Similarities: The proposed Mitchell/Baucus agreement includes the following provisions which are similar to the Administration bill: a 10 million ton target; a post-2000 emissions cap; an allowance trading system, and 107 plants in the first phase. It does not contain any cost sharing provisions.

Differences:

- o NO_x Reductions - The bill requires a 4 million ton reduction in NO_x emissions, as compared to a 2 million ton reduction in the Administration bill.
- o Clean Coal Technology - The bill omits financial and regulatory incentives for utilizing clean coal technology.
- o Compliance Deadline - Compliance deadlines are shortened by one year in both phases.

The Committee adopted a sense of the Senate resolution opposing cost-sharing based on a tax or a fee.

HOUSE

- o The Waxman substitute amendment for stationary source non-attainment, defeated in subcommittee, will be offered in full committee or on the floor. It is close to the Senate non-attainment provisions.
- o Onboard canisters were adopted by the subcommittee and will likely remain in the bill.

- o Waxman/Dingell tailpipe compromise calls for stronger NO_x and HC tailpipe standards than our original bill, but unlike the Senate bill and the original Waxman proposal, does not make a second phase of even tougher standards mandatory. These second phase requirements are instead contingent on the findings of a feasibility study.
- o Substantial paring back of the Administration's alternative fuels program for a weaker performance standard and no requirement to produce clean-fueled vehicles.

Other strengthening amendments relating to air toxics and acid rain, which mirror provisions in the Senate bill, were defeated in Subcommittee but will be offered in Full Committee or on the Floor. The major ones include:

- 1) A strong Phase II in air toxics to address residual risk;
- 2) the regulating of 100% of the source categories which emit air toxics;
- 3) removal of the Administrator's discretion in addressing accidental releases;
- 4) shortened acid rain compliance deadlines; and
- 5) a NO_x reduction requirement of 4 million tons, rather than 2.

Cost-sharing - Although not in the subcommittee bill, Dingell floated and plans to offer his cost-sharing fee proposal which we oppose and, based on EPA estimates, could add \$1 billion to the cost of the acid rain provisions.

OUTLOOK

- o The Subcommittee on Energy and Power (Sharp) has jurisdiction over alternative fuels and acid rain. Mr. Sharp favors cost-sharing for the Midwest and held off marking up the bill in an attempt to obtain the necessary votes to support the concept. He has yet to decide whether he will mark up the bill in the second session.
- o Senator Mitchell announced that Clean Air will be the first issue raised on the Senate floor on January 23, 1990

Representative Dingell is putting together a package of amendments which EPA anticipates will be made public next week. Some of them are a positive move toward relaxation of the permitting requirements in our bill. However, the package will likely contain his cost-sharing proposal.

Congressman Lent's staff believe some of the tougher non-attainment and air toxics provisions will be adopted, and it would therefore be in the Administration's interest to negotiate some of these provisions for a "better" outcome rather than be saddled with the original amendments. While they believe the stationary source non-attainment program will be expanded, we may be able to negotiate provisions to relax some of the requirements which impact growth potential for smaller sources.

Since the initial floor action will take place in the Senate, our efforts should be focused on relaxing some of the provisions in the Senate bill, since the House is likely to adopt tougher measures.

Senator Mitchell, having agreed to a resolution against cost-sharing based on a tax or a fee, may be looking for other ways to appease Midwest Senators, such as a 20 targeted approach, or various permutations of cost-sharing, such as 2 for 1 credits. Several Midwestern Senators are holding meetings looking for ways to get some support for easing the burden for their states.

Senate staff believe floor action will take about three weeks. Since a filibuster requires 40 votes, Midwestern Senators do not have enough votes to mount one.

Attached are some one page summaries which describe in more detail the differences, title by title, between our bill and the Senate and House bills.

Attachments

CLEAN AIR ACT SENATE AMENDMENT PRIORITIES

FIRST PRIORITY

Administration Proposal

Senate Bill

Method of Fixing

Co-Sponsors

Supportive Industries

House Comments

DEFINITION OF MAJOR SOURCE/NEW SOURCE REVIEW

Retains current law
(100 ton major
source; "netting"
allowed; offset
ratios do not change)

Tightens current
requirements by a)
lowering the
definition of "major
source" to 25 tons/10
tons VOC; b)
eliminating
"netting"; and c)
establishing higher
offset ratios in
serious areas and
above.

Amend Senate bill to
delete appropriate
provisions.

All major groups

Lent substitute did
not change
Administration bill;
Waxman nonattainment
provisions are
similar to Senate
bill.

MANDATORY FIPS

Makes Federal
implementation plans
(FIPs) discretionary
with EPA; relieves
existing obligations
in Chicago and
California

Retains mandatory EPA
duty for FIPs if
States do not submit
or carry out plans;
silent on existing
court-ordered FIPs

Amend Senate bill to
make FIPs
discretionary; add
Administration
provisions for
existing court
ordered FIPs

Waxman bill
(H.R. 2323) was silent
on this topic. EPA
is now under a court
order to propose a
FIP for Los Angeles
by April 1990 and
promulgate by
February 1991.

MANDATORY MACT FOR ALL SOURCE CATEGORIES

Requires MACT
regulations on the
top 50% of listed
source categories;
EPA must decide
whether to issue
regulations on other
categories.

Requires MACT
regulations on 100%
of listed source
categories.

Amend Senate bill to
conform with
Administration
proposal.

H.R. 2585 is similar
to the Senate bill.

FIRST PRIORITY — CONTINUED

<u>Administration Proposal</u>	<u>Senate Bill</u>	<u>Method of Fixing</u>	<u>Co-Sponsors</u>	<u>Supportive Industries</u>	<u>House Comments</u>
RESIDUAL RISK					
EPA may require additional controls if sources pose "unreasonable risks" after application of MACT controls.	Sets up a mandatory risk target of 1 in 10,000, with a goal of 1 in 1 million.	Amend the Senate bill to eliminate mandatory numerical risk targets.			H.R. 2585 has even tighter requirements than the Senate bill.
TAILPIPE STANDARDS (LIGHT DUTY VEHICLES)					
First Phase: .25 gpm HC .7 gpm NOx	First Phase: .25 gpm NMHC .4 gpm NOx	Substitute Administration or Dingell-Waxman provisions for Senate bill		Automobile industry	The Dingell-Waxman compromise now included in H.R. 3030 uses the same Phase I standards as the Senate bill, but Phase II standards do not take effect unless they are deemed necessary, feasible and cost-effective after an EPA study.
No Second Phase	Second Phase: .125 gpm HC .2 gpm NOx 1.7 gpm CO				
(Note: this does not take the Dingell-Waxman compromise into account)	CO2 standard beginning in 1996				
ALTERNATIVE FUELS					
Requirement to introduce cars which can use alternate fuels in the 9 worst ozone areas. 1995-500,000 vehicles 1996-750,000 vehicles 1997 and after- 1 million vehicles	No provision	Add Administration provision to Senate bill			

FIRST PRIORITY — CONTINUED

<u>Administration Proposal</u>	<u>Senate Bill</u>	<u>Method of Fixing</u>	<u>Co-Sponsors</u>	<u>Supportive Industries</u>	<u>House Comments</u>
CO2 EMISSIONS STANDARDS					
No provisions.	Establishes CO2 emissions standards to be met on average by auto manufacturers	Delete Senate CO2 emissions standards provisions.			
	1996: 266 gpm (33 mpg)				
	2000: 220 gpm (40 mpg)				
CLEAN COAL TECHNOLOGIES					
Provides for extension of compliance date until 2003 and other incentives for utilities using CCT.	No incentives.	Add Administration incentives for CCT to Senate bill.		Midwestern utilities	

**CLEAN AIR ACT
SENATE AMENDMENT PRIORITIES**

SECOND PRIORITY

<u>Administration Proposal</u>	<u>Senate Bill</u>	<u>Method of Fixing</u>	<u>Co-Sponsors</u>	<u>Supportive Industries</u>	<u>House Comments</u>
FEES					
Permit fees are established in Title IV. Fees are equivalent to \$25 per ton for sources required to have a permit, with a 4000 ton cap.	Establishes higher (\$75/ton State + 15/ton EPA) fees for sources in non-attainment areas, with no cap. Also creates \$2/car fee in ozone areas.	Delete Senate non-attainment fees; apply fees through permit provisions.			
ACCIDENTAL RELEASES					
Original Administration bill contained no provisions on accidental releases, except for the establishment of an Accidental Release Investigation Board under EPA authority to investigate accidents.	Contains a very extensive accidental release program, requiring extensive industry monitoring and hazard assessments. Requires the establishment of an independent Chemical Safety and Hazard Investigation Board.	Delete the Senate provisions for hazard assessments or substitute the provisions in H.R. 3030 as amended by the Lent substitute. Efforts by Sen. Chafee to establish the Board as under EPA authority in Committee were unsuccessful.			H.R. 2585 provisions are similar to Senate bill. The Lent substitute to H.R. 3030 added provisions for EPA to promulgate regulations on accidental releases of listed substances from sources subject to regulation under the other toxics control provisions.
ONBOARD REFUELING CONTROLS					
Does not require onboard; requires Stage II in Moderate and higher ozone nonattainment areas.	Requires onboard and Stage II controls in most ozone nonattainment areas.	Delete the onboard requirement			Onboard was added in House Subcommittee markup of H.R. 3030. H.R. 2323 requires both onboard and Stage II.

SECOND PRIORITY — CONTINUED

<u>Administration Proposal</u>	<u>Senate Bill</u>	<u>Method of Fixing</u>	<u>Co-Sponsors</u>	<u>Supportive Industries</u>	<u>House Comments</u>
OXYGENATED FUELS					
Requires use of oxygenated fuels in serious CO nonattainment areas	Requires use of oxyfuels with 3.1% oxygen content (ethanol mandate)	Delete mandatory oxygen content			
COMPLIANCE DEADLINES					
Phase I: 12/31/95	One year earlier than Administration bill for both phases.	Amend Senate deadlines to conform to Administration proposal			A similar amendment was offered in the House Subcommittee but rejected.
Phase II: 12/31/2000					
TRANSPORT AREA REQUIREMENTS					
Authorizes EPA to establish areas to address long-range ozone transport; sets up commission to address Northeast but with no mandatory duties.	Sets up Northeast commission like Administration bill but requires mandatory Stage II and I/M programs throughout NE Corridor (exemptions possible upon petition by the State).	Delete mandatory transport areas requirements from Senate bill.			H.R. 2323 provisions are similar to Senate.
CONSUMER & COMMERCIAL PRODUCTS					
Requires two year study; gives EPA discretionary authority to set national regulations based on results.	Provides for a similar study but requires EPA to establish regs which reduce 3% of total national VOC.	Delete mandatory control requirements from Senate bill.		Almost all industries (though Speciality Chemicals associations want a longer time for the study).	H.R. 2323 has a mandatory schedule for EPA rules on solvents, coatings, and pesticides.

SECOND PRIORITY — CONTINUED

Administration
Proposal

Senate Bill

Method of Fixing

Co-Sponsors

Supportive Industries

House Comments

SANCTIONS

Makes sanctions
(construction ban;
highway funding;
drinking water
hookup) on States
discretionary.

Makes construction
ban and highway
funding sanctions
mandatory for State
failures to plan or
implement.

Substitute
Administration
sanctions provisions
for Senate
provisions.

H.R. 2323 is similar
to Senate bill except
that higher offset
ratios are used
instead of
construction ban.

CLEAN AIR ACT
SENATE AMENDMENT PRIORITIES

THIRD PRIORITY

<u>Administration Proposal</u>	<u>Senate Bill</u>	<u>Method of Fixing</u>	<u>Co-Sponsors</u>	<u>Supportive Industries</u>	<u>House Comments</u>
OUTER CONTINENTAL SHELF (OCS) JURISDICTION OVER AIR POLLUTION SOURCES					
Administration bill is silent; relies on current DOI authority under OCS Lands Act.	Transfers authority to regulate OCS air pollution sources from DOI to EPA; EPA has 12 months to set rules.	Option A: Delete OCS provisions from Senate bill. Option B: Amend Senate bill to conform to current planned OCS rules.	Senator Breaux has expressed interest in an option similar to B.	Oil and Gas Industry	H.R. 2323 contains an OCS provision similar to the Senate bill.
NONATTAINMENT AREA BOUNDARIES					
States recommend boundaries to EPA; EPA has final designation authority.	Boundaries for ozone/CO areas are presumptively MSA/CMSA; areas within MSA/CMSA can be excluded for air quality reasons.	Amendments to Senate bill at full committee made the provisions of the two bills much closer in effect.			H.R. 2323 is similar to both the Administration and Senate bills.
AREA SOURCES AND MONITORING					
EPA is authorized to establish regulations covering area sources (non-major sources) if it determines that such sources collectively warrant regulation.	Provides an extensive regulatory program for area sources including 1) monitoring of air toxics levels in urban areas; 2) a mandatory regulatory program to produce a 75% reduction in risk from area sources; 3) a research program; and 4) required development of a strategy for reducing urban toxics risks and required allocation of State grant funds.	Deletion of the mandatory targets and the mandatory monitoring program in the Senate bill.			H.R. 2585 contains a program which puts more emphasis on a mandatory schedule for standards for area sources and less emphasis on monitoring than does the Senate bill.

THIRD PRIORITY -- CONTINUED

<u>Administration Proposal</u>	<u>Senate Bill</u>	<u>Method of Fixing</u>	<u>Co-Sponsors</u>	<u>Supportive Industries</u>	<u>House Comments</u>
ELECTRIC UTILITY REGULATION					
Provides for a three year study by EPA on the toxic emissions from electric utilities. Regulations under this section occur only if the study shows they are warranted.	Provides for a study of chlorine emissions from utilities, but utilities would otherwise be subject to regulation under MACT standards.	Add study requirements in Administration bill.		Electric utilities	Electric utilities are covered under H.R. 2585 just like any other source category.
NOx REDUCTIONS					
2 million ton reduction from projected 2000 emissions	4 million ton reduction from projected 2000 emissions				A similar amendment was offered but rejected in Subcommittee

January 10, 1990

**OFFICE OF SCIENCE AND TECHNOLOGY POLICY
SENIOR STAFF**

- 1. James Wyngaarden: Associate Director for Life Sciences**
- 2. Thomas Ratchford: Associate Director for Policy and International Affairs**
- 3. Eugene Wong: Consultant and my nominee for Associate Director for Physical Sciences and Engineering**
- 4. William Phillips: Consultant and my nominee for Associate Director for Industrial Technology**
- 5. Karl Erb: Assistant Director for Physical Sciences and Engineering and Coordinator for this first PCAST meeting**
- 6. Nancy Maynard: Assistant Director for Environmental Science**
- 7. Michelle Van Cleave: Assistant Director for National Security Affairs and Counsel to the Director, OSTP**
- 8. Judith Bostock: Special Assistant to the Director, OSTP**

I would request that, if possible, all of these persons be allowed to attend the meeting.

I anticipate that the four Associate Directors will make brief presentations and Dr. Erb has coordinated all planning for the meeting and would, I believe, be essential to insure a smooth operation.

**D. Allan Bromley
Director
Office of Science and Technology Policy**