



NATIONAL
ENDOWMENT
FOR
THE ARTS

A Federal agency
advised by the
National Council
on the Arts

Frank Hodson
Chairman

12/30

Jim -

Attached is a note to JAB
on the NEA budget.

I would be very grateful
if you could bring it to
his attention, also for any
suggestions.

Many thanks & best
for the new year.

Frank



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Jim -

I know you want to stay
out of this, but as you
can see from the attached, Sam,
as I mentioned to you, soliciting
Mike's help.

I would obviously very much
appreciate yours as well. If
I could see any benefits to
the Administration-- certainly
none have been expressed to
me by OIB-- I'd be, as I have
been, a good soldier. But

PTO

NATIONAL
ENDOWMENT
FOR
THE ARTS

WASHINGTON
D.C. 20506



A Federal agency advised by the
National Council on the Arts

MEMORANDUM

December 29, 1983

TO : THE HONORABLE MICHAEL DEEVER
DEPUTY CHIEF OF STAFF
THE WHITE HOUSE

FROM: F.S.M. HODSOLL, CHAIRMAN
NATIONAL ENDOWMENT FOR THE ARTS *Frank*

SUBJ: ARTS ENDOWMENT FY '85 BUDGET

In accordance with your request, this memorandum summarizes the essential points I made to Bill Sitman regarding our budget. I regret bothering you, but feel strongly that the President is not well served by the OMB FY '85 budget mark of \$140 million for the Arts Endowment. I have proposed \$162 million (the same as FY '84). I understand the equivalent agency in science (NSF) is getting a raise over FY '84. Operating agencies like the Smithsonian are being held even. It is a case, in my view, of no political or budgetary advantages, coupled with political and possible budget disadvantages. If necessary, and subject to your advice, I would seek an opportunity to bring this to the President's personal attention.

You can justify the Arts Endowment budget at a variety of levels. There is no magic level. But if we are serious about restraining the budget, the Administration's budget proposal should be in the ballpark of what is politically inevitable. Otherwise, the Executive Branch is irrelevant to the determination of this small agency's budget, and the Congress becomes the Endowment's Board of Directors.

The facts are:

- 1) For three years, we have proposed low Endowment budgets and failed: \$88 million in FY '82, \$101 million in FY '83, and \$125 million in FY '84. The actual budgets passed by the Congress and signed by the President for those years are: \$143 million in FY '82, \$144 million in FY '83, and \$162 million in FY '84.
- 2) Last year (FY 1984) is instructive: we proposed \$125 million; the Senate came in at \$143 million; the House came in at \$165 million; our approved budget is \$162 million. Last year I urged \$144 million (FY '84 budget) and got a raise from \$101 million to \$125 million. Had the Administration proposed \$144 million, I think (but cannot prove) that we could have held the NEA budget to \$150-155 million, instead of \$162 million. We would also have gotten significant credit in the highly visible arts world, particularly with the trustees of arts organizations who are largely supporters

of the President and who would have helped us hold the line had we been in the ballpark.

3. This year, I have urged on OMB a budget of \$162 million; their mark is \$140 million. The arts lobby is discussing \$200 million. I have discussed with the relevant Senate Committee the lowest number they would consider for FY '85; I am told \$160-165 million. \$140 million is not in the ballpark.
4. Government support for the arts has a strong political following. Notwithstanding very tight budgets in many states, state arts agency support continues to increase. A particularly dramatic example involves Governor Thompson of Illinois: Thompson tried to abolish the state arts agency; the trustees of the major Chicago arts organizations held his state income tax increase hostage; the end result was continuation of the arts council and a doubling of its budget. Similarly the Los Angeles Music Center prevented substantial reductions of the California Arts Council budget.

The bottom line is:

1. We look ridiculous proposing slightly increasing, but nonetheless irrelevant, budgets. The substance of our proposals causes a sour taste among arts organization trustee supporters of the President and the many women volunteers who help the arts -- not helping the gender gap. Irrelevance on the budget also reduces the Administration's capacity to fashion agency programs in a way that encourages more attention to quality and stimulation of additional private support. It strengthens the hand of the full-time paid arts lobby and House Democrats and weakens our ability to make a difference. It shifts power from the Executive Branch to the Congressional Branch. For example, the President of the American Association of Museums told me last week that our budget positions had for the first time in 16 years caused arts organizations to go directly to the Hill, as opposed to working through the Endowment.
2. Based on my soundings and our experience over the past 3 years, the OMB mark of \$140 million will be considered irrelevant. Given the likely Senate position on our budget, the OMB mark will not result in a lower House and Senate compromise; the bargain will be between the Senate and House without regard to the Administration (like 82, 83, and 84). Conversely, if we come in at \$162 million (the same as last year), we have a good chance of holding the eventual outcome close to that; otherwise I will simply, as last year, be forced to respond to House requests for budget allocations at increased levels after the fact.
3. Administration proposal of \$162 million will recognize the inevitable: provide us with important political credit, and put us in a position for the first time both to hold the budget

line and become a more positive force in the arts. I cannot see any costs; there are no trades in this area. It is a small theoretical price (\$22 million) for an actual political and possibly budgetary gain.

SUGGESTED ACTION

Call Stockman to urge holding the Endowment budget to \$162 million, not cutting it disproportionately. (Stockman may not fight if the West Wing is politically interested.) The essential point is: what does OMB think we will gain by forcing the Endowment to espouse a budget which will automatically be ignored by Republicans as well as Democrats?

I would welcome the opportunity to discuss this with you, Mike. Last year, the Budget Review Committee denied my appeal. Doing the same thing again this year just doesn't make any sense!

G.C. (Hodsell)

Australian Atomic Energy Commission

File
no action needed.
Cliffbrook, 45 Beach Street, Coogee, N.S.W.



OUR REFERENCE

YOUR REFERENCE

BOX 41, POST OFFICE, COOGEE, N.S.W., AUSTRALIA, 2034
CABLES: ATOMCOM, SYDNEY - TELEPHONE: 665-1221

2nd February, 1981.

PERSONAL AND CONFIDENTIAL

Dear Frank,

May I first wish you a successful 1981 and hope that the new administration has settled in smoothly.

I appreciated the opportunity to talk to you last year on the subject of the history of the INFCE study and my book. I have to admit that the work on the book is proceeding slowly due to the pressure of other work. I have therefore decided to try to speed it up by spending at least three months on it full-time early this year. To this end I am applying for a grant equivalent to three months salary so that I can take leave without pay, plus an amount to pay for an overseas trip to interview a few additional people, especially Mr. Jimmy Carter, who I was unable to see last year.

I've started by applying to the Rockefeller Foundation last week when I found the deadline for applications was the 1st February, 1981, and I will be applying to others, such as the Ford Foundation. I took the liberty of including your name on a short list of referees to whom the Foundation could refer to check my bona fides, so I hope this is acceptable to you.

...

I enclose a copy of a brief outline of the book for which I've chosen the provisional title of "Nuclear Conflicts", for your background information.

Yours Sincerely,

(C.J. HARDY)

Chief Scientist, Nuclear Fuel Cycle

Encl"

Mr. Frank Hodsell,
Department of State,
C Street,
WASHINGTON. D.C. U.S.A.

Proposal for Grant (Continued)

Appendix 1. Draft Book Cover

Back Cover

"NUCLEAR CONFLICTS"

On the 7th April 1977 President Carter made a major policy speech on nuclear energy. In it he called for an International Nuclear Fuel Cycle Evaluation Study to assess how to promote the peaceful uses of nuclear energy whilst minimising the risks of proliferation of nuclear weapons. This study became known as INFCE.

The study commenced at a conference in Washington on the 19 October 1977. It ended 29 months later on 28 February 1980 at a conference in Vienna. During that time over 100 technical meetings were held, over 500 experts in technical and international affairs took part from 66 countries and over 20,000 pages of reports were written. The results were published in 1980 in 9 volumes totalling over 2,000 pages.

INFCE was claimed throughout to be a technical fact-finding and assessment study, not a political negotiation. It had the aim of better informing national governments and aiding them in the formulation of their future nuclear policies.

Dr. Hardy presents INFCE as a series of conflicts and as a technical study interwoven with political considerations and national interests. He documents the many factors in the years leading up to 1977 which provided the incentive for the United States Administration to conceive the idea. He discusses the conflicts between the USA and the many nuclear nations in the western world during 1977 before the concept was accepted. He shows the conflicts that arose between the uranium producers and consumers, signatories and non-signatories to the Nuclear Non-proliferation Treaty, North and South, governments and nuclear industries, and departments within governments. He shows how the various interests were finally combined into a consensus report and where the differences remain in the fine print. He discusses finally "Where do we go from here?".

Dr. Hardy sees INFCE as a worthwhile but never-to-be-repeated exercise, a technical tour-de-force that will have a significant impact on future international nuclear relations. If the INFCE reports become accepted as the "Bible" of the nuclear fuel cycle, "Nuclear Conflicts" will be the "Concordance" and provide valuable insights into it.

Proposal for Grant (Continued)

Appendix 1. Draft Book Cover

Front and Back Flaps

"NUCLEAR CONFLICTS"

is the background story and guidebook to the International Nuclear Fuel Cycle Evaluation (INFCE) Study initiated by President Carter in 1977. An outline of the study is given on the back cover.

The author describes why the study was started, how it was carried out by experts from 66 countries for 29 months, and how the results were presented in 9 volumes of over 2000 pages. He discusses the conflicts which occurred on many levels before and during the study, how many of them were resolved and how the nuclear fuel cycle is likely to develop now that INFCE is over.

200 pages \$20.00

Cont. from inside back flap:

leader of the Australian delegation to several of the Working Groups at meetings in the USA, Europe and Japan.

Dr. Hardy wrote "Nuclear Conflicts" as a private initiative outside of his work as a senior government official. He travelled widely to gather material and to interview some of the principal persons involved in INFCE.



Dr. Hardy was born in England in 1931. He graduated from the University of Bristol with BSc Honours in Chemistry in 1952 and a Ph.D. for research in 1955. He received a D.Sc. in 1971 for his extensive publications in the nuclear field.

He worked with the UK Atomic Energy Authority from 1955 to 1970 in the development of nuclear fuel processes and the application of nuclear techniques in British non-nuclear industry. He spent two years in 1965-66 as a guest scientist at the Oak Ridge National Laboratory in the USA, a centre for US nuclear fuel cycle research.

Dr. Hardy joined the Australian Atomic Energy Commission in 1971 as Chief of the Chemical Technology Division. He is now the Chief Scientist for the Nuclear Fuel Cycle and principal adviser to the Commission and the government in this field. He played a major part in INFCE and was

Continued inside front flap

Fee
Hodson
→

Don. Hodson

December 19, 1980

Mr. James D. Kohlmann
19520 N.W. 12th Avenue
Miami, FL. 33169

Dear Mr. Kohlmann:

On behalf of Jim Baker and the President-elect, many thanks for your letter of December 2. Rest assured that we will take your views into account as we develop the agenda of the Reagan Administration.

Sincerely,

F.S.M. Hodson
Assistant to the Chief of Staff,
Designate

FSMH/kc

December 2, 1980

Mr. James Baker
Office of the President-elect
1726 M Street, N.W.
Washington, D.C. 20270

DEC 5 1980 ✓

Dear Mr. Baker:

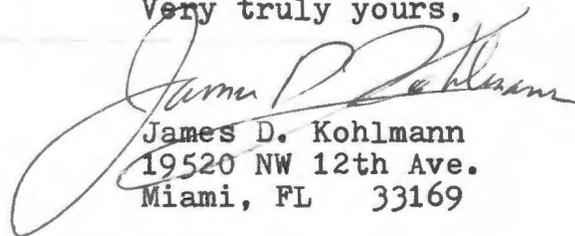
As an American and Republican, I am naturally delighted with the triumph of November 4th. For the first time in many years I feel it may be possible to hope for genuine responsiveness from the Government on matters that concern us all.

The enclosed letter is directed to President-elect Reagan with the understandable hope that he will find time to read it personally. If this is not possible, I am told you are his close confidant and in a position to bring matters to him for consideration.

That being the case, please read my letter to him and if, upon evaluation, you feel my observations have merit, please bring them to the President-elect's attention. I would hope that he may see thereby areas of grave concern not currently on his priority agenda and may even perhaps make them so. Were such a thing to happen, I believe the interests of the American people would be well served.

I appreciate very much your consideration of my request and hope you will find it possible to speak for me in this matter. May God give you, our new President Reagan and his entire Administration wisdom and strength for the tasks that lie ahead.

Very truly yours,


James D. Kohlmann
19520 NW 12th Ave.
Miami, FL 33169

December 2, 1980

Dear President-elect Reagan:

I would first like to congratulate you on your stunning victory. It is, along with the Republican sweep in the Senate, a cause for celebration for ordinary Americans like myself unequalled in 25 years of bureaucratic encroachments on our freedom. May God give you the strength and uncommon wisdom needed to begin turning our beloved country back into the America we once knew.

In the flurry of media speculation about what you will do next, little has been said about two areas which I believe are of great importance. I should like to express my concern and hope that you may be moved to take action.

As one having a degree in economics I am familiar with the basic supply and demand problem usually referred to in introductory courses as "guns or butter." The Soviet Union apparently, with the appalling help of former U.S. Administrations, has solved the problem neatly. They consume our "butter" and use their own resources to make guns. My impression is that they don't pay for the butter but they do train the guns on us. Of all the foolish and dangerous things the U.S. Government has permitted in recent years, the flow of American technology, manufactured goods and foodstuffs to a nation firmly committed to our destruction is, in my judgement, the worst.

Please, for the sake of America, install a Secretary of Commerce who recognizes this and will put a halt to such a suicidal program. If the Russians have to provide for their own people they may be distracted somewhat from building armaments. Let us put a stop to this continuous subsidy of our own downfall.

The other concern I have begins with Paul Volcker, Chairman of the Federal Reserve Board. There is speculation that you may retain him and I ask you to reconsider. His performance in office has not been encouraging and further, he was appointed by Jimmy Carter whose economic ideas are diametrically opposed to yours, regardless of past campaign rhetoric from him. Lastly, he is a member of the Trilateral Commission, the low-profile organization of powerful men which seems to have an unusual number of its people in high government office.

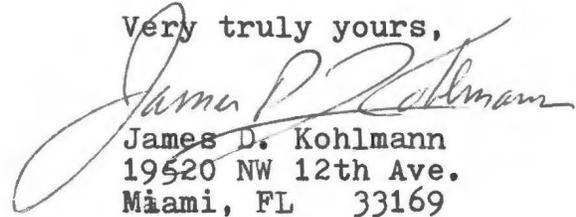
To my mind, there is something inherently sinister about a small, almost publicly unknown group such as this exerting overwhelming influence upon our national affairs. I'm sure you are well aware of the names and titles of those in power now. I find the lack of media attention to this situation peculiar. Were any other homogeneous group - Irishmen, Christians, Freemasons, most recently Georgians, etc. - so heavily represented in positions of power, the news media would relentlessly inform the world.

About the Trilateral Commission and its activities, we hear nary a word. It is left to small conservative tabloids to inform us of this and the general public views such relatively unknown forums with distrust. Hence these people exercise their power untroubled by public scrutiny and the majority of Americans remains uninformed. Nevertheless, I have become aware of this concentration of power from enough independent sources to feel concerned and vaguely threatened.

May I suggest very seriously that the Federal Government needs to be cleansed of members of the Trilateral Commission for the good of the United States. Paul Volcker should very definitely be among those invited to resign.

I appreciate the time you have taken to let me express these concerns. If my letter has somehow motivated you to consider action in these matters I will be most pleased. I believe that today our country needs a strength of leadership perhaps unequalled in American history to solve the immense problems that lie before us. Because of November 4th, I and many other working Americans look to you and your new Administration with eagerness and renewed hope for the future.

Very truly yours,


James D. Kohlmann
19520 NW 12th Ave.
Miami, FL 33169

Dan 12-19-80

December 19, 1980

Mr. Anthony Alonge
81-15 268th Street
Floral Park, N.Y.

Dear Mr. Alonge:

Mr. Baker has asked me to respond to your letter of November 16. He thanks you for your congratulations and your thoughts.

The objectives of your "Plan Growth to the People" are shared very much by Governor Reagan. You can be sure that he will make every effort to move towards goals such as these.

Thank you again for taking the time to write us.

Sincerely,

F.S.M. Hodsoll
Assistant to the Chief of Staff
Designate

FSMH/kc

DEC 4 1980

Anthony Alonge
81-15 268th Street
Floral Park, New York

November 16, 1980

James A Baker, Chief of Staff
Dear Mr Baker,

May I extend my profound
~~congratulations~~ congratulations. Your tenacity and
difficult times working for
President Gerald Ford, George
Bush, and then success of
President Elect, Ronald Reagan.

Caroline and I wish you
and your family good health
and happiness in your new
appointment.

Should you not recall my
name, from the many letters
advising and suggesting my
"Growth to the People Plan" would
win the Presidency for Gerald
Ford. Include me with the other
half of our citizens, I cried with
them in his loss of the Presidency.

More than twenty five years.
a "Research Analyst", Stock Analyst,
Mergers and Acquisitions. Comparing

2)

to many "named Prominent Economists who have failed in solving the "Dilemmas of our Country": I will bear any challenge that my "~~Plan~~ ~~Growth to the People~~ will ~~Reduce~~ - 1) Inflation, 2) Energy needs and pressure from O.P.E.C., 3) Pollution, 4) Crime, 5) Danger from Nuclear Waste, 6) Danger of Possible War and the Slaughter of our Youth. How can any decent and intelligent Man or Women ignore these benefits.

Would you believe three optimum size Corporations rejected and lacked Americanism. No words can I write the anger expressed upon them.

Working on a plan the Nation needs. Firstly what do we have to offer in the next two years before winning the majority in the house of Representatives for President Ronald Reagan - and set up the future of Republicanism.

3/

The "Plan" centers on how to reduce, Sixty (60) to Eighty (80) Billion Dollars in Interest Costs on our National Debt.

Don't despair dear friends, these are my cup of tears.

Hope this letter gets to you soon. Would like to hear from you.

Sincerely
Anthony Alonzo

P.S. From the "Plan" there will be "Millions for Campaigns" or "Profit" for those who will help "Bankroll", and get The Plan started with my Associates.

last
Sending you a copy of my response from President Gerald Ford.

GERALD R. FORD

March 16, 1977

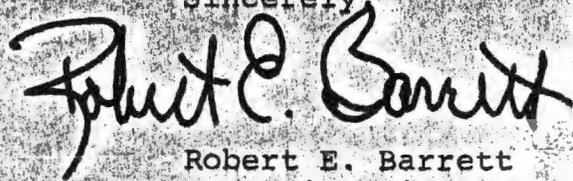
Dear Mr. Alonge:

On behalf of President Ford, I would like to thank you for your recent letter.

While President Ford appreciates the interest which prompted you to write, I regret to advise that he will be unable to become involved with the "Growth to People" program you described. For reasons which I am sure you can understand, President Ford has decided to limit his activities to more broad-ranged concerns.

President Ford is grateful for your thinking of him, and he asked me to convey his best wishes.

Sincerely,

A handwritten signature in cursive script that reads "Robert E. Barrett". The signature is written in dark ink and is positioned above the typed name and title.

Robert E. Barrett
Executive Director
to President Ford

Mr. Anthony Alonge
1254 Gracia
Camarillo, California 93010

General Motors Corporation

2

JAMES D. JOHNSTON
DIRECTOR
GOVERNMENT RELATIONS

August 6, 1981

Mr. Francis S. M. Hodsell
Deputy to the Chief of Staff
The White House
Washington, D. C. 20500

Dear Frank:

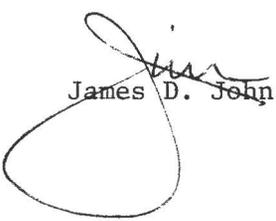
Thanks for convening the meeting last week with the auto industry to discuss the Clean Air Act. For our purposes, it was most worthwhile. I hope it was helpful to you and your colleagues.

Now that the tax and budget legislation is completed -- and we were pleased to help in that effort -- I am glad to note the Cabinet decision yesterday on amending the Clean Air Act. As you know, we consider this to be the single most important regulatory reform action that needs to be completed this year.

The first problem I dealt with after leaving the Foreign Service many years ago for the auto industry was clean air and it will probably still be at issue when I retire. In the interim, if you think I might be helpful in supplying any information or folklore on the subject, don't hesitate to call.

Again, thanks for the meeting.

Sincerely,


James D. Johnston

JDJ:cb

**CHRYSLER
CORPORATION**

CHARLES T. CUDLIP
VICE PRESIDENT
WASHINGTON OFFICE

July 31, 1981

Mr. Frank Hodson
Deputy to the Chief of Staff
The White House
Washington, DC 20500

Dear Frank:

I would like to thank you for taking time from your busy schedule to discuss amendments to the Clean Air Act.

As you know, it is very important to our industry that we see legislative action on this issue in the Fall. I appreciate your interest and your concern and please know that I am always available to be of assistance as we proceed with these necessary changes.

Continued best wishes to you.

With regard,



CTC:pt



SUPERVISOR, THIRD DISTRICT
BRUCE NESTANDE
VICE-CHAIRMAN OF THE BOARD OF SUPERVISORS
ORANGE COUNTY HALL OF ADMINISTRATION
10 CIVIC CENTER PLAZA, SANTA ANA, CALIFORNIA 92701
PHONE: 834-3330 (AREA CODE 714)

*File
Clean air act*

June 30, 1981

Mr. F.S.M. Hodson
Deputy Assistant to the President
The White House
Washington, D.C. 20500

Dear Frank,

Thanks for putting together the Clean Air Act meeting. Hopefully, it will be possible to assist the Administration's proposal. Enclosed is the most recent press regarding the Waxman position. This article appeared in the editorial page of Sunday's L.A. Times.

When you have formulated your game plan, please let me know what I might do to assist. I'll do whatever is possible and most helpful. I await your response.

Best wishes,

A handwritten signature in cursive script, appearing to read "Bruce".

BRUCE NESTANDE
Supervisor, Third District

BN:kc

Enclosure

Clean Air Act: Just Another Trinket for Reagan to Dust Off?

By HENRY A. WAXMAN

Representatives of industry, environmental lobbyists, members of Congress and concerned citizens have been waiting for some time to see the Reagan Administration's proposal for amendments to the Clean Air Act.

Enacted in 1970, our clean-air laws have established air-pollution standards designed to protect the health of the American people; they have forced industry to control pollution from their plants and required our cars to become progressively cleaner.

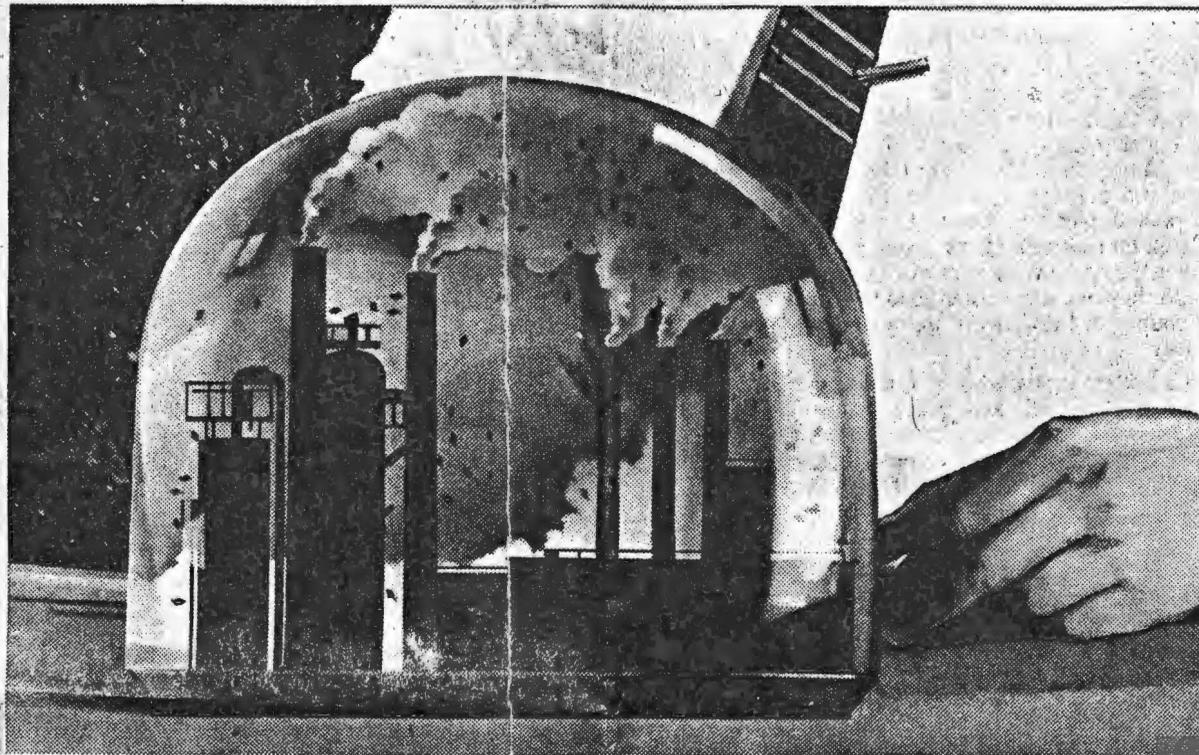
I recently obtained a draft of the proposal the Administration intends to submit to Congress this week. Even though it is only a draft, it provides the most definitive indication to date of the direction Interior Secretary James Watt and the Cabinet Council is contemplating.

In a word, the proposal would end the federal government's decade-long commitment to cleaning the air in our nation's cities. If this proposal becomes law, 140 million people who live in dirty-air areas will be permanent victims of air-pollution levels that threaten health by aggravating the incidence of heart disease, lung disease and cancer.

This proposal goes well beyond the changes that industry has publicly advocated. It goes far beyond even Vice President George Bush's publicly expressed goal of "mid-course corrections" to make application of the law more efficient and equitable, to eliminate bureaucratic delay, and to ease somewhat the regulatory burden on industry. Instead, the Administration is proposing nothing less than a blueprint for the destruction of our clean-air laws.

There is no doubt in my mind that if the President persists in this course, there will be a furious and acrimonious battle in Congress that only will delay the passage of the changes that the law truly needs.

There is, after all, no reason for fundamental changes in the Clean Air Act. It has done much to improve air quality across America without hindering our economic and energy development. The President's Commission on Coal and the National Commission on Air Quality both have concluded that we can vastly increase our use of domestic energy reserves without sacrificing the Clean Air Act. This law also enjoys the broad support of the American people—86% of them, according to a Harris Survey released earlier this month.



LYONS/STIEGER /for The Times

But this draft proposal, currently under consideration at the highest levels of the Administration, would drastically limit the federal government's ability to protect the public health of America from air pollution.

It would do away with the federal program to clean up the air in cities where it is worst, such as Los Angeles, by repealing requirements that industries reduce their emissions until clean-air standards are met.

It would turn back the clock on auto-pollution standards, actually allowing cars in the future to pollute the air more than many of those being sold today. The

proposal would allow, for example, a doubling of the current output of carbon monoxide, and would take no further measures to control "nox" (oxides of nitrogen).

It would permit areas that are currently cleaner than the law requires—areas that have special protection to prevent significant deterioration in air quality—to become polluted to the maximum level now allowed under the law.

It would permit states, acting on their own, to relax pollution controls for industry, setting off an ugly process in which industrial growth would go to the limits

bidder. Even where clean-up technology is available and needed, industry would no longer be required to use it. New factories could be built without adequate pollution-control equipment; for example, coal-fired power plants would no longer have to use scrubbers to remove dangerous sulfur emissions.

It would do nothing to alleviate the ominous threat of "acid rain"—precipitation loaded with industrial contaminants that can fall to earth hundreds of miles from the source, sterilizing lakes and spoiling forests.

And the proposal would erect new obstacles to federal enforcement of the law against polluters. Prosecution and fines against violators would be made optional rather than mandatory.

All of these proposals contradict the basic policies that have served us well over the past decade: First, that we should make sure that new sources of pollution be as clean as possible. Second, that we should not allow the states to compete with each other by offering lenient pollution-control policies. Third, that measures must be taken to control pollution that crosses state and national boundaries.

Air pollution is a problem that cannot be controlled by the states alone, and is a problem that will not be controlled by industry. The only effective guarantee of a clean environment is a coherent national policy to curb air pollution. The Administration's proposals would essentially repudiate that guarantee.

The Administration's philosophical approach to pollution control appears to center no longer on what happens to the health of the American people, but on what the cost might be to industry.

If everyone who has a stake in clean air made his or her views known, perhaps this Administration would understand that the American people do not want to live in a land irreversibly covered by a blanket of factory smoke and auto exhaust that threatens their well-being.

Henry A. Waxman (D-Calif.) is the chairman of the House energy and commerce subcommittee on public health and the environment, which has jurisdiction over the Clean Air Act.

cc. (Hodsoll)

ANDREWS, KURTH, CAMPBELL & JONES

ATTORNEYS

1747 PENNSYLVANIA AVENUE, N. W.

WASHINGTON, D. C. 20006

(202) 861-7400

2500 EXXON BUILDING
HOUSTON, TEXAS 77002
(713) 652-2500

*File
Energy*

CABLE ADDRESS

ANKUR

May 1, 1981

Mr. Frank Hodsoll
Deputy to the Chief of Staff
The White House
Washington, D.C.

Dear Frank:

I enclose a copy of Platt's Oil Regulation Report which will give you some idea of the guerrilla warfare that is continuing at the Department of Energy. I don't think the problem is anywhere near under control but I don't think anything can be done until some appointments get made.

Sincerely,



Michael F. Butler

Enclosure



OIL REGULATION

REPORT

MONITORING FEDERAL ACTIVITIES IMPACTING ON PRICES AND SUPPLIES

Vol. 6, No. 7

April 24, 1981

DOE WAGES CAMPAIGN TO PRESERVE ENFORCEMENT EFFORTS

Dept. of Energy enforcement and special counsel officials, concerned about Reagan Administration attempts to trim their operations, are waging an intense campaign to preserve their cases against oil companies over at least the next several years. Moreover, according to sources, the campaign is showing signs of succeeding, and companies of all sizes should beware.

Reportedly, enforcement and special counsel officials are examining every opportunity for expanding and prolonging enforcement cases--a crucial exercise now that Congress is examining the proposed DoE budget for the next fiscal year. Included in this process is a tactic that began during the closing months of the Carter Administration--reopening old audits wherever possible. For example, one small downstream firm was recently contacted by the agency regarding its product sales during the last two months of 1973. In this case, an audit had already been conducted covering the period in question--in 1976. Apparently, DoE has uncovered new information requiring a reexamination. Many such examples have emerged over the past several weeks.

The idea of reopening old audits, according to sources, is to pad DoE's list of unresolved cases to strengthen its argument for sufficient funds to maintain its operations. Ironically, this same tactic had been used unsuccessfully by the agency earlier this year with chief White House budget-cutter Stockman, who even publicly ridiculed DoE for inflating the amount of money involved in overcharge cases. But DoE officials now seem to be employing the strategy with better results on Capitol Hill, where they reportedly have won commitments from several key legislators for a higher funding level for enforcement efforts than had been requested by the White House.

The current DoE enforcement situation is mirrored all over the federal bureaucracy at the moment. Officials are fighting White House attempts to curtail their programs. Unfortunately, the White House can't possibly keep track of all the independent actions of the agencies. Furthermore, there is still a substantial constituency in Congress that supports enforcement of the now-defunct oil price regulations. Given these two factors, the current survival campaign by both the enforcement and special counsel offices at DoE is given a fair chance of succeeding.

'V' factor muddle lingers..... Page 2

'V' FACTOR MUDDLE LINGERS

Despite a decision made weeks ago by the Reagan White House to drop the matter permanently (see February 27 REG/REPORT), the question of whether the "v" factor in the refinery cost allocation rules was valid and is enforceable continues at the Dept. of Energy, the product of a fierce internal effort by DoE enforcement people to preserve the issue.

Furthermore, unless new attention is devoted to the matter by the White House, or unless the courts somehow strike down the "v" factor rule once and for all, the issue may persist for some time to come.

The "v" factor rule required assignments of increased costs to price-controlled products to be based on the volumetric proportion of output of each product to total refinery output. The rule was made necessary when the government began the long process, in 1974, of decontrolling selected refinery products. The long controversy over the "v" factor began because it was originally implemented as an emergency rulemaking, with no prior opportunity for public review. The emergency action was taken to "correct" a final rule, not a proposal, an action that was ruled as improper by the U.S. Supreme Court last year.

When we last reported on the status of the "v" factor, DoE had just announced it was reviewing its recent new proposed rulemaking--which would have retroactively imposed the "v" factor beginning in 1974--in response to President Reagan's order for a temporary moratorium on new regulations. Meanwhile, a U.S. District Court in Texas had issued a temporary restraining order against the new rule until a decision could be reached on a new suit brought by Mobil.

The combined effect of those two new developments was to arouse hopefulness among refiners that the issue was about to sink out of sight. No such luck.

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COURT DECISION NO HELP. The Texas court, ruling on Mobil's claims, reached the same decision as the U.S. Supreme Court last year, namely, that the old Federal Energy Office improperly implemented the "v" factor rule in 1974. Then, more recently, the Temporary Emergency Court of Appeals--the "temporary" judicial body set up in 1971 to rule on wage and price freeze matters--upheld the Texas decision.

If left to stand, the TECA action probably would wipe out much of DoE's current remaining enforcement effort against refiners, because an invalid "v" factor rule would add billions of dollars to refiner cost banks. Unfortunately, the 1974 "v" factor rule is only one of three DoE could bring to bear against refiners. The other two are the new proposed rule, and a reimplementing of the original rule imposed by the Federal Energy Administration on February 1, 1976. The 1976 rule wasn't addressed directly by the TECA decision.

DoE lawyers, buoyed by the apparent TECA omission, are now claiming that even if the original 1974 rule was invalid, the 1976 rule was properly implemented and therefore a "v" factor limitation applies at least from February 1, 1976 through the January 27, 1981 end of decontrols. On the other hand, the TECA decision declares that the "v" factor rule was invalid from 1974 through decontrol--in essence invalidating the 1976 rule as well. Both DoE lawyers and outsiders acknowledge that it probably will require another round of litigation to resolve this discrepancy.

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CAPITALIZING ON INATTENTION. At this point, it appears that the "v" factor issue could be resolved in favor of the DoE enforcement people, thereby insuring many remaining months of litigation for refiners with pending enforcement cases. At the very

least, the issue apparently will remain unresolved for some time, mainly because enforcement officials will be able to pursue the matter on two fronts--by declaring that the 1976 rule is valid and enforceable, and by attempting to implement the new proposal.

Regarding the proposed rule, several sources find particularly perplexing the fact that DoE is still pushing the matter because, they say, the new "v" factor proposal was supposed to have been dropped outright under direct orders from the White House Office of Management & Budget. Top Administration officials, who had been studying many federal regulations considered unnecessary or overly burdensome, recommended elimination of the new proposal. That recommendation was translated into a directive to DoE.

So why is the "v" factor proposal still under active consideration? Basically, there are two reasons:

- + According to sources, DoE enforcement officials have waged an "unprecedented campaign" within the agency to preserve the rulemaking --or at least escape the certain death the suspension would have provided--despite orders from the OMB.
- + Also according to sources, the White House is currently so preoccupied with broader matters--such as the president's health after the assassination attempt and his overall economic package--that administration officials simply haven't had time to concentrate on "tiny" details such as an obscure petroleum regulation.

Does the latter item mean that the White House has left resolution of the new "v" factor proposal up to DoE? Not at all.

Rather, top administration officials are apparently unaware that the issue is still active. This indication has been confirmed in a recent letter from a White House official to an oil company representative, in which the official declared that the "v" factor rulemaking had been "repealed."

"It's amazing," says one source. "Those guys at the White House don't have any idea what's going on at DoE. And at the rate the (president's) economic package is going through Congress, DoE could have the new rule out and conduct several years' worth of enforcement before they find out."

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ENFORCEMENT NOT DEAD. The advantage DoE enforcement officials have now is that, even if the White House manages to return its attentions to the "v" factor proposal long enough to eliminate it, the recent TECA decision still leaves open the possibility--for now at least--that the rule may be enforced from February 1976 through decontrol. Trimming two years from the "v" factor restriction would still leave enormous refiner cost banks. But DoE should find sufficient room to pursue recovery of overcharges for several years--a process that sources say DoE enforcement people consider essentially as important as the outcome.

Incidentally, the Reagan Administration may not be able to curtail DoE enforcement activities easily. The agency has found a new willingness by Congress to appropriate money for DoE enforcement efforts (see story on page one). Consequently, assuming DoE either pursues the latest proposed "v" factor rule or has its 1976 rule upheld in the courts, enforcement officials will have the resources to pursue refiners for quite some time.
