F: EPA

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED

FEB 3 1983

JAMES F. DAVEY, Clerk

UNITED STATES OF AMERICA,
and
ANNE M. GORSUCH,

Plaintiffs,

v.

THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES; THE COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION OF THE HOUSE OF REPRESENTATIVES; THE HONORABLE JAMES J. HOWARD, CHAIRMAN OF THE COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION OF THE HOUSE OF REPRESENTATIVES; THE SUBCOMMITTEE ON INVESTIGATIONS AND OVERSIGHT OF THE COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION OF THE HOUSE OF REPRESENTATIVES; THE HONORABLE ELLIOTT J. LEVITAS, CHAIRMAN OF THE SUBCOMMITTEE ON INVESTIGATIONS AND OVERSIGHT OF THE COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION OF THE HOUSE OF REPRESENTATIVES; THE HONORABLE THOMAS P. O'NEILL, SPEAKER OF THE HOUSE OF REPRESENTATIVES; EDMUND L. HENSHAW, JR., THE CLERK OF THE HOUSE OF REPRESENTATIVES; JACK RUSS, SERGEANT AT ARMS OF THE HOUSE OF REPRESENTATIVES; JAMES T. MOLLOY, THE DOORKEEPER OF THE HOUSE OF REPRESENTATIVES.

Defendants.

Civil Action No. 82-3583

M E M O R A N D U M

The United States of America and Anne M. Gorsuch, in her official capacity as Administrator of the Environmental Protection Agency (EPA), bring this action under the Declaratory Judgment Act, 28 U.S.C. §2201. Plaintiffs ask the Court to declare that Administrator Gorsuch acted

lawfully in refusing to release certain documents to a congressional subcommittee. Defendants in the action are the House of Representatives of the United States; the Committee on Public Works and Transportation; The Honorable James J. Howard, Chairman of the Committee on Public Works and Transportation; The Subcommittee on Investigations and Oversight of the Committee on Public Works and Transportation; The Honorable Elliott J. Levitas, Chairman of the Subcommittee on Investigations and Oversight of the Committee on Public Works and Transportation; The Honorable Thomas P. O'Neill, Speaker of the House of Representatives; Edmund L. Henshaw, Jr., Clerk of the House of Representatives; Jack Russ, Sergeant at Arms of the House of Representatives; and James T. Molloy, Doorkeeper of the House of Representatives. The individual defendants are sued only in their official capacities. The case is now before the Court on defendants' motion to dismiss.

The essential facts are undisputed. On November 22, 1982, a subpoena was served upon Anne Gorsuch by the Subcommittee on Investigations and Oversight (the Subcommittee) of the Committee on Public Works and Transportation (the Committee). The subpoena required Administrator Gorsuch to appear before the Subcommittee on December 2, 1982, and to produce at that time the following documents:

> all books, records, correspondence, memorandums, papers, notes and documents drawn or received by the Administrator and/or her representatives since December 11, 1980, including duplicates and excepting shipping papers and other commercial or business documents, contractor and/or other technical documents, for those sites listed as national priorities pursuant to Section 105(8)(B) of P.L. 96-510, the "Comprehensive Environmental Response, Compensation and Liability Act of 1980."

On November 30, 1982, President Reagan sent a Memorandum to

Administrator Gorsuch instructing her to withhold from the Subcommittee any documents from open law enforcement files assembled as part of the Executive Branch's efforts to enforce the Comprehensive Environmental Response, Compensation and Liability Act of 1980. On December 2, 1982, the return date of the subpoena, Administrator Gorsuch appeared before the Subcommittee. She advised the Subcommittee that the EPA had begun to gather for production all documents responsive to the subpoena, but ". . . sensitive documents found in open law enforcement files will not be made available to the Subcommittee." 149 Cong. Rec. H10037. The Committee passed a Resolution reporting the matter to the full House of Representatives on December 10, 1982. The full House cited Administrator Gorsuch for contempt of Congress on December 16, 1982. The initial complaint in this case was filed on the same day, one day before the contempt resolution was certified to the United States Attorney for the District of Columbia for presentment to the grand jury. To date, the United States Attorney has not presented the contempt citation to the grand jury for its consideration.

Section 192 of Title 2 of the United States Code provides that a subpoenaed witness who refuses "to produce papers upon any matter under inquiry before either House . . . or any committee of either House of Congress", shall be guilty of a misdemeanor "punishable by a fine of not more than $1,000 nor less than $100 and imprisonment in a common jail for not less than one month nor more than twelve months." Once an individual has been found in contempt by either House of Congress, a contempt order is presented to the President of the Senate or the Speaker of the House of Representatives for

certification. 2 U.S.C. §194. The President or Speaker in turn delivers the contempt citation to the appropriate United States Attorney. The United States Attorney is then required to bring the matter before the grand jury. Id.

The Executive Branch, through the Justice Department, has chosen an alternate route, however, in bringing this civil action against the House of Representatives and individual members of the Legislative Branch. Plaintiffs ask the Court to resolve the controversy by deciding whether Administrator Gorsuch acted lawfully in withholding certain documents under a claim of executive privilege.

Defendants raise several challenges to the propriety of plaintiffs' cause of action. Included among defendants' grounds for dismissal are lack of subject matter jurisdiction, lack of standing, and the absence of a "case or controversy" as required by Article III, §2 of the United States Constitution. In addition, defendants claim that they are immune from suit under the Speech and Debate Clause, Article I, §6, cl. 1. Plaintiffs have addressed and opposed each of these threshold challenges.

The Legislative and Executive Branches of the United States Government are embroiled in a dispute concerning the scope of the congressional investigatory power. If these two co-equal branches maintain their present adversarial positions, the Judicial Branch will be required to resolve the dispute by determining the validity of the Administrator's claim of executive privilege. Plaintiffs request the Court to provide immediate answers, in this civil action, to the constitutional questions which fuel this controversy. Defendants, however, have indicated a

preference for established criminal procedures in their motion to dismiss this case. Assuming there are no jurisdictional bars to this suit, therefore, the Court must initially determine whether to resolve the constitutional controversy in the context of a civil action, or defer to established statutory procedures for deciding challenges to congressional contempt citations.

The statutory provisions concerning penalties for contempt of Congress, 2 U.S.C. §192 and §194, constitute "an orderly and often approved means of vindicating constitutional claims arising from a legislative investigation." Sanders v. McClellan, 463 F.2d 894, 899 (D.C. Cir. 1972). Under these provisions, constitutional claims and other objections to congressional investigatory procedures may be raised as defenses in a criminal prosecution. See Barenblatt v. United States, 360 U.S. 109 (1959); Ansara v. Eastland, 442 F.2d 751 (D.C. Cir. 1971); United States v. Tobin, 306 F.2d 270, 276 (D.C. Cir. 1962). Courts have been extremely reluctant to interfere with the statutory scheme by considering cases brought by recalcitrant witnesses seeking declaratory or injunctive relief. See, e.g., Eastland v. United States Servicemen's Fund, 421 U.S. 491 (1975); Ansara v. Eastland, 442 F.2d at 754. Although the Court of Appeals for this Circuit has entertained one civil action seeking to block compulsory legislative process, that action was brought by the Executive Branch to prevent a private party from complying with a congressional subpoena. See United States v. American Telephone and Telegraph Company, 551 F.2d 384 (D.C. Cir. 1976). Significantly, therefore, in that case the Executive Branch was not able to raise

its claim of executive privilege as a defense to criminal contempt proceedings.

Courts have a duty to avoid unnecessarily deciding constitutional issues. United States v. Rumely, 345 U.S. 41, 45-46 (1952). When constitutional disputes arise concerning the respective powers of the Legislative and Executive Branches, judicial intervention should be delayed until all possibilities for settlement have been exhausted. See United States v. American Telephone and Telegraph, 551 F.2d at 393-395. Judicial restraint is essential to maintain the delicate balance of powers among the branches established by the Constitution. See id. Since the controversy which has led to United States v. House of Representatives clearly raises difficult constitutional questions in the context of an intragovernmental dispute, the Court should not address these issues until circumstances indicate that judicial intervention is necessary.

The gravamen of plaintiffs' complaint is that executive privilege is a valid defense to congressional demands for sensitive law enforcement information from the EPA. Plaintiffs have, thus, raised this executive privilege defense as the basis for affirmative relief. Judicial resolution of this constitutional claim, however, will never become necessary unless Administrator Gorsuch becomes a defendant in either a criminal contempt proceeding or other legal action taken by Congress. See, e.g., Ansara v. Eastland, 441 F.2d at 753-754. The difficulties apparent in prosecuting Administrator Gorsuch for contempt of Congress should encourage the two branches to settle

their differences without further judicial involvement. Compromise and cooperation, rather than confrontation, should be the aim of the parties. The Court, therefore, finds that to entertain this declaratory judgment action would be an improper exercise of the discretion granted by the Declaratory Judgment Act, 28 U.S.C. §2201. See Hanes Corp. v. Millard, 531 F.2d 585, 591 (D.C. Cir. 1976). In light of this determination, the Court will not address the additional grounds for dismissal raised by defendants.

Accordingly, defendants' motion to dismiss is granted.

An appropriate Order follows.

United States District Judge

Dated: February 3, 1983

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED

FEB 3 1983

JAMES F. DAVEY, Clerk

UNITED STATES OF AMERICA, et al.,

Plaintiffs,

v.

THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES, et al.,

Defendants.

Civil Action No. 82-3583

O R D E R

Upon consideration of defendants' motion to dismiss this action, plaintiffs' opposition, the memoranda filed by the parties, oral arguments of counsel and the entire record, it is by the Court this 3rd day of February, 1983

ORDERED that defendants' motion to dismiss is granted and this action is dismissed.

United States District Judge

THE WHITE HOUSE
WASHINGTON

EPA

CABINET AFFAIRS STAFFING MEMORANDUM

DATE: 2-7-83 NUMBER: 077782CA DUE BY: _____

SUBJECT: Cabinet Council on Natural Resources and Environment - Wednesday, February 9, 1983 4:00p.m. in the Roosevelt Room

	ACTION	FYI
ALL CABINET MEMBERS	☐	☐
Vice President	☑	☐
State	☑	☐
Treasury	☐	☑
Defense	☐	☑
Attorney General	☑	☐
Interior	☑	☐
Agriculture	☑	☐
Commerce	☑	☐
Labor	☐	☑
HHS	☐	☑
HUD	☑	☐
Transportation	☑	☐
Energy	☑	☐
Education	☐	☑
Counsellor	☑	☐
OMB	☐	☑
CIA	☐	☑
UN	☐	☑
USTR	☐	☑
CEA	☑	☐
CEQ	☑	☐
OSTP	☐	☐
_____	☐	☐
_____	☐	☐

	ACTION	FYI
Baker	☑	☐
Deaver	☐	☐
Clark	☐	☑
Darman *(For WH Staffing)*	☑	☐
Harper	☑	☐
Jenkins	☐	☑
_____	☐	☐
_____	☐	☐
_____	☐	☐
_____	☐	☐
_____	☐	☐
_____	☐	☐
_____	☐	☐
CCCT/Gunn	☐	☐
CCEA/Porter	☐	☐
CCFA/Boggs	☐	☐
CCHR/Carleson	☐	☐
CCLP/Uhlmann	☐	☐
CCMA/Bledsoe	☐	☐
CCNRE/Boggs	☑	☐

REMARKS: The Cabinet Council on Natural Resources and Environment will meet Wednesday, February 9, 1983 at 4:00 p.m. in the Roosevelt Room. The agenda and papers are attached.

RETURN TO:

☐ Craig L. Fuller
Assistant to the President
for Cabinet Affairs
456-2823

☑ Becky Norton Dunlop
Director, Office of
Cabinet Affairs
456-2800

THE WHITE HOUSE

WASHINGTON

February 7, 1983

MEMORANDUM FOR THE CABINET COUNCIL ON NATURAL RESOURCES AND ENVIRONMENT

FROM: DANNY J. BOGGS, EXECUTIVE SECRETARY

SUBJECT: CCNRE Meeting of February 9

There will be three major items on the agenda for our February 9 meeting at 4:00 P.M. in the Roosevelt Room.

1. A proposed draft of a Presidential Environmental Statement (attachment A).

2. A complete draft of an EPA groundwater policy document with a short summary (attachment B).

3. Material relating to the EPA legislative agenda for 1983, with major attention to the Clean Air Act and Clean Water Act and Resource Conservation and Recovery Act (attachment C).

THE WHITE HOUSE

WASHINGTON

February 7, 1983

MEMORANDUM FOR THE CABINET COUNCIL ON NATURAL RESOURCES AND ENVIRONMENT

FROM: DANNY J. BOGGS, EXECUTIVE SECRETARY

SUBJECT: Environmental Statement

The attached Environmental Statement has been reviewed and generally approved by a Working Group. Cabinet Council approval is sought to forward it to the President for such use as he may make of it. A longer, more catalog-like document outlining environmental achievements is in preparation, probably for use in the Council on Environmental Quality's Annual Report.

ENVIRONMENTAL SPEECH

Serving as your President has given me a first-hand opportunity to travel throughout the country. I can proudly report that America has many of the world's mightiest rivers, most bountiful plains, and abundant energy and mineral resources. God blessed this nation with a clean and healthy environment.

We have developed these resources through a political and economic system which rewards initiative, efficiency and productivity. This has resulted in the growth of the United States into the most prosperous nation on earth.

This prosperity occured in tandem with a recognition of our responsibility to future generations. Our natural resources and the quality of our environment are an important part of the legacy we will hand on to our children, and which they will hand on to theirs.

We all have a right to be proud of the actions we have taken as a Nation to protect the quality of the environment for ourselves and for our children. Air quality in the United States today, especially in the cities, is much better than it was ten years ago. Streams, rivers, and lakes all across the country are becoming cleaner. We recently issued regulations which stringently regulates the manufacture, storage, transportation and disposal of hazardous waste and created a fund to clean up abandoned chemical dump sites. Expenditure by businesses and government to comply with environmental laws were over $55 billion, or $245 per man, woman and child in the U.S. last year.

Our national park system has grown to 74 million acres, and almost 7,000 miles of river are included in our national wild and scenic river system. We have 413 wildlife refuges totaling some 86.7 million acres. This record cannot be matched by any other nation.

As ranchers, Nancy and I have spent a good part of our lives outdoors. We believe environmental protection and natural resource management are important functions of government. Consequently, when I was elected, I committed my Administration to forceful management and improvement of existing environmental programs. State and local governments have become full partners with the federal government in the search for lasting, effective solutions to environmental problems. These institutions can respond to local situations better than the federal government. We also undertook several new initiatives to ensure that our natural resources remain productive, our environment remains clean and healthy, and government stewardship is improved.

Let me outline some of the improvements and initiatives undertaken in the past two years:

- When my Administration came into office the national parks needed immediate attention. These areas, which are enjoyed by 290 million visitors annually, had deteriorated. Health and safety hazards were rampant. In order to protect our existing parks and correct these deficiences, we created the Park Restoration and Improvement Program. This five year, $1 billion dollar effort will protect our Nation's natural and cultural resource base and improve the physical facilities in the national parks.

- My Administration worked with Congress to prohibit most new federal funds, including Federal flood insurance, from subsidizing development in the ecologically sensitive undeveloped coastal barriers of the Atlantic and Gulf coasts.

- My Administration has proposed the expansion the National Wild and Scenic River System by adding some 245 river miles in Colorado, Wyoming, Arizona, and Michigan. We also made major additions to the National Trails System and the National Registry of Natural Landmarks.

- Responding to a potential health risk to our Nations children, my Administration issued regulations that dramatically reduce the amount of lead which can be added to gasoline and will result in a 34% decrease in emissions.

- My Administration took positive actions to protect school children from a suspected cancer-causing asbestos. In May 1982, EPA required that all elementary and secondary schools, public and private, should test for and inform its school population if friable (crumbling) asbestos-containing building materials were found in the school building.

- Through an innovative program which allowes business greater flexibility to meet air quality standards, we have been able to achieve greater reduction in pollution at lower costs. We are applying common sense to an environmental problem.

- My Administration established the basic national requirements to safely handle and manage hazardous waste. These requirements had never been established prior to this Administration, even though Congress had mandated them to be established by 1978. These requirements will ensure that the federal and state governments will cooperatively control hazardous waste from its generation to its disposal to ensure that public health and the environment are adequatley

protected. In addition, we are rapidly implementing the $1.6 billion program to cleanup abandoned hazardous waste dumps. Action has already begun at over 100.

- Toxaphene, a previously popular insecticide and herbicide, has been under reivew by EPA for potential adverse health effects since 1977. This last year, a final decision was made by EPA to cancel the registration of toxaphene, except for some minor restricted uses which currently have no available substitutes.

- My Administration has published water pollution regulations for 19 industries that will reduce discharges of toxic pollutants by those industries by 96 percent.

- I signed into law an Administration-supported bill on nuclear waste disposal. This legislation includes strong environmental safeguards that will finally enable us to safely dispose of the waste of our nation's nuclear reactors.

- In July of 1981, I wrote to the International Whaling Commission strongly supporting an indefinite moratorium on commercial whaling. A number of whale species have been over-harvested, and the United States has placed eight species, including the sperm whale, on our list of endangered species.

- In order to answer the pressing questions about the causes and effects of acid rain, I increased the acid rain research budget. Federal expenditures on that effort have grown by 112 percent to $27 million.

Our environmental programs are the strongest in the world. We have made a commitment to protect the health of our citizens and be wise stewards of our natural resources. We have provided financial and technical support to other nations and international organizations to protect global resources.

Private businesses and public interest groups, federal, state and local governments, and private citizens of all philosophical persuasions, must all recognize that our common future is bound up inextricably with our management of the environment. Only by working together in a cooperative spirit that transcends personal differences will we achieve our environmental goals efficiently and manage our abundant natural resources wisely.

THE WHITE HOUSE

WASHINGTON

February 7, 1983

MEMORANDUM FOR THE CABINET COUNCIL ON NATURAL RESOURCES AND ENVIRONMENT

FROM: DANNY J. BOGGS, EXECUTIVE SECRETARY

SUBJECT: EPA Legislative Agenda

In the coming year, Congress may be dealing with each of the following items, either because the current authorization bill has expired, or because there may be congressionally-inspired efforts to amend existing law. These are the Nation's core environmental statutes, and the Council should be aware of the status of EPA and Administration policy regarding them. The major statutes are:

Clean Air	R&D
Clean Water	Ocean Dumping
RCRA	Safe Drinking Water
TSCA	Superfund
FIFRA	

Attachment C.1. is a brief statement from EPA on its current thinking on several of the important but not absolutely most controversial statutes.

EPA has provided draft legislation which it is considering on the Clean Air Act, the Clean Water Act, and the Resource Conservation and Recovery Act. The first two were received in time to convene Working Groups on Friday, February 4, for initial EPA presentations of their suggested legislation.

With regard to the Clean Air Act (an overview and a section-by-section analysis are attachment C.2.), there was considerable discussion by the Working Group as to whether a major substantive Administration bill would be productive at this time, and as to specific features of the suggested legislation. No consensus was achieved.

With regard to the Clean Water Act (an overview and a section-by-section analysis are attachment C.3.), discussion of the Working Group focused primarily on the absence of provisions addressing

the Section 404 "dredge and fill" program, and on the absence of a provision allowing industries to receive waivers from the requirements of the BAT (best available technology) requirements. No consensus was reached as to whether an Administration bill should or should not contain such requirements.

With regard to the Resource Conservation and Recovery Act (a short rationale for legislation is attachment C.4), no Working Group convened because of time constraints.

OTHER EPA REAUTHORIZATIONS

The Environmental Protection Agency (EPA) intends to seek a basic reauthorization of the following statutes: the Toxic Substances Control Act (TSCA), the Federal Insecticide, Rodenticide and Fungicide Act (FIFRA), and Title I of the Marine Protection, Research, and Sanctuaries Act (MPRSA).

Included in EPA's proposed bills to extend appropriation authorities under these statutes are some limited amendments which are described below.

Our proposed FIFRA reauthorization bill would amend the Act to extend the activities of the FIFRA Scientific Advisory Panel (SAP) which advises EPA as to the impact of pesticides on health and the environment. In addition the FIFRA bill would amend the Act to affirm the existing authority of EPA to investigate and refer cases, under the criminal provisions of this statute, to the Attorney General for prosecution.

The criminal affirmation amendment is included in EPA's proposed TSCA reauthorization bill and would also amend the Act to affirm the Agency's authority to initiate and conduct investigations of potential criminal violations under TSCA.

Proposed amendments to Title I in the MPRSA reauthorization bill would establish a user fee system. Our proposal would authorize permit fees to offset the costs of reviewing and processing permit applications. Special user fees would be calculated to allocate costs among permittees according to tonnage dumped, toxicity, special monitoring requirements, and other appropriate factors. Special user fees for monitoring activities would be used to recoup costs of site designation activities, and to offset costs of monitoring.

February 2, 1983

Overview of Proposed Changes

Section 110 - SIPs

1. Allow up to two years to submit a SIP revision in response to a new or revised NAAQS.

2. Authorize States to establish operating permits program for specific sources for changes in emissions of less than 500 tons per year.

3. Require EPA to conduct periodic audit of State plans.

4. Delete certain provisions relating to transportation controls.

Section 111 - NSPS

1. Delete percentage reduction requirement.

2. Make standards effective on date of promulgation rather than proposal.

3. Extend time for completion of NSPS for listed categories.

Section 112 - Hazardous Air Pollutants

1. Make standards effective on date of promulgation rather than proposal.

2. Provide for simultaneous listing of pollutants and sources thereof which pose a significant risk to public health.

3. Eliminate ample margin of safety requirement.

4. Standards based on best demonstrated technology eliminating unreasonable risk.

Section 119 - Smelters

Adopt language of Senate bill:

a. provide for issuance of orders up to January 1, 1993.

b. allow use of de minimus (5% of calendar year) supplementary controls.

c. prohibit removal of existing continuous emission controls.

Part C. PSD Program

1. Delete Class III category

2. Exempt fugitive dust from increment consumption.

3. Delete requirement to develop increment-type limits for pollutants other than PM or SO_2.

4. Establish BACT as the applicable NSPS for sources under 500 TPY; retains case-by-case review for other sources.

5. Changes thrust of visibility requirement to prevent "significant" impairment rather than any impairment.

6. Short-term class II increments would not apply unless States "opts in" with a SIP revision.

Part D. Nonattainment

1. Substitute BACT, as defined in PSD, for LAER.

2. Delete nonattainment deadlines.

3. Make application of construction ban and funding restrictions discretionary with the Administrator.

4. Antibackslide provision.

Acid Deposition

1. Acceleration of research.

2. Mitigation of effects.

Section 202 - Light-duty Motor Vehicle Emission Standards

1. .41 HC/7.0 CO/1.0 NO_x with possibility for NO_x/particulate tradeoff for light-duty diesel vehicles.

Section 202 - High Altitude Standards

1. Authorize proportional standards for high altitude vehicle.

2. Authorize greater than proportional CO high altitude standard, but not more stringent than 7.8 (current standard).

Section 203 - Tampering

Prohibit sale of parts or components that will render emission control devices inoperative.

SECTION-BY-SECTION ANALYSIS

I. Implementation Plans

- o Allows States a reasonable time (not to exceed 2 years) in which to submit a SIP revision in response to a new or revised NAAQS.

- o Eliminates construction moratorium from the requirements of a SIP, but requires SIP to meet the requirements of Part D.

- o Requires EPA to conduct periodic audits of SIP's and control requirements developed under it and to notify States of any plan deficiency discovered as a result of the audit.

- o Authorizes a State to adopt a program establishing emission limitations and schedules and timetables for compliance for stationary sources, which program must provide:
  - methods of establishing emission limitations that provide for attainment and maintenance of NAAQS;
  - each emission limitation requires RACT when required under Part D;
  - a copy of each new emission limitation or modification which involves a potential net increase of emissions of 500 tons or more per

year or of action delaying compliance with an emission limitation where compliance would reduce emissions by 500 tons or more per year must be submitted to EPA before taking effect.

- o Requires EPA to publish notice of such submittal and provides for a 30-day comment period. No emission limitation or compliance schedule will take effect:
  - if EPA objects in writing within 60 days after receipt of the submittal that the limitation or schedule is inconsistent with the Act;
  - if a person files the same comment on the same grounds at the State and Federal levels, unless EPA determines not to object to the limitation or schedule; except that the State or local governments responsible for implementing the SIP need not have filed comments previously;
  - if the limitation or schedule is not submitted as required for actions involving 500 tons or more a year.
- o For enforcement purposes, limitations or schedules adopted by a State under this program are deemed to be provisions or requirements of an applicable SIP.

II. <u>New Source Performance Standards</u>

- o Deletes percentage reduction requirement.

- Limits application of NSPS to source constructed or modified after the publication of regulations prescribing a standard of performance.

- Requires NSPS for listed categories be completed as expeditiously as practicable but not later than December 31, 1987.

III. Hazardous Air Pollutants

- Changes the applicability of emission standards for new sources from the date of proposal to the date of promulgation of standards.

- Conforms definition of "technological system of continuous emission reduction" to the definition in section 111(a) (a technological process for production or operating that is inherently low pollutant or a technological system for continuous pollution reduction before the pollution is emitted).

- Bases future listing actions on source categories whose emissions pose a significant risk of increased mortality or serious health effects. The list is to identify the source category as well as the air pollutant of concern. Requires EPA to seek the advice of the SAB concerning the risks to public

- Declares that a decision to list is not subject to judicial review, but may be challenged in an action for review of emission standards.

- Requires EPA to establish emission standards for sources in the listed categories; standards must reflect the best demonstrated technology for continuous emission reduction and any additional emission limitation necessary to protect against unreasonable risks of increased mortality or serious health effects.

- Requires EPA, in determining "unreasonable risk", to consider the range of projected health risks to exposed individuals and populations; the weight of evidence that such health risks exist; the cost and feasibility of control measures beyond best demonstrated technology; and other relevant factors.

- Authorizes EPA to distinguish among classes, types, and sizes within listed source categories for purposes of establishing standards and to distinguish between new and existing sources. For existing sources, EPA may also distinguish based on age, process employed, degree of existing control, and other relevant factors.

- Establishes the effective date for emission standards as to new sources as the date of promulgation and as to existing sources at such time (not to exceed 2 years after promulgation) as EPA may specify.

- o Deletes 90-day delay of effective date of emission standards to correspond to compliance schedule established by other amendments.
- o Replaces the "ample margin of safety" requirement for design, work practice, or operational standards authorized to be promulgated by EPA with an "unreasonable risk" requirement.
- o Amends section 122 to conform to the changes made in section 112.

IV. Primary Nonferrous Smelter Orders

- o Prohibits a primary nonferrous smelter from receiving an NSO if it is operating under a State variance from its emission limitation or standard as required in or under the applicable SIP on the date of enactment.

- o In determining if an NSO may be issued, authorizes de minimis use of supplementary controls in order to demonstrate attainment and maintenance of NAAQS for SO_x.

- o NSO's which will be in effect after January 1, 1988, are to be conditioned upon maintenance of full operation of whatever control technology that has been installed prior to January 1, 1988. Extends the life of each of the NSO's for five years.

- For the orders expiring January 1, 1988, the Administrator may, at any time during which the order applies, conduct a public hearing on the availability of technology. For orders expiring January 1, 1993, the hearing may also concern the continuing eligibility of a smelter and the circumstances surrounding the issuance of the order.

- In establishing emission limitations for SO_x for primary nonferrous smelters, allows the effect of de minimis supplementary controls (up to 5% of any calendar year) to be taken into account. Prohibits "backsliding" from present levels of use of continuous control technology. Requires the Administrator to conduct a study and report within five years on adequacy, reliability, and enforceability of use of de minimis supplementary controls.

V. Prevention of Significant Deterioration

- Eliminates Class III increments.
- Eliminates short-term Class II increments one year from date of enactment unless prior to that time State identifies to Administrator Class II areas to which short-term increments continue to apply.
- Allows State at any time to revise plan to eliminate annual and/or short-term Class II increments in any

Class II area or portion thereof, except that the annual increments cannot be eliminated in the "mandatory" Class II areas (those areas specified in Section 164(a)(1) and (2)). The State must provide Federal land managers with an opportunity to comment on such revisions. Such revision must be approved, unless it does not meet the requirements of section 110.

- To the extent short-term Class II increments apply, a source need only demonstrate that emissions attributable to the operation of the facility will not exceed short-term Class II increments.

- Permit Governors in States with approved PSD plans to exempt from increment consumption concentrations of particulate matter attributable to emissions from construction or other temporary activities or attributable to fugitive emissions of particulate matter including those from farming, other agricultural activities, or unpaved roads.

- Eliminates certain provisions which applied only to Class III areas.
- Eliminates Section 165(b) which currently exempts from Class II increments emissions from modifications of existing facilities if the modification results in allowable emissions of less than 50 tons per year.

- Requires permitting authority to grant or deny a PSD permit within one year of filing of complete PSD application by a facility which will emit or have the potential to emit 500 tons or more per year of a regulated pollutant. Requires grant or denial of a permit within six months of filing a complete application by a facility which will emit or have the potential to emit less than 500 tons of a regulated pollutant.

- Requires, within two months of filing of permit application, notification to applicant on whether application is complete or if additional information is needed.

- Gives permitting authority discretion to require monitoring data as part of permit application.

- Amends section 166 to require Administrator to study and report to Congress within three years on whether PSD provisions adequately protect Class I areas and recommend any appropriate changes.

- Provides that term "modification" includes only changes resulting in a net increase in emissions of air pollutant from source of 100 tons per year or more, or 1000 tons per year of carbon monoxide.

- Amends definition of BACT to require case-by-case review for a facility which will emit or have potential

to emit 500 tons per year or more of any regulated pollutant, or less than 500 tons per year of a regulated pollutant if facility is not subject to an NSPS or a hazardous emission standard. Defines BACT as the NSPS or hazardous emission standard for a facility which will emit or have the potential to emit less than 500 tons per year of a regulated pollutant and which is subject to an NSPS on hazardous emission standard.

- o Clarifies date of baseline concentration, and facilities which are included in baseline and those which count against increment, in areas redesignated as Class I area after date of enactment of amendments.

- o Defines "stationary source" for purposes of PSD and visibility requirements as all activities in same industrial class located on contiguous or adjacent properties and under common control (i.e., plant-wide definition of source).

VI. Visibility

- o Changes thrust of visibility requirement to prevent "significant" impairment rather than any impairment.

VII. Requirements for Nonattainment Areas

- o Reestablishes the plantwide definition of "stationary source" for purposes of nonattainment.

- o Deletes nonattainment deadlines.
- o Prohibits relaxation or delay of any emission limitation, control requirement, or compliance schedule as a result of the attainment date extension.
- o Authorizes, but does not require the Administrator to prohibit the construction or modification of a major stationary source in a nonattainment area, where the source's emissions would cause or significantly contribute to concentrations of a pollutant for which the area is nonattainment, if the Administrator determines the State has failed to submit a plan or substantially failed to implement a plan requirement in the nonattainment area.
- o Substitutes BACT for LAER.
- o Authorizes the Administrator in whole or in part to disapprove projects or withhold grants authorized by the Act, if any State or local government substantially fails to implement any plan requirement in the nonattainment area. The action of the Administrator must be based on the severity of the air quality problem resulting from the failure to implement. Upon action by the Administrator, DOT is prohibited from approving any project or awarding any grants under Title 23, USC, other than for safety, mass transit, or transportation improvement projects related to air quality maintenance for such area.

VIII. Acid Deposition

- o Sets forth findings and declarations of Congress, including:
  - the causes and effects of acid deposition, the availability of control measures, and the effectiveness of efforts to improve the environment should be more fully understood before further controlling SO_2 and NO_x emissions;
  - the acid deposition phenomenon appears to be an increasing problem;
  - acid deposition has the potential to contribute to increased levels of acidity in aquatic and terrestrial systems and to the deterioration of buildings and monuments.
- o Declares the purpose of the new law is to accelerate research and to authorize grants to States for mitigation of harmful effects on aquatic ecosystems resulting from high acidity.
- o Requires EPA to submit a report to Congress by December 31, 1984, identifying the causes and effects of acid deposition, the atmospheric transport and transformation process of precursors, possible methods of controlling precursors, and the relative impact of local sources compared to more distant sources.

- Authorizes EPA to make grants to States for neutralizing acid-altered bodies of water and removing toxic metals mobilized by acid deposition.

TITLE II

I. Emission Standards for Light-duty Vehicles and Engines

- Establishes the emission standards for LDV's during and after model year 1983 at the following levels: .41 gpm for hydrocarbons; 7.0 gpm for carbon monoxide; and 1.0 gpm for oxides of nitrogen, except in the case of diesel-fueled LDV's.
- For diesel-fueled LDV's manufactured during and after model year 1983, the emission standard for NO_x will be 1.5 gpm; except that for model year 1988 and earlier vehicles and engines that have an emission standard for particulate matter that is more stringent than the PM standard during model year 1983, the NO_x standard will be 2.0 gpm.
- Directs EPA to arrange with NAS to study the health effects of mobile source emissions, including health effects at various levels of regulation; impact of emission standards on fuel economy, safety, and performance; the availability of technology; and other relevant factors. The study is to be submitted to the Administrator by March 31, 1986 and then subsequently transmitted to Congress within 120 days thereafter.

II. High Altitude Standards

- o Eliminates the requirement that 1984 model year and later high-altitude vehicles meet the same numerical emission standards as their low altitude counterparts.

- o Authorizes EPA to adopt, for any vehicle class, high altitude standards that require the same percentage reduction in emissions from baseline levels that is required of low altitude vehicles ("proportional" standards). Less stringent standards are also authorzied.

- o For CO, EPA is authorized to adopt a greater-than-proportional high altitude standard, but such standard cannot be more stringent than 7.8 gpm (current standard).

- o Requires EPA to making findings with respect to economic impact, techological feasibility, and air quality improvements before proportional standards are adopted.

III. Tampering

- o Prohibits any person from selling, or offering to sell, any part or component where the person knows or reasonably should know that a principal use of such part or component will be to render inoperative,

or alter in a manner that causes a vehicle or engine not to comply with applicable emission standards, any part or component placed on or in a vehicle or engine for the purpose of controlling emissions.

TITLE III

I. Administration

- Authorizes EPA to initiate and conduct investigations and to refer the results thereof to the Attorney General for prosecution in the appropriate cases.

C.3

CLEAN WATER ACT REAUTHORIZATION - 1983

1. AUTHORIZATION [sections 104(u), 106(a) and 517]
   5 year reauthorization of funding to 1988.

2. BAT/BCT COMPLIANCE DEADLINE EXTENSION [sections 301(b)(2) and (k)]
   Extend Section 301 BAT/BCT compliance deadlines from July 1, 1984 to July 1, 1988.

3. MUNICIPAL DEADLINE EXTENSION [section 301(i)]
   Allow all POTWs not in compliance with secondary treatment to apply for an extension to 1988.

4. ENVIRONMENTAL MODIFICATION FEES [section 301(m) - new subsection]
   Allow Administrator authority to charge fees for waiver or exemption processing.

5. NEW SOURCE PERFORMANCE STANDARDS [section 306(a)]
   Make new source performance standards applicable only after final regulations are issued (instead of proposed).

6. PRETREATMENT [section 307(e) - new subsection]
   Allow local POTW's to apply on behalf of indirect dischargers for environmental modification of categorical standards.

7. ADMINISTRATIVE CIVIL PENALTIES [section 309(g) - new subsection]
   Allow Administrator authority to administratively assess civil penalties for clear well documented violations of CWA. (analoguous to parking ticket concept) appeal to district court provided.

8. FELONY SANCTIONS [section 309(c)]
   Modify enforcement provisions of section 309 - (penalties of up to $50,000/day and/or 2 years imprisonment - basically to parallel RCRA)

9. THERMAL DISCHARGES [section 316(a), (b), and (c)]
   Base modification of technology based thermal standards on either 1) protection of balanced population of fish ("indigenous" deleted) or 2) attainment of State water quality thermal standards.

10. NPDES PERMIT TERM EXTENSION [section 402(b)]
    Extend NPDES permit life from 5 to 10 years for permits with no environmental modifications.

11. PARTIAL NPDES PROGRAM APPROVAL [section 402(b) and (c)]
    Allow State administration of selected parts of permit program.

12. MUNITIONS [section 502(6)]
    Exclude conventional munitions from CWA definition of "pollutant".

13. CRIMINAL INVESTIGATIONS [section 501(g) - new subsection]
    Provide confirmation of EPA's criminal investigative authority.

Section by Section Analysis

AUTHORIZATION

Section 1 of the bill amends sections 104(u), 106(a) and 517 to extend funding authority for 5 years, through fiscal year 1987. Funding for fiscal year 1984 is based on the President's budget, and for subsequent years such sums as may be necessary are authorized. A technical amendment has also been made to section 517 to authorize funds for section 304 information and guidelines.

These funds will support the development of information on pollution prevention, reduction and elimination through a program of research, investigation and demonstration (section 104(u)); grants for State and interstate agency pollution control programs (section 106(a)); and the general implementation of the Act (section 517).

BAT/BCT COMPLIANCE DEADLINE EXTENSION

Section 2 of the bill amends section 301 of the Act to extend the current deadline for industrial compliance with BAT and BCT effluent guidelines from July 1, 1984, to July 1, 1988; and for industrial BAT/BCT permit limitations based on best professional judgment (BPJ), to provide three years from date of issuance in which to achieve compliance. This section also continues the present 3 year deadline extension for dischargers using innovative technologies to achieve compliance with BAT.

Delays experienced by the Agency in promulgating BAT/BCT effluent guidelines leave very little lead time for industry to meet present compliance deadlines. The purpose of this revision, therefore, is to provide industry with sufficient time to construct the necessary treatment facilities to come into compliance with BCT and BAT effluent guidelines.

MUNICIPAL DEADLINE EXTENSION

Section 3 amends section 301 of the Act to allow all publicly owned treatment works (POTW's) not in compliance with applicable secondary treatment or water quality based effluent limitations to apply for an extension to 1988.

In 1977, extensions of compliance deadlines under the Act were authorized to no later than 1983. In the recent 1981 municipal construction grant amendments (P.L. 97-117), the extension date was changed to 1988, but only POTW's that already had extensions were eligible. The purpose of this revision is to allow all POTW's not in compliance the opportunity to apply for that extension. To receive an extension, a POTW must meet the same tests and conditions set forth under the 1977 Act.

ENVIRONMENTAL MODIFICATION FEES

Section 4 adds a new subsection to section 301 of the Act. This subsection provides the Administrator with the authority to charge fees for processing and reviewing applications to modify or exempt certain effluent limitations, standards, and requirements under sections 301(c), (g), (h), 307(b), and 316(a) of the Act. Under this revision, fees collected by EPA would be used solely for the purposes of processing and reviewing such applications.

NEW SOURCE PERFORMANCE STANDARDS

Section 5 amends section 306 to redefine "new source" to make new source performance standards (NSPS) applicable after issuance of final rather than proposed regulations.

Presently, facilities are defined as new sources if construction is begun after issuance of proposed new source performance standards. The difficulty with this definition is that in practice, it may take over a year between the issuance of proposed regulation and the promulgation of final binding standards. The purpose of this revision is to ensure that final NSPS standards will be available and applicable as new construction is begun.

PRETREATMENT

Sec. 6. amends Section 307 to allow modification of certain categorical pretreatment requirements for industrial facilities discharging into a POTW if it can be demonstrated to the satisfaction of the Administrator and the State that the modification will not interfere with meeting the State designated uses for the receiving water body.

For an industrial facility to receive a modification, the POTW must apply on its behalf. The POTW must have an approved general pretreatment program and show that it is either at secondary or on a compliance schedule to achieve it. Among other things, the POTW must also develop for itself end of pipe numerical effluent limitations for each of the pollutants that would otherwise be limited by the categorical standard. These end of pipe limitations must be adequate to ensure that attainment of local water quality objectives will not be interfered with. In addition, a monitoring program must be in place to ensure that these limitations in fact will not be exceeded.

ADMINISTRATIVE CIVIL PENALTIES

Section 7 amends section 309 of this Act to provide the Administrator with authority to administratively assess civil penalties of up to $10,000/day for clear and well-documented violations of the Clean Water Act which may not be serious enough to require judicial enforcement.

Presently, civil penalties under the Act can only be imposed through judicial enforcement. By providing authority for administrative penalty assessment and resolution of factual issues before a neutral hearing officer, this revision will allow institution of an enforcement mechanism which would minimize protracted litigation while ensuring due process and resolving issues to the satisfaction of all parties more efficiently and expeditiously.

FELONY SANCTIONS

Section 8 amends section 309 to provide that dischargers or individuals who knowingly violate or cause the violation of certain Clean Water Act requirements would be subject to criminal penalties of up to $50,000/day and/or imprisonment for up to 2 years. Existing misdemeanor penalties would be retained to address those violations which do not merit extraordinary punishment.

Presently the Clean Water Act has no provision that deals with knowing violations of major statutory or regulatory requirements. This provision is intended to address intentional violations of the Act occurring on a regular basis over an extended period of time that result in significant harm to public health or the environment and provide for the imposition of correspondingly stiffer penalties for such actions. This provision is not directed or intended to apply to isolated instances of either unpermitted discharges or discharges exceeding permit limitations.

THERMAL DISCHARGES

Section 9 amends section 316 to modify the environmental tests for thermal discharge modifications from a test based on balanced, indigenous population to either the attainment and maintenance of numerical thermal water quality standards or a test based on a balanced population of shellfish, fish, and wildlife. Such environmental modifications would be conditioned on the establishment of a monitoring program to ensure compliance.

The present provision may require protection for uses which do not exist in the receiving waters of the discharger and which may exceed existing State standards.

Section 316 is also amended to allow the use of alternative measures, such as construction and operation of a fish hatchery restocking program, to mitigate the adverse environmental effects of intake structures if the alternative measures are equal in effect to the Best Technology Available for intake structures.

NPDES PERMIT TERM EXTENSION

Section 10 amends section 402 of the Act to extend the present NPDES permit term under the Act from 5 to no more than 10 years for permits with no environmental modifications.

For the State and Federal agencies assigned the responsibility for issuing discharge permits, the extension of the permit term will reduce the annual permitting workload and serve as a management tool to ensure that large backlogs do not accumulate in the future. For the permittee, the longer term should generally provide more certainty over the longer period of time, thereby making investments in pollution control more economical.

PARTIAL NPDES PROGRAM APPROVAL

Section 11 amends section 402 to allow EPA to approve partial State administration of permit programs. Currently, States wishing to administer the NPDES program must assume all major components of the program before EPA is authorized to approve State assumption.

Allowing partial program approvals would provide the States flexibility in seeking approval for those parts of the program which they can administer immediately. While a State with a fully approved program could return the entire program to EPA, it could not return any part or parts.

MUNITIONS

Section 12 amends Section 502 to exclude munitions used in the course of conventional military weapons training from the definition of pollutants controlled under the Act. The purpose of this revision is to permit the military to conduct training activities without the necessity of obtaining an NPDES permit for the intentional or accidental discharge of projectiles into waters near or surrounding targets.

CRIMINAL INVESTIGATIONS

Section 13 amends section 501 of the Act to affirm the existing authority of EPA to investigate and refer cases under the criminal provisions of statute. The need for this provision arises frim the absence of specific statutory language pertaining to criminal investigative jurisdiction under the Act.

In January 1981, as a result of specific challenges to the Agency's independent authority to conduct criminal investigations, Attorney General Civiletti issued a confirmation of criminal investigative jurisdiction in a letter to the Administrator of EPA. Litigants continue to resist, however, due to the absence of specific statutory language confirming this authority.

Enactment of section 15 will confirm and clarify the Agency's authority to initiate and conduct investigations of potential criminal violations of the Clean Water Act and to refer the results of these investigations to the Attorney General for prosecution.

AUTHORIZATION

Sec. 1. (a) Section 104(u)(1) is amended by deleting the word "and" following "1981," and by inserting "not to exceed $12,533,600 for the fiscal year ending September 30, 1984, and such sums as may be necessary for the fiscal years ending September 30, 1985, September 30, 1986, September 30, 1987, and September 30, 1988" immediately following "1982,".

(b) Section 106(a) is amended by deleting the word "and" following "1973", by inserting "; and" immediately following 1982, and by adding a new paragraph (3) as follows:

"$24,000,000 for the fiscal year 1984, and such sums as may be necessary for the fiscal years 1985, 1986, 1987 and 1988".

(c) Section 517 is amended by striking "and" immediately following "1981," and by inserting ", $91,589,300 for the fiscal year 1984 and such sums as may be necessary for the fiscal years 1985, 1986, 1987, and 1988" immediately before the period at the end thereof.

(d) Section 517 is further amended by inserting "304(k)" in place of "304".

BAT/BCT COMPLIANCE DEADLINE EXTENSION

Sec. 2. (a) Section 301(b)(2)(C) is amended to read as follows: "With respect to all toxic pollutants referred to in table 1 of Committee Print Number 95-30 of the Committee on Public Works and Transportation of the House of Representatives, compliance with those effluent limitations established in regulations issued under sections 301(b)(2) and 304(b)(2) of this Act no later than July 1, 1988, and for all other limitations established to carry out the provisions of this subparagraph compliance no later than 3 years after the date such limitations are established;"

(b) Section 301(b)(2)(E) is amended to read as follows: "With respect to pollutants identified pursuant to section 304(a)(4) of this Act for categories and classes of point sources, other than publicly owned treatment works, compliance with those effluent limitations established in regulations issued under sections 301(b)(2)(E) and 304(b)(4) of this Act no later than July 1, 1988, and for all other limitations established to carry out the provisions of this subparagraph compliance no later than 3 years after the date such limitations are established;"

(c) Section 301(b)(2)(F) is amended to read as follows: "For all pollutants (other than those subject to subparagraphs (C), (D), or (E) of this paragraph) compliance with those effluent limitations established in regulations issued under sections 301(b)(2) and 304(b)(2) of this Act no later than July 1, 1988, and for all other limitations established to carry out the provisions of this subparagraph compliance no later than 3 years after the date such limitations are established."

(d) (1) Section 301(k) is amended by deleting the words "July 1, 1987," and inserting in lieu thereof the words "July 1, 1991,".

(2) Section 301(k) is further amended by deleting the letter "(A)" from "(b)(2)(A)" wherever it appears.

MUNICIPAL DEADLINE

Sec. 3. Section 301(i)(1) is amended by deleting the words "within 180 days after the date of enactment of this subsection" and inserting in lieu thereof the following: "within 12 months after enactment of the Clean Water Act Amendments of 1983."

ENVIRONMENTAL MODIFICATION FEES

Sec. 4. Section 301 is amended by adding a new subsection (m) as follows:

"The Administrator may prescribe such processing fees for applications for modifications and exemptions submitted to the Administrator pursuant to sections 301(c), (g),(h), 307(b), and 316(a) of this Act as he/she deems appropriate. All amounts collected by the Administrator under this subsection shall be used solely for application processing purposes; provided that these amounts shall be credited to the appropriation that incurs the costs and shall be available only in such amounts as are included in appropriations acts."

NEW SOURCE PERFORMANCE STANDARDS

Sec. 5. Section 306(a)(2) is amended by adding a sentence at the end thereof to read as follows:

"For the purposes of any regulation proposed after the date of enactment of the Clean Water Act Amendments of 1983, the term "new source" shall mean any source, the construction of which is commenced after the publication of final regulations prescribing a standard of performance under this section which is applicable to such source."

PRETREATMENT

Sec. 6. (a) Section 307 is amended by adding a new subsection (e) as follows:

(1) The Administrator with the concurrence of the State (or, if appropriate, the State) may issue a permit under section 402 for a treatment works (as defined in section 212 of this Act) which is publicly owned, which modifies applicable industrial categorical standards established under sections 307(b)(1) and (c) of this Act for industrial sources introducing pollutants into such works upon a showing, satisfactory to the Administrator (or, if appropriate, the State) that -

(A) the treatment works is in compliance with the requirements of section 402(b)(8) of this Act;

(B) the treatment works is in compliance or subject to a schedule for achieving compliance with effluent limitations based upon secondary treatment (as defined pursuant to section 304(d)(1) of this Act or as may be modified pursuant to section 301(h) of this Act) and with the requirements of section 403 of this Act;

(C) there are applicable numerical effluent limitations for the treatment works specific to the pollutants for which the modification is requested to ensure that such pollutants do not pass through the treatment works in quantities sufficient to interfere with the attainment or maintenance of the designated uses (established pursuant to section 303(c) of this Act) of the body of water into which such works discharge, and that the works is in compliance or subject to a schedule for achieving compliance with such limitations as expeditiously as possible and with the requirements of section 403 of this Act;

(D) such modification will not result in any pollutant interfering with the operation of such works or impairing current or planned future sludge use or disposal by such works;

(E) there exists adequate legal, financial, technical, analytical, administrative, and enforcement authority, as well as resources and a system of enforceable limitations to ensure compliance with the requirements of this subsection;

(F) a monitoring program will be established in accordance with section 402 of this Act to ensure continued compliance with the requirements of this subsection; and

(G) an annual report will be submitted to the Administrator (or, if appropriate, the State) to document continued compliance with the requirements of this subsection.

(2) Upon a finding that any of the applicable requirements of this subsection are not being met by the treatment works to which a modified permit was granted, and after notice and consultation with State and local authorities (or, if appropriate, the Adminis-

trator), the Administrator (or, if appropriate, the State) shall modify or rescind such modification, and may establish such effluent limitations for the treatment works as may be necessary to achieve the purposes of subsections (b) and (c) of this section.

(3)(A) Any application for a modification filed by a treatment works under this subsection shall not operate to stay any requirement of subsection (b) or (c) of this section unless such works submits a letter of intent to the Administrator (or, if appropriate, the State) within 120 days of the promulgation date of the industrial categorical standard for which the modification is requested, or within 120 days of the date of enactment of this bill if the applicable standard was promulgated prior to such date.

(B) The letter of intent shall include, but not be limited to, a demonstration satisfactory to the Administrator (or, if appropriate, the State) that (i) the treatment works is in compliance with the requirements of section 402(b)(8) of this Act or with effluent limitations based upon secondary treatment (as defined pursuant to section 304(d)(1) of this Act or as may be modified under section 301(h) of this Act), and (ii) both an achievable schedule containing planning, development, and performance dates by which all the requirements of paragraph (1) will be met, and a workplan specifying the scientific, technological, and administrative methodologies to be relied on in meeting the schedule have been established.

(C) Upon receipt of a satisfactory letter of intent, the Administrator (or, if appropriate, the State) may stay the applicable requirements of a categorical standard for which a modification is requested for an industrial source introducing pollutants into the treatment works for no more than two years from the date such letter of intent is received.

(D) The Administrator (or, if appropriate, the State) shall revoke any stay granted under this subsection upon a finding that the dates of the schedule or methodologies of the workplan contained in the letter of intent under subparagraph (B) have been significantly delayed or varied.

(b) Section 402 is amended by adding a new subsection (m) as follows:

"In issuing a permit under this section, the Administrator shall not require pretreatment by dischargers of conventional pollutants identified pursuant to section 304(b)(4) of this Act in compliance with all applicable requirements of local pretreatment programs approved under subsection (b)(8) of this section as a substitute for municipal treatment adequate to meet the requirements of a permit issued under this section for a treatment works (as defined in section 212 of this Act) which is publicly owned. Nothing in this subsection shall affect the Administrator's authority under sections 307 and 309 of this Act, affect State and local authority under sections 307(b)(4) and 510 of this Act, relieve such treatment works of its obligations to meet requirements established under this Act, or preclude such works from pursuing whatever feasible options are available to meet its responsibility to comply with its permit issued under this section."

ADMINISTRATIVE CIVIL PENALTY AUTHORITY

Sec. 7. Section 309 is amended by adding a new subsection (g) as follows:

"(1) In addition to any other relief provided, whenever on the basis of any information available to him the Administrator

finds that any person is in violation of section 301, 302, 306, 307, 308, 318, or 405 of this Act, or is in violation of any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act by him or by a State, or in a permit issued under section 404 of this Act by a State, he may after consultation with the State in which the violation occurs assess a civil penalty of not more than $10,000 per day of violation not to exceed $75,000 in total.

2) In assessing such penalty, the Administrator shall provide the person in violation with notice and opportunity for a hearing which shall not be subject to the requirements of sections 554 or 556 of the Administrative Procedures Act.

3) In determining the amount of penalty to be assessed, the Administrator shall take into account the nature, circumstances, extent and gravity of the violation or violations, and with respect to the violator, ability to pay, effect on ability to continue in business, any prior history of such violations, the degree of culpability, economic savings, if any, resulting from the violation and such other matters as justice may require.

4) If any person fails to pay a civil penalty assessed in accordance with paragraphs (1), (2), and (3), the Administrator may request the Attorney General to collect the amount assessed plus interest in an action brought in any appropriate district court in the United States.

5) Any person aggrieved by a final assessment of the Administrator and who has requestd a hearing under paragraph (2) may seek review in the appropriate district court of the United States only by filing an action within 30 days of the date of that assessment.

6) The Administrator shall have the authority to issue subpoenas ad testificandum and subpoenas duces tecum in connection with hearings under subsection 309(g)(2) of this Act and may request the Attorney General to bring an action to enforce any subpoena under this section. The district courts shall have jurisdiction to enforce such subpoenas and impose sanctions and attorneys fees for failure to comply.

7) Action taken by the Administrator pursuant to this subsection shall not affect or limit the Administrator's authority to enforce any provision of this Act, provided however, that the discharge of pollutants which is penalized administratively under this subsection shall not be the subject of a civil penalty under section 309(d) or section 311(b) of this Act."

FELONY SANCTIONS

Sec. 8. Section 309(c) is amended as follows:

"(1) Any person who (A) negligently violates section 301, 302, 306, 307, 308, 318, or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act by the Administrator or by a State, or any requirement imposed in a pretreatment program approved under Section 402(b)(8) of this Act or in a permit issued under section 404 of this Act by the Secretary of the Army or by a State, or who (B) negligently introduces into a sewer system or into a publicly owned treatment works any pollutant or hazardous substance which causes or may reasonably be anticipated to cause personal injury or property damage, or causes such treatment works to violate any effluent limitation or condition in

any permit issued to the treatment works under section 402 of this Act by the Administrator or a State, shall be punished by a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than one year, or by both.

(2) Any person who (A) knowingly violates section 301, 302, 306, 307, 308, 318, or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act by the Administrator or by a State, or any requirement imposed in a pretreatment program approved under section 402(b)(8) of this Act or in a permit issued under section 404 of this Act by the Secretary of the Army or by a State, or who (B) knowingly introduces into a sewer system or into a publicly owned treatment works any pollutant or hazardous substance which causes or may reasonably be anticipated to cause personal injury or property damage, or causes such treatment works to violate any effluent limitation or condition in a permit issued to the treatment works under section 402 of this Act by the Administrator or a State, shall be punished by a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than two years, or by both.

(3) It shall be an affirmative defense under subsections (c)(1)(B) and (c)(2)(B) of this section that such discharge or introduction was in compliance with all applicable federal, state, and local requirements which govern the discharge or introduction of a pollutant or hazardous substance into a sewer, or publicly owned treatment works.

(4) Any person who knowingly makes any false material statement, representation, or certification in any application, record,

report, plan, or other document filed or required to be maintained under this Act or who knowingly falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under this Act, shall upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than two years, or by both.

(5) If a conviction is for a violation of paragraph (1), (2), or (4) of this subsection committed after a first conviction of such person under the same paragraph, the maximum punishment under the respective paragraph shall be doubled with respect to both fine and imprisonment.

(6) For the purpose of paragraphs (1), (2), and (4), the term "person" shall mean, in addition to the definition contained in section 502(5) of Act, any responsible corporate officer.

(7) For the purpose of paragraphs (1), (2), and (3) the term "hazardous substance" shall mean (A) any substance designated pursuant to section 311(b)(2)(A) of this Act, (B) any element, compound, mixture, solution, or substance designated pursuant to section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, (C) any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act (but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by Act of Congress), (D) any toxic pollutant listed under section 307(a) of this Act, and (E) any imminently hazardous chemical substance or mixture with respect to which the Administrator has taken action pursuant to section 7 of the Toxic Substances Control Act.

THERMAL DISCHARGES

Sec. 9. (a) Section 316(a) is amended as follows:

"The Administrator (or, if appropriate, the State) may issue a permit under section 402 of this Act which modifies the requirements of sections 301 or 306 of this Act with respect to any effluent limitation proposed for the control of the thermal component of any discharge from a point source, upon a showing by the applicant satisfactory to the Administrator (or, if appropriate, the State) that such modified limitation will assure (1) the attainment and maintenance of thermal water quality criteria adopted under section 303 and compliance with the requirements of section 403 of this Act, or (2) the protection and propagation of a balanced population of shellfish, fish, and wildlife in and on that body of water as determined by the State (or, if appropriate, the Administrator). Before the Administrator (or, if appropriate, the State) may impose such a modified limitation, the applicant must also show that a monitoring program will be established in accordance with section 402 of this Act to ensure continued compliance with the requirements of this subsection."

(b) Section 316(b) is amended as follows:

"Any standard established pursuant to section 301 of this Act and applicable to a point source shall require (1) that the location, design, construction, and capacity of cooling water intake structures reflect the best technology available for minimizing adverse environmental impacts, or (2) that other equally effective measures be applied either alone, or in combination with best technology available, to minimize adverse environmental impacts. Any standard established pursuant to section 306 of this Act and applicable to

a point source shall require that the location, design, construction, and capacity of cooling water intake structures reflect the best technology available for minimizing adverse environmental impacts."

(c) Section 316(c) is amended as follows:

" Notwithstanding any other provision of this Act, any point source of a discharge having a thermal component, the modification of which point source is commenced after the date of enactment of the Federal Water Pollution Control Act Amendments of 1972 and which, as modified, meets (i) effluent limitations established under section 301, or, if more stringent, effluent limitations established under section 303 or (ii) the requirements of paragraphs (a)(1) or (2) of this section, shall not be subject to any more stringent effluent limitation with respect to the thermal component of its discharge during a ten year period beginning on the date of completion of such modification or during the period of depreciation or amortization of such facility for the purpose of section 167 or 169 (or both) of the Internal Revenue Code of 1954, whichever period ends first.

NPDES PERMIT TERM EXTENSION

Sec. 10. Section 402(b)(1)(B) is amended as follows:

"are for fixed terms not exceeding 10 years except for permits which reflect modifications under sections 301(c), (g), (h), (m), 307(e) or 403 of this Act, which shall be for fixed terms not exceeding 5 years;"

PARTIAL NPDES PROGRAM APPROVAL

Sec. 11. (a) Section 402(b) is amended by inserting the following after the first full sentence:

"In the event the Governor submits a plan to administer part of

a permit program, the Administrator may approve such submission upon a showing that the plan provides for administration of permit program components which represent a significant and identifiable part of the State program authorized by this section."

(b) Section 402(c) is amended by deleting the words "as to those navigable waters" and inserting in lieu thereof the words "as to those activities and discharges".

(c) Section 402(c) is further amended by adding a new paragraph (4) as follows:

" In the event a determination is made (A) by a State to return administration of the program to the Administrator or (B) by the Administrator to withdraw approval pursuant to paragraph (3) of this subsection, return of administration or withdrawal of approval may only be made of the entire program currently being administered by the State."

MUNITIONS

Sec. 12. Section 502(6) is amended by deleting the word "or" where it appears before the letter "B", inserting a comma in place of the period, and adding the following to the end thereof:

"or (C) munitions expended in the course of conventional weapons training exercises by the Armed Forces of the United States, or by its allies in joint training exercises."

CRIMINAL INVESTIGATIONS

Sec. 13. Section 501 is amended by adding a new subsection (g) as follows:

" In carrying out the provisions of this Act, the Administrator, and duly-designated agents and employees of the Environmental Protection Agency, are authorized to initiate and conduct investigations under the criminal provisions of the Act, and to refer the results of these investigations to the Attorney General for prosecution in the appropriate cases."

EPA HAZARDOUS WASTE LEGISLATIVE INITIATIVE

EPA seeks endorsement of its intention to pursue amendments to the law mandating the Agency to comprehensively regulate management of hazardous wastes. The legislative proposal contemplated would not materially expand EPA's powers but would defuse several issues critics in Congress have exploited with some success, reduce litigation, and demonstrate this Administration's commitment to protect public health through an effective partnership with the States.

BACKGROUND

EPA was vested in 1976 with responsibility to create a national regulatory scheme for the safe management of hazardous wastes by the Resource Conservation and Recovery Act (RCRA). The previous Administration faltered in implementing key provisions of RCRA -- failing even to meet court ordered schedules extending statutory deadlines. By 1981, Congressional frustration with the pace and extent of the Agency's response to the problems of hazardous waste was strongly felt and widely shared on both sides of the aisle. In spite of this Administration's early and substantial progress in implementing RCRA, legislation was nearly enacted in the last Congress to require the Agency to close significant gaps in the RCRA regulatory framework. While indicating an intention to close these gaps, the Agency opposed the proposals as unduly restrictive of Agency discretion and unnnecessary given the broad authorities of RCRA. Agency opposition was not persuasive to a majority of the House, which adopted H.R. 6307 late in the last Congress. Only adjournment averted similar Senate action.

Private sector groups potentially affected by RCRA amendments are unanimous in predicting enactment of substantive RCRA legislation in this session of Congress. The EPA draft bill would address many of the same issues contained in the bills originating on the Hill last year. An Administration proposal would demonstrate that, contrary to the assertions of some members of Congress, we are not indifferent to the severity of remaining hazardous waste problems nor unwilling to see them addressed legislatively. In many cases affirmative legislative support for the Agency's intended course of action would help further protective regulatory action and afford a measure of protection from legal challenges. The Agency's opposition in the 98th Congress hampered effective negotiation. The Agency believes its active support for legislation with reasonable schedules and appropriate decision criteria should foster a better result in this Congress.

While a number of non-controversial or technical amendments are included, the principal and potentially most controversial proposals are briefly described below. We expect each of these

issues to be addressed in bills now being readied for introduction on the Hill. EPA believes that activities addressed by the amendments may be regulated under existing legal authority, though in some cases without consideration of costs and other important factors.

Small Quantity Generators

In 1980, EPA exempted generators of less than 1000 kilograms (approximately one ton) of hazardous waste per month from most of the hazardous waste management regulations including the requirement to treat, store, or dispose of their wastes in a Subtitle C (hazardous waste management) facility. The exclusion was justified by our need to focus initial RCRA implementation efforts on larger generators who generate 95-99 percent of all hazardous waste.

The exemption has been criticized in Congress and by a variety of groups. When the Agency adopted the exemption, it was explained as an interim measure that would be re-evaluated in 2-5 years. EPA is vulnerable to legal attacks on the basis that the exclusion is not presently authorized by RCRA.

EPA has recently initiated a study of small quantity generators to determine the risks associated with their wastes and the optimal regulatory strategy for dealing with these risks. The Agency believes that this study is a crucial requisite to the imposition of a regulatory program on these generators and the waste they generate. Although the Agency believes that regulatory controls will, in some cases, be necessary, we feel that specific regulatory solutions should generally be determined after the study rather than in the statute at this time. Accordingly, the Agency's position is that the reauthorization bill should require a two year study, followed a year later by the promulgation of regulations* under a broad statutory mandate, rather than under specific statutory directives as to what must be included in the regulations.

The Agency also believes strongly that any amendment must give the Administrator discretion to consider the size and administrative capabilities of small quantity generators. This is crucial because many small quantity generators are small businesses that may not be able to bear the impact of the full program applicable to higher volume generators.

*The Agency's proposed bill would require regulation only of generators generating between 100 and 1000 kilograms per month. Full discretion would be left with the Agency in terms of whether or not to regulate generators of less than 100 kilograms per month of hazardous waste. It should be noted that without this floor level, approximately 500,000 additional generators would be subject to RCRA control.

The bill does contain one requirement that would become effective prior to completion of the study. This requirement mandates that off-site shipments of hazardous wastes by generators of between 100 and 1000 kilograms of hazardous waste per month be accompanied by a notice (e.g., a label or shipping paper), identifying the generator and the hazradous wastes being transported. The purpose of this notice is to alert the transporter and final recipient of the waste (e.g., the landfill or recycler) of the nature of the wastes they are receiving so that they can institute proper handling procedures. It should be noted that a petition has been filed with the Agency and in court to require the Agency to promulgate regulations with similar notice requirements. Of course, any shipments which are otherwise subject to regulations promulgated by the Secretary of Transportation under the Hazardous Materials Transportation Act (49 U.S.C. 1801 et seq.) would remain subject to DOT control.

Burning and Blending of Hazardous Waste

Hazardous waste is currently exempt from RCRA when being legitimately recycled for energy recovery purposes. However, the burning of some hazardous wastes in certain boilers could result in unacceptable levels of hazardous emissions. Although the extent of the problem caused by this practice is not fully known, one source estimates that approximately 20 million tons of hazardous waste per year are being burned in boilers. This "gap" in the RCRA regulatory program has been heavily criticized by Congress and others. The Agency is currently conducting a detailed analysis of emissions from boilers burning hazardous waste to determine the risks associated with this practice and an analysis of the need for standards regulating the blending and distribution of fuels containing hazardous wastes. EPA interprets the existing law as an authorizing regulation of these activities.

The Agency's proposed amendment on the burning and blending of hazardous waste would require facilities which produce, burn, or distribute a fuel either derived from or containing hazardous waste or used oil to make a one-time notification to the Agency of these activities and maintain appropriate records. (However, the Administrator is given discretion to waive these requirements for certain facilities such as residential boilers.) The Agency believes that in order to adequately apply and enforce either administrative or technical controls to persons involved in the use of hazardous wastes as fuel, it must know the identify of these persons and the nature of their activities and have access to records on their activities.

The amendment also provides that off-site shipments by producers or distributors of fuels derived from or containing hazardous waste be accompanied by a notice (e.g., label or shipping paper) in order to alert transporters and users of such fuels of their hazardous waste content. (This requirement would not apply to fuels derived from or containing waste oil only.)

The final provision of the amendment directs the Agency to promulgate such standards applicable to facilities which produce, burn, or distribute such fuels as may be necessary to protect human health and the environment. Thus, standards would not be necessary in those situations where the burning of these fuels did not cause adverse affects.

Land Disposal Prohibitions

On July 26, 1982, EPA promulgated standards for hazardous waste land disposal facilities. The preamble to those regulations acknowledged that land disposal facilities require long-term care and oversight, particularly given some uncertainty over the effectiveness in the long run of required technologies. Therefore, the Agency believes that prohibiting land disposal of certain wastes which are highly mobile, toxic, persistent, and have a high tendency to bioaccumulate, is prudent public policy. The Agency believes that such prohibitions are now authorized by RCRA.

The proposed amendments would first require a report to Congress in two years identifying hazardous wastes for which disposal in or on the land may not be protective of human health and the environment. The Agency would be directed to identify practicable alternate management technologies (e.g., incineration, pretreatment, etc.) which will be protective and include an assessment of the costs and environmental impacts of these alternate technologies.

The amendment requires regulations one year after completion of the report, prohibiting the land disposal of specified hazardous wastes where the Administrator finds (1) it may be necessary to protect human health and the environment and (2) praticable waste management alternatives exist. The amendment also contains a provision allowing variances from a general prohibition based on a demonstration by a facility owner or operator that land disposal of a specific waste at a specific facility is protective of human health and the environment.

Another provision in the proposal would allow the Administrator to provide an effective date either longer or shorter than the 6-month period now provided for in the statute. Using this authority, the Administrator could prohibit the land disposal of a waste, even if alternate capacity (as opposed to technology) isn't immediately available, by providing an effective date longer than six months. Longer effective dates would be based on the Agency's best estimate of when alternate capacity will become available.

THE WHITE HOUSE

WASHINGTON

February 7, 1983

MEMORANDUM FOR THE CABINET COUNCIL ON NATURAL RESOURCES AND ENVIRONMENT

FROM: DANNY J. BOGGS

SUBJECT: EPA Groundwater Policy Statement

Attached is a short summary of an EPA Groundwater Policy Statement. A Working Group met on this material several times, and generally reached the conclusion that the statement was as good as could be achieved for present purposes. However, there was no consensus on whether to support EPA's recommendation that it should proceed to issue this policy document.

EPA'S PROPOSED POLICY ON GROUND WATER

EPA has drafted a proposed policy governing ground-water protection. The policy applies only to EPA's programs protecting ground water. However, since it encourages States to prepare strategies to protect their own ground water, tailored to meet individual States' needs, the policy has indirect implications for other Federal agencies with related programs. EPA plans to publish this policy as a draft and solicit public comment.

Why A Policy?

Ground water is an immense national resource which provides the prime source of drinking water for the majority of Americans, as well as water for irrigation and industrial applications. While more consistent, reliable information is needed to describe the nature and extent of ground-water contamination nationally, there have been numerous, locally severe instances of toxic infiltration of essential aquifers. In some cases where this has occurred, concern for public health has led to well closings and a search for expensive alternative sources of water, or costly added treatment prior to use. The Congress and numerous public interest groups have become increasingly vocal in demanding systematic, national preventive action.

EPA has sufficient statutory and regulatory authority, as well as several programs in place to control the principal sources of ground-water contamination, such as hazardous waste disposal sites. However, these programs need to be better coordinated at the Federal level, and meshed with related activities of State government, especially where States are also making delegated decisions under EPA programs.

The Administrator of EPA believes it is very important to release the proposed policy because: (1) it responds to what is perceived as a major problem without expanding the Federal role; (2) it provides a framework for better Federal-State coordination and makes it easier for States to implement delegated functions; (3) it improves internal EPA program coordination and effective use of resources; and (4) it may relieve Congress' concerns that EPA needs more authority, by initiating a dialogue that clearly demonstrates the contrary.

What the Policy Says

The long-term goal of EPA's proposed ground-water policy is "to safeguard the public health and sensitive environmental systems by protecting the quality of ground water, taking into consideration current and projected future uses, consistent with statutory objectives." The policy is built on seven operating principles:

A. States properly have the lead in protecting ground water.

B. We must fully use and coordinate existing insititutional and statutory abilities.

C. Within Federal environmental law, States must have maximum flexibility to tailor strategies to protect ground water to meet local needs and conditions.

D. Protection of ground-water quality will be a goal linking all relevant EPA program activities.

E. EPA will use all available data to inform the public of the levels and significance of ground-water contamination, and of means to safeguard water quality.

F. EPA will base ground-water policy decisions on the best available science; to the extent necessary, EPA will strengthen its research in this area.

G. Although water quality and water quantity are closely linked, water allocation is a State function; EPA will not involve itself in this issue.

Recognizing that States properly have the lead in ground-water protection, the policy encourages States to prepare long-term strategies which articulate their own priorities and which lay out the means by which to coordinate institutions for the protection of ground water. In support of this work, EPA offers to provide technical information and consultation, to make the strategies eligible under existing program grant authorities (insofar as the law may allow), and to use completed strategies as the basis for negotiating State/Federal commitments to ground-water protection actions.

At the Federal level, EPA will set up institutional arrangements to coordinate ground-water protection across programs, and between Headquarters and Regions. EPA will work with States to identify and correct inconsistencies or conflicts in our regulations and administrative policies. In order to make best use of existing capabilities, EPA will strengthen relationships with other Federal agencies responsible for measuring or preserving ground water. The Agency will cooperate with States to better define the magnitude of the existing problem and progress made in dealing with it. Finally, EPA will review and focus its research to develop needed techniques to detect, predict, control, and clean up contaminated ground water. As a first step in promoting better Federal regulations and supporting State strategies, EPA will shortly begin a public dialogue to consider such concerns as when and how to preserve waters of differing use, either current or as projected.

Anticipated Effect

Several States have undertaken ground-water protection strategies based on requirements which vary according to the current and projected future use of a given aquifer. This policy will promote the expansion of these voluntary efforts to other States. It will also increase the focus and consistency of Federal programs as they affect ground water.

Issues

In deciding to propose this policy, EPA has identified and considered a number of issues.

o State Sensitivity. Although the policy says clearly that States have the lead in ground-water matters, any initiative calling for enhanced coordination may be viewed as an opportunity to expand Federal influence over States. Does this policy adequately ensure State authority over ground water?

EPA Resolution: The policy does not present a threat to State automony. We have observed that several States have already begun to devise strategies without Federal intrusion into their approaches or decisions. Nothing in the policy suggests that the Agency could or would dictate conditions to States.

o Scope of the Problem. The policy acknowledges that data about the extent and severity of ground-water contamination nationally are incomplete. The policy accepts numerous, locally severe incidents, along with limited-sample survey data, as grounds for action and commits EPA to seek further definition of the magnitude of the problem. Is there compelling reason to defer action due to incomplete measurement of the scope of the problem?

EPA Resolution: Despite gaps in our ability to characterize the scope of existing ground-water problems, the number and distribution of known incidents of contamination are substantial. Since the potential for further contamination exists, a policy emphasizing prevention of contamination seems to be justified. This view is strengthened by the fact that the policy calls for no new or expanded Federal programs, but rather the enhanced coordination of existing efforts.

o Political Consequences. If ground water is identified as an area of national concern, some States may use this as an argument for additional Federal assistance. This is predictable even though State participation is voluntary. On the other hand, if EPA does not take action, we risk a Congressional initiative which is likely to be far out of line with actual need. In addition, we may give rise to a perception that the Administration has failed to respond to an emerging environmental problem.

o EPA Resolution: EPA's resolve to reduce State grants is firm. This policy will not catch the States cold; most if not all States have programs in this area. Many States and areawide agencies received funds under Sec. 208, Clean Water Act (now discontinued) to assess ground water problems, and have developed strategies. EPA would respond to further demands by pointing to programs and grants already available. EPA's offer of technical support for voluntary State programs is unlikely to prove a decisive argument for increased Federal grants. The possibility of rash Congressional action is real. By moving ahead with the proposed policy EPA may be able to avert such action.

o Role of Other Agencies. EPA needs to increase its coordination with other Federal agencies in support of ground-water protection at the State and Federal levels.

EPA Resolution: The major need which other Agencies can fill is for hydro-geological information for such decisions as use-projection and monitoring. USGS has already agreed to work with EPA in this area.

o Changes to Ground Water Policy in response to Agency Comments

1. Expanded discussion of existing programs to specify future actions which would protect ground water. (OMB)

2. Removed reference to developing control or clean up hardware. (OMB)

3. Expanded and clarified State lead role. (OMB)

4. Clarified reference in the Goal to "sensitive environmental systems" as primarily being wetlands with ecological value. (DOI)

5. Removed reference to "the extent feasible" in the Goal as it was interpreted as a stringent (Air Act) requirement. (DOI)

6. Clarified use of the term "National Technology based Standards". (DOI)

7. Expanded the implementation section. (DOI)

8. Clarified such terms as "other uses", "competing uses", etc. (DOI)

9. Added more emphasis on enforcement. (DOJ).

10. Added more detail on the nature and extent of the problem. (DOJ)

11. Provided more background on State role in ground water to substantiate our position on State role. (DOJ)