



Interoffice Communication

To *Environmental Distribution**

From *J. McCleskey*

Date *February 1, 1974*

Subject

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JCL

Attached is the quarterly Legal and Legislative Report from the Environmental Council meeting in January. I recommend that this excellent document be widely circulated to plant management for their information.

[Handwritten signature of J. McCleskey]
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LEGAL AND LEGISLATIVE REPORT

1973 FOURTH QUARTER SUMMARY
(October, November, December)

Conoco Environmental Advisory Council
Washington, D.C.
January 29, 1974
Clyde R. Hampton

I FEDERAL LEGISLATION AND REGULATIONS

A. Clean Air Act of 1970

1. Significant regulations

- a. EPA proposed on October 12 (38 FR 28301) to amend its regulations so as to no longer require unleaded gasoline deliveries by retailers owning six or more stations. The prior regulation promulgated January 10 still requires owners of each station pumping 200,000 gallons annually to provide at least one grade of unleaded fuel.
- b. Amended regulations on start-up, shut-down, and malfunction of new stationary sources of air pollution were adopted by EPA on October 15 (38 FR 28564) and will be effective November 14.
- c. Final EPA regulations establish the following phase-down of average lead content in gasoline (38 FR 33734):
 - 1.7 grams per gallon (gpg) by January 1, 1975;
 - 1.4 gpg by January 1, 1976; 1 gpg by January 1, 1977;
 - .8 gpg by January 1, 1978; and .5 gpg by January 1, 1979. (Ethyl Corporation has filed an action to contest these regulations and also Ashland Oil, Clark, Kerr-McGee and Mohawk).
- d. EPA proposed on October 30 (38 FR 29893) regulations for states to carry out preconstruction review of indirect air pollution sources (sometimes called "complex" sources of air pollution). Proposed regulations would apply to facilities generating significant amounts of auto traffic such as shopping centers, airports, stadiums, highways, parking lots, commercial or industrial developments, etc. The case of NRDC v. EPA, 4 ERC 1945, ordered the EPA Administrator to issue final regulations by December 15.
- e. EPA has approved or revised a large number of transportation control plans submitted by the States. Primarily metropolitan areas are affected. Oil companies have filed legal actions in most Federal circuits contesting primarily the hydrocarbon emission vapor controls. Conoco has filed an action against EPA in the Tenth Circuit regarding the Denver Air Quality Control region.
- f. EPA promulgated regulations on December 27 (38 FR 35310) to prevent the issuance of Federal grants and loans to facilities violating requirements of the Clean Air Act. EPA Administrator is required to publish a list of violating facilities by July 1.

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2. Most EPA officials support alternative IV of four alternatives which EPA has proposed under court order (Sierra Club v. EPA, 4 ERC 1205) to prevent significant deterioration of existing air quality. Alternative IV would require States to place their land within one of two zones of allowable deterioration, one area being more restrictive than the other.
3. Quarles, Deputy Administrator of EPA, said at an ASCE conference on October 29 that EPA is prepared to grant variances to exceed sulfur standards in areas with severe fuel shortages even if primary ambient air quality standards are exceeded. Industry attempts to blame environmental controls for energy shortages were termed "irresponsible."
4. Train told Senate Public Works Committee on November 6 that EPA does not intend to take any action that would inhibit the use of catalytic converters on 1975 automobiles. Auto manufacturers opted for a freeze of 1974 levels. Exxon pointed to dangers of increase of sulfates from converter.
5. Without seeking the advice of EPA, the White House transmitted to Congress November 29 a proposal to freeze auto emissions standards at 1975 interim levels through the 1977 model year. The Senate passed a bill (S.2772) 85-0 which would amend the Clean Air Act to extend 1975 interim auto emissions standards for another year.
6. A number of States have moved to relax or waive environmental standards to ease fuel shortages. Some States have also granted variances for use of high sulfur fuel oil and coal.
7. Authority to regulate radiation from nuclear power plants was transferred from EPA to AEC.

B. Federal Water Pollution Control Act Amendments of 1970

1. Significant regulations

- a. EPA adopted regulations limiting the financial liability of small onshore storage facilities for oil removal costs incurred by the Federal government on September 13, 1973 (40 CFR 113).
- b. EPA adopted ocean dumping regulations on October 15 (38 F.R. 28609).
- c. EPA issued on October 16, final guidelines (38 F.R. 28758) establishing test procedures for the analysis of pollutants. Instead of requiring the use of a single reference method of each pollutant as originally proposed, final guidelines approve the use of more than one test procedure. Final guidelines apply to each NPDES water discharge permit.
- d. EPA proposed on October 11, 1973 (38 F.R. 28194) effluent limitations guidelines and new source performance standards for the plastic and synthetic resins industry.

- e. EPA also proposed on October 11 (38 F.R. 28174) effluent limitations guidelines and new source performance standards for the inorganic chemicals industry.
 - f. EPA proposed on October 26 Water Quality criteria and measurement techniques pursuant to Section 304(a)(c) of the FWPCA. Reports are available at the EPA Washington, D. C., and the ten Regional offices. Criteria were taken from recommendations of the National Academy of Sciences Report on water quality criteria under contract to EPA.
 - g. EPA issued final pretreatment standards for industrial contributors to public treatment systems on November 8 (38 FR 30982).
 - h. EPA issued effluent limitations standards for six categories of petroleum refining operation on December 14 (38 FR 34542). Oil industry feels standards for 1977-1983 (best practicable treatment) are too restrictive.
 - i. EPA issued effluent limitations guidelines and new source standards for the organic chemicals industry on December 17 (38 F.R. 34706).
 - j. Executive Order 11752 issued by the President on December 19 (38 F.R. 34793) directs Federal agencies to provide leadership in pollution abatement under all Federal environmental laws.
 - k. EPA issued proposed toxic pollutant effluent standards for 24 source categories on December 27 (38 F.R. 35388).
- 2. Congress introduced a joint resolution (SJ Res 158) to declare void EPA's final regulations for reimbursement of costs for sewage treatment construction. Cities and States are also unhappy over what they feel is an inadequate reimbursement of sewage treatment costs.
 - 3. Support of construction and operation of deep water ports was given by the Chairman of the National Security Council Interagency Task Force on the Law of the Sea and the Council on Environmental Quality testimony before Senate hearings. Further justification for deep water ports was provided by a CEQ contractor, Arthur D. Little, Inc.
 - 4. A legal question has been raised under the FWPCA as to whether publication of effluent limitations guidelines by EPA rather than of actual effluent limitations would satisfy the requirements of the Act (under new matrix approach
 - 5. California, Connecticut, Michigan, Oregon, and Washington were granted permanent authority by EPA to take over the water discharge permit program.
 - 6. The National Commission on Water Quality is undertaking a comprehensive two-year study regarding pollution control costs, technology and other related items.
 - 7. As of October 25, EPA had completely approved water quality standards for 20 states.
 - 8. EPA issued a report on pollution of ground waters from sub-surface excavations in accordance with Section 304(e) of FWPCA.

9. EPA policy statement says subsurface injection of wastes should be strictly controlled.
10. Only eight of the 50 States do not report significant salt water intrusion problems according to an EPA report entitled "Identification and Control of Pollution from Salt Water Intrusion."
11. Under *NRDC v. Train*, on November 27 Judge June L. Green of the U. S. District Court for the District of Columbia imposed deadlines for EPA's promulgation of effluent limitation guidelines under Section 304(b)(1)(A) of the FWPCA.
12. Support for and opposition to a new matrix approach for establishing effluent limitations was the theme of a November 29 meeting of the EPA's Effluent Standards and Water Quality Advisory Committee (ESWQIAC) (See attachment for summary of arguments pro and con regarding the matrix system).
13. A GAO report states Federal drinking water standards were exceeded for at least one month by more than 25% of 446 water distribution systems sampled in a six-State survey.
14. Congress expected to enact a Safe Drinking Water Act in 1974 (HR 10955; S433). Revision of drinking water standards issued in 1962 should be finished by June 1, 1974, after a four year review.
15. General Accounting Office expresses grave doubt that 1985 zero discharge goals can be met at current rate of water pollution research funding.

II COAL, HARD MINERALS AND LAND USE

A. Recent developments

1. The Senate approved a strip mining bill (S425) on October 9, 1973 by an 82 to 8 vote. An amendment which was defeated would have relaxed a requirement that strip miners restore the land to the approximate original contour. Senator Mansfield was successful in offering an amendment to ban strip mining where the surface rights are privately owned but the subsurface mineral rights are owned by the United States.
2. The Land Use Policy and Planning Assistance Act (S268) is a land use bill proposed by the Senate (Sen. Jackson) which would require States to enact enabling legislation, to develop regulations to protect land usage and develop a land process program.
3. An unreleased National Academy of Sciences report states that there is not enough water available in the West for large scale coal gasification or electric generating facilities.
4. A report entitled "An Analysis of Strip Mining Methods and Equipment Selection" prepared under an Office of Coal Research contract by Pennsylvania State University recommends various techniques for environmentally safe strip mining.

5. Russell Train said on October 18, that the final report of the Sulfur Oxide Control Technical Assessment Panel concluded that SO₂ removal from stack gases is technologically feasible in commercially sized installations. Electric utility spokesmen disagree and say that stack gas scrubbers have not yet been proven reliable enough to warrant wholesale conversion.
6. Proposed coal surface mining legislation will not be taken up by the full House Interior Committee until at least January 27 under an agreement reached November 6 by leaders of the Mining and Environment Subcommittees.
7. EPA contractors, Skelly and Loy, Harrisburgh, and Penn. Environmental Consultants, Inc., Pittsburgh, issued an extensive report (required by Section 304(e) of FWPCA) regarding water pollution from mining activities.
8. A report prepared for the Office of Coal Research by Ralph M. Parsons Co. of Los Angeles and released on October 25 describes plans for the construction of a demonstration plant (requiring a capital investment of \$270 million) to produce clean boiler fuels from coal.
9. S2680, reported by the Senate Public Works Committee on November 14 would authorize the EPA to suspend temporarily emission regulations to permit power plants to convert from oil to coal. Train endorsed the concept in testimony on November 12.
10. Department of Interior released an impact statement regarding the proposed geothermal leasing program.
11. The National Emergency Energy Act (S2589) was reported out by Senate and House conferees on December 19, but opposition by the White House and several oil-state Senators to a "windfall profits" provision included in the bill prevented its passage. Under S2589, auto emissions standards would have been frozen at 1975 levels for a year, certain actions would have been exempted from NEPA, and coal fired plants would be granted temporary variances from emissions limitations.
12. Secretary of the Interior Morton approved oil shale leasing programs under an environmental impact statement despite "unavoidable" environmental degradation. Six tracts in three States (Colo., Utah, and Wyo.) will be offered for sale.
13. A report on the status of State coastal zone management efforts is available from the National Oceanic and Atmospheric Administration (NOAA). NOAA will hold a series of meetings in December and January for public comment regarding criteria to be used in approving State coastal zone management programs under the Coastal Zone Management Act of 1972 (38 F.R. 34217).
14. Robert Reid of EPA said on December 7 that not enough coal is available for power plant conversions from oil to coal to pull the U.S. out of the energy crisis this winter.
15. Energy Policy Office adopted regulations (38 FR 32577) to prevent industries from converting from coal to oil and from high to low sulfur fuels except where necessary to meet national primary air standards.
16. The Citizens Advisory Committee on Environmental Quality stated in its annual report that land use legislation should be the top priority of Congress.

III INTERNATIONAL PROBLEMS

A. Recent developments

1. An International Convention for the Prevention of Pollution from ships was concluded at a 79-nation 665-delegate conference in London on November 2. The new accord supersedes a 1954 Oil Pollution Convention.
2. The second annual meeting of the US-USSR Joint Committee on Cooperation in the Field of Environmental Protection began in Washington November 13.
3. The Law of the Sea Conference seems headed toward agreement on a 12-mile territorial sea according to John Moore, the President's representative for the Conference.

IV MISCELLANEOUS

1. A study prepared by the General Accounting Office of the National Environmental Policy Act emphasizes that EPA is subject to the environmental impact statement requirements of NEPA.
2. The Ford Foundation announced that it is considering cutting back its financial support of five public interest environmental law firms (Center for Law in the Public Interest, Environmental Defense Fund, Natural Resources Defense Council, Public Advocates and the Sierra Club). John Quarles of EPA urged that this action not be taken.
3. The American Bar Association's Section of Antitrust Law recommended that EPA prepare a "Competitive Impact Statement" with respect to the effects of its regulatory actions upon antitrust considerations. Concern was expressed that excessively restrictive standards might discourage entry into a particular industry and grant monopolistic advantages to existing industries.
4. Former Delaware Governor Russell E. Peterson was named Chairman of CEQ. As Governor of Delaware, Peterson pushed through the controversial Delaware Coastal Zone Act. Other members are John Busterud and Dr. Beatrice Willard. Gary Widman, Hastings School of Law, San Francisco, California, was named as General Counsel replacing Timothy Atkeson.
5. Alan Kirk, General Counsel of EPA, opposed a bill (H.R. 7592) to amend the National Environmental Policy Act to include a provision for citizens' suits. John Busterud of CEQ also opposed the bill.
6. EPA published on October 26 the first volume of a two volume reference on EPA's legal authority to act in the fields of air, water solid waste, pesticides, radiation and noise ("EPA Legal Compendium").
7. EPA will promote a widespread adoption of resource recovery says the acting deputy assistant administrator for solid waste management programs on November 16.
8. Train says the U.S. should commit itself to a two to three percent annual growth in energy demand.
9. EPA is supporting the Administration's bill (S4873) entitled "Hazardous Waste Management Act."

V JUDICIAL CASES

Natural Resources Defense Council v. EPA, 5 ERC 1891 (1st Cir.). Environmental group was awarded attorneys fees and court costs against the Federal government pursuant to a successful challenge of EPA's approval of state implementation plan. Section 304(d) of Clean Air Act authorizes awards in successful suits brought against the U.S. under Section 304(a) (the Citizen suit provision) and the Court here held that Section 304(d) was also applicable to this suit brought under Section 307, a general provision relating to administrative proceedings and judicial review.

Southern Illinois Asphalt v. Illinois EPA, 5 ERC 1929 (Ill. App. Ct., Oct. 10, 1973) The Illinois pollution control act's grant to State administrative agency of the right to impose variable money fines for violations of act, was held to be an unconstitutional delegation of authority to Administrative agency.

US v. General American, 6 ERC 1024 (D. N.J.) a corporation, as well as an individual, is protected against use of a report made by the corporation of an oil spill (under Sec. 311(b)(5) of FWPCA) in a criminal action brought against the corporation. Sec. 311(b)(5) bars use of that report in any criminal action against such corporation.

NRDC v. Train, 6 ERC 1033 (D.C.D.C. 1973) Federal District Court of the District of Columbia established a schedule of dates as to when EPA must publish final effluent limitations guidelines because EPA had failed to meet one year deadline for action under FWPCA.

Zahn v. International Paper Company, 6 ERC 1120 (U.S. Sup. Ct.) A class action (under Rule 23 of Fed. Rules of Civil Procedure) may not be maintained without a showing that each member of class independently satisfies the \$10,000 jurisdictional amount requirement of 28 USCA § 1332(a), even if the named plaintiffs did show they had suffered pollution damage in excess of \$10,000 each. Suit was dismissed as to each member of class who failed to meet the \$10,000 jurisdictional amount.

Essex Chemical Corp. v. Ruckelshaus, 5 ERC 1820 (C.A. D.C. 1973) NEPA does not require EPA to prepare an environmental impact statement under Sec. 111 of Clean Air Act providing for new source performance standards. EPA must, however, demonstrate that standard is not purely theoretical or experimental and must show that pollution control system designed to achieve standard is reasonably efficient, reliable, and not exorbitantly costly, either environmentally or economically, although the standard need not have been routinely achieved by affected industry prior to promulgation.