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NOMINATION OF WILLIAM D. RUCKELSHAUS

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HEARINGS

BEFORE THE

MITTEE ON PUBLIC WORKS

UNITED STATES SENATE

NINETY-FIRST CONGRESS

SECOND SESSION

DECEMBER 1 AND 2, 1970



Printed for the use of the Committee on Public Works

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1970

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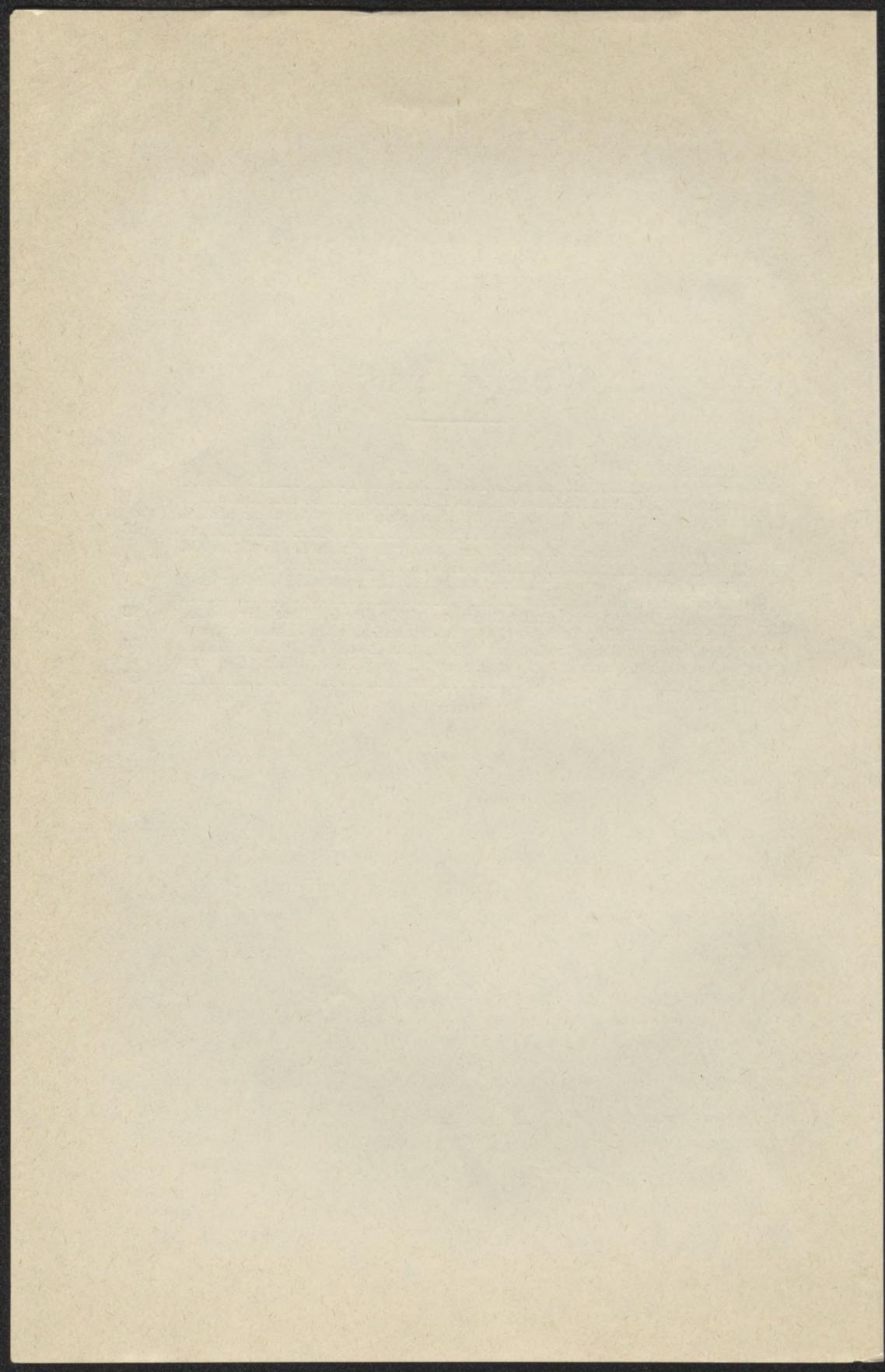
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NOMINATION OF WILLIAM D. RUCKELSHAUS

TUESDAY, DECEMBER 1, 1970

U.S. SENATE,
COMMITTEE ON PUBLIC WORKS,
Washington, D.C.

The committee met at 10 a.m., pursuant to call, in room 1318, New Senate Office Building, Senator Jennings Randolph (chairman of the committee) presiding.

Present: Senators Randolph, Young, Muskie, Jordan, Spong, Cooper, Boggs, Baker, Dole, and Gurney.

Also present: Senators Aiken and Bellmon, Agriculture and Forestry Committee; Senators Jackson and Allott, Interior and Insular Affairs Committee; and Senator Pearson, Commerce Committee.

The CHAIRMAN. Good morning, ladies and gentlemen.

The Committee on Public Works is meeting to consider the nomination of William D. Ruckelshaus to be the Administrator of the newly formed, and we hope very active, Environmental Protection Agency. This nomination assumes great importance for several reasons.

First, the agency which Mr. Ruckelshaus has been proposed to head is a new one. Consequently, he will be called upon to oversee the formation of a new governmental structure, pulling together several existing organizations and creating whatever new machinery is necessary to carry out the mission of the Environmental Protection Agency.

Such an assignment obviously requires a man to have more than routine managerial abilities. In any new organization, the early, formative period of its existence can have a substantial determination on how it responds to the task assigned it.

Perhaps even more significant is the fact that the Environmental Protection Agency will cope with matters of critical importance, including enforcement of laws that are on the statute books, so that every American will understand that there is a genuine effort being made at this time in protecting the environment in which we live.

There is ample evidence to indicate that not only the United States but the entire world is faced with an environmental crisis.

I call attention to the International Clean Air Conference which will be held in Washington next week. I think it is significant for us to realize that there are delegates coming from behind the Iron Curtain. We will have approximately 100 persons from Japan, indicating that the entire world is alert to the problem of pollution.

We have awakened—some persons too late.

I read only a few days ago that Joanne Woodward, the actress wife of Paul Newman, gave an interview in which she said our planet is doomed.

I don't believe that, but this is an expression that, of course, people make in varying degrees.

But we are considering the extent of our abuse of the world in which we live and how we can lessen that abuse.

We know that unless we change our ways drastically, and change them sooner than later, substantial portions of our world may become at the very least undesirable places in which to live, in some cases almost uninhabitable.

In the United States, the ecology movement, I am convinced, is no mere fad, a temporary diversion that will soon become tiresome and be replaced by some other crusade, as some have designated the environmental effort.

I think we have had fresh evidence in the elections on November 3 of the commitment of the American people to the enhancement of the environment. I am not now discussing candidates that were elected or defeated. I am talking about those issues where the people of the United States committed themselves to sums of money, commitments made through bond issues—\$750 million, for example, in the State of Illinois, in the State of Maine and in other States that are represented by our membership here today, considerable amounts of money dedicated by the people to pay for the job they believe must be done.

Bond issues in past elections have not fared too well. The matter of school bond issues fared very poorly in 1970. But practically all of those issues where people were to commit themselves to money for the environment received the affirmative action of people on November the 3d.

So I think it is correct to say that there is not only an awareness, but there is a certain sense of alarm over the direction in which we have been moving with accelerating speed.

I believe the American people want action, and the elections that I have mentioned indicate their willingness to support these efforts with the necessary commitment of financial resources.

Therefore, I know that the nominee realizes that the Environmental Protection Agency and the man chosen to be its Administrator will, at the outset, occupy very critical and prominent positions in the public arena.

Congress has passed environmental control legislation and will continue to provide effective tools to halt the abuse of our environment.

We will expect those officials responsible for the administration of these laws to do so with fairness, yet, with firmness.

I commend the administration for its response to environmental needs that resulted in the creation of this new agency. In a field that has grown so large and diverse, and in an area where urgent demands for action are being made, there must be a single governmental agency with the overall authority and broad outlook to do what will be necessary.

Under these circumstances, I know that the Senators of the Public Works Committee who are present today and our guests from other committees will wish to question Mr. Ruckelshaus.

While the Public Works Committee has primary jurisdiction for environmental legislation in the Senate, the effort is so broad and en-

compasses so many endeavors that, as I have indicated, other Senators from other committees are involved in degree.

I, therefore, as chairman of this committee, formally invited the chairmen and the ranking minority members of the Interior, Commerce, Labor and Agriculture Committees to participate in the hearing or the hearings that we begin this morning.

The CHAIRMAN. I want to accommodate the Senator from Vermont who has another engagement. He comes to us from one of the committees involved.

Senator Aiken, we will be glad to have you ask questions or make a comment.

Senator AIKEN. Thank you, Senator Randolph, for inviting me to participate in the hearings this morning, and thank you for giving me the opportunity to make a short statement here and ask one question inasmuch as I have an unavoidable meeting at 10:30.

I want to say first off that I believe the selection of Mr. Ruckelshaus to be Administrator of this Agency is a very good selection. I think at this point he plans to do an excellent job for us.

I would like to present to him one situation and then ask one question.

For the last generation a large paper mill has operated on the west bank of Lake Champlain in the State of New York. Lake Champlain, I believe, is the largest freshwater lake in the United States outside the Great Lakes.

This paper mill, owned by the International Paper Co., as I say, has operated like most paper mills and has a very substantial output of sludge, now called pollution, I believe, from this mill into Lake Champlain.

At the present time, this sludge covers a bed of 300 acres, but the pollutionary effects go much beyond the sludge bed until the time has come now that, when we try to get usable water on the Vermont side of the lake, and three-fourths of the lake is in the State of Vermont, we find it will not pass for domestic consumption.

The paper mill is now building a new mill several miles farther down the lake from where the old one was. This will cost about \$100 million. It will provide very important employment. It will provide a market, they tell me, for about 1,000 cords of pulpwood a day and be very important to the economy of that area.

The paper company advises me that with the new processes they can control about 90 percent of this sludge. The other 10 percent, of course, is undesirable but possibly could be tolerated if the old sludge bed could be cleared up.

New York State has held that it wouldn't be nice to upset the sludge bed; it might do more harm than good. But nobody else believes that story at all. We think it should be cleared up.

The Army Engineers estimate it will cost from \$4 million to \$5 million to clean out the sludge so that the new mill could operate and the water would be made usable for our people on the Vermont side of the lake.

Vermont is planning to go into the courts. If they do that, it will delay the opening of the new mill, which I think is set for some time this month or next. As I say, it will be a very important mill.

One of Secretary Hickel's last acts was to give New York State orders to present to him within a short time their plans for clearing up this sludge. Of course, the paper company feels they are not for it, that this is a test case and they will fight it to the end. They feel that having paper mills all over the United States, this case would constitute a precedent and if they have to clean up the lake at Ticonderoga they will have to go to all the other places, the rivers and lakes where they have mills, and do the same thing. Naturally, they don't want to go to that expense.

New York, for a generation, and the Federal Government, too, have been collecting taxes from this mill. The mill furnished employment for several hundred people. It has been a market for the pulpwood of the area, which is very important. It has been my opinion that the Federal Government and New York, having made the gains from this operation, and being responsible for it, in a sense, should bear the cost of cleaning up Lake Champlain, which I insist is the most beautiful freshwater lake we have, and certainly the largest outside of the Great Lakes themselves.

So that is the question: Who is going to pay the cost? It is a situation which must be met because, if nothing is done about it, the entire lake is likely to be polluted from the New York side to such an extent that the water will be condemned for use on both sides of the lake.

The question I have is: Mr. Ruckelshaus, are you aware of this situation and, if you are approved for this position, do you intend to follow through and see that this pollution of great magnitude in Lake Champlain is handled properly, and that further pollution will be prohibited?

Mr. RUCKELSHAUS. Senator, I am aware of this situation in the broad outline that you have given me. I am also aware of the competing claims of the States of Vermont and New York.

Secretary Hickel has given the State of New York, as I understand it, until December 15 to come up with a plan as to how the sludge bank will be removed. That order will remain in effect.

I believe that it is this precise kind of situation that the Environmental Protection Agency was created to take care of, where we have pollution of lakes and streams in this country and we have not been able to abate that pollution in the past.

I think it is this Agency's mission to see that as quickly as possible these pollutants and the pollutant effect of effluent from plants and from municipalities is cleaned up.

It is my intention, if I am confirmed as Administrator of this new Agency, to see that this mission is carried out. So I can assure you that when the State of New York submits its recommendation as to how the sludge should be removed, we will study it very carefully and make provision for the removal of pollutants from that lake.

Senator AIKEN. I thank you for your good intentions. I must say that up to now New York State has shown very little sympathy for the damage they have been causing to the lake and to the State of Vermont.

But the State and the Federal Government have undoubtedly collected in revenue many, many times the cost of restoring that lake, the waters of that lake, to a usable condition. I think they have an obligation to clean it up.

I thank you.

I thank you again, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Aiken. The Senator comes from the Agriculture Committee, one of the committees that I mentioned as having been invited.

Senator AIKEN. I have an appointment now with the Governor of Vermont, who is interested in this same matter.

The CHAIRMAN. Bring him over, Senator.

Senator Pearson of Kansas, has come by and indicated his interest in the nominee this morning. He comes from the Commerce Committee.

I have been asked to read a letter from a valuable member of the Public Works Committee, Senator Birch Bayh of Indiana. I shall do so before the statement of Mr. Ruckelshaus.

Dear Mr. Chairman:

I regret that an out-of-town commitment makes it impossible for me to be present today and, thus, I cannot present to the committee William Ruckelshaus who has been nominated to serve as Administrator of the Environmental Protection Agency.

As you may recall, Mr. Ruckelshaus was my opponent in 1968, and proved to be an able and articulate one.

How close was the race?

Mr. RUCKELSHAUS. Senator, he beat me by 72,000 votes. I wasn't able or articulate enough.

The CHAIRMAN. I will continue with the reading of the letter.

I am grateful to the voters of Indiana for making it possible for me to recommend Bill Ruckelshaus. Mr. Ruckelshaus has been involved in fighting pollution for over a decade. As Deputy Attorney General to the State of Indiana, he drafted the Indiana Air Pollution Control Act which was passed in 1961.

He also prosecuted corporations and municipalities for their pollution practices. It is my judgment that this unique background, together with the excellent reputation he has earned as Assistant Attorney General in the Civil Division makes him an excellent choice as Administrator for this most important agency.

I highly recommend him to the committee and know that you will accord him all the courtesies traditional for occasions of this nature.

Mr. Ruckelshaus, at this time, we would ask you to make any statement or to prepare for the committee's consideration any material that you think would be pertinent.

STATEMENT OF WILLIAM D. RUCKELSHAUS

Mr. RUCKELSHAUS. Mr. Chairman and members of this committee and other committees:

I do not have any prepared opening statement. I would like to express my appreciation of you, Mr. Chairman, for scheduling this hearing in an expedited manner, recognizing the great press of business that the Senate has and recognizing that the Environmental Protection Agency, under the reorganization plan as submitted by President Nixon, is supposed to open its doors for business on December 2, which is tomorrow.

I appreciate the committee holding this hearing in an expedited manner.

I would like to just echo what you said, Mr. Chairman, in your opening remarks, that I recognize how terribly important this Environmental Protection Agency is.

I recognize how vital it is that the Administrator of this Agency carry out the responsibilities as outlined in the 15 component agencies

that have come from other departments and agencies of Government to be formed as the Environmental Protection Agency.

I recognize how vital it is to the future of this country and, indeed, to the future of the world, that we be successful in this new effort.

I am dedicated to that success. If this body should see fit to confirm me, I can hereby testify to the fact that I will devote every bit of my energy, intelligence, and ability to carry out the mission of this Agency.

With that, Mr. Chairman, I will simply rest and I will be glad to answer any questions that any of the members of this committee have.

The CHAIRMAN. Thank you very much.

The chairman, as always, will cooperate with the members of the committee.

I will lead off with certain questions.

One, Mr. Ruckelshaus, is in reference to enforcement and research priorities and how you view them. There have been certain comments made on your appointment through the media, and it has been indicated that you will be the chief enforcer of the Administration on antipollution legislation.

How do you view your role as Administrator, and the relationship between enforcement responsibilities and your obligations to promote additional pollution abatement and research activities?

I would like for you to tell us what you consider to be the priorities that will be considered and acted on as you move into this post.

Mr. RUCKELSHAUS. Mr. Chairman, I think that enforcement is a very important function of this new Agency. Obviously, if we are to make progress in pollution abatement, we must have a firm enforcement policy at the Federal level. That does not mean that this policy will be unfair, that it will not be evenhanded, but it does mean that it will be firm and as far as I view the mission of this Agency and my mission as its proposed Administrator, it is to be as forceful as the laws that Congress has provided, and to present a firm support of enforcement behind the States.

Most of the pollution laws of this country, as passed by Congress, make the States the primary enforcer. Having spent a number of years in the State attorney general's office in the State of Indiana, I know that the States, as regulators of industry, and regulators in the area of pollution, operate under some disadvantage.

The States compete very fiercely for industry to locate in their States, and when they are asked to regulate that same industry that they are asking to locate in their States, sometimes they are not as effective as they should be.

I believe they can become more effective if there is a strong Federal presence behind them. So where the States want to become more active in the field of regulation and enforcement, when they know that the Federal presence behind them is going to be strong and firm and evenhanded, they are going to do a better job.

This Agency, obviously, has several other responsibilities and functions. It has the function of standard setting or of approving standards at present as set by the States pursuant to air and water criteria, established by the Water Quality Administration and the National Air Pollution Control Administration.

The CHAIRMAN. How many agencies now operating will be brought under your umbrella?

Mr. RUCKELSHAUS. There are 15 component units that will be brought under this umbrella. They come from the Department of Interior, the Department of Health, Education, and Welfare, the Department of Agriculture, the AEC and one function of the Council on Environmental Quality.

I think, Mr. Chairman, that we have also an obligation as an Environmental protection agency to develop long-range plans as to where we want to be as an agency in 4 or 5 years and where we want to be as a nation 4 and 5 years down the line. Our enforcement policies should be pursuant to these long-range plans. We should not attempt, on a piecemeal basis, to exercise our enforcement powers, but should do so in an evenhanded manner, recognizing that where we ask one industry to do something, if we don't ask every industry within that competing group to do the same thing in terms of pollution abatement we may put that one industry at a competitive disadvantage.

That is what I mean by an evenhanded treatment of enforcement.

We have the grant authority and the research and development authority which have been taken from these other agencies and put into the Environmental Protection Agency. Again, I think we must exercise this considerable power of grants in aid and research and development in terms of a long-range plan, what is the best kind of research and what is the best kind of monitoring function, for instance. What is the best kind of grant function that we can develop as an agency in order to achieve our goals which may be 4 and 5 years down the line.

I think we have to develop a philosophy of grants, a philosophy of research and development, a philosophy of standard setting that will allow us to achieve a clean environment in the future.

The mission of this Agency, to clean up the environment. We have to use every single tool that we have as inherited from the 15 components in order to achieve that mission.

That is what I see in a very broad way as the role of this Agency.

There is one other function, Mr. Chairman, which I think the Administrator of this Agency has to exercise, and it is crucial if we are going to succeed. That is the function of leadership. This job cannot be done by the Federal Government alone. It has to be a cooperative effort by the Federal Government, by the State governments and local governments and by, really, the whole society.

It seems to me to do little good for the Administrator of this Agency to attempt to ascribe blame for the pollution that exists in our society.

What I think must be the role of the Administrator is to exercise leadership, to attempt to convince all segments of our society that really all of us are to blame. That includes the Federal Government, the State and local governments, and the private and independent sector. It is going to take a total effort on the part of all of us if we are going to succeed in cleaning up the environment.

It is this vital role of leadership which I think this Agency also has to supply.

The CHAIRMAN. I think that is a well-reasoned statement. I agree with what you have said. What you should do, of course, after what you have said, is a further commitment.

I want to ask you about the air pollution control funding and staffing in the Agency. I am not sure of the television program on which

you appeared last evening, but you were asked whether you believed that you had sufficient staff. Do you recall that question?

Mr. RUCKELSHAUS. Yes, I think I do, Senator.

The CHAIRMAN. The reason I am bringing it to your attention now is because the National Air Pollution Control Administration is presently staffed at less than half its authorized level. The Agency has estimated it will need 200 additional slots.

Why do you call them slots?

Mr. RUCKELSHAUS. I think maybe that is a term I picked up in Indiana, Mr. Chairman, but these are positions within that Agency.

The CHAIRMAN. That is to meet the needs of legislation now in conference. The administration requested \$96 million from an authorization of \$179 million. The Congress appropriated \$109 million.

As Administrator, will you request full funding, and do you intend to staff the Air Pollution Control Administration at the full level of the authorization?

Mr. RUCKELSHAUS. Mr. Chairman, I am in the process of going through the budgetary needs and requests of every single one of the 15 component agencies that are under this present Agency, and viewing the new air pollution statute as it is presently in conference.

Obviously, if we are going to carry out the mission of that law, whichever version is eventually passed by Congress, we are going to need additional resources in the air pollution field.

I think I will have to review the budgetary needs of the Agency once that bill becomes law, and attempt to carry out the mission as outlined by the Congress.

It is my own belief that within the administration I have to be an advocate for the environment, for the kind of job that must be done, not only in air but in water, solid wastes, pesticides and radiation, and I have to make a determination, in the event I am confirmed as administrator, of just what the needs of the various components of this Agency are, and to make recommendations to the Congress through the Office of Management and Budget for the funding of those needs.

It is my present belief, at the present rate that I have been able to review the budgetary needs of these component agencies, that we are going to need additional personnel and resources in the National Air Pollution Control Administration, which is now part of the Environmental Protection Agency.

The CHAIRMAN. I have other questions, but I want to cooperate with the members of the committee. These questions will be asked by me at a later time in the event they are not asked by other members.

Senator Boggs.

Senator BOGGS. Thank you, Mr. Chairman.

I want to commend you, Mr. Chairman, on your opening statement. You express the sentiments held by me and, I feel confident, most of the members of this committee.

It is also a distinct pleasure to join with you in welcoming Mr. Ruckelshaus this morning.

Mr. Ruckelshaus, we are happy to commend you on your appointment to this very important position, which will be among the most important and significant in our Government during the days to come.

President Nixon's decision last summer to establish the Environmental Protection Agency was a most heartening one to me. The agen-

cies with jurisdiction over various aspects of pollution control have too long been split among several departments. This split has prevented creation of the most effective and coordinated approach to environmental enhancement, I believe.

"The environment," as President Nixon has said, "must be perceived as a single, interrelated system." I believe that EPA is the lens that will give us that perception. The selection of an Administrator is a key decision in making EPA work. In this era of environmental awareness, the man who is confirmed to this important post must be an effective Administrator, as well as an effective advocate for environmental enhancement.

I was pleased with your statement, Mr. Ruckelshaus, and the answer you gave to our distinguished chairman's question. Leadership is very important in the whole approach to this question of environmental enhancement, particularly the coordination between various branches of the Federal Government, as well as the State and local governments and public and private agencies.

Your answer to the question concerning enforcement is most important. Your intention to be fair and firm in enforcement is exactly, I think, what the Congress expects from an effective Administrator of EPA.

I realize that you may not, at this stage, have all the answers to the specific questions involved in this great and complex challenge for environmental enhancement. But I am impressed with your background and your previous experience.

At this point, Mr. Chairman, I ask unanimous consent that the résumé of the nominee be made a part of the record.

The CHAIRMAN. This will be received and will be included in the record of the hearing.

(The résumé follows:)

RÉSUMÉ OF WILLIAM DOYLE RUCKELSHAUS

Born: July 24, 1932, Indianapolis, Indiana, son of John K. and Marion Doyle Ruckelshaus.

Education: St. Joan of Arc Elementary 1938-46, Indianapolis; Cathedral High School 1946-48, Indianapolis; Portsmouth Prior 1948-51, Portsmouth, Rhode Island; Princeton University A.B. 1957; Harvard Law School LL.B. 1960.

Military: U.S. Army 1953-55, discharged as drill sergeant.

Experience: 1960-65, Deputy Attorney General, State of Indiana (1963-65, Chief Counsel, Indiana Attorney General Office; in charge of overseeing 63 attorneys handling the legal business for the State of Indiana).

1960-62, as Deputy Attorney General, assigned to the Indiana State Board of Health. Duties were to represent the State Board of Health and related agencies in all of their legal problems. In such capacity, represented the Indiana Stream Pollution Control Board in a vigorous program to end the pollution of Indiana waters. Several administrative and court orders were obtained against corporations, individuals and municipalities to cease and desist polluting Indiana streams and lakes; drafted Indiana Air Pollution Control Act, which passed in 1961. The thrust of the Act was to place primary responsibility on local governments for cleaning up their own air, with power for the state to supervise the effectiveness of the local programs and to enter the field with their own administrative sanctions where the local government was not doing an effective job; while serving in this capacity, became knowledgeable in the entire field of public health and environmental control from the standpoint of state government and its relation with the federal and local government.

1965-67, Minority Attorney, Indiana State Senate.

1967-69, Elected to the Indiana House of Representatives, Elected Majority Leader, Indiana House of Representatives; first legislator in Indiana political his-

tory to be elected Majority Leader in his first term. In capacity as Majority Leader, maneuvered meat, milk and food protection legislation through the legislature and into law. This legislation changed the emphasis of these programs from the enhancement of economic interest to the protection of the consumer from the standpoints of human health, safety and well being. Also wrote and engineered the passage of property tax incentives to industry for the construction of air and water pollution control facilities.

1968, Nominated by the Republican Party of Indiana as its nominee for the United States Senate.

1960-69, partner, law firm of Ruckelshaus, Bobbitt & O'Connor, Indianapolis.

1969-70, Appointed Assistant Attorney General of the United States, Civil Division. In this capacity, in charge of a Division which oversees 200 lawyers in Washington, D.C., with offices in New York and San Francisco. The Civil Division of the Justice Department presently carries a caseload in excess of 19,000 cases involving every conceivable problem in civil law. The Civil Division represents in court every major department and agency of government and handles litigative problems as diverse as a right of the astronauts to read the Bible as they circle the moon to the pollution of the beaches in Santa Barbara. In this capacity, and prior capacity in the Indiana Attorney General's Office, has several times appeared and argued cases in the Supreme Court of the United States and Courts of Appeals throughout the country.

1970, Nominated as Administrator of the Environmental Protection Agency, Washington, D.C., on November 6, 1970.

Organizations: Indianapolis Bar Association, Indiana Bar Association, Federal Bar Association, American Bar Association, American Political Science Association, Indianapolis Council on Foreign Relations, Audubon Society.

Family: Wife, Jill Elizabeth Strickland Ruckelshaus; Children, Catherine Kiley 9; Mary Hughes 9; Jennifer Lea 6; William Justice 5; and Robin Elizabeth 2.

Honors: Cum Laude graduate of Princeton, named Outstanding Republican Legislator in Indiana House of Representatives by working press, 1967; Indiana Broadcasters Association Award for Outstanding First Year Legislator in House, 1967; Named Man of the Year by Indiana Jaycees.

Senator BOGGS. Mr. Ruckelshaus, I want to commend you again on your appointment and take this opportunity to wish you every success in the important work that you will undertake.

Thank you, Mr. Chairman.

Mr. RUCKELSHAUS. Thank you, Senator Boggs.

The CHAIRMAN. Thank you, Senator Boggs.

Senator Young.

Senator YOUNG. Thank you, Mr. Chairman. At the moment I have no questions to ask the nominee. I may and probably shall wish to ask some questions later on.

The CHAIRMAN. That will be understood. You shall be given that opportunity.

We will now have questions or comments from Senator Baker.

Senator BAKER. Thank you very much, Mr. Chairman. My remarks will be very brief.

First, I would like to say that I have known Mr. Ruckelshaus for some time. I am delighted with the President's recommendation that he fill this post, and hopefully, he will be confirmed by this committee and by the Senate.

There is one point the nominee commented on in response to a question by the chairman. That was the relationship of the States in their enforcement role and the disadvantage they suffer from time to time because, in part, of their laudable recruiting activities in the field.

There is one other area where the States are at a disadvantage as well.

In the recently passed Air Pollution bill, passed by the Senate, there is a provision which tends to take care of that deficiency. I refer to

pollution by Federal agencies. In my own State of Tennessee, an Army ordnance plant at Chattanooga is among the greatest sources of pollution in our State.

The State even now is virtually unable to do anything about it.

Would you give the committee some estimate of the role that your office and you as Administrator might play in trying to see that Federal agencies and Federal installations are brought into strict compliance with the environmental control regulations and statutes?

Mr. RUCKELSHAUS. Senator Baker, there can be no question that one of the biggest polluters in the country is indeed the Federal Government.

The President recognized that in his statement last February in which he said that all Federal agencies would have to be well on the way to cleaning up their pollution, either with a plan or have the plan implemented by the end of 1972.

This Agency is charged with the responsibility of cleaning up pollution and doing something to enhance the environment throughout the country. Included in that responsibility obviously will be the responsibility to see that the Federal Government itself ceases polluting.

At this stage of our organization I do not have a direct answer to your question as to what we are going to do about it. However, I am able to answer your question to the extent that we intend to carry out the directive of the President as issued in the Executive order of last February to see that the Federal installations in the country clean up their effluents and emissions as quickly as possible.

This will take some additional appropriations, which this administration is committed to ask Congress to make, pursuant to the President's statement.

Senator BAKER. I am sure you will fulfill the commitment made by the President with respect to the elimination of Federal pollution.

But I would hope that you, as Administrator, would continue to be aware of the fact that States and municipalities are virtually powerless to enforce or to accelerate the enforcement of antipollution measures against Federal installations and, therefore, your Agency would be particularly strict, even severe, in seeing that Federal agencies would first be brought into compliance in this field.

Mr. RUCKELSHAUS. I agree with you completely, Senator.

Senator BAKER. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Muskie.

At this point, the Chair doesn't consider it a pleasantry in any way, but I have said that we work as a team in the Public Works Committee, and we do, in reporting and having the Senate pass 12 strong antipollution bills. We recognize the leadership of the subcommittee's chairman, Mr. Muskie, in air and water pollution.

Senator MUSKIE. Thank you very much, Mr. Chairman.

First of all, I would like to compliment Mr. Ruckelshaus on his distinguished public record. It is an impressive one for so young a man. I hope that he will add to it in the responsibilities which he is now seeking to assume.

Mr. Ruckelshaus, you spoke of leadership in your response to one of the chairman's questions. I couldn't agree with you more. This is an area in which we need vital and vigorous leadership by the man who occupies this position.

I hope that you will so conduct yourself that you will preempt the title tossed around rather loosely in recent years, that you will become known as Mr. Clean.

There are many areas of inquiry which we could explore in this hearing. I think we should do so to a greater extent than we might normally in confirming an appointment of this kind.

This is a new agency. It is the kind of independent agency that many of us have been seeking for a long time. I applauded the President's decision to create it under the reorganization plan.

There are a great many hopes tied up in this agency. A great many people are looking to it for leadership, for the leadership of which you spoke.

So I think in this hearing we have a responsibility to explore the dimensions of the job and the attitudes which you would bring to it. Without that, we are going to be somewhat at loose ends in trying to evaluate the directions that you may seek to pursue.

We can't cover all of the areas of interest but I am going to try to be selective in my questioning, bearing in mind especially that we are operating at least in the first round of questions under the 10-minute rule; which is fair, I think, to all members of the committee.

I am going to ask a few questions in this first 10-minute period and perhaps come back to others afterward.

First of all, pursuing a question raised by the chairman, I would like to call your attention specifically to the table contained in the committee report on the National Air Quality Standards Act of 1970.

In our deliberations in this committee on that piece of legislation, we were very sensitive to the fact that in the past, legislation has not worked because it was underfunded and understaffed. We did not want to hold out false hopes with respect to this piece of legislation which is now in conference.

So we asked the administration to give us its best estimate of the staffing that would be required to enforce and administer this piece of legislation. The administration gave us those estimates, and they are contained on page 45 of the committee report.

I would like to ask, Mr. Chairman, that that table be included in the record of this hearing.

The CHAIRMAN. We shall include that table.
(The table follows:)

ESTIMATE OF RESOURCES NEEDED TO IMPLEMENT PROPOSED AMENDMENTS¹ TO CLEAN AIR ACT AS CONTAINED
IN SENATE BILL

[Dollars in thousands]

	Fiscal year 1971		Fiscal year 1972		Fiscal year 1973	
	Position	Amount	Position	Amount	Position	Amount
Air quality monitoring.....	85	\$3,700	205	\$3,750	205	\$3,750
Production car testing.....	30	1,070	80	3,330	100	3,900
National emission standards.....	107	2,210	130	3,300	130	3,300
Fuels/fuel additives regulation.....	20	980	30	1,100	30	1,100
Control program assistance:						
(1) Technical assistance.....	254	6,100	402	11,170	410	11,415
(2) Control program grants.....	26	12,900	12	6,300	16	8,000
(3) State vehicle inspection grants.....	2	2,500	29	32,500	50	75,000
Mobile source standards.....	7	655	11	660	12	240
Used vehicles.....	16	1,275	16	1,800	19	1,800
Instrumentation.....	4	1,200	20	5,800	20	5,800
Fuels conversion.....	1	500	2	1,000	10	10,000
Vehicle R/D.....	3	750	3	750	3	1,000
Federal facilities and procurement.....	15	500	35	1,200	50	1,700
Subtotal.....	570	34,340	975	72,660	1,055	127,005
Forward planning estimate; implement current legis- lation.....	1,141	112,018	1,450	160,500	1,755	186,100
Subtotal cost to implement new legislation.....	1,711	146,358	2,425	233,160	2,810	313,105
Effects research, sec. 107.....	30	3,000	110	5,000	120	7,000
Grand total.....	1,741	149,350	2,535	238,160	2,930	320,105

¹ Excludes sec. 107 effects research.

Senator MUSKIE. When you examine it, you will note, Mr. Ruckelshaus, that in the first year, fiscal 1971, these estimates would provide for an increase in the staffing from 971 employees to 1,740. This is minimum staffing, as we understand the administration's estimate. That staffing would have to grow in the next 2 fiscal years to a total of 2,930.

I would rather not pass that bill than to have it enacted into law knowing that it wasn't going to be adequately staffed and funded. There is no point in our holding out false hopes to this country. Even if enacted with full staffing and funding, it is going to be difficult to achieve the objectives of that legislation.

So to give it a fair chance to succeed, to move in the direction of cleaner air, we must have adequate staffing and funding. We made this point very emphatically on the Senate floor so that Senators would not be misled about what they were doing.

These words won't work unless we have the staffing.

As I understand your response to the chairman's question, you agree with that point of view.

Mr. RUCKELSHAUS. Yes; that is right, Senator.

Senator MUSKIE. And you will, as it is your responsibility, review the estimates in order to form your own independent judgment, but your objective coincides, I assume, with the objective of the committee report in that respect.

Mr. RUCKELSHAUS. Yes, Senator, it does.

Senator MUSKIE. Now, may I pay you a compliment as I resume my questions. There is a story in this morning's New York Times entitled "Revision Delayed on Oil Spill Code."

I would like to ask, Mr. Chairman, that that story be included in the record.

The CHAIRMAN. That will be done.
(The article follows:)

[From the New York Times, Tuesday, Dec. 1, 1970]

REVISION DELAYED ON OIL SPILL CODE—Administration Had Planned Easing,
but Ruckelshaus Insists Upon a Voice

(By E. W. Kenworthy)

WASHINGTON, Nov. 30.—The Nixon Administration planned to issue relaxed regulations on oil spills tomorrow, but pulled back late today when William D. Ruckelshaus, the director of the new Environmental Protection Agency, protested that he should have some voice in the matter.

Mr. Ruckelshaus is scheduled to appear tomorrow morning before the Senate Committee on Public Works in confirmation hearings.

Late today, reports began circulating on Capitol Hill that Theodore Rogowski, associate solicitor in the Interior Department with responsibility for environmental legislation, had completed a revision of the regulations in response to complaints from the oil industry, owners of oil tankers and the maritime insurance industry.

POSTPONEMENT RUMORED

According to sources in the Interior Department, Under Secretary Fred J. Russell, who is Acting Secretary until Representative Rogers C. B. Morton is confirmed to succeed the ousted Walter J. Hickel, planned to sign the proposed new regulations tomorrow and send them to be printed in the Federal Register.

Hard on the heels of these reports, rumors developed that the Ruckelshaus confirmation hearings would be postponed if Mr. Russell signed the new regulations.

According to sources on Capitol Hill, a legislator called Mr. Ruckelshaus and informed him of the planned new regulations and of the possibility that his confirmation would be delayed beyond Dec. 2, the day the new agency goes into operation.

Mr. Ruckelshaus called John Whitaker, White House liaison with the Interior Department, who had him call Mr. Russell.

Mr. Ruckelshaus, according to an official in his office, told Mr. Russell that inasmuch as Interior's Water Quality Administration would be shifted to the new agency and that he, Mr. Ruckelshaus, would have responsibility for any new regulations, he should have a voice in determining what those regulations would be. And the responsibility for issuing them, he said, should be his.

Mr. Ruckelshaus, it was said, did not make a prior judgment on the regulations.

Mr. Russell then agreed to hold up sending the proposed regulations to the Federal Register for "notice of rule making"—the first stage in promulgation of regulations.

It was regarded by many observers as significant that the Administration had apparently delayed the revision of the regulations until after Mr. Hickel had been dismissed as Secretary of the Interior.

Mr. Hickel had taken a hard stand against perpetrators of oil spills. He ended offshore oil leases for 19 months after the Santa Barbara blowout off California in January, 1969. And following the fire and spill at a Chevron rig last February, he induced the Justice Department to sue companies operating in the Gulf of Mexico that had allegedly failed to observe the department's safety regulations.

The regulations that were to have been revised define "harmful" quantities of oil for the purposes of applying penalties and liabilities under the Water Quality Improvement Act of 1970.

The Water Quality Improvement Act provides that, except where an owner or operator of a vessel can prove that a discharge of oil was caused solely by an act of God, an act of war, negligence by the United States or an act by a third party, he will be liable for clean-up costs incurred by the United States Government up to \$14-million, or \$100 a gross ton, whichever is less.

Subject to the same exceptions, owners of shore and offshore facilities are liable for clean-up costs up to \$8-million.

Furthermore, any owner or operator of a vessel or a shore or offshore facility who knowingly discharges oil is liable to a fine up to \$10,000 for each offense and a \$1,000 fine for failure to notify the appropriate United States agency that a spill has occurred.

But these provisions are subject to determination by the President of "those quantities of oil the discharge of which . . . will be harmful to the public health or welfare," including fish and wildlife, shorelines and property.

Mr. Nixon signed the act last April 3 and delegated authority for issuing the required regulation to Mr. Hickel. On July 24, Mr. Hickel published in *The Federal Register* a notice of the proposed regulation and invited comment from interested parties.

The proposed regulation defined as harmful an amount that violates applicable water quality standards, or causes "a visible film, sheen or discoloration of the water or adjoining shorelines."

But his proposed regulation excluded discharges resulting from a properly functioning vessel engine, an act of a third party or an act of God, and also discharges necessary to save human life or limb.

The proposed regulation alarmed Senator Edmund S. Muskie, principal author of the act, and the members of his Subcommittee on Air and Water Pollution. After consultation with committee members, Mr. Muskie wrote Mr. Hickel on July 30, saying that he feared the proposed regulation would weaken the act's provisions requiring notification of a spill and empowering the Government to seek penalties and assess liability.

If this would be the effect of the regulation, Mr. Muskie said, "the impact of the act would be drastically diluted."

At a meeting with the subcommittee on Aug. 4, Interior officials agreed to rewrite the regulations to meet the subcommittee's objections. As issued on Sept. 11, the regulations simply said that the definition of discharges did not cover those from a properly functioning engine, but did cover the blowing of oil in bilges.

The oil industry, tanker companies and maritime insurance companies have protested strenuously against these stringent regulations as technically infeasible.

The planned regulations, it was said, were designed to meet, at least in part, these complaints.

Meanwhile, the White House press secretary, Ronald L. Ziegler, acknowledged today that six high Interior Department employes had been dismissed by Frederic V. Malek, a special assistant to the President for personnel.

Senator MUSKIE. I gather that you had some influence in delaying consideration of those modifications of our policy dealing with spills from offshore drilling. This is an area in which this committee has been closely concerned and identified for more than a year, since the Santa Barbara spill. We would hope that you would take a good look at these proposed changes and that before you approve them, or make a decision—I hope you do not approve them—with respect to them, that you would consult with this committee so that we may understand exactly what you have in mind.

Mr. RUCKELSHAUS. Senator, I did, last evening when I heard of the imminence of the issuance of the regulations, call the Under Secretary and ask him to defer the issuance of these regulations because the responsibility for their issuance was about to be transferred to the Environmental Protection Agency.

I assured him that I had no preconception about the regulations themselves, that I would look at them as closely as I could and as fairly as I could.

I assure you that before ever arriving at a decision as to whether to issue them as proposed regulations, I will confer with this committee and make sure that I am fully apprised of all of the views of the members of the committee.

Senator MUSKIE. Now I would like to get into another area which is more current.

One of the reasons why I advocated the establishment of this independent agency, and one of the reasons I applauded the President's decision to do so, was because I felt the need for an independent

agency, an agency that was tied to no other responsibilities but that of enhancing the quality of our environment, an agency that was in a position to assert its responsibility and its point of view in the environmental field.

I would like to bring to your attention something that is not working out that way with respect to another agency.

In the National Environmental Policy Act, which was enacted into law early last year, there is a provision relating to the responsibility of agencies of the Federal Government to comment on the environmental impact of decisions in which the Federal Government was involved. This is on page 254 of this committee print.

Mr. RUCKELSHAUS. Is that section 102 of the act, Senator?

Senator MUSKIE. Yes.

Mr. RUCKELSHAUS. Yes, I have it here.

Senator MUSKIE. Let me read this.

Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved.

Copies of such statement and the comments and views of the appropriate Federal, State, and local agencies which are authorized to develop an environmental standard, shall be made available to the President, the Council on Environmental Quality, and to the public as provided by section 552 of title V, United States Code, and shall accompany the proposal through existing agency review processes.

With respect to the SST, an issue which is pending in the Senate, and which will shortly come up for debate on the Senate floor, there has been a report by the Department of Transportation. I understand it exists in draft form.

I am also advised that environmental improvement agencies were asked for their comments pursuant to this provision of the National Environmental Policy Act.

When I asked for copies of those comments, I was told they were not available. I was told that the comments were oral, that they were not reduced to writing, and that they are not available.

That, in my judgment, runs counter to the intent, indeed, to the direct mandate, of the language I have just read.

In other words, the one piece of paper we have is from the agency whose responsibility it is to promote the development of means and methods of transportation. Comments of the environmental agencies have been submerged and have been given second place in this process.

That was not the intent of this law.

Senator Proxmire and I sent Secretary Volpe a letter yesterday requesting that the views of the environmental agencies be made available to the Senate before debate begins. I don't know what the response will be.

Mr. Chairman, I ask that a copy of this letter be included in the record at this point.

The CHAIRMAN. We will include the letter.

(The letter referred to follows:)

DECEMBER 1, 1970.

HON. JOHN A. VOLPE,
Secretary, Department of Transportation,
Washington, D.C.

DEAR MR. SECRETARY: Last September, the Office of SST Development submitted a preliminary draft report on the SST's potential environmental

impact to the Council on Environmental Quality. This draft represented the first step in complying with Section 102(C) of the Environmental Quality Act, which requires that legislative requests involving programs with potential environmental impact be accompanied by a "detailed statement by the responsible official on—the environmental impact of the proposed action."

The Act also stipulates that "the responsible Federal official shall *consult with and obtain the comments of* any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate Federal, state, and local agencies . . . shall be made available . . . to the public . . ."

At the time the preliminary draft was made available, DOT announced that it was circulating the draft for comments to 11 Federal agencies, as required by the Act. The agencies were given 30 days to respond.

It is now more than 2½ months since the Department submitted its preliminary draft on the SST's environmental impact. No comments have been made available to the public.

The Senate may act upon the appropriations request for the SST this Thursday. Members of the Senate would be most interested in what these agencies have to say.

A few days ago, one of our staff members inquired about these comments. He was told that not all the comments had been made, and that those that had come in would not be made available now.

We strongly believe that these comments should be made available immediately. Your compliance with this request by close of business December 1 will be greatly appreciated.

Sincerely,

EDMUND S. MUSKIE,
WILLIAM PROXMIRE,
U.S. Senators.

Senator MUSKIE. The question I want to address to you, Mr. Ruckelshaus, is this: You will be right in the middle of this one—as with the Council on Environmental Quality.

If your independence as an agency has any meaning at all, it means that you have a responsibility to assert your position on the environmental impact of such projects as this, or any others that have an environmental impact.

What will be your view?

Mr. RUCKELSHAUS. Senator, there are two facets in your question. I have discussed this problem of the environmental impact statements under section 102 with Russell Train, the Chairman of the Council on Environmental Quality. It is his interpretation of the law that the section that you read means that when the final decision is made by the particular agency, the copy of their environmental statement and all of the comments that were submitted to that agency relating to the environmental impact of what they were doing is released to the public.

Senator MUSKIE. If they are oral, how are they to be released to the public?

Mr. RUCKELSHAUS. Again, I can't answer that. Obviously, if the comments are oral, there is nothing to release. If the comments are in writing, as I think the statute contemplates, then all of those comments also would be released.

Mr. Train's attitude about the release of the decision itself and the effect on the environment that the agency making the decision thinks it will have, and the comments made back to that agency by other affected agencies, is that they should all be made public at an early date, even though the statute doesn't clearly say that they should.

I agree with that interpretation. He has encouraged agencies to make public, decisions that are in the process of being made, and also to make public what they believe the environmental impact will be.

I think that is a good policy and a policy that should continue to be followed by this Government.

Senator MUSKIE. Let me ask you this: There has been no secret about the Department of Transportation's attitude on the SST. That has been in the public domain for weeks, if not months.

Should not the review of the environmental agencies be available at the same time, in the public domain, as the views of the promotional or development agency, so that the public can have the benefit of both at the same time, over the same period of time, as the issue is debated?

You spoke of leadership, the leadership role which you would assume. Should not the environmental agencies be asserting and pressing their point of view on the environmental damage involved in this kind of an issue?

Mr. RUCKELSHAUS. Senator, I may have been misunderstood. I think that is precisely what I said. I think that the comments by the environmental agencies involved should be a matter of public record prior to the making of the decision, just as the near decision of the agency itself is announced and what they believe the environmental impact should be.

I think that the question is whether the law now provides that they have to be. The question is whether the comments have to be made public before the decision itself is finally made, and the final environmental impact statement as it is generated from all the comments that are made becomes public.

Senator MUSKIE. This is an interesting point. If there is an ambiguity, is it incumbent upon the protector of the environmental area to suppress that ambiguity in a way that suppresses the environmental view?

We are talking about leadership. Shouldn't he be resolving ambiguities and doubts in a way that would support his position?

Mr. RUCKELSHAUS. I think, Senator, that is precisely what Mr. Train has done and precisely what I would intend to do.

Senator MUSKIE. Has Mr. Train done it, since we do not have at this point, a day or two before debate is about to begin in the Senate, the statements of the environmental agencies?

Mr. RUCKELSHAUS. I don't know whether any such statements exist as comments on the proposal by the Department of Transportation, so I can't answer the question.

Senator MUSKIE. With your own statement of policy, would you say that the Senate ought to have, at this point, the environmental statements bearing upon the SST?

Mr. RUCKELSHAUS. Yes; if such statements exist, yes; I think the Senate should have.

Senator MUSKIE. I am told they are oral in form. Do you think that the environmental agencies have a responsibility now to issue statements confirming their oral statements before debate begins in the Senate?

Mr. RUCKELSHAUS. It is my understanding of Mr. Train's policy that that is precisely what he would do.

Senator MUSKIE. Would you encourage me to believe, then, that I would get a favorable answer to the letter which I sent yesterday to Mr. Volpe?

Mr. RUCKELSHAUS. If written statements exist, I would encourage you to believe you would get a favorable answer, Senator.

Senator MUSKIE. But they do not exist. What encouragement, then do you think I ought to get?

Mr. RUCKELSHAUS. I really find it difficult to answer how you could get statements that don't exist.

Senator MUSKIE. If you had the responsibility, and you will, if you were in existence today and had been over the period that this project developed, I would be pressing you to give me your position on the issue, whether or not it had been reduced to writing.

I would ask you to do so before the debate in the Senate. What would be your response?

Mr. RUCKELSHAUS. I would be glad to give it to you and I would think that would be a reasonable request.

Senator MUSKIE. You would resolve that ambiguity on the side of environmental efforts.

The CHAIRMAN. I want to say for the record that it will not be necessary to conclude our hearing today. We are going to, hopefully, do the job, but we may find it necessary, because of the interest and the desire of the members to question Mr. Ruckelshaus, to move to another day.

I said at the outset I had invited, on behalf of our committee, the chairmen and ranking minority members of other committees.

I know Senator Cooper will understand for the moment if I recognize the chairman of the Interior and Insular Affairs Committee, Senator, Jackson; I recognize the ranking minority member of that committee, Senator Allott.

We are grateful for their being present here today. I would want to accommodate them if they care to enter into this discussion. Senator Jackson.

Senator JACKSON. Thank you, Mr. Chairman. Senator Allott and I are delighted to be here to represent the Interior Committee.

We deeply appreciate your most gracious invitation to participate in this hearing.

First let me say, Mr. Ruckelshaus, that I am quite impressed with your very fine background and record. You are obviously a very able lawyer and you should be a good administrator of this all important agency.

I have listened with interest to the colloquy and discussion on section 102. As the author of this act, I must say we didn't resolve all of the problems. Senator Muskie and I worked over various sections after it was passed by the House and while it was in conference committee.

It was certainly contemplated that the 102 statements from the Department, when they were finalized, would, of course, be made public. This is a necessary part of the process by which a proper decision can be made.

I know, however, ambiguities still remain. Senator Allott and I hope, shortly after the new Congress convenes, to have an oversight hearing in connection with the administration of this act.

There are a number of areas of uncertainty that need to be cleared up. We hope to have Chairman Train before our committee at that time. It may be necessary to amend section 102 in view of the discussion here this morning.

It is difficult to know at what time in this process of complying with section 102 that such information should be public. I think, it is when the agency has reached its final draft form which is formally submitted to the White House. Whatever ambiguities do exist, and there are some, I hope we can amend the law at the next session of the Congress.

In the meantime, I would join with the expression of interest on this point to say that whatever written data are available, should be made public. I hope that will be done.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you for coming this morning.

Senator Allott?

Senator ALLOTT. Thank you very much, Mr. Chairman.

I also, Mr. Ruckelshaus, am very impressed with your resume and your fine record.

I join with the chairman of the Interior Committee in his remarks with respect to S. 1075 on which we all spend many, many hours trying to resolve some very, very difficult questions.

One thing that occurs to me with respect to the present situation is this: The SST, for example, was started, I believe, in calendar year 1960. It was started by an appropriation in the Independent Offices Subcommittee, authorizing certain sums for research in the development of an engine for an SST. This has gone through various stages through the years.

We are not now, as I see it, and I am sure this is true, at a critical decision point on whether it should be authorized, because we have been through that and it has been authorized and is within the authority of the Transportation Department to do this.

The question occurs to me: Was the decision made when the Administrator of FAA called me the last day of the year, I believe, 1965 or 1966, and informed me that he would be making an announcement the following morning, which was New Year's, as to a decision between the competing companies.

The basic decisions are the things I am pointing out here for reasons of a legislative record. Basic decisions have been made upon this matter in the past.

The question before us now, or which is about to be before as in the Senate, is to the appropriation of moneys for two prototypes. We may run across this same question again in the future. This may be part of the reason for the absence of formal statements.

We may run across this same situation in the future where we have Government actions extending over a period of years as to whether at each step of the authorization process, at each step of the appropriation process, these reports have to all be gathered in again and published.

I am not seeking by any means to obviate what I think was our purpose in S. 1075, I forget the number it bears under the Public Law.

But this is a question that I think we should consider when we talk about working on this or clarifying some provisions of this bill in the future.

Mr. RUCKELSHAUS. Senator, I think that is one of the problems that Mr. Train has found very perplexing in attempting to administer this provision, just at what stage of the particular proposed piece of legislation or governmental project should the environmental impact statements be released.

He has told me that many times in a very early stage of the decision-making process he has been contacted by various agencies about to make a decision or about to decide whether they should go forward making a decision, and he has been able to convince them that they should not even consider such a decision because of the adverse environmental impact of what they were about to do.

I think a question could arise whether at an early stage of the decisionmaking process an environmental impact statement be released.

I think the question is at just which point in the decisionmaking process should the environmental impact statements of the various concerned agencies be made public.

I think it is this question of trying to arrive at guidelines as to when they should be made public that has given him some difficulty.

Senator ALLOTT. This is true particularly, Mr. Ruckelshaus, in this particular question, where you actually have not had one decision. We have had a series of decisions extending now over a period of 10 years, and the decisions have taken the form of decisions upon appropriations. Of course, during most of these 10 years, S. 1075, or the present law creating the Environmental Quality Council, was not in existence.

Now I think we have to try to make it clear what is intended and when this particular section 102 came into effect.

I think that is all I have, Mr. Chairman. I appreciate the opportunity you have given me to comment.

The CHAIRMAN. Thank you, Senator Allott.

Senator Cooper. I am glad you have come to the hearing. I know it was not possible for you to be here earlier.

The record will disclose that the Senator is the ranking minority member of the Public Works Committee. We are happy to have him at the hearing.

Senator COOPER. Thank you, Mr. Chairman.

I had noted the stories in the newspaper concerning Mr. Ruckelshaus. I have had a talk with him to discuss the various issues that have been raised. I think in every case his answers were correct and incisive.

I remember the story about the 1961 Indiana-Illinois Air Pollution Compact. Of course, it predated the air pollution legislation that we passed here in the Congress.

I have also noted the other questions raised here this morning.

I have found him a very able and forthright man. He has a good experience and he will have a most difficult job of enforcing these pollution control acts.

I look for him to do this job and do it well, to follow up the spirit of the acts that have been passed and that will be passed by the Congress. I commend him.

The CHAIRMAN. Thank you, Senator Cooper.

Senator Jordan.

Senator JORDAN. Thank you, Mr. Chairman.

I had the pleasure a few days ago of a good, long visit with Mr. Ruckelshaus and we had a very satisfactory discussion. I feel that he is well qualified, capable and will do a good job in administering this new agency to which he is being appointed.

I think it is tremendously important that these environmental functions are being brought together under a single agency instead of being handled by several different ones as is now the case.

In the past, you could get most any kind of answer you wanted if you kept talking to enough different people. It reminds me of a story of a fellow who got sick and called a doctor. The doctor was slow getting there and so the man called another one. They both showed up at the same time. That didn't make either doctor very happy. They put their hands together to take his pulse and one said pneumonia and the other said drunk.

That is typical of the kind of answers we have been getting out of some of these agencies on environmental matters. If we have this all under one agency, maybe we can get one answer that will really go to the problem.

I think you will do a good job, Mr. Ruckelshaus, and you have my support.

The CHAIRMAN. Thank you, Senator Jordan.

Senator Dole.

Senator DOLE. Mr. Chairman, I am sure Mr. Ruckelshaus is aware that this hearing record will be very important to him in the months ahead. After he is confirmed, it is something he will want to refer to as we remind him of what he said today.

And for the record it might be well to have the President's message sent to Congress under the Reorganization Act, in which the President outlined the responsibilities of EPA and what the component parts would be.

I ask permission at this time, Mr. Chairman, to make the President's statement on the EPA under Reorganization Plan No. 3 a part of the hearing record.

The CHAIRMAN. We will include that, Senator.
(The document referred to follows:)

MESSAGE OF THE PRESIDENT RELATIVE TO REORGANIZATION PLANS NOS. 3 AND 4 OF 1970, JULY 9, 1970

To the Congress of the United States:

As concern with the condition of our physical environment has intensified, it has become increasingly clear that we need to know more about the total environment—land, water and air. It also has become increasingly clear that only by reorganizing our Federal efforts can we develop that knowledge, and effectively ensure the protection, development and enhancement of the total environment itself.

The Government's environmentally-related activities have grown up piecemeal over the years. The time has come to organize them rationally and systematically. As a major step in this direction, I am transmitting today two reorganization plans: one to establish an Environmental Protection Agency, and one to establish, within the Department of Commerce, a National Oceanic and Atmospheric Administration.

ENVIRONMENTAL PROTECTION AGENCY (EPA)

Our national government today is not structured to make a coordinated attack on the pollutants which debase the air we breathe, the water we drink, and the land that grows our food. Indeed, the present governmental structure for dealing with environmental pollution often defies effective and concerted action.

Despite its complexity, for pollution control purposes the environment must be perceived as a single, interrelated system. Present assignments of departmental responsibilities do not reflect this interrelatedness.

Many agency missions, for example, are designed primarily along media lines—air, water, and land. Yet the sources of air, water, and land pollution are

interrelated and often interchangeable. A single source may pollute the air with smoke and chemicals, the land with solid wastes, and a river or lake with chemical and other wastes. Control of the air pollution may produce more solid wastes, which then pollute the land or water. Control of the water-polluting effluent may convert it into solid wastes, which must be disposed of on land.

Similarly, some pollutants—chemicals, radiation, pesticides—appear in all media. Successful control of them at present requires the coordinated efforts of a variety of separate agencies and departments. The results are not always successful.

A far more effective approach to pollution control would:

Identify pollutants.

Trace them through the entire ecological chain, observing and recording changes in form as they occur.

Determine the total exposure of man and his environment.

Examine interactions among forms of pollution.

Identify where in the ecological chain interdiction would be most appropriate.

In organizational terms, this requires pulling together into one agency a variety of research, monitoring, standard-setting and enforcement activities now scattered through several departments and agencies. It also requires that the new agency include sufficient support elements—in research and in aids to State and local anti-pollution programs, for example—to give it the needed strength and potential for carrying out its mission. The new agency would also, of course, draw upon the results of research conducted by other agencies.

Components of the EPA

Under the terms of Reorganization Plan No. 3, the following would be moved to the new Environmental Protection Agency:

The functions carried out by the Federal Water Quality Administration (from the Department of the Interior).

Functions with respect to pesticides studies now vested in the Department of the Interior.

The functions carried out by the National Air Pollution Control Administration (from the Department of Health, Education, and Welfare).

The functions carried out by the Bureau of Solid Waste Management and the Bureau of Water Hygiene, and portions of the functions carried out by the Bureau of Radiological Health of the Environmental Control Administration (from the Department of Health, Education and Welfare).

Certain functions with respect to pesticides carried out by the Food and Drug Administration (from the Department of Health, Education and Welfare).

Authority to perform studies relating to ecological systems now vested in the Council on Environmental Quality.

Certain functions respecting radiation criteria and standards now vested in the Atomic Energy Commission and the Federal Radiation Council.

Functions respecting pesticides registration and related activities now carried out by the Agricultural Research Service (from the Department of Agriculture).

With its broad mandate, EPA would also develop competence in areas of environmental protection that have not previously been given enough attention, such, for example, as the problem of noise, and it would provide an organization to which new programs in these areas could be added.

In brief, these are the principal functions to be transferred:

Federal Water Quality Administration.—Charged with the control of pollutants which impair water quality, it is broadly concerned with the impact of degraded water quality. It performs a wide variety of functions, including research, standard-setting and enforcement, and provides construction grants and technical assistance.

Certain pesticides research authority from the Department of the Interior.—Authority for research on the effects of pesticides on fish and wildlife would be provided to the EPA through transfer of the specialized research authority of the pesticides act enacted in 1958. Interior would retain its responsibility to do research on all factors affecting fish and wildlife. Under this provision, only one laboratory would be transferred to the EPA—the Gulf Breeze Biological Laboratory of the Bureau of Commercial Fisheries. The EPA would work closely with the fish and wildlife laboratories remaining with the Bureau of Sport Fisheries and Wildlife.

National Air Pollution Control Administration.—As the principal Federal agency concerned with air pollution, it conducts research on the effects of air pollution, operates a monitoring network, and promulgates criteria which serve as the basis for setting air quality standards. Its regulatory functions are similar to those of the Federal Water Quality Administration. NAPCA is responsible for administering the Clean Air Act, which involves designating air quality regions, approving State standards, and providing financial and technical assistance to State Control agencies to enable them to comply with the Act's provisions. It also sets and enforces Federal automotive emission standards.

Elements of the Environmental Control Administration.—ECA is the focal point within HEW for evaluation and control of a broad range of environmental health problems, including water quality, solid wastes, and radiation. Programs in the ECA involve research, development of criteria and standards, and the administration of planning and demonstration grants. From the ECA, the activities of the Bureau of Water Hygiene and Solid Waste Management and portions of the activities of the Bureau of Radiological Health would be transferred. Other functions of the ECA including those related to the regulation of radiation from consumer products and occupational safety and health would remain in HEW.

Pesticides research and standard-setting programs of the Food and Drug Administration.—FDA's pesticides program consists of setting and enforcing standards which limit pesticide residues in food. EPA would have the authority to set pesticide standards and to monitor compliance with them, as well as to conduct related research. However, as an integral part of its food protection activities, FDA would retain its authority to remove from the market food with excess pesticide residues.

General ecological research from the Council on Environmental Quality.—This authority to perform studies and research relating to ecological systems would be in addition to EPA's other specific research authorities, and it would help EPA to measure the impact of pollutants. The Council on Environmental Quality would retain its authority to conduct studies and research relating to environmental quality.

Environmental radiation standards programs.—The Atomic Energy Commission is now responsible for establishing environmental radiation standards and emission limits for radioactivity. Those standards have been based largely on broad guidelines recommended by the Federal Radiation Council. The Atomic Energy Commission's authority to set standards for the protection of the general environment from radioactive material would be transferred to the Environmental Protection Agency. The functions of the Federal Radiation Council would also be transferred. AEC would retain responsibility for the implementation and enforcement of radiation standards through its licensing authority.

Pesticides registration program of the Agricultural Research Service.—The Department of Agriculture is currently responsible for several distinct functions related to pesticides use. It conducts research on the efficacy of various pesticides as related to other pest control methods and on the effects of pesticides on non-target plants, livestock, and poultry. It registers pesticides, monitors their persistence and carries out an educational program on pesticide use through the extension service. It conducts extensive pest control programs which utilize pesticides.

By transferring the Department of Agriculture's pesticides registration and monitoring function to the EPA and merging it with the pesticides programs being transferred from HEW and Interior, the new agency would be given a broad capability for control over the introduction of pesticides into the environment.

The Department of Agriculture would continue to conduct research on the effectiveness of pesticides. The Department would furnish this information to the EPA, which would have the responsibility for actually licensing pesticides for use after considering environmental and health effects. Thus the new agency would be able to make use of the expertise of the Department.

Advantages of Reorganization

This reorganization would permit response to environmental problems in a manner beyond the previous capability of our pollution control programs. The EPA would have the capacity to do research on important pollutants irrespective of the media in which they appear, and on the impact of these pollutants on the total environment. Both by itself and together with other agencies, the EPA would monitor the condition of the environment—biological as well as physical. With these data, the EPA would be able to establish quantitative "environmental baselines"—critical if we are to measure adequately the success or failure of our pollution abatement efforts.

As no disjointed array of separate programs can, the EPA would be able—in concert with the States—to set and enforce standards for air and water quality and for individual pollutants. This consolidation of pollution control authorities would help assure that we do not create new environmental problems in the process of controlling existing ones. Industries seeking to minimize the adverse impact of their activities on the environment would be assured of consistent standards covering the full range of their waste disposal problems. As the States develop and expand their own pollution control programs, they would be able to look to one agency to support their efforts with financial and technical assistance and training.

In proposing that the Environmental Protection Agency be set up as a separate new agency, I am making an exception to one of my own principles: that, as a matter of effective and orderly administration, additional new independent agencies normally should not be created. In this case, however, the arguments against placing environmental protection activities under the jurisdiction of one or another of the existing departments and agencies are compelling.

In the first place, almost every part of government is concerned with the environment in some way, and affects it in some way. Yet each department also has its own primary mission—such as resource development, transportation, health, defense, urban growth or agriculture—which necessarily affects its own view of environmental questions.

In the second place, if the critical standard-setting functions were centralized within any one existing department, it would require that department constantly to make decisions affecting other departments—in which, whether fairly or unfairly, its own objectivity as an impartial arbiter could be called into question.

Because environmental protection cuts across so many jurisdictions, and because arresting environmental deterioration is of great importance to the quality of life in our country and the world, I believe that in this case a strong, independent agency is needed. That agency would, of course, work closely with and draw upon the expertise and assistance of other agencies having experience in the environmental area.

Roles and Functions of EPA

The principal roles and functions of the EPA would include:

The establishment and enforcement of environmental protection standards consistent with national environmental goals.

The conduct of research on the adverse effects of pollution and on methods and equipment for controlling it, the gathering of information on pollution, and the use of this information in strengthening environmental protection programs and recommending policy changes.

Assisting others, through grants, technical assistance and other means in arresting pollution of the environment.

Assisting the Council on Environmental Quality in developing and recommending to the President new policies for the protection of the environment.

One natural question concerns the relationship between the EPA and the Council on Environmental Quality, recently established by Act of Congress.

It is my intention and expectation that the two will work in close harmony, reinforcing each other's mission. Essentially, the Council is a top-level advisory group (which might be compared with Council the of Economic Advisers), while the EPA would be an operating, "line" organization. The Council will continue to be a part of the Executive Office of the President and will perform its overall coordinating and advisory roles with respect to all Federal programs related to environmental quality.

The Council, then, is concerned with all aspects of environmental quality—wildlife preservation, parklands, land use, and population growth, as well as pollution. The EPA would be charged with protecting the environment by abating pollution. In short, the Council focuses on what our broad policies in the environmental field should be; the EPA would focus on setting and enforcing pollution control standards. The two are not competing, but complementary—and taken together, they should give us, for the first time, the means to mount an effectively coordinated campaign against environmental degradation in all of its many forms.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

The oceans and the atmosphere are interacting parts of the total environmental system upon which we depend not only for the quality of our lives, but for life itself.

We face immediate and compelling needs for better protection of life and property from natural hazards, and for a better understanding of the total environment—an understanding which will enable us more effectively to monitor and predict its actions, and ultimately, perhaps to exercise some degree of control over them.

We also face a compelling need for exploration and development leading to the intelligent use of our marine resources. The global oceans, which constitute nearly three-fourths of the surface of our planet, are today the least-understood, the least-developed, and the least-protected part of our earth. Food from the oceans will increasingly be a key element in the world's fight against hunger. The mineral resources of the ocean beds and of the oceans themselves, are being increasingly tapped to meet the growing world demand. We must understand the nature of these resources, and assure their development without either contaminating the marine environment or upsetting its balance.

Establishment of the National Oceanic and Atmospheric Administration—NOAA—within the Department of Commerce would enable us to approach these tasks in a coordinated way. By employing a unified approach to the problems of the oceans and atmosphere, we can increase our knowledge and expand our opportunities not only in those areas, but in the third major component of our environment, the solid, earth as well.

Scattered through various Federal departments and agencies, we already have the scientific, technological, and administrative resources to make an effective, unified approach possible. What we need is to bring them together. Establishment of NOAA would do so.

By far the largest of the components being merged would be the Commerce Department's Environmental Science Services Administration (ESSA), with some 10,000 employees (70 percent of NOAA's total personnel strength) and estimated Fiscal 1970 expenditures of almost \$200 million. Placing NOAA within the Department of Commerce therefore entails the least dislocation, while also placing it within a Department which has traditionally been a center for service activities in the scientific and technological area.

Components of NOAA

Under terms of Reorganization Plan No. 4, the programs of the following organizations would be moved into NOAA:

The Environmental Science Services Administration (from within the Department of Commerce).

Elements of the Bureau of Commercial Fisheries (from the Department of the Interior).

The marine sport fish program of the Bureau of Sport Fisheries and Wildlife (from the Department of the Interior).

The Marine Minerals Technology Center of the Bureau of Mines (from the Department of the Interior).

The Office of Sea Grant Programs (from the National Science Foundation).

Elements of the United States Lake Survey (from the Department of the Army).

In addition, by executive action, the programs of the following organizations would be transferred to NOAA:

The National Oceanographic Data Center (from the Department of the Navy).

The National Oceanographic Instrumentation Center (from the Department of the Navy).

The National Data Buoy Project (from the Department of Transportation).

In brief, these are the principal functions of the programs and agencies to be combined.

THE ENVIRONMENTAL SCIENCE SERVICE ADMINISTRATION

(ESSA) comprises the following components:

The Weather Bureau (weather, marine, river and flood forecasting and warning).

The Coast and Geodetic Survey (earth and marine description, mapping and charting).

The Environmental Data Service (storage and retrieval of environmental data).

The National Environmental Satellite Center (observation of the global environment from earth-orbiting satellites).

The ESSA Research Laboratories (research on physical environmental problems).

ESSA's activities include observing and predicting the state of the oceans, the state of the lower and upper atmosphere, and the size and shape of the earth. It maintains the nation's warning systems for such natural hazards as hurricanes, tornadoes, floods, earthquakes and seismic sea waves. It provides information for national defense, agriculture, transportation and industry.

ESSA monitors atmospheric, oceanic and geophysical phenomena on a global basis, through an unparalleled complex of air, ocean, earth and space facilities. It also prepares aeronautical and marine maps and charts.

Bureau of Commercial Fisheries and marine sport fish activities.—Those fishery activities of the Department of the Interior's U.S. Fish and Wildlife Service which are ocean related and those which are directed toward commercial fishing would be transferred. The Fish and Wildlife Service's Bureau of Commercial Fisheries has the dual function of strengthening the fishing industry and promoting conservation of fishery stocks. It conducts research on important marine species and on fundamental oceanography, and operates a fleet of oceanographic vessels and a number of laboratories. Most of its activities would be transferred. From the Fish and Wildlife Service's Bureau of Sport Fisheries and Wildlife, the marine sport fishing program would be transferred. This involves five supporting laboratories and three ships engaged in activities to enhance marine sport fishing opportunities.

The Marine Minerals Technology Center is concerned with the development of marine mining technology.

Office of Sea Grant Programs.—The Sea Grant Programs was authorized in 1966 to permit the Federal Government to assist the academic and industrial communities in developing marine resources and technology. It aims at strengthening education and training of marine specialists, supporting applied research in the recovery and use of marine resources, and developing extension and advisory services. The Office carries out these objectives by making grants to selected academic institutions.

The U.S. Lake Survey has two primary missions. It prepares and publishes navigation charts of the Great Lakes and tributary waters and conducts research on a variety of hydraulic and hydrologic phenomena of the Great Lakes' waters. Its activities are very similar to those conducted along the Atlantic and Pacific coasts by ESSA's Coast and Geodetic Survey.

The National Oceanographic Data Center is responsible for the collection and dissemination of oceanographic data accumulated by all Federal agencies.

The National Oceanographic Instrumentation Center provides a central Federal service for the calibration and testing of oceanographic instruments.

The National Data Buoy Development Project was established to determine the feasibility of deploying a system of automatic ocean buoys to obtain oceanic and atmospheric data.

Role of NOAA

Drawing these activities together into a single agency would make possible a balanced Federal program to improve our understanding of the resources of the sea, and permit their development and use while guarding against the sort of thoughtless exploitation that in the past laid waste to so many of our precious natural assets. It would make possible a consolidated program for achieving a more comprehensive understanding of oceanic and atmospheric phenomena, which so greatly affect our lives and activities. It would facilitate the cooperation between public and private interests that can best serve the interests of all.

I expect that NOAA would exercise leadership in developing a national oceanic and atmospheric program of research and development. It would coordinate its own scientific and technical resources with the technical and operational capabilities of other government agencies and private institutions. As important, NOAA would continue to provide those services to other agencies of government, industry and private individuals which have become essential to the efficient operation of our transportation systems, our agriculture and our national security. I expect it to maintain continuing and close liaison with the New Environmental Protection Agency and the Council on Environmental Quality as part of an effort to ensure that environmental questions are dealt with in their totality and that they benefit from the full range of the government's technical and human resources.

Authorities who have studied this matter, including the Commission on Marine Science, Engineering and Resources, strongly recommended the creation of a National Advisory Committee for the Oceans. I agree. Consequently, I will request, upon approval of the plans, that the Secretary of Commerce establish a National Advisory Committee for the Oceans and the Atmosphere to advise him on the progress of governmental and private programs in achieving the nation's oceanic and atmospheric objectives.

AN ON-GOING PROCESS

The reorganizations which I am here proposing afford both the Congress and the Executive Branch an opportunity to re-evaluate the adequacy of existing program authorities involved in these consolidations. As these two new organizations come into being, we may well find that supplementary legislation to perfect their authorities will be necessary. I look forward to working with the Congress in this task.

In formulating these reorganization plans, I have been greatly aided by the work of the President's Advisory Council on Executive Organization (the Ash Council), the Commission on Marine Science, Engineering and Resources (the Stratton Commission, appointed by President Johnson), my special task force on oceanography headed by Dr. James Wakelin, and by the information developed during both House and Senate hearings on proposed NOAA legislation.

Many of those who have advised me have proposed additional reorganizations, and it may well be that in the future I shall recommend further changes. For the present, however, I think the two reorganizations transmitted today represent a sound and significant beginning. I also think that in practical terms, in this sensitive and rapidly developing area, it is better to proceed a step at a time—and thus to be sure that we are not caught up in a form of organizational indigestion from trying to rearrange too much at once. As we see how these changes work out, we will gain a better understanding of what further changes—in addition to these—might be desirable.

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

The Congress, the Administration and the public all share a profound commitment to the rescue of our national environment, and the preservation of the Earth as place both habitable by and hospitable to man. With its acceptance of these reorganization plans, the Congress will help us fulfill that commitment.

RICHARD NIXON.

THE WHITE HOUSE.

Senator DOLE. One question that I am concerned with is the relationship of the EPA to the Council on Environmental Quality.

Are they competing agencies? Or do they complement one another? How do you distinguish the two?

Mr. RUCKELSHAUS. Senator Dole, the Council on Environmental Quality that was established pursuant to the act signed by the President on the 1st of January this year, has a broader mandate in some respects than the Environmental Protection Agency.

It deals with the whole spectrum of problems involved in the environment, including population control, land use control, and recommendations for international cooperation in the field of the environment.

The Agency is described as a policymaking arm of the Executive Office of the President. Obviously, there is going to be some overlap between the Council on Environmental Quality and its policymaking responsibilities and that of the Environmental Protection Agency.

It is practically impossible to separate operational function from the policymaking in any two agencies.

It is my conviction, however, that the two agencies are complementary and that they are supporting rather than competing.

I believe we will have a much better chance of making positive and swift progress in doing something about the continued degradation of the environment if both of these agencies remain strong.

I know that is the President's conviction, because he expressed that to me and Mr. Train the day that my nomination as Administrator of this Agency was announced.

He believes that with this strong policymaking agency as an arm of the Executive Office of the President, and the Environmental Protection Agency as the agency which is really on the frontline in terms of

implementing that policy, that we have a very strong situation in the administration and in the Executive Office of the President to do something positive about the environment.

I think that there is one thing that is very important if we are to preserve mutual strength. That is that Mr. Train and myself maintain very close coordination, very close contact, and that we recognize that there might be areas in which our agencies have overlapping responsibilities. That relationship between Mr. Train and myself exists and I know that both of us are committed to doing everything we can to see that it continues.

Senator DOLE. Would it be fair to say that Mr. Train's Council works in an advisory capacity whereas yours would be the establishment and enforcement of standards? You are the operating agency?

Mr. RUCKELSHAUS. That is the way, Senator, the agencies are defined, and that is the way we basically intend to carry out their responsibilities.

Senator DOLE. But there will be overlapping questions in some areas that will have to be resolved through regular communication.

You are exactly right, as far as I can determine, that it is necessary to have this close relationship between the two agencies.

Now with reference to a local question, and again, I would say that certainly the members present can't expect answers today on something that will require action a year from now but we can at least get your general views. In my State of Kansas there is a plan presently under discussion by the Atomic Energy Commission to dispose of radioactive waste materials. Of course, this is a matter that concerns Kansas. On the one hand, it is an economic boost, and on the other hand, there is no real certainty that it is danger-free. It does appear as has been pointed out in other hearings, that the AEC sometimes becomes both the promotional agency and also the judge of whether or not certain standards are met.

The Resources Recovery Act of 1970, calls for a study by EPA, with reference to the disposal of waste.

But my point is that this is an area that we feel you have jurisdiction of, and it would be very helpful and reassuring to any State being considered as a possible depository for radioactive materials, if you would give this careful attention.

There doesn't seem to be any great demand from other States to have this economic boost. We are not certain we want it in Kansas.

Mr. RUCKELSHAUS. Senator, I believe that under the Reorganization Plan No. 3, which created this Agency, the functions of the Federal Radiation Council were transferred from the Atomic Energy Commission to this Agency and the functions of the Bureau of Radiological Health in HEW as they relate to radiation in the environment were also transferred to the Environmental Protection Agency.

It is our interpretation of that transfer that the standards-setting for radiation is vested in the Environmental Protection Agency. I can assure you that we intend to exercise that function with all of the intelligence and understanding and recognition of the great need to preserve human health in this country that we can bring to bear.

Senator DOLE. It will be helpful, and it will, as I said, offer some reassurance from an independent agency. I don't quarrel with the AEC but it does appear to some that it is difficult to be both the judge and the jury.

Again, a general question with reference to your own attitude: What is your opinion with reference to citizen suits against the polluter and against governmental agencies?

Mr. RUCKELSHAUS. The citizens' suit provision that was in the air pollution bill as it passed the Senate was commented upon in the letter sent to the members of the conference committee by Secretary Richardson.

This was the one provision of the bill in which I took a significant part in arriving at the determination of what should be contained in that letter. I took part in this determination prior to leaving the Justice Department as part of my duties as Assistant Attorney General in charge of the Civil Division.

There are three determinable kinds of citizen suits delineated in the bill. The first are citizen suits against private polluters. We unequivocally support that provision in the act.

The second is citizen suits against governmental agencies. Again, we strongly support that provision in the act.

It doesn't seem to me that there should be any distinction made in terms of an individual citizen's right to sue, between a private polluter and a governmental polluter, in the event the charges they make in the suit turn out to be true.

The third provision provides for citizen suits against the Administrator, if he fails to carry out any duties under the act, or if he fails to carry out to the satisfaction of the individual citizen the standards and standards-setting functions and enforcement functions of the act.

This last provision gives us some difficulty, gives me some difficulty, because as a proposed nominee as Administrator of this Agency, in the event that we establish nationwide air pollution standards as called for in both the House and Senate versions of the act, and we have an air control region where all of the emitters of pollution in that region are put on a time schedule that they must live up to in order to come up to the standards as adopted by the Federal Government for the ambient air quality of that region. If an individual citizen comes in and says we are not enforcing the standards as to a particular industry or a particular polluter in that area, it is going to give us a great deal of administrative difficulty in enforcing the provisions of that act. If we are constantly in court explaining why this particular polluter is being treated in this way as opposed to another polluter in the same region.

Obviously, there should be judicial review of an Administrator's exercise of discretion. The judicial review that is usually given for the exercise of discretion by any governmental official is if he acts in an arbitrary and capricious way, that exercise of discretion can be knocked down by the courts.

This provision will remain intact regardless of any citizen suit provision in the bill.

I think that what we are getting close to when we get to the third provision in the act is providing for every single decision of an administrator at every single step of the way to be reviewed in the courts.

It may be that I will be spending so much time in court explaining why I have done or have not done a particular thing under this tremendously complex and pervasive act that I won't be able to do very much about administering that act because I will always be explaining why I am not administering the act in court.

It seems to me that rather than expand considerably the traditional idea of judicial review of an administrator's decision, as this provision is contained in the Air Pollution Act, we should provide the expansion in terms of citizen suits against individuals and governmental agencies, and leave it to the administrator to administer this act.

If I don't do the job that I am supposed to do in the event I am confirmed, or if any administrator doesn't, then the Congress and the President, for that matter, have a very good remedy in terms of either replacing me—the President does in replacing me—or a congressional committee that is interested in the act can request that I come up and testify as to why I am not administering the act.

But I think that once you repose power somewhere in an administrative agency you have to give the person that is given that power and responsibility that goes with it the opportunity and the leeway to act.

I am afraid that the citizen suit provision as contained might seriously inhibit that leeway.

Senator DOLE. Could it also in effect result in fewer actions against the polluter, whether it be a governmental agency or a private corporation, or a person, and a greater number of suits against the Secretary?

The citizen still has the right, of course, to go directly against the polluter, which seems to me to be the proper course.

Mr. RUCKELSHAUS. I think, Senator, it is very difficult to say just what the result would be of such a provision. The provision itself is so broad in terms of the rights of the citizen to question a decision of an Administrator at every single step of the way that I think it could well be that we would be simply inundated with lawsuits and be incapable of administering the act.

Senator DOLE. Or at least you could be joined in every suit brought against a polluter.

Mr. RUCKELSHAUS. I assume, as in the past, there will be plenty of lawsuits against the Administrator of this Agency questioning, as there should be, the way he is administering the act.

I just think that we should use the traditional judicial machinery and concept of judicial review of administrative decisions rather than this broader provision.

Senator DOLE. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Dole.

Senator Cooper.

Senator COOPER. I am sure Mr. Ruckelshaus is familiar with the amendments to the Clean Air Act concerning automobiles, which were passed by the Senate in consideration that 45 to 50 percent of the air pollution is caused by automobile emissions.

The bill passed by the Senate requires that by 1975 automobile manufacturers take steps to reduce pollutants in automobile emissions, by 90 percent, from the 1970 levels.

There is also provision that if the Secretary of HEW finds that the deadline cannot be met, a 1-year extension can be given, subject to judicial review.

The Department of HEW has made certain comments on that section. And of course, this bill is now in Senate-House conference. We believe on the Senate side that our deadline will be maintained. I think that is our position, the position of the Senate conferees.

In the event our position is maintained, would you enforce that provision of the act?

Mr. RUCKELSHAUS. Senator, my answer to that is absolutely. I believe that regardless of the opinion of the administration or the opinion of the Administrator of this Agency, as to the wisdom or advisability of any section in the law, once the Congress passes the law and gives the responsibility to an administrative official to implement it or enforce it, his responsibility is clear and he must do what Congress has enacted into law.

I would only by way of illustration point out that in the letter sent to the chairman of this committee, Senator Randolph, Secretary Richardson states very clearly that he fully supports the objective of accelerated control of automotive air pollution and supports the proposed establishment of 1975 as the target date for achieving the proposed 90-percent reduction.

The letter does make a distinction about an extension beyond 1976.

There is a provision in the Senate version permitting the Administrator to extend the period for 1 year in the event he finds that the state of the art is such that they can't meet the standards and that they have made a good-faith effort to come up with an emission control device that would meet the standards.

He can extend it for 1 year. That decision is judicially reviewable, again under the Senate version of the act.

The only distinction is that in the letter it is suggested by Secretary Richardson that any further extension, where those two criteria would apply, where they had not come up with a device that could meet the standards and where they had made a good-faith effort, a further extension should be granted by the Administrator with judicial review by the court rather than as is true in the Senate version of the act, the extension would have to be granted by Congress if the standards had not been complied with by 1976.

Senator COOPER. But the belief of the committee and the Senate in passing the bill was that this deadline was necessary to stimulate on the part of the manufacturers the greatest effort to meet this deadline.

We placed in the bill a provision for a further extension.

Have you any views on that?

Mr. RUCKELSHAUS. Senator, I think that the administration and Secretary Richardson recognizes the need to keep the pressure on the automobile industry in order to come up with a proper emission control device.

The only question is when you get to the point where everyone will agree, let us postulate, that every effort had been made by the automobile industry to come up with an emission device, and that the state of the art was such that it was impossible to meet the standards, being 90 percent of the standards as set in 1970, the question is then who should grant a continued extension.

The difference in the approach of Secretary Richardson and the approach in the Senate version is that under the Secretary's version the Administrator of the Environmental Protection Agency, with his decision being judicially reviewable, should make that decision as opposed to Congress making the decision.

I think in either case the pressure will be kept on the automobile industry to come up with an acceptable device. In the event I am

confirmed as Administrator, I can assure this committee that I intend to keep the pressure on as much as possible.

Senator COOPER. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Cooper.

Senator Spong will be next, but I just want to add to what has been said on this matter. I think it is heartening to the members of the Senate committee and our coworkers from other committees to hear you say, Mr. Ruckelshaus, that you intend to carry forward the intent of the Congress.

That has not always been so. I will not labor the record this morning, but there have been repeatedly very valid reasons why we have had oversight hearings.

We have found in some instances the actual intent of the Congress, as written into law, has been subverted within the agency.

I think it is heartening, as I have indicated, to have you say, and to emphasize that what is done in the Congress will be your commitment in carrying out the provisions of any act. Is that true?

Mr. RUCKELSHAUS. That is absolutely true, Mr. Chairman.

The CHAIRMAN. We are now in conference on the national air quality standards and we will be in conference again this afternoon. There was no cut-off date, of course, in the House bill for lessened emissions from automobile or other vehicle engines.

We know, of course, what we did in the Senate.

This is one of those crucial points, and it is not an easy one to settle.

The House has indicated already in its conferences with the Senate that there should be some technique, some machinery, by which we could continue to delay, whereas, the Senate has been firm in the date, with the Secretary and the court acting on a 1-year extension.

You understand all of this.

Mr. RUCKELSHAUS. Yes, I do, Senator. I think the administration clearly supports the need of the Senate deadline and to do everything in the power of the Government to see that that deadline is met consistent with the state of the art and the good-faith effort made on the part of industry to come up with an acceptable device.

Senator MUSKIE. Mr. Chairman, I wonder if I might pursue this point for just a minute or two in order to round out the discussion?

The CHAIRMAN. In about 30 seconds. I will conclude in about 30 seconds.

Mr. Ruckelshaus, you made reference to the letter I received from Secretary Richardson. I want to say that I did not put all of the implications on that letter that some persons have.

I realize that there are differences in points of view, but I understood very clearly the intent of the Secretary. That is, in essence, to endorse what we have done in the Senate committee.

He indicated that the House, in not acting in any way on this matter—I think he meant to indicate—has done less than the job that needed to be done.

Is that your view?

Mr. RUCKELSHAUS. Mr. Chairman, the letter states very clearly that the Secretary supports much of what the Senate has done. There is not, I believe, in the letter, any implication of dereliction on the part of the other House, and I would not so imply.

The CHAIRMAN. I would like, without objection, to place in the record at this point the letter which has been under discussion.
(The letter referred to follows:)

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
November 17, 1970.

HON. JENNINGS RANDOLPH,
Chairman, Committee on Public Works,
U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: I am writing to present the views of the Administration to the conference committee considering the House and Senate versions of H.R. 17255, amendments to the Clean Air Act.

To begin with, it is extremely gratifying to note that all of the major Clean Air Act amendments proposed by President Nixon in his February 10, 1970 environmental message to the Congress are reflected in both versions of the bill. I refer specifically to the President's proposals regarding national air quality standards, State adoption of implementation plans covering the whole area of every State, emission standards applicable to major new stationary sources of air pollution and to hazardous emissions from all stationary sources, expanded and streamlined enforcement powers, assembly-line testing of motor vehicles, and regulation of fuels and fuel additives.

We are, therefore, fully in accord with the objectives and the essential features of both the House and Senate bills. In our judgment, however, both bills have certain provisions that should be modified in the manner recommended below. While this letter makes reference to the Secretary of HEW throughout, as do both bills, we note that the Senate bill has the effect of vesting these authorities in the Administrator of the Environmental Protection Agency, as contemplated by Reorganization Plan Number 3 of 1970.

Automobile Emissions. The Senate bill would require, under provisions that have no counterpart in the House bill, that certain automobile emissions be reduced by 90 percent from the 1970 levels by 1975, unless the Secretary of HEW extends this period for one year, which extension would be subject to judicial review.

The objective of these provisions is to accelerate substantially the current timetable for controlling automobile emissions. The Senate bill does this by making effective in 1975 the standards administratively projected to take effect no later than 1980. We fully support the objective of accelerated control of automotive air pollution and support the proposed establishment of 1975 as a target date for achieving the proposed 90 percent reduction.

Based on the information available to us at this time, we are uncertain whether the requisite control technology will be developed and reduced to commercial practice on a mass-production basis by 1975-76. This presents the Federal government with a dilemma. On the one hand, if, despite a maximum effort, the necessary control technology cannot be developed and put into production, then emissions cannot in fact be reduced to the levels sought. On the other hand, the prospect of repeated deadline extensions based simply on the absence of control technology gives rise to an understandable concern that automobile manufacturers may not press the development of such technology and its application as rapidly as they should to meet air quality requirements.

The Senate bill would resolve this dilemma by providing an absolute statutory deadline of 1976, despite the fact that the very basis the bill provides for the single extension from 1975 to 1976—that all good faith efforts have been made to meet the standards, but no effective control technology has been developed—would logically justify additional extensions for a manufacturer on the basis of similar findings.

We believe that provision for additional extensions of the deadline can be made while at the same time assuring maximum effort by the manufacturers, as sought by the Senate bill. To accomplish this, we suggest that, using the 1975 standards as a yardstick, the manufacturers' efforts be examined periodically by a highly competent, impartial body outside of Government—the National Academy of Sciences and/or the National Academy of Engineers would be eminently qualified to play such a role. (We understand the conferees are interested in using the Academies in a manner that may be related to this proposal.) Such examination should involve periodic determinations of the manufacturers' level of effort and judgment as to the progress in developing adequate control technology, and its

application to mass production. The results of such examinations would keep the Congress and the Secretary informed of the manufacturers' efforts and progress toward meeting the standards and provide the Secretary with a basis for determining whether to grant or deny any extension which a manufacturer might seek. It seems to us that such a procedure would provide a more orderly and equally beneficial process for achieving the results sought by the Senate bill.

We would also favor two other changes in the provisions of the Senate bill with respect to automobile emission standards. First, there is a serious question whether the bill, in fixing January 1, 1973, as the earliest time a manufacturer could seek a deadline extension, gives proper recognition to automotive production lead times. Establishing any specific date in the bill seems unnecessary to us, however, and we recommend that this matter be left up to the judgment of the Secretary. There is clearly a natural regulator at work here, since the earlier a manufacturer might seek an extension, the less credible would be its claim that it had made a good faith effort to meet the standards. Second, we also recommend that, instead of providing for essentially de novo judicial review of the Secretary's decision with regard to an extension request, the bill should provide for the customary more restrictive scope of judicial review.

Warranty of Automotive Pollution Control Systems. In provisions that again have no counterpart in the House bill, the Senate bill requires, effective 90 days after appropriate test procedures have been established, that the automobile manufacturers warrant that their pollution devices will meet prescribed emission standards for 50,000 miles.

In testimony before the Senate committee the Administration supported the principle of requiring a manufacturer's warranty of control devices, and we continue to support this principle. However, we regard the 50,000 mile warranty as inappropriate and unrealistic in the light of known technology and experience.

At the present time the Federal government nor the manufacturers have sufficient or reliable knowledge as to why, in some cases, a particular automobile in actual use fails to meet emission tests. This being the case, substantial and no doubt lengthy research and studies would have to be undertaken before the Secretary could, with any confidence, promulgate defensible test procedures, which under the bill would make the manufacturers liable for the satisfactory performance of emission devices for 50,000 miles. Thus, the provisions of the Senate bill could have the unintended result of actually delaying the imposition of any warranty requirements for a long period of time. If on the other hand the Secretary were to promulgate test procedures before the Government or the manufacturers better understand why some automobiles fail to meet emission requirements, manufacturers would almost certainly price the warranty at a level which would fully protect them from this lack of knowledge. Also, the manufacturers could understandably specify extremely stringent maintenance requirements as a condition of the warranty. Since most car owners would have little incentive to comply fully with all of these requirements, the warranty would be unenforceable in many cases and would make virtually no contribution to control of air pollution.

We favor including a provision in the bill which would authorize the Secretary to impose warranty requirements on the manufacturers as he determines that such requirements can be justified on the basis of adequate operating knowledge that has become available. Such warranty requirements could be made more stringent as more knowledge and experience in these matters are gained, with a view toward progressing to the goal of a 50,000 mile warranty requirement on all new automobiles. We also favor requiring from the outset a manufacturer's warranty against defects in material and workmanship.

State Vehicle Emission Standards. The Senate bill, in provisions not contained in the House bill, would empower States to fix special emission standards for new vehicles more stringent than the standards fixed by this legislation if the States could prove to the satisfaction of the Secretary that such action were necessary to meet air quality standards in regions within their jurisdiction.

We believe that existing law properly provides for Federal preemption of emission control standards for new vehicles, in recognition of the need for uniformity and the inability of manufacturers to produce different types of vehicles for a number of States. In addition, as a practical matter there would appear to be very little further reduction in automobile emissions available to the States, in view of the stringent Federal emission standards contemplated by the Senate bill for 1975.

We recommend that the present Federal preemption concept be retained without change, and that the States attain air quality standards by the ample variety of

other means contemplated by the bill—including control of emissions from other than new cars, and, if necessary, traffic controls.

Export Vehicles. The Senate bill would eliminate a provision in the existing Clean Air Act which exempts new motor vehicles and engines manufactured solely for export and sale abroad from applicable emission standards. The House bill would make no change in existing law in this regard.

We are unaware of any rationale to support this proposed change, and we believe that the considerations which supported the present export exemption provision are still valid. The emission standards adopted by a number of foreign countries on the basis of their air pollution control needs probably will continue to be significantly less stringent than the emission standards contemplated by the Clean Air Act. American motor vehicles are required, of course, to comply with applicable foreign emission standards, and requiring them to comply with the differing American standards could seriously prejudice their competitive position abroad.

Mandatory Licensing. The Senate bill compels holders of patents, trade secrets, or know-how on pollution control devices to grant licenses to all applicants for the use (upon payment of reasonable royalties) of these devices, if the Secretary of HEW determines that this is necessary to facilitate compliance with air pollution standards for automobiles, aircraft, and vessels, for hazardous facilities, or for new stationary sources. There are no comparable provisions in the House bill.

The constitutionally-recognized protection which patents afford has been a key element in encouraging innovation, and we are seriously concerned as to what the ultimate effects of this major change in policy might be. In particular, we are uncertain as to its possible deterrent effects on the incentive to invent in the pollution control field, where the need for innovation is so great. Moreover, we are not aware of the basis for assuming that developers of essential air pollution control technology would refuse to make it available either by license or direct sale to the users.

We recognize that this authority is permissive, and that the report of the Senate Public Works Committee emphasizes that very restrictive use should be made of it. Despite this, we are not convinced of the need for such a basic change in policy in light of its potential adverse effects and in the absence of known abuses. If in the future a situation arises in which a refusal to make technology available threatens to jeopardize the national air pollution control effort, Congress can then legislate to meet the particular problem.

Citizen Suits. The Senate bill authorizes citizens to bring civil actions against alleged polluters (including governmental entities) or against the Secretary of HEW to enforce compliance with the requirements of the Act. There are no comparable provisions in the House bill.

In authorizing citizen suits directly against alleged polluters, this provision builds on the trend of existing law, and we do not object to its enactment. Such suits can contribute to the effective enforcement of air pollution control measures.

However, the authorization of citizen suits against the Secretary to force him to take enforcement action in a particular case would have the unintended result of reducing the overall effectiveness of our air pollution control efforts by distorting enforcement priorities that are essential to an effective national control strategy. Therefore, we recommend the deletion of that portion of the provision authorizing suits against the Secretary. This deletion will not affect the right of citizens to move directly against alleged polluters, including Federal agencies.

We note that the Senate bill contains no express provisions either requiring bonds to be posted as a condition for granting preliminary injunctions (i.e., injunctions granted before full hearings) or explicitly stating the authority of the courts to fit final relief to the equities of the case. Adequate bonds and flexibility of relief can be very important in cases of this type. However, we trust that the courts will exercise their existing authority to fix preliminary injunction bonds at levels sufficient to protect any defendants later found upon full hearing to have complied with the Act and to frame final orders that fully take into account all of the circumstances of the case.

State Implementation Plan Deadlines. The Senate bill provides that within nine months after promulgation of any national ambient air quality standard each State is to submit to the Secretary for approval an implementation plan for each air quality control region, providing for the attainment of the standard within three years after approval of the plan. In addition to limited Secretarial authority for extensions based on new information, provision is made in the bill for judicially-granted one-year extensions of the three-year deadline, upon petition of the Governor of the State concerned (subsequent to the approval of the implementation

plan) if the Court determines that such relief is in the paramount interest of the U.S. and that means to control the emissions have not been available for a sufficient period of time. The House bill contains no such provisions.

In providing for extensions of this deadline subsequent to approval of the implementation plan, the Senate bill plainly concedes that cases may very well arise where marginal or inadequate emission control technology would render it impossible to meet the standard within the three-year period. Although both the State and the Secretary might agree that this is so at the time an implementation plan is submitted for approval, the Senate bill forbids the Secretary from approving anything but a three-year implementation plan, which in due course probably would be appealed by the Governor. The net effect of the bill's provisions in such cases would be to place both the Secretary and the State concerned in the untenable position of approving an implementation plan they know is unrealistic and probably unworkable.

To avoid this type of situation we favor an amendment which would, in the few cases where it might be necessary, permit the Secretary to extend the deadline at the time the State's implementation plan is being reviewed and approved. Such extensions should only be made if the Secretary determined that adequate control technology is not available and is not likely to be available, and he should be required to make public his determination and the specific grounds on which it rests. Moreover, once beyond the three-year period the Secretary should determine periodically whether adequate control technology is available and make known his findings and any requisite compliance determinations resulting therefrom.

Certification of New Sources. The Senate bill establishes a Federal requirement (which could be delegated to the States) to certify that all new stationary sources of emissions meet Federal performance standards reflecting the latest available control technology and processes. Such certification would involve (a) preconstruction review of locations and design of any new source, (b) performance tests within a reasonable time after operation commences, (c) methods to identify violations and enforce compliance, and (d) methods to assure that any new source will not prevent implementation of national air quality standards or goals. The House bill contains no comparable provisions.

We feel that this certification procedure is overly elaborate and would impose a heavy and unnecessary burden on both the Government and industry. Moreover, industry would appear to have ample incentive for preconstruction consultation with responsible officials even without this special mechanism. We see no reason why performance requirements could not be established and enforced in the same manner as other emission requirements. If compliance with performance standards were made part of a State's implementation plan, these adverse consequences would be avoided and there would also be the additional benefit of placing the basic enforcement responsibility in the State, as is generally the case under the Act, rather than in the Federal Government, as the Senate bill provides.

While we recommend that basic enforcement of performance standards should be in the States, we favor retaining the provision of the Senate bill which allows the Secretary to enforce these standards without being required to make a finding that a State has failed to perform adequately. We also would favor a similar pattern for the enforcement of emission standards established under section 114 of the Senate bill.

We can see merit to a statutory requirement that the emissions from all new sources would have to be measured at the time (or within a reasonable time thereafter) they begin operations, and we would support the retention in the bill of provisions to accomplish this purpose.

National Security Exemptions. The Senate bill authorizes the President to exempt Federal property, facilities, vehicles, or vessels from applicable emission standards, whenever he determines that this is necessary in the paramount interest of the United States. The bill also authorizes the Secretary of Defense to defer for one year, if necessary for the purpose of national security, the applicability of emission standards to military aircraft and vessels. The comparable provision in the House bill, which covers only emissions from new stationary sources, carries out the Administration's recommendations for exemptions by the Secretary of HEW when he determines they are necessary for the purpose of research, investigations, studies, demonstrations, or training, or for reasons of national security.

We would support the approach of the Senate bill, if aircraft are included under the Presidential exemption provision, since the reasons for authorizing exemptions

for all other Federal facilities, vehicles, and vessels are equally applicable to aircraft, particularly combat aircraft. We also believe that the Presidential exemption should be made applicable to non-Federal facilities, since there could conceivably be instances where their exemption would be as much in the paramount interest of the U.S., as would be the exemption of Federal facilities.

Hazardous Emissions. The Senate bill requires zero emissions from facilities determined by the Secretary of HEW to be emitting pollutants hazardous to health even in trace amounts, with a specific timetable for compliance and enforcement, unless the owner of such facility can demonstrate that continued operation (under applicable emission standards) will not endanger the public health. The House bill contains no comparable provisions.

Of course, hazardous emissions should be effectively and quickly controlled, as was recognized in the Administration's bill. Because the Senate bill in Section 114 gives the Secretary general authority to set emission standards, down so zero levels, for all facilities, we think the Secretary should have the flexibility to deal with hazardous emissions on a priority basis within this general authority. In fact, the Secretary could move more swiftly and equally effectively under such general authority, in Sections 114 and 116 of the Senate bill, than he would be able to under the specific hazardous emission control procedures contained in Section 15. Accordingly, we recommend deletion of Section 115 of the Senate bill, and any necessary modifications of Section 114 to fully cover hazardous emissions.

Low Emission Vehicle Procurement. The Senate bill requires the Federal Government, in provisions not contained in the House bill, to procure vehicles determined to be "low emission", and authorizes premium prices to be paid for such vehicles.

These provisions were contained in a separate bill added by amendment on the Senate floor. We had recommended a number of modifications in these provisions in comments on both that separate bill and a comparable bill in the House. We continue to support these changes, and particularly feel that there should be discretion in the President with respect to procurement of these vehicles in order to assure realistic accommodation to budgetary priorities and the special vehicular needs of the Government, and to permit orderly procurement should there be a number of "low emission" vehicles to select from.

Fuels and Fuel Additives. The House bill contains a number of restrictive provisions on the authority to fix standards respecting the composition of fuels or fuel additives. For example, standards on fuels and fuel additives could be fixed under this authority only if the Secretary could show that it is not otherwise technologically or economically feasible to achieve automobile emission standards. The Senate bill does not contain similar restrictions.

The Administration recommended broad authority to regulate fuel and fuel additives, because it believed that such authority, in conjunction with controls over sources using such fuels, is necessary in order to mount the most effective overall attack on air pollution. We recommend, therefore, that these provisions be modified to conform with the Administration's air pollution bill, the essential provisions of which on this matter are incorporated in the Senate bill.

Also in connection with fuels, we would recommend that authority over aviation fuels and additives be lodged in the Secretary of HEW, who will have jurisdiction over all other fuels and additives, rather than being placed in the Administrator of the Federal Aviation Administration, as the House bill provides.

Personnel. Two troublesome provisions of the Senate bill, relating to personnel who would be authorized to participate in carrying out the Act's requirements, raise serious precedential and administrative problems and we urge their deletion. There are no comparable provisions in the House bill.

Section 10 of the Senate bill would authorize a sweeping exemption from the customary Civil Service appointment and classification laws, as they relate to the procurement of personal services to carry out the Act's requirements. We believe that the personnel needs of the air pollution control program, like similar needs in other urgent Federal programs, can be met within the Civil Service framework. In addition to creating a most undesirable precedent, this provision would constitute a marked departure from a long-standing Federal policy against the performance of clearly governmental functions by non-governmental personnel, which is of particular concern in this instance due to the important regulatory and enforcement actions to which such work could give rise.

The Senate bill provides in various sections, but most notably in proposed Section 305 of the Act, that attorneys appointed by the Secretary would be authorized to represent him in suits brought by or against the Government under the Act's provisions. Such authority is at odds with long-standing Federal policy of this and

prior Administrations of placing litigating authority in the Attorney General, to be exercised as he deems appropriate. This policy derives from the sound administrative practice of relying on the Justice Department's established legal expertise and resources, rather than promoting the duplication of such expertise and resources in each of the Federal departments and agencies. We favor deleting Section 305 (as well as making comparable conforming changes in other provisions of the bill), the result of which would be that in actions instituted under this Act, officers of the Department of Justice under the direction of the Attorney General would appear for and represent the United States or any officer or agency thereof, including the Secretary.

Procedural and Technical Changes. We believe that there are a number of places in both the Senate and House bills where changes in procedural and technical provisions would avoid unintended results and materially improve the legislation. We would like to furnish such changes to the conferees informally along with the revisions needed to carry out the amendments recommended in this letter. In view of the sweeping and widespread implications of this bill, and in order to avoid, to the greatest extent possible, litigation that could slow down its implementation, we believe you will agree that its complex provisions need to be drafted with the greatest possible care and precision.

In conclusion, we would like to reiterate the Administration's strong support for the effective control of air pollution by legislation embodying the major features of the House and Senate bills. Accordingly, we recommend the enactment of such legislation, incorporating the recommendations made above, during this session of the Congress.

The Office of Management and Budget advises that enactment of H.R. 17255, if amended as recommended in this letter, would be in accord with the program of the President.

Sincerely,

ELLIOT RICHARDSON, *Secretary.*

The CHAIRMAN. Senator Muskie, Senator Spong has not had the opportunity to question yet, and we are following in order today. I think we should give him that opportunity.

Senator SPONG. And since I speak so slowly, 10 minutes is very little to me.

Senator MUSKIE. I sympathize with the Senator.

Senator SPONG. Mr. Ruckelshaus, I want to commend you for your opening statement. As Senator Muskie pointed out, you mentioned the need for leadership.

You also mentioned the need for developing philosophy and for a strong Federal presence.

I would like to ask you your view of what role should the States play in abating pollution, particularly with respect to standard-setting and enforcement authority. Should there be specific divisions of authority between the States and the Federal Government, or should there be concurrent jurisdiction?

Do you believe the Federal Government should have absolute preemptive authority over automobile and aircraft emissions and fuel additives?

There are three questions.

Mr. RUCKELSHAUS. I will try to answer them in the order in which they were asked, Senator.

I believe in the area of standards-setting that we need national standards to be established. This is the administration's position, as it was in the water pollution bill that was introduced this year.

It is our position in the air pollution bill that is presently in conference.

I think both Houses agree that national standards are necessary. In the past we had State standards established pursuant to Federal criteria approved by the Federal Government.

The distinction between these kinds of standards and national standards is almost so small as to escape anyone's ability to describe it.

So I think we might as well make it clear that we have national standards. So many of the problems of pollution are interstate in nature that to attempt to prescribe standards for one State that may be considerably different from another will obviously have an impact interstate that is of national concern.

So, I think, that national standards should be established.

As far as enforcement is concerned, the distinction probably most meaningful in terms of the difference between State and national standards is that the States were the primary enforcement arm of the standards under both the air and water laws as they now exist.

The administrative procedure that is in both of these laws that is necessary to go through before the Federal Government can come in and exercise its own enforcement powers is extremely cumbersome and in my estimation, ill advised.

Whenever it is necessary for one level of government to prove that another level of government is not properly exercising its enforcement powers before the upper level of government can come in, you have a very difficult situation.

I think that under the philosophy, as I understand it, in both the air and the water legislation which is in various states of progress in the Congress, there is the idea that the States are still the primary enforcement arm, but the Federal presence is much closer to the States.

Where it is clear that the States are not doing the job, there is no necessity for the Federal Government to prove that in some administrative hearing, or to make a case that this is happening in some administrative hearing. Rather, there is authority, and should be authority, I believe, in the Environmental Protection Agency for the Administrator to order that the Federal presence be made meaningful, and that the Federal Government be able to move in very quickly without going through this cumbersome administrative procedure to see that the laws as passed by Congress, and the national standards, are enforced.

Your third question has to do with automobile and aircraft emission and fuel additives.

My own belief, again on a broad basis, is that in the area of air and water pollution the States should be permitted to set stricter standards than the Federal Government if they wish.

Where we have problems that are again peculiarly national, such as the automobile and aircraft industries, to allow each and every State to set a different standard than is set nationally might impose an incredible burden on these industries to just be able to function as they have in the past.

The letter, again, that was sent to Chairman Randolph, expresses the administration's belief and my belief that the present provision relating to the setting of automobile emission standards should continue to be a national standard, so that the industries, both aircraft and automobile, are not put to impossible tasks, really, to come up with different kinds of emission control devices, depending on which State they happen to be in.

I also believe, as Administrator of the Agency, that the standards that we set should be the highest possible in terms of cleaning up the

emissions as they come out of both the automobile and aircraft given the state of the art and, again, the standards as set out in the statute, the ability, and the willingness of the particular industry to attempt to come up with a device that meets those standards.

California does have a separate emission standard in automobiles and I see no reason at this point to disturb that peculiar relationship that exists with California as opposed to the rest of the Nation.

However, if we expand that to States all over the Nation, I think we may well have a chaotic situation.

Senator SPONG. As a matter of policy, what emphasis do you believe should be given to activities under the Refuse Act as a means of abating water pollution?

Mr. RUCKELSHAUS. The Justice Department adopted some guidelines to the Refuse Act. I was a signatory to those guidelines because of my position as Assistant Attorney General in the Civil Division.

It was our responsibility to civilly prosecute vessels where oil spills developed. This was the sole responsibility I had in the area of pollution in the Justice Department.

As I read the guidelines, they provide that most of the water pollution will be taken care of pursuant to the standards adopted by the States and the implementation plan submitted to the Federal Water Quality Administration, so that where a particular industry is complying with those standards and guidelines and implementation plan, the Justice Department will not proceed pursuant to the Refuse Act.

These guidelines must be interpreted in light of the bill that was submitted to Congress by the administration to shorten the administrative procedures necessary in order for the Federal Government to move in in the event a State was not enforcing its own standards. That bill has not as yet passed.

It is my belief that it is necessary for the Federal Government to have the ability to move in very quickly where a State is not acting in order to give the States the kind of strong Federal presence and regulatory backup to give the States the opportunity to be good, strong regulators themselves, that we may well take another look at the guidelines as issued by the Justice Department and decide that we would want to broaden the scope and the use of the Refuse Act in the future.

There is in the guidelines, I think, some present discretion invested in the Administrator of this Agency to request the Justice Department and the U.S. attorneys to move in quickly now when the States have not acted.

On page 3 of the Justice Department Guidelines under "Policy" it says that the act can be used where, in the opinion of the Federal Water Quality Administration, the polluter has failed to comply with obligations under such a procedure.

Such a procedure refers to the Federal Water Quality Act guidelines.

It is my belief that we may well take this provision in the present guidelines and request the Justice Department in many more instances than we have in the past.

Senator SPONG. What sort of liaison do you believe should be maintained between your Agency and the Corps of Engineers with respect to the Corps' responsibility under the Refuse Act?

Mr. RUCKELSHAUS. We have under vigorous study the possibility of issuing or instituting a permit system pursuant to the Refuse Act.

While there have been some delays in the last few weeks, I am somewhat hesitant to give you a date as to when such a procedure would be announced. In the very near future there will be an announcement as to the implementation of the permit procedure under the 1899 Refuse Act in conjunction with the Justice Department, the Environmental Protection Agency and the Corps of Engineers, and also the Council on Environmental Quality.

The relationship between the Environmental Protection Agency and the Corps of Engineers obviously has to be very, very close, if we are going to make this act work, if we are going to make this procedure adopted pursuant to the 1899 act work.

It is my own belief that the procedure for the issuance of the permit would better be placed in the Environmental Protection Agency because of the mission of this Agency, the permit for the discharge of waste by any industry into a stream, rather than in the Corps of Engineers.

But the act itself provides that that responsibility is in the corps. I think because of the need to implement some nationwide procedure for the control of discharge of effluents from industry into streams throughout the country there is an imperative need for speed in coming up with a permit procedure that will implement this act that has been in existence for 71 years.

Senator SPONG. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Spong.

We have completed our first round except for Senator Gurney.

I do want to recognize Senator Muskie, as he has requested, to complete certain questioning. Then we will be gratified to have Senator Bellmon speak.

For the record now, we will ask you, Mr. Ruckelshaus, to return tomorrow. We will meet at 10 a.m. in room 4200, New Senate Office Building.

Senator Gurney.

Senator GURNEY. Thank you, Mr. Chairman.

I want to join the other members of the committee, Mr. Ruckelshaus in welcoming you here this morning. I certainly want to say for myself that it is reassuring to know that your work and leadership in this area of environmental control dates back to 10 years. That is quite a bit before we took any leadership here in the Congress.

I noted in your résumé you were the author of an Air Pollution Control Act in Indiana way back in 1961; that your enforcement work began about that time, too.

Certainly, you are no newcomer to this field, but you took a very early interest and leadership. That is reassuring to me, and I am sure it is to the other members of the committee, and also the Senate.

I, too, read this article in the Times this morning that Senator Muskie referred to I want to say for myself it is reassuring also to see your aggressive interest in these regulations under the Water Quality Administration.

I think your agency, or the agency that you will head if your nomination is approved, certainly has prime responsibility in this area.

I think approval of those regulations should come from your agency. Again, it is reassuring to see your leadership here.

I have one question that I would like to ask. It occurs to me that there will be conflicts occasionally between departments of government in this area of environmental quality.

For example, down in Florida now we have a situation that I might use as an example. I don't say that it is a conflict between two departments of government, but it does involve two. This, of course, is the jetport proposed for the Miami area. Here we have involved the Department of Transportation, which, of course, has primary jurisdiction over air travel in the country and, as such, over airports, and the Department of Interior because of their interest in the Everglades National Park.

Suppose you had a situation like that and two agencies took a differing viewpoint on what ought to be done? In this case, of course, there is the location of the airport. I hasten to say that there is no thought that these two departments are going to take a different viewpoint.

I simply use this as a concrete illustration of instances that may arise.

What role does this agency that you may head, play in such a situation as that? What do you envision is your role in a conflict between two departments such as this?

Mr. RUCKELSHAUS. I think, Senator, we have a very strong advocacy role in the Agency within the administration, and the Environmental Protection Agency must insist that its name means what it says. That is to protect the environment.

If a decision is about to be made by another agency of Government that would have a detrimental effect on the environment, then I think we have to stir up a good deal of dispute over whether this decision should be made.

I think we have to be willing to make this advocacy right to the final decisionmaker in the administrative branch, in the White House.

I believe if we are going to be effective as an advocate for protection of the environment, we have to be willing to exercise that advocacy role within the administration as well as without.

Senator GURNEY. I certainly am delighted with your answer. I had hoped that this was the viewpoint that you would take. It occurs to me that that is the role above all of this Agency, to protect the environment in all its respects despite the differing viewpoints, programs, in other parts of the Government.

Again, that sort of an answer is reassuring to me.

I commend the President on his choice. I think he has made a fine choice.

As for myself, I see no problem in your nomination.

That is all, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Gurney.

Senator Muskie.

Senator MUSKIE. Might I say that I liked your answers to Senator Gurney's questions very, very much. It would be a good note on which to close. But I would wrap up a couple of points and not open up any new ones, since it has been decided to resume the hearings tomorrow.

There are areas that I want to open up tomorrow.

On this question of the section 102 reports involving the SST, I would like to make clear what I consider to be violation of the spirit, if not the letter of the law.

First of all, these environmental agency reports were ordered. I don't think there is any ambiguity on that point. The law says, "These reports shall accompany the proposal through existing agency review."

I don't know how oral statements can accompany a report. It would be rather cumbersome if you sent the people who made the oral reports along with them and filed them. So I don't think there is any doubt that written comments were intended.

If written statements do not exist with respect to the SST, that failure, I think, is a failure to read the requirements of the law.

Secondly, with respect to the time, I think I would have to concede that there is ambiguity in the sense that no time for making those reports public is indicated in the law.

Again, I want to repeat what I said to you earlier, that in the case of such an ambiguity, the environmental protector, using the advocacy role which you so eloquently described in response to Senator Gurney, should take it upon himself to resolve the ambiguity in the public interest and make his views known publicly, if he is to be a true advocate.

I wanted to make that point and then call to your attention what I am sure you already know, because you have obviously done a good bit of homework in preparation for these hearings.

You are obviously well versed in many aspects of the legislation we are considering in the Congress at the present time.

In section 310 of the Senate-passed Clean Air Act Amendments, on page 129, lines 7 through 20, your Agency is given an explicit responsibility with respect to section 102 statements.

I would like to read that into the record and perhaps get your reaction. I think they support the position you have already taken, in a sense.

The Administrator shall review any matter relating to duties and responsibilities granted pursuant to this Act contained in any, (1), detailed statement prepared by any Agency or Department of the Federal Government pursuant to Public Law 91-190—that is the Section 102 section—and, (2), proposed regulations published by any Agency or Department of the Federal Government pursuant to any statutory authority and; (b), in the event the Administrator determines—that is you—that such detailed statement or such proposed regulation is unsatisfactory from the standpoint of public health or welfare or environmental quality, the matter shall be referred to the Council on Environmental Quality for a determination and recommendation to the President which shall be made public.

The intent here is to give you authority to reach into any agency in keeping with the spirit of your reply to Senator Gurney to raise the red flag whenever you see an environmental risk flowing from any pending decision in any Department of the Federal Government.

That is a broad responsibility. We have it in here. If you have any reservations about it while the bill is in conference, you may want to indicate that to us; or if you believe in that section, that might be helpful in the conference, too.

Mr. RUCKELSHAUS. Senator, I don't have any trouble with that section at all. I would point out that there may be the same kind of ambiguity as to then the statement is released in the last sentence read in section (b), where it says,

The matter shall be referred to the Council on Environmental Quality for a determination and recommendation which shall be made public.

Is it the matter in our referring it to the Council that makes it public or is it when the Council refers it to the public that it is made public?

Senator MUSKIE. We can clarify that ambiguity.

Mr. RUCKELSHAUS. I may regret that I pointed that out. I think, Senator, one of the problems with the making of statements like that public may well be illustrated by the SST.

It is my understanding of the present environmental study of this problem that there is a study being made by the Department of Transportation, that there are recommendations which have been made to the Department, and I don't know whether oral or written, as to what the study should contain.

It should contain a study of noise pollution, of the radiological effects on passengers and crew at the altitudes at which the SST will travel, and also at the particulate and air pollution problem at 60,000 feet.

The recommendations have been made that all of these problems be studied very, very carefully in the study that is being sponsored by the Department of Transportation.

The decision about the SST, as I think Senator Allott alluded to, has been a continuing decision, so that each time a new decision is made it is in relation to an appropriation as to whether we should continue with the development of the two prototypes of the SST.

Again, in reading section 102 and this section 310 of the proposed Clean Air Act, it is difficult to tell just whether you have to make another environmental impact statement at every stage of those proceedings.

My own feeling would be that at whatever stage there is a significant impact on the environment, if a decision is made and that impact can be determined by the Environmental Protection Agency or the Council on Environmental Quality, that impact should be made public and there should be an opportunity for comment on the findings by these two agencies.

Senator MUSKIE. With respect to section 310 which I have just read, this makes you a self-starter, whenever you, unilaterally, see an environmental risk. You are given the responsibility to raise the red flag.

What is involved here is not an input to somebody else's decision and somebody else's statement. This is an issue to be taken by you.

The reason we are making you independent is so that you will be independent. I think the Council and you have a responsibility for seeing to it that whenever an environmental evaluation is made, whether pursuant to section 102 or this, that that evaluation enters the public domain as soon as you have made it.

To wait until it can be buried in some promotional or development agency's report or statement is to give it less than the emphasis we intended for it.

We want you to be the advocate that you described in response to Senator Gurney's question. We want you to be the gadfly. That is the whole purpose of it. I would like to make that clear.

With respect to Senator Allott's comments, I would say that it was clear from January of 1969, that President Nixon and Secretary Volpe were reviewing the SST decisions. Whatever decisions had been made previous to that, they clearly were taking another look at it and were going to make a new decision.

That being so, that review was being undertaken in the context of this whole environmental surge that has taken place in the last year or two.

So whatever doubts there may have been in the absence of such a review, about whether or not the environmental agencies had a responsibility to take a position, the fact that the review was being taken indicated that a new decision was in process.

That being the case, it seems to me that whenever an agency—developmental, promotional, or environmental—develops its own position on the issue, that position should be made public.

That is my view. Senator Allott obviously takes a slightly different view. I won't undertake to interpret his, but that is my view.

Moreover, I think even if an activity started 50 years ago, if there is reason to look at it in the light of current environmental concerns, it is your responsibility to be a self-starter in that connection and undertake to use whatever authority you have to restrain or even to prevent such an ongoing activity if, in your judgment, the judgments of your people, there is an unfortunate environmental impact.

I don't think the fact that the first decision was taken 50 years ago in any way dilutes your responsibility.

I have one further comment, and if you want to respond to what I have just said and to the further one I would have no objection, but I am primarily making it to round out this record this morning.

This is with respect to the deadline on automobile emissions. At the time Secretary Richardson's letter was sent to the chairman, it had been announced that the House and Senate conferees had reached a tentative agreement on the deadline. Unfortunately, perhaps from my point of view, that agreement wasn't spelled out in detail.

So it is possible and conceivable that the question would have been reopened in the conference in any case. But the effect of the Secretary's letter was to reopen it. The proposition that has been presented to the conference is based upon the recommendations of the Secretary. That, of course, is his prerogative. I am not one to say that the President and the executive branch of Government haven't a right to make an input into the legislative process whenever in conscience they feel they must.

But they ought to, at the same time, consider the impact of that input.

I think it has reopened the question.

Getting down to the philosophy behind this committee's position and the Senate's position on the automobile deadline, the difference between the administration position and ours is this: Both positions recognize that by January 1, 1975, the industry may not have the hardware to achieve the standards set out in the law.

We have said that the best way to bring pressure upon the industry to develop that hardware is to require them to come to the Congress for any extension.

The administration is saying that just as much pressure can be generated if that extension can be granted administratively.

I think on the face of it, it is obvious, from the reaction of the industry to both propositions, the industry regards it as more difficult to get an extension at the hands of Congress than at the hands of the Administrator.

So if we were to adopt the administration's proposition, the interpretation would be that the Congress has relaxed its requirement.

That would be the interpretation of the industry. That would be the interpretation of the public.

In my judgment, that would be an unfortunate interpretation to make possible.

We understand we have asked of the industry something they might not be able to do. My own feeling is that if they really exert themselves under a clear recognition of what the Congress has said the public policy must be, they can do the job.

In any case, what we do with that provision of the bill will be a symbol to the country of the firmness of our resolve, and I think the country wants us to be firm.

I would hope the administration would consider what I have said this morning and find its way clear to agree with the Senate conferees and the Senate and this committee on this point.

Mr. RUCKELSHAUS. Senator, if I may respond to the two points in reverse order, as far as the interpretation which Congress, or the automobile industry, or the people of the country may place on what we have done by sending the letter suggesting another means of extending the deadline rather than to go to Congress, this is not the intent of the letter.

The intent of the letter is to be firm. In the bill as it passed the Senate, the industry does not have to go to the Congress in the first instance if they want a 1-year extension. They ask the Administrator and then his decision is judicially reviewable.

We are suggesting that in addition to the 1-year extension, a further review not only by the Administrator but by an independent body such as the National Academy of Science, also be established so that there will be credibility given to the industry's claim that they have done everything in their power to come up with a device and that no such device is available.

What we are suggesting is that it is a much more orderly way to proceed by going to the Administrator as the Senate version has suggested in the first place, and that we are giving the Administrator added credibility in terms of his final determination as to whether the automobile industry has made this effort by getting the National Academy of Sciences or another independent body to review what the automobile industry has done.

I would hasten to add, Senator, that as Administrator, in the event I am confirmed, of this Agency, I would intend to look with a very jaundiced eye at any claim that everything had been done that could be done—with a very jaundiced eye that they could not comply with the standards as set by the Congress that should be met in 1975, and that I would hold the automobile industry to the strictest possible proof to show and convince me that they had done everything in their power to comply with those standards and that they had not been able to achieve a device that would do that.

Again, it seems to me, as the letter states, that to place this responsibility on an administrative agency giving judicial review of that decision in court is a more dispassionate way to arrive at a complete understanding of all the facts involved in the decision than to place that decisionmaking power in Congress.

This is the position, I think, as stated in the letter. Again, it is my belief that both the administration's aim and the aim of the Senate bill are the same; that is to keep the maximum pressure on the auto-

mobile industry to come up with a device by 1975 that will meet the standards.

Senator MUSKIE. I must say I am more sure of that after your answer than I was before. I mean no disrespect. I want to be dispassionate in my analysis, but I want to be very clear on what it is the Senate intended.

The National Academy of Sciences is going to make, I am sure, a dispassionate evaluation if it is given this authority. But it is going to be a scientific finding as to whether or not the technology exists. But whether the National Academy of Sciences is in a position to judge whether it could have been brought into being under the appropriate political pressure is another question.

Yet, if the National Academy of Sciences makes a finding that has to do only with whether the technology exists, this gives the automobile industry a perfect out. You are in no position to put the National Academy under pressure to make the political judgment.

It is just conceivable that by 1975 we may know enough more about the health impact of automobile emissions to decide that whether or not the technology exists, dirty cars ought not to be manufactured anymore.

I don't think that is going to be so.

But the bill is written on the assumption that the rockbottom of public policy ought to be the protection of public health, and because it is related to public health so directly we said that Congress makes the decision that this is the deadline now.

If it is to be changed, then the Congress, who represents the people, must take the heat so that the decision is visible, so that congressional viewpoints are visible, so that the vote is visible to the public and not buried in the bureaucracy of the National Academy of Sciences or the bureaucracy of the executive branch of Government.

We were well aware of what we were doing, and we were well aware that we might be asking the impossible. But what Secretary Richardson's letter opens up is the possibility of not a 1-year extension but of an indefinite number of extensions, as I read the letter, if the National Academy of Sciences says, "As of this moment, January 1, 1975,"—January 1, 1976, 1977—"the hardware doesn't in fact exist." That is what disturbs me.

Mr. RUCKELSHAUS. Senator, I don't believe that is the intent of the letter, nor do I believe this would open up unlimited extensions because the person who had to make the extension was the Administrator of this Agency anymore than giving Congress the power to make the extension would open it up to unlimited extensions.

It is my belief that the letter states very clearly that the National Academy of Sciences' role is not to make the final decision. The final decision has to be in the Administrator. It is a political decision, political in the highest sense of the word that ought to be made, it seems to me, by the Administrator of this Agency, where he can be called up to Congress to account for his decision, where he can be called into court to account for his decision under the terms of the bill.

Senator MUSKIE. May I read from the letter?

We believe that provision for additional extensions of the deadline can be made while at the same time assuring maximum effort by the manufacturers as sought by the Senate bill. To accomplish this we suggest using the 1975 standards as a yardstick, and the manufacturers' efforts be examined periodically by a highly competent and impartial body outside of government.

The National Academy of Sciences and/or the National Academy of Engineers would be eminently qualified to play such a role.

Such examination should involve periodic determinations at the manufacturer's level of effort and judgment as to the progress in developing adequate control technology and its application to mass production.

The results of such examinations would keep the Congress and the Secretary informed of manufacturers' efforts and progress towards meeting the standards, and provide the Secretary with a basis for determining whether to grant or deny any extension which a manufacturer might seek.

May I say this: If the National Academy of Sciences says, in effect, the manufacturers have tried but they haven't the hardware, isn't it going to be much easier to give them an extension than if that finding hadn't been made, even though the language of the legislation reflected in the Secretary's letter would give the Secretary the final word?

The fact that the manufacturers could say, "The National Academy of Sciences tells you we haven't the hardware," is going to soften the case for the deadline. That is going to be the inevitable effect.

Mr. RUCKELSHAUS. Senator, if you interpret the effort to get some dispassionate analysis of the state of the art and the efforts that they have made as an effort to ease the decision of the Administrator to allow an extension, I think it is a misinterpretation of what we are attempting to say in the letter.

What we are attempting to do is to clearly repose the responsibility in the Administrator of the Environmental Protection Agency to make this decision. That decision is reviewable in the courts, just as it is in the present Senate version of the act in the first year in which he makes a decision. It is reviewable by any committee of Congress.

If the National Academy of Sciences came up with a finding that was clearly erroneous or that was not buttressed and based on fact, as the Administrator himself, by his own independent analysis was able to find, then that decision would be overruled, the recommendation would be overruled, and there would be a finding that there either was not an honest effort that had been made or that the state of the art was such that they could provide emission devices to take care of the problem.

I don't believe the effort here is to lessen the pressure. It is, rather, to provide a more orderly way to determine whether a good-faith effort has been made and what the state of the art was.

The CHAIRMAN. I recognize the Senator from Tennessee.

Senator BAKER. Thank you, Mr. Chairman.

Just so the record today won't expose a different point of view on this particular subject, I would like to take a minute or 2 to state my own position about this section. It ought to be borne in mind that the distinctive feature of this statute as far as automobile emissions are concerned is that for the first time we are requiring by statute a certain level of emissions.

We are not leaving it to the administrative department of government to determine those from time to time but we are requiring it by statute by 1975. It was pointed out early in those considerations that if we take this novel and fairly rigid approach it is necessary to provide an escape hatch in the event of honest impossibility of performance because we cannot legislate the impossible as much as sometimes we appear to want to.

It was then decided, without disclosing any of the considerations of the Senate in executive session beyond that necessary to make a clear picture here, that the available ways to accomplish the design of an escape hatch were these: No. 1, to leave it open to the Congress to decide from time to time to alter in the ordinary way, by statutory enactment, the requirements for automobile emissions; No. 2, to provide for administrative determination in the executive department from time to time of modification of automobile emission standards; or, No. 3, to put it entirely beyond the scope of the legislative department and vest it in the judiciary to decide from time to time whether or not it was impossible or possible to perform, and to vest in the judiciary very limited and very specific authority to review the contention of the industry and of the Government.

I may say, and I believe my colleagues will agree, that at one time or another in executive session the Senate committee adopted all three of these variables.

We finally came to a compromise in the Senate version which consisted of judicial review of a limited 1-year administrative extension, which implied while it did not state, that after that 1-year judicially reviewable extension the Congress was free to act in its exquisite wisdom as to whether or not it would grant an extension beyond 1976.

We then went to conference with the House. I believe the record of that conference may disclose that I was the only conferee that expressed reservations about the recommendation of the House conferees for the compromise that was tentatively adopted at the first meeting, which was a suggestion that the Administrator, on the advice of the National Academy of Science, make a recommendation, and that the Administrator's decision was then judicially reviewable for 1 year and that the Congress could act after 1976, thus putting four levels of determination in the statute.

I think each one of these has departed from the ideal and has softened the resolve of the Congress to provide the maximum absolute impetus to provide a clean car by 1975 or as soon thereafter as possible.

For whatever little it may be worth, I think, as I thought at the beginning, the way to handle this is in fact to adopt unique and stringent statutory requirements, but then to put the whole review process beyond the scope of both the executive department and the legislative department, beyond 1975 or 1976, and vest in the impartial and independent judiciary the right by statute to review on a specified basis the possibility or impossibility of performance.

We have not reached that point. We are still in conference. I still think that is the way to do it. I note for the record that does not agree with Secretary Richardson's point of view. It does not agree with what I conceive to be the present status of the situation in the conference but I believe it is the maximum effort by the Congress to provide the maximum impetus for the production of a clean automobile by 1975.

I think we have not done that and I am hopeful that the conference still will accomplish that.

The CHAIRMAN. The Chair would like to state, since discussion has been covering the consideration of this vital matter in executive session, that the strictly judicial procedure which the Senator from Tennessee has referred to was encompassed in the bill reported by the committee

to the Senate by a vote of 8 to 6, indicating, then as now, that there is a considerable difference of opinion.

I imagine if Senator Spong were to speak now he would have some very definite ideas on this because I recall his position in committee.

Senator COOPER. There was another question raised on this same subject in executive session. There is such a thing as due process in the Constitution; I think the judicial review would provide due process.

The CHAIRMAN. The Chairman thought so, too. You will remember he joined you.

Senator MUSKIE. I would like to remind everyone that the bill was reported unanimously out of committee.

The CHAIRMAN. Next I will recognize Senator Bellmon, who comes from the Interior Committee and the Agricultural Committee.

We will be glad for you to question the witness.

Senator BELLMON. Thank you, Mr. Chairman. I appreciate the opportunity to be here.

I have only two brief questions.

Mr. Ruckelshaus, in your capacity as head of EPA, will it be part of your responsibility to advise the President on the environmental impact of the budget he submits to the Congress?

Mr. RUCKELSHAUS. Of the budget?

Senator BELLMON. Yes.

Mr. RUCKELSHAUS. Senator, under the act establishing the Council on Environmental Quality, in the section 102 statements which we were discussing a moment ago, it does say that an agency shall include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of human environment a detailed statement by the responsible official of the impact on the environment.

Senator BELLMON. Let me be specific for just a moment. Going back to the 1930's, we had a very serious erosion problem in the Middle West. It got so bad that this period was known as the "Dirty 30's." This is a term I think you will recognize. The dust storms we had even reached the Capitol here in Washington.

As a result of this, the Federal Government began to help land-owners and farmers in combating erosion. This has been done largely through two agencies. One is the Soil Conservation Service and the other is the so-called agricultural soil conservation program.

For the past several years, the President, not only Mr. Nixon but his predecessors, have been taking out of the budget funds for ASCP. These are funds that are used to do a tremendous job of improving environment for the country. They help fight soil erosion and wind erosion. They help control floods. They have done a great deal to improve the recreational value of rural America.

They have done a great deal to conserve natural resources. To me, the slight saving in money which would be accomplished by abolishing this program, as administrations have tried to do, is very poor economy.

I am curious to know if in your capacity you would be able to take a look at this budgetary recommendation and perhaps change the President's mind.

Mr. RUCKELSHAUS. Senator, this is more clearly in the responsibility of Mr. Train's Council on Environmental Quality, but I would be happy to take a look at the provision that has been deleted from the budget that you refer to and make a determination as to whether I

believe it is advisable to put it back in the budget and, if I felt so, to try to convince the President that he should.

Senator BELLMON. It would seem to me that this is only one of many areas where the President's budgetary recommendations do have a very real impact on the environment.

I would hope that you would use your official capacity to review the budget with this in mind.

I have one other question. Your responsibilities are going to be tremendous, as I think everyone will agree. It occurs to me that the responsibilities may be too much to be handled by one agency in Washington. We are presently preparing legislation to authorize the establishment of Regional Environmental Monitoring Laboratories to be set up in different parts of the country.

I would like to submit a copy of this legislation to you for your review and your comments, if you would be kind enough to look it over.

Mr. RUCKELSHAUS. I would be happy to look at it, Senator. We have regional offices in both air and water throughout the country. We have a lot of monitoring and surveillance functions within the Environmental Protection Agency.

If your suggested legislation would be supportive of those functions or somehow complementary to them, I am sure we would look favorably upon it.

Senator BELLMON. I believe it would be considerably broader than anything we have now. I think we make a mistake when we think of environment as relating only to water and air pollution. There are many other elements that go into creating a desirable environment. These can be readily eroded unless we are constantly alert.

I want to compliment you, Mr. Ruckelshaus, on the fine job you have done this morning.

I hope to be able to work with you.

Thank you, Mr. Chairman.

Mr. RUCKELSHAUS. Thank you.

The CHAIRMAN. You have indicated, and others have stressed, that you will have a very difficult assignment. You may not be responding so much to the President of the United States, but he may be asking you, rather than you asking him; isn't that right?

Mr. RUCKELSHAUS. That would be a switch, Senator, but you may well be right. In the area of the environment, obviously, I have an advocate's role within the administration.

The CHAIRMAN. That is exactly right. You are front man when you go into this job.

We have had considerable written material with reference to your background and experience, Mr. Ruckelshaus.

The Charleston, W. Va., Gazette is editorially a newspaper that works diligently for the enhancement of the environment. It has given special attention in the November 23 issue to an Associated Press story written by Stan Benjamin and Mark Brown, in which you were asked questions and you responded.

Because of the nature of the questions and the responses, I am going to place that, if there is no objection, in the record at this point.

(The article referred to follows:)

[From the Charleston Gazette, Nov. 23, 1970]

"CAN'T WORK THROUGH SYSTEM IF IT'S BEING CUT OFF"

(By Stan Benjamin and Mark Brown)

WASHINGTON.—President Nixon's nominee for a top antipollution post has warned the administration it seems to be shutting out, in three proposed actions, the citizen involvement it so loudly encourages.

William D. Ruckelshaus, nominated to head the new Environmental Protection Agency, told the Associated Press he expressed his concern to Leonard Garment, a close adviser to the President, on the eve of his nomination.

Ruckelshaus also revealed the administration will announce soon executive action to expand antipollution enforcement; is seeking legal weapons to speed up enforcement; and will probably support the basic provisions of a pending air pollution bill, including a 1975 deadline for production of pollution-free cars.

Here are questions and answers from the interview with Ruckelshaus, currently head of the Justice Department's civil division:

Q.—What about your opposition to the Internal Revenue Service proposal to remove tax-exemption from public-interest law firms?

A—I sent a letter to Leonard Garment expressing my concern over this near-decision . . . I think public-interest law firms can perform a real service in the area of the environment and if their funding or contributions is inhibited, I think it would be unfortunate. I am in favor of encouraging these kind of firms in this activity.

Shortly after the interview, the Internal Revenue Service said it was granting tax-exempt status to public interest law firms in such fields as consumer protection and the environment, as long as they meet guidelines specified by the IRS. Key guidelines are that the firms represent a genuinely public interest, refrain from accepting fees and refrain from any lobbying or other political activity.

There were two other things I mentioned to him. One had to do with the citizen suits, and I think we ought to be encouraging this kind of thing too.

You see, we *seem* to be closing off an avenue for people to express their discontent in the institutions of government or the direction in which society is moving—and there, again, I think that's unfortunate.

We say, "Let people work through the system," then let's let the system respond. I think the courts have been shown to be a rather effective means of changing institutions that badly needed change.

Q.—What are the other points you mentioned to Garment?

A.—The other one was about the regionalization of LSO offices, a reference to a proposal by the Office of Economic Opportunity to give regional offices more control over legal services to the poor.

These, it seemed to me, all coming at the same time, would give people the impression that the administration was trying to close off the system, while at the same time we were saying you ought to work through it.

Q.—Was this your initiative or Garment's?

A.—Mine. I was involved in those two decisions (citizens suits and legal service) and then when this IRS decision came along, his name was in the paper connected with the story, and so I called him and asked him what he'd do about it, and told him of my concern.

And he said, well, send me a letter, which I did.

What I was trying to tell him was that while each of these decisions was quite independent of the other ones—I don't think there was any coordination of this effort—it appears to someone who views the federal government as a monolith that this is a big conspiracy to close off the system.

And it seemed to me somebody in this administration ought to be thinking about this in terms of our plea to keep the system open.

Q.—You gained some antipollution experience as a deputy state attorney general in Indiana almost 10 years ago. What lessons do you carry into your new job as head of the Environmental Protection Agency?

A.—In Indiana we would try to get business to comply with antipollution laws without that long procedure of court suits, and the way we were able to get them to comply was because they knew we were willing to go to court.

Also, businesses were more willing to comply if they knew other businesses had to comply too—that's the need for a uniform enforcement policy. The same thing applies exactly on the federal level.

If we have a strong nationwide policy to get antipollution devices on, businessmen will welcome it because they will know their competitors have to do it too.

This agency (EPA) is in a position to emphasize that they are going to have to do it.

Q—At present, however, when one company is prosecuted, others don't seem to take the hint, because they know you don't have the manpower to go after all of them.

A—We've already got a way around that. We've got a program we will institute shortly that will make uniform enforcement a lot more possible. I can't discuss the details with you yet.

Q—Will this new program be instituted through executive action, or will it require authorization from Congress?

A—By executive action.

Q—Congress is now considering an air pollution bill passed by the Senate, providing for tough enforcement and a 1975 deadline for production of cars emitting a very low level of pollutants. A conference committee is considering this bill and a separate House bill backed by the administration, but the administration has not commented on the Senate version. What is your view?

A—I'm going to have to testify on my confirmation in the next week or 10 days and I've been discussing this with a number of people in government.

I suspect the administration will support the 1975 deadline. It's a deadline the auto companies obviously will claim they can't meet, but you've got to push them to achieve the results we all say we want. I think the administration will support the essential provisions of this bill.

The CHAIRMAN. We will return tomorrow to room 4200 at 10 a.m. (Whereupon, at 12:35 p.m. the committee recessed, to reconvene at 10 a.m., Wednesday, December 2, 1970.)

NOMINATION OF WILLIAM D. RUCKELSHAUS

WEDNESDAY, DECEMBER 2, 1970

U.S. SENATE,
COMMITTEE ON PUBLIC WORKS,
Washington, D.C.

The committee met at 10 a.m., pursuant to recess, in room 4200, New Senate Office Building, Senator Jennings Randolph (chairman of the committee) presiding.

Present: Senators Randolph, Young, Muskie, Spong, Eagleton, Boggs, Baker, and Dole.

Also present: Senator Hart, Commerce Committee.

The CHAIRMAN. A pleasant good morning, ladies and gentlemen.

We resume our hearings in connection with the nomination of William Ruckelshaus to be the Administrator of the Environmental Protection Agency.

The record will indicate that the chairman of this committee invited members of other committees, to participate.

We are privileged today to have Senator Philip Hart, of Michigan, to join with us in colloquy with the witness. Senator Hart is the chairman of the Natural Resources, Energy and Environment Subcommittee of the Commerce Committee.

The Public Works Committee is very gratified that you are here, Phil. We know you are intensely interested in the subject matter of the hearing. Please inquire.

Senator HART. Mr. Chairman, thank you very much for your gracious hospitality. I realize the limitations attached to you and your members. I have only four points I would like to ask of Mr. Ruckelshaus.

I am sorry that I couldn't be here yesterday, but I understand that you then said that you were for some aspects of citizen suit proposals and against others.

I am commenting now on several proposals that are pending in the Congress.

I understand you indicated you were against the extension of the scope of judicial review over the administrative determination of standards, not wanting people looking over your shoulder when you were trying to set a standard.

What if the administration sets a bad standard? Shouldn't we facilitate the citizen's opportunity to correct it?

Mr. RUCKELSHAUS. Senator, the essential objection that I had to the provision regarding citizen suits in the bill, the air bill, as it passed the Senate, was not specifically aimed at judicial review of standards, but the statement in the bill regarding the scope of judicial review of administrative action as I read the section at every step of his decisionmaking process.

There are three areas of judicial review, or three areas of citizen suits, in the bill. One is citizen suits against individuals, private individuals, polluters, which we fully support.

Another is citizen suits against governmental agencies which are polluting, which, again, I fully support.

The third is the citizen suits against the Administrator in the exercise of his duties. The provision as it is written is extremely broad, and what concerned me about it was not that necessarily a standard as set by the Administrator would be reviewed but that every single decision the Administrator made would be subject to judicial review.

So if we had an air control region established and standards adopted, national standards, pursuant to air quality criteria, and if we had put specific industries within that air control region on a timetable by which they must comply with the standards as established by the Federal Government, and if all of those timetables and every compliance within the timetables would be subject to judicial review it was my fear that the Administrator would be spending so much time in court explaining every single decision that had been made that it might seriously jeopardize his efforts to do what he is supposed to do, which is clean up the air.

As far as standards themselves that are set, I don't have any particular objection to those standards being reviewed judicially.

Senator HART. Thank you.

The Refuse Act of 1899 was the subject of review, as I understand it, during the period you were with the Department of Justice. The Department issued some guidelines. The guidelines state, in part, that the policy of the Department of Justice with respect to the enforcement of the Refuse Act is not to attempt to use it as a pollution abatement statute in competition with the Federal Water Pollution Control Act or the State Pollution Abatement Procedures, but, rather, to use it to supplement that act by bringing appropriate actions either to punish the occasional or recalcitrant polluter or to abate continuing sources of pollution which for some reason or other have not been subjected to a proceeding conducted by the Federal Water Quality Administration or by a State, or where in the opinion of the Federal Water Quality Administration the polluter has failed to comply with obligations under such procedure.

Why should it be the policy of Justice to bring actions only when there is pollution?

The reason I ask that is that it seems to me it is something like saying we will prosecute unlicensed drivers only when they have an accident or when they are speeding.

How can we develop an inventory of discharges, which is desirable, unless we make it clear that all who violate the Act may indeed be subject to prosecution?

Mr. RUCKELSHAUS. Senator, as I pointed out yesterday, I was a signator to those guidelines as Assistant Attorney General in charge of the Civil Division. The sole responsibility that I had within the Civil Division in pollution, as far as these guidelines were concerned, had to do with oil spills from vessels.

The policy itself, again I think, has to be looked at in terms of the introduction of the administration's water bill earlier this year, in which the administration suggested a considerably foreshortened administrative procedure under the Federal Water Quality Act for the

Federal Government to move in an enforce water quality standards when they were not being enforced by the State, and when it was clear that an industry was violating its water quality standards as established under the Federal Water Quality Act.

I have talked to the Attorney General about the guidelines. I have talked to Mr. Kashiwa, who is the Assistant Attorney General in charge of Lands and Natural Resources Division, which enforces, this act.

It is my opinion that we may will have to revise these guidelines in order to give the Department of Justice and the Environmental Protection Agency a quicker means of moving in and attempting to abate pollution than we now have.

Under the Federal Water Quality Act, the administrative procedure is very cumbersome and difficult. It is necessary for the Federal Government to accuse the State government of not having enforced its own standards before it can move in. It would be preferable, in my estimation, if it appeared obvious that they were not enforcing it for the Federal Government to move in, without going through some accusatory Federal proceeding.

I also think that the permit system as provided in the act should be implemented by the Federal Government so that we can get, as you say, an evenhanded approach to all industries throughout the country, and that we are not just selecting specific polluters within a class of industry and singling them out for prosecution, but, rather, everybody should be brought under a nationwide scheme to abate pollution in an evenhanded and swift way.

I think very soon we will have an announcement from the administration regarding the implementation of the permit system as it is spelled out in the Refuse Act of 1899.

Senator HART. That will be an announcement welcomed by all except hard-core polluters, I am sure.

One way we could help is funding the Corps of Engineers adequately to do a real licensing job. The corps testified that they needed about \$2 million for the remainder of this fiscal year to get going on a program.

I am sure that everybody knows they are supposed to have a permit and everybody has checked to see if they do.

Would you support an appropriation for \$2 million to permit the corps to begin doing this job in this fiscal year?

Mr. RUCKELSHAUS. Senator, we have had under intensive study, at least since my nomination, the implementation of the permit system under the Refuse Act. Obviously, to announce a plan to implement the permit system and not to provide adequate funds to take care of the plan is not being altogether candid with either the Congress, the people, or the executive branch or anyone else.

When the announcement—and it will be rather quick, though I can't give you an exact date—is made about the implementation of the permit system, there will be a statement also regarding the need for whatever funding is necessary to see that the system is carried out. I certainly will support that plan.

Senator HART. Are you talking in terms of days?

Mr. RUCKELSHAUS. Hopefully, that is right, Senator. There was some hope that we could get the system announced prior to the formation of the new agency. But because of the need to make sure

we had ironed out all the administrative difficulties in implementing the system, this was not possible.

Senator HART. Thank you.

Mr. Chairman, I have just one more point.

The CHAIRMAN. Senator, may I press on this point that you have raised? It has been a matter of concern within this committee, as you know, when the Corps of Engineers comes before us spelling out its needs.

Under our Water Improvement Quality Act, we have directed the U.S. Corps of Engineers to give permits for certain types of work, outfalls, and construction into navigable streams being involved.

As they look back they find, and this is factual, that there were many times in the past when really they hadn't checked these matters as closely as they should have. They so admit.

They are now asking for additional funding to do the job of reviewing. Just how alert the Corps of Engineers is to its responsibility, I am not attempting to say. The corps is charged from time to time with a failure to understand the problems of pollution as these are created by channelization and many types of construction that the corps carries forward.

I have not yet read it, but I understand that in the current issue of Reader's Digest there is a rather scathing attack upon the Corps of Engineers and some of its practices. Even though I haven't read the article, I am asking that it be read, and I will check it.

I will ask the Corps of Engineers, through its chief, to respond to what has appeared in the article so that we may know not just the answers to some of those charges, but what the corps is thinking of in connection with its plans for the future.

I think your discussion with Mr. Ruckelshaus on this point is important because it is a current matter and it is under consideration by the corps itself.

In this instance the corps, I think, has recognized its failure, at least in the past, to do what it should have done.

In the Water Quality Improvement Act we have stated that this is to be done, and it is so written into law.

Senator HART. Thank you, Mr. Chairman.

Senator Spong has called my attention to an exchange you had yesterday on this subject.

I am sure it is easy to jump on the corps for its failure to require compliance with the 1899 act, but I suspect that there are a lot of people who can be criticized for failure to observe the 1899 act.

In our hearings on the discharge of mercury, we learned, as I recall it, that as of July 29 at least, there wasn't a single permit issued for any activity in the whole State of Michigan, and we are not really a rural State. You don't have to be a Ph.D. in anything to know that there must be some industrial activity that discharges into either the Great Lakes or some of our navigable rivers.

The CHAIRMAN. Senator, at that point I would add further, and perhaps Senator Spong has studied this problem, and Senator Boggs is cognizant of it, we know that there is a need for an in-depth study by our Public Works Committee of the efforts of the corps not so much perhaps misplacing in the past, but on the failure to take into consideration the environmental factors.

As you know, in section 21 of our Refuse Act there are certain matters that are of importance. I can say this morning that it is our

intention that it will be a project of this committee early next year to have an oversight hearing on the corps activities with reference to these matters.

Senator HART. Knowing your concern and the determination of this committee to insure that we proceed promptly, I know those hearings will be conducted.

The CHAIRMAN. This is a very real problem we have been facing in this committee.

Do you wish to make a comment, Senator Spong?

Senator SPONG. Not at this point.

The CHAIRMAN. Senator Boggs?

Senator BOGGS. Thank you, I support you, Mr. Chairman, in the statement you have just made.

Senator HART. Carl Klein, when he was Assistant Secretary of the Interior, testified, on the mercury problem in July and August of this year. At that time he said that within 3 months all firms, all industrial activities, that discharged into navigable streams a mercury element were to be below one-half pound of mercury discharge a day, and within 6 months all detectable discharges were to cease. Failure to meet those levels would result in the Department of Interior recommending prosecutions under the 1899 act.

Would this policy be continued by the Environmental Protection Agency, or have you had an opportunity to think upon it?

Mr. RUCKELSHAUS. Senator, it is the policy, my policy, that if any hazardous substance is being discharged into the air or into the water we should take immediate steps to see that it ceases as quickly as possible.

To the extent that his announced intention last summer before your committee would implement that policy, I certainly would support it. I have talked to Mr. Kashiwa at the Justice Department and have his assurance that he is eager to get any cases in order to see that the discharge of mercury is ceased as quickly as possible.

We are working very closely with him to see that he is satisfied.

Senator HART. I don't know whether Interior has sent Justice any additional cases, but there have been no prosecutions under the 1899 act for mercury pollution other than the 10 that were filed last summer.

My last question: This thing called the Federal Insecticide, Fungicide, and Rodenticide Act is my next subject.

Several times we have been told that amendments to that act soon will be transmitted to the Congress. On June 17, the Department of Agriculture testified before our subcommittee that the Department considered the current pesticide law inadequate and were developing amendments. They said the same thing on the 29th of September.

It has been nearly 6 months since the first of those statements, and we are still awaiting the arrival of the amendments.

Some of us introduced legislation to change the scheme of pesticides legislation. All of us know, I am sure, that we can proceed in partnership with the administration on this thing.

Have you any idea when those proposals will finally arrive here?

Mr. RUCKELSHAUS. Senator, I have been in the process for the last 3 weeks of attempting to familiarize myself with all of the laws under which this new Agency must operate. Among them are FIFRA, as you pointed out.

It is my preliminary estimate that there will be a good number of amendments to laws throughout the Environmental Protection Agency coming to Congress very shortly.

As far as this particular law is concerned, I can assure you that we are giving it our closest study and just as quickly as possible we will have suggested amendments to Congress.

I agree with you, that we should work very closely with Congress in an effort to see that the pesticide law is the best that we can possibly devise for the control of hazardous substances.

Senator HART. In the June testimony, the Department of Agriculture informally explained on the record the amendments they thought desirable. They seemed to make very good sense.

I know you have many chores, but perhaps you can file those as soon as you can.

Mr. RUCKELSHAUS. I certainly will.

Senator HART. Mr. Chairman, thank you very much for your kindness.

Mr. Ruckelshaus, I was told yesterday, displayed great confidence, and certainly this morning this is true. It doesn't surprise anyone who remembers his testimony before the Judiciary Committee when he was on his way into the Justice Department.

Mr. RUCKELSHAUS. Thank you, Senator Hart.

The CHAIRMAN. Thank you, Senator Hart.

We want to express our appreciation again for the cooperation of the members of the Agriculture, Interior, and Commerce Committees during these hearings.

Mr. Ruckelshaus, as you know, the Public Works Committee has recently considered new legislation which was signed into law on October 26 by the President, the Resource Recovery Act.

This measure, although not having perhaps the appeal that air and water pollution measures often have, did have the very careful consideration of the subcommittee and of the committee. It had almost the unanimous support of the Members of the Congress, in both the Senate and the House.

We were gratified that the administration did not move slowly but actively in support of this legislation. There have been charges, however, at least evidences in certain news stories that I have read, of uncertainty on the part of the administration, perhaps based on maybe the lateness of the hour the President used in actually signing the bill, on just what the administration is going to do in connection with solid waste disposal. Of course, as we move into this new Agency, we are thinking about it.

I want to underscore the fact that over 80 percent of the people in this country live in urban areas, and with this fact before us we cannot overlook the problem of solid wastes, because this is a major environmental problem.

I know that you realize this is an extremely important problem. Whether it is New York City or another metropolitan area, it is in this country, you are shocked, as a visitor, if you are not familiar with the situations in those metropolitan areas. There are accumulations of wastes of many types, not just in so-called ghetto sections, but even on Fifth Avenue or near the very modern and attractive office buildings and hotels.

These are the situations that confront us.

Broward County, for example, in Florida, the county that has the highest growth rate in the Nation, has 7,000 septic tanks. Broward County is a county with high-rise condominiums, having several thousand people in them, business buildings of like structure, and they are growing.

The commodity that people in the Fort Lauderdale area and in other areas have is warmth, which they advertise.

I am speaking now about the beaches and the condition of the water, and the possibility of a complete breakdown of the whole area because of the septic tanks that are involved in just one county.

Do you want to comment at this point on the problem?

Mr. RUCKELSHAUS. Senator, I think you have put your finger on the reason for this Agency. That is that the problems of environment are really very much interrelated to the problems of solid waste, which can cause water pollution, air pollution through incineration or through whichever way solid waste has been disposed of in the past, and it really is not an intelligent way to go about trying to do something constructive about enhancing the environment to treat the media as separate entities of this overall problem.

The Resource Recovery Act, which was signed by the President, October 26, and to which you referred, and which your committee was so instrumental in steering through the Congress, is an act which I can pledge to you we are fully prepared to implement, we are fully prepared to do what is necessary, to see that the provisions of the act as announced by Congress are carried out.

As I said to you yesterday, the question of whether the administration or any administration during the course of a bill going through Congress agrees with every provision of it, and the question of whether the administration will implement that bill as it is passed, are two entirely different things.

This bill has now been passed. It is the will of Congress. As far as I am concerned as Administrator nominee of this new Agency, it is my obligation to carry it out.

I intend to do just that. I have talked to Mr. Vaughn, who will be the Acting Commissioner of the Solid Waste Bureau within the Environmental Protection Agency, and we have under very intensive study the budgetary needs of the Agency in order to carry out the provisions of the act.

We will be making some recommendations regarding those needs in the coming months. I think the act gives us a basis to make some solid progress in resource recovery systems in an effort to try new and different things to deal with the problem of solid waste. I think we can make some real progress with this act in the future.

The CHAIRMAN. What you say today is reassuring. You do know, Mr. Ruckelshaus, and this is not in any way political, there was a period not so many months ago when we were attempting to clear from the Congress the program for sewage treatment plants throughout the country, with a higher appropriation in the Senate and a lower figure in the House, and then an agreement on the amount of money. Continuing to come to us was the recommendation of the Budget Bureau on a much lesser figure.

Finally, however, when the figure was agreed to, the President, as I have indicated many times, stepped forward and has funded it in the full amount.

So if there has been a reluctance sometimes in the minds of people to just feel that the administration is committed to these matters in an all-out frontal attack, not a timid approach, I mention it here today because you are going to have to do the job here. Is that correct?

Mr. RUCKELSHAUS. Yes, that is right.

The CHAIRMAN. What you are telling us is that you are gearing up for this sort of an effort. I don't want to speak of the glamor in connection with pollution problems, but the solid waste problem sometimes doesn't have the appeal that air and water pollution have had. But it is as important and perhaps even more important in the months and years ahead.

Do you agree with that?

Mr. RUCKELSHAUS. Yes. I couldn't agree with you more, Senator. Obviously, the problems of solid waste are serious and we are not taking care of the problem now in the country. Most of the systems being used in the major metropolitan areas of the country are obsolete, are contributing to air pollution in particular, and to water pollution, also.

Obviously, this act is aimed at developing new means of disposing of solid waste. I think it is also going to take, as I mentioned yesterday, an effort on the part of the Administrator of this Agency to convince people that they are going to have to reorient their view as to what exactly amounts to waste in society; that we have a problem of returnable versus nonreturnable bottles.

If you use all returnable bottles, some of the studies have shown that they are discarded as waste just as nonreturnable bottles are. So it isn't a very simple matter just to say that the bottler himself should change the kind of receptacle that he gives the public.

The public has to realize that we have a problem. Again, I think this is an area in which the leadership of this Agency is very, very important.

The CHAIRMAN. Not only the research programs, the innovative ways, but the grants to State and interstate programs might be brought into being.

I think once again you assure us of not only your knowledge of this subject but your determination to move in an area of this kind with which you will be associated in a position of leadership.

I want to cooperate with members of the committee. I have more questions, but the will come a little later.

I move now to Senator Boggs.

Senator BOGGS. Mr. Chairman, I have no questions at this time. I would like to take this opportunity, however, to say two things. I appreciate—and I know the full committee appreciates—the cooperation by members of other committees. Senator Hart's questions have been excellent and important.

In addition, I want to say how much I have been impressed—very favorably impressed—by the fine answers Mr. Ruckelshaus has given to these important questions.

I yield the balance of my time, Mr. Chairman.

The CHAIRMAN. Thank you very much.

Senator MUSKIE.

Senator MUSKIE. I notice Senator Eagleton is here, and I know he could not be here yesterday. I wonder if we might yield to him for any first questions that he might have.

The CHAIRMAN. I would be delighted, sir.

Senator Eagleton.

Senator EAGLETON. Thank you, Mr. Chairman.

Mr. Ruckelshaus, I would like to ask you one basic, philosophical question. I have heard that perhaps it was discussed briefly yesterday by you and Senator Muskie. It is with respect to air pollution.

If the Congress establishes a national air pollution standard so as to protect public health, do you think that regions or States should have the option, if they see fit, of being even more stringent than the national standard which would obtain from, say, New York to Hawaii?

Should any given State or region for economic reasons or other reasons, climatic, geographical, atmospheric, decide to have an even more stringent standard that would protect not only public health but plantlife and what-have-you, should they have the option of having an even more stringent air quality standard if in their judgment they so desired?

Mr. RUCKELSHAUS. Yes, Senator Eagleton. Like you, having been in the State attorney general's office, I have an extremely strong bias in favor of the State having the kind of authority that you mention.

In particular, I think in air and water pollution if the State wants to decide for itself that "We want the standard that is stricter than that standard set by the Federal Government," States should be permitted to do so.

As I mentioned yesterday, there may be some exceptions to this rule where a problem is peculiarly national in scope and where to permit the State to have a stricter standard as regards a specific problem—and I think automobile emissions may be one of these areas—it would create a chaotic situation in terms of the industry involved.

I think that puts a greater burden on the Federal Government, to have an even stricter standard than it might otherwise have.

Senator EAGLETON. A final question: When the Justice Department put forth their guidelines for the enforcement of the Refuse Act, those guidelines were not accompanied by 102(c) statements describing the environmental implications of that action. At least, that is my information.

The legislative history of the Environmental Policy Act suggests that, from the report, "Policy statements such as this should be accompanied by a 102(c) statement."

Do you know of any reason why the Justice Department didn't submit its 102(c) statement when it was indicated that such should be done in the report supporting that legislation?

Mr. RUCKELSHAUS. Senator, I do not. I don't know what the date of these guidelines was, whether the guidelines were issued prior to or after the passage of the 1970 act which provided for the 102 statements.

If they were issued after its passage, I can't answer that except to say that it could be that the guidelines were an effort to define a question that really was so deeply involved in the environment and that the environmental questions were so much a part of the guidelines themselves that the Department might have felt that a 102 statement was redundant.

Obviously, the various interpretations of the guidelines might be used to show that they would have an adverse effect on the environ-

ment if the water quality standards were not being complied with by industries and States, the States weren't enforcing it and the administrative procedure didn't permit the Federal Government to come in quickly enough and nothing else was being done.

I think this is the kind of question we are going to have to review very quickly in taking a look at the guidelines to see whether they shouldn't be changed.

Senator EAGLETON. Thank you very much.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Eagleton.

Senator Baker.

Senator BAKER. Mr. Chairman, I had the opportunity to put a question to the nominee yesterday. I have no other questions today except that Senator Allott, of Colorado, sent a statement with questions, with a request that they be put to Mr. Ruckelshaus, which I would like to do at this point.

The CHAIRMAN. Yes.

Senator BAKER. This is at Senator Allott's request, Mr. Ruckelshaus.

I wish to make a statement to highlight a problem, and call your attention to what I hope will be on your list of top priorities.

Section 704 of the Tax Reform Act of 1969 provided a new section 169 of the Internal Revenue Code of 1954 entitled "Amortization of Pollution Control Facilities."

Briefly stated, this section provides a tax incentive for businesses to install pollution abatement facilities.

In order to receive this tax benefit, business must receive Federal and State certification of the facilities prior to filing an election with the Internal Revenue Service. Federal certification will be granted by the Environmental Protection Agency.

It is my understanding that Federal certification cannot be obtained at this time because appropriate regulations have yet to be finalized by the two predecessor agencies, the Federal Water Quality Administration and the National Air Pollution Control Administration.

I am aware of the fact that the Environmental Protection Agency and the Internal Revenue Service will have to coordinate their efforts in this regard and of the inherent difficulties in such a task.

However, I sincerely hope that this matter can be finalized as quick as possible to avoid hardships to the taxpayers. For example, if Federal certification is not available prior to the income tax filing deadline, then the special election cannot be made.

After certification is obtained, the taxpayer would be faced with making a retroactive election and amending prior tax returns, all of which can be burdensome and costly.

I think the issuance of these regulations should begin as soon as possible so that the congressional purpose behind Internal Revenue Code section 169 can receive full implementation.

Mr. Ruckelshaus, are you aware of this situation, and if so, do you have any comments on this matter?

Mr. RUCKELSHAUS. I am aware, Senator, that the situation exists, and I am aware that the regulations have not been issued.

We will do everything in our power to see that the regulations are issued to provide for certification as quickly as possible.

As Senator Allott points out, it is not fair to provide a tax incentive to an industry to put emission or effluent devices on a plant and then not give them any procedure whereby they can take advantage of this tax incentive.

So as quickly as possible, in cooperation with the IRS, we will come up with regulations that will provide for industry to take advantage of these tax incentives.

Senator BAKER. Thank you very much.

The CHAIRMAN. Senator Muskie.

Senator MUSKIE. I would like to ask some more questions, Mr. Ruckelshaus, about the air pollution bill that is in conference.

Before I do, there are a couple of other problems I would like to touch on briefly.

Incidentally, as I read the stories of yesterday's hearings, it occurs to me that we didn't treat you too roughly yesterday. That really isn't the intent of the hearing. I begin with that note to emphasize that what we are trying to do with these hearings, and I think this is so of all of the Senators in the questions they have asked, is to begin the process of defining the role of the new agency, and the directions which you propose to take insofar as it has been possible for you to define those directions yourself.

I would like to commend you again for the very evident homework which you have done in preparation for this hearing and for the assumption of your new duties.

I think it is most helpful to us in these questions, and I am sure it will be most helpful to you as you undertake these responsibilities.

A nuts-and-bolts question I would like to ask you is the manpower one. When Interior took over the water pollution program several years ago from the Public Health Service, there was a considerable loss of personnel.

As you know, the Public Health Service, and the people under it, operate under different rules, different prerogatives, and different policies relating to their benefits and privileges than do the personnel in the rest of the civil service.

Are you going to suffer any attrition in manpower as you take over NAPCA and other functions that are now in the Public Health Service?

Have you examined that problem? Have you any judgments on it?

Mr. RUCKELSHAUS. Senator, as I stated yesterday, I think it is clear that in the case of NAPCA, if the air bill passes as it is presently in Congress in a form similar to either House, there obviously will be a need for additional resources to implement the bill.

Before the bill passes it is probably not possible to say what additional resources will be needed.

As far as the loss of manpower from NAPCA, in coming over from the Public Health Service, I don't think we are going to lose any manpower from that agency itself.

There are some continuing questions with HEW in the determination papers we are discussing to determine just exactly what resources amount to overhead from the agencies that are coming over and what resources should remain in HEW.

We have some continuing questions. I think those questions will be resolved in the next week to 10 days and we will be able to get a better idea of just where we stand in terms of resources.

Senator MUSKIE. The real question I am pinpointing is related to the attitude of the people themselves. When the water quality program was moved into Interior, a great many people were reluctant to give up the Public Health Service for the civil service, notwithstanding their interest in the program and the desire to remain with it.

They resolved their dilemma by remaining in the Public Health Service and leaving the water pollution program.

I wondered whether the same problem exists with respect to the personnel in NAPCA.

Mr. RUCKELSHAUS. We have a bill that has passed the Senate that will provide an orderly option of transfer from the Public Health Service to the civil service, and I think it is vital that this bill pass the House. It is presently in Congressman Staggers' committee.

I have recently talked to him about the great need that we have for the passage of this bill. I recognize that there are personnel problems in the commissioned corps. We have about 600 people in the commissioned corps coming over from HEW to the Environmental Protection Agency

We are trying to do everything in our power to see that this transition is as orderly and as free from dislocation as possible. I have talked to a number of people in the commissioned corps coming over and have discussed with them their problems, and have given them every assurance that we would do everything in our power to see that the transition was as smooth as possible in the hopes that they could assume their new duties in the Environmental Protection Agency with as little dislocation as possible.

Again, I think it is vital to the success of the Agency in terms of this problem which you have pinpointed that the legislation pass the House as it has the Senate.

Senator MUSKIE. Another problem that we have a special interest in in this committee is Biscayne Bay. We held hearings in connection with the Turkey Point powerplants there.

Biscayne Bay is a unique resource. We were disturbed in our hearings several years ago that the delicate ecological balance involved in Biscayne Bay wasn't fully understood in terms of the need to protect it and its fragility.

It has been a continuing ecological issue ever since. I am interested in knowing whether you focused on this problem and whether you intend to continue the data collection and enforcement activities in connection with the Turkey Point plan.

Mr. RUCKELSHAUS. Senator, I have focused on that problem only in that I am aware of it and aware of its broad ramifications.

We will continue with the data collection and the ecological problems involved in the bay itself, and we will continue with the enforcement procedures as in the past.

I cannot speak with great knowledge and detail about the particular problem of Biscayne Bay, but I know that it is a problem of great importance to the country as well as to the immediate area.

I can assure you that we will give it all of our attention as quickly as possible.

Senator MUSKIE. I would like to particularly urge you in this connection to press forward with a study of thermal effects, as the polluters prefer to call them. Obviously, there is a potential for great benefits as well as great harm. There is a tendency, sometimes, to focus on the benefits rather than the harm, especially when the harm is difficult to spell out. We need to know a great deal more.

The Biscayne Bay area, I think, is a particularly good illustration of the fact that there is a tendency to focus on the benefits.

This is a shallow bay. It is a unique one. The danger of tipping it from a subtropical to a tropical water, with all of the ecological con-

sequences that might follow, is a question that we ought to think about seriously before we permit that balance to be tipped.

It may be a good thing to tip it, when we know what the results will be. But we don't know.

There is a tendency to think of thermal pollution to be to advantage unless someone is able to prove some specific disadvantage. Then it is too late.

Mr. RUCKELSHAUS. Senator, I can assure you that I do not believe that thermal pollution is necessarily an advantage.

Obviously, the change in the ecology that can be caused by thermal pollution can be substantial. It can be substantially greater than one might believe just by talking about the degrees of increase in heat in the water.

The use of the Refuse Act to get thermal pollution defined as refuse, I think, gives us another tool to get at the problem of thermal pollution and be able to take a look at it and see what the effects will be before any further thermal pollution is permitted.

I think we should continue to take that approach.

Senator MUSKIE. An attorney from the Florida coast may think that anything that would warm up the water on the Maine coast couldn't be anything but good. Unfortunately, there is an ecology geared to the current temperature of the water off the Maine coast, also, that shouldn't be destroyed.

It wouldn't necessarily be good to warm it up. There are some days in the summertime when I think I could use a little more heat off the Maine coast, but we have to be careful about it.

Let me turn to the air pollution bill which is pending in Congress. It is unusual, I think, to raise issues in pending legislation in a hearing of this kind, but I think it is unavoidable.

Secretary Richardson has submitted a letter to the Congress. It has been considered by the conference and debated there. I think to the extent that we can provide further enlightenment or clarification of what that letter means in terms of the administration position it would be helpful.

The first question I would like to ask you is this: It is with respect to auto emissions. As you know, the provisions in the legislation are geared to the health effects of auto emissions and designed to avoid unfavorable health effects.

Do you believe that the degree of control which is proposed by the act is necessary to achieve protection for the health of people—deadlines, timetables, and so on?

Do you think that that degree of control is essential to the protection of the public health?

Mr. RUCKELSHAUS. Senator, I think that, again, from the letter, it is clear by the support for the 1975 deadline as an ideal that the administration does very definitely feel that these deadlines are important for the preservation of the health of the people of this country.

Senator MUSKIE. I would then like to move from that point to the question of the warranty provisions in the bill. Secretary Richardson, as I understand it, and you can clarify this, has proposed a defect warranty rather than a performance warranty.

Is my understanding correct?

Mr. RUCKELSHAUS. I think he has proposed that in the bill there be a defect warranty and that the provision as to a performance war-

ranty be left to the discretion of the Administrator when appropriate tests were available to test the performance of the devices so that we could—

Senator MUSKIE. But that is what the bill provides. The bill provides for a performance warranty to be implemented when the Secretary has developed the necessary test procedures.

Mr. RUCKELSHAUS. But it is my understanding from reading the letter that the position is that we should have a defect warranty to begin with, and that this should be established immediately rather than waiting for a performance warranty to depend on the appropriate tests being developed by the Administrator. Then the Administrator should be given the discretion to increase the coverage of the warranty as the appropriate tests become available.

Senator MUSKIE. That is an important clarification that we have this morning, if that is correct.

Mr. RUCKELSHAUS. The last paragraph on page 4, Senator, where it talks about the warranty, says:

We favor including a provision in the bill which would authorize the Secretary to impose warranty requirements on the manufacturers as he determines that such requirements can be justified on the basis of adequate operating knowledge that has become available.

Senator MUSKIE. On page 3 of his letter there is this:

We regard the 50,000-mile warranty as inappropriate and unrealistic in the light of known technology and experience.

Then on page 4 there is the language which you read in part.

I would like to add this sentence which follows what you read.

Such warranty requirements could be made more stringent as more knowledge and experience in these matters are gained, with a view towards progressing to a goal of the 50,000-mile warranty requirement on all new automobiles.

We also favor requiring from the outset a manufacturer's warranty against defects in material and workmanship.

That last sentence, of course, raises no issues between the Secretary and the legislation.

The question, then, as I understand it, that is raised by the Secretary's letter is whether, in connection with the 1975 deadline we require a performance warranty of 50,000 miles.

Am I correct, then, in interpreting his letter as saying that there ought not to be that kind of a warranty in connection with that deadline?

Mr. RUCKELSHAUS. I think that only would be a correct interpretation, Senator, in the event that there were appropriate tests available so that they could be promulgated by the—

Senator MUSKIE. No, the legislation provides for that. In other words, the warranty becomes effective when the Secretary has decided that he has the necessary test procedures to measure the performance.

Mr. RUCKELSHAUS. Then there would be no deadline in 1975.

Senator MUSKIE. The deadline applies to the requirement that the automobile meet the standards set out in the bill. The warranty could be made to apply to that deadline or sooner if the Secretary has developed the test procedures.

It is that provision of the bill to which the Secretary has taken objection, as I understand it. That gives him the discretion to decide when he has the test procedures.

If that is the only condition, then he is in agreement with the bill?

Mr. RUCKELSHAUS. I assume the essential problem with the bill that is enunciated in the letter has to do with the availability of these test procedures and the possibility of getting the procedures by 1975, and that the Secretary, rather than being locked into a schedule as to when it should be done, feels it should be left more to his discretion.

Senator MUSKIE. Let me read the language of the Senate bill. This language, I think, was offered by Senator Hart on the floor of the Senate. We accepted it.

Within 90 days after the Secretary shall have established feasible methods and procedures for making tests as required by subsection (b), every new vehicle or new vehicle engine introduced in commerce for sale or resale shall be warranted by the manufacturer to be designed, built and equipped so as to conform with applicable regulations issued under this Title, and shall further be warranted to remain in conformity with such regulations for the lifetime of such vehicles or engines if properly maintained, serviced and operated. Operation for 50,000 miles shall be taken as the basis for the lifetime of the vehicle or engine under this section.

As a condition to the obligation of manufacturers to correct deficient performance, manufacturers may require the ultimate purchaser and subsequent purchasers of such vehicles or engines, (a), to provide reasonable evidence of the time when such vehicles or engines were first placed in regular service; and, (b), to provide reasonable evidence that prescribed maintenance, adjustment and service requirements and schedules were observed.

In the language which I just read there is no arbitrary deadline with respect to the warranty.

We say first that the Secretary shall establish the tests and he shall determine when he has such tests, and only then, or within 90 days thereafter, shall the warranty apply.

Second, we provide, because maintenance is obviously a part of the efficient performance of an engine, that the manufacturer may stipulate the maintenance, service and operational requirements that the operator must meet in order to take advantage of the warranty.

As I understand from the Secretary's letter, he takes issue to that language in the bill. Yet, you interpret his position so that when you finish you seem to be in agreement with the language in the bill. That is all I want to have clarified.

Mr. RUCKELSHAUS. I interpret his language on page 4, Senator, in that paragraph that I quoted, to mean what it appears to mean as I read it. That is that the Secretary believes that once adequate test procedures are available up to 50,000 miles, or the lifetime of the car, if that is the way it is defined in the warranty, to test the devices, the Secretary would be given discretion at that point to provide for a 50,000-mile warranty.

Senator MUSKIE. Can we interpret his letter as endorsing the provisions of the Senate bill?

Mr. RUCKELSHAUS. I think, Senator, that the bill under his interpretation is subject to some ambiguity in that maybe the development of appropriate tests is not as close as we might think, and there might be some steps in terms of arriving at the final 50,000-mile warranty prior to issuing a final warranty on the 50,000-mile figure.

Senator MUSKIE. Mr. Ruckelshaus, you are a pretty good man with language, but you haven't really given me a very clear distinction between what the Secretary is proposing and what is in the Senate bill.

As I read the Secretary's proposal, and if we were to adopt whatever language he would offer to implement it, we could expect maybe

no warranty at all, or a warranty of only 10,000 miles, or a warranty of only 20,000 miles, depending upon what the Secretary's estimate of the technological progress of the industry might be.

The deadline is meaningless, in my judgment, unless it is geared to an effective technology. If there is no warranty at all, that deadline is meaningless, because the industry could produce some hardware that could meet the test for 5,000 or 10,000 miles, but of what use is that to the operator or to the public?

Here we have a publication of the Automobile Manufacturers Association. Let me give you the figures on how long a car stays on the road once it leaves the showroom. This is for the year 1969.

Automobiles under 1 year of age, 6,467,000. The peak is automobiles of 3 to 4 years of age, with 8,700,000. At 10 years, it has tapered down to 2.5 million. It gets down to an insignificant figure, maybe, of half a million in 15 to 16 years.

So a significant proportion of each year's production of new cars is on the road for over 10 years, and not for 50,000 miles, but for several times 50,000 miles.

So when we speak of a warranty of 50,000 miles as representing the useful life, we are being a little unrealistic, but only because we tried to adjust to what might be considered a realistic estimate of the capability of the industry in developing the technology. So the 50,000-mile figure is a compromise.

When I read the Secretary's letter and contemplated the possibility that that might be reduced to 40,000, 30,000, 20,000, 10,000, or 5,000 miles, then I was disturbed because then the deadline is meaningless, in my judgement.

There has been some discussion as to whether the Senate bill means any significant change on the emission of pollutants into the atmosphere.

Let me give you a figure. The uncontrolled automobile will discharge into the atmosphere 8.7 billion gallons a year in the form of hydrocarbons. Controls for 1971 would reduce that to 1.4 billion to 1.6 billion gallons of gasoline into the atmosphere a year. Those are the current controls.

The 1975 standards we are talking about would reduce that to 140 million to 160 million gallons per year. That is the order of magnitude.

To the extent that you dilute the effectiveness of the device by tinkering with the warranty and permitting a lower standard of performance, to that extent you raise that figure toward the higher ones. That is the nature of the problem.

The warranty provisions haven't been focused on much in the public discussion or in the Senate debate. But I think they are key to the effectiveness of the deadline.

Mr. RUCKELSHAUS. Senator, I don't disagree with you and I don't think the letter does. I don't think there is any intention on the part of the Secretary in this letter to dilute the importance of having a device that works and having some way of insuring that it works.

The experience that they have had, as I understand it, in California, of automobiles after they have had an emission control device on them for a number of months, is that for some reason some of the emission devices don't seem to be working as well as they did at the beginning, while others are working above the standard. It is because of a lack of technology to discover just what it is that makes one of

these devices work or not work that the provision is suggested by the Secretary that we push again in this area as hard as we can to develop the technology to insure that the devices do work, but that we do so again in terms of what can realistically be expected.

I don't believe that this means by any stretch of the imagination that the goal of the 50,000-mile warranty, the goal of a total warranty for the life of the car, is not something we wouldn't try and get to as quickly as we could.

I certainly agree with you that a device that works the day it goes out of the dealer's office and doesn't work a week later is useless in terms of controlling emissions into the air.

Senator MUSKIE. Let us be perfectly clear. In connection with the warranty we have two developments. First, is the development of a test. Second, is the development of the hardware.

The development of the test is left to the Secretary's discretion in the Senate bill. We leave to him the development, and to decide when he has one that works.

The date for development of the hardware, in my judgment, is the deadline of January 1, 1975. If you agree with me that the deadline ought to apply to the development of the hardware, and that the Secretary ought to have the discretion to develop the test as rapidly as possible and decide when he has it, then we are in agreement on the Senate provisions of the bill.

Mr. RUCKELSHAUS. If that is your interpretation of the way it presently reads, I think the Secretary's interpretation when he wrote the letter was somewhat different.

But if it is left to the discretion of the Secretary to determine when an adequate test is available so as to make it advisable that a 50,000-mile warranty, or any kind of warranty for that matter, can be placed on the device, then we are in agreement.

Senator MUSKIE. Would you agree with me that the target ought to be a 50,000-mile performance capability by January 1, 1975?

Mr. RUCKELSHAUS. I would go you a step further, Senator. I think the target ought to be a warranty for the device to do what it says it does as quickly as possible.

Senator MUSKIE. Not later than January 1, 1975, by law?

Mr. RUCKELSHAUS. Again, everyone, I think, wants to achieve the target date.

Senator MUSKIE. We are talking about the provisions of this bill, Mr. Ruckelshaus. This is an issue in conference. It is one in which the administration's position is going to be discussed and debated. It already has been. There is confusion as to what the Secretary's letter means.

You seem to have said at some point this morning, and I think you are capable of saying it more clearly, that you are in agreement that by January 1, 1975, the industry ought to be required to develop a clean engine with a performance capability of 50,000 miles.

That, I think, is a fairly simply stated proposition.

Mr. RUCKELSHAUS. Yes; I say we fully support the provision of the bill which sets 1975 as the target date for the —

Senator MUSKIE. For 50,000-mile performance.

Mr. RUCKELSHAUS (continuing). For the development of the hardware. To set the target date as 1975 for the development of a

50,000-mile warranty is also something we support. There may be some disagreement as to the capability of arriving at that kind of performance by 1975.

Senator MUSKIE. I suspect that if we set the target as 10,000 miles that might be achievable today. So the two are tied together inevitably. You have to have both to make the target meaningful.

You still don't say whether or not the requirement in the bill should be that by January 1, 1975, the industry must produce a clean vehicle with a clean performance capability of 50,000 miles.

Is that the intention of the Secretary's letter?

Mr. RUCKELSHAUS. The intention of the Secretary's letter is that the 1975 target date is a good one, and that there ought to be a 90 percent reduction of the pollutants that come from the emission of the internal combustion engine by that date.

It is also true that in the warranty provision the Secretary fully supports a 50,000-mile warranty if, again, that is technologically feasible by 1975.

The question of the appropriate test procedure is one that has to be within the discretion of the Secretary. So the answer to your question is yes, that they do support 1975 as the target date.

Senator MUSKIE. Do you support the Senate provisions with respect to warranty?

Mr. RUCKELSHAUS. If the Senate provisions mean the same thing as what the Secretary has said in the first sentence—

Senator MUSKIE. Let me give you my conclusion on that score, and I give it to you because I know you are capable of saying precisely what you want to say.

As I understand what you have said, what the Secretary proposes does not mean what is in the Senate provisions. I don't think it is necessary to go around the circle again. I have tried to understand what you have said.

I am not trying to put words in your mouth. But my conclusion from what you said is that the Secretary's letter does not mean what is in the Senate bill.

Senator BAKER. Mr. Chairman, would the Senator yield briefly so I can make sure I can understand what you are both saying?

Senator MUSKIE. Yes.

Senator BAKER. It is my understanding of the Senate bill which is now in conference, and this provision was the subject of a good deal of discussion yesterday in the committee hearing, that the Senate bill which is in conference does not provide a January 1, 1975, effective date for the 5-year, 50,000-mile warranty but, rather, that the Senate bill provides that the Secretary will determine adequate and appropriate test methods and when he does then there will be a 5-year, 50,000-mile warranty which, unless I misunderstand my own words, falls about halfway between what Mr. Ruckelshaus and Senator Muskie are describing.

Mr. RUCKELSHAUS. Senator, I think that is precisely what the Secretary's letter says on page 4 of the letter, where he says what we favor.

Senator BAKER. I think the Secretary might be amazed at how many interpretations have been put on the letter.

Mr. RUCKELSHAUS. I did not write this letter.

Senator BAKER. Mr. Chairman, I have no desire to confuse the issue. I just want to make sure that this particular feature is clearly in

the record because I think it is so far unclear and I think it is a matter we are going to have to thrash out in conference.

I think there is a good bit of work yet to be done on the warranty provision.

Senator MUSKIE. Let me refer briefly once more to two sentences in the Secretary's letter, which I think are the basis for the misunderstanding, if there is one, as to what it means.

There is the sentence on page 3 which reads:

We regard the 50,000-mile warranty as inappropriate and unrealistic in the light of known technology and experience.

My comment on that is we understand that we don't have the technology today to achieve the January 1, 1975, deadline. We are not talking about what is known today.

What we are talking about is what must be done to meet the public health requirements. I think that must have been clear to the Secretary. So his use of that language in that sentence is disturbing in connection with the warranty.

The other is this: "Such warranty requirements could be made more stringent as more knowledge and experience in these matters are gained, with a view toward progressing to a goal of a 50,000-mile warranty requirement on all new automobiles."

To the extent that that sentence speaks of requirements that could be made more stringent with 50,000 miles as the goal, I assumed that the Secretary was talking about a warranty that would be less stringent; meaning, possibly, a 5,000, 10,000, 15,000 or so on, mile warranty.

I don't know what other interpretation to place upon that sentence.

It is because of those two sentences that it was my feeling that the Secretary's letter implied a concern with technological capability as now known in a way that diluted his commitment to the deadline for January 1, 1975.

That is my gut reaction to the letter.

Senator BAKER. If you will yield one moment further so that my understanding of it will be on the record at this point as well, I would say once again that I feel that the Senate version as amended before by Senator Hart and the Secretary's letter admit of more than one interpretation, and that I think we need to tighten up these provisions, so that we are all playing off the same sheet of music.

I would point out as an example of the susceptibility of more than one interpretation that it is my understanding of the Senate version that the automatic trigger is the development of a test and that the warranty provision of the Senate version cannot go into effect until such a test is devised. Rather, under the Secretary's letter, he suggests that we can go ahead and make a lesser warranty if the technology will only permit of a lesser warranty, looking toward the time when finally we can have 5 years and 50,000 miles, or a warranty of even greater magnitude than that, possibly to encompass the whole life of the automobile.

I don't suggest that that is the correct or certainly not the only interpretation to be placed on either the Senate bill or the Secretary's letter. But I think it is one.

I think in conference we had better get about the business of trying to state what we really intend.

Senator MUSKIE. I, obviously, have taken more than my share of the time.

Mr. RUCKELSHAUS. Senator, I think that is precisely what the letter says. In the last sentence of the letter on that particular subject, where he talks about the need for an immediate manufacturer's warranty against defects in material and workmanship, he does feel that the bill as written might preclude the possibility of that warranty being immediately effective as long as there wasn't an appropriate test available for a 50,000-mile warranty.

Senator MUSKIE. There is no question about defects in material and workmanship. The hardware may not be a device. It may be engine modification.

How, then, do you relate a warranty of defect to that part of the engine which is supposed to produce a clean performance? That is why a warranty defect doesn't work in this connection unless it happens to be an add-on device. So performance warranty is important.

Again, I don't want to belabor it. I guess we will each have to take such comfort as we can out of your testimony. I am going to be inclined to accentuate the positive and say in my arguments to the conferees, "By God, Mr. Ruckelshaus wants a strong warranty provision."

I yield to Senator Dole.

Senator DOLE. I have no questions. But I would observe this may become the second most famous letter of this administration.

Mr. RUCKELSHAUS. I can assure you, Senator, that the next letter I testify on up here will have my signature on it.

Senator DOLE. Secondly, I have been impressed with your answers to questions. I am ready to vote for either you or Senator Muskie at this point.

Thank you.

Senator MUSKIE. Thank you very much, Senator Dole.

The CHAIRMAN. For what office?

Senator MUSKIE. I am going to give that further thought.

The CHAIRMAN. Mr. Spong.

Senator SPONG. You and Senator Muskie have massaged the Senate bill rather thoroughly Mr. Ruckelshaus, and I am a little hesitant to ask one more question about it.

However, I don't believe it has been covered thus far in the hearings.

The Senate bill, on page 78, controls the time that an application for extension may be made insofar as the 1975 cutoff date is concerned. Subsequent to Senate passage of the bill, and this was discussed on yesterday, the National Academy of Sciences came into the picture.

I would like to ask you this: Assuming that it is possible for the National Academy of Sciences to make a finding within a reasonably short period of time, would you comment on the provisions in the bill for an application for extension which bill permits an application to be filed as early as January 1, 1973?

In other words, I wonder if it would be possible for a period to exist in which there would be a finding that the standard could not be met and yet the industry could not make application for the extension and know where they stand.

Would you comment on that?

Mr. RUCKELSHAUS. Senator, I think, again, that in the letter it is made clear that the setting of a deadline as to when a manufacturer has to come in and request an extension makes it difficult for the Administrator of the Environmental Protection Agency to have the requisite flexibility to decide the credibility of the request for an extension.

It seems to us there is a natural regulator that exists in the request on the part of the automobile manufacturer in that the earlier they come in and ask for an extension, the less credible is going to be their request.

So there is going to have to be, it seems to me, a rather rigid proof on the part of the automobile industry that they have to get an extension as of a specific date in order to be able to tool up to produce automobiles by 1975.

Again, I think to set a time schedule within which that might be done in the act might reduce the flexibility that the Administrator would have in determining whether such a request should be given consideration and should be granted.

So I think, again taking into account all of the kinds of problems that might exist, that particular date should be left to the discretion of the Administrator. For instance, if this were true, and there were no deadline in the bill, and the automobile industry came in the 1st of January, 1971, and said, "We are not going to be able to do it by 1975; we want a 1-year extension," if any Administrator were to be so intrepid as to grant an extension at that point, I am sure—

Senator SPONG. He might as well have written the letter.

Mr. RUCKELSHAUS (continuing). He would be very quickly called before this committee to justify it.

Senator SPONG. Yesterday, late in the hearing, Senator Bellmon, I believe, talked to you about regional offices and some special interest he has.

The regional offices of the National Air Pollution Control Administration and the Federal Water Quality Administration have had overlapping jurisdictions.

Do you have any views as to the desirability and feasibility of consolidating these regional operations? We heard a little bit about manpower, but can you tell us now the number of regional offices you propose to maintain?

Mr. RUCKELSHAUS. Senator, this, again, is the kind of thing that an Administrator, it seems to me, before a final decision is made, would seek the advice of this committee in both Houses on before a final decision.

I believe that if we are going to be successful as an agency we will have to develop a strong regional concept within the agency, particularly in the three problems of air, water and solid waste.

At present, the water regions are along basin lines and the air regions are drawn along State lines. Air is collocated with the 10 regions announced last year by the President for the Federal Regional Centers.

It is my present intention to collocate all the regional boundaries of the various media that are involved in the new agency in the 10 regional centers.

I recognize that in your State, in Charlottesville, this might cause some dislocation problems.

Senator SPONG. Now that you mention it, I might say to you that lately in Virginia everything seems to be moving to Philadelphia. I sort of agree with W. C. Fields. On his tombstone he had inscribed "I would rather be here than in Philadelphia."

I know you will be mindful of the exodus that has taken place. I am primarily interested in the overlapping. I think one of the things all of us look forward to is a consolidation of these efforts.

I know that additional manpower is needed in some of these agencies. I think all of us would have regrets if we just end up with more different people doing different things.

Mr. RUCKELSHAUS. I think the strong regional administrator concept—and we will be shortly announcing moves in this direction—is very important to make this agency successful. Further, we have to get really good people at the regional level who have knowledge of the States in their region and who have the ability to talk to the people at the State level and tell them what the programs are and convince them of the necessity for having a strong regulatory policy at the State level. It is very necessary.

We have to have clear delegations of authority to the regional administrator so that they know what their powers are, and not as now, where they have the responsibility to do something and really don't have the power to do it.

We have to make sure that not only do they get the heat, but that they have the power to do something about reducing the heat. That is the direction in which we want to move.

SENATOR SPONG. Mr. Chairman, I do want to commend Mr. Ruckelshaus for his appearances both yesterday and today.

I believe you have been questioned by about one-fifth of the Senate in the last 2 days. I, for one, will take what I conceive to be the better part of your testimony back to the conference, along with Senator Muskie.

Thank you.

The CHAIRMAN. Who among our members or our colleagues has questions? I shall have questions to conclude.

Senator Muskie, would you proceed at this time?

Senator MUSKIE. Just one, and I would want a very brief answer.

Secretary Richardson proposed continuing existing law which exempts new vehicles made for export from emission standards.

In 1968, we exported cars to at least 86 countries. That is according to the Automobile Manufacturers Association. I like to use that as an authority whenever I can.

Is it really right for us to adopt a posture of exporting a form of pollution that we will not accept for ourselves?

Mr. RUCKELSHAUS. Senator, I think one of the things that I have discovered rather rapidly in this area is that the awareness of the problems of pollution and degradation of our environment is a worldwide phenomenon, and that in most every developed country of the world there is a growing awareness of the problems of the environment and the need to do something about them.

I think that if domestically we are going to ask our industry to take some rather serious and expensive steps to abate pollution, which is exactly what I propose to do, that it is also incumbent upon this agency and upon the administration and upon everybody responsible, to attempt to encourage the other developed countries of the world and, indeed, all of the countries of the world, to take the same kinds

of steps so that we do not put our domestic industry at a competitive disadvantage with industries in foreign countries.

Senator MUSKIE. That is an interesting point. Why should we not say to them, then, that they ought not to sell their shoes to us in this country until they have the same wage standards that we have here?

Mr. RUCKELSHAUS. That is the subject for another hearing, Senator.

Senator MUSKIE. It is the same philosophy. I don't really want to get you engaged in the trade issue. I couldn't help throwing it in.

I remember when I went over to Germany in 1962 on an environmental mission that Chancellor Erhardt and President Johnson had arranged. I remember being told by the Germans how closely they had followed the hearings in this committee on automobile emissions.

They were looking to our policy to give them the lead and perhaps to stimulate the pressures necessary for them to meet our standards.

I saw no reluctance on their part. They have to meet American standards in the production of their own cars for export to the United States.

I am not trying to be picky, but I think it is a mistake, and I am certainly going to urge the conferees to accept cars for export.

Senator BAKER. Mr. Chairman, once again I feel this is an area where our committee will have to direct some of our attention and thoughts. I don't mean this to be critical or cynical, but to say that we will require American emission control devices on cars for export smacks of being a little paternalistic, it seems to me, because it is entirely possible that other countries—and I am thinking now principally of Japan—may decide that the objective of cleaning up their atmosphere will be accomplished with a different set of devices and a different design and technique than we are doing in the United States.

I wonder, rather, if a more appropriate way to approach it might be that we bar from export any vehicle that does not comply with the statutes of that country rather than the statutes of this country.

Senator MUSKIE. I am reading a great deal these days about the advice foreign countries are giving us about our trade policies. We don't regard that as paternalistic, and I don't regard this as paternalistic.

Senator BAKER. It depends on what you are talking about. If it imposes a hazard to the people in Tennessee, I would call it that.

Senator MUSKIE. I don't think calling it one thing or another means very much.

Our cars, because they are larger and have more power, are greater polluters than most foreign-made cars.

I just don't see any reason to unleash them upon the world when we are reluctant to adopt them here. That is my position.

I didn't raise the question to try to persuade the administration to have another point of view. I simply wanted to raise it for the record.

May I say in closing, I have several pages of questions that could be usefully put. I don't intend to.

I was interested in getting the flavor of your proposed solution, the depth of your concern, and the dimensions of your knowledge.

The concern of this committee is that we achieve the objectives that we have laid down, and I think that is your concern, too.

Mr. RUCKELSHAUS. Thank you, sir.

Senator MUSKIE. I will give you all the support I can, Mr. Ruckelshaus.

Mr. RUCKELSHAUS. Thank you, Senator Muskie.

The CHAIRMAN. Mr. Ruckelshaus, we have a valued member of this committee, Senator Gravel, of Alaska, who hoped to be present for the hearing today. He has not returned from his State and has asked the Chair to ask your response to a question that is of interest to Alaska.

You will recall that yesterday the SST was a matter of discussion. Senator Gravel has asked that I speak to you about what you consider to be your responsibility in connection with the trans-Alaska oil pipeline. The SST causes a problem in one area, and the Alaskan pipeline problem may be in another area.

Have you any comment or predisposition on this matter?

Mr. RUCKELSHAUS. Senator, I have not focused directly on that problem. It is not a problem that is specifically delegated to the Environmental Protection Agency. I have read much of the testimony and efforts by those involved in the trans-Alaska pipeline situation to give every consideration to the environmental impact of that project.

I also think there needs to be a continuing investigation and surveillance on the part of everyone concerned with the environment to see that every conceivable environmental protection is taken care of in that project.

The CHAIRMAN. Thank you very much.

I am certain he just wanted to indicate his interest and concern, and you have done the same. That is all we can expect this morning. You have indicated it is more an indirect contact that you will have with this problem. But apparently it is a very real problem.

Do you recognize it as such?

Mr. RUCKELSHAUS. Yes, it certainly is. I am aware of that, Senator.

The CHAIRMAN. Mr. Ruckelshaus, our committee during recent years has received what I would characterize as very extensive testimony on the need for the development of a work force that is qualified to operate and to maintain the sewage treatment plants and the resource recovery systems. Because we thought of this as a very important matter, when we had the Water Quality Improvement Act of 1970 and the Resource Recovery Act before us in 1970, we gave attention to these matters.

I think you could help us if you would tell us this morning what emphasis you would place on the implementation of the training programs, bringing into being that corps of individuals who would have the expertise and, of course, the commitment to do this job which you say needs to be done and which you propose to do.

Mr. RUCKELSHAUS. Senator, this is one of the areas in which I have already appointed a task force to look into the whole grants program for technical assistance and the educational grants that we have made in all the component agencies.

I think what we need to do is to discover what the real need is in this area. I think the committee has recognized, there is a great need for technical assistance to the States and the people who will operate these programs, and we need to zero in our grants program on precisely the area where the need is the greatest to insure that this need is met.

I know this committee has a great concern in this area, and I am hopeful that very quickly the report of the task force will show how we might make a better use of our money in the grants program to insure that the technical assistance is available.

The CHAIRMAN. You know how important this is, Mr. Ruckelshaus. In good purpose we passed the Coal Mine Health Safety Act. The success of that program rests on inspectors who go into the mines in the various fields throughout the States like West Virginia, Pennsylvania, Ohio, Kentucky, Virginia, and others.

But we don't have the persons who are qualified to do the job at the beginning, so there is a feeling that the act has failed. Well, the act hasn't failed. It is an impossible job almost to bring these people into being within just a few weeks.

Are you going to have that trouble?

Mr. RUCKELSHAUS. There is a continuing effort that has been made on the part of all of the component elements coming in to provide technical assistance and training for people who can do the job that is spelled out in the statute.

We have a real need at the State level, it is my understanding now, in air pollution in particular, to provide the kind of technical expertise and assistance to take care of this job.

In the solid waste disposal area we have the same kind of problem. We just don't have enough people who know how to get the job done.

We are going to have to see that they are available.

The CHAIRMAN. Of course, we are asking for a large complement to do this job, aren't we? In connection with the inspectors, we are calling for 450 new people to come in and carry out the provisions of that act, at least in part. How many persons do you feel will need to do this job.

Mr. RUCKELSHAUS. That at this point, Senator, is very difficult for me to answer. I am in the process, as I said yesterday, of making an agonizing line-by-line analysis of the budgets of each of these agencies and listening to the people who have been involved in these programs for many years, trying to get as good a grasp as I can possibly get of just what the needs to implement all of the programs are.

Once I have gotten that grasp and once I understand better just what the precise needs are, I will be in a position to testify to this committee and to any committee in Congress to request that we be given that assistance.

The CHAIRMAN. Reference has been made to Japan several times. Japan has in its fiscal year budget \$315 million for pollution abatement on many fronts. We now have \$1.4 billion.

Would you make a comparison here? Do you think they are doing more or less than perhaps they should in relationship to what we are doing?

Mr. RUCKELSHAUS. I didn't go to Japan to the meeting that Mr. Train went to, to look at their pollution abatement system, their pollution abatement program.

But from what I have understood from talking to him and many others who were there, their program is considerably behind ours and ours has a long way to go. I think one of the things he found was that they had very precise devices to measure pollution and they knew maybe better than we did how much pollution was there.

But in terms of doing anything about it, they were considerably behind us.

The CHAIRMAN. Mr. Ruckelshaus, as we conclude the questioning, I want to come to water pollution because there are many people who feel that this is even more basic than some of the other activities for which you will have leadership.

We have had the awarding of construction grants, the awards made on the basis of State plans in reference to water pollution priorities. Yet, a General Accounting Office study indicates that the awards, at least to date, have been made on a first-come, first-served basis.

I am not sure that fulfills the intent of the act. In fact, I would say it does not. If there needs to be a correction of that procedure, which I hope there can be, what is your plan?

Mr. RUCKELSHAUS. I think, Senator, there is a need in the whole area of financing sewage treatment facilities to analyze precisely the best way we can get a total attack on the problem and not just wait for somebody to come in and apply for funds before we give them to them.

There are a number of States which have adopted prefinancing programs that permit them to attack this problem across the board and still be eligible to receive Federal funds over a period of years.

I think we have to look at the program in terms of how can we encourage all of the States to attack the problem of water pollution on a broad scale and not just in terms of a first-come, first-served basis, because we then have a number of municipalities and areas which have not gotten treatment facilities that are adequate and we are not attacking the problem on as consistent and as broad scale as I believe we should.

The CHAIRMAN. Thank you very much for your attention to the hearing from the standpoint of not only your statements but the responses to the questions that have been asked of you.

Mr. Ruckelshaus, and ladies and gentlemen, we are concluding the hearings on your nomination.

We have satisfied ourselves that there is no conflict of interest, in connection with your holdings. We are ready now to go into executive session. That might be held at perhaps a later date, Mr. Ruckelshaus.

But this committee, we think reflecting the intense interest of the Congress and the American people, has a desire to move as expeditiously and as carefully as possible in the consideration of your nomination.

I am contacting now the members of the committee who are not in the room at the present time. It is our purpose to go into executive session as we close this formal hearing today.

Again, for all members of this committee, and for those who have joined with us from other committees, we are grateful for the attitude which you have indicated, for the knowledge with which you have spoken, and for your desire, as we sense it, to do a job which needs to be done, and that you will do it as quickly as possible that we may best serve the American people and improve the quality of life of this Nation.

Do you have any further comment, Mr. Ruckelshaus?

Mr. RUCKELSHAUS. Senator, just to thank you again, as I did at the outset yesterday, for the courtesy which you have shown in ex-

pediting this hearing. I appreciate very much the opportunity to appear before the committee.

The CHAIRMAN. That will conclude the hearing.

(Whereupon, at 11:58 a.m. the committee adjourned to proceed into executive session.)

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