

JUN 9 REC'D

THE WHITE HOUSE

WASHINGTON

June 9, 1994

MEMORANDUM FOR SANDY BERGER  
SUSAN BROPHY  
SALLY KATZEN  
BRUCE LINDSEY  
SYLVIA MATHEWS  
KATIE MCGINTY  
JACK QUINN  
CAROL RASCO  
ROBERT RUBIN

FROM: LLOYD CUTLER *LNC*  
STEPHEN NEUWIRTH *SN*

SUBJECT: 3:00 p.m. meeting today on Congressional requests for information concerning the White House role in agency rulemaking

The purposes of today's meeting are (1) to review the Administration's policy on the confidentiality of discussions between the White House and Executive Branch agencies on rulemaking and regulatory issues; and (2) to determine what action, if any, the White House should take in response to a written request to EPA from Senator Baucus seeking detailed information on the National Economic Council and its role in any EPA rulemaking, regulatory or policy matters since the start of the Administration.

Background

As you know, Senator Baucus, Chairman of the Senate Committee on Environment and Public Works, has been investigating EPA's promulgation of rules for compliance with statutory reformulated gasoline (RFG) standards under the Clean Air Act. In May, the Senator sent to the White House written requests for information concerning what role, if any, the National Economic Council played in EPA's rulemaking process (including what contacts the White House had on the RFG issue with the Government of Venezuela and the Venezuelan oil company, PDVSA).

The White House provided Senator Baucus with comprehensive information on the involvement of NEC and other White House staff on the RFG issue, as well as information about the involvement of other offices in the Executive Office of the President (NSC, OMB and USTR). We explained that this information was subject to claims of executive privilege, but was being provided in a spirit of cooperation.

The White House also provided a description of the NEC's coordinating role in the Executive Branch. But we declined to provide a list, requested by Senator Baucus, of all EPA regulatory issues, during the period February 1993 to the present, in which the NEC was involved and the dates and participants of all meetings involving NEC that included discussions of EPA regulatory issues. We explained our view that this broad and extremely burdensome request is not appropriate in relation to the matter under investigation, and is totally unrelated to the RFG issue.

Senator Baucus has now directed a new set of broad requests to EPA, seeking comprehensive information on the relationship between the NEC and EPA since the start of the Administration. Senator Baucus now requests production by EPA of:

- complete and unredacted copies of all correspondence, memoranda, reports, or notes received by EPA from the NEC;
- a list of all NEC meetings attended by EPA staff during which matters involving EPA were discussed, including the dates, EPA staff in attendance, and the subject of the discussion; and
- complete and unredacted copies of all notes, minutes, memoranda, reports, or correspondence prepared by EPA personnel pertaining to NEC meetings.

The approach taken by the Administration in responding to this request will set a precedent that could have broad ramifications for other policy councils in the White House.

We have attached copies of the White House correspondence with Senator Baucus, as well as Senator Baucus' most recent request to EPA. The White House responses to Senator Baucus should be treated as confidential and should not be distributed.

JUN 9 REC'D

THE WHITE HOUSE  
WASHINGTON

May 12, 1994

Honorable Max Baucus  
Chairman  
Committee on Environment and Public Works  
United States Senate  
Washington, D.C. 20510

Dear Mr. Chairman:

This letter responds to your letter to Robert Rubin, dated April 28, 1994, concerning what role, if any, the National Economic Council (NEC) played with respect to the Environmental Protection Agency's promulgation in December 1993 of a final rule on reformulated gasoline.

As an initial matter, it should be noted that the NEC is a Cabinet-level council established by President Clinton pursuant to Executive Order 12835 (January 25, 1993). The membership includes the President; the Vice President; the Secretaries of State, the Treasury, Defense, Agriculture, Commerce, Labor, Housing and Urban Development, Transportation and Energy; the Administrator of EPA; the Administrator of the Small Business Administration; the Chair of the Council of Economic Advisers; the Director of the Office of Management and Budget; the United States Trade Representative; the Assistants to the President for Economic Policy and Domestic Policy; the National Security Adviser; and the Assistant to the President for Science and Technology Policy.

The principal functions of the NEC are to coordinate the economic policy-making process with respect to domestic and international economic issues; to coordinate economic policy advice to the President; to ensure that economic policy decisions and programs are consistent with the President's stated goals; and to monitor implementation of the President's economic policy agenda.

Pursuant to Executive Order 12835, the NEC staff is a White House staff group headed by the Assistant to the President for Economic Policy. The staff is responsible for carrying out the day-to-day tasks involved in coordination and integration of Administration economic policy.

In responding to your letter, we first set forth a skeletal chronology of events bearing on the questions in your April 28 letter, and then provide answers to those questions. The

information below is subject to claims of executive privilege, but is provided in a spirit of cooperation. In providing this information, we do not waive any such claims of executive privilege and reserve the right to assert such claims in the future.

In 1991, 1992 and 1993, EPA promulgated several proposed versions of a rule on compliance with statutory reformulated gasoline (RFG) standards. We understand that during the fall of 1992 and during 1993, EPA officials held a series of meetings -- including meetings with representatives of Petroleos de Venezuela (PDVSA), the Government of Venezuela, domestic refiners and officials of other agencies -- to discuss the proposed rule. We understand that officials of the State Department and the United States Trade Representative participated in discussions on the RFG issue with representatives of Venezuela and PDVSA during this period.

At the request of the Ambassador of Venezuela, W. Bowman Cutter, Deputy Assistant to the President for Economic Policy and a principal point of contact in the White House for international economic policy issues, met on December 6, 1993, with the Ambassador and two other Venezuelan government officials, and Venezuela registered its concerns -- including potential claims under the General Agreement on Tariffs and Trade (GATT) -- regarding the RFG issue.

On December 13, 1993, Sally Katzen, Administrator of OMB's Office of Information and Regulatory Affairs, met with representatives of PDVSA and discussed the Venezuela RFG issue.

On December 14, 1993, Mr. Cutter convened a meeting composed largely of deputy level officials to discuss the Venezuela RFG issue. The RFG rule under consideration by EPA implicated international economic and trade issues of concern to the Department of State and the United States Trade Representative (USTR). The purpose of this December 14 meeting was to allow an airing of issues arising from the different perspectives of the interested agencies. EPA reported that a court-ordered deadline of December 15, 1993, for promulgating a final rule would preclude resolution of the Venezuela RFG issue before the final RFG rule would be promulgated, but that EPA wanted to continue to meet with officials from Venezuela after the rule was promulgated. It was agreed that the State Department would advise Venezuela officials that EPA wanted to continue discussions notwithstanding the issuance of a final rule.

On December 15, 1993, EPA announced the promulgation of a final RFG rule. At the press conference announcing the rule, an EPA official noted that EPA was still considering the Venezuela RFG issue and would continue discussions with PDVSA.

On January 14, 1994, the Venezuelan government requested formal consultations on the December 15 final rule pursuant to Article XXII of the GATT. Venezuela claimed that the final rule constituted discrimination in violation of GATT, because it did not allow foreign refiners to establish individual baselines, as domestic refiners are allowed.

During February and March 1993, officials of EPA, USTR and the State Department continued discussions on the RFG issue with the Venezuelans, including a consultation pursuant to Article XXII of the GATT. This consultation was a normal procedure required by the GATT following a formal request from the Government of Venezuela.

Mr. Cutter called for an interagency meeting on the RFG issue to be held on March 14, 1994, to allow for a report on the status of EPA's continued discussions with the Venezuelans, and to provide an opportunity for airing issues with respect to steps EPA might take in response to those discussions. Mr. Cutter was unable to attend this meeting, and the meeting was chaired by Ms. Katzen of OIRA.

Ms. Katzen convened two additional follow-up interagency meetings, and one interagency telephone conference call, on the RFG issue during March and April of 1994. These meetings also addressed informal inquiries from Congressional offices regarding the Venezuela RFG issue.

On April 22, 1994, EPA promulgated a proposed RFG rule that would revise the final rule of December 15, 1993.

The NEC as a body of principals never met to discuss the Venezuela RFG issue. As noted, certain members of the NEC staff were involved in interagency meetings on the issue, meetings convened for the purpose of airing and coordinating the various agency perspectives on a matter that implicated national and international economic and trade concerns and involved a foreign government.

Set forth below are the specific answers to the numbered questions in your April 28 letter.

1. Five members of the NEC staff have worked on the Venezuela reformulated gas (RFG) rule issue: Robert E. Rubin, Assistant to the President for Economic Policy; W. Bowman Cutter, Deputy Assistant to the President for Economic Policy; Heather Ross, Special Assistant to the President; Sylvia Mathews, Special Assistant to Mr. Rubin; and Holly Hammonds, formerly Director to the NEC and the National Security Council.

2. The NEC as a body of principals never met to discuss the Venezuela RFG issue. Members of the NEC staff participated

in meetings as follows, according to the best recollections of those involved:

A group composed largely of deputy level officials met to discuss the Venezuela RFG issue on the evening of December 14, 1993, in Room 231 of the Old Executive Office Building. The RFG rule under consideration by EPA implicated international economic and trade issues of concern to the Department of State and the United States Trade Representative (USTR). The purpose of the December 14 meeting was to allow an airing of issues arising from the different perspectives of the interested agencies. Those attending the meeting were: Carol Browner, Administrator of EPA; Michael Vanderberg, Chief of Staff to the Administrator of EPA; Richard Wilson, Director for Mobile Sources, Air & Radiation, EPA; W. Bowman Cutter, Deputy Assistant to the President for Economic Policy; Heather Ross, Special Assistant to the President for Economic Policy; Samuel (Sandy) Berger, Deputy Assistant to the President for National Security; Sally Katzen, Administrator, OMB Office of Information and Regulatory Affairs; Joan Spero, Under Secretary of State for Economic and Agricultural Affairs; Ambassador Alexander Watson, Bureau of Inter-American Affairs, Department of State; and Ambassador Charlene Barshefsky, Deputy United States Trade Representative.

EPA continued discussions with the Venezuelans on the RFG issue after December 15, 1993. Mr. Cutter called for an interagency meeting to be held on March 14, 1994, to allow for a report by EPA on the status of EPA's continued discussions with the Venezuelans, and to provide an opportunity for airing issues with respect to steps EPA might take in response to those discussions, as well as the timing of any response to the Venezuelans. While this meeting did take place on March 14 in Room 180 of the Old Executive Office Building, Mr. Cutter was unable to attend, and the meeting was chaired by Sally Katzen, Administrator of OIRA. Holly Hammonds and Heather Ross of the NEC staff attended this March 14, 1994 meeting. Other attendees included Mary Nichols, Assistant Administrator, Air & Radiation, EPA; Mary Smith, Director of Field Operations & Support, Air & Radiation, EPA; Richard Wilson, Director for Mobile Sources, Air & Radiation, EPA; Joan Spero, Under Secretary of State for Economic and Agricultural Affairs; Edward Casey, Deputy Assistant Secretary of State for the Bureau of Inter-American Affairs; Kyle Simpson, Executive Assistant, Office of the Deputy Secretary of Energy; Wesley Warren, Associate Director, White House Office of Environmental Policy; Eileen Clausen, Special Assistant to the President for Global and Environmental Affairs, National Security Council; Bruce Lindsey, Assistant to the President and Senior Advisor; Barbara Chow, Special Assistant to the President for Legislative Affairs; Ambassador Charlene Barshefsky, Deputy United States Trade Representative; and Daniel Brinza, Senior Advisor and Special Counsel for Natural Resources, USTR.

After March 14, 1994, Ms. Katzen of OIRA convened two interagency meetings for agency representatives and White House staff at which the Venezuela RFG issue, including inquiries on the matter from Congressional offices, was discussed. One meeting was held in Ms. Katzen's office, Room 350 of the Old Executive Office Building; the second meeting was held in Room 180 of the OEOB. Sylvia Mathews attended both of these meetings for the NEC; Heather Ross of the NEC attended the second of these meetings.

Ms. Katzen also chaired an interagency telephone conference call on the Venezuela RFG issue on April 20, 1994. Robert Rubin, Heather Ross and Sylvia Mathews of the NEC each participated in this telephone conference call.

3. At the request of the Ambassador of Venezuela, Mr. Cutter met on December 6, 1993, with the Ambassador, the Economic Counselor of the Embassy of Venezuela, and the Minister of Energy of the Government of Venezuela. The Ambassador requested the meeting so that Venezuela could register its concern regarding the reformulated gasoline issue.

At the meeting, the Ambassador described Venezuela's point of view regarding the issue. In particular, the Venezuelans argued that if EPA were to adopt a rule that would not allow foreign refiners to establish individual baselines, as domestic refiners would be allowed, this would amount to discrimination in violation of the GATT.

Mr. Cutter asked at the meeting whether the Department of State and EPA were aware of the nature of Venezuela's concern. Mr. Cutter was told that the Venezuelans had been in frequent contact with both agencies throughout much of 1993 and that both agencies were well aware of the issue. Mr. Cutter thanked the Ambassador for providing this information and concluded the meeting.

This December 6 meeting was in no respects unusual. In addition to his responsibilities as day-to-day manager of the NEC staff, Mr. Cutter has functioned within the White House staff as a principal point of contact for international economic policy issues.

Neither Mr. Cutter nor other members of the NEC staff attended any other meetings with Venezuelan government officials or representatives of PDVSA concerning the Venezuela RFG issue. We understand, however, that representatives of Venezuela did meet regarding this issue with officials of various agencies of the United States Government.

4. Sally Katzen of OIRA met with representatives of PDVSA on December 13, 1993, and discussed the Venezuela RFG issue.

OIRA is an office within OMB, which is an agency within the Executive Office of the President.

Since February 1, 1993, members of the staff of the United States Trade Representative, also a separate entity within the Executive Office of the President, met with representatives of the Venezuelan Government and PDVSA and discussed the Venezuela RFG issue on several occasions. On April 23, 1993, representatives of the Venezuelan government raised the RFG issue with USTR staff at a U.S.-Venezuela Trade and Investment Council Meeting; the issue had not been formally on the meeting agenda. During November 1993, a member of the USTR staff attended a meeting between EPA officials and representatives of PDVSA at which the RFG issue was discussed. On December 10, 1993, USTR staff discussed the RFG issue with Venezuelan Energy Minister Parra and Ambassador Sosa, Emissary of the Venezuelan President-elect. On February 11, 1994, members of the USTR staff, as well as officials of the State Department and EPA, participated in a consultation with the Government of Venezuela, pursuant to Article XXII of the GATT, on the RFG issue. And on March 11, 1994, representatives of the Venezuelan government met with USTR staff to discuss Venezuela's position on the issue.

One member of the National Security Council staff met on a number of occasions with representatives of the Government of Venezuela, and on one occasion with representatives of PDVSA, during 1993 and 1994, where, among other issues, the Venezuela RFG issue was raised.

To our knowledge, no members of the staff of the White House Office other than Mr. Cutter met with representatives of the Venezuelan government or PDVSA regarding the Venezuela RFG issue. Several members of the White House Office staff did participate in meetings at which the Venezuela RFG issue was discussed.

5. The purpose and mission of the NEC includes, as noted above, coordinating and integrating the development of national and international economic policy for the President. A significant aspect of this mission is to assist in the coordination of different perspectives that emerge as agencies of the Executive Branch pursue their particular missions. In the case of the Venezuela RFG issue, it became clear that an action contemplated by EPA would implicate international economic and trade issues involving a foreign government -- including an asserted violation of the GATT -- of concern both to the Department of State and the United States Trade Representative. The role and responsibility of the NEC in this instance was to coordinate among the agencies involved so that there could be an airing of issues. It was for this purpose that the meetings of December 14, 1993, and March 14, 1994, were held.



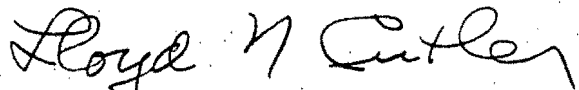
6. At the December 14, 1993 meeting, EPA reported that there had been discussions between EPA and officials from Venezuela and PDVSA, that the December 15, 1993 deadline for promulgating a final rule precluded resolution of the Venezuela RFG issue before the final RFG rule would be promulgated, and that EPA wanted to continue to meet with the Venezuelans after the rule was promulgated. At the meeting, it was agreed that the State Department would inform Venezuelan officials that EPA wanted to continue discussions with the Venezuelans notwithstanding the issuance of a final rule. The NEC did not itself make any decision regarding these continued discussions.

7. The Venezuelan RFG issue was a specific instance of interagency coordination by the NEC staff where action by an agency implicated international economic and trade concerns, in this case involving a foreign government. The NEC typically is involved in issues requiring resolution of, or the development of a process for resolving, differences of perspective among different agencies. Such coordination necessarily covers the full spectrum of policy development, including Presidential decisions and initiatives, regulatory process, and legislative development. The NEC and the NEC staff have carried out coordinating activities across this full spectrum, and many of the issues addressed have involved EPA -- the Administrator of which is a member of the NEC -- because of that agency's important involvement in issues that have a significant economic dimension.

\* \* \*

As you know, this Administration has been committed to ensuring a coordinated economic policy, and has given particular focus to the complex intersection of trade and environmental issues. The Administration believes firmly that a strong environmental policy is good economic policy, and looks forward to working with you and other members of Congress to realize that vision.

Sincerely,



Lloyd N. Cutler  
Special Counsel to the President

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## United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS  
 WASHINGTON, DC 20510-8175

April 28, 1994

Mr. Robert E. Rubin  
 Assistant to the President for  
 Economic Policy  
 National Economic Council  
 Old Executive Office Building  
 Washington, D.C. 20500

Dear Mr. Rubin:

As you know, this Committee is conducting an ongoing review of the activities of federal departments and agencies with respect to Venezuela and the Environmental Protection Agency's (EPA) promulgation of its December 15, 1993 final rule on reformulated gasoline. As part of the inquiry, the Committee has gathered documents from EPA, the Department of State, and the Office of the U.S. Trade Representative (U.S.T.R.). On April 22, 1994, the Committee conducted its first hearing on this subject.

Documents reviewed by the Committee and testimony presented at the hearing demonstrate that the National Economic Council (NEC) was prominently involved in this matter and conducted at least two meetings about the RFG rule, on December 14, 1993 and March 14, 1994. Therefore, in order to facilitate the Committee's investigation, I consider a complete review of the NEC's role concerning Venezuela and the RFG rule to be of paramount importance.

The U.S. Senate Committee on Environment and Public Works has jurisdiction over all federal statutes implemented and enforced by the Environmental Protection Agency (except the Federal Insecticide, Fungicide, and Rodenticide Act) and all aspects of federal environmental policy. Senate Rule XXVI (8) (a) (2) provides that the Committee "shall review and study, on a continuing basis the application, administration, and execution of those laws, or parts of laws, the subject matter of which is within the legislative jurisdiction of that committee." With respect to the committee's oversight authority, Senate Rule XXVI(1) provides that the Committee can "require by subpoena or otherwise the attendance of such witnesses and the production of such correspondence, books, papers, and documents, to take such testimony" and "make investigations into any matter within its jurisdiction."

I appreciate the interest of the White House Counsel, who met with Committee staff today to discuss the Committee's concerns about the NEC's role in the RFG rulemaking. Mr. Cutler said the White House would be responsive to my questions.

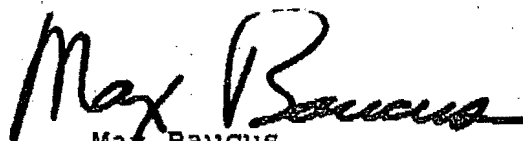
As an initial step toward the Committee's full review of NEC's role in decisions related to Venezuela and the RFG rule, I request that you provide answers to the following questions, covering the period February 1, 1993 to the present. I would appreciate your providing the responses by no later than May 12, 1994.

Schedule of Questions

1. Who are the members and staff of the NEC that worked on the Venezuela RFG rule issues? Please provide each individual's name and title.
2. When did the NEC meet to discuss the Venezuela RFG rule and who attended the meetings? Please provide the dates and locations of each meeting and each individual's name and title.
3. When did NEC members or staff meet with representatives of the Venezuelan Government or PDVSA to discuss the RFG rule? Please provide the names and titles of all individuals attending such meetings as well as the dates and locations of each meeting.
4. Did anyone on the White House staff, other than NEC members or staff, become involved in the Venezuela RFG issue or meet with representatives of the Venezuelan Government or PDVSA regarding this matter? Please provide the names and titles of all individuals who had such involvement.
5. Why did the NEC become involved in the Venezuela RFG issue?
6. Why did the NEC decide that negotiations between EPA and Venezuela should be continued after the publication of the December 15, 1993 final RFG rule?
7. Since February 1, 1993, has the NEC convened to discuss any other regulatory matters pertaining to EPA? If so, please provide a list of regulatory issues or regulations that had been the subjects of the meetings.

Thank you for your attention to this matter. If there are any questions, please contact Marc Smolonsky of the Committee's staff.

Sincerely,

  
Max Baucus  
Chairman

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# United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS  
WASHINGTON, DC 20510-0175

May 17, 1994

Lloyd N. Cutler  
Special Counsel to the President  
The White House  
Washington, D.C. 20500

Dear Mr. Cutler:

As you know, this Committee is investigating the Administration's activities regarding the Environmental Protection Agency's (EPA) final rule on reformulated gasoline (RFG) in connection to Venezuela, a major exporter of gasoline to the United States.

I have reviewed your letter of May 12, 1994, which responded to my April 28, 1994 questions about the National Economic Council's (NEC) involvement in the RFG rulemaking. Although your response provides new details about the NEC's activities regarding Venezuela, it is incomplete in some respects. Therefore, I would appreciate your additional response to the following questions.

### Schedule of Questions

1. In regard to NEC involvement in the EPA regulatory process, you stated: "The NEC and NEC staff have carried out coordinating activities across this full spectrum, and many of the issues addressed have involved EPA -- the Administrator of which is a member of the NEC -- because of that agency's important involvement in issues that have a significant economic dimension." For February 1, 1993 to the present, provide a list of all EPA regulatory issues in which the NEC was involved and the dates and participants of all meetings involving NEC that included discussions of EPA regulatory issues.

2. If discussions with Venezuela were ongoing, why was it necessary for there to be an agreement at the December 14, 1993 NEC meeting that the State Department inform Venezuela that negotiations would be continued?

3. You reported that a member of the National Security Council staff met with representatives of the Government of Venezuela on a number of occasions, and one occasion the RFG issue was raised. In what context was the RFG issued raised with the NSC staff member, and what was the nature of the discussion?

4. Provide complete, unredacted copies of the NEC minutes for December 14, 1993 and March 14, 1994.

Please respond to this request by May 25, 1994.

Thank you for your attention to this matter. If there are any questions, please contact Marc Smolonsky of the Committee's staff.

Sincerely,

Max Baucus  
Chairman

THE WHITE HOUSE

WASHINGTON

JUN 9 REC'D

June 1, 1994

Honorable Max Baucus  
Chairman  
Committee on Environment and Public Works  
United States Senate  
Washington, D.C. 20510

Dear Mr. Chairman:

I have received your letter of May 17, 1994, in which you have set forth additional questions concerning the Environmental Protection Agency's rule on reformulated gasoline (RFG).

As you know, my letter of May 12, 1994, explained that the National Economic Council as a body of principals never considered the Venezuela RFG issue. That letter also set forth that certain members of the NEC staff were involved in interagency meetings on the Venezuela RFG issue, meetings convened for the purpose of airing and coordinating the various agency perspectives on a matter that implicated international economic and trade concerns and involved a foreign government. As I noted, this Administration has given particular focus to the complex intersection of environmental and trade issues, and believes firmly that a strong environmental policy is good economic policy.

Set forth below are specific answers to the numbered questions in your May 17 letter.

1. We have attempted to provide you with accurate and complete information on the Venezuela RFG issue, including, among other things, information on any meetings on that issue involving members of the NEC staff and EPA. As explained in my letter of May 12, the Venezuela RFG issue was a specific instance of interagency coordination by the NEC staff where action by an agency implicated international economic and trade concerns.

You have also requested a complete list of all EPA regulatory issues in which the NEC was involved from February 1, 1993 to the present, and the dates of and participants in all meetings during that period that involved the NEC and included discussions of EPA regulatory issues. We do not believe this broad and extremely burdensome request is appropriate in relation to the particular matter you are reviewing, and it is totally unrelated to the Venezuela RFG issue.

2. As set forth in my letter of May 12, W. Bowman Cutter of the NEC convened a meeting on December 14, 1993, composed largely of deputy level officials, to discuss the Venezuela RFG issue. The purpose of the December 14 meeting was to allow an airing of issues arising from the different perspectives of the interested agencies. EPA reported that the Venezuela RFG issue could not be resolved prior to the court-ordered deadline of December 15, 1993, for promulgating a final rule. EPA also reported that it wanted to continue to meet with officials from Venezuela to continue discussions on the RFG issue after the final rule was promulgated.

As I explained in my May 12 letter, it was agreed at the December 14 meeting that the State Department would advise Venezuelan officials that EPA wanted to continue discussions notwithstanding the issuance of a final rule. It is a normal role of the State Department to communicate messages from the United States government to foreign officials. It was necessary to advise Venezuelan officials that EPA wanted to continue discussions because without such advice, the Venezuelan officials might construe the issuance of the final rule as the end of the matter. Among the issues that EPA wanted to continue to discuss with Venezuelan officials were those relating to monitoring and enforcement of individual baselines, issues that were necessary to resolve before the final rule promulgated on December 15 could be modified. As set forth in my letter of May 12, EPA announced on December 15 the promulgation of the final rule. At the press conference announcing the rule, an EPA official noted that EPA was still considering the Venezuela RFG issue and would continue discussions with PDVSA.

3. As set forth in my letter of May 12, one member of the National Security Council staff, the Special Assistant to the President and Senior Director for Inter-American Affairs, Richard Feinberg, met on a number of occasions during 1993 and 1994 with representatives of the Government of Venezuela, and on one occasion with representatives of PDVSA, where, among other issues, the Venezuela RFG issue was raised. As a Senior Director, Mr. Feinberg meets frequently with officials representing the Government of Venezuela as well as other Latin American countries.

In the context of a December 1993 visit to Venezuela to express United States support for the upcoming democratic elections, Mr. Feinberg met with Venezuelan Minister of Energy Parra to discuss the Venezuela RFG issue. Mr. Parra indicated that the RFG issue had become a national issue in Venezuela and raised trade concerns that could give rise to a GATT challenge. Mr. Feinberg listened to the Venezuelan Government's concerns about the international implications of the RFG issue and indicated that he would study the problem when he returned to Washington. During this same trip, Mr. Feinberg was briefed on

the general Venezuelan economic picture by Venezuelan officials and industry representatives, including representatives of PDVSA. These PDVSA representatives took the opportunity to raise the RFG issue with Mr. Feinberg.

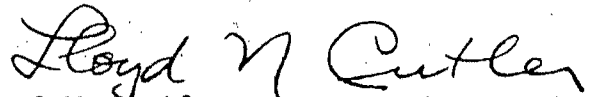
Venezuelan government officials raised the RFG issue with Mr. Feinberg on other occasions, as they would other matters of importance to United States-Venezuelan relations. This occurred, for example, when a Venezuelan delegation visited Washington at some time after Mr. Feinberg's December 1993 trip to Venezuela. Consistent with his responsibilities, Mr. Feinberg recalls that he reported on the international implications of the RFG issue to the Deputy Assistant to the President for National Security.

4. As set forth in my letter of May 12, the meetings addressing the Venezuela RFG issue on December 14, 1993 and March 14, 1994, were not meetings of the NEC as a body of principals, though members of the NEC staff did attend both meetings. No NEC minutes were created for either of those meetings.

\* \* \*

The information provided above, like the information in my letter of May 12, is subject to claims of executive privilege, but is provided in a spirit of cooperation. In providing this information, we do not waive any such claims of executive privilege and reserve the right to assert such claims in the future.

Sincerely,



Lloyd N. Cutler  
Special Counsel to the President



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OGC. IMMEDIATE OFFICE  
P. FAX # 456-2878  
M. H. MATTHEWS

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| JOSEPH L. LIEBERMAN, CONNECTICUT  | LAUCH FAUCLOTT, NORTH CAROLINA |
| HOWARD M. METZENBAUM, OHIO        | DUKE STEPHENSON, IDAHO         |
| MARIE WOFFORD, PENNSYLVANIA       |                                |
| BARBARA SOBER, CALIFORNIA         |                                |

# United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS  
WASHINGTON, DC 20510-6178

May 24, 1994

DEBORAH L. BOWEN, STAFF DIRECTOR  
STEVEN J. SHUMBERG, JUNIOR STAFF DIRECTOR AND CHIEF COUNSEL

The Honorable Carol M. Browner  
Administrator  
Environmental Protection Agency  
401 M Street, S.W.  
Washington, D.C. 20460

Dear Administrator Browner:

As you know, this Committee is investigating the Environmental Protection Agency's activities in regard to Venezuela and the Reformulated Gasoline Rule, promulgated by EPA under the authority of the Clean Air Act Amendments. As part of the review, the Committee conducted a hearing April 22, 1994.

On May 12, 1994, I was informed by the White House Counsel that the National Economic Council (NEC) is typically involved in issues requiring resolution of interagency differences. The Counsel stated: "The NEC and the NEC staff have carried out coordinating activities across this full spectrum, and many of the issues addressed have involved EPA...because of that agency's important involvement in issues that have a significant economic dimension."

In regard to the NEC's involvement in EPA issues, I request that the following information covering the period January 25, 1993 to the present, inclusive, be provided to the Committee by no later than June 6, 1994.

1. Provide complete and unredacted copies of all correspondence, memoranda, reports, or notes received by EPA from the NEC.
2. Provide a list of all NEC meetings attended by EPA staff during which matters involving EPA were discussed, including the dates, EPA staff in attendance, and the subject of the discussions.
3. Provide complete and unredacted copies of all notes, minutes, memoranda, reports, or correspondence prepared by EPA personnel pertaining to NEC meetings.
4. In response to earlier requests, the Committee did not receive any documentation pertaining to the December 14, 1993 NEC meeting at which the Venezuelan RFG issue was discussed. I ask that you make another careful search of EPA files, including files within the immediate Office of the Administrator, the files of

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May 21, 1994

Page 2

Michael Vandenburg, and the files of Richard Wilson, and transmit copies of any documents related to the December 14 meeting.

In addition to these questions, I am also submitting follow-up questions from the April 22 hearing from me and Senator Lieberman. I ask that you respond to the follow-up questions by no later than June 6, 1994.

Questions from the Chairman

1. During the hearing, the Assistant Administrator for Air testified that there is a .18 percent differential in nitrous oxide emissions in Venezuelan RFG, based on EPA's knowledge of PDVSA's exports to the United States. How many millions of gallons did EPA assume PDVSA would be exporting and include in the formula from which the .18 percent figure was derived?

2. The Assistant Administrator for Air also testified that negotiations with Venezuela were an ongoing and evolutionary process. In this regard, please provide the dates of all meetings between PDVSA representatives or representatives of the Venezuelan government that pertained to the RFG rule that occurred between September 1, 1993 and March 15, 1994.

Questions from Senator Lieberman

1. The Assistant Administrator for Air testified that EPA does not know the quality of constituents in the 1990 baseline of each domestic refiner who will market RFG in the northeast. Why does EPA lack information on the individual baselines of domestic refiners?

2. How did EPA decide to require the domestic refiners to use these 1990 baselines rather than the statutory baselines without basic air quality information?

3. Is it true that it is impossible for domestic refiners to have levels of olefins in their 1990 baselines, and consequently in their RFG, that are higher than the PDVSA level?

4. In response to one of my questions, the Assistant Administrator for Air appeared to say that the system of verification contained in the April 21 proposed rule is different than anything that EPA had previously

May 24, 1994  
Page 3

considered. However, she subsequently testified that the verification system contained in the proposed rule was virtually identical to a proposal considered in September 1993. In light of the similarity between the September 1993 rule, which was rejected by EPA, and the proposed rule, how can EPA now determine that the same proposal is feasible and will not present verification, compliance, and enforcement problems?

5. Is it appropriate, given the controversy surrounding the proposed rule, for EPA to reconsider the entire portion of the rule allowing use of individual baselines, and would it be better or worse for air quality in the northeast to require all refiners, whether domestic or foreign, to use the statutory baselines rather than to allow Venezuela to use its own baseline?

Thank you for your attention to this matter. If there are any questions, please contact Marc Smolonsky of the Committee staff at 224-3551.

Sincerely,



Max Baucus  
Chairman