

DRAFT DISCUSSION OUTLINE FOR USE WITH ROY ASH, RUSSELL TRAIN & JOHN WHITAKER:
PROPOSED ALTERNATIVES FOR REORGANIZATION OF FEDERAL ENVIRONMENTAL PROGRAMS

Ash

I. Alternatives Being Considered by/Council (order of preference)

A. Department of Natural Resources and Environment (consolidation of all pollution control; energy, mineral & water resource; and land management programs)

B. Separate Departments of Environmental Quality (Pollution Control) and Natural Resources

C. Department of Natural Resources and consolidation of Environmental Quality Programs in DHEW

II. Basic DHEW Position

We favor consolidation of environmental quality programs, to permit a comprehensive "systems" approach to pollution abatement, although we believe that the advocater of change bears a heavy burden of proof in view of the "slippage time" likely to ~~result~~ result from major reorganization.

We oppose the consolidation of environmental quality programs and natural resource programs within one Department because these programs are not closely related and ~~indeed~~ indeed often conflict. The interest in enhancing environmental quality is often at odds with the interest in resource development. Combination of these programs within one Department is not compelled by close programmatic relationships between them and will inevitably result in frequent intradepartmental compromises. The environmental quality program will frequently lose because the ~~na~~ resource development programs are well-entrenched and have much greater budgetary clout.

We feel that a consolidated environmental quality program should either be in an independent agency or Department, where it can operate effectively and with

a single, clear mission of public protection, or in DHEW because of the inextricable relationships between ~~environmental protection~~ environmental quality (pollution control) programs and programs for the protection and enhancement of health. DHEW definitely has no "expansionist" ambitions in this regard, but must be satisfied that the organization and placement of environmental quality programs will be such as to preserve these relationships -- which can be categorized under the increasingly-used phrase, "human ecology." Our concern with environmental quality is based upon a concern for man's health and well-being.

III. Major Discussion Points

A. Questions concerning a single Department of Natural Resources & Environment

1. Although natural resource programs and environmental protection both programs are ~~all~~ concerned with land, air, water, minerals and energy, are there important programmatic relationships between these two types of programs that dictate their consolidation?

2. Are these programmatic relationships closer than those between environmental quality programs and health programs?

3. Although it is true that the single Department concept will provide for some important tradeoffs and conflict resolutions at the intradepartmental level, how important is this?

a. Won't environmental quality programs inevitably be seriously compromised in this setting? Isn't the public interest thereby seriously harmed?

b. If the objective is to avoid having these conflicts settled by the President with all the visibility that involves, isn't it true that (1) such conflicts can often be resolved by the Council on Environmental Quality or the proposed new Domestic Policy Council? (2) any compromise of environmental quality

objectives is sufficiently important that it should not be resolved within the bowels of a single Department and without the public scrutiny and involvement that both the National Environmental Policy Act of 1969 and Executive Order 11514 of March 5, 1970 seek to secure? and (3) the proposed single Department would only provide for intradepartmental resolution of a fraction of all the conflicts that exist between the goal~~s~~ of environmental protection and other goals? (Many of these conflicts do not involve resource development and will have to be resolved by the CEQ, the Domestic Policy Council or the President anyway; if the goal is intradepartmental conflict resolution, why not put environmental quality programs in the Department of Commerce?)

4. Won't the proposed single Department ensure the maximum separation of environmental quality and health programs (more than would placing ~~such~~ environmental quality programs in either DHEW or an independent agency or department)?

A.

B. Concern for Preserving the Vital Environmental Quality / Health Relationship

1. The basis for pollution control and protecting environmental quality is a concern for man's health and well-being -- the organization of environmental quality programs should be such as to ensure that this "raison d'etre" for such programs remains as ~~the focus for~~ their focus and that this is the mission of the overall organizational unit.

2. There are numerous and important interfaces between environmental quality programs and health & consumer protection programs at the operating level. (CC Johnson will elaborate) These relationships are not only important to preserve but are much more significant than the operational relationships between environmental quality and natural resource programs.

3. Since physical and mental diseases are increasingly environmentally-determined, DHEW's mission of preserving and protecting health will be seriously undermined by loss of effective interface between environmental quality and other health programs.

4. Many "health inputs", especially development of health criteria as the most important basis for standard-setting, are essential to environmental quality programs. Separation of environmental quality programs from the "health department" (DHEW) can therefore have two/^{alternative}adverse consequences: (a) If the EQ programs are housed in ~~a~~ their entirety (including health effects research, etc.) in another Department or agency, the health factor may be downgraded and/or ineptly handled, (b) if the health aspects of EQ programs are left in DHEW, the ~~environmental~~ EQ program would become fragmented and it would be ~~extremely~~ difficult, in view of the present FWPCA experience, to ensure that the/^{isolated}health ~~components~~ components of EQ programs received adequate attention within DHEW and had workable lines of communication with the "parent" EQ programs outside of DHEW. (Situation ^a(b) above might be avoided or minimized if EQ programs were put into an independent agency with a clear health/consumer~~s~~ protection mission akin to DHEW's.)

IV. Other Points

A. The President will look bad to the public (particularly as compared to Muskie, who proposes an independent pollution control agency) if he proposes the single Department, where environmental quality programs will be subject to constant intradepartmental skirmishes with powerful conflicting interests.

The Secretary

April 1, 1970

Frederic V. Malek
Deputy Under Secretary

Report on Meeting with Secretary Stans

My meeting with Secretary Stans yesterday focused on two issues: the role of Commerce in the field of environmental quality control and the organizational proposals of the Ash Council.

The National Industrial Pollution Control Council, for which Commerce will have responsibility, will have 50 representatives with 2 from each major polluting industry. Mr. Stans sees the Department of Commerce acting as an interface between enforcers and industry through this Council. To this end, we will be working with his people to establish a closer liaison on various environmental activities.

Secretary Stans was somewhat concerned about the letter you had sent him responding to the views expressed in his memo to the President. Mr. Stans was first concerned that we meant to tie industry voluntary efforts to a tight program outlined by pollution abatement officials. I assured him that our major intent was to ensure close coordination between Government endeavors and that which is done by industry on a voluntary basis. His second concern related to our philosophical statement that many of the costs associated with pollution abatement could be absorbed by industry. After a brief discussion I concluded that we did not necessarily feel that industry had to absorb the costs, but did not think it wise to go on record stating that the costs would have to be passed on to the consumer.

With regard to the Ash Council proposals, Mr. Stans joined us in opposing the formation of a total Environmental and Natural Resources Department that was proposed. He felt, however, that pollution abatement could continue in a number of Departments, but with closer coordination between their efforts than had been the case before. I argued that we had seen little evidence in the past that it was possible to get close inter-Departmental working relationships on programs such as these, and that we felt coordination could only be achieved through the consolidation of pollution abatement activities. I believe I succeeded in softening his position somewhat.

I have two other items regarding the environment which are worth mentioning at this time. First, Secretary Romney and Secretary Volpe have both endorsed the Ash Council proposals. I will be following up at HUD as you suggested, and you may want to discuss this with Mr. Volpe. Also, the Ash Council will probably recommend abolishment of the Federal Radiation Council with responsibilities transferred to the new agency. In my discussion with the Ash Council staff, I did not raise any objections to the abolishment of the Federal Radiation Council.

cc: The Under Secretary
Lewis Butler

bcc: Mr. James W. McLane
Mr. Roger Strelow

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
OFFICE OF THE SECRETARY

Date: June 22, 1970
Reply to: Frederic V. Malek
Attn of: Deputy Under Secretary *FVM*
Subject: Environmental Protection Administration
To: Elliot L. Richardson
Secretary-Designate

On Wednesday, June 24, The President is scheduled to announce his proposed Environmental Protection Administration (EPA) and send the Reorganization Plan to Congress. The Plan will become effective 60 days thereafter unless vetoed by the Congress. Major portions of EPA that will come from HEW include the National Air Pollution Control Administration, parts of the Environmental Control Administration, and parts of the Food and Drug Administration. HEW has supported the concept of the new agency from the beginning. HEW has been unique among the Departments contributing to EPA by providing an internal HEW task force under my direction which is helping the White House with the Reorganization Plan.

Objectives of Reorganization

The objective of the new agency is to provide an integrated solution to the problems of environmental pollution by consolidating the most relevant pieces of Departments and Agencies charged with the problem of pollution abatement.

EPA will also have as positive objectives the production of:

- . research and standard setting based on a comprehensive view of human health and of the planet's ecology;
- . a comprehensive (not restricted to one medium) policy for pollution control;
- . an ability to recognize and deal with new environmental problems;
- . an integrated system of pollution control and enforcement, so that we do not create new problems in the process of controlling existing ones;
- . simplification of relations for state and local governments;
- . clarification of industry responsibility, by providing consistent standards and a single enforcement agency.

Constituent Pieces of EPA

As of this moment, five agencies will contribute programs to EPA.

- . Federal Water Quality Administration (USDI)
- . Environmental Radiation Standards from Federal Radiation Council and Atomic Energy Commission
- . Pesticide registration from Department of Agriculture
- . Pesticide research and standard-setting from Food and Drug Administration, DHEW
- . Portions of Environmental Health Service, DHEW
 - National Air Pollution Control Administration
 - Bureau of Solid Waste Management
 - Bureau of Water Hygiene
 - Environmental Radiation activities
 - Management staff

The internal structure of the Environmental Protection Administration is not yet determined. We are working with the White House to delineate options for EPA's Director.

Remaining HEW "Environmental Health" Programs

Three major types of environmental programs will remain in HEW after EPA is formed. These are:

- Basic health effects research
 - . National Institute of Environmental Health Sciences, NIH
 - . Some research programs from Environmental Health Service
- Consumer Protection and protection of individuals from health hazards
 - . Food and Drug Administration
 - . Bureau of Occupational Safety and Health

- . Protection against radiation from consumer products, foods, drugs, medical and industrial devices

-- Community Sanitation

- . Bureau of Community Environmental Management

Those portions of EHS remaining with HEW will be placed in other agencies within HEW.

Advantages of EPA Over Present Arrangements

For the first time, there will be coordination of governmental environmental control (pollution abatement) activities. This should encourage comprehensive approaches to pollution problems which are formulated in terms of a pollutant's long-term effect on the total environment. EPA can take into account a pollutant's impact, whether it appears in air, water, or some other medium. Compliance with, for example, air standards will not be achieved at the expense of water standards unless such a decision has been made explicitly. EPA will be able to act on new problems that might now be bypassed because they do not fit into present areas of responsibility.

It is significant that there will now be one focus for Federal antipollution activities. Industries, state and local agencies, and consumer groups will be able to look to one Federal agency. For example, at present, a utility company desiring to construct a power plant may have to respond to the (sometimes conflicting) requirements of: Interior's FWQA, HEW's NAPCA and the Bureau of Solid Waste Management, and the AEC. As a second example, there will be a point of central coordination for all research on the adverse effects of environmental contaminants, on controls technology, and a central point for the evaluation of all pollution-related government activities.

Finally, EPA will clarify the purpose of pollution abatement programs by separating them from the promotional interests of other agencies. For example, Agriculture will no longer be simultaneously responsible for Pesticide registration and for increased agricultural production. EPA's independent status should lend credibility to its programs.

Major DHEW-EPA Relationships

Two potential problems remain concerning HEW's relationship with the new agency.

In the transition, about 650 Public Health Service Officers will be transferred and represent a particular problem. Their skills are needed, and HEW cannot absorb them if they do not go to EPA with the programs. In return for service in a quasi-military organization, these men receive certain benefits (e.g., retirement after 20 years service) not available to civil service employees. In 1966, when the water program was transferred to Interior, inequities were perpetrated. We are working with the White House and the Surgeon General to resolve this issue and will have done so by Wednesday.

After the new agency is created, HEW will be a source of expertise in the area of environmental health effects research. While the National Institute of Environmental Health Sciences will be a principal contributor of such information, other portions of HEW will also participate. It is necessary now to begin planning for the needed intradepartmental and inter-agency cooperation.

This is only an abbreviated synopsis of the rationale and particulars of the reorganization. If you desire further information, we can conduct a full briefing or provide an expanded paper.

cc: The Under Secretary

ENVIRONMENTAL PROTECTION

Objectives of Meeting with Dr. Egeberg

1. To anticipate and discuss any issues he may foresee through separating EPA and HEW health efforts:
 - Possible shortchanging of the health aspects of the environment within EPA, even though the intent is to establish at a minimum a strong "gross" health effects competence for EPA.
 - Relationships between the environment and preventive health.
 - EPA versus NIEHS (to remain in HEW) and HSMA.
 - State and local public health agency functions versus environmental functions.
2. To solicit his aid in the following areas:
 - Establishing a strong health effects competence for EPA (identifying and recruiting key personnel, helping establish professional "credentials" for it).
 - Supporting EPA internally.
 - Helping to generate support for the reorganization
 - Congressional health interests.
 - Health interest groups.

Background

1. Purpose of EPA is a merger (as distinct from a consolidation) of pollution abatement efforts (not clearly broad based "environmental quality" charter).
2. HEW functions to be transferred

EHS

- air pollution control (NAPCA)
- solid waste management (BSWM)
- water hygiene
- radiological health (except electronic products and medical radiation exposure which probably will go to FDA)
- community environmental management (except injury control, which probably will go to HSMA, and Arctic Health Research Center).
- office of the administrator

FDA

- pesticides (except enforcement of pesticide tolerance levels in foods and Total Diet Studies)
3. Other EPA pieces
- Interior: FWPCA
 - Commerce: ESSA and C & GS
 - Agriculture: pesticides effort
 - AEC: undecided
4. Interesting pieces not being merged.
- Transportation: Jet smoke (FAA) and mass transit non-conventional power.
 - Interior: solid waste piece of Bureau of Mines.
 - HEW: noise pollution and occupational health.
 - HUD: sewage

→ Points in Response to Environment versus Health Issues

1. Although HEW's first choice was to obtain all environmental pieces, EPA is our strong second choice compared to the third possibility of a Department of Natural Resources transformation of Interior.
2. To prevent a short changing of environmental health with EPA, our approach is:
- To retain NIEHS; to use it to concentrate on "micro" health effects; and to establish a procedure whereby NIEHS output becomes related to EPA standard setting.
 - To obtain an informal commitment whereby HEW helps to create an adequate and appropriate health effects competence within EPA.
 - Utilizing the pieces EPA obtains automatically with several functions transferred from HEW.
 - Identifying and recruiting key personnel.
 - Moral support via health profession.
3. Relationships between the environmental infrastructure and the health infrastructure.
- HEW recognized the inadequacy of submerging the environment beneath the health structure, which exhibits an overriding concern with personal health services and preventive medicine.

- HEW has had the intention to establish separate comprehensive environmental legislation for State and local planning and financial assistance and authority for manpower training to:
 - give a separate identity to the environment.
 - bring environmentalists to bear on the problem.
 - encourage States to follow suit and make a separate, comprehensive environmental break, among other things, so that they can link up various Federal pieces intrastate.
- To link up the environment and health efforts in correlary areas, administrative devices would suffice
 - HSMA-EPA (not defined, yet).
 - NIEHS-EPA (will attempt a formalized relationship).
 - State and local agencies and potential EPA infrastructure (not addressed, yet).

4. Congressional and Interest Group Support for Reorganization.

- We have discussed this with Jim Cavanaugh and have used his ideas to suggest a game plan to the Ash Council.
 - get to health people soon and discuss options to make them feel "involved" as opposed to presenting EPA as a "finished piece, take it or leave it."
 - ask Dr. Egeberg to delegate this to Cavanaugh.

Other Potential Issues

1. Transfer of PHS Corps personnel: we are seeking a way to obtain key and best people for EPA, in the transition and in the long run, but this is a tough personnel problem.
2. Partnership for Health: we recommend maintaining the current program (including supporting HEW's current commitments in the rodent control program) through FY 71, afterwhich EPA should have separate planning and financial assistance authority and HEW will back away. In fact, such a small portion of Partnership for Health now relates to environmental health that the programmatic impact on health should be small.



THE DEPUTY UNDER SECRETARY OF HEALTH, EDUCATION, AND WELFARE
WASHINGTON, D.C. 20201

~~CONFIDENTIAL~~ - EYES ONLY

DETERMINED TO BE AN
ADMINISTRATIVE MARKING
E.O. 12958, Section 1.3
By ACE NARA, Date 9/22/09

October 6, 1970

MEMORANDUM FOR THE HONORABLE H. R. HALDEMAN

Subject: Selection of Administrator - Environmental Protection Agency (EPA)

Background

The reorganization plan forming EPA was approved by the Congress last week, and the selection of an Administrator is entering its final stages. John Whitaker has been very ably handling most aspects of EPA's formation and has forwarded the names of prospective candidates to the President. Because of my new role in executive personnel, I discussed this with John last week. He informed me that Russell Train is the leading candidate and is likely to be selected.

The selection is already so far down the pike that I hesitate to become involved, even to the limited extent of making my opinion known to you. However, I do have problems with the proposal now before the President and would feel less than conscientious if my objections were not made known to you. In doing so I want to caution that I am not nearly as close to the situation as John Whitaker, and my judgment should be weighed accordingly.

Issues

There are basically two issues to consider:

1. Whether it is desirable to have the same person heading both the EPA and the Council on Environmental Quality (CEQ) as opposed to having separate, independent heads.
2. Whether Russell Train is the right man for the position of Administrator.

EPA - CEQ Relationship

My understanding is that an options paper has already been presented to the President on this issue and a tentative decision reached that it is desirable to have a common head. However, I see only a few potential benefits from such an arrangement but significant disadvantages.

The commonly stated benefits are that a close link with EPA would give the CEQ needed resources and clout, that EPA could benefit from CEQ's closeness to the President, and that the President would have one person rather than two reporting to him on environmental matters. I feel only the latter is a cogent argument as CEQ already has considerable power and is not necessarily closer to the President than the head of EPA might be.

There are three major disadvantages to having a common head. First, EPA must be a going concern with improved and demonstrable results by the end of 1971 if we are going to make environmental achievement a positive election issue in 1972. This will be an enormous task. A number of independent units must be pulled together and organized, new policies must be fleshed out, further legislation developed, and vigorous and improved implementation must be carried out. If we are to fulfill our promise and make the combined units more effective than the sum of the parts, vigorous, full time leadership is required. This is not likely to be provided by a man wearing two hats, even though Train would have a head start due to his background.

A second disadvantage is that the combined head of EPA-CEQ would be in the position of both prosecutor and judge, two distinctly different roles (the first being a strong advocate, the second being a statesman and arbiter). The results are that CEQ would lose its aura of independence and objectivity, Congress is likely to be disturbed, antagonists are more likely to seek out the President and make him the impartial judge, and in fact the CEQ's decisions may take on too much of an environmental control bias.

Finally, the role of CEQ as an Administration-wide advocate and coordinator would be jeopardized by this arrangement. EPA will have its hands full redirecting and managing its own programs. The risk is that CEQ staff would be drawn into close support of EPA programs only, thus neglecting the broader and quite critical role of guiding Administration-wide policies and efforts.

Train as Administrator

Russell Train has done a good job with the CEQ in a short period of time, and he already has the background, as well as the staff, which would permit him to "hit the ground running." Against this, however, must be

balanced the fact that he is more of a statesman and "outside man" than a strong manager. There are hard decisions on internal organization, program priorities, and individual enforcement issues which must be made by the Administrator, even if he relies on a strong Deputy.

Russell Train does not seem to be the type of person to make these kinds of decisions well. Moreover, he has not shown any ability to use his subordinates to make up for these management limitations. At the CEQ, he has put together only an average staff, and he has yet to make any clear delegations of responsibility to senior staff members. The resulting fluid, unstructured organization can work at the CEQ, but it would be disastrous for an operating agency.

Recommendations

In light of the above, I would recommend against a common head for EPA and CEQ, and in any event would favor someone other than Russell Train as Administrator. I have not reviewed the list of potential candidates and cannot recommend an alternative at this time.

If Train is named Administrator, it is important that we find a Deputy with strong management capabilities and a reputation as a strong, tough, decision maker.

*

*

*

I have not told John Whitaker of my intent to write a memo on this subject. Therefore, if you decide to pursue any of these thoughts, please let me know so I can cover the base with John and avoid any injured feelings.



Frederic V. Malek