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EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

JUL 23 1979

MEMORANDUM FOR THE PRESIDENT

FROM: James T. McIntyre, Jr. *J. McIntyre*

SUBJECT: Assignment of Federal Civil Rights
Leadership and Management Responsibilities

I. INTRODUCTION

This memorandum presents OMB's recommendations for improving the efficiency and effectiveness of Federal civil rights programs. These recommendations result from Phases I and II of our study of Federal civil rights compliance efforts.

Phase I of our study was the basis of Reorganization Plan No. 1 of 1978. That Plan made the Equal Employment Opportunity Commission (EEOC) the Federal Government's principal equal employment agency and authorized it to coordinate all equal employment programs. Simultaneously, responsibility for the contract compliance program was consolidated in the Department of Labor.

Phase II focused upon: better enforcement of laws prohibiting discrimination in federally-assisted programs, in housing, and in credit; and better mechanisms within the Executive Office of the President (EOP) for articulating and implementing your commitment to civil rights.

II. THE CURRENT STRUCTURE

A. Federally-Assisted Programs, Housing, and Credit

Major civil rights laws applicable to federally-assisted programs primarily are enforced by individual program agencies and provide for fund termination in cases of noncompliance. The key nondiscrimination provisions applicable to housing are enforced by the Department of Housing and Urban Development (HUD) through conciliation efforts, while 12 other agencies enforce equal credit provisions through a wide range of sanctions, including cease and desist orders.

Generally, all of the statutes also are enforceable by the Department of Justice (DOJ) through civil actions instituted either unilaterally or upon referral from an agency. Additionally, four agencies have coordinative

responsibilities in these areas: DOJ; the Department of Health, Education, and Welfare (HEW); HUD; and the Federal Reserve Board.

B. Civil Rights Responsibilities Within EOP

Within EOP, the Office of Management and Budget (OMB) is responsible for a number of functions which impact on civil rights, such as determining agency funding levels and ensuring competent administration of government programs. Moreover, various members of the White House staff have been assigned civil rights responsibilities. These include those Special Assistants who serve as Administration liaisons with minorities, women, and the aged.

III. PROBLEMS

A. Federally-Assisted Services, Housing, and Credit

Enforcement of civil rights provisions in these areas has not been effective. In our study, we identified the following major problems.

(1) Lack of Compliance Activity. Agencies have failed to develop comprehensive compliance programs. Many have not issued regulations to implement civil rights requirements in a timely manner, investigated complaints expeditiously, conducted compliance reviews, or taken enforcement actions.

(2) Conflict between Agency Mission and Civil Rights Objectives. Agencies have subordinated civil rights to programmatic concerns and inhibited enforcement of civil rights laws in order to avoid jeopardizing or delaying an otherwise desirable program, or adversely affecting relationships with a recipient.

(3) Overlapping Responsibilities. Overlap has resulted in inconsistent policies and duplicative compliance activities.

(4) Inadequate Coordination. Coordination has been fragmented and ineffective. Four agencies have overlapping coordinating responsibilities, while no agency coordinates the 37 program-specific civil rights provisions or any sex discrimination requirements.

(5) Poor Management. Agencies have failed to plan, execute, and evaluate their civil rights activities effectively; and most do not have effective management systems.

B. Inadequate Leadership of the Federal Civil Rights Effort

Within EOP, three weaknesses compound the difficulties in civil rights enforcement.

(1) Inadequate Mechanisms to Develop Civil Rights Policies and Priorities. The fragmentation of civil rights duties and the minimum exchange of information and ideas impedes the systematic and comprehensive review of equal opportunity issues.

(2) Lack of Effective Oversight. EOP has no framework for systematic analysis of agency civil rights programs. OMB personnel often lack the information necessary to assess agency civil rights activities.

(3) Failure to Support Coordinators. Agencies often resist directives from peer coordinators as unauthorized encroachments on program administration. The EOP and White House staff have not given the agency coordinators the support necessary to overcome this resistance.

To remove these impediments we believe that three steps are essential:

- (1) The creation of a civil rights unit within OMB.
- (2) The establishment of a task force on civil rights consisting of key White House staff.
- (3) The issuance of an Executive Order delegating responsibility to DOJ for the coordination and leadership of all Federal civil rights activities in areas other than employment.

IV. A CIVIL RIGHTS UNIT IN OMB

I intend to create a small civil rights unit in OMB to provide assistance to OMB's staff in assuring cost-effective and efficiently managed civil rights programs. In addition, the unit will support EEOC and DOJ in meeting their coordination responsibilities.

V. ALTERNATIVES AND RECOMMENDATIONS FOR FURTHER IMPROVEMENTS

A. The Structure for Addressing Civil Rights Issues Within the White House

The options considered for enhancing White House civil rights efforts were:

- (1) Appointment of a new Assistant to the President.

- (2) Designation of a current staff member as coordinator.
- (3) Creation of a White House civil rights task force.

The appointment of a Presidential aide with authority over all civil rights matters would facilitate development of uniform policies and ensure that issues receive appropriate attention. It would, however, increase the size of the White House staff. Moreover, it would be difficult to select a person acceptable to all elements of the civil rights community.

Similarly, assignment of a single staff coordinator may be opposed by groups who do not identify with the designee.

A civil rights task force does not have the problems of the other two options. In addition, the concept is supported by key White House staff as well as numerous civil rights organizations.

To assure comprehensive and consistent treatment of civil rights issues within the White House, OMB recommends that a task force be established. It would eliminate duplicative efforts by White House staff and communicate your policies to the agencies and the public. In addition, it would have responsibility for reviewing implementation of civil rights laws and seeing that significant interagency disputes are resolved expeditiously.

Members of the task force would include those Special Assistants whose primary assignments relate to concerns of minorities, women, and the aging; the Domestic Policy Staff's Associate Director for Civil Rights and Justice; and others in the EOP presently involved in equal opportunity matters (e.g., James Dyke of the Vice President's staff, Margaret McKenna and Douglas Huron of the Counsel's staff, and Rick Hernandez of the staff of the Assistant for Appointments). The chair of the task force would be rotated among its senior members.

APPROVE _____ DISAPPROVE _____

B. Coordination of Federal Civil Rights Activities Related to Federally-Assisted Programs, Housing, and Credit

Two major options were considered:

- (1) Consolidation of civil rights enforcement responsibilities.
- (2) Creation of a two-tiered system whereby primary enforcement responsibility would be retained by the program agencies, while coordination and leadership responsibility would be centralized.

Two variations of the first option were analyzed. The first was to consolidate all civil rights responsibilities in a single agency. The second, endorsed by HUD, consolidated all housing programs in HUD, all education programs in HEW, and all other programs in DOJ.

As you know, our plan for reorganizing equal employment operations incrementally moved toward total consolidation in order to eliminate duplicative and inconsistent standards and procedures from fully activated enforcement programs. It received widespread support from civil rights and business groups.

Consolidation of compliance activity in the federally-assisted programs, housing, and credit areas also should reduce duplication, overlap, and inconsistency, and ultimately increase compliance activity. Furthermore, consolidation into a single purpose agency would eliminate the conflict between program goals and civil rights objectives.

Yet, most civil rights groups and agency officials strongly believe that total consolidation would be unwise at this time. Their opposition is based on the assumption that internal agency mechanisms are necessary to assure consideration of civil rights objectives in carrying out programs. Moreover, the transfer of agency enforcement responsibility to HUD, HEW, and DOJ also is opposed because HUD and HEW had deficient civil rights efforts in the past and have substantial conflicts between their grant programs and civil rights missions, and DOJ has no experience in operating a major administrative enforcement program.

Furthermore, centralization requires a lengthy transition period marked by diminished efficiency and management problems.

With regard to the second option, three methods of centralizing coordination authority were considered. The first, endorsed by HUD, placed the responsibility for housing coordination in HUD, education coordination in HEW, and coordination of all other programs in DOJ. The second alternative, proposed by HEW, established a coordinating

council composed of the heads of the compliance agencies, chaired by the Attorney General. The third alternative provided for coordination and leadership to be centralized in a single agency.

HUD's proposal would allow more precise enforcement direction to be given to specialized programs. However, such a structure would result in agencies dealing with multiple coordinators, and reduce the possibility of building links between interrelated programs and between functional areas.

HEW's proposal would avoid the risks associated with peer group coordination by sharing the coordination responsibility among the compliance agencies. However, the council approach to civil rights coordination has failed drastically in the past.

Therefore, we conclude that consolidation is not a good solution and that coordination by three specialized agencies or by a council would be ineffective. We recommend the designation of a lead agency to coordinate civil rights enforcement in federally-assisted programs, housing, and credit to complement EEOC as the lead agency in equal employment.

An Executive order would assign to DOJ the responsibility for leadership and coordination of compliance activities in areas other than employment. It would expressly empower the Department, after consultation with affected agencies, to ensure adoption of consistent standards, procedures, and data-collection requirements; develop appropriate staff training programs; provide for the sharing of compliance records and findings; design mechanisms to minimize duplicative efforts; and propose a governmentwide approach to cooperating with State and local human rights agencies. The Department would review and approve agency regulations and annual enforcement plans. In addition, it would monitor and evaluate the effectiveness of agency operations, assist agencies in the development of budget submissions, and provide OMB with recommendations concerning agency requests.

This is likely to increase both the quantity and quality of agency efforts. For example, it would reduce duplicative and often inconsistent agency reporting requirements and spur the use of innovative approaches in interrelated fields such as housing and education. (Attachment A consists of two charts which depict the present and proposed structure for civil rights coordination.)

The Civil Rights Division of DOJ is the logical institution in which to vest centralized coordination. The Division's preeminence in the law enforcement field, its reputation for

competence and objectivity, and its experience in providing technical assistance to agencies buttress this conclusion.

The Civil Rights Division, however, has historically emphasized litigation and has relegated coordination to a secondary position. Although this Administration has taken measures to correct this imbalance, we believe that two safeguards are needed to ensure full coordination.

First, a new Deputy Assistant Attorney General should be appointed within the Civil Rights Division to implement the recommended Executive order. The Deputy will require a substantial staff which would be derived from the Division's present allocation for coordination, supplemented by positions currently authorized for compliance agencies. Second, the Attorney General should submit to the Director of OMB a plan for implementing the Executive order within 45 days of its issuance. Thereafter, the Attorney General should submit semiannual reports on coordination activities. DOJ approves of these measures.

There are limitations, however, on this approach. For example, coordination of the independent regulatory agencies which enforce the Equal Credit Opportunity Act will be dependent on their cooperation and, therefore, may be less likely to succeed. There also would be two agencies with interagency responsibilities in the housing area. DOJ would continue coordinating agency efforts to ensure that recipients of housing-related assistance abide by civil rights laws. Similarly, HUD would continue to assist agencies to ensure that the administration of housing-related programs is designed to conform to fair housing goals. This division of responsibilities uses strengths of both departments, DOJ concentrating on law enforcement programs, and HUD specializing in the development and operation of housing programs. In order to ensure consistency and to facilitate joint activities, HUD would coordinate its Title VIII leadership activities and its private sector enforcement efforts with DOJ.

This approach is favored by many civil rights groups and organizations representing recipients of Federal funds, such as the League of Cities and the National Governors' Association. It has been endorsed by an overwhelming number of the affected Federal agencies. (Attachment B is a summary of the views of 37 agencies.)

Two agencies presented significant criticisms of the proposal. Both HUD and HEW expressed concern that a Deputy Assistant Attorney General does not have the necessary rank to be an effective coordinator. However, the proposed Executive order will assign ultimate coordination responsibility to the Attorney General.

HUD believes that to enforce fair housing effectively it must be the independent focal point of that effort. We agree that HUD should play a crucial role in securing fair housing; however, success of the overall Federal civil rights program requires coordinated efforts and resolution of conflicts between compliance and programmatic concerns. We believe DOJ is the agency most detached from such conflicts and, from the standpoint of legal competence, best able to provide leadership and guidance to other agencies.

HUD also asserts that this recommendation runs counter to the President's endorsement of Congressional efforts to grant HUD the authority to issue cease and desist orders. We see no conflict between the plan to amend the Fair Housing Act and the proposal to ensure that its enforcement is coordinated with other existing civil rights programs. While cease and desist is an important new enforcement tool, its effect will be heightened by targeting subjects identified through coordination with other agencies.

Centralized coordination also may not satisfy proponents of full consolidation. These include a few governors and some State and local human rights commissions. Beyond this, a few civil rights groups question the ability of DOJ to implement the Executive order. In addition, some women's groups believe that DOJ is not sufficiently sensitive to sex discrimination issues. Despite the misgivings of these groups, no active opposition to this recommendation is expected.

APPROVE _____ DISAPPROVE _____

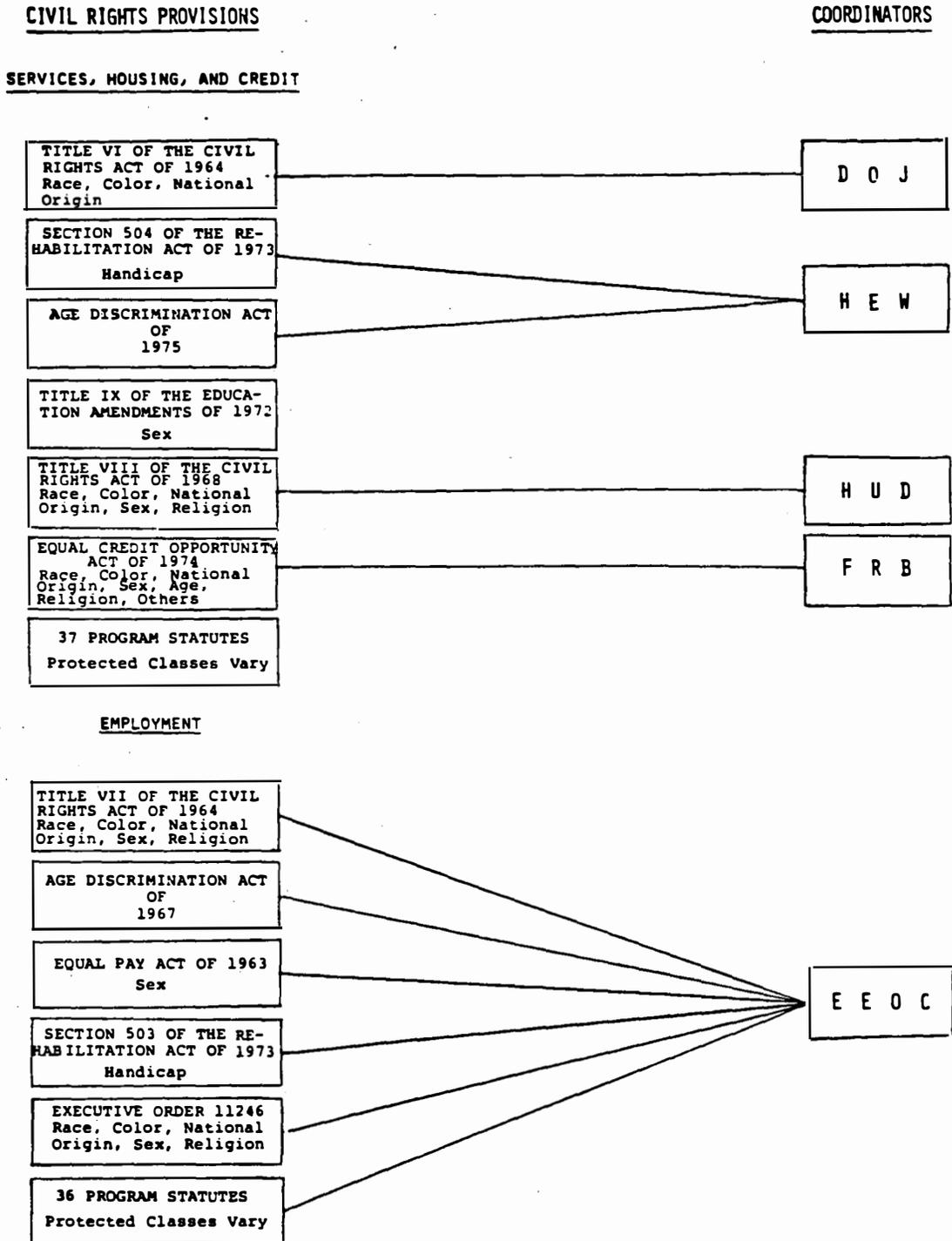
C. Announcement

We believe that the adoption of these recommendations and the creation of the new OMB unit should be announced by you at a press briefing. Attending the briefing would be the appropriate EOP staff and representatives of the agencies most directly affected. This approach not only provides you with an opportunity to reinforce your often stressed commitment to equal opportunity, but also advances your efforts to eliminate governmental inefficiency and unnecessary regulatory burdens, and will aid implementation of the Executive order.

APPROVE _____ DISAPPROVE _____

ATTACHMENT A

PRESENT FEDERAL CIVIL RIGHTS ENFORCEMENT STRUCTURE

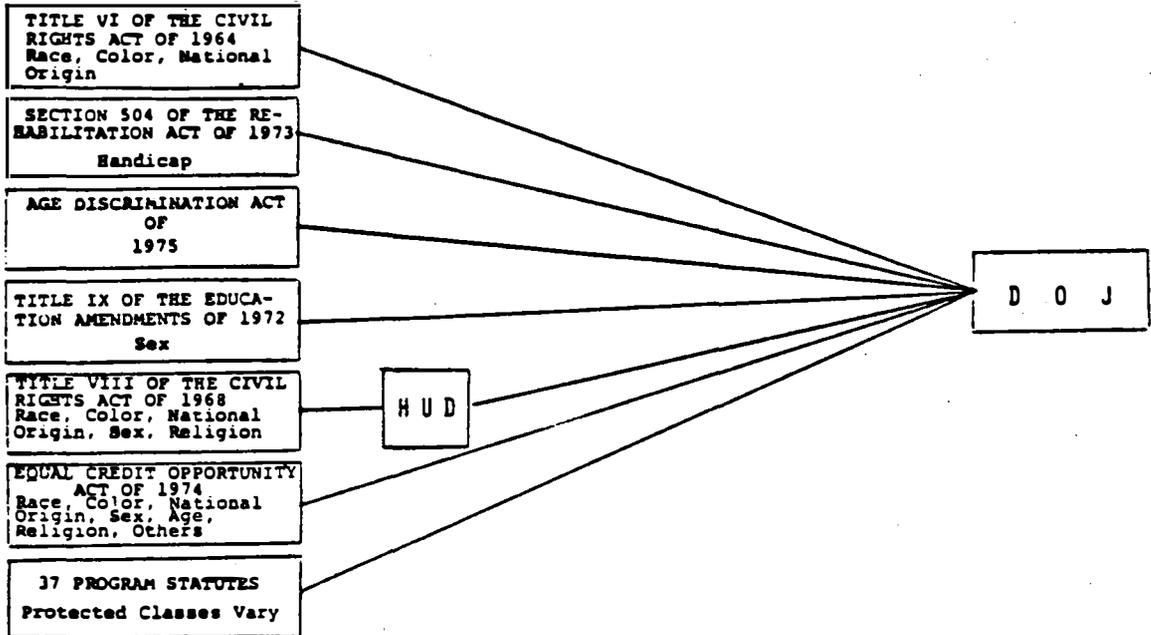


PROPOSED FEDERAL CIVIL RIGHTS ENFORCEMENT STRUCTURE

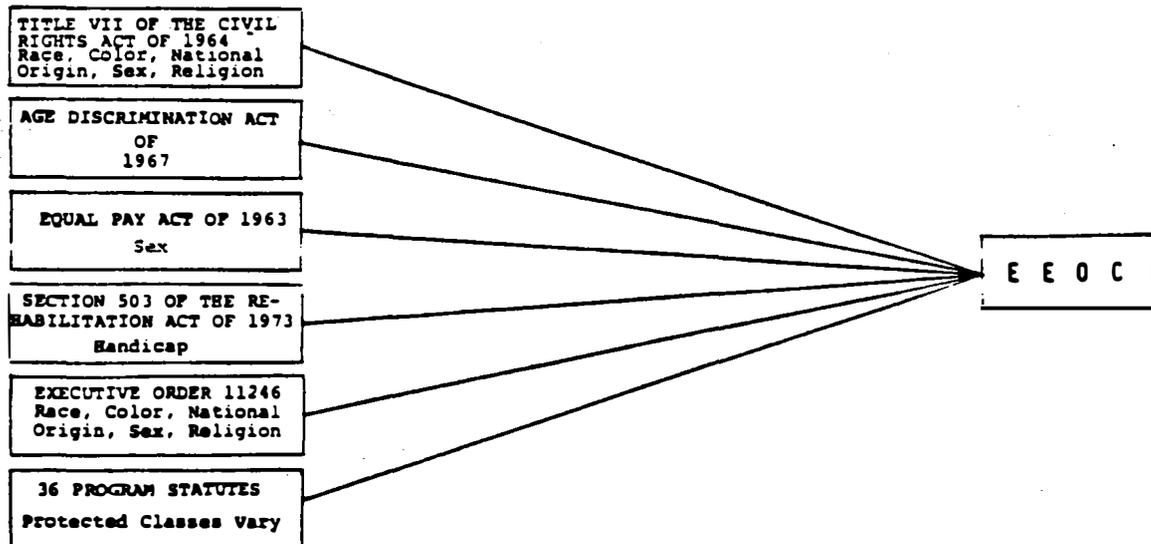
CIVIL RIGHTS PROVISIONS

COORDINATORS

SERVICES, HOUSING, AND CREDIT



EMPLOYMENT



SUMMARY OF AGENCY COMMENTS ON THE OMB RECOMMENDATION
TO INCREASE THE COORDINATION AUTHORITY
OF THE DEPARTMENT OF JUSTICE

Copies of the draft memorandum recommending that the Department of Justice receive coordination and leadership responsibility for civil rights enforcement in federally-assisted programs, housing, and credit were sent to 37 government agencies for comment. To date, 32 responses have been received. Fifteen agencies unconditionally endorse the OMB recommendation, six support it and offer suggestions for strengthening DOJ's position as coordinator, five express a desire to limit the coordination authority of DOJ, two oppose the recommendation, and four have no comment. In addition, five agencies did not respond. A summary of the positions of the responding agencies follows.

- The following agencies unconditionally support the OMB recommendation.

Department of Agriculture
Department of the Interior
Department of Transportation
Department of the Treasury
ACTION

Community Services Administration
Environmental Protection Agency
General Services Administration
Small Business Administration
Veterans Administration
Federal Deposit Insurance Corporation
National Aeronautics and Space Administration
Nuclear Regulatory Commission
Tennessee Valley Authority
Civil Aeronautics Board (It believes that under the OMB proposal, the relationship between Justice and independent regulatory agencies should be advisory in nature.)

- The following agencies support the OMB recommendation and offer suggestions for improving DOJ's position as a coordinator.

Department of Justice (It believes that an OMB civil rights unit is necessary to augment the coordinator's authority.)
Department of Commerce (It contends that an OMB civil rights unit is necessary to complement the coordinator's authority.)
Equal Employment Opportunity Commission (It recommends that some central authority, perhaps OMB, closely monitor the coordinative efforts of the EEOC and DOJ.)

Department of Labor (It also suggests legislation or an Executive order to include the prohibition of sex discrimination under Title VI.)

Department of Defense (It suggests a delay of six months before implementation to allow DOJ time for internal reform which would be accomplished with OMB oversight. It also maintains that the DOD housing program should be exempt from DOJ's coordination.)

Civil Rights Commission (It believes that HUD must maintain a lead role in fair housing enforcement. It also asserts that DOJ's role as coordinator must be complemented by the appointment of a cabinet level civil rights advisor and the establishment of an OMB division of civil rights within the Director's office.)

- The Federal Home Loan Bank Board believes that the proposed role for Justice as coordinator of Federal civil rights enforcement should not revamp or duplicate existing nondiscrimination frameworks. It further contends that Justice's role as coordinator should take into account the difference between the roles of program and regulatory agencies. Concurring in this position are:

Farm Credit Administration

Office of Personnel Management

National Credit Union Administration (It is of the opinion that only Congress and not DOJ should monitor and evaluate the effectiveness of other agencies civil rights operations.)

Federal Reserve System (It believes, however, that Congressional concurrence might be needed with respect to certain legislatively mandated enforcement responsibilities that the FRS must now act upon within its own authority.)

- The Department of Health, Education, and Welfare believes that the OMB proposal has two defects: the coordination function is not well defined, and a Deputy Assistant Attorney General at the Department of Justice would not be able to carry out effectively the coordination responsibility.

As an alternative, HEW calls for an Executive order establishing an interagency coordinating council composed of the heads of the compliance agencies, with the Attorney General serving as Chair. A staff,

headed by an executive director, would be assigned to the council. The functions of the council would be those the OMB proposal assigned to the Department of Justice.

- Department of Housing and Urban Development attached the following summary to its response:

I [Secretary Harris] believe that the February 2, 1979 recommendation of the PRP Civil Rights Task Force to locate all civil rights coordinating responsibility in respect of specialized Federal programs in a Deputy Assistant Attorney General will only be a step backwards and not an improvement in civil rights administration in the Federal Government. The proposed reorganization will continue the currently fragmented civil rights program and exacerbate existing problems. The recommendation would perpetuate the illogical separation of policymaking from enforcement authority and expand it to areas where authority and responsibility for the program are now in a single agency. It would tend to diffuse the accountability that program officers and agencies currently possess, and could diminish the number and quality of personnel to be used to enforce the fair housing laws by diverting them to coordinating roles. Such fragmentation would continue, and probably proliferate, differing enforcement standards and practices.

The recommended decision fails to build upon existing program expertise, contradicts the President's intent as stated in the State of the Union Message to strengthen fair housing enforcement authority and accountability in the Department of Housing and Urban Development, and ignores the wisdom gained from the study of civil rights enforcement in employment. Worst of all, it would diminish markedly the status and rank of leadership in fair housing and discourage effective civil rights leaders from public service. This could alienate a large constituency whose support this Administration is now beginning to harden as a result of successes in the employment area.

Instead of increasing "coordinating" and "directing" authority in the Department of Justice, the preferable approach would be to follow the EEOC reorganization model. This would create single agency authority and accountability for all civil rights policy and enforcement within the appropriate agency for each of the major specialized Federal programs with significant civil rights functions, e.g., housing and education, with the Department of Justice having such authority for all other programs. This would recognize

the unique statutory basis for each program and would build upon existing expertise, minimize disruption, maximize accountability and bring about more effective enforcement as a result of structural reform rather than transparent temporary coordination measures. To do otherwise would weaken the Federal civil rights program.

If this approach is not acceptable, the President should consider a consolidation of coordinating responsibility in HUD and HEW with respect to each department's major Federal programmatic activity, with DOJ having such responsibility for all programs other than housing and education. This would still retain effective use of the expertise of the program while permitting full consolidation within program areas should the results of the interim partial consolidation be less than effective. In no event should responsibility for programs such as Title VIII of the 1968 Civil Rights Act be splintered and weakened by dividing authority among several agencies or departments.

- The Department of Energy, the Legal Services Corporation, the National Endowment for the Humanities, and the Interstate Commerce Commission offered no substantive comments.
- The Department of State, the Federal Trade Commission, the National Endowment for the Arts, the National Science Foundation, and the Securities and Exchange Commission did not respond.

STAFF COMMENTS

STAFF COMMENTS

- creating civil rights unit within OMB

OMB, Congressional Liaison, Lipshutz, Martin, Weddington and Cruikshank recommend.

Watson believes that it is not clear what the OMB unit would do.

Eizenstat has no comment.

- establishment of a White House civil rights task force

OMB, Congressional Liaison, Lipshutz, Martin, Weddington and Cruikshank recommend.

Watson believes that the need and specific role for the task force is not clear. Eizenstat also disagrees, believing that a civil rights task force would bring into the White House controversial issues such as North Carolina desegregation and women in sports, on which agencies should have the lead.

- switching coordination of non-EEO Federal civil rights activities from HEW and HUD to Justice

OMB, Lipshutz, Weddington and Cruikshank recommend. Eizenstat also concurs, but suggests that potential opposition from civil rights groups be thoroughly checked out before any decision is made.

Watson opposes this recommendation because (1) the advocacy role that HEW and HUD play for certain constituencies is an inappropriate role for Justice; and (2) the Administration has proposed legislation to strengthen HUD's fair housing enforcement tools, which will be coming to the floor of the House in September. Congressional Liaison believes that giving coordinating responsibility to Justice seems to run counter to our Fair Housing proposal, and could result in the defeat of this, our major civil rights legislative initiative in the 96th Congress. Louis Martin joins Watson and CL in recommending that no decision be made on this proposal until a comprehensive assessment is made of the views of civil rights groups, of the possible impact on the Fair Housing legislation, and until the views of the new Cabinet members can be obtained.

- presidential announcement of decisions

Lipshutz, Weddington, Martin, Cruikshank and OMB
recommend.

Phil Wise and Stu Eizenstat believe Presidential involvement should be considered only if civil rights groups regard these decisions as an important reaffirmation of the Administration's commitment to civil rights.

(Louis Martin and OMB staff believe that the OMB unit and a White House task force would be positively regarded; reaction to a new coordinating role for Justice is less clear.)

THE WHITE HOUSE
WASHINGTON

7/23

Continue to (HOC) - Joanne
will check today to see when
it is expected.

Ray

THE WHITE HOUSE
WASHINGTON

Bill - - (Eliot Cutler)
Omb wants to
hold

60-Day Coal Report

Tick lower, OMB
SE Fall? why on how
to proceed; may need 1-week
Let turn on

4/11 Mly Mon - May
17067D (for now)

7/23 - down
w/idea;
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THE WHITE HOUSE
WASHINGTON



Bill--

OMB wants to put a hold
on the National Energy
Supply Shortage
Proclatmation. Apparently
there is a problem with
the dates. (Roy N. 3634)

THE WHITE HOUSE
WASHINGTON

Bill - Justa

Reminder: OMB
wants to hold this
up until next
Friday (← probably)

ID 792457

THE WHITE HOUSE

WASHINGTON

DATE: 05 JUN 79

FOR ACTION: SECRETARY ADAMS

- attached

SECRETARY ANDRUS

attached

STU EIZENSTAT

FRANK MOORE (LES FRANCIS)

attached

JIM MCINTYRE

*Appalachian Region
Commissioner courts - attorney*

DOUG COSTLE

attached

INFO ONLY: THE VICE PRESIDENT

JODY POWELL

JERRY RAFSHOON

JACK WATSON

CHARLES SCHULTZE

SUBJECT: SCHLESINGER MEMO RE 60-DAY COAL REPORT

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+ RESPONSE DUE TO RICK HUTCHESON STAFF SECRETARY (456-7052) +

+ BY: 1200 PM THURSDAY 07 JUN 79 +

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ACTION REQUESTED: YOUR COMMENTS

STAFF RESPONSE: () I CONCUR. () NO COMMENT. () HOLD.

PLEASE NOTE OTHER COMMENTS BELOW:

DP

FOR ACTION
FYI

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<input type="checkbox"/>	LOG IN/TO PRESIDENT TODAY
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<input type="checkbox"/>	CONFIDENTIAL
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<input type="checkbox"/>	EYES ONLY



Department of Energy
Washington, D.C. 20585

June 4, 1979

MEMORANDUM FOR:

The President

FROM:

Jim Schlesinger *JS*

SUBJECT:

60-Day Coal Report

The 60-day report on means to increase the production and use of coal, which you requested on April 5, is enclosed.

Enclosure

REPORT ON
INCREASING COAL PRODUCTION AND USE
BY THE
SECRETARY OF ENERGY
JAMES R. SCHLESINGER
AS REQUESTED BY
THE PRESIDENT ON APRIL 5, 1979

June 4, 1979
Washington, D.C.

INCREASING COAL PRODUCTION AND USE

Given the meager prospects for improvement in world oil supply and the long lead times for the introduction of other alternatives, the United States will require much greater use of coal in order to grapple effectively with the energy problems of the 1980's and 90's. Without greatly expanded use of coal, this country just may not make it.

In the abstract, the need to increase coal production and use is recognized by all. In practice, countless decisions, arrived at independently by various levels of government, tend to militate against the use of coal. If this nation is to cope effectively with economic and national security problems during the rest of this century, the obstacles to increased coal production and use must be removed by an effective national commitment to coal.

Two years ago the President presented the National Energy Plan (NEP) to the American public and to Congress. The NEP proposed measures that would keep oil imports at 6-7 million barrels per day (MMBD) in 1985. While many of these measures were enacted, three elements critical to greatly increased coal use have not been implemented:

- Domestic oil and gas prices have not moved rapidly to world levels;
- An industrial users tax and rebate mechanism, reinforced by a regulatory program, was not enacted;
- A stable regulatory regime has not been established.

As a result of these and other factors, the use of coal in 1985 is expected to be substantially less than projected earlier and the demand for imported oil higher by at least 2 MMBD. At the same time, developments in the world oil market have made it increasingly doubtful that an additional 2-3 MMBD will be available.

The extended curtailment of Iranian exports and the reduced level at which production was resumed have brought closer the time when world oil demand exceeds available supply. There have been no other developments that have favorable oil supply implications for the near or long term. This more somber assessment of world oil prospects is based on the following considerations:

- The situation in Iran has not stabilized and current exports of 2-3 MMBD could be stopped again at any time.
- Saudi Arabia has delayed capacity expansion and has imposed restrictions on production.
- Elsewhere in OPEC, no additions to capacity can be anticipated and current capacity continues to erode due to maintenance difficulties and maturing fields.
- The disappearance of spare capacity makes the U.S. more vulnerable to random disturbances in the intricate global oil supply system. The nation is also more vulnerable to politically-inspired embargoes, imposed by any one of several small producers, that would have been little more than an inconvenience a few years ago.

- Outside of OPEC, no new oil provinces have been discovered, despite continued drilling, to supplement the last large finds in the North Sea, North Slope and Mexico; and there is no improvement in the energy outlook for the Soviet Union.
- The position of the price moderates in OPEC has been weakened by the change in Iran and the successful demonstration that less oil brings more money.

Consequently, there will be even less oil in the 1980's than was expected two years ago, and quite possibly no more than is available today. If additional oil is not available, increased demand will push world oil prices up causing higher rates of inflation and reducing output and employment. Under these circumstances, further increases in U.S. oil imports could be obtained only by bidding available supplies away from Europe, Japan and the less developed countries.

If further increases in oil imports are not available on acceptable terms, the nation will have to meet its additional energy needs from domestic resources. Although conservation has reduced growth in energy demand to half the rate of GNP growth, there is still a large increment of demand that must be met by domestic production. Domestic oil and gas output cannot be expected to increase sufficiently, even with greater investment. The use of solar and renewable energy resources will increase steadily in coming years, but long lead times in developing and placing these new technologies in commercial use will push their main contribution into the next century. Finally, increases from nuclear power may be reduced as a result of Three Mile Island.

The only conclusion that can be drawn is that coal must play the major role in meeting the nation's incremental energy needs for the rest of this century. The alternative is no longer imported oil because it will not be available. The only other alternative is a permanent slowdown of the economy.

Notwithstanding the critical need for coal, growth in domestic coal use is lagging. To meet the nation's energy needs, coal consumption will have to rise from 623 million tons last year to 1.0 billion tons by 1985 and 1.6 to 2.1 billion tons by 2000 depending on the contribution of nuclear power. This will require at least a 4.5% annual increase in coal use. Yet, over the last five years, annual growth has averaged 2%, and even less in recent years. The difference between a 2% and 4.5% annual rate of growth in coal use by the year 2000 is approximately 600 million tons of coal or the equivalent of 6 million barrels of imported oil per day. Additional oil in that quantity is not likely to be available.

The prospects for increased coal production and use will be determined by the following four factors:

1. Implementation of the Clean Air Act

Coal is demand limited; and one of the principal constraints on demand for coal is the Clean Air Act. The objectives of the Clean Air Act are not at issue. However, the mechanics of its implementation have often presented an unintended obstacle to the increased use of coal. The states, which have the principal responsibility for achieving clean air objectives under the Act, have incentives to discourage internal coal use and to trust that the increased burning of coal occurs in other states. As a result, everyone favors greater coal use in the general, but few take the specific action necessary to bring this result about.

Many states have adopted stricter regulations in their implementation plans than necessary in order to establish reserve margins to provide for future economic growth or to simplify administration and enforcement. These margins may have been understandable when the energy problem was perceived as less serious. They are less understandable when they lead to increased oil imports and they reduce economic performance. Other provisions of the Clean Air Act and its implementing regulations could be changed so as to remove impediments to expanded coal use without violating National Ambient Air Quality Standards.

2. The ability of utilities to finance new coal capacity

The displacement of oil from existing utility boilers depends largely on additions of new coal fired baseload capacity. Regulatory procedures, however, discourage utilities from retiring these boilers as rapidly as economically justifiable. Regulatory "lag" in an inflationary period makes it harder for utilities to raise capital and to undertake a replacement construction program. Public utility commissions are reluctant to allow utilities to build more capacity than needed to meet load growth plus a reserve margin. Regulatory accounting practices "front-load" capital charges, so that a new coal plant, which provides power more cheaply, paradoxically raises rates in the first few years. The net result is less coal use, more oil imports, and increased overall cost to consumers.

3. The reduction of coal's competitive advantage

The cost advantage enjoyed by coal from the increase in world oil prices in the 1970's is disappearing under the impact of government regulations that increase the cost of mining, transporting and using coal. For example, coal prices have more than tripled over the past decade and almost doubled in the past four years. In particular, coal imports have been rising in recent years, while there is unemployment and as much as 100 million tons of unused capacity in the mines. Although the quantities of imports are not yet significant (4-6 million tons), the trend is disturbing and symptomatic.

4. The institutional impasse over coal

Responsibilities for various aspects of coal production, transportation and use are relegated to different agencies and levels of government. No mechanism exists to resolve issues and establish a balance at the federal level below the President or to coordinate actions effectively at the federal, state and local levels. The result is the delay, inaction, finger-pointing and uncertainty that has led to the unacceptably low 2% rate of annual growth in coal use, accompanied by a rise in oil imports.

In addition to reducing the immediate constraints to conventional use of coal, the federal government must also become actively involved in the development of capacity to produce synthetic fuels from coal. In the longer-term, synthetic fuels from coal will contribute increasingly to reducing the nation's dependence on imported oil. Because of the large capital expenditure, complex technologies and uncertainty over price, private investors are not willing today to make commitments to such projects without active and effective government support. But the nation can ill afford to wait. The worsening world oil price outlook makes actual capacity in these technologies increasingly more attractive and the costs of delay ever greater.

Two major strategies emerge for increasing coal production and use in this country:

- In the near-term, increases must depend upon greater conventional use of coal in the utility and industrial sectors;
- In the long-term, additional increases in coal use will depend upon new, non-conventional coal technologies and adequate coal production from federally owned western lands where most future increases in production will occur.

RECOMMENDATIONS

Conventional Coal Uses

1) In view of the unavoidable conflict and need for a fine balance between coal use and air quality, I recommend that the President establish an independent task force, perhaps the Coal Commission, to examine modifications in the implementation of the Clean Air Act that could increase coal use without violating National Ambient Air Quality Standards. Examples of such measures are:

- Urge the states to examine and revise their implementation plans where they are stricter than necessary to meet the National Primary Ambient Air Quality Standards;
- Review the impact of non-attainment and prevention-of-significant-deterioration provisions of the Clean Air Act as they affect siting and the use of coal in industrial facilities;
- Use intermittent control and improved monitoring systems where an exemption from the use of coal under the coal conversion program under the Fuel Use Act would otherwise be granted;
- Reform the process of issuing permits for coal-fired plants by using more realistic air quality modeling; and

- Revise the criteria and duration in Section 110(f) for temporary modification of State Implementation Plans (SIPs) that are more stringent than required to meet primary standards, including measures to place greater initiative with the President.

2) To speed the substitution of coal for oil in existing facilities, I recommend that:

- The Administration consider additional economic incentives to improve the cost advantage of coal, including augmented tax credits and depreciation allowances or phased-in boiler fuel taxes with rebates; and
- The Administration develop a program to assist states in assuring adequate financing for utilities to add coal and other non-oil and gas generating capacity.

3) To reduce the time required for siting and licensing coal burning plants, I recommend that:

- A mechanism be established to encourage states to "bank" sites; and
- A "one-stop" licensing system be established at the federal and state levels for coal-fired utility and industrial users of coal.

4) To cut through the institutional impasse, I recommend that:

- The President create a mechanism to resolve coal issues at the federal level that will preclude the usual bureaucratic stand-off; and
- The National Governors Association be asked to address ways to bring greater unity to the efforts of the states and the federal government to increase coal production and use.

Non-Conventional Coal Uses

1. To assure the rapidly expanded use of new coal technology in the 1980's, I recommend that:

- The Administration aggressively pursue the demonstration of a broad range of new coal technologies so that their technical, environmental, economic and financial characteristics are well known;
- The Administration recognize that federal participation is necessary to accelerate the creation of meaningful synthetic fuel capacity in the late 1980's; and
- High priority be placed on the implementation of the Administration's generic loan guarantee legislation.

2) To provide adequate domestic supply for increasing coal use, I recommend that:

- The Department of Interior's (DOI's) administration of leases incorporate multiple land use planning to permit timely leasing of high quality coal that can be developed with the least environmental risk;
- DOI's surface mining regulations and unsuitability criteria be applied in a way that facilitates increased coal production; and
- Diligent development of existing leases, and expeditious processing of all outstanding preference right leases be required.

3) To ensure that problems in transportation do not erode coal's competitive advantage, I recommend that:

- The Administration ensure that coal users do not bear a disproportionate share of the cost of upgrading and maintaining railroads;
- The Administration's proposals for railroad deregulation emphasize protection for captive shippers, such as a ceiling on the tariff a railroad may charge, in addition to provisions for long-term freight contracts;
- Priority be given to passage of the Administration's coal slurry pipeline legislation;

- Measures be developed to halt the abandonment of trackage that will have a significant impact on coal hauling; and
- The Department of Transportation (DOT) examine and recommend measures the states can take to ensure the adequacy of state roads to meet present and future coal transport needs.

CONCLUSION

The President has stated clearly and bluntly that the nation's energy problems are serious and getting worse. To help solve those problems, it is imperative that the United States stop using so much petroleum and start using more abundant fuels. While the contribution of nuclear power, solar energy and renewables will be helpful, the greater use of coal is indispensable. If this nation can overcome the unintended obstacles to greater coal use, then the prospects for our security and well-being are reasonably good. The time is right for a renewed national commitment to coal.



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

JUN 4 1979

Memorandum

To: The President

From: The Secretary of the Interior

Subject: Sixty Day Coal Report

On April 5, 1979, you asked that the Department of the Interior, along with the Department of Energy and the Environmental Protection Agency, report to you within sixty days on how coal production, development and use can be increased. This memorandum summarizes the steps I am taking to ensure that the Department of the Interior's responsibilities are carried out in a manner that efficiently and responsibly encourages long-term growth in the production and use of coal. (These initiatives are discussed further in The Sixty Day Coal Report transmitted to you by OMB.)

The DOI Role in Expanding Coal Production and Use

Before summarizing the Department's initiatives, several facts should be emphasized:

1. Coal production has increased in recent years; indeed, March 1979 was a record month for U.S. steam coal production.
2. In the past two years, production of Federal coal has risen over 65% to in excess of 60 million tons; during your first term, Federal coal production will double. Mine plan approval by this Department during the past two years will significantly increase Federal coal production capacity, adding an estimated 90 million tons to the nation's coal supply. These numbers demonstrate an important turnabout in the availability and use of this vital energy resource.
3. The coal industry is, by common consensus, capable of even greater production. Present national production capacity exceeds demand by 100-150 million tons per year.
4. Near-term increases in coal use are primarily constrained by demand factors, especially the prices of substitute fuels, rather than supply considerations.
5. The major policies and programs of the Department of the Interior, which include leasing of Federally-owned coal and regulation of the surface environmental impacts of all coal mining, affect the availability of coal and,

to some extent, the cost at which it can be mined, but have little effect on the demand for coal.

In light of the points noted above, it is unlikely that the initiatives proposed in this memorandum will have major near-term effects on the use of coal. However, the steps I have taken will ensure that, as an increased demand for coal materializes over the next decade, this Department's programs are carried out to encourage efficient and responsible growth in coal use. These initiatives will allow the Department to:

- o expedite decisions by DOI public lands management agencies affecting the siting of energy projects;
- o manage Federal coal reserves — including a new system for leasing Federal coal — to encourage the use of coal;
- o assure a stable and rational regulatory environment to provide greater certainty and, thus, encourage the development of coal; and
- o encourage the development of techniques to extract coal in the most efficient, productive and environmentally sound manner.

Opening Debate on Legislative Mandates

The Department of the Interior has discouraged efforts to reopen Congressional debates about the basic legislative mandates for coal leasing, Federal lands planning and management, and surface mining. Years of debate preceded the 1976-77 adoption of those guiding statutes. The statutes provide clear Congressional direction that Federal coal leasing and non-Federal coal production take place within planning and regulatory frameworks that assure necessary coal production while minimizing environmental and other social costs. The Department has developed integrated programs to implement the statutes and to carry out Presidential coal development and environmental protection directives. The implementation of these programs is just underway, and changes in the underlying statutes would be, in my view, premature.

Even if DOI coal-related planning and environmental standards were substantially relaxed, no significant increase in production or use of coal would result. There would be some reduction in costs and some changes in location of coal production and use, but conflict and resulting delays for individual development proposals would likely increase, State-Federal relations would return to pre-1977 conflicts, and public acceptance of increased coal use would diminish. Where programs of this Department affect the cost of mining coal — especially the new Federal coal management program and the Office of Surface Mining regulatory program — they will be monitored carefully to identify unwarranted or unintended effects that would inhibit coal production as demand increases.

Comments on the Sixty Day Coal Report

There are two major deficiencies of the Sixty Day Coal Report: first, there is only limited analysis of the nation's energy situation to place the present coal use situation into accurate perspective; and, second, analysis that would permit evaluation of the benefits and costs of the report's suggestions for increasing coal use is lacking.

The percentage of coal as an element of our Nation's in-the-ground energy reserves compared to the percentage of coal's contribution to total energy use is not, in itself, sufficient for analysis of the economic benefits of expanding the use of coal. In fact, the emphasis on that statistical perspective creates a false impression of an irrational disparity between reserves and use.

Coal is unquestionably the fuel of choice for generating electricity, and will continue to be. Data show that the percentage of electric power made with coal rather than oil/gas is increasing. While projections for additional electric power capacity are being reduced (because of general economic circumstances causing an overall reduction in plans for building new electric power plants), coal's share of the projected new capacity is increasing. The Administration can point to success in assuring that coal is used to wean our electric power industry away from oil.

Beyond the effort to make coal the basic electric power fuel, major increases in the use of coal will likely come from:

- o substitution of electric power for direct petroleum uses;
- o increased use of liquid or gas fuels made from coal rather than oil and natural gas; and
- o greatly increased conversions of present electric power and industrial boilers to coal.

In my view, the analysis in the Sixty Day Coal Report does not adequately address the costs and benefits of pursuing specific policies within these general areas. There is no quantification of the actual coal-use benefits to be derived from the suggestions of the Department of Energy, and so there is no way to judge the relative economic and social value of those suggestions. The actual coal-use increases to be gained from the environmental trade-offs

proposed by DOE would likely not achieve a level of significance, in relation to the social costs, unless accompanied by economic trade-offs to cause earlier fuel switching, synthetic fuels consumption, or fuel-to-electricity shifts. The credibility and acceptance of whatever coal-use policy changes you might consider will rest on accurate and reviewable data and analysis to demonstrate the Administration's understanding of the efficiencies and equities involved in any decisions.

DOE Initiative on Intermittent Control Systems

Of the initiatives contained in the materials made available by DOE and EPA staff for this Sixty Day Coal Report, the only issue on which I have a specific comment is the use of intermittent control systems (ICS). A Department of Energy staff paper prepared for this Report recommends amending the Clean Air Act to permit the use of intermittent control systems to meet air quality standards, as a means of increasing the demand for coal. No data or information currently exists which would indicate that allowing the use of intermittent control systems would have more than a marginal effect on increasing demand for coal. This Department has several concerns about the use of intermittent controls, especially the resulting increased loading of the atmosphere with sulfates and nitrates which contribute to visibility degradation and acid rain. Furthermore, the reliability and enforceability of intermittent control systems have not been demonstrated. For these reasons, and others contained in the EPA paper on this topic, I strongly believe that amending the Clean Air Act to permit use of ICS is not justified by the current information.

DOI Initiatives

I am pleased to report to you the following initiatives that are or will be taken to encourage the increased production, development and use of coal. The initiatives are listed here, and discussed in more detail in the attached report, under the four broad issues mentioned above.

Issue 1: What can be done to expedite decisions by DOI public land management agencies affecting the siting and development of coal-using energy projects?

The land and resource management responsibilities of the Department of the Interior play an essential role in assuring that plans for increased production of coal are accompanied by development of powerplants, transmission lines, rail and slurry transportation systems, water supplies, and other facilities necessary for the increased use of coal. In this regard, the major activities of the Department are in evaluating rights-of-way proposals for transmission or transportation over Federal lands and in compliance with the Clean Air Act Amendments of 1977, assessing the air quality impacts on Federal lands of new coal fired powerplants. Coal production and use is projected to increase substantially in Western

states by the end of the century. As a result, DOI public management agencies, whose jurisdiction is substantially concentrated in the West, will be increasingly called upon to make difficult decisions involving expanded coal use, environmental protection, and priority use of water.

The Department of the Interior will take the following steps to expedite decisions affecting the siting process:

- o Improve Departmental-level oversight of priority projects being evaluated or permitted by Interior agencies.
- o Reorganize Bureau of Land Management (BLM) headquarters and field offices to improve BLM capability to handle major projects.
- o Develop new rights-of-way regulations under the Federal Land Policy and Management Act to save time and money for applicants.
- o Direct increased attention to BLM land use planning program impacts on coal-related DOI actions.
- o Encourage active coal industry involvement in earlier and more open project planning.
- o Establish new National Park Service technical support function to provide faster and more reliable evaluations of coal facility air quality impacts on the National Park system.
- o Make State governments more active and supportive participants in DOI coal development decisions.

Issue 2: How can the Federal Government manage its coal reserves to encourage the use of coal?

On June 2, I gave my approval to a new Federal coal program that will make 1.5 to 2 billion tons of coal available for prompt leasing and, in the long run, will clear the way for leasing up to 200 billion tons of coal. One of the most critical decisions I made was to streamline the system used by the Bureau of Land Management to determine which Federal lands should be considered unsuitable for coal mining. Another critical decision concerned maximum economic recovery, which, by statute, must be determined before a lessee may mine coal and which requires the lessee to mine a specified amount of coal. In response to further analysis by the Department and concerns expressed by industry, other agencies of the Federal government and the States, I chose a new definition for maximum economic recovery which corresponds with the manner in which economic decisions are made by industry and is far less costly to this Department to administer.

In renewing the Department's program for competitive leasing of Federal coal, I have adopted the following policies and procedures to assure an economic and environmentally-sound program:

- o Improve coordination of the responsibilities of the Department of the Interior in the areas of land use planning, environmental protection, and coal leasing to help to minimize delays and uncertainty.

- o Work closely with the Department of Energy to ensure that leasing activity will be responsive to demand projections.

- o Enforce diligent development provisions in the law to ensure that coal is developed in a timely and assured basis.

- o Better coordinate activities of the Bureau of Land Management and the Fish and Wildlife Service to ensure that coal on Federal lands is mined in an environmentally sound manner.

Issue 3: How can the Federal Government assure a stable and rational regulatory environment and, thus, provide greater certainty to encourage the development of coal?

During the last ten years, major legislation has been enacted affecting where, how and under what conditions coal can be mined. These statutes assign regulatory functions to different agencies and to different levels of government. The uncertainty inherent in implementation of these regulatory functions has been blamed for limiting the movement to coal. As noted elsewhere, it is unlikely that this is currently a major factor inhibiting coal production, development and use. In point of fact, annual coal production from Federal and Indian lands in the West will increase significantly by the mid-1980's as a result of 25 new or expanded major mining plans approved since January 1977, all of which were rigorously reviewed for adherence to Federal regulatory statutes, including applicable standards of the Surface Mining Control and Reclamation Act of 1977.

Nevertheless, it is clearly of paramount importance for the Federal Government to: (1) avoid delay, duplication and unnecessary cost to industry and the general public in the review and approval of mining operations; and (2) assure that regulatory programs are implemented to accomplish their objectives in the most efficient and least burdensome manner.

The Department of the Interior will take the following steps to meet these objectives:

- o Streamline the permit review and approval process.
- o Encourage early identification of reclamation problems.
- o Assure the smooth transition to State regulatory primacy.
- o Establish a comprehensive and credible evaluation system

to monitor economic consequences of surface mining regulatory programs.

- o Develop a program to explain the surface mining regulatory program and to train operators and their employees.

Issue 4: How can the Federal Government encourage the development of techniques to extract coal in the most efficient, productive and environmentally sound manner?

The primary burden of developing techniques for the extraction of coal in a manner that is not only environmentally sound, but also economically efficient lies with the coal mining industry and its suppliers of equipment and consultants. Because of the importance of coal as a source of energy, however, the Federal Government must do what it can to facilitate and complement the efforts of industry.

The Department of the Interior will take the following steps towards this objective:

- o Clarify the environmental information requirements imposed by the recently promulgated surface mining regulations and how they can be met.
- o Utilize the experimental practices provisions of OSM's regulations, where appropriate.
- o Conduct R&D on ways in which to reduce the overall cost of complying with environmental performance standards.


CECIL D. ANDRUS

Attachments

ID 792569

THE WHITE HOUSE

WASHINGTON

DATE: 08 JUN 79

FOR ACTION:

INFO ONLY: THE VICE PRESIDENT STU EIZENSTAT
FRANK MOORE (LES FRANCIS) JIM MCINTYRE

SUBJECT: COSTLE MEMO RE EPA RECOMMENDATIONS ON THE 60-DAY COAL
STUDY

+++++
+ RESPONSE DUE TO RICK HUTCHESON STAFF SECRETARY (456-7052) +
+ BY: +
+++++

ACTION REQUESTED: YOUR COMMENTS

STAFF RESPONSE: () I CONCUR. () NO COMMENT. () HOLD.

PLEASE NOTE OTHER COMMENTS BELOW:

	FOR STAFFING
	FOR INFORMATION
	FROM PRESIDENT'S OUTBOX
	LOG IN/TO PRESIDENT TODAY
	IMMEDIATE TURNAROUND
	NO DEADLINE
	LAST DAY FOR ACTION

FOR ACTION
FYI

/	VICE PRESIDENT
	JORDAN
/	EIZENSTAT
	KRAFT
	LIPSHUTZ
/	MOORE
	POWELL
	RAFSHOON
	WATSON
	WEXLER
	BRZEZINSKI
/	MCINTYRE
	SCHULTZE
	ADAMS
	ANDRUS
	BELL
	BERGLAND
	BLUMENTHAL
	BROWN
	CALIFANO
	HARRIS
	KREPS
	MARSHALL
	SCHLESINGER
	STRAUSS
	VANCE

	ARONSON
	BUTLER
	H. CARTER
	CLOUGH
	CRUIKSHANK
	FIRST LADY
	HARDEN
	HERNANDEZ
	HUTCHESON
	KAHN
	LINDER
	MARTIN
	MILLER
	MOE
	PETERSON
	PETTIGREW
	PRESS
	SANDERS
	WARREN
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	CONFIDENTIAL
	SECRET
	EYES ONLY

*Send
Costle memo
to ↑*



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUN 7 1979

THE ADMINISTRATOR

MEMORANDUM FOR THE PRESIDENT

FROM: Douglas M. Costle *Douglas M. Costle*

SUBJECT: EPA Recommendations on the 60-Day Coal Study

The Administration's position on the controversial issue of coal use and the environment has been a central feature of your energy policy. Two radically different views of this issue are routinely pressed on the public. One view asserts that for coal use to increase, environmental requirements must be relaxed. The other view maintains that the public still regards coal as a dirty fuel and that to increase coal use the government must adopt a clear position favoring strong environmental controls.

In your 1977 Energy Message you clearly set Administration policy as agreeing with the second viewpoint - that coal can and must be burned cleanly for the public to accept it. In my opinion your position on this issue helped make the coal conversion programs one of the least controversial parts of your energy program.

I do not believe Administration policy on this issue should change. Jim Schlesinger's memo to you on the "Sixty-Day Coal Study" takes a different view. He states that environmental requirements are a major constraint on coal use. He recommends that we try to amend the Clean Air Act. I disagree.

Your Actions On Coal

This Administration has no reason to be apologetic about its record on coal. Coal use is on the upswing. Despite a recession, coal use by electric utilities has risen at six percent a year between 1973 and 1977. This trend was dampened somewhat in 1978 by the coal strike.

Coal's dramatic cost advantage over oil is projected to continue to improve over the next decade and we can expect its use to increase in the industrial sector as well as its traditional market in the electric utility sector.

You have already taken the most important step towards increased coal use by decontrolling the price of oil. In my opinion, this action dwarfs the effect of all of the measures discussed in the Sixty-Day Study. This measure not only makes the direct firing of coal more attractive, but gives a tremendous boost to the use of coal derived synthetic fuels.

Nonetheless, several impediments to increased coal use remain. The most important one from our vantage is the public's perception that coal is a "dirty" fuel. This public perception gets translated into legal restrictions, many of them at the state or local level. For example, many states have more stringent limitations on coal burning than are required by any federal law.

EPA's Role

I see part of EPA's job as assuring the public that coal can be burned cleanly. I believe that we are doing so and in a way that is getting a lot more coal burned. For example:

- o Since the adoption of the Prevention of Significant Deterioration program under the Clean Air Act, EPA has issued permits for 74 new coal-fired utility boilers which, when they come on line in the 1980's, will increase coal use by nearly one-fourth.
- o Under this program we have denied permits for only two plants. One of these plants has come back with better pollution controls and now can probably be approved.
- o EPA has completed necessary environmental reviews on the vast majority (100 out of 146 units) of coal conversion candidates referred to it by DOE. No EPA requirement impedes their conversion.

- o Our just announced New Source Performance Standards for utility boilers provide maximum flexibility in choice of coal type. Our joint analysis with DOE showed coal use nearly tripling by 1995 with the standard having a negligible effect on total production.

The Clean Air Act

I strongly urge you to reject Jim Schlesinger's recommendations to amend the Clean Air Act for the following reasons:

- o Changing the Clean Air Act would buy little in increased coal use. Every analysis we have done (including joint analyses with DOE) shows existing national environmental requirements are not a major impediment to coal use. Coal is on the increase because of its tremendous price advantage over oil. Environmental requirements are generally much less costly than the price differential between the two fuels. Changing these requirements will have little effect on fuel choice, especially when one considers that these requirements are necessary in most cases to get people to accept coal burning in their own back yard.
- o Reopening Clean Air Act issues will add uncertainty and confusion and could slow both the nation's movement to coal and the further implementation of badly needed environmental controls. Administration proposals to amend the Act are likely to be bitterly opposed and will simply make our desire to increase coal use much more controversial.
- o This is a very sensitive period for Clean Air Act implementation. Under the Act, state clean air plans needed to meet public health standards must be adopted this year. Many States are behind schedule and would jump at an excuse to take more time. I am working to keep the Act intact while keeping the pressure on the States to submit adequate clean air plans. Administration consideration of amendments at this time would very likely cause major delays in this important public health program.

The Sixty-Day Coal Study

This study was set up to be a joint effort by the Department of Energy, the Department of the Interior and EPA. Each agency was given responsibility for certain issues. DOE had responsibility for most of the demand related issues. Unfortunately, DOE pulled out of this joint effort at the last minute. We have thus been forced to prepare a final report which is in large part a DOE draft.

The combined staffs of EPA, DOI and OMB have been unable to correct many of the deficiencies in the report. The report is not of the quality you have the right to expect of a major interagency effort. The report is generally qualitative. It offers no framework for comparison of the costs and benefits of different options for increased coal use.

I recommend that you not release this report in its current form (or Jim's report). I recommend that you direct DOE to work with EPA, DOI and OMB to finish a report worthy of publication.

EPA Issues

EPA had responsibility for two issues in the interagency report: intermittent control systems and research and development on using coal cleanly.

Should the Clean Air Act be amended to allow the use of intermittent controls?

Intermittent control systems are techniques to reduce emissions only when weather conditions will produce high pollution levels around major sources, e.g., by switching fuels or cutting back on plant operation.

I strongly recommend against amending the Clean Air Act to allow their use. Government and industry debated this issue from 1972 to 1977. Finally, Congress

(supported by the Administration) resolved the issue by forbidding intermittent controls as an acceptable pollution control technique.

Allowing intermittent controls is not appropriate because :

- o They do not decrease the amount of pollutants going into the atmosphere. Thus, allowing them would further degrade visibility in our national parks, would increase acid rain and sulfate levels, and would erode the margin of safety in our public health standards.
- o They allow emissions to go right up to air quality ceilings, forcing possible delays of new projects while states or firms figure out how to get enough clean up of existing facilities to make room for new ones.
- o They discourage firms from trying to improve control technology.
- o They have been tried in the past and are very difficult if not impossible to enforce.
- o No increase in coal use from such a policy has been shown. No analysis of such benefits has been done. EPA believes very little increase in coal use would actually result.
- o Trying to amend the Clean Air Act to allow their use is not likely to be successful and would be contrary to your strong commitment to environmental quality.
- o As an alternative, DOE can use its existing regulatory authority under the Fuels Use Act to force facilities to burn coal that are reluctant to burn it voluntarily.

Would an increased level of Federal R/D spending on pollution control accelerate near term coal use?

I recommend an expansion of the sulfur oxide and particulate control technology research and development efforts. The expanded program would focus upon technologies which could achieve a higher level of control at a reduced total annual cost. The expanded environmental control R&D program would:

- o Lower the public's resistance to the use of coal, which is perceived as a "dirty" fuel, and
- o Lower industry's resistance to the use of environmental controls.

Lowering the public's and industry's resistance to expanded coal use would accelerate the installation and commercialization of new coal-fired boilers and the earlier retirement of existing facilities.

Other Issues

Of the issues where the Department of Energy had the lead, I have little to recommend. However, I agree with DOE staff that the Fuel Use Act be enforced as vigorously as possible. In addition, I favor measures to retire existing oil fired utility boilers and replace them with new coal fired power plants. New coal fired power plants emit less than existing oil fired plants and in some cases are cheaper because of the enormous price advantage that coal has.

Finally, with regard to the Department of the Interior's issues, I must first observe that their prime responsibility is coal supply, not demand. At present we have excess coal supply capacity. This will continue to be the case for the next several years. Thus, DOI's recommendations deal with longer run questions. I concur with their recommendations to increase coal use. EPA will continue to work closely with them to ensure that DOI programs both get us the coal we need and are compatible with environmental requirements.

ID 792457

THE WHITE HOUSE

WASHINGTON

DATE: 05 JUN 79

FOR ACTION: SECRETARY ADAMS

SECRETARY ANDRUS

STU EIZENSTAT

FRANK MOORE (LES FRANCIS)

JIM MCINTYRE

DOUG COSTLE

INFO ONLY: THE VICE PRESIDENT

JODY POWELL

JERRY RAESHORN

JACK WATSON

CHARLES SCHULTZE

SUBJECT: SCHLESINGER MEMO RE 60-DAY COAL REPORT

*XC: FM ✓
HL ✓
SL ✓*

+++++
+ RESPONSE DUE TO RICK HUTCHESON STAFF SECRETARY (456-7052) +
+ BY: 1200 PM THURSDAY 07 JUN 79 +
+++++

ACTION REQUESTED: YOUR COMMENTS

STAFF RESPONSE: () I CONCUR. () NO COMMENT. () HOLD.

PLEASE NOTE OTHER COMMENTS BELOW:

Cable: On 5/11 the Congressional Coal Group asked to meet w/you to supplement this report. I think they should.



THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

JUN 12 1979

MEMORANDUM FOR: Mr. Rick Hutcheson
Staff Secretary
The White House

SUBJECT: Comments on DOE Report on Increasing Coal
Production and Use, June 4, 1979

In response to your request we have reviewed the Report on Increasing Coal Production and Use, which was forwarded to President Carter by Secretary of Energy James Schlesinger on June 4, 1979. Our comments are attached.

Thank you for the opportunity to comment on this report.

A handwritten signature in black ink, reading "Brock Adams". The signature is written in a cursive style with a large, prominent initial "B".

Brock Adams

Attachment

Department of Transportation Comments on DOE Report
on Increasing Coal Production and Use, June 4, 1979

The main body of the report does not address transportation except for a brief reference to the reduction of coal's competitive advantage through government regulations that increase the cost of mining, transporting and using coal. No discussion is included of the rationale for the specific actions concerning transportation which are presented in the recommendations section of the report.

In the recommendations section, the report includes under "Non-Conventional Coal Uses" five items concerning transportation. The first recommendation is that the Administration ensure that coal users do not bear a disproportionate share of the cost of upgrading and maintaining railroads. We are strongly opposed in principle to unnecessary government interference in railroad operation. Long term rate regulation would be counter to the Administration's proposed legislation. The goal of the proposed Railroad Deregulation Act of 1979 is to reform the economic regulation of the railroads to foster a healthy, efficient private freight transportation system, with a maximum reliance on competitive forces in the transportation marketplace.

The second DOE recommendation is that the Administration's proposals for deregulation emphasize protection for captive shippers, such as a ceiling on the tariff a railroad may charge, in addition to provision for long-term freight contracts. The Administration's proposed Railroad Deregulation Bill contains protection for the captive shipper. The Interstate Commerce Commission may undertake investigation of rates upon allegation by a transportation customer that a rate has damaged its competitive position and impose a new rate if the shipper shows that he has no reasonable transportation alternative and the railroad fails to show the rate it established was reasonable. The proposed bill also includes a requirement for submission to Congress of a two-year and a four-year status report on its implementation. These reports will include an assessment of the impacts of its provisions on captive shippers, and the fourth-year report will contain recommendations for legislative change should the bill's provisions impact unfairly on any segment of the economy. With respect to the DOE recommendation concerning contract rates, the bill explicitly permits, and, in fact, encourages contracts for rates and services between carriers and purchaser of rail services.

With respect to the recommendation on coal slurry pipelines, DOT supported the Administration's 1978 bill to grant Federal powers of eminent domain to coal slurry pipeline operators. We continue to favor such legislation, provided that energy and economic efficiency in coal transportation and maintenance of fair intermodal competitive conditions are assured.

The fourth recommendation concerns halting rail abandonment. In that this would increase rather than decrease the regulatory burden as well as lead to economically inefficient and energy inefficient transportation decisions, I would oppose it.

The final recommendation is that the Department of Transportation examine and recommend measures that the States can take to ensure the adequacy of State roads for coal transport needs. The Department, with the cooperation of the States, is examining the adequacy of all roads used for coal transportation. Previous studies have indicated that coal roads are in poor shape, requiring over \$4 billion to upgrade them. We have proposed a method for aiding the States in financing solutions to coal transportation problems, including coal roads and railroad grade crossings, through a Federal severance tax on coal. After studying the problem for over two years, we have come to the conclusion that, if the necessary restoration is to be accomplished, a severance tax is the only viable way to fund this program. The DOE has refused to accept this position, and we have been waiting for some months for a statement of their recommendations as to alternatives. They have indicated concerns with the proposal, including the impact which a severance tax would have on the competitive position of coal. The Office of Management and Budget has requested that the proposal be coordinated with other agencies, including the Department of Energy. We are continuing our efforts to develop a coordinated proposal.



APPALACHIAN REGIONAL COMMISSION

OFFICE OF THE
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June 19, 1979

The President
The White House
Washington, DC

Dear Mr. President:

The 60-day Coal Report which you requested from the Departments of Interior and Energy and the Environmental Protection Agency will soon reach your desk. As your representative to the Appalachian Regional Commission my perspective of the problems of increasing coal development are different than the three agencies who have primarily a regulatory responsibility.

In my day to day contacts with the 13 Appalachian States, I have witnessed their support for your commitment to increased coal utilization and their frustrations with a goal as yet unrealized.

The recent instability in the regulatory framework of coal development has significantly retarded the movement to coal, but this instability can now be put behind us. In addition, a political consensus appears to be growing for the synthetic production of oil and gas from coal. In short, the time is finally right for a strong move toward coal.

I am including a brief report on how I believe a coal development policy should proceed. Thank you for this opportunity.

Sincerely,

WILLIAM E. ALBERS
Alternate Federal Cochairman

Enclosure

COAL POLICY RECOMMENDATIONS

The national security implications of our current dependency on oil are grave and finally are being realized by the American public. Two of your earlier energy messages called for the Nation to use more coal, but only minimal movement in that direction has occurred. The major reason for this lack of progress is regulatory instability which eliminates investor confidence. Investors must feel secure that the rules of the game for coal development are stable and that long-term investments can be made now based on existing regulations.

Although present coal production exceeds demand, an increased demand for coal is anticipated. We must begin now to assure that increased amounts of coal can be mined in a safe and environmentally secure manner and that miner's health and safety programs are improved. Coal transportation systems require attention as do the procedures for power plant siting and licensing. Financial incentives for the retrofit of existing facilities with pollution control equipment are required.

A consensus is quickly forming in the Congress and the media in favor of synthetic fuels, particularly the production of synthetic gas and oil from coal. Synthetic fuels are the best intermediate term solution to our present energy supply problems. Leadership in moving the United States to an easily understood alternative to oil requires immediate attention. Coal and oil shale are the most promising domestic resource for synthetic production.

In order to realize these expressed goals, the White House must appoint an individual who can give day to day attention to a mobilization effort to move toward a reliance on domestic energy sources. The gravity and pervasiveness of this issue requires Presidential attention and leadership.

REGULATORY STABILITY

From the beginning of the Administration's support for coal (April, 1977), the regulatory climate for coal production and utilization has been extremely uncertain. The impact of regulatory instability on the decision-making process for utilities and investors is enormous and has been a major factor in the lack of movement to coal. Three major new laws: The Clean Air Act, the Powerplant and Industrial Fuel Use Act, and the Surface Mining Control and Reclamation Control Act have all been in the rule-making stage. These laws provide the regulatory framework for coal production and use.

Each set of regulations had to be developed over the last year and a half without the benefit of the stability of the other pieces. Now, after long and torturous regulatory procedures, the regulations resulting from these laws are now almost final. The several agencies must "bury the hatchet" and proceed to implement these laws. Any show of uncertainty by the Administration for any of these three regulatory programs will only continue to delay the nation's movement to coal.

The greatest deterrent to industrial coal conversion is the uncertainty surrounding the regulatory climate. Only when industry believes that the rules of the game will not change, will long-term capital commitments be made based on the existing regulatory framework. Any effort to reconsider any of the three laws will directly undermine our nation's efforts to cut back on foreign oil imports. The Clean Air Act's New Source Performance Standards are reasonable and provide a stimulus to the development of new clean burning coal technologies such as fluidized bed combustion, combustion of mixed fuels, and synthetic fuels production.

COAL PRODUCTION

The coal industry is currently capable of producing 100-150 million tons of coal per year more than we can utilize and will have little problem meeting the requirements advanced to date by energy forecasters for the 1985-200 era. We need to begin now, however, on a small number of important tasks designed to improve the productive capacity of the coal industry. Labor-management relations, miners' health and safety, and environmentally sound coal mining practices are the issues which need immediate attention. The problems associated with coal production need not be serious in the future, if we undertake today a determined effort to make the mining of coal humanly and environmentally acceptable.

COAL TRANSPORTATION

While the transportation infrastructure in the East is in place, serious maintenance problems exist. In the West, the long unit coal trains are disrupting many communities. For the past year, the Departments of Transportation and Treasury have been analyzing various financing proposals to pay for the necessary improvements.

Improvement costs will be significant, but a decision on how to finance these improvements must be made quickly due to the lead time required for making improvements in rail and road systems. The abandonment of branch rail lines must also be reviewed in terms of its impact on coal transportation.

COAL UTILIZATION

The demand side of coal economics requires the greatest attention.

A serious impediment to converting existing oil fired facilities to coal is the high capital cost related to the retrofit of these installations. Tax incentives combined with the coal conversion mandates included in the Powerplant and Industrial Fuel Use Act should bolster the demand for coal. I believe the long-term benefits of an accelerated depreciation allowance for coal related equipment far outweigh the initial costs.

Streamlining the licensing of coal fired powerplants makes more sense if the most environmentally sound pool of potential sites has been identified. The Federal government can assume this responsibility and must begin to identify these sites immediately.

SYNTHETIC FUELS

The greatest potential future demand for coal lies in synthetic fuels production. Synthetic fuels technologies are at the threshold of moving from the R&D stage. In the past several weeks, many newspaper editorials and Congressional statements have called for the United States to move aggressively in this direction. In the past few weeks a number of synthetic fuel bills have been introduced in the Congress and Senator Henry Jackson has made a commitment to have a synthetic fuels bill on the floor of the Senate in July.

The major impediment to synthetic fuels production is the enormous capital requirements. Due to the large amount of venture capital required for construction and operation of a synthetic fuels facility, companies are hesitant to invest large quantities of stockholder money in a plant to produce a product which still faces some risk.

Since it is in the national interest to develop alternative nonconventional sources of oil and gas, the government should assume part of the financial risk. This can be done in a number of ways. Direct federal funding, loan guarantees, assured prices, and guaranteed markets must all be considered as means of advancing synthetic fuels technologies.

Synthetic fuel production can place an upper limit on OPEC prices and displace foreign oil barrel for barrel. In addition, synthetic fuels can be burned as safely as natural gas and oil.

INSTITUTIONAL MECHANISM

The bloody battle over the development of the 60-day coal study demonstrates the need for a decision-making mechanism within the White House with an Administration-wide perspective on coal policy. While the 60-day coal study was limited because only three agencies were involved, a consensus even among the three, could not be achieved. It was embarrassingly clear during Secretary Schlessinger's testimony to the President's Coal Commission that no one was in charge of coal policy development.

On an issue of this importance the White House must take charge. An individual is needed who can cross departmental lines and aggressively implement a policy whose primary focus is to remove our dependency on foreign oil. It has been demonstrated over the past eighteen months and two energy/coal messages that the Cabinet has been incapable of doing this for themselves.

A visible White House commitment to coal and synthetic fuels will prove to OPEC, the American people and the world that the U.S. is determined to break its dependency on foreign oil.