

SJR

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Network for Environmental Policy Awareness

Regional Coordinators:

Mayor Tom Fink
Box 196650
Anchorage AK 99519
907/343-4278/Fax 343-4110

Mayor Greg Lastotka
90 W. Broad Street
Columbus, OH 43215
614/645-6171/Fax 645-7051

Mayor Bill Westbrook
Box 1687
Jackson, WY 83001
307/733-3932/Fax 733-0919

DATE: January 25, 1994 PLEASE ACT BY JANUARY 31

TO: Mayors/Managers, NEPA

FROM: Regional Coordinators

SUBJECT: "JOHNSTON AMENDMENT"

Congress reconvenes today, and within the next week or two there may be critical action in the House of Representatives on the "Johnston Amendment" to the EPA Cabinet bill. You will recall that the "Johnston Amendment," which was added to the Senate version of the Cabinet bill by a vote of 95-3 and is now ready to be proposed in the House of Representatives, would require EPA to explain whether the expected benefits of a regulation justify its costs.

In the House, it is possible there will never be any debate or vote on the merits of a "Johnston Amendment" because the Rules Committee has ruled that the amendment is not germane. When the Cabinet bill is brought to the floor of the House, as soon as next week, there will be an opportunity to vote to overturn that ruling, and then vote on the amendment itself.

Therefore, your help is needed immediately. If the amendment is not added to the House bill, the amendment in the Senate is sure to be watered down in conference. Please tell your U.S. Representative you oppose the rule that would avoid consideration of the merits of the amendment, and that you favor the amendment. Following are some points you might want to make:

- There should be a vote on the amendment itself; it is too important to be dismissed on a technicality.
- The amendment is commonsense, and it is clearly consistent with the President's recent Executive Order No. 12866 setting forth the Administration's regulatory philosophy.
- American cities and counties cannot continue to spend more on environmental regulations without having EPA explain whether the benefits will justify the costs. They also need to know whether a regulation is supported by sound scientific analysis, and how the risk it addresses compares with other risks.
- If EPA is to be given greater stature, it should have greater accountability.

This imminent Congressional action is the most important on the unfunded mandates issue since Senate approval of the Johnston Amendment last May. Every bit of help will count. Opponents of the Johnston amendment in the House delayed action because the vote projections have been so uncertain. A vote could occur any day now, so the sooner you act the better. In addition to faxing or calling your representative, enlist other mayors and county commissioners to do the same; also, urge your national associations to lobby. Do send copies of materials to 907-343-4110.



National Advisory Committee:

Paula Easley, Director, Govt. Affairs, Municipality of Anchorage (Chair)
Steve Parks, Chairman, Nationwide Public Projects Coalition
Henry Lamb, Exec. Vice President, Environmental Conservation Organization
Rhonda McAtee, Director, Pennsylvania Landowners Association

March 2, 1994

TO: Rep. Gail Phillips

**FROM: Paula Easley, Director, Government Affairs
Municipality of Anchorage**

RE: Resolution Opposing Unfunded Federal Mandates

Gail, you may know I'm one of the ringleaders nationally who has campaigned to stop Congress's practice of adopting costly environmental measures and then telling states and cities to implement and pay for them.

The movement has been successful thanks to the efforts of many, but we recognized the need to turn up the heat. Reauthorization of the Clean Water Act and Endangered Species Act, wetlands, Superfund and initiatives on indoor air quality, chlorine, radon, etc., all involve billions of dollars that Congress wants communities to finance. At the same time they're giving more powers to the federal agencies and making it more difficult for local economies to thrive by taking land and resources out of production and killing business with yet more costly regulations.

To broaden support for stopping unfunded mandates, the Environmental Conservation Organization is coordinating a grassroots campaign to obtain resolutions to that effect from all 50 state legislatures in the next six weeks. Becky Gay suggested a resolution signed by you, Ramona Barnes, Rick Halford and Robin Taylor might be quickly obtained if you, in fact, support the issue and if you think a joint resolution is too cumbersome for the short timeframe. That's what some of the legislatures not in session are doing.

Coordinated by

eco
environmental
conservation
organization

P.O. Box 191, Hollow Rock, TN 38342 • 901-986-0099 (voice) • 901-986-2299 (fax)

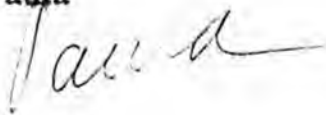
On April 15, Senator Dirk Kempthorne (if he ever runs for President, I want to be his campaign manager!) and several other sponsors of legislation dealing with environmental mandates will hold a press conference in Washington. Simultaneous press conferences are to be held across the country. This will build on the successful "National Unfunded Mandates Day" media effort last fall by the national municipal associations. We'd like the House and Senate leadership to participate in the Alaska press conference and will work with you on scheduling and arrangements.

Enclosed are sample resolutions and backup material. We are also obtaining resolutions from community and private organizations that will be widely distributed in Congress.

From the enclosed quotes you'll see the impact of our battle to get just one little rule changed in the House. I had no idea the outcome of that vote would be so significant!

Please phone or fax me at the above numbers if there are things I can do to help this along. Many thanks.

Paula

A handwritten signature in cursive script, appearing to read "Paula", written in dark ink.

**A Resolution Calling Attention to the Effect of
UNFUNDED MANDATES
On Local Government and Urging
Congress to Reduce These Burdens on Local Citizens**

WHEREAS, unfunded mandates on state and local governments have increased significantly in recent years; and

WHEREAS, federal mandates require cities and towns to perform duties without consideration of local circumstances, costs, or capacity, and subject municipalities to civil or criminal penalties for noncompliance; and

WHEREAS, federal mandates require compliance regardless of other pressing local needs and priorities affecting the health, welfare, and safety of municipal citizens; and

WHEREAS, excessive federal burdens on local governments force some combination of higher local taxes and fees and/or reduced local services on citizens and local taxpayers; and

WHEREAS, federal mandates are too often inflexible, one-size-fits-all requirements that impose unrealistic time frames and specify procedures or facilities where less costly alternatives might be just as effective; and

WHEREAS, existing mandates impose harsh pressures on local budgets and the federal government has imposed a freeze upon funding to help compensate for any new mandates; and

WHEREAS, the cumulative impacts of these legislative and regulatory actions directly affect the citizens of our cities and towns; and

WHEREAS, the International City Managers Association, the National Association of Counties, the National League of Cities, the U. S. Conference of Mayors, and other state and local government representatives, began a national public education campaign to help citizens understand and then reduce the burden and inflexibility of unfunded mandates, by dedicating October 27, 1993 as National Unfunded Mandates Day,

NOW, THEREFORE, the assembly here gathered resolves:

Section 1. that the _____ endorses the efforts of national, state, and local organizations to fully inform citizens about the impact of federal mandates on our government and the pocketbooks of our citizens;

Section 2. that we shall double our efforts to inform and work with members of our Congressional delegation to educate them about the impact of federal mandates and actions necessary to reduce their burden on our citizens;

Section 3. that we shall urge our citizens to support Congressional action that will bring about an end to federal unfunded mandates.

ADOPTED this _____ day of _____, 1994

**BACKGROUND
MATERIALS**

CLERK'S OFFICE

APPROVED

Date: 10-26-93

Submitted by: Chairman of the Assembly at the
Request of the Mayor

Prepared by: Office of the Mayor

For reading: October 26, 1993

ANCHORAGE, ALASKA

AR NO. 93-320

1 A RESOLUTION CALLING ATTENTION TO THE EFFECT OF UNFUNDED MANDATES ON
2 LOCAL GOVERNMENT AND URGING CONGRESS TO REDUCE THESE BURDENS ON LOCAL
3 CITIZENS
4

5
6 WHEREAS, unfunded mandates on state and local governments have increased significantly in
7 recent years; and

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9 WHEREAS, federal mandates require cities and towns to perform duties without consideration
10 of local circumstances, costs, or capacity, and subject municipalities to civil or criminal penalties for
11 noncompliance; and

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13 WHEREAS, federal mandates require compliance regardless of other pressing local needs and
14 priorities affecting the health, welfare, and safety of municipal citizens; and

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16 WHEREAS, excessive federal burdens on local governments force some combination of higher
17 local taxes and fees and/or reduced local services on citizens and local taxpayers; and

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19 WHEREAS, federal mandates are too often inflexible, one-size-fits-all requirements that impose
20 unrealistic time frames and specify procedures or facilities where less costly alternatives might be just
21 as effective; and

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23 WHEREAS, existing mandates impose harsh pressures on local budgets and the federal
24 government has imposed a freeze upon funding to help compensate for any new mandates; and

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26 WHEREAS, the cumulative impact of these legislative and regulatory actions directly affect the
27 citizens of our cities and towns; and

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29 WHEREAS, the International City Managers Association, the National Association of Counties,
30 of National League of Cities, and the U.S. Conference of Mayors, in conjunction with other state and
31 local government representatives, has begun a national public education campaign to help citizens
32 understand and then reduce the burden and inflexibility of unfunded mandates, beginning with a National
33 Unfunded Mandates Day on October 27, 1993.

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35 NOW, THEREFORE, the Anchorage Assembly resolves:

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37 Section 1. that the Municipality of Anchorage endorses the efforts of National, County and
38 Municipal organizations to fully inform our citizens about the impact of federal mandates on our
39 government and the pocketbooks of our citizens.
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Section 2. that the Municipality of Anchorage resolves to redouble our efforts to inform and work with members of our Congressional delegation to educate them about the impact of federal mandates and actions necessary to reduce their burden on our citizens.

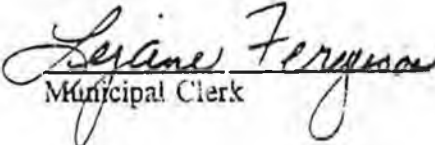
Section 3. that the Municipality of Anchorage will join with hundreds of cities nationwide in recognizing October 27, 1993 as Unfunded Mandates Day.

PASSED AND APPROVED by the Assembly this 26th day of October, 1993.

Tom Fink
Mayor



Mark Begich
Chairman

ATTEST:

Municipal Clerk

Controversial Issues Will Be Raised During Markup

SENATORS DRAFTING CWA PROPERTY RIGHTS, WETLANDS AMENDMENTS

Several senators are drafting private property rights and wetlands amendments to the Senate clean water bill, to be offered during the Senate Environment & Public Works Committee markup of the legislation on Feb. 23. Given the controversy over such issues, the amendments could significantly bog down or even derail the legislation.

Sen. Dirk Kempthorne (R-ID) is crafting amendments to S. 1114 focusing on concerns that the bill substantially erodes state discretion in administering the CWA, despite the bill's promotion as one that significantly enhances state flexibility. Kempthorne is also developing amendments to protect the rights of private landowners who have argued that federal environmental laws are encroaching on their constitutional rights. Sen. Lauch Faircloth (R-NC) is developing amendments that would roll back existing wetlands regulations, which critics have charged are cumbersome and overly protective.

At a Feb. 2 clean water, fisheries and wildlife subcommittee hearing on the bill, Kempthorne expressed concerns that S. 1114 ignores the potential for infringement of private property rights under Title VII wetlands provisions, as well as under watershed planning and nonpoint source control programs in Title III, and is expected to offer amendments on the private property rights issue. There should be "compensation and assurances" that what landowners are being asked to do is based on sound science and will have minimum impact "compared to the benefits," Kempthorne stressed.

Faircloth testified that wetlands provisions are of most concern to him, stressing that they need to be "more simple to comply with." The Senator will likely offer an amendment lowering "outrageously high" fines that the current bill would allow EPA to impose on violators. EPA should offer mitigation banking credits to landowners for created wetlands. Faircloth said, pointing out that "if we are going to inventory wetlands losses, we need to inventory gains" as well.

EPA has too much power dictating to states the elements of their antidegradation policies and designated uses. Kempthorne said, calling the agency's method a "one-size fits all" approach. "EPA is required to publish state guidelines for naming Outstanding National Resource Waters, for setting up comprehensive statewide water monitoring programs, and for reviewing and revising water quality standards," Kempthorne said at the hearing. "If that's not enough, the bill then sets arbitrary deadlines for all this to be done -- to EPA's satisfaction, I might add."

Kempthorne is also expected to introduce an amendment that would attempt to improve the scientific basis for EPA rulemaking, and that would more strongly connect pollution reduction efforts to human health risk and cost-benefit analysis. The current bill seems to reflect the attitude that "if it is human-induced, then it must be bad," the senator said at the hearing.

S. 1114 would establish federal authorities and regulations that force the federal government into direct conflict with the states' traditional right to allocate and control the use of waters within their jurisdiction. Kempthorne complained. "It does this with little thought for the long-term consequences, and with little respect for the system of property rights and water rights," Kempthorne said, adding that these rights underpin the livelihood of the West. States are in the best position to decide water allocations and uses -- the consequences of which Kempthorne contends cannot be understood by EPA "thousands of miles away in Washington."

Kempthorne will also likely introduce an amendment that will move the CWA farther away from habitat and species protection, possibly eliminating wildlife criteria, biological monitoring, and the emphasis on sediment quality, congressional sources say. The more variables included in the meaning of water quality, "the more complex the decisions and tradeoffs become," he said. Kempthorne is also expected to propose changes to the bill that would alter current enforcement provisions. "The bill, in practical effect, makes punishment and revenue collection the enforcement goal, rather than compliance," Kempthorne said.

Congressional sources say Faircloth amendments will include proposals that would weaken EPA authority to mandate changes in industrial processes. "We are sending bureaucracy up the pipe and into the plant," he said at the subcommittee hearing, emphasizing that the economic cost of mandates is not adequately considered. Faircloth will also include amendments promoting more reliance on publicly owned treatment works -- rather than requiring facilities to treat waste on site -- and striking out S. 1114's phaseout of many persistent toxics, congressional sources speculate.

at chlorine in a comprehensive manner."

Environmentalists, who have made a chlorine ban a top priority, would have preferred the bill by Rep. Bill Richardson (D-NM), H.R. 2898, which calls for a chlorine ban within five years, says one environmentalist. However, because the administration proposal is highly specific, targeting certain industries for assessment and setting a timetable, environmentalists generally had a favorable reaction to the plan, this source says. The National Wildlife Federation and Clean Water Network, representing 450 environmental groups, applauded the chlorine proposal.

Red Cavaney, president of the American Forest & Paper Association, which would be significantly affected by a chlorine strategy, in a statement said that the proposed study "may provide an alternative way to deal with this complex problem" and called for the study to clarify outstanding scientific issues regarding chlorine.

Policy

Issue Likely To Be Key In CWA, SDWA

EPA CABINET BILL VOTE BOOSTS CONTROVERSIAL RISK ANALYSIS PROPOSALS

Controversial proposals that would require EPA to conduct risk analysis for its rules received a significant boost with the recent House vote on an EPA-elevation bill, a vote that likely signals risk analysis will be a central issue in clean water and safe drinking water debates, according to congressional, state, and other sources.

The House on Feb. 2 voted 227-191 to allow risk analysis-related amendments to be proposed for H.R. 3425, the Department of Environment Act, stunning House leadership and environmentalists who felt certain they could sustain the rule excluding such amendments. The defeated rule would have barred an amendment sponsored by Reps. John Mica (R-FL) and Karen Thurman (D-FL) that seeks to require risk and cost-benefit analysis for agency rules. The rule was voted down despite intense lobbying by the White House, environmentalists, and opponents of risk analysis amendments.

"They gave it their best shot, but we got grassroots lobbying by state and local officials" and defeated the rule "by a landslide," says a congressional source, who comments that members of Congress showed an unprecedented interest in risk assessment questions. This will have a big impact on the Clean Water Act and Safe Drinking Water Act" because "the risk assessment hand has been strengthened," this source adds.

A state source says that the EPA Cabinet bill vote "reflects a coming into awareness that the [risk analysis] perspective is legitimate" and not merely a disguised attempt to undercut EPA or roll back regulations across-the-board. Over the past 20 years, there were "tremendous targets of opportunity" to control sewage and industrial effluent discharges with a certainty that large risk reductions were being achieved, this source says. But now those "big, uncontrolled sources" are no longer available, so risk and cost-benefit analysis is needed to make regulatory decisions that truly achieve benefits for expenditures, this source adds. With the House vote on H.R. 3425, members of Congress "were saying we want to discuss [risk] and to vote" on the issue. A House proposal for reforming the SDWA would make risk and cost-benefit analysis an integral part of the agency's standard-setting procedures, this source notes.

"We're trying to figure out where to go from here," says a disappointed environmentalist, who adds that the House leadership "would never have brought this up if they'd expected the vote" to come out as it did. "A number of offices that said they'd support the rule didn't," resulting in a vote that shocked House leaders and environmentalists alike, this source says. Though surprised by the vote, environmentalists "have known this was a big problem all along," and regard the three themes of risk analysis, unfunded mandates, and property takings as "the last piece of the Reagan legacy" pushing "to get big government out of our lives" and roll back regulations, this source explains.

House members supporting risk analysis amendments are meeting with House majority leader Richard Gephardt (D-MO) to discuss possible compromise positions, says a congressional staffer. This source stresses that proponents of risk analysis are not saying that EPA must base its rules on the most cost-effective decision. Rather, the goal is to "just get the information out" on what risk-reduction benefits would be achieved by various expenditures on controls, this source says. Risk assessment is about setting priorities, this source says.

You did it!

Before assuming responsibility, states would need to have a cleanup program in place that is substantially consistent with the Federal program.

Finally, the administration's proposal would provide for greater public and community accountability by making the program more responsive to poor and minority communities that have frequently borne the brunt of chemical disposal. Greater community involvement would be accomplished by the establishment of community working groups that would be an important voice in determining the cleanup goals and future uses of the sites.

Chances of Enactment

Details of the administration's Superfund reform had been leaked to the press, including EPA WATCH,

over the past couple of months. As such, the final version of the plan contained few surprises. Congressman Al Swift (Democrat of Washington) and Senator Frank Lautenberg (Democrat of New Jersey) are expected to sponsor the administration's bill in Congress. But until final language has been written into a bill, most parties directly affected by the plan are reacting cautiously. This includes Congressman Swift, who has said that the proposal is a "good starting point" for a Superfund bill.

The business community, which has paid dearly under the present Superfund law, is generally pleased with the plan. On the other hand, environmentalists are not happy with the proposal's remedy selection reform and consider the plan too "pro-business" for their liking.

Insurers, also among the big losers

under current law, applaud the administration's efforts to relieve the insurance industry from much of the grief it has endured under Superfund's liability system. Though they describe the plan as a "step in the right direction," they still worry that the EIRF will not be large enough to cover Superfund liability settlements.

Finally, as noted in EPA WATCH (January 15, 1994), the crowded Congressional calendar may not allow for consideration of such an ambitious program this year. Senator Max Baucus, Democrat of Montana and chairman of the powerful Senate Environment and Public Works Committee, has joined House Minority Whip Newt Gingrich in casting doubt on whether the entire program can be enacted in what remains of the 103rd Congress. "We don't have a lot of time this year," he told the *Washington Post*. ♦



RISK ASSESSMENT CONCERNS STALL EPA CABINET BILL IN HOUSE

In a stunning setback to EPA, the House on February 2 voted by a margin of 227 to 191 not to consider a bill to elevate the agency to cabinet-level status.

An administration-backed attempt to bring the bill, H.R. 3425, up for consideration on the House floor collapsed when 60 Democrats joined all but five Republicans in blocking a vote on the measure that would create the Department of Environmental Protection (DEP).

The vote to shelve consideration of H.R. 3425 is seen by Congressional observers as a reflection of widespread discontent among lawmakers with the House Democratic leadership's efforts to keep the bill free of amendments which would drastically alter the way EPA implements environmental regulations. Not even intense lobbying by Vice President Al Gore and EPA Administrator Carol Browner to bring H.R. 3425 to a vote

succeeded in stemming the tide.

At the center of the controversy stands an amendment sponsored by Representatives John Mica (Republican of Florida) and Karen Thurman (Democrat of Florida) which would require EPA to conduct risk assessments and cost-benefit analyses before issuing environmental regulations. Their proposal closely parallels an amendment sponsored by Senator J. Bennett Johnston (Democrat of Louisiana) which was attached to the Senate version of the EPA-cabinet-elevation bill approved by the upper chamber last May. The Johnston amendment passed the Senate by an overwhelming 95-to-3 margin (See EPA WATCH, May 30, 1993 and November 30, 1993).

The House Rules Committee, supported by the White House, issued a rule prohibiting debate on the Mica amendment, arguing that it was not "germane" to legislation establishing the Department of Environmental

Protection. But Congressman Mica, backed by Senator Johnston, refused to withdraw his amendment, setting the stage for the February 2 confrontation from which proponents of risk assessment reform emerged victorious.

Hoping to persuade his colleagues to reject the Mica amendment, Congressman John Conyers (Democrat of Michigan, chairman of the House Government Operations Committee, and the sponsor of H.R. 3425) argued that, "The purpose of this bill is not to change environmental policy." In response, Mr. Mica asked: "Why doesn't the administration want to debate this issue? I thought they wanted to reinvent government, not stick with the status quo."

Risk Assessment and Unfunded Mandates

"When are we going to realize th

we have limited resources that must be deployed rationally." This amendment will enable EPA to focus regulations on real health threats," the Florida Republican said. "What is the cost and what is the risk and what are the benefits to the public?"

Bringing risk assessment reform to the issue of unfunded Federal environmental mandates, Mr. Mica pointed out that state and local governments spend about \$30 to \$40 billion a year trying to comply with EPA's rules and regulations. "The Federal government cannot continue to impose these costs on state and local governments without a careful evaluation of the costs and benefits of these regulations," he added.

A key element in Mr. Mica's success was the backing he received from a host of bipartisan organizations with considerable influence on Capitol Hill. Backers of the Mica amendment included the National League of Cities, National Governors' Association, National Association of Counties, National Conference of State Legislatures, National Federation of Independent Businesses, the National Farm Bureau Federation, and National Association of Manufacturers.

Congressional sources on both sides of the issue credit the National Governors' Association's (NGA) strong statement (see below) in support of risk assessment and cost-benefit analysis, coupled with its ringing condemnation of unfunded mandates, with providing the margin of victory to Mr. Mica's forces. "The NGA's statement was issued on February 1, and the House voted on February 2. That tells you something," a Congressional staffer told EPA WATCH.

Back to the Rules Committee

The EPA cabinet-elevation bill now returns to the House Rules Committee where its future is uncertain. Sources on the committee say it is unclear when H.R. 3425 will be brought back to the House floor for action. EPA and the White

House remain opposed to inclusion of the Johnston/Mica amendments in the bill but appear to be outnumbered in the House. Fresh from their unexpected victory, Mr. Mica and his supporters do not plan to back down.

Further complicating the matter is the frequently-cited statement by Representative Henry Waxman (Democrat of California and chairman Energy and Commerce Committee's subcommittee on health and the environment) that he would rather see no EPA cabinet-elevation bill than one with risk assessment and cost-benefit language. "It's a real mess now," commented one Congressional staffer sympathetic with the administration's position. "There is talk of reviving a 'clean bill' (with no amendments), but that won't pass in the current atmosphere. We don't know where to turn right now."

There are reports circulating on Capitol Hill that EPA might be willing to swallow a compromise risk assessment/cost-benefits amendment as a price for cabinet-level status. Proponents of risk assessment reform fear that the compromise amendment, if it is introduced, would contain most of the language of the Johnston and Mica amendments but with little of their substance. "We want real reform, not a substitute for reform," said a key Congressional staffer who supports the Johnston/Mica approach.

Sources at EPA were also stunned by the vote. High-level EPA officials had been assured by the White House and the House leadership that the Mica amendment would be defeated. "Morale here has really taken a hit," an agency source told EPA WATCH. "For five years, Congress has been unable to get a cabinet status bill passed, and now this happens." Another source commented that "unfunded mandates, the spotted owl, wetlands, and Superfund have all come home to roost. It was pay-back time"

"Deep Well of Discontent"

The latter observation is shared by

several Congressional sources. "On paper," the source said, "there is widespread support in Congress for EPA cabinet status; few openly oppose it. But, in reality, EPA is not very popular here, and a lot of members used the Mica amendment as an excuse to show their displeasure. They are really feeling the heat on unfunded mandates and other environmental regulations. Mica and Johnston have tapped into a deep well of discontent."

In this connection, it is significant that the House Rules Committee did accept as germane to H.R. 3425 an amendment put forward by Congressman Tom DeLay (Republican of Texas). Submitted in response to revelations of contract mismanagement at EPA, the DeLay amendment would authorize the new department's Inspector General to enter into an interdepartmental investigatory task force with the Department of Justice to identify waste, fraud, and criminal misconduct within the DEP.

Among the other amendments that could eventually be tacked on to H.R. 3425 are the following:

- Rep. William Clinger (Republican of Pennsylvania) would require the assistant secretary for intergovernmental affairs to develop strategy to reduce unfunded Federal environmental mandates imposed on state and local governments;
- Rep. Craig Thomas (Republican Wyoming) would establish an ombudsman at the DEP to assist small businesses to comply with environmental regulations; and
- Rep. Deborah Price (Republican of Ohio) would require the secretary of the DEP to assess on an annual basis the performance of the new department's regional offices.

With the defeat of the House rule limiting amendments, additional amendments are expected in the days ahead, including an amendment dealing with protection of private property rights. ♦

CONRAD BILL FOCUSES ON INTERSTATE TRANSPORT OF SOLID WASTE

Saying his legislation is "the toughest bill on interstate waste that has ever been introduced in the U.S. Senate," Senator Kent Conrad (Democrat of North Dakota) has introduced a measure that would allow a state to regulate the disposal of municipal solid waste generated outside its borders.

Angered that "the garbage merchants of America . . . are searching for new targets of opportunity," Senator Conrad told his colleagues on January 28 that "states ought to have the ability to make a decision on what comes into their states." He cited large, sparsely populated states such as Montana, Nebraska, South Dakota, and his native North Dakota, as the preferred dumping sites for the 15 to 18 million tons of municipal waste transported across state lines each year.

"Currently," he pointed out, "whenever a state takes action, lawsuits are brought, and the argument is made that under the commerce clause of the Constitution, a state cannot do anything to inhibit what moves in interstate commerce. They cannot do anything unless Congress takes action."

Key Provisions

This is just what his bill, S. 1808, is designed to do. It would amend the

Solid Waste Disposal Act (SWDA) so that, "Each state is authorized to enact and enforce a state law that regulates the treatment, incineration, and disposal of municipal solid waste generated in another state."

Second, his legislation would provide that the entire affected local community be allowed to make a decision "on what comes into that town or that city." S. 1808 would authorize the Governor of each state to determine what the affected community is and, once that determination is made, it would be up to the affected community to decide whether to accept the out-of-state waste.

Third, the Conrad bill would provide for full disclosure before any permit is granted for the transport of interstate waste. Among the items to be disclosed are the following:

- What are the economic implications?
- What are the environmental effects?
- What are the long-term plans of the company that is pursuing a waste permit?
- What is the financial strength of the company? and
- What is the ability of that company

to assure that the proper environmental and health standards are pursued?

"We have seen examples around the country where a local entity would get a permit for a landfill and then a large out-of-state interest would come in and buy that local entity, greatly expand the permit, and there was little that could be done at the local level," the North Dakota Democrat said. "That should not be the case. The local community ought to know what is the future plan before any permit is granted."

Full Disclosure of Violations

Finally, S. 1808 would provide for full disclosure on the part of the company seeking a permit with regard to the firm's background. This would include submitting a detailed history of violations of the terms of permits granted to them at other locations.

Senator Conrad added that he has already talked to Senator Dan Coats (Republican of Indiana) who has sponsored similar legislation in the past aimed at getting more local control over interstate transport of municipal solid waste. It is Mr. Conrad's hope that Senator Coats will agree to co-sponsor S. 1808. As EPA WATCH goes to press, Senator Coats has not yet responded to the Conrad bill. ♦

PRIVATE PROPERTY ADVOCATES PLAN MAJOR CONGRESSIONAL PUSH

Buoyed by a series of largely unexpected legislative victories late last year, private property rights advocates in Congress are preparing to make their growing influence felt on every piece of environmental legislation that comes before Congress in 1994.

"When you lose your job because of an owl or you lose your shrimp boat because of a turtle, the cost of environmental protection hits home." Congressman Billy Tauzin (Democrat of Louisiana) recently told the *St. Louis Post-Dispatch*. "Things are coming to a head now because there

are train wrecks across the country between environmental protection and property rights."

Mr. Tauzin plans to introduce a "land owners' rights" bill in February aimed at protecting people from losing control over their property as :

result of environmental regulations. His measure will be but the first in what promises to be a string of bills and amendments designed to anchor protection of private property rights into every conceivable piece of environmental legislation.

Among the most appealing targets of opportunity are the Clean Water Act (CWA), which includes wetlands regulation, the Endangered Species Act (ESA), and the EPA cabinet-elevation bill. Just how potent the property rights advocates have become was demonstrated last October when the House, by a margin of 309 to 115, attached a strong property-rights protection amendment to legislation creating the National Biological Survey (NBS). The amendment, sponsored by Congressman Charles Taylor (Republican of North Carolina), requires written permission from the property owner before surveying for the NBS can begin (See EPA WATCH, November 30, 1993).

Some Congressional property rights supporters believe EPA is so eager for passage of a cabinet-level elevation bill and for reauthorization of the Clean Water Act that the agency might be willing to go along with the inclusion of landowner protection language if that what it takes to get both bills passed.

Efforts to attach private property protection amendments to environmental legislation pose a dilemma for the White House. Though private property advocates believe they have few supporters in the Clinton administration, there are plenty of signs the White House is becoming aware of how politically explosive the issue has become. In announcing its proposals for reform of the nation's wetlands regulations last August, the administration was careful to include language dealing with landowners' concerns. While the administration's position fell far short of private property groups' demands, the mere mention of the issue in an official White House document was seen as significant by some of the movement's leaders.

Controversy Surrounding BLM'S Baca

An even more telling indication of the administration's unease in this area surfaced in late January when the *Washington Post* reported that efforts were underway to replace a key Department of Interior official. Jim Baca, appointed by President Clinton as head of the Bureau of Land Management (BLM) and an ardent proponent of more stringent environmental controls on Federal land, was reportedly offered a new job as deputy assistant secretary of interior. According to the *Post*, Mr. Baca was to be "kicked upstairs," because his aggressive approach to revamping Federal grazing and mining policies had angered some western Democratic governors. The BLM manages approximately 270 million acres of land in the West.

For their part, the western governors -- notably, Cecil Andrus (Idaho), Roy Romer (Colorado), and Mike Sullivan (Wyoming) -- were reacting to angry constituents who fear the loss of their livelihoods as a result of land use policies pushed by Mr. Baca. However, efforts to remove Mr. Baca stalled when he refused to accept the new position, forcing the administration either to fire him or to back down.

The administration, led by Interior Secretary Bruce Babbitt, chose the former, forcing Mr. Baca to resign on February 5. Environmental groups, spearheaded by the Sierra Club, the National Resources Defense Council, the Wilderness Society, and the National Wildlife Federation, lost no time in denouncing Mr. Baca's ouster, accusing the White House of not being sincere about its commitment to the environment. Hoping to smooth over the environmentalists' ruffled feathers, Secretary Babbitt said that, "The reform agenda of this Department remains absolutely unchanged." He further stated that Mr. Baca's dismissal had more to do with "differences in style" than with disagreements over policy.

But this was immediately denied by Mr. Baca who told the *Washington Post* that Secretary Babbitt's claim was "kind of bogus." "Frankly, this

came about because those western elected officials were worried about fund-raising from those traditional extractive industries."

Western governors, who pressured Secretary Babbitt to remove Mr. Baca, still fear unpleasant political repercussions from the Department of Interior's emerging stance on the use of Federal land. The matter is particularly sensitive in light of the fact that Mr. Clinton, breaking what had been a Democratic electoral drought throughout much of the West for almost a generation, carried Colorado, Nevada, Montana, and New Mexico in his successful bid for the White House in 1992.

Meanwhile, the political controversy swirling around the Department of Interior is not likely to go away. The White House is expected to announce its new policy on Federal grazing regulation within two months. Most observers believe the administration will water down its original plans to promulgate more stringent environmental regulations on millions of acres of range land in the West. This is certain to trigger an angry response among environmentalists who will, once again, say they have been betrayed by the administration. Ranchers and others who use the Federal lands to make their living will just as vociferously claim the administration's new grazing regulations will put substantial numbers of them out of business. ♦

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EPA WATCH
14140-L Parke Long Court
Chantilly, Virginia 22021
(703) 968-9768 - Office
(703) 968-9771 - FAX

Thomas A. DeWeese, Publisher
Janice H. Brown, Managing Editor
Dr. Bonner R. Cohen, Editor

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The group also says requirements in the bill that instruct EPA to develop water quality criteria that "the administrator determines would result in the greatest benefit to human health and the environment" would create a standard that "is ambiguous and goes well beyond the normal EPA standard of protecting human health and the environment. NAM also says that a provision in the bill requiring EPA to develop eight sediment quality criteria in a four-year period is "incompatible with the development of sound science," saying sediment quality criteria should be developed by state water quality officials.

NAM takes issue as well with the bill's permit fee provisions, suggesting fees should be capped; argues that the bill's increased emphasis on citizen suits would lead to escalating litigation costs with little environmental benefit; and maintains that the bill's provisions restricting the "domestic sewage exclusion" under the Resource Conservation & Recovery Act would force industry to spend millions to build redundant treatment facilities.

Senate sources say NAM's objections represent a formidable list of concerns that will likely form the basis of several amendments that will be offered at the Feb. 23 markup. "NAM is very powerful in the Senate," one Senate source says, adding "they are not the type to compromise early, so we should all expect a fight on these issues."

INDUSTRY CALLS HOUSE CABINET VOTE BOOST TO CWA WETLANDS AGENDA

Industry groups seeking to curb federal wetlands regulations say the recent resounding defeat of a House rule that would have barred private property rights amendments to an EPA Cabinet elevation bill will likely force wetlands reform opponents into a more conciliatory stance.

These sources say concerns over property rights played a key role in the rule's defeat, demonstrating that widespread concern about the issue in the House can produce floor votes if members developing Clean Water Act reauthorization proposals fail to address property rights concerns in the federal wetlands program.

The House on Feb. 2 defeated a House Rules Committee rule restricting amendments to the EPA cabinet elevation bill by a 227-191 margin (*Inside EPA*, Feb. 4, p14). The rule would have barred amendments addressing EPA management issues and environmental policy matters, including an amendment on private property rights protection developed by Rep. Billy Tauzin (D-LA). Tauzin's amendment would have required the director of an Office of Environmental Justice proposed in the bill to develop plans to protect the constitutional rights of private property owners and to provide compensation for landowners when a decision pursuant to the federal wetlands program results in a substantial devaluation of property. The Clean Water Act section 404 wetlands program has prompted the a mass of private property "takings" claims in various courts, and has generated significant support for wetlands reform efforts supported by Tauzin and many other House members.

Backers of Tauzin's amendment say their House opponents now are aware that property rights have strong support on the House floor, a development certain to strengthen Tauzin's bargaining position as wetlands proposals are debated in House subcommittees as part of Clean Water Act reauthorization. The vote could have an impact on Senate efforts as well, these sources say, pointing out that a solid group of senators continues to seek serious wetlands reforms and will use the concern over property rights to bolster their bargaining position. Senate sources would not comment.

"The momentum continues to shift in our direction," one supporter of wetlands reform says, noting that both the Senate Environment & Public Works Committee bill -- S. 1304 -- and the Clinton administration's wetlands plan "clearly move in our direction." The vote "demonstrates that we cannot be brushed aside and that [either] substantial reforms to the wetlands program must take place" or property rights "will kill Clean Water Act reauthorization."

Despite the confidence expressed by property rights advocates, House Public Works & Transportation Committee Chairman Norman Mineta (D-CA) in a Feb. 7 speech before the Assn. of State & Interstate Pollution Control Administrators continued his unwavering opposition to compensating landowners for federal wetlands protection decisions. "There are improvements we can make in the administration of the wetlands protection program, but the idea that government cannot act to restrict activities on private property which harm the public interest without paying off the landowners is not one of the changes we will be making," Mineta said (*see related story*).

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