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Floor Statement on the Nixon Administration Environmental Record

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FOR RELEASE

FLOOR REMARKS OF
SENATOR EDMUND S. MUSKIE
CHAIRMAN, SUBCOMMITTEE ON AIR AND WATER POLLUTION
ON
THE NIXON ADMINISTRATION ENVIRONMENTAL RECORD

Two weeks ago, the Senate passed an omnibus water pollution control bill by a vote of 86 to 0. The bill had been reported unanimously by the Committee on Public Works. Fifteen members of the Committee are cosponsors.

The Senate bill makes a major change in the water pollution control mechanism--from water quality standards to effluent limits. The bill restores balance to the Federal-State relationship in the national effort for clean water.

But last, week, the White House press secretary said the Administration wants the House Public Works Committee to hold public hearings on the Senate bill. The White House staff circulated a series of amendments designed to gut the Senate measure.

One of these amendments wipes out the authority of the Administrator of the Environmental Protection Agency to review permits issued to polluters by the States. I find the proposal to be, at the very least, an irony. Let me tell you why.

Late last, year, the Administration invented a Federal permit system by seizing upon an old law, the 1899 Refuse Act:

- The permit system ignored the States;
- The permit system ignored existing water quality programs;
- The permit system ignored existing water pollution control laws; and
- The permit system ignored even the Administration's proposals to amend the Federal Water Pollution Control Act.

In this situation, the Administration at first declined to give the Subcommittee on Air and Water Pollution any recommendation for a permit system that would work.

When pressed by the Subcommittee, the Administration again declined to send up a formal, written recommendation. Instead, it informally and hesitantly came out for a State-Federal system which retained a Federal veto of individual permits.

Then, after the Subcommittee reported the omnibus bill to the full Committee, the Administration recommended a delay; that is, the permit system would be delegated to the States, but only after 1975.

But in executive session on October 12, EPA Administrator Ruckelshaus strongly recommended a Federal review of individual permits. So, after 45 executive sessions and constant consultation with Administration environmentalists, the Committee on Public Works reported a clean bill.

That bill attempted to adapt the Committee's decision to set limits on effluents to what appeared to be the Administration's position on the permit system.

In accordance with Mr. Ruckelshaus's recommendation, the Senate bill insists upon a Federal presence in the permit system. It restores to the States a role in the water pollution program.

How to explain the Administration's waffling? I think the Administration discovered that it was pulling on the tails of some very large and disgruntled bears.

Consequently, the Administration now is sending up couriers to meet behind closed doors and to advocate the gutting of the permit system which the Administration--not the Senate nor the House nor anybody else--invented.

Mr. President, I find the White House position on the Senate bill to be inconsistent with other White House pronouncements on the environment. Further, I find this is not the first time that White House positions and pronouncements have been out of phase.

I think I know why. The White House opposes the \$14 billion the Senate believes must be spent over the next four years to clean up the Nation's rivers, lakes, and streams. Apparently, the White House did not anticipate the cost of a clean environment when the President said on January 1, 1970:

"The 1970s absolutely must be the years when America pays its debt to the past by reclaiming the purity of its air, its waters, and our living environment. It is literally now or never."

I also think that adequate levels of Federal assistance, adequate amounts of Federal money, and assured availability of Federal funds were more than the President intended when he said on February 10, 1970:

"The tasks that need doing require money, resolve and ingenuity -- and they are too big to be done by government alone. They call for fundamentally new philosophies of land, air and water use, for stricter regulation, for expanded action, for greater citizen involvement, and for new programs to ensure that government, industry and individuals all are called to do their share of the job and to pay their share of the cost."

Unfortunately, perhaps, for the White House, the Senate takes the President at his word. Listen, for example, to what the President said when he signed an executive order on December 23, 1970:

"I have today directed the establishment of a Federal permit program covering facilities which discharge waste into navigable waters and their tributaries in the United States...."

"This law (the 1899 Refuse Act), which we have relied upon for many of our water pollution enforcement actions to date, prohibits the discharge of refuse matter...."

The Senate took the President at his word. The Senate bill prohibits the discharge of pollutants and sets 1985 as the year in which the goal should be met.

The Senate agreed with the President that it is now or never when the Senate voted down the SST.

The Senate agreed with the President that it is now or never when the Senate voted unanimously for a clean car by 1975.

The Senate agreed with the President that it is now or never when the Senate voted unanimously to recover and recycle, rather than to burn and bury, solid wastes.

But Administration officials apparently do not share the sense of urgency expressed by the President and endorsed by the Senate. Listen, please, to the Administration's record in response to the President's call of "now or never". The Administration has:

- Failed to request adequate funds and manpower for air pollution control, water pollution control, and solid waste disposal;
- Failed, until pushed by Senate hearings, to issue strict regulations to implement a tough oil pollution law, as authorized by the 1970 legislation initiated in the Senate;
- Failed repeatedly to make available to the public all information required of Federal agencies to comply with the Environmental Policy Act of 1970;
- Failed to support tough provisions of the Senate's 1970 air pollution bill and initiated the effort to undercut the "clean car" deadlines in the conference committee;

- Failed to issue stringent guidelines under the Clean Air Act of 1970 for toxic substances, aircraft emissions, new sources of air pollution, and engine testing;
- Failed to follow up its announced intent to get the lead out of gasolines so that devices available to clean up auto emissions can work effectively;
- Failed to develop a national policy for noise pollution control but sent up a bill to repeal a section of the Clean Air Act of 1970 which authorizes a \$30 million study of noise pollution by EPA; and
- Failed to support the Environmental Protection Agency as the leading agency within the executive branch for pollution control, reducing the agency's role to hearing examiner.

Mr. President, I am particularly concerned about the Administration's failure to support EPA as the leading agency for environmental protection. The agency's efforts under the Clean Air Act of 1970 are being undermined in the White House.

Under the Clean Air Act, the agency is directed to perform certain duties within certain time limits. The agency also is directed to include the public in all aspects of these proceedings.

But contrary to the law's intent, the agency is prevented from promulgating regulations based on the administrative record. Instead, the agency is required by the Administration to submit recommendations to a group of unknown, final decision makers.

I understand the group includes the Secretary of Commerce, the Director of the Office of Management and Budget, members of the Domestic Affairs Council, and perhaps others. None, so far as I know, has any statutory authority. All are shielded from public scrutiny. This group makes the final decisions on the regulations needed to implement the Clean Air Act of 1970.

The results of this kind of decision-making are well known in the Capitol. A recent publication of the Center for Political Research has this to say about a delay in the promulgation of standards for hazardous air pollutants:

"Despite overt appearances, EPA is not primarily responsible for the unlawful delay. EPA, thanks to feverish work, had proposed standards approved and ready for publication before the September 27 deadline. At that point, the Office of Management and Budget interceded and asserted its right to review based on its authority to oversee matters involving the economy...."

Similarly, the Natural Resources Defense Council, Inc., in discussing Federal guidelines under the Clean Air Act of 1970, reported:

"Shortly before final publication, the revised Guidelines were pulled into the White House Office of Management and Budget for what was described as 'routine review.' One and one-half months later, Guidelines were finally published that had been weakened considerably in several important ways.

"We believe changes were made in response to heavy industry pressure and comments from Federal agencies -- among them the Federal Power Commission, Department of Defense and the Commerce Department -- that were made well after the formal comment period was over. There was no public access to this review."

Mr. President, this kind of decision making frustrates not only the purpose of EPA but also the concept of administrative practice. One of the legal principles embedded in administrative law is that all persons are entitled to know who makes decisions affecting their interest and to seek judicial review of the decisions.

Under the Clean Air Act, the EPA Administrator is authorized to make decisions. He, of course, should make decisions, and his actions, as provided in the Act, should be subject to judicial review.

But when decisions are made in private, when decisions are made by persons not subject to examination by the legislative Committee in the exercise of its oversight responsibility, the public and its interest are not being served.

No Senator can be unconcerned in the face of such performance by the Executive. Consequently, Mr. President, I announce that the Subcommittee on Air and Water Pollution will begin in the near future a series of oversight hearings into implementation of the Clean Air Act Amendments of 1970.

Let me emphasize, Mr. President, that the Subcommittee will concentrate upon oversight of the Clean Air Act Amendments, but the hearings may not be limited to this topic. Other aspects of the national effort to clean up pollution of the land, water, and air resources may be examined.

Finally, I want to say that I am disturbed by the tendency of some Administration officials to adopt an either/or approach to this country's environmental problems. These officials seem to believe that this country can have either a clean environment or a healthy economy, but not both.

I reject the either/or approach. But I recognize its appeal to Americans who are troubled at a time when the economy suffers from inflation and recession, from unemployment and underemployment. And I say we must have a clean environment and a healthy economy.

To obtain both, we must have a broader policy, a broader effort. Only a strong economy can provide the necessary investment in environmental control systems. Only a strong economy can at the same time produce the goods we require.

This is a task worthy of our best efforts; it is a task essential to the protection of our own health and welfare, to survival on this planet. It is a task in which we must be united.

On that point, I see no discord at all between the Senate and the White House. Just last August, the President said:

"The work of environmental improvement is a task for all our people. It should unite all elements of our society -- of all political persuasions and all economic levels -- in a great common commitment to a great common goal."

Mr. President, I invite the White House to renew its commitment and to join with the Senate in the national effort for a clean environment and a healthy economy.