MEMORANDUM

TO: Senator Edmund S. Muskie

FROM: Leon G. Billings

SUBJECT: Clean Air Act Conference

The joint staffs met Thursday afternoon, all day Friday and again Sunday morning in an effort to accommodate the differences between the two bills. As I previously indicated, the House bill is broader and more complex than the Senate bill. And, as I have indicated, the House simply will not consider an austere proposal.

We have, however, reached tentative staff agreement on most important issues excluding nondegradation and auto emissions.

It is not likely that the staff can resolve the auto emissions issue. I will work with the Committee staff to develop a Senate recommendation. We will also attempt to come up with a Senate staff recommendation on nondegradation, but I would hope that we could negotiate something at the staff level with the House so that the Conferees will have something before them on that issue.

The House provision on unregulated pollutants has raised serious questions with our Minority. This provision requires the Administrator to begin the process of regulation of four assumedly hazardous pollutants "unless" he finds they are "not likely to endanger health or welfare". The "reversal of burden" creates problems for the minority. As yet no accommodation has been reached on our side.

The House bill also raises serious problems in other areas: first, it establishes too many procedures; second, it attempts to satisfy too many special interests; and third, it is, for the most part, not time-constrained.

In our negotiations with the House, we have attempted, in reverse order, to fix some dates certain for final compliance with statutory requirements; we have tried as best we can to eliminate some of the provisions which were so blatantly special interest as to be embarrassing;
and we have tried to eliminate some of the excessive and burdensome pro-
cedures. We have had moderate success.

The most important procedural issue in the House bill would, in
effect, amend the Administrative Procedures Act as applied to Clean Air
Act proceedings. The House bill would substitute the "substantial
evidence rule" for the traditional "arbitrary and capricious rule" under
which other administrative procedures (and all of EPA's other programs)
perform. I have insisted that that provision be dropped for the reasons
implicit above and because it is obvious that if such a change is to be
made, it should be made across-the-board by the Judiciary Committee and
not in one statute in application to one agency.

As frequently as possible, we have insisted on the inclusion of fi-
nal deadlines not later than 1983 (though we have maintained the Senate
provision that, for major stationary sources, delayed compliance penal-
ties would begin on January of 1979).

We have dropped such special interests provisions as the House
requirement that DOT veto aircraft emissions standards and that the
Administrator of EPA set standards for school bus passengers (a DOT
function) and a requirement that EPA establish "fill pipe" standards for
automobiles. At the same time, we have kept with only minor modifi-
cation, the House provisions phasing in application of vapor controls to
independent gasoline retailers. We will propose a modified warranty
provision which accepts the House 18 months, 18,000 mile warranty for
three years subsequent to the establishment of an in-use test with an
automatic reversion to 5 years, 50,000 miles after the third year and
which would permit an opportunity for the FTC to study the implications
of the warranty and report back to Congress. (I consider this a major
compromise on the part of the Senate, but necessary to achieve other
points.)

We have kept the House "indirect source" provision which intends
to make regulation of the construction and location of shopping centers
and so on a last line of defense for the States and EPA. Under the House
bill, the effect would have been to never have indirect source controls
regardless of the nature of air quality in urban areas. The staff com-
promise would make such indirect source controls a possibility, though
there are a sufficient number of loopholes to never make them onerous.
This is the second major area of compromise which the House staff insists
is necessary to hold together Representative Rogers' coalition.

The staff will be prepared at 9:30 a.m. on Tuesday, to begin going
through a series of recommendations for the Conferees. The basic dif-
ficulty will be how long each recommendation is debated. To the extent
people want to delay the amendments to defeat them, extensive discussion will serve that purpose.

I understand that Senator McClure would like to begin with a discussion of automobiles. The strategy of the conservatives is to discuss automobiles, resolve that issue and then filibuster resolution of any other issues. They will argue, however, that if autos cannot be resolved, nothing can be resolved. In my judgment, it may be possible to resolve everything but autos -- which would be an interesting twist of fate for Dingell, et al. In any event, the staff has assumed that non-degradation and autos would be deferred until other issues had been resolved.

The Chairman is under considerable pressure from industry to modify the so-called "steel" amendment to make it less difficult for new industry to build in dirty air areas. I have advised the Chairman's staff that relaxing that amendment is not an alternative available to the Conference; that the existing law prohibits the location of any source (new or expanded) in an air quality control region where emissions from that source would interfere with attainment and maintenance of the standards; that the "steel" amendment is an exception to that provision and that any modification of that exception so as to broaden it would be beyond the scope of the Conference.

This does not mean that the effort would not be made. I call your attention to the attached document from the Chamber of Commerce-NAM-utility-business coalition organized to fight the Clean Air Act. You will note that almost without exception the issues that they raise are not "in Conference." They want modification of the steel amendment and modification of non-degradation, the effect of which would be to diminish both bills. It may be useful to make an early point (if the steel amendment is raised) that the Conferrees are not in a position to do anything but make this provision more strict (between existing law and the steel amendment). The only other alternative is to delete it entirely, thus leaving existing law, or not change it at all.
Both the House (Sec. 108) and Senate (Sec. 6) bills contain amendments to the Clean Air Act which would legislate a policy of nondeterioration of air quality in areas of the country having air quality better than required under national health and welfare standards. Although the House and Senate nondeterioration provisions differ markedly in detail, conceptually they are very similar. Industries which will be most directly impacted by this policy (including oil, chemicals, mining and smelting, paper, construction, and utilities) are convinced that it will have an adverse effect on industrial growth and development in many areas of the country. Nevertheless, since nondeterioration is now contained in both bills, it is obvious that it will be contained in the report now being prepared by the House-Senate conferees.

It is the consensus of the industrial community that any nondeterioration provision could be vastly more workable if it contained or reflected the following points:

1. Coverage should be restricted to sulphur dioxide (SO_2) and particulates. The Senate provision covers these pollutants; the House bill also covers carbon monoxide, photochemical oxidants, hydrocarbons and nitrogen oxides. The latter pollutants should be subject to a 2-year study (the Senate bill provides a 1-year study) by EPA to determine if a nondeterioration policy regarding them is feasible and if so, how it might be implemented. The U.S. Court of Appeals for D.C. has concluded that such a policy regarding pollutants other than SO_2 and particulates is not currently feasible.

2. Three area classifications should be provided for, with the states having sole authority to establish procedures for the designation of Class III areas (areas with the largest increments).

3. Permits for new or modified sources should be granted if modeling shows that short term (less than annual) increments for all area classifications and pollutants will not be exceeded more than 5% of the time. No subsequent action should be taken against a source if, despite modeling and diligent, good faith efforts, such increments should be exceeded more than 5% of the time.

4. Allowable increments should be those already in force under EPA regulations.

5. The definition of a major stationary source (sources for which a permit must be obtained in nondeterioration areas) should exclude those emitting less than 250 tons of pollutants per year. Both bills cover sources emitting more than 100 tons per year. This could include hospitals, schools, and many other non-industrial facilities, greatly increasing the cost and complexity of the permit procedure, particularly for small businesses.

6. BACT should be a state determination on a case-by-case basis (as in the Senate bill).
NONATTAINMENT

The existing Clean Air Act effectively prohibits construction or modification of industrial facilities in areas which exceed the national air quality standards. The Senate bill in section 11 would allow expansion in such areas under circumstances which are so limited that most industries, particularly those which currently have "tight" emissions controls, are excluded. A similar provision in the House bill (section 115) was deleted on the floor. In order to avoid the complete cessation of industrial development in such areas, it is essential that the Senate provision be modified to reflect the following points, and be adopted as part of the Conference Report on the bill:

1. The location of new facilities, as well as the modification or expansion of existing facilities must be permitted.

2. The "total cumulative emissions" of the proposed developer should be considered on an "air quality control region basis," and not on a "plant-site basis."

3. The state should have the sole authority to determine if granting a permit would be in compliance with its implementation plan.

4. "Natural emissions" should not be charged against a potential developer.

The existing Senate provisions could be modified to reflect these points as follows (brackets indicate language which would be deleted, underlining indicates language to be added):

Sec. 11. Section 113 of the Clean Air Act is amended by adding the following new subsection:

"(g)(1) No major emitting facility shall be constructed or modified in any air quality control region or portion thereof in which any national ambient air quality standard is exceeded, if such facility will emit air pollutants subject to such standard so as to prevent the attainment or maintenance of such standard, except that a facility [proposed for construction or modification at an existing site or plant owned or controlled by the owner or operator of such facility] may be constructed or modified in such region if the owner or operator demonstrates to the satisfaction of the State that (A) the proposed facility will comply with the best available control technology (as defined in section 110(g)(6)(A) of this Act) applicable to such proposed facility before the proposed facility begins operation, (B) all existing sources owned or controlled by the owner or operator of the proposed facility in the same air quality control region as the proposed facility
either are in compliance with all applicable emission limitations or are in compliance with an approved schedule and timetable for compliance under a provision of an applicable implementation plan under section 110 of this Act or an enforcement order issued under section 113(d) of this Act, (C) the total cumulative emissions from the existing sources within the region of [at] the proposed facility location and the proposed facilities will [at no time] not increase, except where natural emissions make compliance with this requirement impossible. [(D) the total allowable emissions from all existing and proposed sources at the proposed facility location will be sufficiently less than the total allowable emissions from the existing sources under the implementation plan or an approved schedule and timetable for compliance applicable prior to the request to construct or modify so as to represent reasonable further progress toward attainment of the applicable national ambient air quality standard, taking into account progress already made.]

"(2) After [January 1, 1979] only a proposed facility where all existing sources owned or controlled by the owner or operator of the proposed facility in the same air quality control region as the proposed facility are in compliance with all emission limitations under an applicable implementation plan under section 110 of this Act shall be eligible for an exception under paragraph (1) of this subsection.

"(3) The provisions of this subsection shall [not] be available [where] when a State has [not made any appropriate revisions] in the applicable implementation plan [to] the necessary procedures to implement the requirement of this subsection. [include the emission limitations established for sources at the proposed facility location under paragraph (1)(D) of this subsection]."
MEMORANDUM

TO: Senator Edmund S. Muskie
FROM: Leon G. Billings
SUBJECT: Meeting With Auto Industry

September 10, 1975

As I indicated, the auto companies are "stonewalling" on the five
year moratorium proposal. Their lobbies have refused to discuss any
alternatives, spending their efforts denigrating the Subcommittee compromise.

On the other hand, Leonard Woodcock has made several suggestions towards
compromise, including interim adoption of the current California standards
or some mechanism to require the industry to demonstrate development of new
technologies.

We are rapidly reaching a point at which the industry must either commit
to the 1978 statutory standards (current law) or some alternative. I suspect
that they are not capable of meeting the statutory standards even though there
is virtually no support for a five year moratorium.

As has been indicated on previous occasions, the issue ought not be whether
or not the standards can be met in 1978, but rather what proportion of the
industry's total production can meet the 1978 standards and how you make the
distinction between those that will and those that won't.

I doubt now that the industry, including suppliers, could gear up to
meet the statutory standards as proposed (with a 1.0 NOx) in 1978 if innovative
technology is required to meet that standard. After all, 1978 models go into
production in 21 months, which is very little time for equipment suppliers
to begin production on equipment the specifications for which have not been
identified by the auto manufacturers. Thus, the real world suggests that the
industry has bought another year through their strategy on insisting on a five
year moratorium.

Whether or not there should be any penalty associated with a strategy
of delay, it is an issue which I am not prepared to address. It seems reason-
able, however, to ask the industry, in light of their argument that effective
technology does not exist to meet tough standards in 1978, that they should
propose an alternate policy, the result of which would be development of that
technology and a demonstration of good faith. They might be asked to identify
all available alternatives which have reasonable chance of meeting the standards
and then how many vehicles could be produced (prototype) which meet those
standards by a specific date next year.
They might also be asked how such a development effort might be monitored to insure that the best technological choices were made towards achieving the standards as well as fuel economy goals. In addition, they might be asked to propose some disincentive/incentive options which might be adopted to insure good faith.

This proposal is not, in structure, a great deal different than that which was initially outlined by Leonard Woodcock except that it puts the burden on the manufacturers to come forward with a specific proposal which could be legislated as an alternative to that which the Subcommittee has adopted (for 1978 only).

It seems to me that if the industry is reluctant to come forward with a proposal which would be admittedly difficult for them to comply with (but not impossible) then one can assume that they know they can meet the statutory standards without unreasonable disruption and therefore can afford to pursue the strategy which they are pursuing.
May 8, 1975

MEMORANDUM

TO: The Staff

FROM: Leon G. Billings

SUBJECT: History and Questions on Auto Emission Standards

There is a tendency to fall into the trap of playing the auto emission standards game. This game is played by selecting a set of numbers and then examining all of the potential ramifications of those numbers. Almost without exception the result of that game is to minimize benefits and maximize costs.

Auto emission standards were not established on the basis of such an analysis. In 1970 the Committee on Public Works’ Subcommittee on Air and Water Pollution concluded that the automobile had to be eliminated as a source of urban air pollution if the health of the people and the economies of many major metropolitan areas were to be protected.

The Subcommittee instructed the staff to determine the level of auto emission control which would be required if the automobile was to be removed as a contributor to unhealthy air quality. The staff was instructed to keep in mind the fact that any new car standards would only be fully effective after a generation of vehicles had been produced. In other words, standards for new cars would have to be sufficiently stringent so that, when ten years of new cars were on the road, the effect of that turnover in motor vehicle population would be to have eliminated the auto as a contributor to the air quality problem.

The decision on auto emissions was made independent of the regulatory structure of the Clean Air Act which required achievement of public health related ambient air quality standards by as early as 1975 and no later than 1977. The argument for this lack of relationship was that achievement of health related ambient air quality standards was a national policy to be achieved as quickly as the regulatory programs of direct and indirect sources could be promulgated and implemented recognizing that the auto could not be eliminated as a part of the problem in all parts of the country in fewer than ten years. Further, as the auto contribution to the problem declined, communities which were "auto pollutant limited" would have room to grow and prosper.
So, having established the basic concept that the purpose of the Clean Air Act was to protect public health, the staff was instructed to seek from the Administration a best judgment as to what the standards to achieve that level ought to be. The staff was not instructed to find out the cost of standards, the timetable for their achievement, nor technological availability, but only, with as much precision as the Administration could provide, the percentage of reduction of auto emissions which would be required for new vehicles in order to remove the auto from the pollution problem. The Administration responded that a 90% reduction of emissions of hydrocarbons and carbon monoxide from partially controlled vehicles and a 90% reduction of emissions of nitrogen dioxide from uncontrolled vehicles would be required.

The Members of the Committee then discussed the issue of leadtime -- having set the standards, how long was it reasonable to give the industry to comply. The Members determined that model year 1975 should be the effective date for hydrocarbons and carbon monoxide and model year 1976 should be the effective date for nitrogen dioxides. The Members further agreed that there should be the possibility of a one year extension with any future extensions to be up to the Congress because of the vital nature of the public policy involved.

A provision was also made to require establishment of a test procedure within months after enactment, which procedure was to be the basis for the 1975-76 numerical standards. (The numbers that resulted were in fact somewhat different than those which the staff expected, but we didn't raise an issue because the Committee had not focused on numbers -- only the degree of emission reduction required to achieve health related ambient air quality for auto related pollutants.)

The questions that are before the Committee this year are no different than the questions with which the Committee was confronted in 1970:

1. Is public health protection from air pollutants a viable basis for the development of air pollution control policy?

2. If public health continues to be a viable, defensible basis for such policy, the Congress must determine whether or not deadlines for achievement of the protection of public health from air pollutants are useful and if so, what should those deadlines be.

3. If both health related air quality standards and deadlines continue to be the basis for control, then the Committee must determine the extent to which autos need to be controlled to achieve health related standards.

4. Over what time frame, trading off the impact of such auto emission controls or the relaxation thereof with regional control policies designed to achieve any appropriate deadlines for public health protection.

Obviously, an order for the Committee to make these kinds of judgments, they need to know what the cost of achieving statutory auto emission standards are, what the technological alternatives are, what the fuel economy implications are, and so on. They also need to know what the cost of the other kinds of controls, including the cost of indirect source and transportation controls, are and the Committee needs to know what the industry is capable of delivering.
The Committee needs to focus on the fact that the 49 State-standards that the industry presently is achieving are exactly those to which the industry committed itself to at the White House a year before the Clean Air Act was passed and nine months before statutory standards were proposed. In other words, the industry has achieved no greater degree of emission control than that level to which the industry committed itself in 1969, six years ago. The Members need to know that the Clean Air Act has caused no increase in cost, no decrease in fuel economy and no disruption in the auto industry. At most, the Clean Air Act may have accelerated the research cost directed toward more restrictive standards and, at least, may have forced the industry to keep what was otherwise a voluntary commitment.

The question is whether or not the Congress intends to maintain the pressure that began in 1970 to achieve any change in a degree of emission performance of automobiles over that level of performance which the industry has prepared to deliver. This is a critical question. It has serious ramifications for public policy. It is not a case of legislating technology, because obviously technology has not been legislated. It is a case of legislating emphasis, directing investment and action by a significant segment of our economy, the product of which is having a significant impact on the quality of our air.
May 12, 1975

MEMORANDUM

TO : Members of the Environmental Pollution Subcommittee
FROM : Subcommittee Staff
SUBJECT: Clean Air Act Hearings -- Automobile Emission Standards

CONTEXT OF PRESENT POLICY

Though the effects of pollution from the automobile have been known for more than fifty years, the first real efforts to control its pollution began in California in 1959. California then adopted a law requiring the installation of pollution control devices as soon as the automobile manufacturers could develop such items. The companies argued that no such devices existed.

Finally in 1964, the State of California verified that independent manufacturers had developed workable devices. The devices had been developed by independent manufacturers, not by the automobile companies. Beginning in model 1966, the California law required installation of control devices. The automobile companies then came forward saying that installation of these independently produced devices was not necessary, because the major manufacturers had developed their own devices.

The Clean Air Act Amendments of 1965 required that the 1966 California standards be applied nationally in 1968. Under those amendments, the degree of emission control required was dependent on technical and economical feasibility. Since such progress was dependent upon inventions created by the industry, a substantial disincentive to develop such devices occurred. This lead eventually to a civil suit initiated by the Justice Department against the auto companies for violation of anti-trust laws through a conspiracy to suppress development of emission control devices. This suit was eventually terminated by a consent decree.

The Air Quality Act of 1967 required the development of criteria documents that would categorize air pollutants and their effects. These documents established the fact that automotive pollutants would need to be reduced by 90% in order to protect public health. On the basis of these documents, Congress required that this 90% reduction occur by 1975. The basis of this reduction came specifically from scientific documents which established ambient air quality levels that would be necessary to protect the public health with an adequate margin of safety. Those documents, updated by scientific studies, continue to be the basis for the efforts to clean up the automobile.
Evidence indicated that air pollution was more severe than had previously been assumed, yet strategies based on technical and economic feasibility subject to a timetable control principally by the industry had not lead to a successful regulatory program. Therefore, the Clean Air Act of 1970 established deadlines, removed the requirement for technical and economic feasibility, and directed the executive branch and the National Academy of Sciences to independently assess automotive technology in order to prod the industry to develop emission controls.

Prior to this, the automobile companies met with President Nixon in November of 1969, and agreed to meet self-imposed standards by 1975, and final clean-up at the 90% level by 1980. Congress, in the Clean Air Act, determined that 1980 was too late, and moved these dates forward to 1975 for two pollutants and 1976 for the third.

But the deadlines had been moved back three times by the Environmental Protection Agency and once by the Congress. As a result, the only requirements presently being met by the automobile industry are those that they imposed upon themselves in the meeting with President Nixon for 1975 one year prior to the enactment of the Clean Air Act. In addition, the industry request for a moratorium stretching through 1982 for two of the pollutants (hydrocarbons and carbon monoxide) and indefinitely for the third pollutant (nitrogen oxides) involves a substantial stretch-out of their original pledge made in 1969 to achieve a 90% clean-up level by 1980.

In effect, present progress of the automobile industry can be characterized as being relatively unaffected by the passage of the Clean Air Act. Present automobiles do not meet the levels originally mandated by Congress, but instead meet only the levels pledged by the auto companies one year prior to enactment of the Clean Air Act.

Since the enactment of the Amendments of 1970, numerous actions have been taken with regard to the automobile. A chronological listing of these events is attached:

**PRESENT LAW AND PROPOSED MODIFICATIONS**

Below is a table showing the standards as established in present law, the recent delay granted by Administrator Train, Mr. Train's proposal through 1982, the President's moratorium proposal, the proposal of the California Air Resources Board and the proposal of the automobile companies.
TECHNOLOGICAL FEASIBILITY

Discussions on this subject usually separate hydrocarbons and carbon monoxide into one category, and nitrogen oxides into another. Administrator Train concluded from the testimony received during the weeks of hearings held by EPA this year that the technology was available to control hydrocarbons and carbon monoxides at the statutory levels (.41 HC, 3.4 CO). His decision to grant an extension was based upon the sulfate problem, not on the lack of availability of technology to do the job.

The hearings did not probe the question of nitrogen oxides deeply, since he did not have authority to grant a delay in that standard.

With regard to nitrogen oxides, both the National Academy of Sciences and the Environmental Protection Agency have concluded that technology exists to meet the 1978 statutory standard of .4 grams/mile. The Academy believes that the increased cost of these systems can be reduced substantially with further development; EPA believes that if the proper technology were to be selected, total lifetime costs would show savings, though initial purchase prices would be higher.

An important factor in these discussions, as well as discussions of fuel economy, is the number of models offered for sale by the automobile companies. If some reduction in the variety of models offered, and some reduction in the weight of models offered is made, then technological feasibility, improved fuel economy, and lower costs all become more manageable. Most projections do not assume any substantially significant change in the present trend of sales mix.

FUEL ECONOMY

The National Academy of Sciences testified at the EPA suspension hearings February 3, 1975 that achieving the final standards for hydrocarbons and carbon monoxide by 1977 would lead to a 5% fuel economy penalty, compared to uncontrolled automobiles (uncontrolled are approximately the same as 1975 models). When questioned, the Academy indicated that the industry had said it could not meet these 1977 standards, but the Academy had concluded that those statements were inaccurate, principally because the manufacturer desired to certify all present models. The Academy felt that a full range of vehicles could still be presented to the public, even though some models might not be offered. These projections did not include any shift to diesel engines, or other major modifications such as substantial efforts to improve fuel economy by redesign of the vehicle, addition of new transmissions, etc.

Meeting the statutory NO\text{\textsubscript{x}} standard of .4 grams/mile could include a fuel economy penalty of up to 10\%, according to the Academy. The industry claims much higher losses would occur.
The report of the EPA technical staff, and the DOT/EPA fuel economy study published in October, 1974 indicate that the choice of better pollution control technology, changes in design of the automobile, and reductions in the weight of vehicles can overcome this fuel economy penalty and provide fuel economy increases that will more than meet the President's goal of a 40% increase in fuel economy by 1980.

It is important to point out, however, that the automobile industry disputes these findings. If the choice is left open to the industry to trade fuel economy against emissions controls, it is highly probable that they will select systems and vehicles designs that will result in fuel economy penalties of substantial portions in meeting this statutory nitrogen oxide standard, at least initially.

**SELECTIVE ENFORCEMENT AUDIT**

EPA is proposing to begin an assembly line audit of vehicles to insure that they meet emission standards. While the Clean Air Act of 1970 contemplated such a test very soon in the regulatory process, it has taken five years for EPA to institute such a program.

The automobile companies object to this testing procedure. They prefer to be able to use an "averaging" technique whereby the average of their cars would have to meet the standard. The present law requires that 100% of the cars must meet this standard. EPA is proposing an auditing system that would require 90% of the cars to pass the test.

California has already instituted an auditing program and has discovered that numerous cars coming from the production lines do not meet the standards.

EPA's regulations for this program have been proposed, but are presently going through inter-agency review before final promulgation occurs.
NOTES ON THE MOSS AMENDMENT

There will be a good deal of speculation in the trade press and among lobbyists and elsewhere as to why the Moss amendment was so soundly defeated. I think there are three or four reasons:

1. There is no question but that the Committee's almost unbreakable unity in favor of the Committee position and against the Moss amendment contributed significantly to the unwillingness of most of the Senate to go along with Moss.

2. The Minority played a significant role in actively lobbying within the Republican caucus for the Committee position. Not only did the Minority deliver handsomely in actual votes but it also had in reserve several other Republicans who could have been called upon had the vote on Moss been close.

3. The Chairman of the Committee actively lobbied for the Committee position and, as a result, can be primarily credited for the Committee unity. The Chairman was also responsible for a number of other votes in the Senate, perhaps as many as 8 to 10 of those who might otherwise have been considered leaning or questionable.

4. The most important reason the Committee won by the margin it did was the error in judgment made by the Senator from Utah, both in antagonizing the Chairman (and the leadership) on the Randolph amendment and accepting the level of advice and assistance from industry lobbyists. The antagonizing of the Chairman challenged his leadership of the Committee, his status in the Senate and his rights as an individual member. Any one,
of those would have been sufficient cause for the Chairman to become a vigorous supporter of the bill rather than a passive actor on the stage. All of them combined made the matter so overwhelmingly personal that he was inclined, and in fact did, actively seek assistance from his colleagues.

I take responsibility for the tactical situation in which Moss found himself, and I am sure Moss will be inclined to blame staff for deliberately deceiving him. But the chronology of events are important.

We begin to consider the Clean Air Act on Monday, July 26th, prior to Muskie's return from Maine. We had no consent agreements, nor did we have an order of amendments. I tried to get agreement from the principals on an order of amendments which would maximize the use of the Senate's time and minimize the amount of time required for the legislation. I could not get any agreements. No one wanted to move before the Moss amendment was up. Senator Moss wanted a full 5 hours on the nondegradation issue which was not possible until Wednesday, and agreement just became clearly out of the question.

On Tuesday morning, I informed Senator Moss' staff and others that there were no agreements, that all deals were off and that the Committee would have to take amendments as they came. We immediately scurried around to begin debate so we could move to roll calls. Senator Muskie accepted two Domenici amendments and had a colloquy on one other. An effort was made to accept a Bentsen amendment but that was set aside pending reworking to make it consistent with the Committee bill.
I suggested to Senator Randolph that he bring up his noncontroversial study amendment and begin discussing it. Senator Muskie then suggested to Senator Randolph (at my suggestion) that the yeas and nays be ordered, which Senator Randolph did and which the Senate accepted. (Senator Buckley almost objected not realizing the importance of getting an early vote on a nondegradation study in terms of the potential of defeating the Moss amendment.)

It was not until the yeas and the nays were ordered that Moss realized he had been placed in a vulnerable position. He realized that a vote on the Randolph study would make his study irrelevent and that he would be faced with an up and down question on deletion of the Committee nondegradation provision. As a practical matter, the minute the Randolph study was offered and became an option for Members of the Senate, Moss' combined study deletion amendment was no longer a viable option. The Moss filibuster joined by Allen's resistence to a time agreement for two days stiffened the back of the Committee and the Senate and antagonized people who might have been leaning toward Moss and his amendment. The rest is history as outlined above.

An additional factor which backfired on Moss, though he was not aware of it, was the Scott amendment. Industry talked Scott into putting up his amendment as a way of tactically stimulating support for Moss on the assumption that supporters of Moss would like to have a chance to vote against Scott before they voted for Moss. This also backfired because the Scott amendment focused attention on the limitations of the Moss amendment with regard to keeping EPA's regulations in place. After failing, the Scott amendment provided real fuel to the fire of the Minority who had based
their entire opposition to Moss on the EPA regulations.

The auspices of the Randolph amendment are interesting. Shortly after the Committee reported its bill, Senator Randolph made a speech in Detroit in which he called for a GAO investigation and study of the nondegradation amendments. The proposal was embarrassing because this is an area in which GAO has absolutely no talent and the suggestion was completely inappropriate. It was the product of Richard Grundy and I suspect it was stimulated by industry people as a way of weaning the Chairman away from the Committee bill. After reading the draft Grundy amendment, I asked Barry for an opportunity to redraft it to make it relevant to the bill and to remove the potential embarrassment to the Chairman, and I was provided that opportunity (Tom did the work).

The amendment the Chairman finally introduced called for a study by the Commission established in the bill, mostly expanding on the original concept included in the bill but based on the assumption that the Committee bill would be enacted including the nondegradation provision.

Thus, a provision which was stimulated by industry in hopes of weaning Senator Randolph away from the legislation became the instrument by which Senator Randolph became the leading advocate and in my opinion the primary reason why the legislation was passed in the form reported by the Committee.
Scott - Allen - and Moss
The vote for the corporate boss
And what do they care
If its all dirty air
They're only concerned with the cost

Scott - Allen - and Moss
They vote for the corporate boss
They seek to delete
What they can't defeat
It's only the environments loss

Scott - Allen - and Moss
They vote for the corporate boss
Oh they would abandon
Beautiful Grand Canyon
To let the power lines cross

Scott - Allen - and Moss
They vote for the corporate boss.