

# CEQ REVISITED

## THE ROLE OF THE COUNCIL ON ENVIRONMENTAL QUALITY

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### **I. EXECUTIVE SUMMARY**

Established by Congress twenty-five years ago, the Council on Environmental Quality (CEQ) is a small policy arm of the Executive Office of the President. CEQ advises the President and Congress on environmental policies, coordinates and mediates a vast array of interagency issues, oversees the agencies' compliance with the law requiring environmental impact reports, and prepares the President's annual Environmental Quality Report to Congress.

Being a small institution free of program responsibilities and agency bias, CEQ is uniquely suited to challenge agency assumptions, bring objectivity to policy formulation, and improve government decision-making. CEQ was instrumental in the 1970s in helping shape most of the nation's environmental programs. However, its influence has waned in recent years because of budget cuts and Presidential and Congressional indifference.

#### *Recommendations:*

1. Congress should retain CEQ's status in the Executive Office, provide it with sufficient budget for adequate contract studies and a staff of roughly forty, and reduce the three Council members to a single director or chairman.
2. In its continuing review of Federal activities, CEQ should re-examine the assumptions and performance of environmental programs, such as the Endangered Species Act, and various regulatory programs of the Environmental Protection Agency. CEQ should again stress the use of economic incentives and efficiencies of the market.
3. CEQ should publish shorter annual reports, and Congress should consider requiring them bi-annually.

### **II. INTRODUCTION**

Twenty-five years ago, Congress created the Council on Environmental Quality (CEQ or Council) as a small office in the Executive Office of the President. CEQ's purpose was to advise the President on environmental policy and to make more rational the process by which the Federal government makes decisions.

As the Appropriations Committees of the Congress review the merits of retaining or ending CEQ's functions, it is worth bearing in mind that CEQ is the one institution of government intended to help bring thoughtfulness, objectivity and sensible coordination to Federal programs affecting the environment. CEQ grew out of centrist traditions in the Congress that saw economic

and social aspirations of Americans as integral to the quality of life and the environment.

In a 1981 report on CEQ, the Comptroller General of the United States concluded that: “CEQ’s role is unique and best filled by the current arrangement of a non-regulatory advisory body within the Executive Office of the President. We perceive a continuing need for the delicate role of balancing environmental concerns with the many Federal programs dealing with other national concerns, such as energy development and economic growth.”

The Henry M. Jackson Foundation has commissioned this paper to ensure that there is informed public understanding as to why there is a CEQ, what Congress originally intended, how the Council has functioned, and what it has achieved through six Administrations. The Foundation takes its name from the late Senator Henry M. (Scoop) Jackson of Washington, who was the driving force behind the National Environmental Policy Act (NEPA) legislation that established CEQ.<sup>1</sup>

It is the conclusion of this report that as the nation ends one century and begins another, the CEQ has never been more needed. The easy environmental problems are resolved. Now the more difficult business begins of seeing to it that governmental efforts produce results in an economically efficient manner and not just greater bureaucracy, waste, and frustration. Although some polluted conditions have considerably improved, many environmental problems are still very serious. They are considerably more intricate than first thought, and they continue to engage the operations of numerous Federal agencies which often act at cross-purposes and cause real (and avoidable or ameliorable) consequences to the environment.

The nation has been well served by having a small group like CEQ strategically placed in the Executive Office of the President. Free of agency and program bias, CEQ can question tightly held assumptions, help resolve multi-agency conflicts, and overcome the rigidity of the bureaucracies by bringing to bear on seemingly intractable problems solutions based on sound science, respect for economics of the market, and informed political intelligence. That has been CEQ’s legacy—but it has been difficult to maintain.

CEQ began with a burst of extraordinary creativity and accomplishment in the first term of the Nixon Administration. It continued doing solid work during a period of rather benign neglect in the Ford Administration, and made steady achievements in the latter years of the Carter Administration (which had initially considered transferring its functions elsewhere).

CEQ’s influence collapsed when the Reagan Administration cut the budget and reduced the staff to caretaker status. President Bush later restored CEQ to modest staff levels and listened to its chairman. President Clinton first attempted to abolish the Council, leaving it without a chairman for nearly two years. He then reconsidered after meeting significant Congressional opposition. The Congress has paid limited attention to its own creation, and the Council has often suffered, particularly in the last fifteen years, from indifference and even opposition from the White House. This has debilitated CEQ’s staff, and thus its intellectual vigor, so that CEQ has struggled to maintain stability and carry out its statutory mandate, while its ability to influence policy has ebbed.

The political setting today is altogether different than it was in the early 1970s during CEQ’s

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<sup>1</sup> While I served for nearly four years as a senior staff member of the first CEQ, I accepted this assignment with the understanding that I would not hesitate to recommend its termination if my survey persuaded me that the Council had lived out its useful life.

heyday. No longer are Americans in an acute state of alarm as they were then over the condition of the environment. While opinion polls show continued public concern for the environment, most politicians treat these issues as not being conclusive in the voting booth. (The political graveyard, of course, continues to receive the bones of those who misjudge public sentiment.) Public moods shift quickly, and are difficult to gauge. This much seems clear: Many Americans do not have the same economic optimism that had prevailed for so many years following the close of World War II. Their anxiety, and the anger and cynicism that give it heat, has compelled a rethinking of the roles of government, its costs, and the benefits it seeks to confer. There is more reason for a continuing CEQ presence to question and coordinate not only the various government agencies whose activities damage the environment, but many of the regulations and programs put in place to remedy that damage.

Such periodic reappraisals are healthy to a democracy. That was one of the reasons Congress established the CEQ—to persist in exposing accepted wisdom to the light of scrutiny. In its thorough manner, and in spite of fifteen years of budget aneurysms and the migration of key staff, CEQ has done that well. And a great deal more.

### **III. HISTORY**

#### ***A. Events Leading Up To CEQ***

The Council on Environmental Quality was established by the National Environmental Policy Act, which was signed into law by President Richard Nixon on New Year's Day, 1970. CEQ's birth, and its early success, resulted from a rare alignment in American political history. In 1970, the public was alarmed by dramatic evidence that the environment was in trouble, if not in certain respects in crisis; few institutions or laws existed for real correction; and the political climate was favorable in Congress—at least a few of its leaders there readying the moves—and the Nixon White House was prepared to act.

Conservation issues had often ridden dramatic events into the public mind and public law. It took years of drought and dust storms in the 1930s to move the Congress and the President to establish an agency for conserving the soil. Dams aimed at the spectacular canyons of the West would bring conflict between conservation and economic development time and again before the Congress, which responded often by adding to the National Parks, and creating new Wilderness and National Recreation Areas.

Conservation was episodic, however, and there yet existed no conceptual adhesive for integrating conservation of natural resources, pollution control, and the human condition into an overarching national policy. Nor did there exist any institution at the Presidential level capable of maintaining and invigorating such a policy. Conditions favorable to both had been evolving in the Congress for ten years, beginning in 1959 when Senator James Murray of Montana introduced a bill to establish a council of natural resource advisors in the Executive Office of the President, patterned after the Council of Economic Advisors. Neither Murray's bill, however, nor various successors to it survived Congressional turf battles and resistance from the Executive Branch.

In 1967, both Senator Jackson, Chairman of the Senate Interior and Insular Affairs Committee, and Representative John Dingell of Michigan, Chairman of the Subcommittee on Fisheries and Wildlife Conservation of the House Merchant Marine and Fisheries Committee, introduced legislation to create variations on a Presidential advisory board or council on the environment. Over the next few years, Congressional committees were holding hearings and issuing reports on environmental proposals, as dramatic events outside the Congress converged onto public consciousness.

By 1969, as Jackson, Dingell, and Senator Ed Muskie of Maine engaged in shaping NEPA, “environment” had become a palpable and dramatic reality to Americans. Rachel Carson’s *Silent Spring* had awakened the world to the unintended consequences of the pesticide DDT. A jetport was proposed to lie athwart the Everglades in Florida. Oil was on the ocean at Santa Barbara, fire was on the Cuyahoga River in Ohio, smog was dreadful in Los Angeles, deadly in Pittsburgh, and Lake Erie was being administered last rites. Everywhere citizens were being reminded in print and on television of the worrisome state of their manmade and natural surroundings. The public wanted its government to act.

Considering how dramatically the National Environmental Policy Act sought to alter the entire Federal establishment, it is astonishing how effortlessly it passed the Congress. (NEPA would eventually be picked up by many states and nearly ninety nations, becoming the most emulated law Congress has ever enacted.) Unlike most legislation, NEPA was refreshingly brief and of almost Constitutional tone. It established a national policy “*to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.*” To put the policy and goals into practice, NEPA required that all Federal agencies would now have to consider and describe the environmental consequences of their major decisions—including alternative courses of action. And it created the three-member Council on Environmental Quality, which would review Federal programs, advise the President, and prepare and submit his annual Environmental Quality Report to the Congress.

In the competition over committee jurisdiction for environmental legislation, Muskie, who was Chairman of the Senate Public Works Committee, introduced his own bill to create in the Executive Office an Office of Environmental Quality (OEQ), headed by a director. Both bills would pass and be signed into law. To avoid the inevitable confusion of duplicate legislation, Jackson and Muskie agreed in conference that the Chairman of the Council would also serve as director of the OEQ, with Muskie’s “Office” essentially providing the staff for the policy Council. As a practical matter, the Office of Environmental Quality’s authorization is coupled with NEPA’s in a single appropriation for the Council. With its establishment of CEQ and requirement of impact statements, however, NEPA would become the law of consequence. Anything but an environmental zealot, Senator Jackson submitted the NEPA conference report to the Senate with the reminder to his colleagues that “*an environmental policy is a policy for people. Its primary concern is with man and his future.*” This was a national policy not of the environment for its own sake, but grounded in the quality of human life.

The conceptual shaping of NEPA’s policy was assisted by committee consultant Professor Lynton K. Caldwell of Indiana University. For some years Caldwell had been thinking of how to inject a national environmental policy into the institutional bloodstream of Federal agencies accustomed to pursuing their programs in ignorance of environmental consequences. He concluded that the policy would need some mechanism to force Federal agencies to address it—thus the environmental impact statements.

Until NEPA, environmental considerations had not been part of the Federal decision-making equation. Agencies had no incentive to think and act differently than their constituencies on the Hill wished and expected. And what they expected is largely what was delivered—concrete in the canyons and asphalt down the road, a manifestly engineered destiny.

Jackson was initially cautious about the impact statement requirement, but eventually he concluded that it was needed. His thinking was influenced by contentious Interior Committee hearings Jackson had recently chaired over Bureau of Reclamation plans to dam the Colorado

River at the Grand Canyon. The Bureau had provided the committee with no real analysis of alternatives. It wanted the dam, and thereby set off a national uproar boosted by Sierra Club ads depicting the project as equivalent to flooding the Sistine Chapel.

During deliberations in 1969 over NEPA, the Office of Management and Budget (OMB) objected to any further “cluttering” of the Executive Office of the President. OMB tried to discourage Congressional authorization of a statutory CEQ by having Cabinet officers testify about President Nixon’s establishment that year of an interagency Cabinet Environmental Quality Council. No one was fooled (probably least of all Nixon, who had seen little progress out of his own creation). Jackson and Dingell felt strongly that the Council on Environmental Quality should provide the President with impartial and objective staff support and unbiased information. There were great expectations that the CEQ should set a new tone for the Federal Government. But no one could predict how dramatically the first Council would help transform the *status quo*.

### ***B. Early Organizational Priorities: Environmental Legislation***

Soon after signing NEPA into law, President Nixon appointed Russell E. Train as Chairman of CEQ. The other members were Gordon J. F. MacDonald, a geophysicist and vice chancellor of the University of California at Santa Barbara, and Robert Cahn, a Pulitzer Prize-winning correspondent for the *Christian Science Monitor*.

Train was an especially distinguished appointment. Former tax judge and president of the Conservation Foundation, he was respected within high levels of government, industry, and the conservation world, and uniquely suited to put into practice what he had been urging of the Congress and the White House. He placed a high premium on staff and quickly assembled an exemplary one.

The White House had already forwarded to Congress the President’s first Environmental Message. Soon thereafter CEQ was pulling together the second of what would be four annual Presidential messages on the environment. Nixon’s environmental messages were backed by legislative proposals, executive orders, budget changes, and agency initiatives of unprecedented scope:

- \_ Establishment of the Environmental Protection Agency (EPA) and the National Oceanographic and Atmospheric Administration (NOAA)
- \_ A strengthened Clean Air Act, with national emission standards on new stationary sources and for hazardous pollutants, and more stringent standards on auto emissions
- \_ The Water Pollution Control Act Amendments of 1972
- \_ National standards for drinking water
- \_ Control of toxic substances
- \_ Laws to restrict ocean dumping and to control noise
- \_ Revised law on pesticides
- \_ Considerable expansion of wilderness areas
- \_ Creation of National Recreation Areas in New York City and San Francisco
- \_ Encouraging states to address land use policy by controlling growth in environmentally sensitive areas (not enacted)
- \_ Protections for endangered species
- \_ Restrictions on the poisoning of predators
- \_ Market incentives to place a tax on sulfur oxide emissions and on lead in gasoline, and to reduce tax subsidies to developers of coastal wetlands (not enacted), and remove tax subsidies that encouraged the demolition rather than restoration of historic buildings.

Despite Train's influence, few of these innovations would have seen the light of day had it not been for the support of the White House. Although obscured by Nixon's disgrace and resignation over Watergate, no President before him or since has laid down anything like his record on the environment.

Nixon maintained a certain skepticism about these issues. But Nixon had in John Ehrlichman, his chief domestic advisor, a man whose emotional leanings and intellectual grasp of environmental issues matched his power in the White House. Nixon's comments to Ehrlichman were essentially, "Look, I know you guys consider this important, and I guess it is. So long as you don't get our tails in the crack over the economy and jobs, go ahead." Ehrlichman did the down field blocking with the President, his deputy John Whitaker handled the important constituent groups, and Christopher Demuth (now President of the American Enterprise Institute) did much of the White House analysis.

Ehrlichman gave Train's CEQ its necessary heft within the Executive Branch, and thus the Nixon environmental program its political ignition. With Ehrlichman at Nixon's ear—and Train and his staff providing the analysis and initiative—the President pursued his legislative agenda with Congress, and took the politically bold step of blocking two high-profile but unsound projects in Florida: the Everglades jetport and the Cross Florida Barge Canal.

CEQ had additional advantages in those first few years. Virtually no one else was on the playing field. OMB did not immediately reassert its traditional power of controlling initiatives in this new arena, the Environmental Protection Agency (EPA) was not on the ground until the second year, and William Ruckelshaus, EPA's first Administrator, had his hands full sorting out the difficulties attendant with running a large regulatory agency and its new programs. The Council was working from a *tabula rasa* in the early 1970s—the issues were fresh to the Congress, to the Executive Branch, to an aroused country—and the confluence of forces built an irresistible momentum for progressive political change.

### ***C. Impact Statements***

The NEPA requirements for agency Environmental Impact Statements (EIS) threatened initially to bog down CEQ staff, as environmental groups pressed the Council to act as judge of Federal projects. CEQ's small staff could not assume that role even had the legislation required it. Instead, CEQ staff worked up a set of guidelines for the preparation of EIS's, placing the responsibility directly where NEPA intended: On the agencies themselves.

The courts helped insure that however hard the agencies dug in their heels, NEPA could not be ignored. Few citizens and environmental organizations tended to devote to policy and institutional change anywhere near the energy they expended trying to stop or delay what they saw as offensive Federal projects. With NEPA in hand, these organizations went to court. While the courts held up projects on which the agency had failed to file an impact statement or filed an inadequate one, the U.S. Supreme Court shied away from measuring agency decisions by NEPA's broad policy. The courts were to look only at compliance with the procedural aspects of NEPA.

But it was no small process. NEPA enforced a revolution in Federal custom and habit. The agencies responded in mixed fashion, sometimes surprising themselves by what their analysis disclosed, but often either resisting or responding in weight, so that not a few EIS's had to be delivered by hand truck. Opaque, convoluted, and gorged with irrelevant data, the "NEPA process" began revealing the earmarks of bureaucratic revenge.

In the Ford Administration, the CEQ staff did a substantial 18 month study of the EIS work in some 70 different Federal agencies. Its report was made available for the transition to the Carter Administration. When it became clear that CEQ should reach for the leash, President Carter issued an Executive Order requiring CEQ regulations on streamlining EIS's. Where the original guidelines had been general, the new CEQ regulations were explicit. They required that the agencies discard insignificant issues and get to the point. Agencies were to assess candidly the alternatives, and were to write clearly and in plain English, ridding the statements of excessive trivia, making them shorter, and allowing people adequate opportunity to comment. CEQ Chairman Charles Warren insisted that the regulations have the consensus of all the agencies and interest groups, and to his credit and that of his staff they achieved consensus and the longevity of the rules.

Currently CEQ is trying to get certain agencies, like GSA, to stop wasting money on doing EIS's on minor projects.

The progression from EIS guidelines to the regulations is an example of how a professional CEQ can rein in bureaucracy, achieve important economic savings, and provide continuity from one Administration to the next. This is the kind of steady spade work and negotiation that rarely garners headlines or accolades, but produces concrete progress in making government perform. Purists will argue that NEPA's national policy has yet to find its way into Federal practice, that the refusal of the courts to review substance, instead of process, makes NEPA more of a paper tiger. But considering where government was in the 1970s, CEQ has helped affect changes in behavior, if not in attitudes.

#### ***D. Research and Reports***

Some measure of the breadth of the Council's work, its full range of inquiry into all aspects of environmental problems—from the scientific, to the economic, to the social—is evident in its various reports. CEQ (Ford Administration) published some of this country's first assessments of the economic costs of pollution control, examining at all income levels who pays and who benefits, and the consequences to inflation, unemployment, and the balance of trade. CEQ has consistently explored how to use the market for the most efficient reductions in pollution. And its report on the costs of sprawl provided local governments with solid information on the environmental, economic, and social consequences of suburban growth.

In CEQ's annual Environmental Quality Reports to the Congress, the Federal Government first publicly addressed the question of global climate change (1970), the problems of deforestation of the tropics (1978), and the importance of biological diversity (1980). Until CEQ's annual reports, there existed no publication anywhere to which one could turn for comprehensive information on the status and trends in the environment. CEQ has annually worked toward developing reliable environmental indicators, but in a field as broad and complex as the quality of the environment, such indicators have proven elusive.

“Fifteen years after the Council on Environmental Quality began its quest for environmental indices,” reported CEQ in 1984, “the Pollutant Standards Index is still the only indicator of environmental quality based on solid theory and is widely used and widely accepted in the environmental community. There still is little agreement in the environmental science community about the health of the environment or even about how it is to be measured.”

CEQ's work on environmental indices, and much else, went out the door in 1981, when the Reagan Administration cut CEQ's budget by nearly 75% and dismissed virtually all of the professional staff. During a number of years in the Reagan Administration, CEQ alumni

preparing surrogate reports at the Conservation Foundation nudged the Council to get the annual reports back on schedule, but CEQ had to depend on former staffers under contract for their preparation and editing. Quality was sporadic. With restoration of some of the budget and staff in the Bush Administration, CEQ's annual reports improved in content and timeliness.

Throughout its twenty-five years, CEQ has been actively engaged in international issues. In 1972, Russell Train led the U.S. delegation to the United Nations Conference on the Human Environment in Stockholm, Sweden. From that conference, the first of its kind, would evolve the United Nations Environmental Program, and numerous cooperative projects and programs involving the entire span of international organizations from NATO to the Organization for Economic Cooperation and Development. CEQ led the international effort to phase out commercial whaling, and was instrumental in negotiating the Great Lakes Water Quality Agreement with Canada and the agreement in 1972 on environmental cooperation between the U.S. and the USSR—progress on initiatives with the USSR continuing right on through CEQ's leanest years and up to the collapse of Communism. An international convention on ocean dumping might still be at sea had it not been for CEQ's leadership.

One of CEQ's greatest substantive international efforts (and its last high watermark) was its 1980 joint publication with the State Department of the *Global 2000 Report to The President*. Conceived by CEQ Chairman Charles Warren in the Carter Administration, *Global 2000* laid out a frank appraisal of the effects by the year 2000 of growing world populations on resources and the environment:

*“If present trends continue, the world in 2000 will be more crowded, more polluted, less stable ecologically, and more vulnerable to disruption than the world we live in now. Vigorous, determined new initiatives are needed for worsening poverty and human suffering, environmental degradation, and international tension and conflicts are to be prevented.”*

#### ***E. Later History: Nixon, Ford, Carter Years***

Russell Peterson, a former Governor of Delaware and duPont executive, followed Train (who became head of EPA) as CEQ Chairman in the later Nixon and Ford years. With Ehrlichman gone, Peterson's CEQ was more on the defensive, trying to hold the gains of the Nixon period against rising inflation and big energy projects emerging from the Department of the Interior. Peterson's staff made common cause with OMB to identify wasteful public subsidies—EPA's building of overcapacity waste treatment plants and interceptor sewers and particular water projects of the Corps of Engineers and the Bureau of Reclamation that were highly questionable on economic and environmental grounds. Peterson gave first voice to the coming energy problems, the market for businesses in pollution control, and the future problems of world population growth. He was more combative than Train, irritating Ford's staff by challenging the C.E.O.s of major companies who claimed that environmental regulations were causing inflation.

Unlike Nixon, President Carter had a personal stake in the environment, but he stumbled badly politically in attempting to cancel the questionable water projects out West. His White House gave access to CEQ, and, on the whole, used it to good effect, especially its report on energy conservation. With the help of CEQ, President Carter issued two Messages on the Environment to Congress and numerous special messages on such issues as plutonium recycling and breeder reactor policy, and solar energy.

Carter's departure from the Presidency in 1980 closed a decade of extraordinary progress on the environment. CEQ had helped launch seven Presidential Messages on the Environment. In addition to the numerous proposals mentioned earlier, CEQ's influence could be seen in Alaskan



lands legislation, in Presidential commitments to energy conservation and streamlined permitting, in new tanker standards and oil pollution controls, nuclear non-proliferation, in the laws that brought modern charters to the public lands, in floodplains and wetlands policy, and in international initiatives that pressed environmental review onto U.S. actions abroad.

### ***F. Fifteen Years On Hold***

CEQ's last 15 years have been mostly a holding action. As President Reagan's newly appointed CEQ Chairman, Alan Hill arrived in Washington to find that he had little more than a chair. Reagan's political views and appointments presaged a reversal—the White House wanted no environmental initiatives. Hill considered CEQ's main achievement in those eight years to be survival.

Michael Deland, Hill's successor in the Bush Administration, rebuilt CEQ to about thirty staff, and he attended the daily White House senior staff meetings, enjoying White House access that Hill had not. Deland spent more time personally with President Bush than had his predecessors with Nixon, Ford, Carter, or Reagan. But Deland—like William Reilly at EPA—hardly had allies in John Sununu, the President's chief of staff, Richard Darman, the director of OMB, and Vice President Quayle with his Competitiveness Council. Reilly and Deland (with the Corps of Engineers and NOAA) were able to overcome a tenacious Quayle in preserving the President's campaign promise of “no net loss of wetlands.” Deland's CEQ helped secure Bush's agreement to a moratorium on offshore oil drilling, and—a year in advance of an international agreement—the unilateral phasing out of chlorofluorocarbons (CFCs) that diminish atmospheric ozone. But without allies to bolster the President, Deland's work was steeply uphill.

Shortly after President Clinton's inaugural, the major environmental organizations were summoned to the White House and told that the President would be recommending the “elevation” of EPA to cabinet status as a new Department of the Environment, which was to absorb the NEPA oversight functions of an abolished CEQ. Clinton established a White House Office of Environmental Policy, which was to assume the policy functions of CEQ, and appointed Kathleen McGinty, Vice President Gore's young assistant, to head it.

Clinton's EPA “elevation” proposal passed the Senate, but stalled in the House of Representatives, where John Dingell and Gerry Studds weighed in against dismembering CEQ. In hearings before the Senate committee on the proposal to terminate CEQ, Senator John Chafee of Rhode Island expressed his amazement at the failure of environmental organizations to come to the rescue of CEQ. Both Russell Train, then Chairman of the World Wildlife Fund, and Michael Deland wrote the Congress strong letters supporting CEQ. But otherwise, there was largely silence. The major national environmental organizations did not want to alienate a new administration they perceived to be in sympathy with their views just to rescue a small Executive Office agency, about which they had often been ambivalent. The grassroots environmental organizations, however, never bought into abolishment of a statutory CEQ.

It is difficult to determine why Clinton tried to pull the plug on CEQ. Like other Presidents before him, Clinton had made campaign promises to cut the White House staff (by 25%—Carter had aimed at 10%) and his staff in its scramble for numbers may have confused the Executive Office with the White House staff, or figured no one else would know or care about the distinction. Some of Clinton's staff were prepared to abolish CEQ by Executive Order, until advised that CEQ existed by Act of Congress and would require legislation for its interment.

Altogether there was a naïveté and ignorance among Clinton's new staff about the value to the President of the CEQ—its remarkable history of innovation, dependable professionalism, and

institutional continuity. They didn't appreciate how unworkable it would be to pass NEPA functions on to EPA, much less that a Presidentially established Office of Environmental Policy—which would be as ephemeral as the President's term of office—was an inadequate substitute for a CEQ established by statute. With opposition in Congress to Clinton's dumping of CEQ, his proposal for elevating EPA to cabinet status foundered. In September, 1994, the President announced that he would merge the Office on Environmental Quality with CEQ, consolidating environmental policy under the chair of CEQ, to which he then appointed McGinty. McGinty operates CEQ with a staff of only seventeen.

#### **IV. CONTEMPORARY RELEVANCE OF CEQ**

The Congress could not foresee in 1969 all the complexities of environmental problems. But it understood what was true then, is true still, and will forever be so: The President and Congress badly need objective advice and sound ideas, yet the dozens of line agencies are not in a position to question the assumptions underlying their own programs, much less declare peace in the constant friction of competing agencies and interests. Environmental issues cut across dozens upon dozens of agencies, each going its own way. The President needs thorough analysis and a savvy and impartial broker, without which the issues fall through the cracks for want of attention and resolution. Or they arrive as a flash flood, when years ago someone should have been tending to the watershed.

CEQ was one of the more thoughtful Congressional innovations in recent times. By creating in the Executive Office of the President a small advisory body with a balanced mandate centering environmental policy on the human condition, the Congress gave itself and the President a statutory instrument to help make sensible policy and bring coherence and resolution to what is inherently a not-so-civil war among jealous duchies. It helped sweep in new laws and executive initiatives that reversed years of neglect.

The United States has made demonstrable progress on institution building and the reduction of some pollutants. But as the nation has moved from the eyesore of junked automobiles to the need for recycling a myriad of toxic chemicals in a complicated industrial stream, the issues get more complicated and the means all the more in need of economic strategies. And control of pollution seems almost simple compared with the intractable problems of wildlife habitat and land use, about which our thinking has barely progressed beyond taxonomic rigidity and platitudes for better planning.

CEQ was a good idea twenty-five years ago, and it is a good idea still. The status now is a different quo, and the national interest has never been more in need of CEQ's steady, impartial counsel.

#### **V. RECOMMENDATIONS**

##### ***A. Where Should CEQ Be?***

Putting any of CEQ's functions in EPA makes little sense. No cabinet department or agency takes kindly to oversight by its peers. And what CEQ does in covering all the activities of the numerous departments can never be done successfully by any of them, even one with the name of Department of the Environment. It's still a department (and in today's political environment, not even a likely one).

CEQ should remain in the Executive Office of the President. The White House is the wrong place for its functions. The White House staff is preoccupied with the President's daily political battles,

having to jump from one hot issue to another. Environmental issues engage so many different departments that this dumps in the President's lap too many disputes best negotiated by a CEQ at some remove.

It's true that the line often blurs between the White House office and the Executive Office—Deland's approach and certainly McGinty's seem to have all but removed it. The real distinction is that the chairman and members of CEQ, as with CEA, require Senate confirmation and must return to the Congress for budget and oversight hearings. This dual responsibility has mostly been toward the Executive, largely because of Congressional neglect. It is time that Congress took an interest in the substantive work of the CEQ, learning more about emerging issues and effective solutions through oversight hearings.

In any event, the White House staff is gone when the President goes. The Presidency—each President, one after another—needs the continuity of a statutory Council. The President can set up his own White House Office of Environmental Quality, but as John Dingell once observed, what one President creates, the next one can remove—and often does. Try to find the Competitiveness Council.

The Executive Office provides the President with institutional continuity and professional knowledge of the issues—close enough to the White House to insure loyalty to the President, but of sufficient distance to allow breathing room and reflection. Unencumbered by agency and program slant, an adequately staffed CEQ in the Executive Office can help the White House sort out what is relevant and factual. Supported by the President and OMB, CEQ has performed these functions in the past with results that dwarf its minuscule demand on the budget.

As the last three Administrations demonstrate, however, nothing Congress writes in CEQ's charter can influence how particular Presidents will view its importance. Except for OMB, whose uncontested power emanates from its authority over the budget, the CEQ is like every other agency in the Executive Office: It can be only as effective as the President and, more to the point, his senior staff want it to be. No CEQ since the Nixon days has had the advantage of a Presidential advisor with the interest and influence of a John Ehrlichman.

The Council on Environmental Quality plays essentially an insider's role, having resisted pressures from environmental organizations to be a more vocal critic. There is no better way for an Executive Office agency to lose its effectiveness than by moving from private counsel to public confrontation. That was never its purpose. Sooner or later a missionary CEQ would abrade the political interests of the President, and guarantee it a monastic existence.

## ***B. What Should The Council Be Doing?***

### **1. Challenging the *status quo* of not only the traditional development programs that can degrade the environment, but the assumptions underlying many of the pollution and wildlife programs now in place.**

I am no expert in EPA's programs, but there appears to be a near consensus among those who are—not a few inside EPA—that some sweeping changes in EPA's programs are in order. A former Administrator of EPA described the Resource Conservation and Recovery Act to me this way:

*“RCRA is a mess, a punitive, overly rigid statute that assumes the worst of industry and over classifies wastes as hazardous to public health. It's driven by the environmental groups. You use dilution. We really need to reconsider our adversary approach.”*

He echoed what I heard from other former EPA officials that many of the agency's statutory programs are inefficient, "nobody understands them. They only make life difficult for everyone. You need some radically new creative thinking in CEQ to redo this."

As for Superfund, while its influence on future industry behavior may not be inconsiderable, billions of dollars have been spent in moving toxic wastes from one site to another. Do the costs justify the benefits, and how serious are the risks? Removed from loyalty to the program, these are the kind of risk analysis questions that CEQ can ask.

No environmental program is more fractious and in need of thoughtful resolution than the Endangered Species Act (ESA). Designed around the principles of systematic biology, and driven in the field by biologists, ESA has made it difficult to resolve in wildlife policy what is part of a larger dilemma over land use, about which our thinking is so rudimentary. Species are the basis of systematic biology, the taxonomic ordering of the genetic pools of life. We should not cavalierly extirpate particular species without knowing what we are losing. But the sheer numbers of those in trouble and the daunting complexity of how the parts (species) relate to the whole (ecosystems), make it unlikely that we will ever understand enough to act in any particular situation with other than a general scientific understanding. So much of ESA, especially on land, is a good goal gone bad, discouraging rather than encouraging wildlife conservation. ESA's equities and economics are perverse—the landowner pays (often heavily in "mitigation"), the public does not—and ESA's penal approach can criminalize what is often innocent conduct. Fearing trouble with the statute, farmers and ranchers have been known to plow up habitat to prevent a listed species from colonizing there. When it became apparent that Federal police power could now be exercised over private land and resident species of wildlife (both historically the province of state and local governments), especially creatures that the public might find repellent, political war was inevitable. What CEQ can provide is a clean slate and candor with the chalk. And a great deal of experimentation with economic incentives. (Statutory compensation schedules would make current bureaucracy seem efficient.) Somehow the present extraction of a public good out of private rights needs a rebalancing of the equities, a reversal of the burdens, and common sense.

Reviewing and rebuilding these environmental programs will prove more difficult than their creation. Both EPA and Interior's Fish and Wildlife Service are accustomed to regulating from the top down. Even if the desire to reform is at the top, it's not in the institutions' genes. Few agency heads are willing to endure charges of "Sell out!" that the interest groups and their allies in the agencies can insure in the press.

It will take more than Presidential and Congressional speeches to move the regulatory agencies off their infatuation with command and control and into market incentives and economic efficiencies. Command and control is a cultural trait—and no small part of that culture is outside the agencies in the interest groups. Like any custom and habit, this will prove difficult to dislodge.

## **2. Addressing major disputes before they become politically untenable.**

CEQ needs time to do the studies and ready issues for their eventual ripening and acceptance. As it did with its report on Integrated Pest Management, CEQ can help the Department of Agriculture, for example, address cooperative ways in which farming can achieve environmental benefits. With sufficient budget, CEQ could now be commissioning studies on how market incentives can work to encourage landowners to benefit habitat.

### **3. Putting some effort into serious future issues—often global.**

This means thoughtful, conceptual work on the long range problems—such as the oceans—that few are thinking about and that do not yet threaten anyone’s prerogatives. CEQ is not a think tank in the pejorative sense, but its thoughtful reports on the costs of pollution control and the impacts of sprawl show how a policy perspective can address the future without getting starstruck. CEQ’s great strength has been in marshalling experts from both inside the agencies and those outside the government to focus on critical issues.

### **4. NEPA Compliance**

In an ideal world, agency compliance with NEPA should be self-enforcing. In the real world, however, CEQ’s NEPA regulations will need periodic refinement and continual nudging to remind agencies of the policy goals of NEPA. Pushing this off on EPA would freeze up the gears. The other agencies would not have agreed to the regulations had they been proposed by another department, and most especially by EPA, which regulates some of their programs. The courts give great deference to CEQ’s regulations, and the rules work, providing CEQ is vigilant in preventing the occasional end-runs by agencies seeking statutory exemptions and in convincing agencies not to waste money on EIS’s on insignificant projects.

### **5. The Annual Reports**

The annual reports to Congress have often served as platforms for the President’s environmental messages. Without many new initiatives, the White House may have less interest in a message. But like the President’s annual Economic Message, an Environmental Message helps discipline White House thinking about priorities beyond the moment.

Given the realities of the budget, the Congress should consider having the Council publish a bi-annual report. The numerous tables on data and trends might better go in a separate report, having the Annual Report to Congress be a more concise document that attends to a few major policy issues. The Annual Report must not revert to a consultant’s product or be a platform for agency puffing. One should not underestimate the long-range importance of CEQ’s educational role in raising the level of public understanding through its annual and special reports.

#### ***C. Some Other Considerations***

CEQ’s three-member structure should be reduced to one. A Court of Appeals decision applied the Sunshine Act to CEQ, so that any discussions among the members require a week’s advance notice in the Federal Register. Even without this absurdity, a three-member council works well under only the best of circumstances. The natural tendency of a council member is to make demands on staff, which can create frictions between staff, staff director, members, and the chairman. A troika rarely works well. A single director, or chairman, makes for a more efficient operation.

CEQ should always be relatively small. No other entity in the Executive Office, except OMB, has CEQ’s span of interagency demands, as the environment—and thus CEQ—cuts across just about every institution in the Executive Branch. What is “relatively small” in the current political climate, may produce the appearance of economy at the risk of a false one. A CEQ staff of 20 can cover the mail and some brushfires, but that isn’t what this organization is about. Forty may be adequate, if there is money for contracts (CEQ hasn’t seen fifty staff since the Carter Administration). Whatever its size, CEQ must maintain a high quality staff, with considerable expertise in economics.

#### *IV. Conclusion*

The Congressional declaration of a national policy for the “productive harmony” of people and nature was the articulation that today goes under the less eloquent rubric of “sustainable development.” Whatever the expression, the meaning is the same: Economic growth and environmental stability are a unity. This thinking has guided one institution of government to deliver on that very human promise.

Environmental reform grew out of American institutions and citizen energy and has spread throughout the world. In no minor way has a small collection of men and women at 722 Jackson Place helped give it shape and persistence.

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