

White House Steps into Lead Fight

EPA is under pressure to drop regulation that would reduce sale of leaded gas

The White House jumped into the ruckus over lead pollution in August and asked the Environmental Protection Agency (EPA) to quash a proposed new regulation that would immediately reduce the amount of high lead gasoline sold in the United States. The EPA wanted to achieve this environmental gain by cracking down on one small segment of the petroleum industry, the gasoline blenders.

The White House decision to intervene, which gives weight to the blenders' lobby, took the EPA by surprise. It came in the form of a low-key letter to the EPA from the Office of Management and Budget (OMB). Some believe it may unravel the EPA's new plan to control the lead pollution from auto exhausts (*Science*, 20 August, p. 711).

The EPA faces a dilemma. One EPA official says the agency has three choices: accept the changes the White House wants, even though they are not based on new health or economic data; negotiate a compromise; or thank the White House for its comments and proceed to adopt the rules as written. The last option may be legally permissible, but politically chancy for the officials who will make the decision.

The EPA's conduct has been somewhat erratic. In February, at the behest of Vice President George Bush's regulatory reform task force, the EPA proposed to relax controls on leaded gasoline. Public hearings were held in April. Environmentalists and public health officials protested vigorously, citing clinical and epidemiological evidence that lead may be more toxic at low levels of exposure than has been officially recognized. There is some evidence, for example, that chronic, low-level exposure damages children's behavioral and intellectual development.

In mid-June, according to EPA officials, the agency decided not to relax lead controls, but to come up with a strong, flexible regulatory scheme. The plan was supposed to reduce the total amount of lead used in gasoline by about 5 percent (3000 tons) in the first year, and by 31 percent over the next 8 years. The details were guarded very closely within the agency, apparently to prevent

lobbyists from learning of them and chipping away at various clauses before publication. On 30 July, agency officials took the highly unorthodox step of using the *New York Times* to serve as a surrogate *Federal Register*. The documents were leaked in toto. This gained the agency a week of flattering press attention. As one White House official commented, the EPA "did not play by the rules . . . they left us very little room for maneuver."

On 10 August, OMB official Christopher DeMuth responded to the EPA with a letter of criticism and suggested changes. Some environmental lobbyists read his letter as a clever scheme for gutting the entire package of EPA lead standards. DeMuth asked the EPA to postpone any changes in the status quo until 31 December, "by which time a final rule should be issued." He asked the EPA to drop a proposed interim measure that would take effect on 1 October and would wipe out a loophole in the law that benefits gasoline blenders. Third, he wanted the EPA to reconsider the "appropriateness" of the numerical limit on lead additives (1.1 gram per gallon) which it has chosen to impose at a later date on both small and large refiners.

The OMB suggestion is destructive, according to Eric Goldstein of the Natural Resources Defense Council, because it would do away with the EPA's tough interim controls and postpone a final rule indefinitely. There is no guarantee that the proceedings will actually end on 31 December, Goldstein says, because the impetus for delay will grow.

Citizen groups will lose their leverage after the November congressional election. Oil companies will lose their incentive to act because they will have achieved their most important objective: suspension of the compliance deadline due to take effect on 1 October. Negotiations over the final standard may die in querulous ignominy.

OMB officials say that they do not want to undermine but to improve the EPA's proposal. As written now, the OMB argues, the lead rule discriminates against some small refiners who cannot compete against the big companies.

The OMB has not criticized the health

data the EPA used in formulating its lead rule. Indeed, it may be awkward to discuss the health merits of a rule that allows over 55,000 tons of lead to be added to gasoline annually, when it is known that auto pollution contributes to lead poisoning.

The OMB focused instead on economic issues. In particular, it embraced the blenders—companies that do not refine gasoline themselves, but buy it from other producers, blend it with additives, and sell it to retailers. Many blenders have come into being in recent years to take advantage of a loophole in the lead regulations created by Congress. The cheapest way to boost octane ratings is to add lead. If lead is disallowed, a producer must buy additional refining equipment, which takes capital. Thus, the Clean Air Act Amendments of 1977 set strict limits on lead but gave small refiners a temporary reprieve, allowing them to add more lead to their gasoline until their refining equipment was installed. The ultimate deadline was to be 1 October 1982.

Some astute entrepreneurs saw the opportunity here and set themselves up as "small refiners"—actually blenders—in the high-lead gasoline business. In this interim period they have done well, buying poor quality gasoline, mixing it with relatively large amounts of lead, and marketing it below the price set by other domestic refiners. Now the EPA has decided that the day of reckoning has arrived for these entrepreneurs. The proposed EPA regulations would force all the new, small refiners (or blenders) to meet the same standards being applied to the big refiners on 1 October. This will eliminate many blenders, which seems grossly unfair to those affected because others will not have to meet the standard until later. However, the blenders cannot argue that they had no warning that this might happen. In fact, they have had 5 years warning.

The reason the blenders are outraged is that they have been excluded from the general amnesty that EPA is granting to all other segments of the industry. A new standard will be set for both large and small refiners sometime, but it cannot be made law until it has passed through the

ordeal of *Federal Register* publication (which has not happened yet), hearings, a hiatus for written comments, and agency review. In the meanwhile, the EPA has proposed to allow large and small refiners to continue doing roughly what they do now, which for some small companies means using as much as 2.5 grams of lead per gallon. Only the small companies that have opened shop since October 1976 will be held immediately to the new standard (1.1 grams of lead per gallon). They are crying foul.

Their cry has been heard. Consider the case of Wickland Oil of West Sacramento, California. Although it is a small blender that only began operating early this year, Wickland has found a voice in Washington, D.C. His name is John V. Diepenbrock, and he was chairman of the finance committee for Ronald Reagan's presidential campaign.

As an agent of Wickland Oil, Diepenbrock visited the U.S. Vice President's office on 16 June to meet with the Vice President's counsel, Boyden Gray, and with Gray's assistant, Frank Blake, who

has been helping the OMB decide what should be done about leaded gasoline. Diepenbrock also met with high-level EPA officials Richard Wilson and Joseph Cannon on 17 June. Later, on 16 July, Diepenbrock met with George Bush. However, on this occasion, Diepenbrock says, he was not an agent of Wickland Oil, but of the Pacific Legal Foundation. The conversation did not turn to lead.

Wickland's immediate problem is that it has been buying one shipload a month (150,000 barrels) of gasoline made in Communist China. This gasoline, although leaded, is too low in octane to meet California's demands. Wickland adds more lead at a terminal completed last January (cost: \$20 million) and sells the blend at its "Regal" outlets. The final product contains 1.3 to 1.4 grams of lead per gallon. A shipment of Chinese gasoline, already bought, is due to arrive in California in October, the very month the EPA has chosen to enforce its new rules. Wickland could lose some money.

Through Diepenbrock, Wickland told the EPA and the White House that it is

being singled out for unfair regulation. The gist of its complaint is that its chief competitor, an older and bigger company—Tosco—is being allowed to get away with selling more highly leaded gasoline. This is possible because Tosco sells *unleaded* gasoline as well. Under regulations, which the EPA would like to abolish, Tosco is allowed to average its leaded and unleaded production to meet a numerical standard. Wickland produces no lead-free gasoline, and thus cannot benefit from averaging.

Wickland officials are deaf to the argument that they should have believed the EPA would enforce the intent of the law, which stipulated that small refiners would lose the exemption from lead controls on 1 October 1982. Wickland's spokesman William Silvia argues that if his company must lose its exemption, then everyone else must lose it at the same time. According to Silvia, company officials invested in the blending business on the assumption that the law would be changed in their favor. They still make that assumption.—ELIOT MARSHALL

The Risks of Living Near Love Canal

Controversy and confusion follow a report that the Love Canal area is no more hazardous than areas elsewhere in Niagara Falls

The senators and representatives of New York State admit to being highly confused about the events preceding the release of a federal report on Love Canal, a toxic waste dump in Niagara Falls. The reason, Senator Daniel Moynihan (D-N.Y.) explains, is that "an awful lot of on and off decisions" were made concerning whether the neighborhood around Love Canal is a safe place to live.

The final version of the government's report, released last month, suggests that the neighborhood is relatively safe. The area adjacent to the dump is generally recognized to be heavily contaminated with toxic chemicals but, the report says, most of the land nearby is just as habitable as that situated elsewhere in the city (*Science*, 20 August, p. 714).

This assessment has encouraged the state to consider resettling a portion of the neighborhood that was evacuated in May 1980, encompassing roughly 400 homes. The incentives for such a decision are financial and esthetic. The state has borne some costs associated with the evacuation and cleanup at Love Canal, some of which could be recouped

through the resale of homes. Resettlement would also permit destruction of a chain link fence that now surrounds the evacuated area, removing a local eyesore and possibly improving the economy of Niagara Falls.

However, resettlement plans may be delayed until the Environmental Protection Agency (EPA) and state officials resolve the confusion and controversy surrounding the federal hazard assessment. The confusion stems largely from the fact that the conclusions of the report were modified twice shortly before its release. Initially, a panel of six federal scientists convened by the Department of Health and Human Services (HHS) agreed that resettlement of the area was acceptable. One month before the report's release, however, the panel withdrew this conclusion and stated that "no definite recommendations or conclusions as to the habitability or the potential human health risks of the Love Canal area can be made." One day before the report was released, the panel reversed itself again and reaffirmed its initial conclusion that the area is habitable.

Although this sequence of events can be readily explained, it has generated questions at Niagara Falls about the panel's commitment to its conclusions. Senator Alfonse D'Amato (R-N.Y.) and Representative John LaFalce (D-N.Y.), who is from Niagara Falls, have suggested that the HHS panel was pressured at the last minute into a decision in favor of resettlement. "This conclusion was reached because EPA put the pressure on and state officials put the pressure on," D'Amato told HHS assistant secretary Edward Brandt during a hearing on 4 August. "That's just not accurate," Brandt replied, and his denial was supported by panel representatives. The charge has proved more popular than the denial, however, and residents of Niagara Falls are now deeply divided over the wisdom of resettlement. The Love Canal Homeowners Association opposes it.

HHS first became entangled in this muddle in March 1981, 7 months after the EPA had gathered information on chemical contamination near the canal. The data indicated that the 21,800 tons of chemicals in the dump had leaked only