

Rachel's Environment & Health News

#251 - A Secret Government Within

September 17, 1991

Government regulations used to be made through an open process. Congress would pass a law saying something should be done; for example, in the Clean Air Act, Congress said some toxic air pollutants should be controlled. In response to the law, an agency (such as U.S. Environmental Protection Agency [EPA]) published a proposed regulation. Anyone who wanted to could send a comment. If the proposed regulation would have large effects on the public, the agency might hold a series of public hearings around the country. After the public comments were all in, the agency mulled them over, reached a decision, and published a final regulation.

That's how it used to work. Ronald Reagan began changing this process almost immediately. Mr. Reagan had been in office less than a month when he issued Executive Order 12291 which said no agency could issue either proposed or final regulations without getting approval from the Office of Management and Budget (OMB). OMB was required to apply "cost benefit" analysis to proposed regulations--if the benefits didn't exceed the costs, the regulations were chucked. In any case, only the least-cost regulations could be adopted, even if other proposals would provide greater benefits.

In January 1985, Mr. Reagan issued Executive Order 12498 saying government agencies had to have OMB approval before even collecting information, through a study or a survey, that might potentially lead to regulation in the future. Where Executive Order 12291 allowed OMB to hold up any regulatory process then under way, Executive Order 12498 allowed OMB to interfere in any regulatory process even before it got started.

In this manner, the Executive Branch of government (the President and his men) could prevent the legislative branch (the Congress) from accomplishing much. Congress can say, "The law will be such and such" but now OMB can say to any agency, "You cannot make a regulation we don't like--no matter what Congress says." Congress of course has the power to force an agency to pass a particular rule, but if Congress has to pass a law creating every regulation that every agency is supposed to make, Congress will be mired in details and will accomplish even less than it does now.

In 1989 President Bush created the Council on Competitiveness and appointed Vice-President J. Danforth Quayle to head it. The Council is another way for the Executive to prevent unwanted regulations.

Under Mr. Quayle's keen eye, the Council has come to concern itself with almost every controversial health, safety and environmental regulation. For example, this summer the Quayle Council played a critical role reversing the nation's wetlands protection policy, opening an estimated 30 million acres of wetlands to destruction by developers. In recent months the Council has been key in derailing certain Clean Air Act regulations to control toxic emissions; in preventing the adoption of strict rules to protect workers from cancer-causing, formaldehyde; and in preventing operators of municipal solid waste incinerators from having to recycle 25% of the garbage delivered to their incinerator door.

Unlike OMB, which is somewhat accountable to the public, the Quayle Council works almost entirely in secret. It is not possible even to learn who works for the Council or who attends its meetings. Freedom of Information Act requests for simple matters--such as the name, background and education of Council staff members--have been denied on the basis of "executive privilege." The deliberations of the Council are not public, its budget is not public, and the Council ordinarily publishes no rationale for any actions it takes. The rules by which the Council operates are not available anywhere. This makes a court challenge to any Council actions difficult or impossible.

Yet the Quayle Council has great authority. The Council can "pull" any regulation being considered by any government agency and can pressure the agency to change it. Since many cabinet officials sit on the Council (though exactly which ones are members is not public

information), it has clout throughout the federal bureaucracy.

March 22, 1991, Vice-President Quayle issued a memo announcing the Council's range of authority. The memo said the following items are subject to regulatory review by the Council: "strategy statements, guidelines, policy manuals, grant and loan procedures, Advanced Notices of Proposed Rulemaking, press releases, and other documents announcing or implementing regulatory policy that affects the public."

Last March a Congressional committee asked Mr. Quayle to send a Council representative to a public hearing. Mr. Quayle not only declined to send anyone, but his Council also refused to answer written questions about the Council's membership and the rules that govern its actions. "Apparently, the Council is not in any way constrained by the guidelines that are supposed to govern the process of issuing regulations," Congressman Henry Waxman concluded.

The Council's work is very persuasive. For example, EPA had proposed that "fuel cleaning" be part of "best available control technology" for municipal incinerators. Coal-burning power plants can offer "fuel cleaning" (meaning chemical removal of sulfur) as an alternative to expensive scrubbers to remove sulfur from smoke stack emissions. By analogy, EPA was urging "fuel cleaning" as a way to reducing toxic emissions from incinerators--they were trying to require incinerator operators to recycle 25% of the garbage that arrive at the incinerator door. The Quayle Council jumped on that idea with both feet, and the idea promptly died.

The Quayle Council often pokes into issues that depend upon scientific and medical expertise, but so far as any public records show, the Council employs no scientists and no physicians. Take the matter of wetlands protection. Wetlands are complex ecosystems that are often highly productive (swamps, for example, are often teeming with life), and are often essential in the chain of being. For example, frogs and other amphibians need land that is wet sometimes and dry others, and the loss of wetlands of contributing to the loss of amphibians worldwide, fraying the web of life itself (see RHWN #246). President Bush made a campaign pledge that there would be "no net loss of wetlands" during his term of office. But in summer of 1991, pressure from developers convinced Mr. Bush to change his policies, and the Quayle Council swung into action to take care of the situation. For several months, scientists within EPA argued for a particular definition of a wetland, aiming to preserve the essential character of wetlands for those creatures that depend upon them. EPA wanted to define a wetland as any land that's got standing water on it seven days a year. Mr. Quayle's Council wanted standing water 30 days a year as the definition. In the end, Mr. Quayle made what must have seemed to him a little joke: "How about if we say when it's wet, it's wet?" as a possible definition for what constitutes a wetland--and EPA accepted a definition (standing water 15 days a year and 21 days of surface saturation a year) that will ultimately allow the destruction of some 30 million acres of wetlands. Three key EPA scientists resigned in protest.

The new Clean Air Act has weak provisions controlling toxic air emissions. The Quayle Council has tried to make them even weaker. The Council has inserted language into EPA's proposed rules that would allow polluters to re-write their own permits, giving themselves leeway to dump additional toxins into the air. Under Council proposals, the public would not have to be notified as companies re-wrote their own permits, the EPA itself would not even be asked for comment, and neighboring states would have no say. Under the proposed rule changes, polluters re-writing their own permits would only have to notify their state government, and state government would have seven days to file an objection; otherwise the re-written permit would go into effect. David Hawkins, senior attorney for Natural Resources Defense Council (NRDC) says the Quayle Council's revisions "Would turn a program intended to protect the people from pollution into a program designed to protect

polluters from the people."

EPA had proposed to prevent lead-acid automobile batteries from being burned in municipal solid waste incinerators because lead is already a major public health problem (see RHWN #213 and #214) poisoning children in rural and urban areas alike. Municipal incinerators are the largest source of lead emissions into the environment. However, the Quayle Council snuffed EPA's proposal, so it's legal once again to incinerate automobile batteries.

The Quayle Council keeps no public records of who it talks to for advice, but Vice-President Quayle says he consults most often with business leaders who can tell him better than economists "how the clock is ticking." Allan Hubbard, executive director of the Quayle Council, says, "When they feel like they are being treated unfairly, [industry groups] come to us." The Council is clearly a secret government within our government. It gets the President's dirty work done quietly, forcefully and without any of those pesky trimmings of democracy.

GET: Christine Triano and Nancy Watzman, ALL THE VICE-PRESIDENT'S MEN (Washington, DC: OMB Watch and Public Citizen's Congress Watch, 1991); \$10 from: OMB Watch, 1731 Connecticut Ave., NW, Washington, DC 20009; phone (202) 234-8494.

--Peter Montague

=====

Descriptor terms: epa; omb; council on competitiveness; dan quayle; ronald reagan; george bush; omb watch; public citizen; policies; federal; wetlands; clean air act;