



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

N-96-01  
II-A-662

*This memorandum was not  
sent forward per Bennett's  
direction. T.C. [unclear]  
12/7/81*

OFFICE OF  
AIR, NOISE, AND RADIATION

SUBJECT: Termination of Noise Regulation Development: Decision Memorandum

FROM: Kathleen M. Bennett  
Assistant Administrator  
for Air, Noise and Radiation (ANR-443)

TO: The Administrator (A-100)

THRU: AX

As you know, I have instructed John Ropes, Acting Director, Office of Noise Programs, to complete the phase-out of office activities no later than September 30, 1982. A very substantial element of this phase-out activity involves the termination of noise regulation development as directed by the Noise Control Act of 1972. The Act is very explicit in its directions to the Administrator of EPA to regulate products which are major sources of noise. However, the Act and its legislative history are not at all clear on the authority of the Administrator to terminate regulation development activities or to withdraw existing regulations for products that have been identified as major noise sources under Section 5(b)(1) of the Act.

As I discussed in my October 17th memo to you, we have two proposed noise emission regulations and four products which have been identified as major sources of noise that require disposition prior to closing down the Noise Office. Under the Act, the Administrator is required to propose and issue final regulations for products "identified as major noise sources," provided such regulations are feasible. The third, and probably most difficult action that we are faced with is the possible rescission of the existing noise emission regulation for truck-mounted solid waste compactors (garbage trucks).

I have received General Counsel's assessment of the options available to you to effect termination of these regulatory activities and also their assessment of the attendant legal implications. I have attached, for your information, a copy of Bill Perry's opinion.

In consideration of Bob's assessment of the breadth of discretionary authority the Act provides you to terminate these actions, the potential legal ramifications of such terminations and the Noise Office's assessment of potential industry, State and local response to such actions, it is my recommendation that you effect the "temporary withdrawal" of specific products from the list of identified "major sources of noise." The basis

for this temporary withdrawal is current economic considerations and the Agency's environmental regulation priorities in light of current budget restraints. This "withdrawal" action would not, per se, remove the "major noise source" designation for any of the subject products since their respective noise contributions to the environment are still in excess of that considered requisite to protect public health and welfare. Rather, the temporary withdrawal leaves the door open for you to reconsider the development of appropriate noise regulations in light of other environmental priorities, available resources, the effectiveness of State and local noise control programs, any voluntary noise reduction actions that may be taken by the potentially affected industries and possible legislative changes to the Act. Further, this approach would not set de facto health or welfare criteria that would serve to adversely impact existing noise emission regulations or prejudice future regulatory actions by EPA, State or local governments. This approach would result in:

a. Withdrawal of the two proposed noise emission regulations; wheel and crawler tractors, and buses.

b. Withdrawal of six products from the "action" list of products identified as major sources of noise. These products are: wheel and crawler tractors, buses, power lawnmowers, truck transport refrigeration units, pavement breakers and rock drills.

In addition to the above withdrawal actions, I recommend that we propose to rescind the existing truck mounted solid waste compactor noise emission regulation. The grounds for this rescission are that industry no longer believes national uniformity of treatment is essential. Further, recent statements from the public sector argue that these products can be more effectively controlled at the State or local level. The record indicates that this proposed rescission would be viewed favorably by Congress, the Council of Economic Advisors, the Office of Management and Budget, by the President, State and local governments, and industry.

Counsel has pointed out that while the "legal" need to request public comment prior to final actions is not absolutely clear, permitting comment on proposed actions may lend strength to the Agency's position should the final withdrawals be challenged. I recommend that you provide a 30-day (minimum specified by the Administrative Procedures Act) period for public comment on all of the above mentioned actions. Since we would expect to incorporate all but the garbage truck withdrawal in a single notice the comment period should not adversely affect our meeting the September 30, 1982 Noise Office phase-out date. We intend to issue the separate notice for garbage trucks in the same time frame. Thus this separate action is not expected to produce any delays in phase-out unless substantive legal issues arise - none are foreseen.

I believe the above actions will result in the most expeditious disposition of these incomplete rulemaking actions. I recommend that you concur.

Decision:

Concur \_\_\_\_\_ Date \_\_\_\_\_

Nonconcur \_\_\_\_\_ Date \_\_\_\_\_

Bob

This memo  
may be useful to you please  
for Action memo. It (decision)  
is not go forward.

K 12/7

**ROUTING AND TRANSMITTAL SLIP**

Date 12-4-81

|   |          |      |
|---|----------|------|
| TO: (Name, office symbol, room number, building, Agency/Post) | Initials | Date |
| Mrs. Bennett  |          |      |
| 2.  |          |      |
| 3.  |          |      |
| 4.  |          |      |
| 5.  |          |      |

|              |                      |                  |
|--------------|----------------------|------------------|
| Action       | File                 | Note and Return  |
| Approval     | For Clearance        | Per Conversation |
| As Requested | For Correction       | Prepare Reply    |
| Circulate    | For Your Information | See Me           |
| Comment      | Investigate          | Signature        |
| Coordination | Justify              |                  |

**REMARKS**

Enclosed is a Decision Memorandum to the Administrator on phasing out our regulatory activities based on ONAC's recommendation that we follow the "modified ONAC" approach suggested by OGC.

DO NOT use this form as a RECORD of approvals, concurrences, disposals, clearances, and similar actions

|  |                |
|--|----------------|
| FROM: (Name, org. symbol, Agency/Post) | Room No.—Bldg. |
| JOHN M. BODES                          | Phone No.      |

5041-102

OPTIONAL FORM 41 (Rev. 7-76)  
 Prescribed by GSA  
 FPMR (41 CFR) 101-11.206



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Decision:

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