Report of The Committee On Legislation And Regulatory Reform

Since the Committee's last Annual Report and the Association's approval of the change of the prior special Committee on Legislation to the General Committee on Legislation and Regulatory Reform, there are a number of areas of Committee interest to be reported.* Both the Congress and the executive branch were active in several areas. The Omnibus Budget Reconciliation Act of 1981, P.L. 97-35, effected major changes in a number of areas of interest to the Association and its members. Among these changes, P.L. 97-35 repealed the authorization for Controlled Substances Act activities, repealed the statutory requirements for fuel changes in existing electric utility facilities, established a low income energy assistance block grant program, increased non-competitive oil and gas lease filing fees and established an off-budget arrangement for financing the Strategic Petroleum Reserve.

The Economic Recovery Tax Act of 1981, Public Law 97-34 (H.R. 4242), which became law on August 13, 1981, is far-reaching in scope. In the energy area, there are numerous changes. There are decreases in the windfall profits tax relative to newly discovered oil, exemptions for oil produced by stripper wells, royalty owner credits for windfall tax liabilities, changes in the credit for producing natural gas from nonconventional sources, and provision of an income exclusion for reinvested dividends of qualified domestic public utility corporations. Of specific interest in the coal area are the Act's provisions for accelerated cost recovery and for investment tax credits.

The Act allows accelerated cost recovery based on ten years for utilities converting oil or gas plants to coal and for the construction of new nuclear plants or new coal plants replacing oil or gas plants. A fifteen-year period is provided for other fossil fuel plants, transmission and distribution, and hydroelectric facilities. Prior to the Act, cost recovery was limited by regulation to a minimum of 16 years for nuclear plants, 22.5 years for other steam electric plants, and 40 years for hydro. Corresponding changes were made in the investment tax credit.

Other areas of activity include the following:

I. GOVERNMENTAL REGULATION

Activities in the Administration relative to regulatory reform, attempts to streamline the federal regulatory process and to reduce governmental intrusion in the commercial and industrial sectors of the economy have occupied a significant amount of time and resources of both the legislative and executive branches. During the ten-month period of 1981 (February-Novem-

*Current procedures of the FEBA require the completion of Committee reports by February 1, 1982, to facilitate publication in the Association's Energy Law Journal prior to the Annual Meeting in May of each year. As a consequence, this report covers the period May 1981 through January 1982. However, as will be seen from the textual materials, report content covers periods prior to May 1981. The nature of the Committee's duties and responsibilities necessitates the coverage of earlier time periods in certain areas.

ber), the number of pages in the Federal Register was one-third less than during the same period a year earlier. Similarly, the number of rules published in the Federal Register decreased by 25% for the same time period.

A. Executive Order 12291

Executive Order 12291, issued by President Reagan on February 17, 1981, establishes guidelines for issuance of new regulations by Executive Branch departments and agencies, including the Department of Energy and its Economic Regulatory Administration. While independent agencies, such as the Federal Energy Regulatory Commission are not, as a matter of law, subject to the Executive Order, the Administration has requested them voluntarily to observe the guidelines. The President's Executive Order supersedes prior E.O. 12044, issued by President Carter in 1978.

The new guidelines require submission of a Regulatory Impact Analysis (RIA) in connection with every new "major rule" promulgated. A major rule is defined as a rule that has at least a $100 million impact on the economy or that significantly affects prices or markets. To the extent permitted by law, a detailed cost-benefit analysis is also required by E.O. 12291. Notices of proposed and final rules are to be reviewed by the Office of Management and Budget (OMB) before publication in the Federal Register. OMB will return to the agencies those rules found to be inconsistent with the Executive Order.

The concept of White House oversight of Executive Branch regulatory agencies has surfaced in at least two recent court decisions.* The most recent case involved the Environmental Protection Agency's adoption of rules governing scrubbers for oil-fired and coal-fired electric utilities. *Sierra Club v. Costle,* 657 F.2d 298 (D.C. Cir. 1981). While recognizing "that there may be instances where the docketing of conversations between the President or his Staff and other Executive Branch officers or rulemakers may be necessary to insure due process," the court ruled that attempts by the Carter White House to influence EPA's policy choices in the context of an informal rulemaking proceeding were not unlawful *ex parte* communications. The court discussed White House control and supervision in broad and approving terms (657 F.2d at 406), and, in so doing, has provided additional support for the regulatory reform initiative embodied in President Reagan's Executive Order 12291:

> The authority of the President to control and supervise executive policymaking is derived from the Constitution; the desirability of such control is demonstrable from the practical realities of administrative rulemaking. Regulations such as those involved here demand a careful weighing of cost, environmental, and energy considerations. They also have broad implications for national economic policy. Our form of government simply could not function effectively or rationally if key executive policymakers were isolated from each other and from the Chief Executive. Single mission agencies do not always have the answers to complex regulatory problems. An overworked administrator exposed on a 24-hour basis to a dedicated but zealous staff needs to know the argument and ideas of policymakers in other agencies as well as in the White House.

* While it is not the province of this Committee to report on general litigation, the view was expressed in Committee work that certain cases have direct, and potentially significant, implications for the future direction of, and impetus behind, the regulatory reform movement and should, therefore, be briefly mentioned in the Committee's report.

There are, nevertheless, at least two (and possibly more) potentially important distinctions between the rulemaking process approved in *Sierra Club* and the process mandated by Executive Order 12291. First, EPA *voluntarily* sought advice from officials outside the agency, whereas E.O. 12291 *requires* the agencies to receive advice and permits OMB to delay issuance of rules until the consultation process is complete. Second, in *Sierra Club,* the court never reached the question of whether a rulemaking would be reversible if Executive Branch officials outside the agency serve as "conduits" for conveying off-the-record comments of third parties to agency officials, since such indirect comments had not been passed on to the EPA. By failing to address the potential "conduit problem", E.O. 12291 leaves open the possibility that such communications may occur.

In the second court decision, *ATMI v. Donovan,* 49 U.S.L.W. 4720 (June 17, 1981), the Supreme Court rejected the contention that the Occupational Safety and Health Administration was required to make cost-benefit analyses in adopting certain cotton dust standards. The Court's decision was based upon its interpretation of the agency's enabling act—in that case, the Occupational Safety and Health Act of 1970. The *ATMI* decision thus raises potentially important questions regarding how far the Administration can go in its effort to impose a general cost-benefit analysis requirement on Executive Branch agencies. Executive Order 12291 seems to anticipate that in some cases cost-benefit analyses might not be appropriate, by requiring such analyses only "to the extent permitted by law." It remains for future cases to determine whether particular agency decisions will be deemed unlawful because of their reliance upon a cost-benefit analysis.

B. Presidential Task Force on Regulatory Relief

Chaired by the Vice President, this Executive Department Task Force has continuing responsibility to assess existing regulations and to review major regulatory proposals.

On March 25, 1981, the Vice President announced the postponement of regulations which were introduced during the last days of the prior Administration. He also presented an initial list of 63 major regulations for review. On December 30, 1981, the Vice President announced that 91 existing regulations and 9 existing paperwork requirements have been designated for review. Thirty of the regulations relate to environmental matters, twenty-four to health and safety, eight to equal opportunity, five to energy, thirteen to economic matters affecting prices or output in specific industries, and eleven relate to a variety of other subjects.

On December 30, 1981, the White House reported that regulatory relief actions taken between January 20 and the end of 1981 have resulted in savings between $2.8 and $4.8 billion in capital investment costs and an additional annual savings of $1.8 to $2 billion in recurring costs. Expected savings from reviews currently underway are estimated by the White House at approximately $12.6 billion in capital investment costs and $7 billion in annually recurring costs. According to the Vice President, the Administration has accomplished ten percent of what it believes should be done relative to

regulatory review task. The Vice President stated that the failure to achieve changes in the Clean Air Act is a concern to the Administration, since that Act, according to the Vice President, authorizes many rules targeted for change.

C. Integration of Regulatory Relief and Paperwork Reduction

The Office of Management and Budget is empowered under the Paperwork Reduction Act of 1980 to reduce by October 1, 1982, the paperwork burden of all the independent regulatory agencies by 15%. The Administration's program to implement the 1980 act has been integrated with its general program to reduce regulatory burdens. As discussed above, all new federal rules—both proposed and final—must be submitted to the OMB for review for cost-effectiveness and necessity.

D. EPA Modifications

One of the agencies to feel a significant impact from the regulatory review process is the Environmental Protection Agency. On March 7, it was announced that the EPA would propose modifications in the manner in which it defines new sources of air pollution in areas which do not meet federal air quality standards. Under the proposal, the EPA would view an entire plant—rather than each facility within a plant—as a "source," thereby permitting plant owners to increase pollution from one part of a plant so long as they correspondingly decrease pollution from another part of the plant. Since pollution from the plant as a whole would not have increased, there would be no modification under the Clean Air Act and formal preconstruction review by the EPA thus would not be required.

On March 25, the EPA announced the removal of procedural restrictions from its "bubble" policy (which treats various stacks of a factory as one emission point under a large dome or bubble) and approved the first state rule—a New Jersey rule—reflecting that approach. *See* 46 F.R. 20551. Under the bubble approach, plant managers may in effect propose their own emission standards, tightening them where it is least costly to do so and relaxing them where pollution control costs are high.

E. Regulatory Relief Activities at the Agencies

On February 17, 1981, the Secretary of Energy announced that national energy efficiency standards for household appliances would not be issued until a thorough review was completed. He also withdrew proposed standby energy conservation measures involving such matters as a compressed work week and vehicle use stickers. Finally, he withdrew several interim measures, such as odd-even day motor fuel purchases and mandatory temperture restrictions. On the same day, the Director of OMB revoked the Department of Energy's clearance under the Federal Reports Act to collect industrial energy consumption data.

Altogether, 181 regulatory relief actions have been announced by thirteen federal regulatory agencies. The Administration estimated these relief actions will result in a $15 to $19 billion savings initially and a $6 billion annual savings in the future.

F. Regulatory Reform Bills

Two major regulatory reform bills are currently pending in Congress — S. 1080, introduced by Senator Laxalt, and H.R. 746, introduced by Representative Danielson. Both bills would mandate many of the reforms established in Executive Order 12291, making a number of amendments to the Administrtive Procedure Act. In brief, the bills would require each federal agency to conduct a regulatory (cost-benefit) analysis prior to issuing a "major rule," defined generally as a rule with an economic impact of $100,000,000 or more. The bills would also provide for presidential (or OMB) oversight of the rulemaking process. These provisions thus focus upon two of the three areas referred to above in connection with *Sierra Club*. The bills do not address the problem of conduit contacts.

S. 1080 was jointly referred to the Senate Judiciary Committee and the Senate Governmental Affairs Committee, and each Committee has issued its report. There are approximately eight substantive amendments awaiting the bill on the Floor, including amendments relating to legislative veto and the Bumpers amendment (providing that a reviewing court shall not accord any presumption for or against the lawfulness of agency actions). Published materials indicate some senatorial concerns that the bill's proposed amendments to Section 553 of the Administrative Procedure Act are more substantive than procedural and will infringe on the jurisdiction of several other Senate committees. The Governmental Affairs version of S. 1080 more closely resembles H. R. 746, which accords greater separation between the Administration and the independent agencies. At this stage, the extent of Floor amendments is impossible to predict.

The House Judiciary Committee has completed its work on H. R. 746. The House bill differs from S. 1080 in that the former contains a modified Bumpers amendment and provision of a two House veto of major rules with presidential approval.

Much of the fervor for regulatory reform has recently cooled, especially in the House. The Administration has indicated that the President will veto any regulatory reform bill containing provisions for legislative veto.

On January 29, 1982, the Court of Appeals for the District of Columbia Circuit held unconstitutional the one-house veto. The Court's 104 page landmark decision in *Consumer Energy Council of America, et al. v. FERC, et al.*

(D.C. Cir. No. 80-2184, Judges Bazelon, Wilkey and Edwards) concludes as follows (p. 103):

> We are aware that our decision today may have far-reaching effects on the operation of the National Government. Yet this cannot deter us from finding the one-house veto unconstitutional. Congressional amici would have us, under the principles of flexibility and practicality in constitutional adjudication, approve an institutional structure whereby the administrative "experts" made policy and the people's representatives (without the President) are reduced to exercising a negative. This contravenes the constitutional procedures for making law. The genius of our Constitution, its adaptability to changes in the nature of American society, depends ultimately on the steadfastness with which its basic principles and requirements are observed. Otherwise its critical protections against governmental tyranny would quickly become meaningless, as the Government in power could shape it to suit whatever purposes seem sound at the present. The Article I restrictions on the exercise of the legislative power, as well as the principle of separation of powers, are fundamental to the constitutional scheme, and because section 202(c) [Natural Gas Policy Act of 1978] attempts to evade them it cannot stand.

In sum, the course of regulatory reform bills in the Second Session of the 97th Congress is open to speculation.

II. ENERGY, FUEL AND CONSERVATION

To date, much of the activity in the areas of energy, fuel, and conservation reflects the apparent national mood for less governmental intervention in private matters and acceptance of the Administraion's philosophy of government as a supplement to private industry.

A. The Department of Energy

The Administration has proposed to dismantle the Department of Energy, transferring some functions and personnel to other agencies and eliminating some functions and personnel. One-quarter of DOE employees would be transferred to the Interior Department, which would become responsible for such matters as the Strategic Petroleum Reserve (SPR) and the government's hydroelectric dams. The Department of Commerce would oversee nuclear weapons production, energy research and development, and policy-making concerning the SPR. The proposed dismantling requires congressional approval.

The Strategic Petroleum Reserve is currently funded off-budget at $3.9 billion, which reflects a 300,000 barrel per day fill rate. Two bills, S. 707 and S. 998, are concerned with financing this item.

B. Emergency Preparedness

The Emergency Petroleum Allocation Act of 1973 expired September 30, 1981. The Administration has stated its preference to rely on the free market and full oil sharing with the International Energy Agency in an emergency.

As originally proposed, S. 1503 would simply have provided the President with standby energy emergency authority. As passed by the Senate — after committee markup — the bill allows oil to be allocated on the basis of the

priorities contained in the EPAA, permits price controls, and provides with certain exceptions for federal preemption of conflicting state and local price and allocation programs. The House version of a replacement to the 1973 Act is H.R. 4700, which the House passed on December 14th. Thereafter, the House finally passed S. 1503 in lieu of H.R. 4700. The bill is now in conference committee.

The so-called Bradley bill, S. 1354, would have permitted free market pricing of crude oil but would have required the President to prepare a standby plan to redistribute windfall profits tax revenues. This substitute bill was defeated in committee, but the issues it raised will likely be debated in the Senate.

C. Energy Acquisition Mortorium

In its year-end rush on the last day of the session, the House of Representatives passed H.R. 5274, which permits congressional evaluation of energy policy by imposing a moratorium on some acquisitions involving major energy concerns and domestic petroleum companies. The moratorium would expire on June 30, 1982. Other legislative proposals are anticipated following the recent controversy over the acquisition of Marathon Oil Company by U.S. Steel.

D. Natural Gas

1. NGPA Proposals

Several amendments have been proposed to the Natural Gas Policy Act. Two bills introduced in the House — H.R. 4390 introduced by Congressman Gramm and H.R. 4885 by Congressman Collins — would repeal federal price controls, as well as the NGPA's incremental pricing provisions, cover well deregulation, FUA repeal, and equal access to the Outer Continental Shelf by intrastate markets. Conversely, H. Con. Res. 77 would express the sense of the Congress that the schedule for domestic natural gas price deregulation should not be accelerated. In the Senate, S. 29 would repeal the federal requirement of incremental pricing under the NGPA.

The Administration has stated that it favors accelerated decontrol of natural gas pricing. The President's Cabinet Council on Natural Resources reportedly has pressed for a more active stance on the matter but the Administration's current concerns with budgetary matters and DOE dismantling seem to have precluded that for the time being. The matter is complex and awaits presidential and congressional action.

2. Fuel Use Act Amendments

In Congress, FUA reform centered on repeal of Section 301, particularly the "off-gas" provision in Section 301(a), which required powerplants to cease using gas entirely for energy production by 1990.

As noted above, the Omnibus Budget Reconciliation Act repealed

Section 301(a), adding in its place a new Section 301(a), which requires utilities using natural gas to submit to the DOE and to implement a conservation plan that will reduce by ten per cent the utility's use of natural gas. Utilities experiencing growth need only plan a reduction in the growth of their natural gas usage. Plants which have not used gas in the year prior to adoption of the Act need not submit a conservation plan for the future use of gas. All plans are subject to a good faith test but are not subject to revocation if their goals are not met. Certifying systems subject to DOE prohibition orders can garner benefits for other environmental operating concerns. Conversions under DOE prohibition orders are not new sources for purposes of the Clean Air Act.

3. Alaska Natural Gas Pipeline Waivers

Both the House and Senate have passed S.J. Res. 115, which is designed to aid construction of the multi-billion dollar Alaska natural gas pipeline. The President has signed the bill into law. The legislation reflects the recognition by Congress that in order to attract the massive amount of capital needed to build the pipeline, legislation was needed relative to existing antitrust and economic regulatory pricing laws, thereby permitting gas consumers to be billed before completion of the pipeline. Judicial challenges are anticipated.

E. Coal

The Administration's policies regarding coal track policies in other energy areas — absent obvious difficulties, the role of government should be in supplementation, not hinderance, of the operation of the private sector. There have been several legislative developments in the area.

1. Environmental Concerns

In order to improve the economies of coal mining and marketing, the Administration has sought review of the Ambient Air Quality Standards. Developments with respect to the Clean Air Act will be discussed more fully below.

The Administration is promoting the concept of multiple use of federal lands, with a high priority given to energy development. Developments in the area of leasing will be discussed more fully below.

2. Coal Gasification

As part of the dismantling of DOE mentioned above, the Administration has indicated that coal gasification programs should be under the aegis of the U.S. Synthetic Fuels Corporation.

The Administration had asked for less funding for coal liquification, but Congress, in the Omnibus Reconciliatioin Bill, increased funding for the coal synfuels programs. The funded amount is slightly above the amount requested

by the Administration but well below the amount previously requested by the prior Administration.

3. Tax on Coal for Black Lung Benefits

Both the Senate and the House passed a bill in December which doubles the coal excise tax from fifty cents to one dollar per ton on underground coal and from twenty-five to fifty cents on surface-mined coal. The measure also doubles the alternative tax on the sale price of coal from two percent to four percent. The bill, H.R. 5919, passed under a suspension of the rules, has the support of the Administration.

4. Coal Pipeline Act of 1981

The House Interior and Insular Affairs Committee passed H.R. 4200, the Coal Pipeline Act of 1981, which would allow coal slurry operators to obtain rights-of-way across private lands through use of federal eminent domain powers. The bill also provides for antitrust review by the Attorney General to determine, prior to ICC certification, the effect proposed pipelines will have on competition.

Proponents of the bill contend that greater use of pipelines would lower coal costs and increase coal production. The ICC, which under the bill would have the authority to grant certificates of public convenience and necessity, supports the bill. The Administration, however, is opposed to the bill on the ground that the use of eminent domain should be left to the states.

5. Staggers Rail Act Changes

Hearings were held by the Senate Subcommittee on Surface Transportation on the effects of the Staggers Rail Act. Representatives of electric utilities, the coal industry, and other "captive shippers" expressed displeasure both with the ICC's new method for determining revenue adequacy for railroads and with its method for determining whether a railroad possesses market dominance in the transportation of a specific commodity. Officials from the Federal Railroad Administration and the ICC praised the act for promoting competition and increasing rail revenues.

6. Coal Severance Tax

Placing a federally-mandated cap on state severance taxes on coal was an active issue in this session of Congress, after several states began to impose their taxes. H.R. 1313 would limit state severance taxes to 12.5%, which is well below Montana's 30% rate and Wyoming's 17% rate. Proponents of the measure argued that a national policy was necessary to prevent disruptive inter-regional rivalries and to ensure fairness.

F. Oil Pipeline Deregulation

Companion bills S. 1626 and H.R. 4488 — concerning oil pipeline deregulation — have been introduced and referred to committee, but hearings have not yet been held. The bills would apply regulatory reform to all oil pipelines except the Trans-Alaska pipeline. (Amendments have been subsequently introduced to include the Trans-Alaska pipeline.) In addition to treating all pipelines on an equal basis, the bills would remove FERC's authority to set rates in the industry. The bills do, however, reaffirm FERC's authority to regulate any unjust discriminatory practices.

G. Renewable Energy Resources (Solar, Geothermal and Alcohol Fuels) and Conservation

The Administration has expressed its desire to reverse the eight-year trend of growth in the funding of alternative energy programs and sharply to curtail federal renewable energy commercialization programs. The prior Administration's goal to have 20% of U.S. energy usage provided through renewable resources by the year 2000 has been reduced to 10%.

The Administration's budgetary proposal is to reduce solar energy spending by $382 million, leaving only funding for long-range R&D projects. The proposal would eliminate the Solar Energy Conservation Bank and the Ocean Thermal Energy Conversion (OTEC) program. Congress met the President midway and restored about $110 million of the proposed cuts. Both the Energy Conservation Bank and the OTEC were preserved in the congressional budget, but at lower funding levels. See P.L. 97-35, Omnibus Budget Reconciliation Act.

The Economic Recovery Tax Act, P.L. 97-34, exempts renewable energy resource applications from some of its restrictive provisions, including its "at risk" provision, aimed at limiting abusive tax shelters. There are also favorable cost recovery and investment tax credit provisions for investments in energy resources.

In the area of alcohol fuels, the Administration sought to eliminate most of the funding for feasibility studies, loan guarantees, and so forth. Congress agreed to cut $724 million, but retained $520 million, divided evenly between DOE and the USDA, with most of the funds to be used for project financing.

Attention in geothermal energy development was centered on leasing reform legislation and budget reductions. Bills H.R. 4067 and S. 1516 would increase the acrage limitation for leases in each state, limit the designation of Geothermal Resource Areas and thereby limit the requirement for competitive bidding, establish expedited leasing procedures, and protect "nationally significant" thermal features of National Parks. The Administration withdrew its support of these bills after OMB objected to the possible loss of revenues from noncompetitive leasing.

The Omnibus Budget Reconciliation Act, P.L. 97-35, cuts the geothermal budget from $199 million in fiscal year 1981 to a little over $55 million in 1982. Cuts are to be made in hydrothermal industrialization areas,

primarily in reservoir definition, loan and loan guarantee programs, and near-term R&D.

There were also deep budgetary cuts in energy conservation programs this year. P.L. 97-35 cut $108 million from a $290 million R&D budget. The Administration asked that regulatory programs for energy performance standards be terminated, but Congress retained $40 million for this item. Congress also retained grant programs for this year, with a $336 million ceiling. The Administration wanted to terminate these programs, but is now seeking passage of S. 1544, which would replace the grant programs with block grants to the states.

H. Nuclear Energy

Congressional activity concerning nuclear energy centered around budget increases, licensing reform, and waste disposal. The Administration's nuclear budget request for FY 82 is $1,054 million, compared to the $813 million from the prior Administration. The Clinch River Breeder Reactor Project has been revived; the Administration believes it is "outside the range of normal industry risk taking," and hence in need of government support. The Administration also seeks to support the existing commercial nuclear industry. The DOE secretary has been instructed to give immediate priority to improving the nuclear regulatory and licensing processes.

Licensing reform amendments to permit low-power operation of nuclear facilities under specific conditions were contained in S. 1207 and H.R. 2330, the NRC authorization bills. In November, the House passed a compromise NRC bill with provisions permitting low-power testing. The Senate bill is still held up by an amendment proposed by Senator Domenici which would delay implementation of uranium mill tailing regulations.

Nuclear waste disposal legislation has strong support in both the House and Senate. Representative Udall introduced H.R. 3809, the "Atomic Energy Act Amendments of 1981," and ushered it through his subcommittee on Energy and the Environment. H.R. 5016, the "High-Level Radioactive Waste Management and Policy Act," was reported out of the House Science and Technology Committee and is expected to be marked up early in 1982. S. 1662, the "National Nuclear Waste Policy Act of 1981," has been reported out of committee, and Senate action is expected shortly after the Congress reconvenes.

III. PUBLIC UTILITIES

Efforts are under way in the 97th Congress to amend the Public Utility Holding Company Act. Believing that many features of the 1935 Act are unnecessarily restrictive of business activity and duplicative of a number of other state and federal mandates, Senators Johnston and D'Amato and Representative Corcoran have introduced bills to amend the act (S. 1869, S. 1870, S. 1871, H.R. 4841, and H.R. 5220). The amendments are aimed at various aspects of the 1935 legislation. In the aggregate, they would, among other things, exempt from the Act any holding company with only one public utility

subsidiary, eliminate a provision in Section 3 of the 1935 act which permits the SEC to preclude diversification, restrict the definition of a gas utility company, and make it easier for utilities to become involved in areas such as natural resource exploration and production, computer services, real estate, and other ventures.

The Securities and Exchange Commission voted unanimously to recommend that Congress repeal the Public Utility Holding Company Act in its entirety. Senator Johnston has introduced a bill to repeal the act (S. 1977).

IV. ENVIRONMENTAL MATTERS

The environmental protection activities of this session include congressional consideration of legislation proposed to fill gaps in existing laws (*e.g.*, oil spill liability and cleanup), oversight revision (*e.g.*, the Clean Air Act), and reauthorization of expiring provisions (*e.g.*, sewage treatment grants).

A. Air Quality

P.L. 97-23 amends the Clean Air Act for the iron- and steel-producing industry. Certain interim pollution requirements must be met, such as maintenance of existing air quality and use of capital earmarked for pollution control to increase productivity.

The Clean Air Act ("CAA") has dominated congressional environmental concerns, with numerous hearings having been held. Major categories of bills under consideration include:

1) auto industry assistance (H.R. 2258, H.R. 1518, H.R. 1035);
2) coal production increases (S. 540, S. 541, S. 542);
3) acid rain problems (S. 723, H.R. 946); and
4) delaying halocarbon production regulations (S. 517, H.R. 1853).

H.R. 3471 is a comprehensive set of amendments which would reduce the stringency of ambient air quality standards, nullify several technological standards, eliminate transportation controls, give more authority to the states, and extend the deadlines for meeting the ambient air quality standards.

The Administration has submitted no proposed legislation concerning the CAA and has backed away from the notion of using cost-benefit analysis as a statutory criterion. Other than calling for more state participation and the setting of standards on an area-by-area basis, the Administration's statements have been broad, unspecific, and seem to retain the federal commitment to clean air.

In September, however, the EPA submitted draft revisions to the Senate Environment and Public Works Committee which would eliminate provisions of the Act dealing with the non-attainment of health standards, would eliminate the "significant deterioration" standards except in National Parks, and would give EPA discretion in penalty situations involving violations. As stated, the EPA draft was not intended as a legislative proposal of the President.

In the first of eight markup sessions, the Senate Environment and Public

Works Committee voted, in November, to retain the existing provisions for setting national primary ambient air quality standards.

While the legislative process continued beyond the September 30th budgetary deadline, EPA continued to carry out the CAA programs under a continuing budget resolution. Staff members of the Senate Environment and Public Works Committee do not believe final votes on pending bills will be taken before March, 1982.

On December 21, in an effort to expedite matters, Representative Lukens, Dingell, Broyhill, *et al.*, introduced a bipartisan bill, H.R. 5252, which would, among other things, base prevention-of-deterioration rules for new sources on "best available control technology" rather than on the "lowest achievable emission rate" as under the current act. The bill would also prevent the application of new source performance standards to industrial coal-fired boilers and would permit the EPA to delegate to the states the power to implement State Implementation Plan (SIP) revisions. As reported, House Health and Environment Subcommittee Chairman Waxman does not support the bill, although Congressman Dingell, the Chairman of the full committee, is a sponsor.

One change has occurred this past year with respect to State Implementation Plans. On September 4, the EPA announced a "parallel processing" system whereby the state and the EPA will propose regulations simultaneously, will announce concurrent comment periods, and will jointly review comments. Under the old system, a SIP revision had first to be adopted by a state and then be sent to the EPA for approval.

B. Water Quality

A pressing congressional concern this past year has been reauthorization of the Clean Water Act grants program for helping municipalities construct wastewater treatment plants. While the President had asked for elimination of funding for FY 82, Congress passed and the President signed H.R. 4503, which continues the Act's current grant allotment formula, restricts project eligibility (but gives Governors discretion to fund other project categories), and modifies but does not eliminate federal funding of reserve capacity construction. The bill saves $2.4 billion for the grants program.

The Industrial Cost Exclusion (ICE), created by the so-called Stafford amendment enacted as part of P.L. 96-483, has also been repealed. The ICE provision would have terminated federal grant assistance after November 15, 1981, for that portion of a municipal sewage treatment plant which would treat industrial discharges of more than 50,000 gallons per day.

C. Oil Pollution Liability and Compensation

For years, Congress has been seeking to enact legislation dealing comprehensively with liability for oil pollution damages and providing for an industry compensation fund. H.R. 85 and S. 681 were similar to bills the 96th Congress had passed. Hope for enactment faded when the Administration announced

its belief that existing mechanisms and common law provide adequate solutions to the problem.

D. Hazardous and Nonhazardous Wastes

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (the Superfund law), P.L. 96-510, provides for the cleanup of spills and leakage of toxic materials but does not aid the victims of a spill. Senator Mitchell's bill, S. 1486, provides victim relief from the Superfund as well as giving victims a cause of action against a responsible party. No Senate action has been taken on this bill.

In the nonhazardous solid waste area, the Administration's FY 82 budget would eliminate loan guarantees for municipal waste-to-energy projects, assistance to State solid waste programs, assistance to communities for developing resource recovery facilities, and solid waste technical assistance to municipalities.

Senator Hatfield has introduced S. 709, the so-called "bottle bill," which would require beverage containers to bear a five cent deposit and would prohibit detachable "pop-top" openers on metal cans. The bill was introduced in the House as H.R. 2498. Hearings have been held but no other action has been taken.

E. Council on Environmental Quality

Since 1978, the Council on Environmental Quality (CEQ) has continually attempted to streamline the preparation of environmental impact statements. It is possible that the Congress of the Administration will propose amendments to the National Environmental Policy Act which could mandate further streamlining or provide for congressional oversight. In addition, H.R. 2114 and S. 1080 would change the scope of judicial review and venue standards.

The CEQ has not escaped the budget-cutting process. The President has proposed a 72% reduction in its budget and its staff. Plans are to have other agencies absorb part of the Council's workload; part may be undertaken by the new Cabinet Council headed by the Secretary of the Interior.

F. EPA

While the EPA's grant program for sewage treatment facility construction faces FY 82 budget cuts of up to $4 billion, most other EPA programs will suffer only minor reductions. A part of the reason for this is that over the past three years there has been no appreciable growth in EPA funding. EPA's operating programs will continue to emphasize health-related problems associated with toxic and hazardous substances. There will be reductions in the air, water quality, radiation, and noise programs.

V. NATURAL RESOURCES

The Administration has pursued changes in the use of the nation's lands and natural resources, with three major goals:

1) acceleration of federal energy leasing, both on land and on the continental shelf;
2) reduction in funding for environmental impact studies, grants for land acquisition, recreation and historic preservation, and some water development projects; and
3) coordination of natural resources management under the Interior Secretary.

A Cabinet Council on Natural Resources and the Environment has been created, with the Interior Secretary as its chairman *pro tem*. The Council is to coordinate among executive departments when major policies are at issue. The Secretary will also supervise the abolition of the Water Resources Council (an interagency coordinating council dealing with water resources) and its replacement by a proposed Office of Water Policy in the Interior Department. In addition, proposals for the dissolution of the Department of Energy would return leasing functions to Interior, where they had been prior to the Department of Energy Organization Act of 1977 (P.L. 95-91).

A. Public Lands

On July 21, 1981, a reorganization of the Bureau of Land Management (BLM), the primary department responsible for federal land use, was announced. The purpose of the reorganization is to increase the availability of federal lands and resources for energy and mineral development. The largest of BLM's appropriations is in the Management of Lands and Resources (MLR) appropriations category. Its budget has been altered and reduced, reflecting the policy to accelerate energy leasing activities, both on and offshore, offset by a reduction in environmental hazard appraisal studies. Other areas of budget reduction are wilderness management, grazing management, soil, water, and air management, and wildlife management.

Five areas of congressional interest and activity in public lands are public lands access, a four-year authorization for the Bureau of Land Management, a payment in lieu of taxes program, public lands title transfer, and improvement in federal royalties collection.

1. Public Lands Access

In April, Representative Santini introduced H.R. 3364, which would establish a national minerals policy. The bill would open up some public lands to mining through a nomination process, subject to Interior Department review. The bill does not apply to parks, which are currently statutorily closed to mining, but it does apply to wilderness areas, which are currently open to certain types of mining under the Wilderness Act of 1964. Hearings were held

in October, but it is not likely that the bill will reach the full House soon. The Interior Committee's Subcommittee on Mines and Mining is awaiting an Administration report which may or may not support the bill. The Administration has expressed interest in accelerating domestic mineral production, but it has expressed no interest in the Santini proposal, since it does not correspond with the Administration's draft policy on mineral development.

On November 20, the House Interior and Insular Affairs Committee approved a resolution asking the Administration to stop issuing mineral leases in wilderness areas until June 1, 1982. The resolution is the result of a controversy that arose when the BLM granted three leases in the 40,000 acre El Capitan Mountain Wilderness Area in New Mexico. The Interior Secretary agreed that "no leases will be issued in wilderness areas unless there is an overwhelming need."

2. Four-Year Authorization for BLM

The Federal Land Policy and Management Act of 1976 eliminated permanent authorizations for the Bureau of Land Management, requiring an authorization bill every four years. Most BLM four-year program authorizations come due this year. The Administration's budget proposes $1.75 billion, a slight increase over the previous budget.

3. Payment in Lieu of Taxes

The Payment in Lieu of Taxes program (PILT) provides for payments to states and municipalities in recognition of the fact that the United States Government does not pay taxes on federally-owned properties in the various states. The Administration's budget proposes a reduction from $103 million in FY 81 to $95.5 million in FY 82 for the program and has proposed a bill, introduced by Senator McClure by request (H.R. 1282), which would change the formula by which PILT payments are calculated, eliminating so-called "double-dipping" by states already receiving large payments from their share of revenues from federal leases, thereby reducing the annual PILT authorization to $45 million. The bill has been referred to the Committee on Energy and Natural Resources.

4. Public Lands Title Transfer

Senator Hatch and Representative Santini have introduced bills (S. 1245 and H.R. 3655) which would require the transfer of some federally-owned lands west of the 100th meridian to the states. Similar bills had been introduced in the 96th Congress, but no action was taken. While both the President and the Interior Secretary have supported this so-called "sagebrush rebellion," the Administration takes the view that appropriate land use should result through management changes rather than through massive land transfers. The bills have been referred simultaneously to the Senate Energy and Natural Resources Committee and the House Committee on Interior and Insular Affairs.

5. Improvement of Federal Royalties Collection

Both the Administration and Congress have been deeply concerned with the inadequacies of the current U.S. Geological Survey's system for collecting royalties from oil and gas leases on federal lands. Representatives Markey and Santini have introduced H.R. 5121, a bill they hope will halt losses to the Treasury Department by more than $1 million a day.

The legislation would allow some states to collect the royalties themselves, keep half and turn the rest over to the federal government, impose more rigorous standards on USGS accountants and inspectors monitoring royalty collection as well as provide USGS with more authority to penalize fraud and theft and to monitor refineries.

In January 1982, the Commission on Fiscal Accountability of the Nation's Energy Resources, chaired by David Linowes, issued its report that included sixty recommenations for creating an effective federal royalty management system. The Commission also found that the U.S. Treasury, the States, and Indian tribes are losing hundreds of millions of dollars each year in uncollected oil and gas royalties.

Staffers on the House Mines and Mining Subcommittee are convinced that some legislative proposal, either H.R. 5121 or something similar, will be acted upon within the next few months. The Administration's proposals are expected at the end of February.

B. Coastal Zones and the Outer Continental Shelf

Currently, leasing of Outer Continental Shelf (OCS) land for oil and natural gas development is governed by the OCS Lands Act of 1953 (P.L. 83-212) and the OCS Lands Act Amendments of 1978. Under the amendments, a five-year leasing program, expiring in May 1985, called for approximately 36 lease sales over the period. On April 16, 1981, the Interior Secretary proposed a revision of the five-year program which would increase average lease sales from 7.2 to over 8 per year. After congressional and other expressed concerns were raised over the environmental impact of this proposal, tracts in the areas of Point Arena, Bodega, Santa Cruz, and the El River basin were excluded from the proposal.

Oil and gas leasing in the OCS was also a priority item in the Administration's budget, which provided for additional leasing funds. Efforts are being made to shorten the sale preparation process and the time between leasing and exploratory drilling.

The Administration is continuing its attempt to extricate entirely the federal government from coastal zone management, which was originally intended to help states accommodate OCS activities. A separate account of $35 million has been established to aid in this process, and appropriations for the Coastal Zone Management Program are $7.4 million, well below the prior Administration budget.

C. Water Resources

In the last five years, Congress has not passed any new construction authorization acts for water resources development. The current Congress is therefore under some pressure to do so. In 1981, the Senate passed S. 306 authorizing 12 new hydroelectric power plants in the west, at a cost of $309 million.

The Administration has proposed to cut by 11% the budgets of the three principal water project construction agencies (the Army Corps of Engineers, Interior's Bureau of Reclamation, and Agriculture's Soil Conservation Service). "Critical" features of their projects—such as the development of hydroelectric, municipal water supply, navigation, and urban water control—would not be affected. The Administration also wants to increase user fees in the inland waterways and to terminate the Water Resources Council, an interagency planning and coordinating council whose funding has already been drastically cut. All water resources coordination would be handled by Interior under the proposal. The Omnibus Budget Reconciliation Act of 1981 provided three years of funding for the National Board on Water Resources Policy, which has not yet been authorized. S. 1095 and H.R. 3432 would authorize the National Board, at which time the Council would be required to transfer all unobligated funds to it.

VI. CONCLUSION

The legislative and regulatory reform actions taken by the Executive Branch and the Congress will produce significant changes in areas of concern to this Association. Additional initiatives are to be anticipated.