The original documents are located in Box 16, folder "Federal Energy Administration - Wallace and Wallace Entitlements Request" of the Philip Buchen Files at the Gerald R. Ford Presidential Library.

File

THE WHITE HOUSE

WASHINGTON

May 27, 1976

MEMORANDUM FOR: PHIL BUCHEN

FROM: KEN LAZARUS

SUBJECT: FEA Matter/ Wallace & Wallace Entitlements Request

Attached are copies of the following:

Tab A -- A memorandum dated May 14 from the General Counsel at FEA to Frank Zarb on the "Legality of Utilizing the Entitlements Program to Provide Financial Assistance to 'Refinery-Constructors'".

Tab B -- A letter dated May 10 from John Hill to Chairman Ribicoff of the Senate Government Operations Committee.

Tab C -- A letter to Mr. Charles Wallace from Frank Zarb dated May 21.

Upon review of these materials, I reached the following conclusions: (1) There is no sound legal footing under current law to allow compliance with the request of Mr. Wallace. (2) Although FEA has not formally opposed legislation introduced by Senator Allen to satisfy the request of Mr. Wallace, John Hill's letter makes clear that the proposal has substantial shortcomings. (3) The possibility of a loan guarantee, also mentioned in Hill's letter, likewise presents substantial problems. (4) It would appear that there is nothing further which can be done at this time by our office on Mr. Wallace's request.

TAB
A

FEDERAL ENERGY ADMINISTRATION
WASHINGTON, D.C. 20461

MAY 14 1976

OFFICE OF THE GENERAL COUNSEL

MEMORANDUM FOR: FRANK G. ZARB
Administrator

FROM: Michael F. Butler - mfB
General Counsel

SUBJECT: Legality of Utilizing the Entitlements Program to Provide Financial Assistance to "Refinery-Constructors"

I. Issue Presented

The issue this memorandum addresses is whether the FEA has the authority, under existing legislation, to provide entitlements benefits beyond those provided by the current program to a limited category of persons ("refinery-constructors") who are in the business of marketing petroleum products and who have under construction new refinery capacity.

II. Statement of Facts

While the entitlements benefits considered herein would accrue to all persons within a prescribed refinery-constructor category, the chief proponent is and the most immediate beneficiary would be Wallace & Wallace Chemical & Oil Corporation ("Wallace & Wallace"), whose proposal involves creation of a refinery-constructor category of entitlements beneficiaries narrowly defined to include only firms like Wallace & Wallace that are importing crude oil for processing and have a refinery under construction. Therefore, a brief description of Wallace & Wallace's circumstances, as representative of the class in general, is appropriate.

Wallace & Wallace is presently a retailer of fuel oil that is attempting to construct a 150,000 barrel-per-day refinery in Alabama. Site preparation for the refinery has been under way since late 1973 and various other related commitments have been made, but no construction of the refinery structure has commenced because adequate financing for the project has not yet been obtained.

The firm has a long-term crude oil supply contract with Venezuela to lift at least 10,000 barrels per day and a processing agreement with Mobil Oil Corporation under which Mobil has agreed to refine the Venezuelan crude during the period in which the Wallace & Wallace refinery is under construction. Wallace & Wallace will retail the heating oil and other products, if any, that will be processed for it by Mobil. Wallace & Wallace has not yet lifted or had processed any Venezuelan crude oil, but it states that it is in a position to do so promptly if adequate additional entitlements relief is provided.

Pursuant to the current Entitlements Program regulations, Wallace & Wallace is able to receive the full benefit of entitlement sales for the Mobil-processed crude oil, since Mobil has agreed to reduce the processing fee by the amount of such benefits, which it is allowed to do under a provision of the entitlements regulations promulgated at the urging of Wallace & Wallace. See 10 C.F.R. §§ 211.67(l), 211.67(m)(1)(i)(A), and 211.67(m)(1)(ii)(A). Moreover, if the Entitlements Program is still in effect at the time the Wallace & Wallace refinery comes on stream, it will be a full participant in that program, on an equal footing with other refiners. It will also be allowed to participate fully in the crude oil buy/sell program to the extent it is able to demonstrate that adequate supplies of crude oil are not available from other sources. See 10 C.F.R. § 211.65(b).

Wallace & Wallace's retail operation currently purchases product from suppliers with whom it also competes, such as Amerada Hess. It is not clear whether having crude oil refined by Mobil pursuant to a processing agreement will reduce the current product costs of Wallace & Wallace's retail operation, but in any event the firm alleges that its per unit costs will still be too high to allow it to compete effectively against firms like Hess. Moreover, Wallace & Wallace alleges that lenders are unwilling to provide the capital necessary to finance construction of the refinery unless the firm achieves a significant increase in its current operating profits. The amount of additional financial assistance that Wallace & Wallace urges be provided to qualified refinery-constructors would be the difference between, on the one hand, such a firm's total costs plus an industry-wide average profit ($.84 per barrel currently) and, on the other hand, the firm's total yield without such additional entitlements relief. In Wallace & Wallace's case,

case, that difference would be approximately $.60 per barrel, or a total of $180,000, for the month of April 1976. Wallace & Wallace does not allege that its current retail operations are unprofitable, but only that they are not earning sufficient profits to enable it to obtain the financing to construct a refinery.

III. Conclusion

There is a substantial likelihood that, if challenged, an amendment to the Entitlements Program to provide additional entitlements benefits to refinery-constructors would be held by the courts to be in excess of the FEA's legislative authority.

IV. Discussion

The request that the FEA provide entitlements to a limited category of "refinery-constructors" in order to further the goal of increasing U.S. refining capacity and increasing competition in the refining industry must initially be considered within the statutory confines of the Emergency Petroleum Allocation Act of 1973, as amended ("EPAA"). Accordingly, the important threshold question to address is whether the EPAA provides the agency with authority to grant the relief sought.

In Section 4(a) of the EPAA, Congress has provided the FEA with authority to regulate the allocation and pricing of crude oil and refined petroleum products. In Section 4(b)(1), Congress has set forth a number of objectives which the FEA's Section 4(a) allocation and pricing regulations should achieve "to the maximum extent practicable." In upholding the Entitlements Program, the Temporary Emergency Court of Appeals ("TECA") has stated that FEA's Section 4(a) authority must be read together with the objectives of Section 4(b). See Cities Service Co. v. FEA, ___ F.2d ___ (T.E.C.A., December 31, 1975), rehearing denied, ___ F.2d ___ (January 28, 1976);*/ Pasco, Inc. v. FEA, 525 F.2d 1391 (T.E.C.A. 1975).

*/ On February 27, 1976, Cities Service Company filed a petition in the Supreme Court to seek review of the TECA decision upholding the Entitlements Program. It will probably be at least another month before the Supreme Court decides
[footnote continued on next page]

However, Section 4(b)(1) of the EPAA does not provide, and no court decision has ever held, that FEA has the authority to take any action it desires in order to achieve a Section 4(b)(1) objective. For example, FEA does not have the authority to take any action it chooses to "foster competition" in the petroleum industry, although that goal is mentioned in Section 4(b)(1)(D) of the EPAA. Rather, the agency is required, in carrying out the allocation and price control authority of Section 4(a), to do so in a manner that would, to the maximum extent practicable, achieve the various objectives stated in Section 4(b)(1).*/ In this respect, the TECA has stated that none of the EPAA's nine objectives should be elevated to the level of a mandatory requirement, and "the balancing of all objectives is required 'to effectuate maximum achievement of their competing interests.'" Pasco, Inc. v. FEA, supra, 525 F.2d at 1397, quoting from Air Transport Ass'n v. FEO, 520 F.2d 1339 (T.E.C.A. 1975). It is thus clear that FEA does not possess unbridled authority to subsidize, or to require other oil companies to subsidize, the construction of a refinery, even though the new refinery might foster competition in the industry and thereby help achieve a Section 4(b)(1) objective.

Against this background, any proposed amendment to the Entitlements Program must be considered in the context of the basis upon which the program has until now been upheld in the courts. The Entitlements Program has been challenged in the courts by the major oil companies as a "subsidy" program beyond the agency's price and allocation authority. As it is presently being administered, however, the Entitlements Program has a direct relationship to the allocation and pricing authority of Section 4(a) because it allocates old oil to reduce the crude cost and product price disparities

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[footnote continued from previous page]
whether it will review the TECA decision. If the Supreme Court decides to do so, it would be six more months before the Court could hear argument on the matter and another two to three months from then before a decision would be issued.

*/ This is clear from the introductory language of Section 4(b)(1) itself, which reads "[t]he regulation under subsection (a), to the maximum extent practicable, shall provide, for . . ." (emphasis added), and then lists the various objectives.

caused by the two-tier (now three-tier) pricing system for crude oil. In effect it spreads the advantage of having access to old oil -- an advantage entirely created by FEA when it imposed price controls on old oil -- to all refiners on a pro rata basis. Given these direct pricing and allocation functions, the Entitlements Program has withstood vigorous court challenges essentially because of the elimination of cost distortions that it achieves. In this connection, the TECA stated in Pasco, Inc. v. FEA:

> "The regulation, by granting entitlements to those refiners with old oil ratios below the national ratio due to their own high production of new, released and stripper well oil, merely provides for the continuation of the monetary incentive which was a fundamental part of the 'two-tier' pricing system. The correction of economic distortion and unfair competitive conditions occasioned by the 'two-tier' system was considered essential by Congress and the FEA. . . . This court finds ample support for the entitlements regulation as promulgated by the FEA and considering the urgent need for action, the implementing agency's program for achieving the varied objectives of the Allocation Act was certainly rational and neither arbitrary, capricious, nor beyond the authority of the agency." 525 F.2d at 1402 (emphasis added).

Accordingly, it is clear that the Entitlements Program's validity hinges on its crude oil "cost equalization"*/ function.

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*/ Although the term "cost equalization" is often used as a shorthand expression in connection with the Entitlements Program, it should be understood that the program does not purport to equalize any costs other than crude oil costs and that, even with respect to crude oil costs, it only eliminates cost disparities created by the two-tier pricing system. It is not designed to eliminate crude oil cost disparities based on quality differentials, vertical integration, transportation, a particular refiner's ability to negotiate a lower price, etc.

The Congress has also specifically recognized the Entitlements Program as a program to remove cost distortions. When the program was being developed in 1974, Congress, in extending the EPAA, observed that the EPAA "provides ample authority for the FEA to institute a system of price equalization to provide for all segments of the industry to benefit from lower-priced domestic oil." S. Rep. No. 93-1032, 93d Cong., 2d Sess. at 2 (August 9, 1974); H.R. Rep. No. 93-1443, 93d Cong., 2d Sess. at 3 (October 8, 1974). Further, during House and Senate oversight hearings on the EPAA in the spring of 1975, the FEA presented to Congress a detailed description of the rationale for the Entitlements Program. It stated in pertinent part:

> "The FEA adopted the final regulations for its old oil allocation program (the entitlements program) in November 1974. The program is designed to equalize substantially costs of crude oil for domestic refiners and to enable independent refiners and marketers who depend heavily upon high cost crude to remain competitive with those having lower crude costs. FEA's rationale underlying its adoption of the program was that some refiners -- including the major oil companies, as a class - enjoyed far greater access to price controlled old oil than certain other refiners -- including small and independent refiners, as a class."*/

Thus, while the basic Entitlements Program itself is clearly lawful, the careful wording of the above quotations indicates that the courts, the Congress and even the FEA itself in the past have concluded that the FEA does not possess unlimited legal authority to use the program in any manner it deems appropriate to achieve any single objective of Section 4(b)(1) of the EPAA. Rather, based on the FEA's rationale

*/ Testimony of Robert E. Montgomery, Jr. and Gorman C. Smith at hearings before the House Subcommittee on Energy and Power, Committee on Insular Affairs, S. Rep. No. 94-17, 94th Cong., 1st Sess. at 459 (March 12, 1975); testimony of Frank G. Zarb at hearings before the Senate Committee on Interior and Insular Affairs, S. Rep. No. 94-16, 94th Cong., 1st Sess. at 525 (May 19, 1975).

for the Entitlements Program, congressional recognition thereof and court decisions upholding the program's validity, it appears likely that the courts will require any modification of the Entitlements Program to be in furtherance of the program's underlying objective of removing cost distortions caused by two-tier pricing or otherwise to bear some direct relationship to the FEA's allocation and price control authority.

It would be difficult to justify the proposed assistance to refinery-constructors as removing the disparities of the two-tier price structure. Indeed, as noted above, for a refinery-constructor such as Wallace & Wallace that is having imported crude oil processed by another refiner pending completion of its refinery, such cost equalization is achieved under current regulations, which allow the firm to receive full entitlements benefits for such crude oil. The proposed amendment would provide additional financial relief that would allow a refinery-constructor to offset not only the high cost of its crude oil, but also to offset all other costs, including its so-called "non-product" costs, that prevent it from earning a net profit that is equal to the average in the industry. Subsidizing these latter costs goes beyond the stated goal of the Entitlements Program and the ground upon which it has been upheld in the courts. It also does not appear to have any significant relationship with any other aspect of FEA's price and allocation control authority under Section 4(a). The refinery-constructor amendment would in effect use the Entitlements Program as a subsidy to achieve a general Section 4(b)(1) objective, and would therefore appear to be an act of doubtful validity.

In support of a refinery-constructor amendment, Wallace & Wallace has raised a number of arguments. First, it has argued that the legislative history of the Emergency Petroleum Allocation Act of 1973, as amended, makes it clear that Congress established the construction of new refinery capacity as a priority national goal and that it intended for the President, in administering the mandatory allocation and price control program, to have extremely broad powers to assist new refiners. They point, for example, to the following language in the Conference Committee Report:

> "The conferees view the construction of new refineries, and the expansion of present

> refinery capacity, as critically important factors in maximizing the amount of petroleum products available to meet domestic demand." H.R. Rep. No. 93-628, 93d Cong., 1st Sess., at 30 (1973).

This clear expression of concern about the construction of new refinery capacity, it is argued, together with the stated objective in Section 4(b)(1)(D) of the Act concerning the priority needs to restore and foster competition in the refining sector of the industry, indicate authority on the part of the President to at least make the very limited extension of the Entitlements Program proposed here.

There is no doubt that it was the intention of Congress in enacting the EPAA that the FEA would use its best efforts within its legal authority to promote new refinery construction. But to state that this was the congressional intent only begs the question, which is, what authority did Congress give the FEA to carry out this intent. Exactly what that authority was is spelled out in the Conference Report immediately following the above quotation upon which Wallace & Wallace relies:

> "The conferees are concerned that refiners may be hesitant to make the substantial investments, and other commitments required for the construction of new refineries and the expansion of existing facilities unless they are assured of adequate supplies of crude oil for their facilities. <u>The provisions of Section 4(c)(4)(B), are intended to provide the President with a means of affording that assurance</u>." <u>Id</u>. (emphasis added).

Section 4(c)(4)(B) of the EPAA reads in pertinent part as follows:

> "The President may, by order, require such adjustments in the allocations of refined petroleum products and crude oil established under the regulation under subsection (a) as he determines may be reasonably necessary --
>
> * * *
>
> "(B) in the case of crude oil (i) to take into consideration market entry by independent

refiners and small refiners during or subsequent to calendar year 1972, or (ii) to take into consideration expansion or reduction of refining facilities of such refiners during or subsequent to calendar year 1972.

"Any adjustments made under this paragraph may be made only upon a finding that, to the maximum extent practicable, the objectives of subsection (b) of this section are attained."

In our judgment, this Section, together with the Conference Report language explaining it, make it clear that the President has authority with respect to new refineries coming on stream to change the existing allocation pattern so as to provide such refineries with adequate supplies. We believe this also encompasses authority to include a new refiner in the buy-sell and entitlements programs on an equal footing with other refiners. Such authority can and will be used when the Wallace & Wallace refinery comes on stream to assure that it has an adequate crude oil supply. There is no indication, however, that Section 4(c)(4)(B) expands the President's allocation and price control authority under Section 4(a) so as to provide new refiners with assurance of an industry-wide average profit, and particularly to do so by requiring other refiners to make up their operating deficits. If Congress had intended for the FEA to have authority to carry out the various Section 4(b)(1) objectives, such as fostering competition or aiding new refinery construction, by requiring the redistribution of profits in the industry -- which would have been regulatory authority broader than that contained in any regulatory program enacted by Congress to date -- it seems that it would have done so in language more precise than that contained in the EPAA.

Second, Wallace & Wallace has argued that a refinery-constructor amendment would not be significantly different in principle from product entitlements given to importers, from the exception relief given to NEPCO, and from the small refiner bias for refiner-sellers.

Product entitlements are distinguishable from the refinery-constructor amendment since they are clearly related to the problem of crude oil cost differentials created by the price control program. The FEA chose not to impose price controls on imported crude oil primarily because to do so would promptly dry up this essential source of supply. As noted above, however, this created a substantial competitive hardship on refiners that were dependent on foreign sources, which hardship was alleviated by the Entitlements Program. Precisely the same problem is created with respect to imported products, which are also deliberately free from price controls.*/ Importers of residual fuel oil and middle distillates, the two principal imported products, must compete with domestic refiners of those products, who of course have a substantial competitive advantage because of the Entitlements Program and their access to price-controlled domestic crude oil. Thus, product entitlements are as directly related to FEA's price control and allocation program as crude oil entitlements and can be justified on that basis.

The refinery-constructor amendment is also distinguishable from the NEPCO exception decision issued by the Office of Exceptions and Appeals, which allowed NEPCO as a product importer to participate in the Entitlements Program even though product entitlements were not generally made available at that time. The decision specifically found that NEPCO, an established and significant factor in the East Coast residual fuel market, was facing immediate financial hardship so severe that it would be unable to survive in the marketplace, and that this serious hardship was the result of cost disparities created by the fact that Amerada Hess, a Virgin Islands refiner, was receiving such considerable financial benefits under the Entitlements Program that it was able to sell residual fuel oil at prices well below those of NEPCO, its principal competitor. New England Petroleum Corp., 2 FEA ¶ 83,136 (May 2, 1975).

The NEPCO decision was an effort to achieve "cost equalization" through the exceptions process for a firm that was not at that time made a participant in the Entitlements Program directly. While NEPCO was at the time receiving an advantage over Hess of $1.00 because of the differential between crude oil and product import fees, the FEA found

*/ The decision not to impose price controls on the first sale of imported crude oil or products was made by the Agency. The FEA had legislative authority in Section 4(a) of the EPAA, however, to impose price controls on imports if it had chosen to do so.

nevertheless that the Entitlements Program gave Hess a net competitive advantage on its cost of crude oil of $1.40 per barrel even after NEPCO's advantage on import fees was taken into account. NEPCO was therefore allowed to participate in the Entitlements Program by this amount, but no more. It was not given benefits that would allow it to exceed the product cost differential between it and Hess caused by the Entitlements Program, let alone to achieve an industry average profit. Indeed, even with the entitlements benefits given to it by FEA, NEPCO has continued to incur substantial operating losses. It is our view, therefore, that the exception relief intermittently granted to NEPCO is directly related to input cost distortions created by FEA's price control program and is thus distinguishable from the refinery-constructor amendment.

Wallace & Wallace's third contention -- that the refinery-constructor amendment is similar in principle to the small refiner bias -- is more difficult to deal with. The small refiner bias provides, on a sliding-scale basis, proportionately greater entitlements benefits to smaller refiners than they would otherwise receive if their entitlement issuances were based solely on their crude oil run levels. The rationale for the bias was originally explained by the FEA as follows:

> "FEA believes that a bias is necessary to compensate relatively small refiners for higher operating costs, proportionately greater capital expenditure requirements, and the fact that such refiners must, in many cases, market their products at a lower price than the products of the major branded refiners. The bias is historically consistent with the treatment afforded by other government programs such as the Oil Import program, royalty oil sales by U.S. Geological Survey and the Small Business Administration program. It is also considered necessary to preserve the competitive viability of this class of refiners."

This bias is obviously distinguishable from the proposed refinery-constructor amendment on the ground that it is designed only to maintain the competitive viability of existing refiners and not to promote increased competition by new entrants. Moreover, the small refiner bias stops far short of guaranteeing that each small refiner earns the industry-wide net profit, as the refinery-constructor amendment would.

A final distinguishing factor is that the inefficiencies of small refineries are easier to determine for purposes of a rule applicable to an entire class. Such inefficiencies would not vary to as great a degree from firm to firm as would competitive disadvantages as between different refinery-constructors. However, it is in fact true that the small refiner bias and the proposed refinery-constructor amendment are similar in that both arguably can be viewed as use of the Entitlements Program to eliminate operating, or non-product, cost disparities among refiners, and certainly both go beyond the basic purpose of the program to eliminate cost disparities created artificially by the FEA's two-tier crude oil pricing system.

The small refiner bias has never been the specific subject of a court decision, even in the cases brought by the major refiners to challenge the program in general. In view of the small refiner bias' departure from the most significant underlying justification for the Entitlements Program, the Agency's firm rational basis for the rule (i.e., the historic preference under the Oil Import Program and the documented inefficiencies of smaller refineries) would be of utmost importance in any defense of the bias in court. Even these rationale, however, would not be available in the defense of a refinery-constructor amendment. Thus, the provisions for a small refiner bias cannot provide a basis for concluding that a refinery-constructor amendment would be within the Agency's legislative authority.

V. Conclusion

In conclusion, it is the legal opinion of this office that a refinery-constructor amendment as presently proposed runs a substantial risk of being declared unlawful if challenged in the courts. As you can see from the foregoing analysis, the issue would be one of first impression, and it is often difficult to predict the outcome of such cases, particularly when the construction of an Act as broad and general as the EPAA is involved. However, considering the significant departure the refinery-constructor amendment would make from the underlying basis of the Entitlements Program and the fact that the amendment standing alone can correctly be characterized as a scheme whereby the Government would be requiring established firms to underwrite the construction of new refineries by their competitors by guaranteeing such new entrants an average net profit, we believe on balance that such far-reaching authority cannot be inferred from the EPAA, which to be sure has broadly stated objectives to be kept in mind, but what basically contains only price control and allocation authority.

TAB
B

FEDERAL ENERGY ADMINISTRATION
WASHINGTON, D.C. 20461
MAY 10 1976

OFFICE OF THE ADMINISTRATOR

Honorable Abraham A. Ribicoff
Chairman, Committee on Government
Operations
United States Senate
Washington, D.C. 20515

Dear Mr. Chairman:

At the hearings of the Senate Government Operations Committee on April 28, 1976 on the FEA Act extension, Frank Zarb was asked a number of questions by Senator James B. Allen regarding the construction of a "grass roots" refinery in Tuskegee, Alabama by Wallace & Wallace Chemical & Oil Corporation and was asked to comment on a proposal by Senator Allen to amend the FEA Act to provide the FEA with authority to assist in the construction of such refineries. Mr. Zarb answered these requests in part and asked for the opportunity to submit additional comments for the record. This letter provides those additional comments.

Background

Before addressing Senator Allen's specific questions, you might find it useful if I provided some background on the entire Wallace & Wallace matter to put the answers to your questions in perspective.

Wallace & Wallace is currently a retail distributor of fuel oil in the New York City area. The firm, which is black-owned, was one of the first participants in the Small Business Administration's Section 8(a) program for minority enterprises and is therefore a priority supplier to a number of federal government installations in New York. In order to allow the firm to participate in the 8(a) program, FEA has from time-to-time given it the necessary exceptions from the mandatory petroleum allocation program.

Wallace & Wallace's plan is to construct a 150,000 barrel-per-day refinery near Tuskegee, Alabama that would allow it to refine the products it now sells at retail and to expand its marketing business. The firm has acquired and is in the process of preparing the site, and it has completed a feasibility study on a refinery that would include certain technologically-advanced desulphurization equipment. Actual construction of the refinery has not commenced, however, due to a lack of adequate financing.

Wallace & Wallace has stated that in anticipation of the refinery construction and to assure a future source of crude oil, it has entered into a contract with the Venezuelan government to purchase 10,000 barrels per day of crude oil, which amount can increase over time. (If FEA's crude oil allocation program is still in effect when the refinery comes on stream, Wallace & Wallace would also be assured of adequate crude oil supplies through that program.) The contract requires Wallace & Wallace to begin lifting oil immediately, but the Venezuelans have held off enforcing that provision until Wallace & Wallace can arrange a suitable means by which the oil can be processed pending completion of the refinery. Wallace & Wallace has obtained a commitment from Mobil Oil Company to have the crude oil processed in one of Mobil's refineries for a processing fee that allows Mobil to cover its expenses and earn a profit. Wallace & Wallace has not yet commenced processing any oil under the agreement, however.

Wallace & Wallace is asking the FEA to help it obtain financing to construct its refinery by giving it additional benefits under the FEA's so-called "entitlements program." That program was instituted in December 1974 to offset the cost disparities caused by the two-tier price control system for crude oil then in effect, which in general controlled the price of established domestic production (so-called "old" oil) but which left new domestic production (so-called "new" oil) free to sell at market prices in order to provide an incentive to increased domestic production. Imported oil also sold at market prices, of course. This two-tier system of low old oil prices, on the one hand, and higher market prices for new and imported oil, on the other hand, provided the necessary balance between the goals of minimizing the inflationary impact of oil shortages and the stimulation of increased production. At the same time, however, it caused severe competitive disadvantages to those domestic refiners that were dependent upon imported oil or new domestic oil, and created substantial advantages for those refiners that were supplied with low-priced old oil.

The entitlements program was designed to eliminate these competitive advantages and disadvantages to refiners caused by the two-tier price system. Its basic idea is that every refiner is "entitled" to the same percentage of cheap old oil and expensive new or imported oil. But instead of physically transferring quantities of old and new oil to achieve a balance (which would have been impossible), it was done by cash adjustments between refiners. In simplified form, every month a national old oil supply ratio was computed, which was the percentage of old oil used in all refineries for that month. Refiners who processed more than their share of old oil were required to purchase an "entitlement" for each barrel of oil they processed in excess of their proportionate share. Refiners with less old oil than the national ratio sold "entitlements" for the total number of barrels they processed that was less than their proportionate amount. Each entitlement is assigned a value by the FEA that is equal to the difference between the national weighted average price of old oil and the weighted average price at which all other oil is sold in the U.S. The entitlement value for January 1976, the last month of the two-tier price system, was $8.09. The entitlements program has the effect, therefore, of allocating old oil on a pro rata basis among all refiners, but does so by giving refiners the option of exchanging money to achieve the same effect rather than physically transporting crude oil.

With the enactment of the Energy Policy and Conservation Act ("EPCA") on December 22, 1975, the FEA on February 1, 1976 created a "three-tier" crude oil pricing system that imposes "lower tier" ceiling prices of about $5.25 per barrel on old oil and "upper tier" prices of about $11.28 per barrel on all other domestic production, and continues to allow imported crude oil to be sold at market levels. The entitlements program was modified to take into account the three-tier system, but it continues to perform the same basic function it performed in the past.

As you know, the mandatory controls on crude oil prices expire on May 31, 1979, and it is FEA's expectation that the price of domestic oil, both old and new, will approach market levels by that time. Of course, as the price of domestic oil comes closer to the market price of oil, the value of an entitlement declines. Consequently, the entitlements program is expected to have a limited period of operation, approximately 36 months, with a declining value for the entitlements.

When the Wallace & Wallace refinery becomes operational, it will at that time automatically become a full participant in the entitlements program and will receive cash payments for each barrel of imported or upper-tier domestic oil it refines in excess of the national average. In addition, it should be pointed out that even today Wallace & Wallace would be a full participant in the entitlements program with respect to the 10,000 barrels (or additional amounts) per day it has arranged to have processed by Mobil if it should decide to institute that arrangement. Until recently, when a firm had crude oil refined for it pursuant to a processing agreement, the refiner received the full entitlements benefits or obligations on the oil involved. At the specific urging of Wallace & Wallace, however, FEA amended its regulations to provide that the refiner may reduce its processing fee by the amount of the entitlements benefits received on the oil, rather than reflecting those benefits in the prices it charges to its customers generally, and Mobil has agreed to do so in this instance. This provides Wallace & Wallace with the full benefit of the entitlements Wallace & Wallace would receive if it, rather than Mobil, refined the oil. This will provide Wallace & Wallace with approximately $2.80 per barrel (entitlements value of about $8.00, times a national old oil supply ratio of about 35 percent) for every barrel processed for it by Mobil once it starts processing oil under the agreement, or approximately $840,000 per month ($2.80, times 10,000 barrels, times 30 days).

Thus, it should be understood that the "refinery-constructor" amendment to the entitlements program proposed by Wallace & Wallace would go beyond placing it on an even footing with current refiners, since the existing regulations do that much. What is being requested is that firms like Wallace & Wallace be given an <u>additional</u> amount of entitlements to sell on the oil processed by another refiner pending construction of its own refinery, which amount would allow it not only its proportionate share of access to old oil but would guarantee it the industry-wide average net profit on the sale of such processed oil. We have been advised by Wallace & Wallace, which has relied on data provided by FEA, that in the month of April the industry-wide average net profit was $.84 per barrel and that Wallace & Wallace would have earned a net profit of $.24 per barrel on the oil that would be processed by Mobil, after receiving the usual entitlements benefits, which, as noted, amount to about $2.80 per barrel currently.

Thus, under its proposed amendment, it would have received in April an additional $.60 per barrel, times 10,000 barrels per day for 30 days or $180,000 total, from the entitlements program to bring its profits up to the industry average. This amount paid to Wallace & Wallace would have come from other refiners who in effect would be subsidizing Wallace & Wallace's operations. Wallace & Wallace proposes that the FEA would compute this amount in a similar manner every month from data submitted by firms participating in the entitlements program.

The Legal Basis for a Refinery-Constructor Program

As Mr. Zarb indicated in his testimony before the Government Operations Committee on April 28, 1976, the FEA does not believe it has at this time the authorization from Congress to adopt the refinery-constructor amendment that Wallace & Wallace has proposed. Our legal staff has thoroughly discussed this issue with Wallace & Wallace's attorneys and the General Counsel of FEA has prepared a lengthy memorandum dealing with their contentions in detail and setting forth his conclusion that FEA does not have the authority to provide the benefits sought by Wallace & Wallace. I would be happy to send you a copy of that memorandum if you wish, but, to review it briefly, the FEA's legislative authority for the entitlements program arises from its mandatory price and allocation authority contained in the Emergency Petroleum Allocation Act ("EPAA") of 1973, as amended.

The entitlements program has been challenged by a number of major refiners on the ground, among others, that it exceeded the FEA's basic price and allocation authority and was in effect a subsidy program by which the major oil companies were required to subsidize their competitors. The FEA was successful, however, in convincing the courts that the entitlements program was directly intertwined with price and allocation authority because it was designed to eliminate economic distortions caused by the two-tier price control program for crude oil and was in effect a scheme to allocate among refiners the FEA-created benefits of access to price-controlled old oil.

In defending the program, the FEA pointed to the fact that Congress had explicitly recognized the authority of the FEA to institute an entitlements program that would eliminate cost distortions caused by the two-tier price system. When Congress first extended the EPAA from February 28, 1975 to August 31, 1975, at which time the entitlements program was being developed, the reports in both Houses noted that an amendment specifically authorizing the entitlements program was unnecessary because the EPAA "provides ample authority for the FEA to institute a system of price equalization to provide for all segments of the industry to benefit from lower-priced domestic oil." S. Rep. No. 93-1082, 93d Cong., 2d Sess. at 2 (Aug. 9, 1974) (emphasis added); H.R. Rep. No. 93-1443, 93d Cong., 2d Sess. at 3 (Oct. 8, 1974).

Thus, the FEA has to date been successful in rebutting the argument that the entitlements program is a subsidy program for small and independent refiners -- since it only requires the equitable distribution of benefits conferred by the FEA's two-tier price system -- and in convincing the courts that it is an essential component of the regulations promulgated under its price and allocation authority. The FEA has not at any time attempted to defend the entitlements program as having authorization wholly apart from the price and allocation authority, and we have serious doubts that such an argument would be accepted. It is for this reason that we have concluded that we do not have adequate legislative authority to promulgate the refinery-constructor amendment, since such an amendment goes well beyond the crude cost disparity problem, which is already taken care of by the present program, and also appears to have no other direct relationship with the allocation or pricing of crude oil or petroleum products.

Wallace & Wallace has asserted that such separate authorization is contained in Section 4(b)(1) of the Act, which states that the FEA's regulations shall provide, to the maximum extent practicable, for a number of objectives, among them being the

> "preservation of an economically sound and competitive petroleum industry; including the priority needs to restore and foster competition in the . . . refining . . . [sector] of such industry, and to preserve the competitive viability of independent refiners . . . ."

Wallace & Wallace also points to legislative history to the effect that Congress had a general desire to encourage the construction of increased refinery capacity by the independent sector. See H.R. Rep. No. 93-628, 93d Cong., 1st Sess., at 30 (1973).

However, Section 4(b)(1) of the Act has not been generally viewed by the FEA or the courts as being a separate, substantive grant of authority, but only a listing of objectives to be considered and dealt with to the maximum extent practicable in carrying out the price and allocation authority under Section 4(a). Although the EPAA was generally intended to provide a broad delegation of authority to the President to deal with the impending embargo, it seems to us highly unlikely that Congress intended, when it enacted Section 4(b)(1), to give the President unlimited authority to take any action he deemed appropriate to foster competition in the petroleum industry, without regard to whether such action was related to his price and allocation authority, and particularly to take such a drastic step as to require the major integrated refiners to directly subsidize new entry by their independent competitors. Indeed, such a construction of the statute would also require the conclusion that the President currently has legislative authority to take such other far-reaching action to promote competition as ordering the breakup of the major companies or spreading subsidization by the major firms to the marketing and production sectors of the industry. We find it difficult to imagine that Congress would have authorized such drastic measures without language more specific than that found in the EPAA.

FEA's Views on the Proposed Amendment to the EPAA

Senator Allen asked the FEA to provide the Committee with its tentative views on his proposed bill that would amend the EPAA to provide the FEA with legislative authority to implement a refinery-constructor amendment to its entitlements program like that proposed by Wallace & Wallace. We are happy to provide you with our initial reaction, subject, as always, to clearance by the Office of Management and Budget.

Senator Allen's proposed bill, a copy of which is enclosed, would amend Section 5(b) of the Federal Energy Administration Act so as to add a new paragraph (13) containing very broad language to the effect that the FEA Administrator shall develop programs to assist and foster the construction of "grass roots" refineries. There is no specific mention of the entitlements program in the proposed bill.

Our comments on the proposed bill are as follows. First, as a technical matter, we believe any amendments relating to the FEA's general regulatory authority in the petroleum industry would most appropriately be accomplished through a change in the EPAA, not the FEA Act, although we realize that the latter's extension is now the matter before the Committee. Among other things, the judicial review provisions of the two acts are entirely inconsistent, which might result in serious problems of consistency in litigation. For example, all cases arising under the entitlements program in general are initially reviewed in the District Courts, from which appeals lie in the Temporary Emergency Court of Appeals, but rulemaking cases involving a refinery-constructor amendment to that program would bypass the District Courts and would be reviewed by the Circuit Courts of Appeals, rather than the T.E.C.A. Moreover, since the FEA Act does not generally contain substantive regulatory authority, it does not contain adequate enforcement authority. It should also be noted that the EPAA and the FEA Act will have different expiration dates.

Second, the language of the proposed amendment may be too vague to accomplish the purpose for which it is intended. For example, the amendment provides that a plan to assist and foster the construction of new refineries shall "minimize economic distortion and inequity" while "assuring the availability of adequate amounts of crude oil for such facilities in the planning stage," and may include measures "whereby refiner constructors may participate in the market-place on the same basis with existing refiners." As noted above, a firm like Wallace & Wallace may already fully participate in the entitlements program on the same basis as other refiners and is assured of having its proportionate share of crude oil if the FEA allocation program is still in effect at the time the refinery comes on stream. The relief it is requesting is in addition to these items, and may therefore possibly be construed as being in excess of the benefits intended to be conferred by your proposed amendment. In our view more specific authorization language would provide greater assurance that the courts would not hold the program to be beyond the agency's authority. In short, we doubt whether the proposed amendment to the FEA Act would provide sufficient authority for the benefits which Wallace & Wallace now seeks.

FEA's Views On Assisting the Construction of New Refining Capacity

As Mr. Zarb indicated in his testimony, the FEA is in general agreement with Senator Allen's view that the promotion of increased domestic refining capacity, particularly by the independent sector, should be a part of this country's energy policy. Subject, of course, to clearance by the Office of Management and Budget, we do, therefore, support in general the creation of programs that would encourage and provide incentives for such new refinery construction. However, we have severe reservations about using the entitlements program for this purpose.

Mr. Zarb pointed out that, in our opinion, the adoption of a refinery-constructor amendment to the entitlements program is not a sound way to deal with the problem. Apart from legal constraints, a policy of using the entitlements program to directly subsidize or underwrite the development of a new refinery by dipping into the entitlement pool twice is, in FEA's view, neither appropriate nor likely to be effective.

The question of the appropriateness of such a policy stems from the nature of the entitlements program itself. The entitlements program involves the transfer of cash to a refiner from other refiners, many of whom are smaller than and are in competition with the transferees. Use of the revenues of one firm to do anything more than equalize crude cost differentials caused by Federal regulations -- i.e., to explicitly favor one refiner over another for whatever purpose -- raises serious policy questions. If not constrained to the narrowest of objectives (i.e., equalization), the program could be used to determine who stays in the refining business and who does not simply by establishing the cash position of various parties through adjustments of the entitlements program. This type of power in the Federal Government, the power to utilize the revenues of one firm to directly favor its competition, must be viewed with extreme concern. Moreover, it should be noted that allowing firms to become entitlement sellers for reasons not related to removing cost distortions will reduce the number of entitlements that would otherwise be available for sale by other firms, thus distorting the original purpose of the program.

The question of the effectiveness of using the entitlements program to underwrite and stimulate the development of a new refinery also stems from the nature of the entitlements program. The value of an entitlement is a function of the spread between the selling price of lower tier and upper tier oils. Since the selling price of lower tier oil is escalating over time and the amount of lower tier oil in the system is continually diminishing due to the depletion of old reservoirs and the replacement of these fields with new, upper tier oil, the value of each entitlement will decline on a steady path for the remaining 36 months of the price control program. In addition to declining values of entitlements, the program will end on May 31, 1979.

In light of these considerations, the special relief sought by Wallace & Wallace would not only decline over time, but also terminate (either through a total loss of value or through an end of controls) about the time the refinery was to begin operation. It is unlikely that investors or banks will provide the equity or debt required to construct the refinery simply on the basis of such relief. Their concern is return on equity or the ability of Wallace & Wallace to retire the debt during the period the refinery is in operation, and the special relief sought by Wallace & Wallace will not be available during that period. If they believe the refinery is economically viable (i.e., capable of producing a fair return and retiring the debt), they will finance the project; if not, they will not finance the project. Relief from a program that cannot effect the refinery's return on equity or ability to retire debt because of its diminishing subsidy value and near-term elimination is not likely to alter their decision.

Finally, the proposed use of the entitlements program would limit government assistance only to those firms currently in the oil business and importing crude oil for processing pending construction of a refinery. It would provide no benefits, however, to other, equally capable firms willing to enter the refinery business.

A more direct approach to the problem would be the creation of a loan guarantee or other similar program. This would provide a sufficient protection for banks and other lending institutions over the life of the loan, and thus provide a solid basis for obtaining the necessary financing. Such programs are a faimilar means of providing government support to the development of critical industries and are generally more capable of assuring adequate financing, which is at the heart of the Wallace & Wallace problem, than would the proposed amendment to the entitlements program. Although we would be willing to provide assistance in helping the Committee to develop such a program, we cannot of course provide you at this time with assurances that it would receive Administration support.

If I can be of further assistance, please do not hesitate to contact me.

Sincerely,

/s/ John A. Hill

John A. Hill
Acting Administrator

cc: Senator John J. Sparkman
Senator James B. Allen
Senator Jacob K. Javits
Senator James L. Buckley
Representative William Nichols

FEDERAL ENERGY ADMINISTRATION
ACT OF 1974

Amendment

Functions and Purposes of the Federal Energy Administration add a new paragraph (13) to Sec. 5(b):

(13) Preserve and enhance the competitive environment for the domestic manufacturing of petroleum products, develop plans and programs to assist and foster the construction of new small grass roots refineries and independent grass roots refineries by issuing regulations which will to the largest degree enhance the probability of their successful competition and minimize economic distortion and inequity, particularly, for small refiners and independent refiners, while assuring the availability of adequate amounts of crude oil for such facilities in the planning stage of under construction through the allocation and issuance of adjusted crude oil receipts in a manner consistent with the Nation's needs for new refining capacity. In administering any pricing or allocation authority provide, by rule, measures encouraging and fostering the construction of new, domestic refining capacity including measures whereby refiner constructors may participate in the marketplace on the same basis with existing refiners.

TAB
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FEDERAL ENERGY ADMINISTRATION
WASHINGTON, D.C. 20461

MAY 21 1976

OFFICE OF THE ADMINISTRATOR

Mr. Charles Wallace
President
Wallace & Wallace Chemical
and Oil Company
200-31 Linden Boulevard
St. Albans, New York 11412

Dear Mr. Wallace:

As you know, the FEA has had under consideration for the past several weeks your proposal for the creation of a refinery-constructor category of participants in the entitlements program. The proposal would basically allow firms like yours that are in the process of constructing a "grass roots" refinery to receive entitlements benefits in an amount that would allow it to earn the industry-wide average profit on its current operations. The purpose of this letter is to provide you with our final position on that issue.

I want you to know that I and my staff support wholeheartedly your Tuskegee oil refinery project, which we consider to be a major step forward in carrying out the Administration's energy policy by providing additional domestic refinery capacity. Furthermore, as I have told you, I am personally committed to the principle that minority-owned and operated projects such as yours deserve every assistance possible from the Federal Government in order to carry out the Administration's commitment to provide equal economic opportunity for all citizens.

Therefore, your proposal has received the fullest consideration by the senior officials of the FEA. As you know, we have previously amended the entitlements regulations to allow you to receive the full benefits of the entitlements program on crude oil you will have processed by Mobil pending construction of your refinery. I and several members of my staff have met with you and/or your attorneys and with members of Congress on several occasions in order to attempt to work out the policy and legal problems involved in your present proposal. I have also allowed you full participation in our decision-making process by permitting you access to draft legal opinions and other internal information prior to a final decision. In short, the FEA has expended substantial staff effort and the time of senior officials in order to find a favorable solution to this problem.

However, after exploring every possible alternative, I regret to have to inform you that the FEA does not believe it has the statutory authority to bend its old oil allocation (entitlements) program in order to give the kind of economic support you request. To summarize briefly the legal conclusion, it is the opinion of FEA's General Counsel Michael Butler, that the FEA's authority and mandate to preserve and foster competition in the refining industry and to encourage new refining capacity is limited to the context of a price and allocation program, and does not allow the agency to go outside that context to create a subsidization program for new refiners, no matter how laudable the purpose. I have thoroughly reviewed Mr. Butler's analysis and fully, albeit reluctantly, concur in it. Mr. Butler's legal analysis is set forth in a lengthy memorandum to me, a copy of which is enclosed.

As you may also be aware by now, I was asked during a hearing of the Senate Government Operations Committee on April 28, 1976, to provide the FEA's views for the record on an amendment to the Federal Energy Administration Act proposed by Senator James B. Allen of Alabama that would authorize the FEA to "develop plans and programs to assist and foster the construction of new small grass roots refineries and independent grass roots refineries." Our tentative views, subject as always to OMB clearance, were provided to the Chairman of the Committee on May 11, 1976 by John Hill, who was Acting Administrator during my absence from the country. Aside from certain technical deficiencies we saw in Senator Allen's amendment, we offered the view that mere adjustments to the entitlements program such as those involved in your proposal were in fact not likely to provide adequate financial assistance in any event to firms like yours that are attempting a major refinery project. We reiterated our view, however, that a government program to assist in the financing of new refinery capacity by independents should be seriously considered, and we offered to the Committee the continued assistance of the FEA in attempting to develop a loan-guarantee program for economically feasible projects. Such a program would, of course, be a more direct and positive means of attracting private capital than a make-shift appendage to the entitlements program would be. A copy of Mr. Hill's submission to the Committee is also enclosed.

In a meeting with Mr. Butler and his staff on April 14, 1976, you also asked the FEA to look into certain other areas in which the FEA might be of assistance to the project. The first was that the FEA amend its entitlements regulations to move forward the date on which the Wallace & Wallace refinery would be eligible to receive entitlements from 60 days to one year prior to commencement of operations. We have subsequently reviewed the regulations carefully and have determined either that your attorneys have misunderstood our regulations or we misunderstood the proposal. Only the "buy-sell" crude oil allocation program, which does not involve entitlements, has a provision for participation 60 days in advance of the allocation quarter in which a refinery comes on stream, and even that provision only allows the submission of an application in advance of the commencement of operations, not the actual receipt of crude oil. See 10 C.F.R. § 211.65(b)(1). To allow a refiner to receive entitlements up to a year prior to the actual commencement of operations by a refiner would of course present the same legal problems that the more limited refinery-constructor amendment would.

Second, you asked the FEA to consider whether the FEA has authority under the Defense Production Act of 1950, 50 U.S.C. App. § 2061, et seq., to make or guarantee loans to Wallace & Wallace to facilitate the construction of its refinery. As you know, the FEA has previously considered this issue and tentatively determined that: (1) it does not have authority under § 2091 to guarantee loans because it has not been delegated that authority by the President, and it is doubtful that he could so delegate in light of the fact that the FEA is not "engaged in procurement for the national defense" as required by that section; and (2) while it does have authority to make direct loans of up to $25,000,000 under § 2092 of the Act, it can do so only out of funds appropriated for that purpose, and the FEA has no such appropriation. We would of course consider in detail any analysis your attorneys may wish to submit in writing on these legal issues before reaching a final decision.

Third, you have requested the FEA to include refinery-constructors and on-going grass roots refineries among the firms that would be eligible for loan guarantees under the proposed Energy

Independency Authority Act of 1975, which is still pending in Congress. Assuming the Act is passed as proposed, the Wallace & Wallace refinery project might qualify for financing assistance, especially if what you have described as the refinery's advanced desulphurization capacity meets the Act's criteria of uniqueness. However, as I am sure you understand, there is no assurance that the Act will be passed in its present form or in time for it to provide any assistance to your project in a timely manner. Moreover, as presently proposed, administration of the loan program would be in an independent government corporation, the Energy Independence Authority, not the FEA. In connection with the Administration's efforts to secure passage of the proposed legislation, the FEA has, however, made some analysis and developed some very preliminary criteria for loan qualification, but is not, as you may have been led to believe, developing detailed regulations to implement the Act if it is passed. We would of course be happy to have the members of our staff that have general responsibility for this project meet with you so that they will be fully aware of your particular circumstances and requirements.

Finally, you asked Mr. Butler simply for general assurances by me that the FEA supports the Wallace & Wallace refinery project and believes it to be fully consistent with the Administration's energy program. Through this letter and my discussions with you, I hope I have made that assurance absolutely clear. Our adverse determination on our authority to use the entitlements program to provide financial backing for your refinery project should in no way be construed as indicating that we do not consider the project a deserving one or that we are not willing to continue to explore alternative solutions with a view to getting your project off the ground.

Sincerely,

Frank G. Zarb
Administrator

Enclosures

FG-65

THE WHITE HOUSE

WASHINGTON

May 19, 1976

MEMORANDUM FOR: PHIL BUCHEN

FROM: KEN LAZARUS

SUBJECT: FEA Matter/Wallace & Wallace Entitlements Request

In accordance with your request, I spoke this afternoon with Glenn Schleede of the Domestic Council staff regarding: (1) the desirability of Administration support for the project under consideration by the firm of Wallace & Wallace to construct a refinery at Tuskegee, Alabama; and (2) the question of whether FEA can legally provide the firm with entitlements to sell in order to assist it in becoming a domestic refiner.

Glenn indicated that FEA (in the person of Frank Zarb) was already on the public record with the view that the agency lacked authority under the Emergency Petroleum Allocation Act of 1973, as amended, to grant the relief sought by Wallace & Wallace. Thus, as a practical matter, it would be difficult to now advance a contrary position on the question, even assuming Counsel's Office or Justice disagreed with FEA's legal opinion. At a minimum, such an approach would increase the already substantial possibility of litigation over the issue.

Glenn will pursue a legislative alternative with John Hill and Mike Butler at FEA. In the event he comes up with anything concrete during my absence on Thursday and Friday, he will contact you directly. Otherwise, we shall see you on the subject next week.

cc: Jim Cannon -- FYI per Glenn Schleede
Glenn Schleede

THE WHITE HOUSE

WASHINGTON

May 12, 1976

MEMORANDUM FOR: KEN LAZARUS

FROM: PHIL BUCHEN P.

Attached is a file concerning the issue of whether or not the Federal Energy Administration has authority under existing legislation to issue regulations to permit refinery constructors a special category of entitlements.

Frank Zarb tells me that they would like to do something to encourage construction of new refineries but that their General Counsel, Michael Butler, believes that any action under existing legislation to do so would trigger a lawsuit which he does not believe FEA would win. As a result, FEA is contemplating seeking an amendment to its statute so as to give FEA the desired authority.

Frank Zarb indicates that he has no objection to our reviewing this matter informally to see if we think legislation is required or whether existing legislation gives the FEA the necessary authority.

I would appreciate your comments to me promptly.

Attachment

Wallace and Wallace Chemical & Oil Corp.

Corporation Headquarters
200-31 LINDEN BOULEVARD
ST. ALBANS, NEW YORK 11412
212-464-3737
TELEX 235487 TWX 710-582-2470

General Offices
1 WORLD TRADE CENTER
SUITE 8755
NEW YORK, NEW YORK 10068
212-432-0797

Alabama Refinery
MACON COUNTY ROAD No. 56
TUSKEGEE, ALABAMA

May 7, 1976

Mr. Phillip Buchen
Counsellor to the President
The White House
Washington, D.C.

Mr. Buchen;

Attached, as per our telecon earlier today, is a copy of the FEA "Legal Memo" re FEA authority to establish the Refiner-Constructor category, and my initial response to that Memo.

These Memos reflect merely the tip of the controversy that has developed between WWCO and the FEA over the last two years. I am prepared to brief you on the details of how and why FEA's position is indefensible.

I have taken the liberty to also include a copy of a telegram to Admin. Zarb and which clearly dates the controversy and copies of two letters which speak to the economic and technical feasibility of the project.

On behalf of Mr. Wallace, the citizens of Tuskegee, Alabama, and future generations of Americans I thank you for taking the time and trouble to review these materials.

Respectfully,

John O. Adams

John O. Adams, Esq.
Special Assistant to the President
910 Sixteenth St NW
Suite 600
Washington, D.C. 20006
202/785-1593

THE WHITE HOUSE

WASHINGTON

May 12, 1976

May 19

Hld FILE

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