

8 September 1975

OGC HAS REVIEWED.

MEMORANDUM FOR: Deputy Director for Administration

SUBJECT: Compliance with Air Pollution Requirements Related
to the Installation of an Incinerator at Headquarters

REFERENT: Memo for DCI fm DDA, subj: Procurement of an
Incinerator for the Headquarters Building, dtd
? 30 May 1975
A.B.C.

1. You have requested the opinion of this Office regarding the recommendations in referent related to the proposed installation of a new incinerator at Headquarters for the destruction of microproduct waste. Of particular concern is the recommendation that the Agency voluntarily submit to a Fairfax County Pollution Board public hearing for a permit for this project. For the reasons outlined below, we recommend that this proposal not be pursued.

2. Section 118 of the Clear Air Act (42 U.S.C.A. 1857f) was amended by Section 5 of the Clear Air Amendments of 1970 (P.L. 91-604) stating, in part, that:

Each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government (1) having jurisdiction over any property or facility, or (2) engaged in any activity resulting, or which may result, in the discharge of air pollutants, shall comply with Federal, State, interstate, and local requirements respecting control and abatement of air pollution to the same extent that any person is subject to such requirements.

In the legislative history (House Report No. 91-1146) it was reported that:

Instead of exercising leadership in controlling or eliminating air pollution the Federal Government has tended to be slow in this respect. The foregoing provisions are designed to reverse this tendency.

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3. Executive Order 11752 (17 December 1973) relates to the prevention, control, and abatement of environmental pollution at Federal facilities. It derives its authority from the Clear Air Act as well as a number of other environmental statutes and other acts. Its purpose is to assure that the Federal Government provides leadership in the nationwide effort to protect and enhance the quality of the air and other such resources. It states, however, that:

In light of the principle of Federal supremacy embodied in the Constitution, this order is not intended, nor should it be interpreted, to require Federal facilities to comply with State or local administrative procedures with respect to pollution, abatement, and control. (Emphasis added.)

It seems clear from this Presidential order that the Federal Government intends to comply with state and local pollution standards, but will not be required nor should it submit to local administrative procedures such as that recommended in referent. While the Order as well as several Federal statutes requires the heads of Federal agencies to comply with certain procedures and reporting requirements regarding the abatement and control of environmental pollution, it is the opinion of this Office that that recommended in referent relating to the proposed public hearing should not be undertaken. As an alternative to the recommendation of referent and in addition to the other requirements of law, you may want to consider Section 3(6) of the Order which states that:

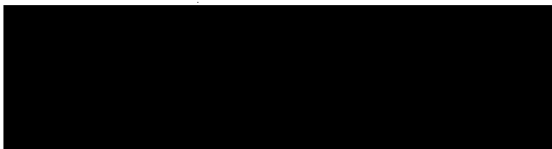
Heads of Federal agencies shall, with regard to all facilities under their jurisdiction in the United States:

* * * *

(6) Consult, as appropriate, with the Administrator [Environmental Protection Agency] and with State and local agencies concerning the best techniques and methods available for the prevention, control, and abatement of environmental pollution.

with respect to the proposed installation.

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Assistant General Counsel