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EPA ELEVATION

HEARINGS

BEFORE THE

SUBCOMMITTEE ON ENERGY POLICY, NATURAL RESOURCES AND REGULATORY AFFAIRS

OF THE

COMMITTEE ON GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED SEVENTH CONGRESS

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CONTENTS

Page

Hearing held on:
- September 21, 2001 1
- March 21, 2002 95
- July 16, 2002 199

Statement of:
- Boehlert, Hon. Sherwood L., a Representative in Congress from the State of New York 4
- Davies, J. Clarence, senior fellow, Resources for the Future; Janet L. Norwood, fellow, National Academy of Public Administration; Robert W. Hahn, director, AEI-Brookings Joint Center for Regulatory Affairs; and Janice Mazurek, director, Center for Innovation and the Environment, Progressive Policy Institute 36
- Ehlers, Hon. Vernon J., a Representative in Congress from the State of Michigan 25
- Futrell, J. William, president, Environmental Law Institute; William Kovacs, vice president, Environment and Regulatory Affairs, U.S. Chamber of Commerce; and Wesley Warren, senior fellow for environmental economics, Natural Resources Defense Council 248
- Horn, Hon. Stephen, a Representative in Congress from the State of California 9
- Studders, Karen A., commissioner, Minnesota Pollution Control Agency; and Jane T. Nishida, secretary, Maryland Department of the Environment 164
- Tinsley, Nikki, Inspector General, U.S. Environmental Protection Agency; and John Stephenson, Director, Natural Resources and Environment, General Accounting Office 100
- Whitman, Christine Todd, Administrator, Environmental Protection Agency; and James Connaughton, chairman, Council on Environmental Quality 222

Letters, statements, etc., submitted for the record by:
- Boehlert, Hon. Sherwood L., a Representative in Congress from the State of New York, prepared statement of 7
- Connaughton, James, chairman, Council on Environmental Quality, prepared statement of 229
- Davies, J. Clarence, senior fellow, Resources for the Future, prepared statement of 39
- Ehlers, Hon. Vernon J., a Representative in Congress from the State of Michigan, prepared statement of 27
- Futrell, J. William, president, Environmental Law Institute, prepared statement of 250
- Hahn, Robert W., director, AEI-Brookings Joint Center for Regulatory Affairs, prepared statement of 61
- Horn, Hon. Stephen, a Representative in Congress from the State of California:
  - Organization manual 31
  - Prepared statement of 10
- Kovacs, William, vice president, Environment and Regulatory Affairs, U.S. Chamber of Commerce, prepared statement of 261
- Mazurek, Janice, director, Center for Innovation and the Environment, Progressive Policy Institute, prepared statement of 74
- Nishida, Jane T., secretary, Maryland Department of the Environment, prepared statement of 179
- Norwood, Janet L., fellow, National Academy of Public Administration, prepared statement of 52

Page

Letters, statements, etc., submitted for the record by—Continued
Ose, Hon. Doug, a Representative in Congress from the State of California, prepared statements of 2, 98, 202
Otter, Hon. C.L. "Butch", a Representative in Congress from the State of Idaho:
Letter dated December 20, 2001 162
Prepared statement of 144
Stephenson, John, Director, Natural Resources and Environment, General Accounting Office, prepared statement of 127
Studders, Karen A., commissioner, Minnesota Pollution Control Agency, prepared statement of 168
Sullivan, Hon. John, a Representative in Congress from the State of Oklahoma, prepared statement of 317
Tierney, Hon. John F., a Representative in Congress from the State of Massachusetts, prepared statement of 208
Tinsley, Nikki, Inspector General, U.S. Environmental Protection Agency, prepared statement of 103
Warren, Wesley, senior fellow for environmental economics, Natural Resources Defense Council, prepared statement of 288
Waxman, Hon. Henry A., a Representative in Congress from the State of California, prepared statement of 216
Whitman, Christine Todd, Administrator, Environmental Protection Agency, prepared statement of 224

EPA ELEVATION: CREATING A NEW CABINET LEVEL DEPARTMENT

FRIDAY, SEPTEMBER 21, 2001

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ENERGY POLICY, NATURAL RESOURCES AND REGULATORY AFFAIRS,
COMMITTEE ON GOVERNMENT REFORM,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:45 a.m., in room 2247, Rayburn House Office Building, Hon. Doug Ose (chairman of the subcommittee) presiding.

Present: Representatives Ose, Otter, Cannon, Duncan, Tierney, and Kucinich.

Staff present: Dan Skopec, staff director; Barbara Kahlow, deputy staff director; Jonathan Tolman, professional staff member; Regina McAllister, clerk; Elizabeth Mundinger and Alexandra Teitz, minority counsels; and Earley Green, minority assistant clerk.

Mr. OSE. The hearing will come to order. Committee, good morning everyone. In the interest of time, I want to submit my statement for the record.

[The prepared statement of Hon. Doug Ose follows:]

Chairman Doug Ose
Opening Statement
Elevating EPA – Creating a New Cabinet Level Department
September 21, 2001

The issue of elevating the Environmental Protection Agency (EPA) to cabinet level status has been around since the agency was created in 1970. When President Nixon submitted his reorganization plan to Congress, Rep. John Dingell of Michigan proposed that instead of establishing EPA, Congress consider a more comprehensive, cabinet-level Department of Environmental Quality.

Over the last 30 years since its creation, Congress has passed numerous environmental statutes expanding the jurisdiction of EPA. As Congress expanded its jurisdiction, the agency has grown as well. Today more than 18,000 employees work at EPA and its annual budget is $7.5 billion.

I would point out that this means that there are more employees at EPA than at each of the Departments of Labor, Housing and Urban Development, Energy, and Education. And, the EPA's budget is roughly equivalent to those of the Departments of State and the Interior.

However, the role of EPA is very different in our society and economy from that of other departments. Fundamentally, EPA is a regulatory agency, and its reach extends beyond the effects of its budget and employees. Decisions made at EPA often have far reaching consequences not only for improving and protecting the environment, but also for the economy as well.

It is also important to note that elevating EPA to a cabinet level department will not, in and of itself, change the agency's size, jurisdiction, or effectiveness. The act of creating a new cabinet level department is largely symbolic. But, as we were all reminded last week, symbols can be powerful things.

The last time Congress created a cabinet level department was in 1988, when it created the Department of Veterans Affairs. Although most of the functions of Veterans Affairs were contained within the Department of Defense, the creation of a separate department has over the past 12 years undoubtedly changed not only how the agency has operated but also the relationship of the government to veterans and their issues.

Likewise, how and why Congress elevates the EPA to a cabinet level department may fundamentally affect not only how the EPA operates, but also the relationship of the government to the environment and environmental issues.

Two bills have recently been introduced to elevate EPA to a cabinet level department. H.R. 2438 introduced by Rep. Sherry Boehlert and H.R. 2694 introduced by Rep. Steve Horn. In addition, Rep. Vernon Ehlers has introduced legislation (H.R. 64), which would reform science at EPA and create a specific Deputy Administrator for Science and Technology. Collectively

these three bills suggest the need for an evaluation of the agency's organization and structure to achieve its mission.

I am pleased that all three of my colleagues could be here today to discuss the issue. I hope that they will impart their wisdom to our Subcommittee. I understand that a couple of them also have pressing engagements so hopefully it will not take too long for them to impart their wisdom.

I'd like to welcome them.

First, we will hear from Mr. Boehlert, Chairman of the Science Committee, who has been a veteran of efforts to elevate EPA to cabinet level going back more than a decade.

Second, Mr. Horn, who as Chairman of the Subcommittee on Government Efficiency, is one of the busiest chairmen in Congress, and is a one man academy of experts on government structure and management.

Finally, Mr. Ehlers, is not only Chairman of the Subcommittee on Environment, Technology and Standards but also a physicist by training, who improves the collective scientific wisdom of Congress by his very presence.

Panel two includes: J. Clarence Davies, Senior Fellow, Resources For The Future; Janet L. Norwood, Fellow, National Academy of Public Administration; Robert W. Hahn, Director, AEI-Brookings Joint Center for Regulatory Studies; and Janice Mazurek, Director, Center for Innovation & the Environment, Progressive Policy Institute.

Mr. OSE. Mr. Tierney.

Mr. TIERNEY. I also would like to submit a statement for the record and ask that it be kept open for submission of relevant materials.

Mr. OSE. Without objection.

Mr. TIERNEY. And then basically give my apologies to the three witnesses. We are dealing with the airline bill and I have to get over to another meeting. So I will certainly read your testimony and I appreciate the work that you have done and appreciate your understanding.

Mr. OSE. I would like to welcome our colleagues this morning, Mr. Boehlert of New York, Mr. Horn of California and Mr. Ehlers of Michigan.

We are going to hear first from Mr. Boehlert, who is the chairman of the Science Committee and has been a veteran of efforts to elevate EPA to Cabinet level, going back more than a decade.

Then we will hear from Mr. Horn, who is chairman of the Subcommittee on Government Efficiency, Financial Management and Intergovernmental Relations, and quite literally one of the busiest chairmen in Congress. He is a one-man academy of experts on government structure and management.

And finally, we are going to hear from Mr. Ehlers, who is not only chairman of the Subcommittee on Environment, Technology and Standards, but is also a physicist by training. He definitely improves the collective scientific wisdom of Congress by his very presence.

Mr. Boehlert.

STATEMENT OF HON. SHERWOOD L. BOEHLERT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. BOEHLERT. Thank you, Mr. Chairman. I want to thank Chairman Burton and the Democrat leadership of the committee for helping make possible today's hearing. Based on its name alone, this subcommittee must be one of the busiest in Congress. Energy Policy, Natural Resources and Regulatory Affairs cover just about every hot issue under the sun, actually including the sun.

But I am not here to talk about solar power, although I'd be delighted to, and I recognize your time constraints in the press of other priorities both international and domestic, so I'll try to be brief. That can be a challenge, given the importance of the subject and my long and often tortuous legislative experience with the effort dating back to 1988. But you know the issues and the importance of EPA's mission, so I'll get right to the point.

And actually there are three points:

No. 1: Congress should elevate EPA to the Cabinet level status it deserves and needs. Now is the time and this is the place to do what is long overdue. What does the United States have in common with Monaco, Libya, Panama, Peru and five other countries? These are the holdouts that, for whatever reason, have chosen not to make their primary environmental agencies Cabinet level departments. Every other major country has done so. Today, more than ever before, we need to make EPA an official member of the President's Cabinet.

This has nothing to do with the stature or capability of Governor Whitman, who I think is doing a tremendous job. Instead, it is a question of timing and national and global conditions. Environmental issues are becoming more complex, more international and more global. This statement is even truer today than it was when I made it before the Senate Governmental Affairs Committee just 2 months ago; climate change, widespread toxic pollution, both chemical and biological, and invasive species are obvious examples. The House Science Committee, which I am privileged to chair, is looking precisely at such issues. There are also growing complexities involving natural resource damages and environmental challenges among other Federal agencies, such as the Department of Energy and the Department of Defense.

No. 2: Don't be tempted by other environmental side issues or controversies. Based on my previous experience with Cabinet level legislation, I cannot overemphasize the importance of staying focused. Let us not forget the lessons of 1993 and 1994 when elevation bills addressed wide-ranging and controversial issues and became magnets for further controversy. The effort ultimately failed. Republicans, Democrats, conservatives, and liberals alike recognized what all of us should recognize today: Only a straightforward, clean elevation bill can make it through the process. That has been the message I have been receiving from the administration—and they re-emphasized that again just yesterday—and many in Congress and I believe they are right.

Many issues confront EPA. Some of these are organizational in nature. Some are left over from previous administrations and some are brand new. Some can be addressed administratively. Many should be addressed through congressional oversight. Mr. Horn, the distinguished chairman of the Subcommittee on Government Efficiency, Financial Management and Intergovernmental Relations, and a good friend of mine and a resource to this Congress, knows this. His expertise in history and government and his appreciation for environmental protection have served the Congress and the Nation well over the years. I look forward to working with him on an EPA elevation bill as well as his particular legislation. The secret to success, I believe, will be for Congress to keep this bill clean and simple, while at the same time, encouraging oversight hearings on other legitimate issues and action on separate and discrete bills by appropriate committees.

And the third and final point, Mr. Chairman: H.R. 2438 and H.R. 64 should continue to move on parallel but separate tracks. Mr. Chairman, I strongly support Mr. Ehlers' bill, H.R. 64, which would strengthen science at EPA by, among other things, establishing a Deputy Administrator for Science and Technology. The bill is pending before our Science Committee and I anticipate full committee approval very soon, perhaps as early as the week after next. While it is not the subject of this hearing, I appreciate the opportunity to comment on its importance and conventional connection to H.R. 2438. Based on committee jurisdictions and recognizing the preferences of the administration, I would urge your subcommittee not to try to attach H.R. 64 or provisions from H.R. 64 to H.R. 2438.

In addition, we continue to have discussions with the administration about H.R. 64 and how its provisions might be implemented

by and integrated within a new Department of Environmental Protection. For the time being, it continues to make sense to move these legislative initiatives on separate tracks.

Thank you, Mr. Chairman. I hope markup of a clean, bipartisan bill, once again let me stress, supported by the administration as a clean bill will follow very soon. I am confident that with your help and the bipartisan support of the committee and full committee, as well as the continued support of the administration, we can make this important effort a success.

Mr. OSE. Thank you, Mr. Boehlert.

[The prepared statement of Hon. Sherwood L. Boehlert follows:]

Testimony of Honorable Sherwood Boehlert
Hearing on EPA Cabinet Level Legislation
Subcommittee on Energy Policy, Natural Resources, and Regulatory Affairs
Government Reform Committee
2247 Rayburn House Office Building
September 21, 2001

Thank you, Mr. Chairman. I also want to thank Chairman Burton and the Democratic leadership of the Committee for helping to make possible today's hearing on H.R. 2438, the Department of Environmental Protection Act of 2001. Based on its name alone, this Subcommittee must be one of the busiest in Congress: Energy policy, natural resources, and regulatory affairs cover just about every "hot issue" under the sun, actually including the sun.

But I'm not here to talk about solar power (although I'd be delighted to) and I recognize your time constraints and the press of other priorities—both international and domestic, so I will try to be brief. That can be a challenge, given the importance of the subject and my long (and sometimes torturous) legislative experiences with the effort dating back to 1988 (when Rep. Jim Florio and I first introduced an EPA elevation bill). But you know the issues and the importance of EPA's mission -- so I will get right to the point. And actually, there are three points:

1. Congress should elevate EPA to the Cabinet level status it deserves and needs.

Now is the time and this is the place to do what is long overdue. What does the United States have in common with Monaco, Libya, Panama, Peru, and five other countries? These are the "holdouts" that, for whatever reason, have chosen not to make their primary environmental agencies Cabinet level departments. Every other major country has done so. Today more than ever before, we need to make EPA an official member of the President's Cabinet.

This has nothing to do with the stature or capability of Governor Whitman, who I think is doing a tremendous job. Instead, it's a question of timing and national and global conditions. Environmental issues are becoming more complex, international, and global. This statement is even "truer" today than it was when I made it before the Senate Governmental Affairs Committee two months ago. Climate change, widespread toxic pollution (both chemical and biological), and invasive species are obvious examples. The House Science Committee, which I'm privileged to chair, is looking precisely at such issues. There are also growing complexities involving natural resource damages and environmental challenges among other Federal agencies, such as the Department of Energy and the Department of Defense.

2. Don't be tempted by other environmental side-issues or controversies.

Based on my previous experiences with cabinet level legislation, I cannot overemphasize the importance of staying focused. Let's not forget the lessons of 1993

and 1994, when elevation bills addressed wide-ranging and controversial issues and became magnets for further controversy. The effort ultimately failed. Republicans, Democrats, conservatives, and liberals alike recognized then what all of us should recognize today: Only a straightforward, clean elevation bill can make it through the process. This has been the message I've been receiving from the Administration and many in Congress and I believe they're right.

Many issues confront EPA. Some of these are organizational in nature. Some are left over from previous Administrations. Some are brand new. Some can be addressed administratively. Many should be addressed through Congressional oversight. Mr. Horn, the distinguished Chairman of the Subcommittee on Government Efficiency, Financial Management, and Intergovernmental Relations, and a good friend of mine, knows this. His expertise in history and government and his appreciation for environmental protection have served the Congress well over the years and I look forward to working with him on EPA legislation. The secret to success, I believe, will be for Congress to keep this bill clean and simple, while at the same time encouraging oversight hearings on other, legitimate issues and action on separate and discrete bills by appropriate Committees.

3. H.R. 2438 and H.R. 64 should continue to move on separate tracks.

Mr. Chairman, I strongly support Mr. Ehlers' bill, H.R. 64, which would strengthen science at EPA by, among other things, establishing a Deputy Administrator for Science and Technology. The bill is pending in the Science Committee and I anticipate full Committee approval very soon, perhaps as early as the week after next. While it is not the subject of this hearing, I appreciate the opportunity to comment on its importance and potential connection to H.R. 2438. Based on Committee jurisdictions and recognizing the preferences of the Administration, I would urge your Subcommittee not to try to attach H.R. 64 or provisions from H.R. 64 to H.R. 2438. In addition, we continue to have discussions with the Administration about H.R. 64 and how its provisions might be implemented by and integrated within a new Department of Environmental Protection. For the time being, it continues to make sense to move these legislative initiatives on separate tracks.

Thank you again, Mr. Chairman. I hope markup of a clean, bipartisan bill--preferably H.R. 2438, the Boehlert-Borski bill--will follow very soon. I'm confident that with your help and the bipartisan support of the Subcommittee and full Committee, as well as the continued support of the Administration, we can make this important effort a success.

Mr. OSE. Mr. Horn.

STATEMENT OF HON. STEPHEN HORN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. HORN. Thank you, Mr. Chairman. It is good to see you in charge of this subcommittee, and I leave to you and the subcommittee what pieces you think make common sense. I am delighted to be here with my two colleagues with whom I have great esteem, and that is Mr. Boehlert and Mr. Ehlers.

And let me just say a couple of points. It is clear, although we have been committed to environmental protection since 1970 with the establishment of the Agency, the priority of that commitment has been the subject of reinterpretation with each new administration because EPA has not had a permanent seat at the Cabinet. With the increasing need to protect the environment across borders and the increasingly complicated nature of environmental protection, we must elevate the existing Agency to a department. In having this discussion, we should take it as an opportunity to provide effective oversight and review many areas of our environmental operations.

Our legislation does this. Two areas of continuing concern: First, despite the implementation of the Government Performance and Results Act, which the General Accounting Office has had great concerns about, the current Agency and we also have problems with them on information management, collection, coordination, computer security, and they remain real challenges for the EPA—and I hope that during the course of debating whether to elevate the existing EPA to a Cabinet level department, we will focus significant attention to information management processes and resources within the current Agency to ensure that our environmental information is reliable and of the highest quality.

Second, we must ensure that the best practice management aids and sound environmental decisions will be the result. Most notably, that includes using risk assessment to understand the benefits to be achieved by proposed regulations and the costs that will necessarily be borne to meet those objectives—risk assignment and assessment as it was originally proposed by our colleagues, Representatives Thurman and Mica back in 1993–1994, and it is included in my legislation. It has been controversial. However, as a critical management tool, it would enable our environmental regulators to begin the process of setting achievable program objectives and methodologies to measure our progress toward achieving environmental goals.

The inability of the existing EPA to establish risk-based program priorities is a deficiency that has been recently noted by the General Accounting Office and the EPA's Inspector General, and requiring risk assessment as part of the regulatory process will do much to resolve this.

I end these comments here and I submit a long statement for the record, Mr. Chairman, if I might. And thank you for holding this hearing this morning. I will be happy to have any questions.

Mr. OSE. Thank you, Mr. Chairman.

[The prepared statement of Hon. Stephen Horn follows:]

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TESTIMONY OF
THE HONORABLE STEPHEN HORN

BEFORE THE HOUSE COMMITTEE ON GOVERNMENT REFORM

Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs

Good morning, Mr. Chairman, and thank you for providing me with the opportunity to present testimony on the need to elevate the Environmental Protection Agency to a full cabinet-level department. I am honored to be here and to share the panel with my distinguished colleagues and leaders in the environmental movement, Representatives Boehlert and Ehlers.

On December 2, 1970, our nation marked its first major environmental milestone by establishing the Environmental Protection Agency. In creating the Agency, then President Nixon stated, "because environmental protection cuts across so many jurisdictions and because arresting environmental deterioration is of great importance to the quality of life in our country and world, I believe that in this case a strong, independent agency is needed."

The president's overriding concern to be addressed by the establishment of the EPA was that although numerous parts of the government may have been sympathetic to protecting our environmental quality, no one distinct department existed to focus solely on our environment. Moreover, the mission statements and purposes across departments necessarily affected how each department viewed environmental protection, leading to inconsistent and varying degrees of real protection.

Since 1970, the Agency has grown in size, budget, and responsibility. For Fiscal Year 2002, EPA has requested $7.3 billion to make sure our air and water supplies are clean and safe, our food supply protected, prevent pollution, improve waste management techniques, and reduce global and cross-border environmental concerns, among other worthy goals. Because the nature and scope of environmental concerns have grown in importance, we need to revisit how we view the EPA, and to give it its rightful and permanent seat within the president's cabinet.

This is not a new debate for Congress. Indeed, both the 101st and the 102nd Congresses passed legislation to elevate the EPA. The 103rd Congress also undertook this endeavor. Senator Glenn, taking the lead on this issue in the Senate, noted the pressing need to provide institutional permanence to back our commitment to environmental protection, the need for greater policy integration and coordination, and the increasingly global nature of environmental pollution as the three underpinnings for EPA elevation. Senator Glenn's bill, S. 171, passed the Senate by a vote of 79-15.

The House of Representatives also undertook to elevate the EPA in the 103rd Congress, proposing legislation similar in intent to S. 171. I was a co-sponsor of that legislation, along with my colleagues Representatives Conyers and Boehlert. H.R. 3425 was considered and passed by the Government Operations Committee, as this Committee was then known. However, this legislation was never considered by the full House of Representatives because the Resolution that was drafted by the House Rules Committee did not permit consideration of an important amendment to require the new department to undertake risk assessments before promulgating new environmental standards. As a result of the Rules Committee's action, a majority of the House voted against the rule, preventing consideration of H.R. 3425. To my knowledge, Congress has not embarked on a serious discussion of the need to elevate the EPA since that debacle.

I underscore the history lesson because the tensions at play in 1993 remain unabated. The conflict is whether we embark down a legislative course that simply elevates the EPA status, called a clean elevation bill, or whether we endeavor to examine the operations of the EPA and provide some correction at the same time.

Given my reluctance to add to our governmental bureaucracy without questioning the effectiveness, efficiency, or management of those governmental entities, my preference is to take this opportunity to consider some of the more pressing management challenges that the EPA faces while also elevating the Agency to full cabinet level. I therefore introduced H.R. 2694, the Department of Environmental Protection Act, which mirrors the last bill on which the House began to build consensus in 1993. Given the level of agreement on its underpinnings, I offer it now as a means to renew a comprehensive dialogue about the governmental business of environmental protection.

I recognize that much progress has been made since 1993, and a great deal of credit goes to both former Administrator Carol Browner for her efforts to organize and streamline the EPA, as well as current Administrator Christine Todd Whitman, who is taking major efforts through her EPA Task Force to re-examine the processes followed by the EPA for environmental protection. Notwithstanding these efforts, I wish to highlight two areas that I believe continue to need Congressional authorization and oversight. Although the Government Performance and Results Act already explicitly imposes a number of information technology and management requirements, this subject continues to be a challenge for the EPA. H.R. 3425 predates this important legislation, but I chose to include its information management requirements on the basis that these provisions (sections 108 and 109 of my bill) are consistent with GPRA and, in light of the continuing challenges, we need to refocus our attention on the EPA's information management processes.

According to the EPA's Inspector General's January 2001 Management Challenges report, "The Agency has not developed an overall strategy to address the integration, quality, and reliability of its environmental data." The IG also notes that "The structure and consistency of EPA's Information Technology (IT) capital investment process is questionable, as is their ability

to effectively track IT development and implementation."

I note that this is the most recent comment by the EPA's IG, and it is remarkable because it reflects only limited progress since this Committee noted, in 1993, that

> "Information is one of the EPA's most important resources. ... Clearly, EPA's success or failure as a Department hinges on how well it manages this resource. While the link between EPA's mission performance and its information systems seems obvious, historically it is a relationship that has been ignored. The public has paid an enormous cost as a result. EPA cannot readily bring together and correlate data from its various programs–such as air, water, hazardous wastes, and pesticides–to assess environmental risks, identify and target enforcement priorities, and conduct general program oversight."

The General Accounting Office further elaborated on this problem in its October 2000 report, "Environmental Information: EPA Needs Better Information to Manage Risks and Measure Results," which I have attached as part of my testimony and ask unanimous consent that both documents be included in the record.

The second problem area revolves around the need to use sound science and risk assessment principles as an integral part of the regulatory process. Senator Bennett Johnston, who originated the concept during the 1993 Senate debate, noted that this requirement is necessary "because we have seen instance after instance where unreasonable regulations have been adopted costing the taxpayer billions of dollars, where this kind of analysis would have avoided that." The premise is not to be obstructionist to environmental protection, but to clearly understand the costs and benefits of any proposal, before they become financial mandates on ordinary citizens. And, requiring EPA to undertake risk assessment as part of the regulatory process will greatly enhance its ability to establish risk-based program priorities. As the GAO notes, "Well-chosen environmental measures inform policymakers, the public, and EPA managers about the condition of the environment and provide for assessing the potential danger posed by pollution and contamination." It is a critical starting point, that is not now required to be undertaken. And although the Government Performance and Results Act moves every agency and every department down the road of cost-benefit analysis, EPA is notable for its limited progress "in adopting more measures that reflect the environmental or health outcomes of programs...." In fact, the EPA IG reflected that, "there is no formal process for considering cost or cost effectiveness in Agency priority-setting decisions. Thus, there is little assurance that EPA is allocating its limited resources to those problems which pose the greatest environmental risks and opportunities for risk reduction."

My legislation addresses this problem by requiring the Secretary to undertake risk assessments before proposing or promulgating final regulations. As my colleague Representative Thurman noted, "risk assessment and cost-benefit analysis will provide the mechanism necessary to enact strict, achievable environmental laws." Putting aside the rhetorical hotbuttons that the phrase "risk assessment" raises, it is an important management tool that ought finally and permanently be deployed by our environmental regulators.

Again, I thank the Chairman for holding this important hearing and reiterate my strong desire to work with all of my colleagues to elevate the EPA and eliminate the management challenges that this important agency continues to confront. I am happy to answer any of your questions.

United States General Accounting Office

GAO

Testimony

Before the Committee on Environment and Public Works, U.S. Senate

For Release on Delivery
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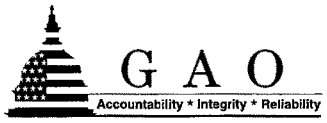
ENVIRONMENTAL INFORMATION

EPA Needs Better Information to Manage Risks and Measure Results

Statement of Peter F. Guerrero, Director
Environmental Protection Issues,
Resources, Community, and Economic Development Division



GAO-01-97T

Mr. Chairman and Members of the Committee:

We appreciate the opportunity to discuss our observations on the data that the Environmental Protection Agency (EPA) needs to manage its programs more effectively. In reports going back to our comprehensive general management review of EPA in 1988,[1] we have identified numerous long-standing problems in the agency's efforts to collect and use environmental data. Drawing from this work, I will discuss today the limitations in the data that EPA needs to (1) set risk-based priorities for its programs and (2) develop outcome-oriented measures of its programs' results. Our observations are as follows:

- EPA's ability to assess risks and establish risk-based priorities has been hampered by data quality problems, including critical data gaps, databases that do not operate compatibly with one another, and persistent concerns about the accuracy of the data in many of EPA's data systems. While EPA's priorities should reflect an understanding of relative risk to the environment and public health, good data often do not exist to fully characterize risk. In the absence of reliable data, public perceptions of risk can influence how EPA determines its priorities and allocates resources. EPA has taken major steps during the past few years to improve its data and to better inform the scientific community and general public of environmental and public health risks. To finish this job, the agency will need to expand its data improvement initiatives to fill key gaps in its data, take advantage of opportunities to develop and implement data standards to achieve compatibility among environmental databases, and ensure the accuracy of its data.

- Measuring the results (outcomes) of its programs is critical to determining EPA's effectiveness. Nevertheless, the agency historically has relied on activity-based output measures, such as the number of inspections performed, because of inherent technical difficulties in establishing sound linkages among program activities, environmental improvements, and public health. Spurred by the requirements of the

[1] *Environmental Protection Agency: Protecting Human Health and the Environment Through Improved Management* (GAO/RCED-88-101, Aug. 16, 1988).

Government Performance and Results Act of 1993 (Results Act), EPA has made progress in recent years in measuring the outcomes of its programs. To ensure future success in developing outcome measures, however, EPA will need to make a long-term management commitment to overcome major challenges to obtaining the data needed to show the results of environmental programs.

Background

Since EPA's establishment in 1970, the federal government has developed a complex system of laws and regulations to address the nation's environmental problems. Over the years, as environmental threats were identified, the Congress responded by enacting laws to address each problem, incrementally adding to the statutory framework that sets EPA's agenda. However, these laws were not coordinated or integrated to provide EPA with an overall system for prioritizing problems so that the most serious problems can be addressed first.

Impelled by budgetary constraints and a growing list of environmental problems, EPA, in the late 1980s, began to consider whether its resources were being spent on the problems that pose the greatest risks to public health and the environment. The agency concluded that the nation actually was devoting more resources to problems that had captured public attention than to problems that were less well known but potentially more serious. Subsequently, EPA began incorporating the concept of relative health and environmental risk into decisions on environmental priorities and emphasizing the need to identify the most serious risks and to keep the public informed about the relative seriousness of various environmental problems. To assess risks and deal with those likely to do the most harm, EPA has recognized that it needs to have adequate environmental and scientific data to conduct risk assessments, set standards, and develop regulations. It also needs such data to identify and develop measures of environmental quality and to assess the effectiveness of its programs by linking program activities to changes in environmental conditions.

EPA Needs Better Data to Establish Risk-based Program Priorities

Establishing risk-based priorities for EPA's program activities requires good data on the use and disposal of thousands of chemicals. To assess human exposure to a chemical, EPA needs to know how many workers, consumers, and others are exposed; how the exposure occurs; and the amount and duration of the exposure. For environmental exposure, EPA needs to know whether the chemical is being released to the air, water, or land; how much is being released; and how wide an area is being affected. EPA's ability to make such assessments is limited by (1) gaps in environmental and health data, (2) databases that do not operate compatibly with one another, and (3) the lack of an effective system for ensuring the accuracy of the agency's data. Although EPA has implemented several agencywide initiatives to address these problems, each of the initiatives has encountered obstacles that must be overcome to substantially improve the agency's data.

Extensive Gaps Exist in EPA's Information About the Environment and Health Risks

Our work over the past few years has shown that very little is known about the risks of potential exposure to chemicals and environmental conditions for workers, the general public, and plant and animal life. For example, we reported the following:

- EPA's Integrated Risk Information System, which is a database of the agency's consensus on the potential health effects of chronic exposure to various substances found in the environment, lacks basic data on the toxicity of about two-thirds of the known hazardous air pollutants.[2]

- EPA's *National Water Quality Inventory* does not accurately describe water quality conditions nationwide. Only 19 percent of the nation's rivers and streams were assessed for the 1996 *Inventory* (the latest report available at the time of our review),

[2]*Major Management Challenges and Program Risks: Environmental Protection Agency* (GAO/OCG-99-17, Jan. 1999).

as were 6 percent of ocean and other shoreline waters. Pollution of the latter has resulted in an increasing number of beach advisories and closures in recent years.[3]

- Of 1,456 toxic chemicals we recently reviewed, data on human exposure were being collected for only about 6 percent. For example, of the 476 chemicals that EPA identified as most in need of testing under the Toxic Substances Control Act, only 10, or 2 percent, were being measured for human exposure. (See table 1.)

Table 1: Extent to Which Human Exposure Data Are Collected for Potentially Harmful Chemicals Through Surveys of EPA and the Department of Health and Human Services

Priority chemicals		Chemicals measured or being measured	
Description of list	Number In list	Number	Percentage
Chemicals found most often at the national Superfund sites and of most potential threat to human health	275	62	23
EPA's list of toxics of concern in air	168	27	16
Chemicals harmful because of their persistence in the environment, tendency to bioaccumulate in plant or animal tissues, and toxicity	368	52	14
Pesticides of potential concern as listed by EPA's Office of Pesticide Programs and the U.S. Department of Agriculture's Pesticide Data Program	243	32	13
Chemicals that are reported in the Toxic Release Inventory; are considered toxic; and are used, manufactured, treated, transported, or released into the environment	579	50	9
Chemicals most in need of testing under the Toxic Substances Control Act (Master Testing List)	476	10	2

Note: Our analysis was based on human exposure data collected through the Department of Health and Human Services' National Health and Nutrition Examination Survey or EPA's National Human Exposure Assessment Pilot Surveys through 2000.

EPA has recognized that it has numerous and significant gaps in its data and has initiated several efforts to fill at least some of the gaps. For example, under its Environmental Monitoring and Assessment Program, EPA is working with other federal agencies to develop information that the public, scientists, and the Congress can use to evaluate the overall health of the nation's ecological resources. EPA also recently launched its High

[3] *Water Quality: Key EPA and State Decisions Limited by Inconsistent and Incomplete Data* (GAO/RCED-00-54, Mar. 15, 2000).

Production Volume Challenge Program, which asked chemical companies to voluntarily generate data on the effects of the chemicals they manufacture or import. As of December 1999, over 400 participants had agreed to make public, before the end of 2005, basic hazard data on over 2,000 of 2,800 high-production-volume chemicals, which are chemicals manufactured or imported into the United States in amounts equal to or greater than one million pounds per year. Furthermore, EPA's new information office will be responsible for encouraging the agency's program offices to reach out to other federal agencies as well as to universities, research institutes, and other sources of environmental information for data that EPA does not collect but that may exist elsewhere. To date, however, such efforts have been hampered by technological limitations imposed by the myriad of incompatible information systems in use across the government.

Moreover, much of the information needed, such as environmental monitoring data, will be expensive to obtain. Thus, it will be important for EPA to work with the states and industry to reduce the reporting burden and to encourage efforts to use data that may already have been collected by other federal agencies or other entities. Likewise, as we recommended to EPA in our September 1999 report on its information management activities, it will be essential for the agency to develop a strategy that prioritizes its requirements for additional data and identifies milestones and needed resources. EPA can then use this information to support its budget requests.

Incompatible Data Systems Limit the Usefulness of Environmental Data

Over the years, EPA has developed and maintained "stovepipe" data systems that are not capable of sharing the enormous amounts of data gathered. EPA now recognizes that common data definitions and formats, known as data standards, are essential to its efforts to integrate data from various databases, including those of its state partners. EPA also considers data standards as key to reducing the reporting burden on industry and the states because such standards would permit integrated, and thus more efficient, reporting of information to the agency. In recent years, EPA has undertaken several efforts to develop standards for some of the data items in its information systems.

According to the Office of Environmental Information, EPA recently approved six data standards and expects that all of these standards will be implemented in the relevant data systems by fiscal year 2003.

EPA recognizes that its current data improvement efforts are only first steps toward its goal of full data integration. For example, EPA has focused primarily on the compatibility of its data with those of state environmental agencies, rather than of other federal agencies and nongovernmental sources. In a May 2000 report, we stated that improved collaboration among federal agencies in meeting the needs for human exposure data is essential because individual agencies have different capacities and skills and separate attempts have fallen short of supporting the large efforts that are needed.[4] EPA's Science Advisory Board[5] has also recommended that EPA do more to link the agency's databases with external databases. The Board noted that "answering many health-related questions frequently requires linking environmental data with census, cancer or birth registry data, or other data systems (such as water distribution maps) to determine whether there is a relationship between the environmental measures and health."[6] EPA officials acknowledge the importance of linking EPA's databases with those of other agencies at all levels of government. However, they told us that their actions to do so have been limited by resource constraints and by the fact that EPA's statutes do not give the agency the authority to require that other agencies collect or report data using formats compatible with those used by EPA.

Concerns Persist About the Accuracy of EPA's Data

In various reviews, we and others have identified persistent concerns about the accuracy of the data in many of EPA's information systems. EPA acknowledges that data errors exist but believes that, in the aggregate, its data are of sufficient quality to support its programmatic and regulatory decisions. However, EPA has not assessed the accuracy of

[4] *Toxic Chemicals: Long-Term Coordinated Strategy Needed to Measure Exposures in Humans* (GAO/HEHS-00-80, May 2, 2000).
[5] The EPA Science Advisory Board was created by the Congress to provide advice to EPA from scientists outside the agency.
[6] Science Advisory Board, *Review of the Agency-Wide Quality Management Program*, EPA-SAB-EEC-LTR-98-003 (Washington, D.C.: EPA, July 24, 1998).

its information systems agencywide, and preventing errors and correcting them once they have been identified has proved daunting for the agency. For example, in January 1998, an EPA advisory council on information management issues described the difficulty of correcting errors in EPA's databases: "Once an error is stored in one or more of the agency's systems, making corrections to all those systems is an exercise in frustration and futility. There is no simple way to ensure corrections are made to all possible systems."

To address such problems, EPA revised its agencywide quality system in 1998 to expand and clarify requirements for how environmental data are collected and managed. Although the Science Advisory Board recently commended the agency for its development of this system, the Board also found that its implementation has been uneven within the agency. Moreover, the Board reported that more than 75 percent of the states authorized to implement EPA's environmental programs lack approved quality management plans for all or some of these programs and thus are likely to be generating data of unknown quality. We recently reported that EPA's *National Water Quality Inventory*, which EPA uses as a basis for measuring progress under the Clean Water Act, does not accurately describe water conditions nationwide. While EPA prepares the *Inventory* on the basis of data submitted by the states, the states do not use a statistical sampling design that provides a comprehensive picture of water quality. The Science Advisory Board has pointed out that EPA programs that rely on data of unknown quality are exposing themselves, the reliability of their decisions, and their credibility to criticisms.

Correcting errors in the agency's data is an important responsibility for the new information office. This office recently developed an Internet-based system to identify, track, and resolve errors found in national environmental databases. The system currently allows individuals to notify EPA of suspected errors in some of the agency's major databases, and EPA intends to implement the data correction system in additional databases during the next two years.

Efforts to Develop Outcome-Oriented Performance Measures Are Constrained by Data Limitations

Well-chosen environmental measures inform policymakers, the public, and EPA managers about the condition of the environment and provide for assessing the potential danger posed by pollution and contamination. They also serve to monitor the extent to which EPA's programs contribute to environmental improvement and can be used in future priority-setting, planning, and budgeting decisions. EPA has been aware of the need for environmental measures since the mid-1970s. Nevertheless, the agency made little progress in developing such measures until the Results Act mandated their use by requiring federal agencies to report annually on their progress in meeting performance goals. Under the Results Act, EPA has begun to set goals and measures that are intended to help the agency, as well as the Congress and the public, assess the environmental results of the agency's activities. While EPA has made progress in adopting more measures that reflect the environmental or health outcomes of programs, the overwhelming number of EPA's measures reflect outputs, such as the number of inspections performed or regulations issued, and additional progress is needed.

EPA considers getting the data needed to measure results its biggest challenge in developing outcome-oriented performance measures. To date, EPA and the states have made limited progress in developing such measures, as these examples indicate:

- Of the 364 measures of performance that EPA has developed for use during fiscal year 2000, only 69 (19 percent) are environmental outcomes; the other measures reflect program activities, such as the number of actions taken to enforce environmental laws. (See table 2.)

- Given inherent uncertainties about the results of research and development activities, the problem of developing outcome-oriented measures is particularly difficult for EPA's science activities. Of 36 measures related to EPA's strategic goal of "sound science," only 2 reflect outcomes.

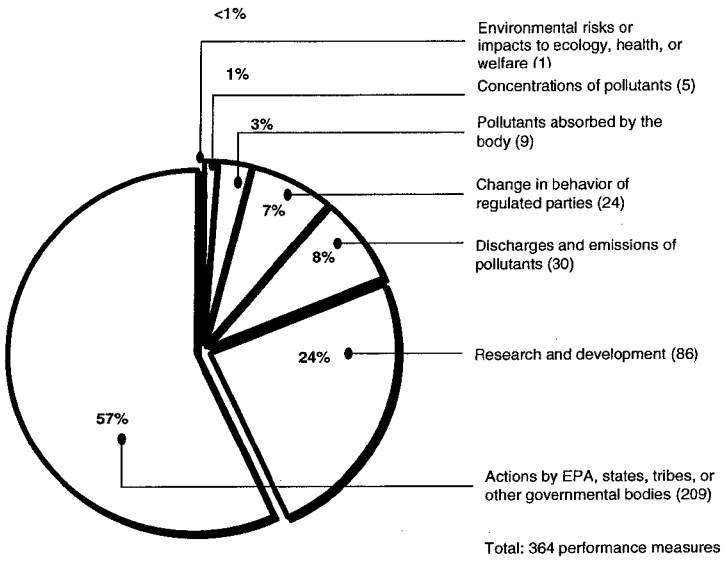
Table 2: EPA's Analysis of the Number and Type of Annual Performance Measures for Its Strategic Goals for Fiscal Year 2000

	Number of annual performance measures		
EPA's strategic goal	**Output**	**Outcome**	**Total**
Goal 1: Clean Air	19	14	33
Goal 2: Clean and safe water	65	17	82
Goal 3: Safe food	16	1	17
Goal 4: Preventing pollution and reducing risk in communities, homes, workplaces, and ecosystems	28	14	42
Goal 5: Better waste management, restoration of contaminated sites, and emergency response	34	8	42
Goal 6: Reduction of global and cross-border environmental risks	27	7	34
Goal 7: Expansion of Americans' right to know about their environment	28	3	31
Goal 8: Sound science, improved understanding of environmental risk and greater innovation to address environmental problems	34	2	36
Goal 9: A credible deterrent to pollution and greater compliance with the law	15	3	18
Goal 10: Effective management	29	0	29
Total	**295**	**69**	**364**

Source: GAO's analysis of EPA data.

In addition to establishing output-and outcome-oriented performance measures, EPA has adopted a framework for categorizing its performance measures according to the type of outputs or outcomes to be achieved. As shown in figure 1, most of the performance measures are outputs involving either research and development efforts or actions by EPA, states, tribes, or other governmental bodies, such as establishing standards for hazardous levels of lead in paint, dust, and soil. The other categories represent outcomes, including measures that focus on risks to ecology, health, or welfare; pollutants absorbed by the body; and concentrations of pollutants in the environment. Over time, EPA plans to increase the number of such measures, as it is able to obtain better data linking its program activities with changes in environmental and health conditions.

Figure 1: Number and Percentage of Performance Measures for Each Type of Activity



Even with better data, it will be a major challenge for EPA to link its environmental programs and activities to outcomes. Environmental conditions may change because of a number of factors, including variables such as the weather or economic activity, many of which are beyond the control of EPA and its state partners. Likewise, it may be difficult to show the relationship between EPA's annual program activities and some outcomes that may not be apparent until many years later. For example, current EPA activities to reduce the amount of polluting nutrients from fertilizers in the ground may not result in improved water quality for a decade or more.

EPA program officials recognize that they need additional measures that show the outcomes of programs, and they have recently taken actions that should strengthen the agency's ability to develop them. For example, EPA is developing processes and long-

Mr. OSE. Mr. Ehlers.

STATEMENT OF HON. VERNON J. EHLERS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. EHLERS. Thank you, Mr. Chairman. It is good to see you in that seat. I would like to speak about H.R. 64, a bill that I sponsored. You of course heard testimony about addressing the global issues from the previous two witnesses. I am speaking about just one specific aspect, and that is how we can improve the science in the EPA.

I appreciate this opportunity to discuss the different ways to elevate the EPA to Cabinet level and also want to present my thoughts about reforms the EPA should undertake immediately regarding use of science and technology in the regulatory process. As co-sponsor of Chairman Boehlert's legislation, I certainly echo his comments today. I fully support its passage and hope the Government Reform Committee will quickly move it to the House floor.

Environmental policy is one of those rare issues that literally affects every single American every single day of their lives. Clean air, clean water, clean land certainly are no less important than agriculture, education, transportation and interior issues dealt with by some of the other 14 Cabinet level departments. The EPA should be recognized for the important role they play in Americans' daily lives.

In my view, one of the key issues surrounding this debate is how should Congress address some fundamental regulatory process changes that the EPA needs to make. Certainly if this Agency is to become a Cabinet level department, it needs to be held to the highest standards of process. I believe that the most fundamental reform the EPA needs to make to the regulatory process is to strengthen the role that science plays in the Agency's decisionmaking process.

As many members are aware, I introduced H.R. 64, which the Science Committee is reviewing, because I believe the Agency needs a new Deputy Administrator for Science and Technology to oversee the vast and complex scientific mission of the Agency. It is essential that science infuse the entire regulatory process, from initial concept to final regulation, if we are to have good science-based regulations.

Let me address the intent of my legislation before I discuss its relevance to the other bills discussed here. Numerous times I have heard my colleagues and the scientific community and the business community and the public say, what we really want is the use of sound science at the EPA. Everyone agrees that regulatory decisions made by the EPA should be based on the best possible scientific research. However, many institutions, citizens and groups believe that decisionmaking at the EPA can be improved by a greater integration of science into the process.

Many different studies have documented the need for strengthening science at the EPA. The most recent of these was issued by the National Research Council in September of last year. The two primary recommendations of that report were to establish a new Deputy Administrator for Science and Technology at the EPA and to set a fixed term for the existing Assistant Administrator for the Of-

fice of Research and Development. These changes would elevate the role of science in the decisionmaking process at the Agency as well as provide more stability to existing research efforts being conducted inside of the Agency.

Both of these charges are captured in H.R. 64, which I have introduced to ensure that science informs and infuses the regulatory work of the EPA. This legislation also builds on the review of our National Science Policy that I prepared in 1998 for the House Science Committee and which was adopted by the House of Representatives in the 105th Congress. The recommendation in that report that received the most favorable response was that science be used differently in the regulatory and judicial processes. It should not be used in an adversarial fashion in the courts and should not be used as a mere adjunct to the regulatory system. Rather, science should be used at the beginning, middle, and end of an agency's decisionmaking process.

Science can help us make informed decisions about the relative risks of a threat, whether or not we need to address it, and about how to allocate resources to address the threat. The Environment, Technology, and Standards Subcommittee, which I chair, has unanimously passed this bill out and it is expected to come before the full committee in the first week of October or soon thereafter, and I certainly hope that it will soon reach the floor of the House.

I might also mention this legislation that I have introduced, H.R. 64, is supported by the Science Advisory Board of the EPA. And I have received numerous letters from professional scientific associations and from business groups and environmental groups supporting the passage of this bill.

I currently support the dual track strategy of moving the elevation bill through the Government Reform Committee and also H.R. 64 through the House Science Committee. I believe both approaches should be taken. I hope that my bill, H.R. 64, will pass into law, and that would, I think, make a strong case for including it in the departmental—I'm sorry, the departmental portfolio that the Agency will have once it becomes a Cabinet level department. But I also am aware of the legislative history, so I was trying to address too many issues, and an elevation bill likely dooms the effort. So I believe this is the best way to move H.R. 64 through the process quickly. And once we get it through the House, we can assess how we can combine the two bills.

I also want to say that because we have a new administration at the other end of Pennsylvania Avenue, we have a golden opportunity to improve the operation of the EPA, and we are looking forward to working with you and your colleagues as well as Chairman Boehlert and Chairman Horn and the administration and other interested parties to bring about these important changes by passing the bills that are before us. I thank you for your time and consideration.

[The prepared statement of Hon. Vernon J. Ehlers follows:]

Testimony of Congressman Vernon Ehlers
Before the House Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs
Hearing on: Creating a New EPA Department
September 21, 2001

Thank you, Mr. Chairman, for your invitation to testify today. I appreciate the opportunity to discuss the different ways to elevate the Environmental Protection Agency to cabinet level status offered by Chairman Boehlert in H.R. 2438 and Mr. Horn in H.R. 2694. I would also like to share with you my thoughts about reforms the EPA should undertake regarding the use of science and technology in the regulatory process.

As a cosponsor of Chairman Boehlert's legislation, I want to echo his comments today. I fully support its passage and hope that the Government Reform Committee will quickly move it to the House Floor.

Environment policy is one of those rare issues that literally affects every single American, every single day of their lives. Clean air, water and land certainly are no less important than Agriculture, Education, Transportation and Interior issues dealt with by some of the other 14 cabinet level departments. The EPA should be recognized for the important role they play in Americans' daily lives.

In my view, one of the key issues surrounding this debate is: How should Congress address some fundamental changes that the EPA needs to make to its regulatory process? Certainly if this Agency is going to become a cabinet level department, it needs to be held to the highest standards of process.

I believe that *the* most fundamental reform the EPA needs to make to the regulatory process is to strengthen the role that science plays in the Agency's decision-making process. As many Members are aware, I introduced H.R. 64, which the Science Committee is reviewing, because I believe the Agency needs a new Deputy Administrator for Science and Technology to oversee the vast and complex scientific mission of the Agency. It is essential that science infuse the entire regulatory process, from initial concept to final regulation, if we are to have good, science-based regulations.

Let me address the intent of my legislation before I discuss its relevance to Chairman Boehlert's EPA elevation bill and my thoughts on the process for bringing these necessary reforms before the House.

Numerous times I have heard my colleagues and the scientific community say, "What I really want is the use of sound science at the EPA." Everyone agrees that regulatory decisions made by the EPA should be based on the best possible scientific research. However, many institutions, citizens and groups believe that decision-making at EPA can be improved by a greater integration of science into the process.

Many different studies have documented the need for strengthening science at the EPA. The most recent of these was issued by the National Research Council in September of last year. The two primary recommendations of that report were to establish a new Deputy Administrator for Science and Technology at the EPA, and to set a fixed term for the existing Assistant Administrator of the Office of Research and Development. These changes would help elevate the role of science in the decision-making process at the Agency, as well as provide more stability to existing research efforts being conducted inside of the Agency. Both of these changes are captured in H.R. 64 to ensure that science informs and infuses the regulatory work of the EPA.

This legislation also builds on the review of our National Science Policy that I prepared in 1998 for the House Science Committee and which was adopted by the House of Representatives in the 105th Congress (H. Res. 578). The recommendation in that report that received the most favorable response was that science be used differently in the regulatory and judicial process. It should not be used in an adversarial fashion in the courts and should not be used as a mere adjunct to the regulatory system; rather, science should be used at the beginning, middle and end of an agency's decision-making process. Science can help us make informed decisions about the relative risks of a threat, whether or not we need to address it, and how to allocate resources to address a threat.

The Environment, Technology, and Standards Subcommittee, which I chair, unanimously passed H.R. 64 on May 17. The legislation is expected to come before the full Science Committee the first week in October, and then I hope it will come before the House quickly thereafter.

I do support a dual-track strategy of moving Chairman Boehlert's legislation through the Government Reform Committee and H.R. 64 through the House Science Committee. Chairman Boehlert and the Administration have advocated passing a "clean" elevation bill, to help ensure its passage. Legislative history has shown us that trying to address many controversial issues in an elevation bill will likely doom the effort. I believe this to be true this Congress as well.

I have taken the same approach with H.R. 64 by keeping it focused on its two main goals. I believe this is the best way to move it quickly through the legislative process. We can reassess how to proceed with both efforts once the bills are ready for floor consideration.

We have a new Administration at the other end of Pennsylvania Avenue, and I think this gives us a wonderful opportunity to strengthen science at the EPA and to elevate the Agency's role in the Federal Government. I am looking forward to working with you and your colleagues, Chairman Boehlert, Mr. Horn, the Administration, and other interested parties to quickly bring both of these important bills before the House and achieve both goals.

Thank you very much for your time and consideration.

Mr. OTTER [presiding]. Thank you very much, Congressman Ehlers. The Chair has been made aware that Members of this panel have to—are maybe even 3 minutes late for another meeting. Could you give the Chair some sort of an expression of the time that you can spend here with us?

Mr. BOEHLERT. I'm fine. I have been on this for 10 years.

Mr. OTTER. Mr. Horn.

Mr. HORN. I have to go to the Transportation Aviation also, but I can stay for 10 minutes certainly.

Mr. OTTER. Then I would like to start off.

Mr. Horn, your bill also embraces several of the ideas on science that Mr. Ehlers' bill does. How do you feel about Mr. Ehlers' bill?

Mr. HORN. I think it is very worthwhile. If we can't get more things in there, that is certainly very useful and I would support that.

Mr. OTTER. Mr. Boehlert.

Mr. BOEHLERT. I'm a co-sponsor, and we're moving that through my Science Committee. I think it is very important that we have science-based decisionmaking. That's why I have strongly endorsed, and Dr. Ehlers I think agrees with this, moving forward on a parallel track. The history indicates—we have been through this in 1993 and 1994. Everybody talks about elevating EPA to Cabinet level status. Incidentally, I might add that the President and the administration are fully supportive of my bill and fully supportive of the concept of a clean bill. That does not address the separate legislation introduced by Dr. Horn and Dr. Ehlers. I am enthusiastic about working with them in partnership; but the fact of the matter is, if we want to do what we all have talked about for a long, long time, we have to avoid attaching anything else that will open up this bill to delay any unnecessary lengthy debate. I fully support and am enthusiastic of my support of Dr. Ehlers' bill and we are moving that on a fast track through the Science Committee. But let me stress, it should go on a parallel track. EPA elevation must be a clean bill, or we will repeat what we have been through before. And I don't want to do that and neither does the President.

Mr. OTTER. Mr. Boehlert, I have several questions about the elevation bill. It has been my experience, at least in business, that you can have only a certain critical mass, I should say, of people reporting to you in order to do an effective job, or a couple of things happen. No. 1, you diminish the opportunities for those that are truly important to the committee or to the people that are reporting to you. Some of the criticism that I have at least heard on the elevation of any agency—not just EPA, any additional agency—is that to the extent that you increase the numbers in the Cabinet room, No. 1, you decrease the administration's focus on other critical functions of government. And I understand it is arguable, you know, where you elevate EPA according to military defense and these kinds of things. But what would you offer as an argument against those who would say, the more people you put in that room, the less effective each of them are going to be?

Mr. BOEHLERT. First of all, I would point out that you don't add anyone to that room. The Administrator of EPA is already designated by the President of the United States as a member of the Cabinet. She has a seat at the table. She has a seat at the table

only at the sufferance of this President. The next President may view it differently.

Second, this Administrator is given Cabinet level status by the President. But in reality, she is in a subordinate position when she represents the U.S.' interests abroad. For example, she travels to international conferences dealing with very sensitive subjects on the environment. She is not at a ministerial level or a Cabinet level officially, so she is dealing from a subordinate position as she is in dealing with the other members of the President's Cabinet. So the President already has the Administrator reporting directly to him. The President is enthusiastic in support of this elevation. I think the time is long overdue that we do this.

Mr. OTTER. And what about diminishing the focus that the President would have on other areas of government?

Mr. BOEHLERT. It won't diminish the focus because he already has a focus.

Mr. OTTER. I understand that. But given the nature of an invited position as opposed to an endowed position, I think that would change the focus considerably, don't you?

Mr. BOEHLERT. The focus is what the President chooses it to be, and he has indicated his intention to give the proper attention and focus to the environment. The American people expect us to protect the air we breathe and water we drink. They expect us to give premier importance to the top official in this country dealing with the environment. They expect the President to have the top environmental official at his side as he makes important decisions. And the President has indicated that is exactly what he wants. So he is on the same wavelength as the American people.

We are not adding any expense or a name change on the door. We are not even adding a new chair. They are kind of expensive. You have had the privilege of sitting down there, so have I, down at the Cabinet room. The same chair will be there. The same occupant will be there, only with a different title, demonstrating in very tangible form that this President, this administration, this government, gives the highest priority to environmental concerns.

Mr. OTTER. Thank you. Mr. Cannon.

Mr. CANNON. In deference to your time, I have one quick question. How do you deal with the Council on Environmental Quality in your bill? Do you change that?

Mr. BOEHLERT. Don't change that at all.

Mr. OTTER. Thank you very much. We appreciate your attention, and we appreciate your extending your time here so we could ask these questions.

Mr. HORN. Mr. Chairman, if I might put in the record the Organization Manual as it pertains now to the Environmental Protection Agency.

Mr. OTTER. Without objection, so ordered.

[The information referred to follows:]

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Suite 700, 625 Indiana Avenue NW., Washington, DC 20004
Phone, 202–694–7000. Fax, 202–208–6518. Internet, www.dnfsb.gov.

Chairman	JOHN T. CONWAY
Vice Chairman	A.J. EGGENBERGER
Members	JOSEPH J. DINUNNO, JOHN E. MANSFIELD, JESSIE H. ROBERSON
General Counsel	RICHARD A. AZZARO
General Manager	KENNETH M. PUSATERI
Technical Director	J. KENT FORTENBERRY

The Defense Nuclear Facilities Safety Board reviews and evaluates the content and implementation of standards relating to the design, construction, operation, and decommissioning of defense nuclear facilities of the Department of Energy (DOE).

The Defense Nuclear Facilities Safety Board was established as an independent agency on September 29, 1988, by the Atomic Energy Act of 1954, as amended (42 U.S.C. 2286–2286i).

The Board is composed of five members appointed by the President with the advice and consent of the Senate. Members of the Board are appointed from among United States citizens who are respected experts in the field of nuclear safety.

Activities

The Defense Nuclear Facilities Safety Board reviews and evaluates the content and implementation of standards for defense nuclear facilities of DOE; investigates any event or practice at these facilities which may adversely affect public health and safety; and reviews and monitors the design, construction, and operation of facilities. The Board makes recommendations to the Secretary of Energy concerning DOE defense nuclear facilities to ensure adequate protection of public health and safety. In the event that any aspect of operations, practices, or occurrences reviewed by the Board is determined to present an imminent or severe threat to public health and safety, the Board transmits its recommendations directly to the President.

For further information, contact the Defense Nuclear Facilities Safety Board, Suite 700, 625 Indiana Avenue NW., Washington, DC 20004. Phone, 202–694–7000. Internet, www.dnfsb.gov.

ENVIRONMENTAL PROTECTION AGENCY

401 M Street SW., Washington, DC 20460
Phone, 888–372–8255 (toll-free). Internet, www.epa.gov.

Administrator	CAROL M. BROWNER
Deputy Administrator	W. MICHAEL MCCABE
Associate Administrator for Communications, Education, and Public Affairs	STEVE SNIDER

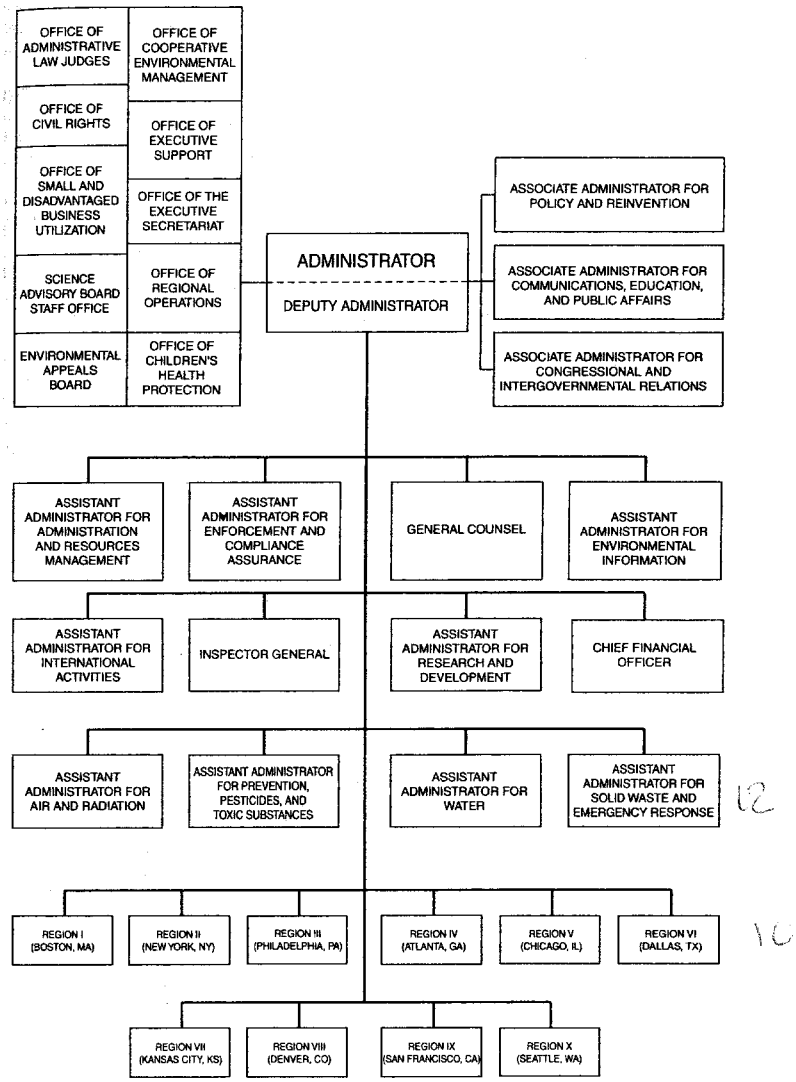
Associate Administrator for Congressional and Intergovernmental Relations	DIANE E. THOMPSON
Associate Administrator for Policy and Reinvention	RICK FARRELL
Chief Judge, Office of Administrative Law Judges	SUSAN L. BIRO
Director, Executive Secretariat	SANDRA L. HUDNALL
Director, Executive Support Office	DIANE N. BAZZLE
Director, Office of Children's Health Protection	E. RAMONA TROVATO
Director, Office of Civil Rights	ANNE E. GOODE
Director, Office of Cooperative Environmental Management	CLARENCE HARDY
Director, Office of Small and Disadvantaged Business Utilization	JEANETTE L. BROWN
Director, Regional Operations Staff	FRANCES T. GREENBERG, *Acting*
Director, Science Advisory Board	DONALD G. BARNES
Lead Environmental Appeals Judge, Environmental Appeals Board	RONALD L. MCCALLUM
Staff Offices:	
Assistant Administrator for Administration and Resources Management	ROMULO L. DIAZ, JR.
2 Assistant Administrator for Air and Radiation	ROBERT PERCIASEPE
3 Assistant Administrator for Enforcement and Compliance Assurance	STEVEN A. HERMAN
4 Assistant Administrator for Environmental Information	ALVIN M. PESACHOWITZ
5 Assistant Administrator for International Activities	WILLIAM A. NITZE
6 Assistant Administrator for Prevention, Pesticides, and Toxic Substances	(VACANCY)
7 Assistant Administrator for Research and Development	NORINE E. NOONAN
8 Assistant Administrator for Solid Waste and Emergency Response	TIMOTHY FIELDS, JR., *Acting*
9 Assistant Administrator for Water	JONATHON (CHUCK) C. FOX
10 Chief Financial Officer	MICHAEL W. S. RYAN
11 General Counsel	JONATHAN Z. CANNON
12 Inspector General	NIKKI L. TINSLEY

[For the Environmental Protection Agency statement of organization, see the *Code of Federal Regulations*, Title 40, Part 1]

The mission of the Environmental Protection Agency is to protect human health and to safeguard the natural environment—air, water, and land—upon which life depends to the fullest extent possible under the laws enacted by Congress.

The Environmental Protection Agency was established in the executive branch as an independent agency pursuant to rganization Plan No. 3 of 1970 (5 .C. app.), effective December 2, 1970. It was created to permit coordinated and effective governmental action on behalf of the environment. The Agency is designed to serve as the public's advocate for a livable environment.

ENVIRONMENTAL PROTECTION AGENCY



Activities

Air and Radiation The air activities of the Agency include:

—developing national programs, policies, regulations, and standards for air quality, emission standards for stationary and mobile sources, and emission standards for hazardous air pollutants;

—conducting research and providing information on indoor air pollutants to the public;

—providing technical direction, support, and evaluation of regional air activities;

—providing training in the field of air pollution control; and

—providing technical assistance to States and agencies having radiation protection programs, including radon mitigation programs and a national surveillance and inspection program for measuring radiation levels in the environment.

For further information, call 202–564–7400.

Water The Agency's water quality activities represent a coordinated effort to keep the Nation's waters clean and safe for fishing, swimming, and drinking, including:

—development of national programs, technical policies, and regulations for water pollution control and water supply;

—ground water and drinking water source protection;

—marine and estuarine protection;

—control of polluted runoff;

—water quality standards and effluent guidelines development;

—support of regional water activities;

—development of programs for technical assistance and technology transfer; and

—training in the field of water quality.

For further information, call 202–260–5700.

Solid Waste and Emergency Response The Office of Solid Waste and Emergency Response provides policy, guidance, and direction for the Agency's hazardous waste and emergency response programs, including:

—development of policies, standards, and regulations for hazardous waste treatment, storage, and disposal;

—national management of the Superfund toxic waste cleanup program;

—development of guidelines for the emergency preparedness and community right-to-know programs;

—implementation of special initiatives such as the brownfields national partnership;

—management of environmental justice/public participation programs related to waste siting issues;

—development of guidelines and standards for the land disposal of hazardous wastes and for underground storage tanks;

—analysis of technologies and methods for the recovery of useful energy from solid waste;

—economic impact assessment of RCRA and CERCLA regulations;

—coordination with the Department of Defense on base closure environmental issues; and

—technical assistance in the development, management, and operation of waste management activities, including technical assistance to Federal facilities.

For further information, call 202–260–4610.

Prevention, Pesticides, and Toxic Substances The Office of Prevention, Pesticides, and Toxic Substances is responsible for:

—promoting pollution prevention and the public's right to know about chemical risk;

—developing and implementing strategies to promote pollution prevention through source reduction;

—evaluating and regulating pesticides and chemicals to safeguard all Americans;

—identifying and reviewing emerging and existing policies, including biotechnology-derived products;

—developing, evaluating, and implementing science policies both domestically and internationally;

—establishing safe levels for pesticide residues on food;

—developing national strategies for control of toxic substances;

—developing criteria for assessing chemical substances, standards for test protocols for chemicals, rules and procedures for industry reporting, and scientific information for the regulation of substances that may be hazardous to people or the environment; and

—evaluating and assessing the impact of existing chemicals, new chemicals, and chemicals with new uses to determine the hazard and develop appropriate restrictions.

The Office also coordinates activities under its statutory responsibilities with other agencies for the assessment and control of toxic substances and pesticides.

For further information, call 202–260–2902.

Research and Development The Office of Research and Development (ORD) provides the scientific foundation for the Agency's environmental protection mission. ORD's chief role is to conduct and support high quality research targeted to understanding and resolving the Nation's most serious environmental threats. In addition, ORD develops methods and technologies to reduce exposures to pollution and prevent its creation. The Office is also a major player in sharing information on technological innovations to protect people and the environment. ORD prepares health and ecological risk assessments and makes recommendations for sound risk management strategies in order to assure that highest risk pollution problems receive optimum remediation. The Office manages a vital extramural grants program entitled Science To Achieve Results (STAR), which awards research grants to scientists in universities and students in environmental science. All ORD extramural and intramural research is carefully aligned to support Agency environmental goals and strategic priorities.

For further information, call 202–564–6620.

Regional Offices

The Agency's 10 regional offices represent its commitment to the development of strong local programs for pollution abatement. The Regional Administrators are responsible for accomplishing, within their regions, the national program objectives established by the Agency. They develop, propose, and implement an approved regional program for comprehensive and integrated environmental protection activities.

Regional Offices—Environmental Protection Agency

Region/Address/Areas Served	Administrator
Region I (John F. Kennedy Federal Bldg., 1 Congress St., Boston, MA 02114) (CT, MA, ME, NH, RI, VT).	Mindy S. Lubber, *Acting*
Region II (290 Broadway, New York, NY 10007) (NJ, NY, PR, VI)	Jeanne M. Fox
Region III (1650 Arch St., Philadelphia, PA 19103) (DC, DE, MD, PA, VA, WV)	Bradley M. Campbell
Region IV (61 Forsyth St. SW, Atlanta GA 30303) (AL, FL, GA, KY, MS, NC, SC, TN)	John H. Hankinson, Jr.
Region V (77 W. Jackson Blvd., Chicago, IL 60604) (IL, IN, MI, MN, OH, WI)	Francis X. Lyons
Region VI (1445 Ross Ave., Dallas, TX 75202) (AR, LA, NM, OK, TX)	Gregg A. Cooke
Region VII (901 N. 5th St., Kansas City, KS 66101) (IA, KS, MO, NE)	Dennis D. Grams
Region VIII (999 18th St., Denver, CO 80202) (CO, MT, ND, SD, UT, WY)	William P. Yellowtail, Jr.
Region IX (75 Hawthorne St., San Francisco, CA 94105) (AS, AZ, CA, GU, HI, NV)	Felicia A. Marcus
Region X (1200 6th Ave., Seattle, WA 98101) (AK, ID, OR, WA)	Charles C. Clarke

Sources of Information

Inquiries for information on the following subjects should be directed to the specified office of the Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460.

Contracts and Procurement Office of Acquisition Management. Phone, 202–564–4310.

Employment Office of Human Resources and Organizational Services. Phone, 202–564–4606.

Freedom of Information Act Requests Freedom of Information Officer. Phone, 202–260–1050. E-mail, hq.foi@epamail.epa.gov.

Information Resources EPA Headquarters Information Resources Center. Phone, 202–260–5922.

Mr. OTTER. Our second panel this morning is in this order: Dr. J. Clarence Davies, senior fellow, Resources for the Future; Dr. Janet L. Norwood, fellow, from the National Academy of Public Administration; Dr. Robert W. Hahn, the director of the AEI-Brookings Joint Center for Regulatory Affairs; and Janice Mazurek, director, Center for Innovation and Environment Progressive Policy Institute.

If you would please take your positions at the table. If I could ask you to please stand and raise your right hands. We do swear our witnesses here. Sometimes we swear at them.

[Witnesses sworn.]

Mr. OTTER. Being the vice chairman, I don't always get an opportunity to explain all the rules and regulations, but I have listened to Chairman Ose give them enough times that I do know that we are limited to 5 minutes, and we want to give everybody an opportunity to discuss particular topics and their feelings about this legislation, but also want to give an opportunity to those of us who are sitting on the committee to ask sufficient questions in order to brief ourselves on the issue and on the legislation. So if you pay a little attention to the light in front of you, green is you are on "go." And when it hits white, you have about 45 seconds. And when it hits red, if you're not in the process of summing—we would like to sum up.

Dr. Davies.

STATEMENTS OF J. CLARENCE DAVIES, SENIOR FELLOW, RESOURCES FOR THE FUTURE; JANET L. NORWOOD, FELLOW, NATIONAL ACADEMY OF PUBLIC ADMINISTRATION; ROBERT W. HAHN, DIRECTOR, AEI-BROOKINGS JOINT CENTER FOR REGULATORY AFFAIRS; AND JANICE MAZUREK, DIRECTOR, CENTER FOR INNOVATION AND THE ENVIRONMENT, PROGRESSIVE POLICY INSTITUTE

Dr. DAVIES. Thank you, Mr. Chairman. I appreciate the opportunity to be here. Let me start by saying that my views are simply my personal views. Resources——

Mr. OTTER. Could I get you to pull that mic just a little closer to you.

Dr. DAVIES. Is that better?

Mr. OTTER. That is much better. And I would warn everybody who is not involved in the conversation that the mics are hot all the time, so you want to be careful what you say. Dr. Davies.

Dr. DAVIES. Resources for the Future is a research organization so it does not take positions on policy matters, so my views are only my personal views. I want to make that clear in the beginning. But I have had a longstanding involvement in the subject of this hearing. I more than 30 years ago coauthored the reorganization plan that created EPA in the first place. And at the time of the events that Mr. Horn referred to of the previous consideration of Cabinet legislation, I was the Assistant Administrator for Policy in EPA and therefore had a fairly active role in those considerations.

I share the view expressed by the members of the previous panel that elevation of EPA to Cabinet level is long overdue. As I guess Mr. Boehlert mentioned, we are one of the few countries in the

world that does not have a Cabinet level environment department. Environment is a major fundamental and permanent responsibility of the Federal Government and its importance should be recognized in organizational terms. Furthermore, it is important internationally to send a signal that we consider environment to be a Cabinet level responsibility. I guess to be more precise, it is important that we erase the negative signal that we give repeatedly in the international arena by having environment occupy a lower level within the Federal bureaucracy.

Let me in this context just mention that in terms of span of control of the President the concern that you raised, Mr. Chairman, a few minutes ago, I really do not think that is a serious concern. As mentioned by Mr. Horn or Mr. Boehlert, the Administrator of EPA is already at the table in the Cabinet. The Cabinet is not a decisionmaking body and therefore, the number there is not really all that relevant. And in terms of reporting to the President, I can put on my political science hat and say that there are Cabinet level positions which Presidents have ignored and other positions which are not Cabinet level, like National Security Advisor, for example, which the President pays a good deal of attention to. It is not unusual, for example, for Republican Presidents, let's say, never to see their Secretary of Labor in anything other than a formal Cabinet meeting. So span of control does not have the same kind of relevance, I think, that it does in the private sector.

I am very sympathetic to Mr. Boehlert's urging that we do a simple, clean elevation without any additional provisions. Nevertheless, I think there are a number of things that at least this committee should consider adding onto the legislation; and perhaps my hope would be at least that a number of them would be noncontroversial and, therefore, would not subject the elevation to the same kind of jeopardy that concerns Mr. Boehlert. I don't know. It is a serious concern. No doubt about that.

I go into details in my testimony on the various items that I think could be usefully considered in the context of a Cabinet bill: A mission statement for the Agency. EPA has never had a mission statement, and I think it would help in a number of contexts if it did have a mission statement.

Integration across media. There is no policy area more fragmented than pollution control. Jan Mazurek and I have spelled out some of the details of that in a book which I have given to staff. And you are not going to remedy that in the context of Cabinet legislation, but I think it could be considered that some kind of commission, some kind of extraordinary body, could be convened to review the statutory authorities administered by the Agency and ways which that could be made into a more integrated whole.

Better science has been touched upon. And I subscribe to the notion of a Deputy or an Under Secretary for Science in the Agency. I think that would be useful. I think there may be other steps that could be done to improve science within the Agency. Better data, I suspect Janet Norwood is going to deal with. But Bureau of Environmental Statistics is badly needed, in my view, and the Office of Information which has been set up by Mrs. Whitman is not an adequate substitute for that; in fact, may detract from that in some

way. So I think we still need a Bureau of Environmental Statistics, and it is a neglected function but an important one.

Program evaluation and economic analysis, which I think Mr. Horn's bill deals with, I'm not sure I fully agree with the way it deals with it, but it does address it and addresses it in important ways.

Statutory basis for innovation. The Agency is running a number of pilot projects—XCEL, CSI, so on—without any statutory authority whatsoever. And I think there is general agreement across party lines and so on that kind of experimentation is useful, constructive, and needed, but it is very handicapped by not having any statutory basis——

Mr. OTTER. Could I get you to wrap up?

Dr. DAVIES. And finally, the international role, which I think would be helpful to mention. I don't think the legislation should become some kind of Christmas tree, but the things I have mentioned are important and worth doing. They are appropriate for Cabinet legislation and I think they should be relatively noncontroversial if framed in the right way.

Mr. OTTER. Thank you.

[The prepared statement of Dr. Davies follows:]

TESTIMONY
of J. Clarence (Terry) Davies,
Senior Fellow, Resources for the Future
before the
U.S. House of Representatives
Committee on Government Reform
Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs

September 21, 2001

Thank you for the opportunity to give you my views on the important subject of elevating EPA to cabinet status. My views are mine only. Resources for the Future is a research organization, and it does not take positions on policy issues.

My involvement in this question and related matters goes back more than 30 years. In 1969 and 1970, I served as the primary consultant to the President's Advisory Council on Executive Organization (the Ash Council) on environmental matters. In that capacity, I co-authored the reorganization plan that created EPA.

As part of submitting the reorganization plan to Congress, the Ash Council staff, supported by OMB and others, spent a lot of time working on the internal organization of what was to become EPA. Our recommendation was for a functional organization, i.e. offices dealing with research, enforcement, planning, standard-setting, state-local relations, etc. This functional organization would replace the components out of which the agency was to be created, including the air and water programs.

Bill Ruckelshaus, the first EPA Administrator, went half way down the road of implementing the proposed plan, creating offices for research, enforcement, and planning. But then, faced with the task of implementing the newly passed Clean Air Act and the soon-to-be-enacted Clean Water Act, he decided that he had to keep the air and

water programs intact. The agency was left organized half on a functional basis and half on a medium (air-land-water) basis. It has remained this way down to the present.

I start with this historical vignette to show that the internal organization of EPA is basically the result of a particular set of circumstances that prevailed 30 years ago. It was not logical or efficient then and it is not logical or efficient now. To the extent that the legislation elevating EPA to cabinet status alters the internal structure of the agency it is not likely to do any harm.

Legislation that only bestows cabinet status is almost entirely symbolic. The symbolism has some usefulness. Domestically, it gives the agency equal status with other departments with whom it has to deal frequently. This might have some slight marginal effect on dealings between EPA and other cabinet departments.

More importantly, cabinet status would have a symbolic effect internationally. The fact that the United States is the only developed nation in the world, and one of the few nations of any kind in the world, that does not have a cabinet-level environmental agency, is a talking point for those who paint this country as crudely materialistic and indifferent to the rest of the world. Elevating the agency would help to show that we are sensitive to the rest of the world and its concerns.

Having said that, I think it is wise of this committee to step back and ask whether an EPA cabinet bill can be an occasion to do something more than make a symbolic gesture. It can, in my opinion, be an opportunity to make a variety of substantive improvements. In particular, I think there are seven areas that this committee should at least consider: 1) agency mission; 2) integration; 3) better science; 4) better data; 5)

program evaluation and economic analysis; 6) innovation; and 7) international role. I will briefly discuss each of these.

Agency Mission

EPA, unlike almost all other federal agencies of any consequence, has never had a statutory mission. This is largely because of the fact that it was created by reorganization plan rather than by legislation. Reorganization plans, a mechanism that no longer exists, were limited to combining existing entities and could not create new authorities or things like agency missions. The cabinet legislation is a logical vehicle by which to give the agency a specific statutory mission.

What difference would having a statutory mission make? I think it would have several benefits. First, it would give Congress a chance to clearly express its views about what the agency should be. Second, it would give the public an agreed upon vision of what the agency should be doing and what its goals should be. Third, it would serve as a touchstone for those both inside and outside the agency to determine what are proper functions and activities of the agency.

The mission statement should be both broad in scope and short in length, analogous to a Constitution. In 1988, I wrote a comprehensive integrated statute for a federal Department of Environmental Protection, in other words a cabinet bill that also replaced the pollution control laws. The mission statement that I wrote for that exercise was as follows:

Sec. 301(a) The mission of the Department is to –

(1) protect and improve the quality of the environment;

(2) protect the public from actual and potential unreasonable environmental risks, including the risks from wastes, products, and other substances that may be found in the environment;

(3) identify, analyze, monitor, and report on existing and potential unreasonable risks to humans and the environment;

(4) assist State, regional, and local government agencies in protecting humans and the environment from unreasonable risks.

(b) In undertaking its mission the Department shall be guided by the goal of improving overall environmental quality as effectively and efficiently as possible.

(c) In undertaking its mission, the Department shall cooperate with other government agencies, other nations, international agencies, and the general public.

I make no claims that this language could not be improved upon. I cite it only as an illustration of what I think a mission statement could contain.

Integration

It is hard to find any field where laws and programs are as fragmented as they are in the environmental field. The main division is by environmental medium (air, land, water), but the laws and programs are further divided by type of substance (pesticides, radiation), by where people are exposed to the substance (occupational health and safety), by function (research, enforcement), by source (automobiles, power plants), by target (endangered species, farm workers), by type of service (community drinking water systems, transient drinking water systems, etc.), and in almost every other conceivable

way. No one can make any sense of it because it has grown incrementally and piecemeal, and there is no overall logic to the system.

This is not the place to go into detail about the harmful effects of fragmentation. Suffice it to say, that a system where there are many parts that are unrelated to each other is not a system that is likely to function well. It also is worth noting that most other industrialized countries have realized this and have taken steps to integrate their pollution control efforts. By the end of this decade, the United States will be one of the few countries (Canada and Australia being the only others) still regulating pollution on the basis of air, land, and water compartments.

I do not think that this committee should consider writing an integrated pollution control statute. However, the cabinet elevation bill would be an appropriate place to establish a commission to undertake a thorough review of the environmental statutes and make recommendations for change. Such a review is long overdue and badly needed. The commission could be in the form of a Congressional select committee, a combined legislative-executive commission, a blue-ribbon non-government committee under Congressional auspices, or some combination. I do not recommend giving the task to an existing outside organization – it needs fresher eyes and higher status than can be provided by an existing organization.

Better Science

Science in EPA has always been a controversial subject. In my view, this is in part because of an underlying trade-off between quality and relevance of scientific information. There is no question that NIH, NOAA, or almost any other agency devoted largely to scientific research will likely produce higher quality science than scientists

working for a regulatory agency like EPA. However, only a regulatory agency can tailor the science to what it needs for regulatory purposes. The organizational question, as I see it, is how far can one go in taking steps to improve EPA science while not losing the relevance of the scientific output.

I agree with the logic of establishing a Deputy Administrator (read Under Secretary) of Science for EPA. However, I think that this committee could go further by giving the new Under Secretary a larger nucleus of scientific manpower. In particular, I would suggest transferring some of the environmental research expertise in the DOE contract labs to EPA. I realize this may pose some jurisdictional problems in this body, but there may be ways to get around this.

The other problem that needs to be addressed in this context is how to relate the research done by the EPA program offices (air, water, etc.) with the research done by the agency's Office of Research and Development (ORD). This is a difficult problem but it needs to be faced. At the present time, the agency has no idea what its total research program looks like because ORD only represents a fraction of the total, perhaps less than half. The other half is distributed among the program offices. It is unclear whether there is a feasible statutory fix for this problem, but I urge the committee to think about it.

Better Data

No pollution control function is more important or more neglected than monitoring environmental conditions. Monitoring provides the reality check, the baseline upon which all EPA policies should be based. In reality, our monitoring data is very poor, and getting worse. I do not have any quantitative information, but having been

closely involved in this area for more than 30 years, I am fairly sure that we had better information on environmental conditions in 1970 than we do now.

The best fix for this problem is one first suggested a long time ago by Paul Portney, now President of Resources for the Future – create a Bureau of Environmental Statistics. When I was Assistant Administrator for Policy at EPA, I tried to lay the groundwork for such a Bureau. Language was included in the legislation at that time to elevate EPA to cabinet status. Nothing came of that effort, but I urge this committee to renew the effort. A Bureau of Environmental Statistics is needed, and it will not happen without legislation.

Let me offer several observations that may be useful to the committee in this context. First, the Office of Information, created by the last EPA administration, is not a substitute for a Bureau of Environmental Statistics. The Office is based on a confusion which has plagued the agency for a long time. The core of the Office is the group of people who were formerly in the Office of Administration and who dealt with information in the administrative sense. They deal with questions like computer compatibility, processing of personnel and financial records, and database management. They have very little relationship or understanding of the collection and dissemination of information on environmental conditions. However, the sharing of the label "information" with those who collect, analyze, and disseminate environmental data has led to a confusion which has now been given organizational reality.

Second, EPA is responsible for only a small part, probably les than 25%, of the data on environmental conditions, and even this small part is mostly collected by the states. NOAA, NASA, and USGS collect more environmental data than EPA. This

reality needs to be recognized in setting up a Bureau of Environmental Statistics, and it is one of the reasons that Congressional action is necessary for a satisfactory Bureau to be established.

Third, the events and circumstances that led to the defeat of the EPA cabinet legislation in the early 1990's were rather unique and probably not relevant to consideration of the present legislation. I mention this in the context of the Bureau of Environmental Statistics because it was primarily controversy over the Bureau proposal that led to defeat of the cabinet legislation. The controversy, however, was largely due to particular personalities and circumstances that prevailed then and that are not pertinent now. The integrated statute that I drafted contains language that I think would avoid the difficulties raised in the 1992 legislation.

Program Evaluation and Economic Analysis

One of the most significant changes that has taken place in environmental policy over the past three decades is the recognition by almost everyone that resources are limited, that priorities need to be established, and that not all environmental initiatives are workable or worthwhile. In short, environmental policies, like all policies, need to be subjected to evaluation and to analysis of their economic consequences.

EPA, in reaction to pressure from a hostile White House, very early in its history built one of the better economic analysis capabilities in the government. It also established a modest program evaluation capability. Ironically, as these functions have become more important and more accepted, EPA has eroded the organizational basis of these functions. I will not bore you with the details of this long decline, which happened under both Republicans and Democrats, but suffice it to say that the Browner

administration finally eliminated what had once been a very powerful office for program evaluation and economic analysis. The cabinet legislation provides an opportunity to restore these functions.

There are many ways that this could be done. Probably the simplest is to provide for an Assistant Secretary for Policy Analysis and Evaluation. Some of the functions of the office could be spelled-out, but they would not have to be. The question of a mission statement is relevant here. If the mission statement makes clear that efficiency and balance are part of the agency's mission, that will go a long way to establishing the importance of the evaluation and analysis functions.

Innovation

In recent years, EPA has initiated a multitude of experimental initiatives – XL, CSI, Green Lights, etc., etc. These efforts were prompted by the recognition that the existing statutory structure was outmoded and ineffective, combined with a reluctance to request statutory change from a Congress controlled by the opposite party.

Most of these initiatives have not been very successful. One reason is that they have lacked any statutory basis, and thus have had trouble gaining support in an agency whose agenda is driven by detailed statutory mandates. Legislation was proposed in the last Congress to remedy this (H.R. 3448, 106th Congress, 1st Session). This committee may want to consider adding language to the cabinet bill that encourages innovative programs and provides legislative support for experimentation.

International Role

In the coming years, more and more environmental problems are likely to be international in scope. If you consider the most recent major problems – climate change,

acid rain, and stratospheric ozone depletion – they are all intrinsically international problems. However, the international role of EPA has usually been neglected, and this has hurt both environmental policy and foreign policy.

The lead role in international negotiations belongs to the State Department. However, EPA has a critical role in providing technical expertise to the State Department, and it also has a large number of other important international functions. Those include meeting with international visitors, providing technical assistance to other countries, and sharing monitoring and other data with other nations and international organizations.

At present, there is no statutory recognition of EPA's international role, and this is an important reason why the agency has neglected international functions. Options that this committee might consider include a statement (either in the mission statement or separately) recognizing the international dimension of EPA's responsibilities and/or giving statutory recognition to the Office of International Activities.

* * *

The pollution control system is in trouble. A few years ago, Jan Mazurek and I did a comprehensive evaluation of pollution control policy in the United States. Our first conclusion was that, "the fragmented [pollution control] system is seriously broken. Its effectiveness in dealing with current problems is questionable, it is inefficient, and it is excessively intrusive." Our second conclusion was that only Congress could remedy these problems.

I realize that it is not the role of this committee to make substantive changes in the pollution control statutes, and it is important that the organizational structure of EPA not

be too far out-of-step with the agency's statutes. But the agency's organization provides opportunities to make progress in environmental policy. I hope that the suggestions I have made are useful to the committee in realizing these opportunities.

Mr. OTTER. Dr. Norwood.

Dr. NORWOOD. Thank you very much. I appreciate the opportunity to be here and to tell you a little bit about some of the work that the National Academy of Public Administration has been doing. My background is mainly in statistical policy, having been Commissioner of Labor Statistics for 13½ years, and I am now doing a great deal of work on promoting scientific development in a variety of areas, including the environment. I was a member of all three NAPA panels, which studies were completed in 1995, 1997 and then 2000. These three reports reviewed the entire operations, the internal structure and implementation strategies as well as the manner in which intergovernmental relations in EPA were handled.

A number of recommendations were made, and I'd be happy to discuss those with the committee at a later time. I was given three questions by the subcommittee staff, and I would like to focus my attention on those.

The first was: Can EPA improve its effectiveness? I believe that we found in the three academy reports that it would be wise for EPA to focus on a few of the most important basic problems, using its energy, resources and innovation to address the problems of smog, water pollution and greenhouse gases.

As Terry said, we believe very strongly that the Congress and EPA should work together to develop legislation to permit EPA to move across environmental media. The stovepipe kind of organization today and the way in which money and resources need to be spent is really counterproductive. We believe that EPA should have an effective system to collect objective and scientific data, and I will get back to that.

Does EPA need structural changes? The most important is in the statistical area. On the question of EPA elevation to status as a Cabinet agency, we really didn't consider that. But I can tell you my personal view, which is that elevation to Cabinet status would certainly increase EPA's importance in the public arena, and especially internationally, and provide its Administrator with a better chance of getting attention.

But I think it's important to point out that Cabinet status will not solve all of EPA's problems. We have to remember that there are a significant group of Cabinet agencies—State Department, Transportation, Energy, Agriculture, Labor and there are more—who are also involved in environmental issues. And the lines of jurisdiction among these agencies, and between them and the EPA, need clarification when Congress considers legislation on the status of EPA in our government.

I believe that EPA needs to be a scientific agency, and that to be successful, any scientific agency must have an adequate system of information that is objective. I would hope that any bill which creates Cabinet status for EPA would take account of the need for an independent Bureau of Statistics within EPA, which is headed by a Presidentially appointed professional with a fixed term of office. We have those models in other parts of the government and they have worked extremely.

There is no way that EPA will be able to go ahead with innovative programs, with changing the way it relates to States and local

areas and to business unless it has a system of scientific information that is objective and goes across all of its media, that can be used to evaluate the effectiveness of the work that is being done as further devolution occurs.

I'd be glad to answer any questions.

Mr. OTTER. Thank you very much.

[The prepared statement of Ms. Norwood follows:]

Statement of Dr. Janet L. Norwood

before the

Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs

Committee on Government Reform

U.S. House of Representatives

September 21, 2001

Mr. Chairman and Members of the Subcommittee:

I appreciate the opportunity to be here this morning to discuss with you the work of the National Academy of Public Administration (the Academy) on improving the management and performance of the U.S. Environmental Protection Agency (EPA). I have been a Fellow of the Academy for almost 20 years and was a member of all three Academy panels on EPA. Suellen Keiner, Director of the Academy's Center for the Economy and Environment, is here with me today.

My own career has involved many years in federal executive branch management. I am an economist, and I served three 4-year terms from 1979 to 1991 as Commissioner of Labor Statistics in the U.S. Department of Labor. In 1992, I left government to work on data policy and organization issues as a Senior Fellow at the Urban Institute. Currently, in addition to serving on the Boards of several companies and non-profit organizations and other activities, I spend part of my time as Counselor and Senior Fellow at the New York Conference Board.

NAPA Studies on EPA

Today, I would like to discuss with this Subcommittee the Academy's recommendations for addressing issues at EPA. This discussion is based on three Academy reports that were requested by Congress and published in 1995, 1997, and 2000.

In 1995, the Academy published *Setting Priorities, Getting Results: A New Direction for EPA*, which focused on EPA's organization and management and its relations with states and local governments. That report analyzed the problems caused by EPA's statutes that limit agency authority to specific environmental media (for example, air and water), as well as the related "stove-pipes" in its management structure. The panel suggested that EPA take steps to integrate planning and budgeting so the agency could be more effective in setting and managing priorities. We also recommended that Congress and EPA work toward adoption of an "integrating statute" to encourage cross-media planning and program implementation.

Two years later, the Academy published its review of EPA's progress in addressing these problems in *Resolving the Paradox of Environmental Protection: An Agenda for Congress, EPA and the States*. Our second report concluded that EPA's progress in merging planning and budgeting had been slow and that the agency lacked the institutional arrangements needed to collect reliable and objective data that are consistent across all of its programs. The Academy urged EPA to adopt performance-based approaches to its own work and its oversight of delegated state programs. In addition, the report pointed out the need for EPA to develop a strong evaluation and accountability system, to determine the effectiveness of innovations for addressing environmental

issues, and to encourage cost-effective methods for environmental improvements by firms, states, and local governments.

The Academy's most recent report *Environment.gov: Transforming Environmental Protection for the 21st Century* was published late last year. This report responded to Congress' request that we evaluate EPA's recent programs for encouraging innovation. This Academy panel recommended that EPA focus its attention especially on three important problems: reducing nutrients in watersheds, controlling the many sources of ground-level ozone and smog, and clarifying the choices the nation must make to bring about a reduction in carbon dioxide and other greenhouse gases. For this report, the Academy commissioned studies by 16 research teams to evaluate a number of program innovations undertaken by EPA.

Based on these studies and research by the Academy's staff, the Panel concluded that EPA has a critical need for organizational and scientific resources to accomplish several key tasks:

- Develop a national information system to collect high quality data for evaluating its programs,
- Develop better methods for holding states, localities, and businesses accountable for results, and
- Adopt more effective management tools to achieve environmental goals.

The Academy also recommended that Congress take steps to increase EPA's flexibility for experimenting with new techniques for preventing or controlling pollution

and suggested ways in which business, foundations, industry and citizen groups could embrace more efficient policies for environmental protection.

The above discussion is, of course, only a very brief overview of the Academy studies, but the Academy's staff -- as well as those of us who served on the panels for the Academy studies -- would be happy to provide further briefings on our research to the Committee or its staff at your convenience.

Answers to the Subcommittee's Questions

Because the time of the Subcommittee is limited, let me now turn to the specific questions that I understand the Subcommittee is especially interested in having answered. I shall take each of these in turn.

1. Can EPA improve its effectiveness in addressing environmental problems?

First, the Academy recommends that, to improve its effectiveness, EPA should focus its attention on three of the most significant -- and difficult -- problems that create a high risk to our environment. We urge EPA to make a national commitment of its energy, resources, and innovations to address the problems of smog, non-point water pollution, and greenhouse gases. We also urge EPA to work with Congress to secure the authority and the funding that will be required to identify the options for solving these problems, to develop innovative approaches, and to make them work.

Second, we recommend that EPA develop better methods for measuring environmental conditions so it can monitor progress and evaluate the success or failure of its program innovations. It is important for EPA to maintain a strong enforcement

program, both as a back-up and a supplement to the states' programs. At the same time, EPA should reduce its command-and-control regulatory system by working cooperatively with all of the players in the system. We must recognize, however, that involving them all more fully requires that EPA – and the country – have an effective system to collect objective, scientific data of high quality, to hold all of these players accountable, to evaluate the effectiveness of EPA and state programs, and to ensure that the environment is protected and improved.

Third, we recommend that EPA increase its use of local collaborative processes, disclosure of information, and market tools such as emissions trading. These and other more flexible approaches can create incentives for states and companies to find cost-effective ways for reducing environmental hazards and for solving problems in a multi-media fashion.

2. Does EPA need structural changes to produce such improvements?

The Academy recommends that Congress create an independent, well-funded Bureau of Environmental Information at a high level within EPA. EPA must have objective and accurate data of high quality that are consistent across geographical units and across its environmental media offices. This information is essential for EPA to evaluate the progress of its programs, determine whether experimental programs have been successful, and hold private companies and individual state agencies accountable.

In addition, all three studies found that a lack of coherent, multi-media authority has seriously hampered EPA's effectiveness. The Academy recommends that Congress should authorize -- and EPA should implement -- a reorganization of its internal structure

to end the current fragmentation among separate media offices. By adopting an integrated, multi-media pollution-control statute that can serve as EPA's organic act, Congress can create a statutory mission for the agency so it can work more efficiently than the single-medium laws now allow. This statute should then serve as the framework for organizing and harmonizing the agency's work

In addition, the Academy's reports found that the organizational structure of EPA needs some revamping. This is particularly true for the role of EPA's regional offices, where the cross-media work and evaluation of the delegated state programs is especially important. As a result, we further recommend that EPA clarify its decision-making authority for resolving disagreements among its program or regional offices.

3. Should EPA be elevated to the status of a Cabinet agency in order to accomplish its goals in a more effective manner?

The Academy panels did not consider this issue, and I, therefore, cannot attribute any view on this issue to them. Nevertheless, I think it is important to point out that the Academy's studies recommend a number of changes that could enhance EPA's ability to operate more effectively, whether or not it achieves Cabinet status. Without implementation of the most important of these changes, it is hard to imagine that elevation to Cabinet level would make EPA more successful than it now is.

My personal view is that elevation to Cabinet status could increase EPA's importance and provide its Administrator with a better chance of getting Presidential attention. Both are useful to an agency. But Cabinet status will not solve all of EPA's problems. We must remember, when considering the pros and cons of Cabinet status for EPA, that a

significant group of Cabinet agencies – for example, State, Transportation, Energy, Agriculture, and Labor – also are involved in environmental issues. The lines of jurisdiction among these agencies and between them and the EPA need clarification when Congress considers legislation on the status of EPA within our government.

As the Academy's recommendations demonstrate, EPA needs the support of the Congress to make many of the changes we have recommended. Whether or not Congress decides to elevate EPA to cabinet status, EPA needs your help in several ways. By promoting innovation, improving the ability to monitor the impacts of new regulatory tools, and harnessing the power of scientific data and research, Congress can strengthen EPA's accountability to the public and increase the capacity of regulated facilities and environmental agencies at all levels for protecting the public health and the environment.

Mr. Chairman, this concludes my statement. I would be glad to answer any questions you may have.

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Mr. OTTER. Dr. Hahn.

Dr. HAHN. Thank you very much, Mr. Chairman. I didn't get three questions to answer and I was instructed to think outside the box a little, so I will try to do this. First I want to say that the formal remarks I would like to submit for the record were coauthored with my colleague, Randall Lutter, at the AEI-Brookings Joint Center.

Mr. OTTER. Without objection.

Dr. HAHN. Since we are short on time, let me make two key points, and then focus on my recommendations. The first point is that EPA should not be elevated to Cabinet status without very serious thought. Once an agency is granted Cabinet status, it is very unlikely in our lifetime to lose that status.

The second point is that we ought to address several defects in both Federal environmental policy and the policy process. EPA, as you probably know, accounts for the lion's share of environmental, health, and safety regulations. We can estimate that in several ways, but it is on the order of three-quarters.

One of the fundamental problems of any mission-oriented agency—and this was pointed out by Justice Stephen Breyer in a very good book called Breaking the Vicious Circle—is that it tends to have tunnel vision. Bureaucrats tend to focus on their particular problem. We as economists think that environmental policy is a very important problem, but we ought to think very carefully about weighing the benefits and costs of any individual policy before we move forward. After all, at the end of the day, EPA is primarily in the business of making regulations.

Some studies at the Joint Center suggest that EPA does not always carefully examine the benefits and costs of its policies. Using the government's numbers, quantifiable benefits fall short of quantifiable costs in almost half of the regulations we examined over about a 15-year period.

Let me turn briefly to our recommendations. We ought to think carefully about requiring the Administrator to weigh benefits and costs or at least, not precluding the Administrator or the Cabinet Secretary from considering benefits and costs. Many of our current laws preclude that, as Dr. Davies and several others have noted.

We think that Congress should require that regulatory impact analyses, and other supporting documents are available on the Internet prior to the regulatory review process. That's It's a matter of promoting transparency.

We believe each of these regulatory impact analyses should include a good executive summary, which should be standardized and include things that you normally would think would be included in an executive summary, but frequently aren't in these analyses; things like information on cost, benefits and whether the best estimate of quantifiable benefits exceeds costs.

We also believe that Congress should set up a separate Office of Policy Analysis, much in the spirit of some of the same suggestions that Dr. Davies and Dr. Norwood made about science, that is responsible for doing all policy analyses. You might be surprised to know that most of the policy analyses are now overseen by divisions or departments within EPA, like Air and Water, that have an

interest in promoting regulation in that area. We think that a separate office would help minimize conflict of interest.

We also think that Congress should require EPA to adhere to standard principles of economic analysis such as the OMB economic guidelines, and we have strong evidence that they don't.

One or two more and I'll stop. We think the Congress should shift control of scientific peer review of key EPA studies away from the Agency, again because of the problem of tunnel vision, to a different governmental body such as the NAS or perhaps an independent group within the Agency, if, in fact, it can be independent.

And, finally, as part of the decision to elevate EPA to Cabinet status, we think you should consider seriously funding the independent regulatory oversight body within GAO that you authorized under the Truth in Regulating Act.

In conclusion, we believe the decision to elevate EPA to Cabinet status is a very important one. We think it should be accompanied by careful consideration of ways in which you can improve both environmental policy and make the process of environmental policy more transparent.

Mr. OTTER. Thank you, Dr. Hahn.

[The prepared statement of Dr. Hahn follows:]

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Elevating EPA to Cabinet Status

Testimony before the
House Committee on Government Reform
Subcommittee on Energy Policy, Natural Resources, and Regulatory Affairs

Robert W. Hahn and Randall Lutter

Testimony

September 21, 2001

Mr. Hahn is Director of the AEI-Brookings Joint Center for Regulatory Studies and Mr. Lutter is a Fellow at the Joint Center. A copy of this testimony can be obtained from the Joint Center's web site: www.aei.brookings.org. The authors would like to thank Erin Layburn and Elisabeth League for research support. The views expressed here represent those of the authors and do not necessarily reflect those of the institutions with which they are affiliated.

Executive Summary

The decision to elevate EPA to Cabinet status is an important one. We think it should be accompanied by careful consideration of ways in which environmental policy could be improved, and regulators and lawmakers can be held more accountable.

As part of a bill to elevate EPA to Cabinet status, we recommend Congress have EPA:

- make regulatory information readily available on the Internet in a timely manner;
- write a clear regulatory impact summary for important regulations;
- create a policy office that would do all policy analyses of significant regulations;
- follow established principles of economic analysis when doing regulatory analyses.

In addition, we recommend that Congress shift scientific peer review of key studies to an independent body, such as the National Academy of Sciences. Finally, we recommend that Congress fund the independent regulatory oversight body that was created by the Truth In Regulating Act of 2000.

Elevating EPA to Cabinet Status

Robert W. Hahn and Randall Lutter

1. Introduction

We are pleased to appear before this subcommittee to provide our views on elevating the U.S. Environmental Protection Agency (EPA) to Cabinet status. We have studied and written about regulatory institutions and improving environmental policy for over two decades. Three years ago, we helped launch a cooperative effort between the American Enterprise Institute and the Brookings Institution to study regulation. The result was the AEI-Brookings Joint Center for Regulatory Studies.[1]

A primary objective of the center is to hold lawmakers and regulators more accountable by providing thoughtful, objective analysis of existing regulatory programs and new regulatory proposals. The Joint Center has been in the forefront of outlining principles for improving environmental and safety regulation, enhancing economic welfare, and promoting regulatory accountability.[2]

You have expressed interest in our views on the elevation of EPA to Cabinet status. We have reviewed a number of proposals currently under consideration. These include H.R. 64, H.R. 2438, and H.R. 2694.[3] Rather than comment on each proposal, we wish to make some observations about U.S. environmental regulation and the quality of regulatory analyses done by the government in support of regulation. Then, we offer several recommendations for improving federal environmental regulation that should be implemented if EPA is elevated to Cabinet status.

2. Some Observations about EPA's Business and the Business of Regulation

EPA is primarily in the business of regulating firms and consumers by limiting their pollution to help protect the environment. It does so pursuant to a number of laws that cover areas such as toxic substances, hazardous waste, clean air, clean water, and safe drinking water. EPA is the largest "producer" of environment, health, and safety regulations in the federal government. According to the federal Office of Management and Budget, the annual cost of federal regulations attributable to EPA between 1995 and 1999 was about $28 billion, relative to an annual cost of $31 billion to $32 billion for all federal regulations issued during that period.[4]

Several scholars have written about reforming environmental regulation. Supreme Court Justice Stephen Breyer, a distinguished scholar, wrote a wonderful book in which he outlined some of the key problems with environmental, health and safety regulation

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[1] All publications of the Joint Center can be found at www.aei.brookings.org.

[2] See Arrow et al. (1996), Crandall et al. (1997), Hahn and Litan (1997), and Arrow et al. (2000).

[3] *Department of Environmental Protection Act,* 107th Cong., 1st Sess., H.R. 2438; *Department of Environmental Protection Act,* 107th Cong., 1st Sess., H.R. 64; *Department of Environmental Protection Act,* 107th Cong., 1st Sess., H.R. 2694.

[4] See Office of Management and Budget (2000).

and also recommended solutions.[5] One of the problems that Justice Breyer described concerning agencies that formulate policy in specific areas, such as EPA, is a tendency toward "tunnel vision".[6] That is, they focus on their area almost exclusively, without giving adequate weight to other concerns. They maintain this focus even when a remedy for the last five percent of the problem entails costs all out of proportion with the associated benefits. In the case of the environment, EPA often develops regulations that are well-intended without considering adverse economy-wide impacts.

Economists have been studying EPA for almost as long as EPA has been in business. We, and most economists, have at least four basic concerns with the way EPA develops regulations and policies. First, economic analysis used to justify significant regulations is not typically transparent.[7] Second, the quality of analysis varies widely, and in some cases, is quite poor.[8] Third, the process frequently does not result in regulations where the quantified benefits exceed the quantified costs.[9] Fourth, the process frequently results in a poor allocation of resources.[10] In particular, there are frequently alternatives that could achieve better environmental outcomes and/or save more lives without raising costs.[11]

3. Recommendations

Our recommendations attempt to address some of the concerns with current approaches to environmental, health, and safety regulation raised by Justice Breyer and others.[12]

Our primary objectives are to:

1. encourage the development of better policy analysis for major regulations;
2. make this analysis readily transparent; and
3. increase the chances that the head of EPA will actually use this policy analysis to reach informed decisions that better allocate scarce resources.

We, and many other economists, recommend that Congress amend environmental statutes to direct EPA to manage environmental hazards in a manner that yields the greatest possible net benefits to society. At a minimum, the head of EPA should not be precluded from considering all relevant information on both benefits and costs in decision making. This recommendation is so important that we separate it from the more straightforward recommendations that we detail below. We recognize, however, that it

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[5] Breyer (1993).

[6] Id at p. 11.

[7] For example, summaries of some analyses are not very useful. The link between analysis and policy conclusions is often not very clear.

[8] See Hahn, at al (2000). For more detailed assessments of specific economic analyses, see Lutter (1999b) and Lutter (2001).

[9] See Hahn (2000).

[10] Indeed some regulations appear to be so costly relative to the associated improvements in health that they worsen public health and result in a net *loss of life* by discouraging private investments in health. See Hahn, Lutter and Viscusi, (2000).

[11] See, for example, Morrall (1986), Stavins (1988), and Tengs et al. (1995). Tengs and Graham (1996) have estimated that reallocating social investments toward saving lives could avoid 60,000 deaths per year without an increase in the compliance costs.

[12] See, for example, Portney (1988).

may not be politically feasible to include in current bills.

We offer the following six recommendations for inclusion in a bill that would elevate EPA to Cabinet status.

Recommendation 1: Congress should require that EPA make each regulatory impact analysis and its supporting documents available on the Internet before a draft proposed or final regulation can be considered in the regulatory review process.

Discussion: If the economic analysis supporting a regulation is expected to inform the decision process, the analysis must precede the decisions themselves. Making such analyses widely available is an important first step in holding lawmakers and regulators accountable for proposed and final regulations. Requiring that an analysis and its supporting documents be made available on the Internet before the regulatory review process begins would permit the public and Congress to verify that decisions do not determine analytic conclusions.

Recommendation 2: Each regulatory impact analysis from EPA should include an executive summary with a standardized regulatory impact summary table that contains information on costs, benefits, technical information, and whether the best estimate of quantifiable benefits associated with the regulation is likely to outweigh the best estimate of associated costs.

Discussion: The executive summary, regulatory impact summary table, and the requirement of standardization itself would all promote greater regulatory accountability. The standardization and summary will make it easier for the public, interest groups, and academics to obtain information on the government's understanding of the benefits and costs of regulation. We present an example of a regulatory impact summary table in Table 1.

Recommendation 3: Congress should create a separate Office of Policy Analysis within EPA and charge that office with doing all policy analyses of significant regulations.[13]

Discussion: Currently, EPA program offices charged with administering particular programs conduct most of the economic analysis supporting new regulations. These offices have a conflict of interest. The air office, for example, would have a natural incentive to support air regulations—the problem is one of "tunnel vision," as Justice Breyer noted. Rather than allowing program offices to prepare economic analysis of proposed regulations, EPA should have a separate policy office charged with providing independent, high-quality analysis for the Administrator of EPA. Program offices should not be in the business of doing policy analysis because of the intrinsic conflict of interest.

[13] President Clinton's Executive Order 12866 defines as "significant" any regulation likely to result in a rule that will either annually affect the U.S. economy by $100,000 or adversely and materially affect the U.S. economy, productivity, environment, or public health, or any entity of the non-federal government. Clinton (1993), Section 3(f)(1).

Recommendation 4: Congress should require that EPA adhere to established principles of economic analysis when undertaking a regulatory impact analysis.

Discussion: OMB has developed guidelines for doing good economic analysis of regulations.[14] It is clear from a careful review of EPA's economic analysis that it is not taking these guidelines seriously.[15] To add political weight to those guidelines, Congress should consider adopting the kinds of principles contained in the guidelines. It should also consider requiring that an agency, such as OMB, enforce them. It, too, could help to enforce those guidelines by holding hearings.

How far should Congress go in providing methods for enforcement? One approach that deserves consideration is to allow agencies to move forward on regulations only after an oversight agency, such as OMB, determines that the guidelines are met.

Recommendation 5: Congress should shift control of scientific peer-review of key EPA studies away from the agency and to a different government body, such as the National Academy of Science.

Discussion: EPA's peer review process lacks independence. The Administrator makes appointments to the expert scientific committees. Many of the experts are heavily dependent on EPA funding. The committees often focus only on the questions brought to them by agency staff, and not on broader more important questions on the same topic. Independent analysts have given essentially no credibility to at least one study reviewed by the EPA's Science Advisory Board.[16] Assigning responsibility for committee appointments and staffing to an agency independent of EPA would make it easier for the committees to be candid in their assessments of EPA regulations and research.

Recommendation 6: As part of a decision to elevate EPA to Cabinet status, Congress should fund the regulatory analysis work at the General Accounting Office that was created by the Truth In Regulating Act.

Discussion: The 2000 Truth in Regulating Act (TIRA) established a pilot project at the General Accounting Office to promote review of agency regulations and their supporting analyses.[17] This is a potentially valuable project because it would establish the first federal regulatory oversight office that is outside the Executive branch. Yet the viability of this project is in doubt because Congress has not yet delivered the $5 million in annual funding authorized by the Act.

We believe it is a good idea for a separate agency outside of the executive branch to provide an independent assessment of existing and proposed federal rules. An independent review by such an agency could check EPA analysis and verify that it is both

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[14] See Daniels (2001), Lew (2000), and Economic Analysis of Federal Regulations Under Executive Order 12866 ("Best Practices Guidances"), (January 11, 1996).

[15] See Hahn et al., (2000), supra note 8. For more detailed assessments of individual EPA analyses, see Lutter (2000) and Lutter (1999b).

[16] See Lutter and Belzer (2000).

[17] See Cavanagh et al, (2001), at p. 17.

replicable, and meets the highest analytical standards.[18] In addition, Congress could use information generated by such an agency to improve regulation and the regulatory process. Since EPA accounts for a large portion of those rules in the current review process, it would be a good idea to provide funding for TIRA when elevating EPA to Cabinet status.

Conclusion

The decision to elevate EPA to Cabinet status is an important one. We think it should be accompanied by careful consideration of ways in which both environmental policy could be improved, and regulators and lawmakers can be held more accountable.

[18] See Lutter (1999a).

Table 1

Regulatory Impact Summary	
I. BACKGROUND ON RULE AND AGENCY	
AGENCY AND DEPARTMENT/OFFICE NAME	
CONTACT PERSON	TELEPHONE NUMBER
TITLE OF THE RULE	
RIN NUMBER	DOCKET NUMBER
TYPE OF RULEMAKING (FINAL/INTERIM/PROPOSED/NOTICE)	TYPE OF RULE (REGULATORY/BUDGET IMPACT)
STATUTORY AUTHORITY FOR THE RULE	RULEMAKING IMPETUS
BRIEF DESCRIPTION OF THE RULE	
II. OVERALL IMPACT	
1. Will the rule have an impact on the economy of $100 million or more?	☐ Yes ☐ No
2. Best estimate of the present value of quantifiable benefits of the rule.	$_____
3. Best estimate of the present value of quantifiable costs of the rule.[19]	$_____
4. Do the quantifiable benefits outweigh the quantifiable costs?	☐ Yes ☐ No
5. Report the dollar year of costs and benefits. _____	
6. Report the discount rate used in the calculations for costs and benefits. _____ If more than one discount rate was used in calculations, please explain why. _____	
7. Discuss level of confidence in the benefit-cost estimates and key uncertainties. Include a range for costs and benefits. _____	
8. Identify benefits or costs that were not quantified. _____	

[19] Costs are defined as costs minus cost savings.

III. COSTS AND BENEFITS

Estimated Incremental Costs

1. Costs and breakdown of quantifiable costs by type.

	Annual	Years in Which Costs Occur	Present Value
Total Costs	_____	_____	_____
Compliance Costs	_____	_____	_____
Administrative Costs	_____	_____	_____
Federal Budget Costs	_____	_____	_____
Local/State Budget Costs	_____	_____	_____
Other Costs	_____	_____	_____

Notes: _____

2. Give a brief description of who will bear the costs. _____

Estimated Incremental Benefits

1. Benefits and breakdown of quantifiable benefits by type.

	Annual	Years in Which Benefits Occur	Present Value
Total Benefits	_____	_____	_____
Health Benefits	_____	_____	_____
Pollution Benefits	_____	_____	_____
Other Benefits	_____	_____	_____

Notes: _____

2. Give a brief description of who will benefit. _____

IV. ALTERNATIVES TO THE REGULATION

1. List and briefly describe the alternatives to the rule that were considered and why they were rejected, including a summary of costs and benefits of those alternatives. If no alternatives were considered, explain why not.

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Mr. OTTER. Dr. Mazurek.

Ms. MAZUREK. I'm the only non-doctor on the panel. Thank you for giving me an opportunity to speak on a subject that has been close to my heart since I staffed the first NAPA panel on EPA in 1994. My main message today is twofold. The Progressive Policy Institute strongly supports the elevation of EPA to Cabinet level status. But our view is that elevation alone is insufficient to reorient the Agency toward what we think are important new environmental challenges of the 21st century. And some Members of Congress have already designed a blueprint to do just that.

In November 1999, Representatives Dooley, Tauscher, Boehlert and Greenwood introduced an early work in progress version of what is referred to as the second generation Environmental Improvement Act, H.R. 3448. We use the term "second generation" to distinguish this approach from the landmark laws and regulations that were expanded by Congress in the sixties and seventies.

Unlike first generation approaches, second generation measures place a premium on measuring success by changes in real environmental conditions, and they also stress improved environmental accountability, more public participation and systemwide change.

I would urge the committee to at least consider the principles contained in 3448 as Cabinet elevation efforts move forward. And let me tell you why. We think that EPA has done a commendable job addressing some of the problems first generation laws were designed to address: smoke from smokestacks, effluent from wastewater treatment facilities.

But we are now faced with a new set of environmental challenges that are very, very different from those first recognized in the sixties and seventies. Whereas the first generation of environmental problems came from highly visible, easy to pinpoint sources, some of today's problems are largely invisible, at least here on the ground, such as global warming. Others come from small, diffused, hard-to-pinpoint sources that are difficult to identify, track, and regulate: homes, cars, dry cleaners, farm fields, and parking lots.

To meet these new and emerging challenges to human health and the environment in a manner that's effective and efficient, EPA must be provided with what we are referring to as a legal space to design, implement, and evaluate innovative environmental management practices. And the second generation bill, at least in its discussion draft form, I think lays out kind of a road map to do just that.

It does so in two ways. First, it's designed to develop more timely, accurate, and more precise information on environmental conditions and environmental performance by industries and other regulated sources. As Terry and I found in our book, monitoring networks and data methods are woefully inadequate in this country, not only to tell us about current environmental conditions, but future environmental challenges. The Agency under the Clinton Administration made some important strides in at least beginning to improve how it manages information. And we believe that Representative Horn's bill contains measures that would take those gains even further.

But the second generation bill would provide incentives to industries and States not only to modernize how they report information,

but also how they monitor and measure environmental performance. Once EPA has better information systems in place to identify new threats, it needs the legal means to test out new ways to address them while upholding the strong environmental standards that were put into place by first generation laws.

The second generation bill would provide regulators with the ability to pursue a broad array of experiments without having to perform Houdini-like contortions on existing rules, as Project XL demonstrated under the previous administration. So, greenhouse gases, intersection of land use, and water quality are just a few examples of what a second generation approach might address.

And to summarize, we think that a Cabinet elevation law that considers second generation principles would let government and business systematically find out what incentives for better environmental performance actually work, before enshrining them in difficult-to-change first generation laws. Thanks.

[The prepared statement of Ms. Mazurek follows:]

Testimony on EPA Cabinet Elevation
Janice Mazurek, Director, Center for Innovation and the Environment, Progressive Policy Institute
Delivered to the U.S. House of Representatives Committee on Government Reform
September 21, 2001

My name is Jan Mazurek. I direct the environmental policy project of the Progressive Policy Institute in Washington, DC. Thank you for the opportunity to speak today.

The Progressive Policy Institute, known as PPI, is a think tank founded more than a decade ago. Over the last 6 years, PPI has promoted performance-based, market-oriented, and community-friendly strategies to help solve today's environmental problems and sustain improvements into the future that the American people demand. We call these "second generation" environmental and natural resources policies to distinguish them from the first generation of landmark environmental laws and regulations set in place in the 1970s and 1980s.

In that context, my main message today is two fold: we strongly support elevation of EPA to Cabinet status as provided for in HR 2438, introduced by Representative Sherwood Boehlert (R-NY) and HR 2694, introduced by Representative Steve Horn (R-CA). But our view is that elevation alone is insufficient to reorient the agency towards the important new challenges of the 21st century. To do so, we must strengthen the agency's ability to identify and to address new problems.

Some members of Congress already have designed a blueprint to do just that. In November 1999, Reps. Cal Dooley (D-Calif.), Ellen Tauscher (D-Calif.), Sherwood Boehlert (R-N.Y.), and James Greenwood (R-Pa.) introduced an early "work in progress" version of the Second Generation of Environmental Improvement Act (H.R. 3448). The Second Generation bill measures success above all by environmental improvement, but also places a premium on improved accountability, public participation, and system-wide change. The Committee should consider incorporating an updated version of the Second Generation proposal into a Cabinet elevation bill.

Second Generation Environmental Policies

Second generation policies may sound like apple pie, but these qualities -- performance-based, market-oriented, and community-friendly -- do not in fact describe the bulk of our first generation laws, regulations, and EPA programs. EPA has done a commendable job in making progress the environmental problems that first generation laws were designed to solve. But now, we are faced with a new set of environmental challenges, different from those we first recognized in the 1970s:

- Two-fifths of smog-causing nitrogen oxides come from factories and power plants. The rest comes from cars, trucks, railroads, airplanes, and other miscellaneous non-industrial sources whose actual emissions are difficult to control under Clean Air Act rules.
- Run-off from agriculture lands and suburban development -- not included in the Clean Water Act permitting program -- is now the most extensive source of water pollution, affecting 70 percent of rivers and streams failing to meet water quality standards.
- More than two-thirds of greenhouse gas emissions -- totally unregulated under the Clean Air Act -- come from electricity consumed to heat, cool, and light homes and buildings, and from fossil fuels for transportation; industry energy use accounts for the remaining third.

- More than two-thirds of threatened and endangered species reside on private lands where the Endangered Species Act is least effective.

Provide EPA Tools to Enhance Environmental Performance

Elevating EPA to Cabinet status sends a strong signal that the United States takes these and other emerging new environmental problems seriously. Given the growing scientific complexity of identifying and solving new problems, PPI also supports efforts to strengthen science at EPA, as provided for in HR 64, by Representatives Vernon Ehlers (R-Mich.) and James Barcia (D-Mich.). But as these new environmental problems illustrate, EPA also requires new management tools to tackle them.

The politics of each of these new environmental problem areas is complex, with broader economic interests in play than just big industry. States and local governments are key players in land use decisions that run through each of these controversies. No single, federally imposed strategy can carry the day.

Even for the challenges that the first generation laws were designed to address -- cleaning up industrial pollution after it has been produced -- acrimonious disputes about benefits and costs continue to slow progress. Indeed, much of our political energy on the environment is now dissipated in arguments about further reducing industrial pollution by government-prescribed means.

First generation laws have been rewritten and updated about as far as they can go; little gain is possible now by major rewrites. Progress can be made only in small increments until a broader public consensus is reached on new ways to tackle the big problems. Systematically testing new ideas and evaluating them with performance measures is a constructive way to break through the political gridlock. What makes a second generation approach different is that it would focus federal action on understanding problems, setting enforceable goals, providing technical assistance, measuring results, and enforcing legal commitments -- while leaving the selection of means to others.

The Clinton Administration made some notable progress in this direction, but lacking specific legislation, its many "reinvention" initiatives were necessarily modest in design and constrained by the administration's own rules and bureaucratic culture. Specifically, the Environmental Protection Agency's (EPA) Project XL (for excellence and leadership) demonstrated the pitfalls of trying new approaches without specific congressional approval of the right legal tools. Legal tools could, for example, include emissions trading, new approaches to polluted runoff in watersheds, and "whole facility" agreements instead of individual source permits. EPA needs a legal basis for continued experimentation and innovation in environmental protection, consistent with a key recommendation of a November 2000 report by the National Academy of Public Administration.

To meet these new environmental challenges in a manner that is effective and efficient, EPA must be provided with the "legal space" to design, implement, and evaluate innovative environmental management practices. The Second Generation of Environmental Improvement Act does just that.

We must recognize that the rules and tools established by first generation laws are insufficient to meet today's environmental challenges. Nor will throwing money at these problems yield

sustainable results; it could in fact distort markets for energy efficient and cleaner technologies. We need to add the policy equivalent of new hardware and software compatible with the dynamics of the new economy. Here are two examples of how the H.R. 3448's provisions would help EPA to better do its job:

Strengthen Monitoring and Information Technologies

Better public information about environmental conditions and environmental performance by industry and others will drive innovation and improve accountability. EPA cannot manage what it doesn't measure. Instead of measuring success by compliance with prescribed technologies, we should be focusing on environmental results and make responsible behavior pay off. HR 2694 contains a number of provisions to improve how EPA manages and communicates information, environmental statistics, and public access to such information. In this regard, the bill is compatible with information provisions contained in the Second Generation of Environmental Improvement Act. Whereas Representative Horn's bill focuses on ways in which to improve how the agency manages information, the Second Generation bill contains incentives both to modernize how industry and states report environmental information but also how they monitor and measure environmental performance.

Our monitoring networks and data are too sparse and inadequate to support performance-based approaches. Timely, focused, and comprehensible performance measures could keep the public's sights set on environmental results, and open the door to more flexible, market-based means to meet or exceed national environmental standards. With a substantial upgrade in public investment -- even a doubling over the current level of about $500 million annually -- this information could prove valuable to regulators, citizens, as well as investors, insurers, and bankers who are in the business of assessing company or public sector management. The Toxics Release Inventory has already shown the power of credible public information disclosure.

Promote Innovative Strategies

Once EPA has better information systems to identify new environmental challenges, it needs the legal means to test out new ways to address them – while keeping in place the strong environmental standards put in place by first generation laws. The provisions contained within the Second Generation of Environmental Improvement Act would provide regulators with the ability to pursue a broad array of experiments in environmental problem solving without having to perform Houdini-like contortions on existing rules. They could try better and bolder experiments, evaluate their results, and take the next step of moving successful experiments into the mainstream of common practice. Here are just a few examples of the kinds of experiments that could be tried.

1) Pollution prevention and product stewardship. Pollution prevention, like disease prevention, often takes a back seat to treatment after pollution (or disease) has occurred. Recently, the EPA, Minnesota, and U.S. Filter Recovery Systems (a maker of industrial wastewater filters) reached agreement to waive an existing EPA rule that classifies used water filters as hazardous waste subject to specific disposal procedures. Instead, the water filter manufacturer will collect the used filters from its customers and recycle the materials, thus avoiding much higher volumes of waste disposal.

Existing rules do not necessarily block pollution prevention or product stewardship, but they rarely encourage it, and sometimes make it more difficult, as in the case of the filter-recycling project. An important voluntary experiment completed in 1999 by Dow Chemical and the Natural

Resources Defense Council also demonstrates this point. According to the participants, "the project found opportunities to reduce nearly 7 million pounds of wastes and emissions at the Dow Chemical manufacturing site in Midland, Michigan, while saving the company over $5 million dollars annually.... Perhaps more incredibly, by the reckoning of Dow managers, the reductions and cost savings ... would not have occurred without the unique involvement of a group of outside environmental activists." In other words, the current legal system did not expect Dow -- now one of the nation's most environmentally advanced companies -- to seek out these improvements.

Second generation legislation, by contrast, recognizes that the next wave of progress in reducing industrial pollution will likely come from sector-specific strategies that set clear environmental targets. Achieving these goals will rely more heavily on market-based incentives to reduce pollution, leaving technology choices to the private sector. Getting there must involve the entire industrial chain of manufacturers, suppliers, and customers. To work, it should reward pollution prevention, process innovation, and product redesign.

2) Performance incentives. A Cabinet elevation law that incorporates second-generation principles would let government and business systematically find out what incentives for better environmental performance actually work before enshrining them in difficult-to-change laws and rules. Some limited experiments are now under way. For example, New Jersey has been experimenting with a single permit for high-performing firms to replace the myriad individual permits for air, water, and waste discharges required under existing law. This "bubble" approach allows firms to comprehensively manage the sum of their emissions and discharges from their entire operation. When combined with a "lifetime" permit -- in place of the standard five-year renewal process -- this approach can allow firms to more efficiently manage their production processes while staying below overall emissions limits. If a firm increased production over time, it would be required to reduce emissions per unit of product to stay within its limits. The incentive is thus to invest in pollution prevention and new equipment, rather than to minimally comply with piecemeal regulatory prescriptions on individual pipes and smokestacks.

Similarly, Wisconsin, Massachusetts, Minnesota, and the EPA are in various stages of testing special incentives programs for high performing companies that do more than the bare minimum to comply with the law. One of the biggest impediments to all of these experiments, however, is the lack of specific direction from Congress to offer positive incentives -- like lifetime permits, more flexibility, less paperwork -- instead of the now-standard fare of gold plaques and cheerful press releases. Second generation legislation could put some valuable economic incentives into play.

3) Smog, energy use, and transportation. Nowhere is the clash between environmental law, energy use, and transportation greater than in the challenge most states and regions now face to reduce smog. PPI long has advocated the use of market-oriented approaches to reducing smog called emissions trading. First, regional and national limits would be set on smog-causing nitrogen oxides as well as greenhouse gases that contribute to global climate change. Then, major sources of these gases would be issued permits limiting their own emissions, but allowing them to trade permits among themselves. Every facility owner and vehicle fleet operator has the incentive to find the cheapest way to reduce emissions -- through its own changes in equipment or operations or through purchasing cheaper credits from other sources.

Emissions trading thus would reduce pollution more efficiently than traditional regulation, spur new energy-efficient technologies, create incentives for vehicle fleet operators to purchase fuel-

efficient vehicles, and make a down payment on the climate change threat. This is another example of a creative strategy that could be tested under the authority of second-generation legislation. Such a program would have clear and measurable environmental targets; meld environmental, energy and transportation decisions; and encourage technological innovation. This is now a rare occurrence under our current laws.

4) Land use and water quality. No problem in water quality is more difficult than reducing polluted runoff from agricultural lands, suburban development, and other diffuse, hard-to-measure sources. These so-called non-point sources are responsible for more than 60 percent of the water quality problems in streams and rivers assessed by the states. As a consequence of a massive barrage of lawsuits by environmental organizations, the EPA is now activating an ignored section of the 1972 Clean Water Act called Total Maximum Daily Loads or TMDL. The TMDL program requires states to determine how much pollution a river, stream, lake, or estuary can assimilate; determine the sources of pollution and their relative contribution; and then assign reduction targets to each source.

What looks straightforward on paper is anything but that in practice. Putting a TMDL program in place is tenuous at best without good water quality monitoring data that describes how conditions vary over dry and wet periods, accurately identifies sources, and can detect and measure changes in source contributions over time. A General Accounting Office study issued in March 2000 concluded: "A vast majority of states reported that they have less than half the data they need to (1) identify non-point sources that are causing waters not to meet standards and (2) develop TMDLs for those waters." Politically, the TMDL program cuts right to the heart of many environmental conflicts: national mandates clashing with local land use prerogatives. Under second generation legislation, the U.S. Department of Agriculture, EPA, and the states could jointly structure a series of experiments to test ways to reduce polluted runoff, setting clear and enforceable environmental targets for pollution reduction, engaging the public early and often in program design, and tracking progress using advanced monitoring and remote sensing technologies.

Results Matter

More thirty years after the first Earth Day, most Americans share a common vision of a good environment. But if progress is to be made in the next 30 years, then Congress should equip the administration and the states with the tools to do the job. Elevating EPA to Cabinet status is a promising start. The ideas contained within Second Generation of Environmental Improvement Act are a constructive place to begin to consider how to give EPA the tools it needs to better identify and set environmental priorities. Those who oppose new regulation as a matter of general principle may resist the suggestion that today's environmental problems should be addressed through federal law. Their preference for volunteerism, however laudable, is simply inadequate. Those who fought for the first generation of laws may resist the suggestion that our current body of laws is insufficient for the new challenges. They must acknowledge that regulatory modernization is a predicate for political consensus and further environmental progress. Both sides should welcome the opportunity that could be created by second-generation legislation to give EPA the ability to innovate and experiment with more sustainable and efficient means to solve today's environmental problems.

Mr. OTTER. Thank you very much. I appreciate once again all of you being here, and your opinions on the legislation that we have under consideration. I guess I have some general questions for all four of you, but I also have some specific questions. And let me just say from my perspective, so you'll know sort of where my questions are coming from, in the West—and I'm from Idaho—in the West there probably isn't a Federal agency that is more hated or distrusted than the Environmental Protection Agency. And I say that, having been the Lieutenant Governor of Idaho for 16 years and watched as the agencies marched into Idaho and took over massive areas of Idaho and usurped a lot of State authority and State responsibilities. But anyway, the feeling generally is that the EPA has declared martial law on the environment in the United States. And subsequently, not unlike most martial—and I happened to be in the Luzon region of the Philippines when Ferdinand Marcos declared martial law in the Philippines, and it was not a pretty sight—all manner of individual and civil rights and Constitutional rights, private property, were set aside. And they were set aside by those folks that came in with the full power of government to do what they wanted to do, without rhyme or reason, suspending in many cases the due process and suspending in many cases many civil liberties.

Most of the civil liberties that we happen to talk about in terms of the EPA are search and seizure, of reports that we hear from all the time from industries; assumptions of guilt, rather than assumptions of innocence and then proving guilt. And so I believe really that a lot of people in the West would be very, very encouraged about elevating the position of EPA Administrator to Cabinet level, so long as they had the same responsibilities as, say, any of the other agencies there to respect private property, to respect the protections under the Bill of Rights and the Constitution.

So with that in mind, I guess I will start with Mr. Hahn. Mr. Hahn, much of what you said really falls in line with under an ombudsman. And an ombudsman, when we finally got him into Idaho in the Silver Valley—and the interesting thing there as I think you probably know the history, the EPA came into the Silver Valley 17 years ago, saying they could clean it up in 3 years for $28 million. That was $280 million ago, and they are 14 years over their time budget. When we kept asking for reports and some kind of responsibility for what was going on, we met a brick wall. And we also met Agency privilege.

And as you know, many of the Agency privileges are pretty extensive for the EPA. No other government agency that I know of, including the FBI, has those kinds of privileges. Anyway, we finally did get the attention and we got the ombudsman to come in. And the ombudsman found a great deal of waste, a great deal of misinformation, a total lack of peer review. And then the EPA Administrator under the last administration de-funded the ombudsman and fired him for the report.

So what kind of protection, if we go to the GAO or if we establish peer review and establish an ombudsman with any kind of strength, what kind of protection, other than a separate agency, can you possibly offer somebody who would be a "whistle blower" on the EPA?

Dr. HAHN. I am not sure I am the best person to answer that question. I am not a lawyer. I think the more general question you raise about agency powers is a very, very important one. If the Federal Government has a very prominent role, as it now does in setting air standards and water standards, we at least ought to put analytical checks on that power by not having the same group that makes the regulations also do the analysis.

Mr. OTTER. You're right. Our feeling is that King George III never had it so good. He made the law, he decided who broke the law, and decided what the punishment was.

Dr. Norwood, how about on independence of the oversight, how do you feel about that?

Dr. NORWOOD. Well, I feel very strongly that there's no way that EPA can continue to work in this whole field without having better approaches to finding what is successful, what is not, and accountability; accountability to the people of the country, to the government, and accountability to the States and localities. In the NAPA reports, we went into considerable length about the way in which EPA should work with States, localities, with business, and with all the stakeholders. Very clearly, they need to do that. And we have made a number of recommendations about that—the more they do that, they still have even more of a responsibility to be accountable for environmental improvement. And so they need to be able to have the scientific information as well as the statistical information to be able to judge whether something has been successful or not and whether this devolution is working.

The only way, it seems to me, that can be done is by restructuring completely the so-called information systems that the Agency now has. I know that they have made some strides. I would not say that they are very large strides. There is a need for a place within EPA that is somewhat independent; that is, having a person heading it with a fixed term of office.

I was Commissioner of Labor and Statistics for a very long time. I had a fixed term of office. We did things and said things and published things that the President didn't like, sometimes the Secretary didn't like. We tried to work with them, of course. But basically, we felt we had a scientific responsibility to the public to use our expertise to explain things as objectively as we could. And I think that EPA is lacking that.

I do think that many of the innovations that they have attempted—and we had something like 17 teams of experts, researchers, examining each of those. I think that many of those innovations probably were successful. But before undertaking a program, one should determine in advance how you are going to determine whether it was successful or unsuccessful and what kind of information you're going to need in order to do that.

And this needs to be a cooperative effort. There's no way the national government can develop all the data that is needed. A lot of the data comes from business. A lot of the work has to be done by business. A lot has to be done by States and localities. So it needs to be a really cooperative effort. There are a lot of examples in the Federal Government of that sort of effort, and I think it can be done here.

Mr. OTTER. Dr. Davies.

Dr. DAVIES. I recognize, Mr. Chairman, that the kind of picture of the Agency you are painting is widespread, especially in the West. It sounds to me like the kinds of problems you are delineating are problems for the courts, and they are not going to be significantly remedied by most of the things that we have suggested here on this panel or elsewhere.

Mr. OTTER. I didn't understand. They are problems of the courts?

Dr. DAVIES. When you talk about civil liberties and property rights, the best data in the world isn't going to remedy that if it's a problem. That's what we have courts in this country for, and that's where the remedy lies for those kinds of difficulties.

Having said that, I agree with both Dr. Hahn and Dr. Norwood that an independent capacity to deal with policy analysis, with economic data, with environmental data, with science and peer review, that all of those things could significantly improve the Agency's performance and effectiveness. And so, you know, I think those are very valuable suggestions, that I am very sympathetic to them.

Mr. OTTER. I would only point out, getting back to the point that Dr. Hahn made, that many of the rules and regulations were promulgated by the Environmental Protection Agency, and some of those are relative to evidence offered in cases of whether or not a person was polluting, whether or not there was a crime, a breaking of a law committed.

I have become familiar personally with some cases, but as a representative of 650,000 people in a district that has 87,000 miles of streambank, 119 municipal water systems or more, at least 119 sewer systems, 650,000 people that work on the watershed, there isn't almost any activity, whether it's recreating or professional working or private property ownership, that they can do without in some way finding themselves coming in conflict with a rule or regulation that probably, in all good intentions, was promulgated for a situation that may be east of the Mississippi and north of the Mason-Dixon line.

Unfortunately, the application of that law is on 87,000 miles of streambank, you know, and so what happens is we've lost confidence. We've lost confidence in an Agency which we hoped was going to come and help us with some of our environmental problems. And they haven't helped. In fact, they have been adversarial and they've—as Jefferson said, harassed our people and eaten out their substance. And that's the problem that we're having.

Dr. Hahn.

Dr. HAHN. I have come in contact with many folks, as you have, who have suggested there are lots of regulations like that. And we have to recognize that Congress at some level deserves a large part of the blame for that through the laws that it passes that, to some extent, empower the Agency to do these things. Now, the Agency may have a different view of how to implement these laws than the initial legislators, but Congress deserves the blame. So if we are going to clean up the process at some point, we have to go back to the organic statutes, and there I think Dr. Davies and Ms. Mazurek have made some good suggestions, as others have.

You really have to make some fundamental decisions about how you want to organize this Agency and what you view as its function. Should it be going after the top health-based environmental

priorities, or should it be going after everything, even if it presents, arguably, no risk from a scientific point of view.

Mr. OTTER. I can tell you, Dr. Hahn, that our problems manifest themselves from each generation. As I indicated earlier, in my 16 years as Lieutenant Governor, many other agencies also marched into the State. OSHA was one of those. OSHA told us that environmentally, health wise, we had to remove all the asbestos from all our schools. We took books and decided to go with 6 and 7-year-old textbooks where the covers were falling off. We let classrooms, although safely, but really not very comfortable to be in, degenerate because we spent tens of millions of dollars removing asbestos. And once we got it all removed and finally sighed relief, then they found one more building that had asbestos in it. And they said, listen, it's not necessary to remove it. All you got to do is paint it over, you can seal it in. And we spent all that money.

Now we come on with the EPA in the Silver Valley of Idaho, and they say in 3 years and for $28 million, we can clean this place up. Here we are, 17 years later, 10 times that much money, and they found out when they were transporting all that dirt from the site of the high levels of lead to the dump site, that they didn't water down the trucks. So now all the yards are contaminated. All the tops of the buildings where the dust settled are contaminated. What we did was we spread the contamination. And these people were there to help.

We don't need any more help like that. We have gone from 9,000 miners to none. We shut down 32 lumber mills in Idaho, most of them for environmental considerations, because they said we don't want you cutting trees off the watershed. And this was a rule that was made, I am sure, with good intentions. But what happened, we shut down 32 lumber mills. What happened was then 880,000 acres burnt up and all that silt and all that watershed is being washed into the salmon recovery areas. So now we've got a bigger problem.

The first thing before we elevate, before we change, before we come in with a whole new matrix of what we're going to do, I think we've got to get confidence back into the system that says we really need this, we really need this help. And I think people are willing to be convinced of that, but I don't think elevating it to the President's Cabinet level is going to do that.

Chairman Ose.

Mr. OSE [presiding]. Thank you, Mr. Vice Chairman. I appreciate you standing in for me. I want to delve in a little bit. I regret I missed the statements that you made, but I did read your testimony and written statements. And it seems to me that there's a consistent comment there that the simple elevation to Cabinet level does not address the underlying problem. We heard this morning from Mr. Boehlert, Mr. Horn, and Mr. Ehlers about how do we move what's called a clean bill forward.

I'd be curious how you would do each approach addressing the systemic needs that we've identified. For instance, Dr. Davies, in your testimony you had seven suggestions, and the others of you had specific suggestions. How do we incorporate those in this process? Are we well advised to go forward with what's a clean bill as, say, Mr. Boehlert may have described it, or do we need to incorporate these other changes?

Dr. DAVIES. Well, I am very sympathetic, as I said in my testimony, I think when you were out of the room, to Mr. Boehlert's concern about having a clean bill and the political dangers of putting too many things into Cabinet elevation. There is also the question of committee jurisdiction, which is a mystery that I have long since ceased to try and understand. But I think my hope would be that at least most of the subjects that I suggested or that others on the panel have suggested or that are in Mr. Horn's bill, could be fashioned in such a way that would generate broad support and basically not be controversial.

There clearly are controversial things which I think would kill the bill. And there's also no question that the more you put in there, the more vulnerable you are to attack from somebody or, you know, some kind of concern. But I think as illustrated by this panel and at least by my knowledge of where different groups are coming from and where the two parties are coming from, there is very broad support for most of the kinds of things that I mentioned in my testimony and which, you know, other members of this panel suggested.

Mr. OSE. Dr. Norwood, in particular with your background at BLS and the like, it seems to me like the issue of metrics, how do we measure progress is a fundamental issue here. How do we go about focusing on that specifically?

Dr. NORWOOD. Well, I think that we have to recognize that there are problems in the science. We don't really have answers to everything. I think that's part of the difficulty that you were talking about before. So we need to have a scientific involvement in the development of the kind of information that is needed as support for what EPA does. And I believe that can be done within the Agency if there is a place to make it clear when the head of that particular part of the Agency has certain scientific qualifications. That's been done in other agencies and it has worked quite well.

The other part is the measurement. You have to decide first what you're going to measure and you need to do that before you go out and tell people all the great things you're going to do. You need to figure out if you're going to start something new, whether or not you're going to measure it and how you're going to measure it, and then you need to develop the data.

Most importantly, EPA has got to be an Agency, as we've indicated in all three of the NAPA reports, which works closely with all of the stakeholders—with the States, with the localities and with business, and sometimes uses business techniques. There are many of them that we've recommended be used. But the basic legislation that created EPA and under which it operates is somewhat stultifying, because it is very difficult and almost impossible to move across media. When you get to the organization of a regional office, for example, which really has to deal with the localities, everything is coordinated there and yet the stovepipes within EPA, which are partly the result of the legislation passed by Congress, makes that extremely difficult.

Mr. OSE. Is the vehicle that allows—is this legislation the vehicle that allows us to try to fix some of those?

Dr. NORWOOD. You know, you are much more skilled at legislation than I. My experience has been, however, that if these things

are not in some way indicated in the legislation, then they don't happen. And that's what would worry me. I pointed out, for example, the problem of all the interactions of all of the agencies in the Federal Government, and the problem of determining who is in charge of the environment in the U.S. Government.

Mr. OSE. I can't remember which of your testimonies, but they had the mediums, and then the geographical areas, and everybody was in charge, so nobody was in charge.

Dr. NORWOOD. And then we have a lot of departments in the U.S. Government who have legitimate areas that they are interested in. But I think that there needs to be a lot of sifting out of that. There need to be strong changes in the management of EPA as well. That would not be a part of legislation, although if there is to be a Bureau of Environmental Statistics, it has to be part of the legislation; otherwise it's not going to happen.

Mr. OSE. Let me ask all of the panelists, one of the suggestions, particularly Mr. Ehlers' bill, was to appoint a Deputy Assistant for Science and Technology, I think is what he referred to. Would that address the need of providing some bridge between the scientific side and the regulatory side? Again, I don't remember which one of your testimonies said it, but one of the points was that the folks who are at EPA largely are regulators and not scientists.

Dr. NORWOOD. Dr. Hahn is the one who discussed that. I just wanted to make one comment, and that is that I have been doing a great deal of work lately at the National Academy of Sciences as well, and I think there is a need for outside people, but there does have to be a scientific group within EPA as well, in my opinion. Now I defer to someone who knows much more about this than I.

Dr. HAHN. In answer to your question about whether you should send this bill up now, clean, or with other things, that's obviously your decision. I don't see a great urgency to elevating EPA to Cabinet status. I could think of advantages and disadvantages, given that I think the four of us at this table who come out of an academic background think there are many things broken in the area of Federal environmental policy that fundamentally need fixing, as they say.

Mr. OSE. Of a structural nature or otherwise?

Dr. HAHN. I don't know what structure is, but as Dr. Norwood pointed out and Dr. Davies pointed out, you've got many, many statutes governing this Agency. You've got a real problem now in terms of the way people view the authority of EPA.

Congressman Otter made a point about his district with respect to asbestos removal. I can tell you that's not an isolated example from my experience. As I pointed out earlier—and Justice Breyer pointed out in his book EPA suffers from "tunnel vision." It only looks at the environment. It doesn't worry about those 800 workers who were displaced and sometimes it doesn't even think about whether there is a better way to achieve the same or better environmental outcome at lower costs.

We need to rectify that by, one, you need to think about what powers you want to give to the Agency and how you want to give the Agency those powers, in one statute or several statutes. And then, what kind of information it uses to make decisions. I think Dr. Norwood pointed out that there are real problems with the na-

ture of the information base that's developed now. The Agency has an intrinsic bias. We have different suggestions for how to address that bias.

Mr. OSE. I don't want to exclude our fourth panelist here.

Ms. MAZUREK. Well, with respect to the point on achieving the same environmental outcome at lower costs, which was alluded to, I think in Congressman Otter's point initially, the 1994 NAPA report and study after study after study during the 1990's, including some of the statements that were made by the prior administration, was that if EPA can find a cleaner, cheaper, smarter way, it should be given the authority to do so. And it tried to do that in number of experiments, including the common sense initiative, Project XL, place-based ecosystem management, and all of those initiatives faltered, paradoxically perhaps, because EPA didn't have the authority to give flexibilities to companies, States and localities who really could deliver superior environmental performance.

That's why my predecessor, Debra Knopman, working with a bipartisan group in Congress, put together the second generation discussion draft, because it would enable those kinds of measures; and also recognizing that the cornerstone, the backbone, to innovation is information that tells us whether or not these results are actually superior to what would have been achieved in the absence of the experimental programs.

And again, a number of these initiatives during the nineties faltered because, A, as Dr. Norwood pointed out, we didn't put the program evaluation measures in place before those programs were actually launched; and B, there was a lack of will and ability and resources, just financial resources on the part of the Agency, to actually verify that these programs were delivering superior environmental results.

Mr. OSE. I need to give my vice chairman some time. I have some questions that I am going to go through here in the second round, and I'm going to ask each of you to provide input on them. But, Mr. Otter for 10 minutes.

Mr. OTTER. Thank you, Mr. Chairman. I am not going to take all that time, but I do just have a couple of questions. I have heard the lack of resources part of the problems as you have just said, Ms. Mazurek. And I wonder if it's the lack of resources, or do we need to redirect resources within the Agency, and maybe we need a third party, as has been suggested by other members of the panel, because I don't know if it was a scientific or a statistically proven report or not, but one of the reports that we received in Idaho was that 12 cents out of every dollar being spent in the EPA was actually being spent on something other than cleaning up the environment; that for the bounce for their buck that the taxpayers thought they should be getting, if 88 cents is being spent on administration or has been the case in court, then rather than directing new resources, maybe this restructuring that my chairman mentioned, Dr. Hahn, has to do with focusing the EPA, as Dr. Norwood suggested, on the greenhouse gases, on the nonsource pollution. And I apologize, I wrote them down, They are in my notes now. But those focuses then invite the locales in. They invite the State agencies.

Quite frankly, I have to tell you that we have a DEQ in Idaho, Department of Environmental Quality, and I think every one of those people in that Agency care a hell of a lot more about the environment in Idaho than any EPA Administrator that comes whipping through from some other State or from some other locale. Quite frankly, I really believe that. Or any group of administrators back here that manifest their desires in rules and regulations that they ship out for us to implement. I think my Governor probably cares more about the environment in the State of Idaho than, quite frankly, the President of the United States. But we have taken them out of the equation.

Dr. NORWOOD. I think it's important to recognize that there have been some initiatives at EPA to put them back. And the latest Academy report called "Environment.gov" does review a whole series of them. The important thing is that there are problems in the legislation which require certain enforcement activities. There are difficulties, as I've said, across media. So Congress bears some of the responsibility for this, I think.

I think that what we're seeing in government generally is a devolution to State and local areas, but there has to be accountability. And so we need to have both, really. And I think we can.

I have had some experience at the very local level, in a small town where we have a home on a big lake, and we've been very active, my husband and I, trying to keep that water clean. I can understand the problems that the town, a very small town, about 800 people, has with the regulation both at the State and at the national level. But EPA has made a number of attempts to change that environment. It needs to do more. And we have made a number of recommendations.

Mr. OTTER. Just one more, perhaps a statement, but I would invite anybody to respond to this. One of the things that I really see lacking in our national environmental policy is a lack of accountability by government agencies themselves. You know, we hear stories all the time about developers that either were fined $250,000 or they go to jail because they didn't follow certain environmental regulations, Army Corps of Engineers, wetlands laws or those kinds of things; polluters that dumped pollution into rivers, you know. And the companies have to now go back years later and make amends for those.

Yet, when I was in the full committee the other day, I asked the Army Corps of Engineers and I asked the EPA and said, "We caught you dumping 200,000 gallons a day of slop into the Potomac River." We caught the Army Corps of Engineers—the EPA caught them—and I said, "Who went to jail?" Well, we come to find out that government agencies are exempt. The very teeth that we needed into the law to make the private property owner and the industry and the States obey the law, we absence ourselves from "accountability," I think was your word, Dr. Norwood.

And so before I would go to any kind of a restructuring, certainly I want the general of the Army Corps of Engineers to go to jail, just like I want the CEO of some corporation to go to jail, or the Governor, if they violate some environmental law. Then I think we truly do have accountability.

Dr. Hahn, I invite comment on that.

Dr. HAHN. There's a problem there. And I'm happy with equal treatment of the Government and the private sector. I like that idea. The problem is: if you own any establishment that is producing anything, you are probably violating some environmental law. It may be a very gray area. I have been a consultant to several companies in which sometimes they simply can't figure out whether they are in complianced.

So I think it's a real good idea to think about limiting the powers of EPA and having the agency focus on the most important issues. You mentioned some that some of the other panelists raised and recognize that this isn't 1970. We are in a new century now, and the States have changed dramatically in their capability for addressing environmental problems in a creative and intelligent way. And a lot of that should be recognized in any sort of statutory changes you make.

Mr. OTTER. Would you agree though, Dr. Hahn, that any law that we make offering penalty or persecution or whatever for violators should also be applied to the government agencies?

Dr. HAHN. I think so.

Mr. OSE. Is pollution any worse, no matter whose hand it comes from?

Dr. HAHN. That's correct.

Dr. DAVIES. You have to deal with the congressional language on sovereign immunity.

Dr. NORWOOD. But there is a more important issue, and that is that if Congress passes legislation requiring certain kinds of enforcement, then the problem may be the legislation. In EPA's case, there are some problems with its legislation, and so it cannot do some of the things that you and I and other people would like it to do. So in a way, Congress also has to be held accountable, if you excuse my saying that.

Mr. OTTER. Send Mr. Boehlert to jail.

Mr. OSE. No, we won't. Dr. Davies.

Dr. DAVIES. There are fundamental problems with the statutes that EPA administers. And I think some of them are spelled out in the book that Jan Mazurek and I wrote. Janet Norwood's point about the stovepipe structure and the fragmentation of the programs, that is the most fundamental problem in my view. I have given to committee staff something that I wrote sort out of desperation, because everybody said you couldn't pull these statutory authorities together. And out of desperation, I tried to do it. Whether I succeeded or not is another question, but you can take a look and see. In any case, I don't think you can deal with Cabinet legislation. I mean, trying to integrate the statutes that the Agency administers raises every single question of environmental policy that has ever been raised. And it is a tremendously complicated task and it's not something that could be undertaken in this context, frankly. It's too bad, but I don't think it can.

I think you can take an initial step, as I suggested, by setting up some kind of commission or select joint committee or some body to start that process rolling, because it is badly needed, but you couldn't do it within the legislation.

If I can just make one other quick point in response to Mr. Otter's comments, without denying anything you said, it is hard to

find Federal programs that are more decentralized to the States than the programs that EPA administers. The two key functions are permitting and enforcement. Something on the order of 80 to 90 percent of the permitting is done by State agencies, and something on the order of 90 to 95 percent of the enforcement is done by State agencies. So it is tremendously centralized now and I think that has just to be kept in mind.

Mr. OTTER. Could I have a followup on that, Mr. Chairman? To Mr. Davies, can the EPA override any of those enforcement or permit agreements?

Dr. DAVIES. Yes.

Mr. OTTER. Can they override every one of them?

Dr. DAVIES. Well, no. There are some where it can and some where it can't; but typically it can, yes. But it is not a frequent occurrence.

Mr. OTTER. As long as you're doing it our way, then you're safe?

Dr. DAVIES. Yeah.

Mr. OSE. I want to go back to some specific questions I have for all of you. There's not going to be any problem here. You have all the time you want.

Dr. Davies, I followed your discussion about how EPA was originally crafted. It was a reorganization rather than the manner in which Cabinet departments are typically created. So I am probably going to followup with some questions to you about that.

I think Dr. Norwood has reemphasized that also about the structural nature of what created EPA that leads to many of our challenges today. I don't know whether or not Mr. Boehlert's bill or Mr. Horn's bill or Mr. Ehlers' bill becomes the vehicle we use. I am just not at that point yet. But I do want to get a clear understanding of that if we move forward with this legislation, what aspects of science need to be strengthened at the Agency? For instance, do we need to specifically address peer review issues of decisions? Do we need more basic research? I think, Dr. Norwood, you talked about targeted research. Do we need more of that? Does anybody have any feedback on that?

Dr. NORWOOD. Well, I believe that the legislation that creates EPA as a Cabinet agency probably has to say that it will have certain officials in it, particularly if they are Presidential appointments; that usually is in law. And I think that an Office of Scientific Research and a Bureau of Environmental Statistics ought to be a part of that.

Mr. OSE. So you would like have the Cabinet Secretary, and then underneath you would have what effectively are deputy secretaries, but there would be the Office of Research, office of X, office of Y, office of Z kind of thing?

Dr. NORWOOD. I'm not sure exactly what the structure would be, but in the statistics field, which I'm much more familiar with, you should have—and in several cases, we do have in several agencies, a Presidentially appointed head of the bureau or whatever you want to call it, of statistics. And you have a fixed term of office for that individual, which means that he or she reports directly to the Secretary, doesn't have to go through a lot of other people and has the independence that comes with having a fixed term of office. For the data system, I think that's terribly important.

Mr. OSE. Dr. Hahn.

Dr. HAHN. I basically agree with Dr. Norwood that's a really important first step. But until you include the policy analysis in a way that it's independent from the development of regulations, you're not going to get the kind of unbiased information and accountability you need.

That's why I argued in my testimony that we ought to have only one Office of Policy Analysis developing policy, as opposed to having it analyzed by parts of the Agency that are actually making the regulations.

Dr. DAVIES. Just on a couple of points. I mean, science in EPA is a very complicated topic. And it's not that they don't do science. Probably something in the order of 20 to 30 percent of the personnel in EPA are scientists of some kind. And a fair number of those people are doing science.

Peer review to me—and here, I guess, Dr. Hahn, I disagree a little bit; I don't think that's a major problem. The Science Advisory Board of EPA is a pretty sophisticated, elaborate operation. It is a much better outside science review operation than most other agencies have, which is not to say it couldn't be improved. And they have recently run into some problems in terms of conflict-of-interest questions, and that is certainly an area in which improvement is warranted. But to me, in the hierarchy of problems, peer review of EPA science is not, frankly, high on the list.

As Dr. Norwood said, part of the problem is just that a lot of the science isn't there. You need to develop the basic science. But part of the problem is also making the EPA science program more rational. As I indicated in my written testimony, the problem here is that the Office of Research and Development, which in theory is the research arm of the Agency, really only does about half the research, and nobody knows for sure what the percentage is. But a significant part of the research is done under the auspices of the individual program offices, Air, Water, Hazardous Waste and so forth. Those research efforts of the program offices are not coordinated with the research done in EPA labs and by the Office of Research and Development. So you've got a fundamental internal problem of harnessing the resources that are there now to better serve the needs.

Mr. OSE. You're suggesting that there is some redundancy perhaps?

Dr. DAVIES. I don't know whether it's redundancy. Yeah, there probably is some, but redundancy is less of a problem than the inability to focus on what the most important problems are.

Mr. OSE. I think your words were "blinders" and "tunnel vision."

Dr. DAVIES. No way of mobilizing the resources that are there to focus on the things that are important.

Ms. MAZUREK. That's not a problem only with EPA. I mean to illustrate, California EPA had this recent problem with something that we know as MTBE. And what happened there was that the air office did the risk assessment when they considered it as an additive in fuel, but the air office had no way of talking to the water office and so the risk assessment was never actually undertaken to determine what would happen if this leaked from gasoline storage tanks into the groundwater. And now we have a big cleanup mess

on our hands out in California as a result of this. But again, this gets back to the media-specific fragmented nature of the statutes, more than a question of redundancy.

Dr. HAHN. Can I offer a personal anecdote as one who was on the White House drafting team for the Clean Air Act Amendments of 1990? I think there is a big problem in getting independent science amd tjere os a big problem of getting independent science heard. When we were developing the Clean Air Act, there was a section of the Clean Air Act that dealt with air toxics legislation. Now, when you say the words "air toxics," everyone gets worried because no one wants to have arsenic in their drinking water, for example. But all of us are going to have some arsenic in our drinking water. We can't remove it all.

The problem was that the scientists that I spoke with at EPA in private conversation, when I called them from the Council of Economic Advisors, told me that air toxics was a very, very low risk problem. They were not allowed to say that publicly. They had analyses suggesting that. They were not allowed to say that publicly or their jobs would have been on the line.

This was a question you raised earlier with respect to the ombudsman. That information should have entered into the public policy discussion before Congress developed the air toxics part of the Clean Air Act, and it wasn't.

Mr. OSE. Dr. Norwood.

Dr. NORWOOD. I do think there is need for an independent scientific group. I believe it should be inside EPA because otherwise I don't think it would really get to the people that it needs to. But there does need to be some kind of protection of that group, of its scientific capabilities and its objectivity.

I should say that part of the problem is that we talk about risk assessment, we talk about all the economic analyses that we should make, with the assumption that all the data are there and that every model works perfectly. I spent some time recently on the board of directors of a very large bank, chairing the board's committee on risk assessment. And I'll tell you that I learned a lot about the practical world and how it is important to have a scientific approach, but that it doesn't come quite so easily, so we have to work with that.

Mr. OSE. That leads directly to the next subject I want to discuss, and that has to do with the stovepipe nature of the manner in which the Agency currently works. You've all recognized sometimes these issues cut across a number of stovepipes. If we're looking at this in an ideal world, so to speak, and we are considering legislation, what sort of a functional structure should we have to deal with these cross-cutting environmental issues? Clearly an independent scientific body to review the information is useful.

I think, Dr. Hahn, you suggested separating scientific review from regulatory action. Are there other such suggestions?

Dr. DAVIES. You could organize the Agency totally along functional lines and it would be a much better, more rational organization than currently exists. The difficulty comes from the disconnect between the way the Agency is organized in terms of offices and the statutory responsibilities it has; if that disconnect becomes too great, then nothing is going to happen and then everything will

just grind to a halt, because when you say whose responsibility is it to carry out the Clean Air Act, you won't be able to find where it is.

Mr. OSE. So your suggestion in that regard is go back to the legislative underpinnings and fix them?

Dr. DAVIES. You have to at least make some progress fixing the statutes before you can change the organization of the Agency.

Mr. OSE. When we fix the statutes, what do we need to do? I mean, that's the question. Do we need to define the structure or need to be somewhat more generic and allow the folks who do the executive branch to define the structure?

Dr. DAVIES. I mean, if I understand your question, what in my mind the most basic thing you have to do is stop dealing with environmental problems in a fragmented fashion, which is what the statutes now do. I mean, most of the major problems we have aren't just their problems. They aren't just water problems. They aren't just hazardous waste dump problems. They cut across a lot of different lines. The environment is one single whole. On things like climate change, on things like acid rain, and on things like stratospheric ozone depletion, on nonpoint sources, almost any major current problem that you name, the way the statutes are written is inadequate to deal with the problem because it doesn't recognize the interrelationships. And so that's what you have to do.

Mr. OSE. Just following up on that, if we had a question dealing with water, under the Clean Water Act, we'd treat it a certain way now. And arguably, we wouldn't know who was in charge. How do we change that so that we know somebody is in charge? We say that you are now the Under Secretary for Water?

Dr. DAVIES. You could do that. That is one option, just to go all the way in that direction. That would not be my preferred option.

Mr. OSE. What would be your preferred option?

Dr. DAVIES. You have 200 pages in response to that.

Mr. OSE. Briefly.

Dr. DAVIES. Briefly, you would have to both do the statutes and the internal organization of EPA on a functional basis. So you would have somebody in charge of standards setting. You would have somebody in charge of enforcement. You would have somebody in charge of planning, somebody in charge of policy and economic analysis and so on. That's how you would organize things. So you would pinpoint responsibility by the nature of the function rather than by the segment or the physical environment or the focus of where the pollution is and so on.

Mr. OSE. Do the rest of the panelists concur?

Dr. NORWOOD. I am not sure that I do completely, but I don't know as much about this as Terry does. But what I would like to say is that I have a strong belief, having been in government a long time, that organizational structure can be very important, but that it doesn't necessarily get you where you want to go; because it's really the informal structure within an agency that counts a great deal.

However, having said that, the problem with the EPA legislation is that it prevents the Agency from thinking broadly and from using its resources broadly. And yet, the States don't think that separately. They don't have those stovepipes. So when you get to

a regional office, it's ridiculous to organize a regional office along separate, media lines because they have to deal with people who are dealing across media lines in the States or localities. You don't have the luxury of having individual offices there.

That is just one kind of thing. There is the question of how they're doing work with some of the innovations that they attempted. We dealt with that in this last report, the restrictions on enforcement that were either in the law or interpreted as being in the law, prevented them from doing many of the things which we, at least at the Academy, felt they should be doing to improve relations and improve the environment.

Mr. OSE. Dr. Hahn. Ms. Mazurek.

Ms. MAZUREK. If I may just sort of followup on Dr. Norwood's point. Under the innovations programs that she mentioned, they found that the enforcement provisions, or just the statutes themselves, were the tripping-up point. So while ultimately I share Terry's vision of where the Agency needs to go, there are some interim measures, if one prefers the Lynn Bloom muddling-through kind of approach, and that's what the second generation proposal was designed to do, to provide legal space to do cross-media approaches and to test out innovative experiments, all the while simultaneously collecting information that starts to tell you what these new emerging priorities are, and then giving the Agency the authority to experiment with different ways structurally of addressing them.

Dr. HAHN. Well, again thinking outside the box, right now EPA really isn't responsible in any sort of meaningful way for showing that it has enhanced the environment of either——

Mr. OSE. Accountable or responsible?

Dr. HAHN. Accountable—I'm sorry, good point—for showing that its actions have actually improved the environment. One way of writing the statute, and I haven't gone through the 200 page exercise that Terry has done, is to say OK fellows, we think you should be thinking about reducing risks in a way that saves lives or life years of Americans or citizens of the world. And we are willing to give you access to private sector resources on the order of X, because effectively when EPA regulates, it takes money out of consumers' pockets. And we want to see in 5 years' or 10 years' time that you have actually made a significant difference based on an independent policy review.

I don't think that is going to happen, but that is one way of getting accountability. It is just some food for thought. I think it could happen in a limited area as a pilot project.

Dr. DAVIES. If I could make one very quick point. I mean, that's absolutely necessary. We are so far away from that, that as Jan and I point out in the book, you can't tell whether water quality in this country has gotten better or worse over the last several decades because the data isn't good enough to answer that question.

Mr. OSE. Mr. Otter. OK, I will continue then. Dr. Hahn, I want to go back to your comments, and Dr. Davies—in fact, everybody here. There is no base line is what you're saying. And there is no attempt to keep the baseline or the updates current for analytical purposes. Does that go back to the underlying statute, the reorganization of it, or is that just practice, managerial practice. I don't

have a problem pointing the finger at us if we're the root cause. Is it that we're not watching? What do we need to do better, or what can we do organizationally to establish the performance measures and then make them work?

Dr. DAVIES. Three things, I think. Better data, better analysis, and Congress asking the questions that will force the Agency to take those things seriously.

Dr. Norwood is talking mostly about data on environmental conditions, and I think that is essential. Dr. Hahn is talking mostly about economic analysis and economic information, and that's necessary, too. So we need to be a little careful when we are talking about different kinds of information, but they all go to the question of holding the Agency accountable and having some kind of defensible, scientifically valid evidence, independently arrived at to some degree, as to whether the job is getting done.

Dr. NORWOOD. And it's important to recognize that a lot of the information has got to be done cooperatively with States, localities, and with the business community. There's no way that the Federal Government can create all of that information. It needs to get the information in large part from a lot of the players in the system. And that means that it has to be certain that there is a consistent system of definitions, the way in which the data are collected, the quality of the data. And there's none of that as of now in this system.

I should say that there are a number of models in the Federal Government system of very good cooperative Federal, State, and even local data cooperative systems. I think it can be done.

Mr. OSE. Where are those models? For instance, where's the template that we can at least go and examine?

Dr. NORWOOD. Well, certainly the place that I am most familiar with, the Bureau of Labor Statistics, has had a Federal-State cooperative program in developing information on employment hours and earnings with the States since 1917. And it means that they work together cooperatively. The Federal Government pays some moneys to the States because the Federal Government needs these data. The States supply money because they want to do other things. The Federal Government helps to keep these units in the States separate and independent from politics.

I used to spend a lot of time talking to Governors about the importance of that when I was there. I think there are examples, different kinds of examples, in agriculture and in education and other places. The important point is that you can't put too big a burden on the respondents, on the people who have the data. You can't have all different jurisdictions asking them for the same information. And it has to be consistent across all of these areas.

I've done a little book on the Federal statistical system and its need for reorganization, which I have yet succeeded in getting passed. And one of the chapters in it is on Federal-State cooperation, which I think is tremendously important. The Feds have a lot to learn in that, however, because it has to be cooperative and it has to meet the needs of both those at lower levels of government and business and the Federal Government. It can't just be a one-way street.

Mr. OSE. Dr. Hahn, Ms. Mazurek, any feedback? I want to thank the panelists for coming today. This has been enlightening, to say the least. We are going to consider what type of legislation to put forward. And obviously, we have—we have the full range, if you will. The record from this hearing will be left open for 2 weeks. We may have some followup questions that we would like to send each of you in writing. We would appreciate your cooperation in the response.

I want to thank you all for coming today. Like I said, this has been enlightening and I do appreciate it. I may end up calling you independently and just talking. So if you will grant me that permission, I may very well followup. We stand adjourned.

[Whereupon, at 11:45 a.m., the subcommittee was adjourned.]

EPA CABINET ELEVATION—FEDERAL AND STATE AGENCY VIEWS

THURSDAY, MARCH 21, 2002

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ENERGY POLICY, NATURAL RESOURCES AND REGULATORY AFFAIRS,
COMMITTEE ON GOVERNMENT REFORM,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:30 a.m., in room 2154, Rayburn House Office Building, Hon. Doug Ose (chairman of the subcommittee) presiding.

Present: Representatives Ose, Otter, LaTourette, Mink and Kucinich.

Staff present: Dan Skopec, staff director; Barbara Kahlow, deputy staff director; Jonathan Tolman, professional staff member; Allison Freeman, clerk; Yier Shi, press secretary; Elizabeth Mundinger and Alexandra Teitz, minority counsels; and Jean Gosa, minority assistant clerk.

Mr. OSE. Good morning. Welcome to our hearing. I want to recognize a quorum with the attendance of Mr. LaTourette.

The issue of elevating the Environmental Protection Agency to cabinet level status has been around since the agency was created in 1970. In the years since its inception, Congress has passed numerous environmental statutes expanding the jurisdiction of the EPA. As its jurisdiction has expanded, the agency has grown as well. Today more than 18,000 employees work at EPA and it has an annual budget of $7½ billion. It is important to note that elevating EPA to a cabinet level department will not in and of itself change the agency's size, jurisdiction or effectiveness. The act of creating a new cabinet level department is largely symbolic, but how and why Congress elevates the EPA to a cabinet level department may fundamentally affect not only how the EPA operates, but also perceptions of the agency and the importance of environmental issues.

Two bills have been referred to this subcommittee to elevate EPA to a cabinet level department, H.R. 2438, introduced by Representative Sherry Boehlert of New York, and H.R. 2694, introduced by Representative Stephen Horn of California. The two bills take significantly different approaches. One offers no reforms to the agency, and the other offers a multitude of reforms to the agency.

The principal question facing our subcommittee at this hearing is what, if any, reform should Congress explore in the process of elevating EPA to a cabinet level department.

When EPA was created in 1970, this country faced widespread and daunting environmental challenges. We have made great progress in the cleanup of large industrial pollution that plagued our Nation 30 years ago. Today, however, we face new environmental challenges, more complex and intractable environmental concerns.

Last week the USGS, U.S. Geological Survey, released a report on various chemicals in our rivers and streams, chemicals like caffeine, which come not from some giant caffeine manufacturing plant but from the coffee, tea and soda that we drink every day. Are tiny amounts of chemicals such as caffeine in our waterway a problem? How big of a problem is this compared to our other environmental problems? What, if any, resources should we devote to solving it?

These are the types of questions that will face EPA in the coming decades. I would point out that it was the Geological Survey and not EPA that produced this study, which in itself raises questions about the role of EPA in dealing with the environmental problems we face as a Nation.

At our first hearing in September, we heard from the sponsors of the elevation bills. In addition, a number of policymakers from the academic community testified about the need for reform at EPA. Having heard from people who view the agency from arm's length, today we want to hear from those dealing with the agency on a more regular basis.

Our witnesses today bring with them a wealth of knowledge about EPA and environmental policy. EPA's Inspector General and the General Accounting Office have spent countless hours reviewing, analyzing and auditing EPA's programs.

Hopefully, their expertise will shed some light on the organizational and management challenges that EPA faces and what sorts of changes need to occur at EPA to ensure that it can achieve its mission.

After our first hearing, several Members of Congress wrote me expressing concern about problems with EPA, citing numerous GAO reports and urging me to address these issues. I have read many of those reports. I am pleased that we could have the GAO here today to focus on those subjects.

The other dramatic change that has occurred since EPA's inception is the emergence of State agencies in protecting the environment. Most of our major environmental laws are delegated in some fashion to the States. In addition, States spend most of the public money committed to environmental protection. For instance, in fiscal year 2000, the States spent just over $13½ billion on environmental and natural resource protection, which is about double the entire budget of the EPA.

State agencies have emerged as not only the workhorses of environmental protection but also innovative leaders. States are on the cutting edge of solving the complex environmental problems that we face today. Unfortunately, and we'll hear more about this today, their innovative ideas often run into obstacles, some of which originate at EPA.

Hopefully, today's hearing will shed some light on the experience that State agencies have had in attempting to overcome these obstacles and what lessons Congress should take from those experiences as we consider elevating EPA.

[The prepared statement of Hon. Doug Ose follows:]

Chairman Doug Ose
Opening Statement
EPA Cabinet Elevation – Federal and State Agency Views
March 21, 2002

The issue of elevating the Environmental Protection Agency (EPA) to cabinet level status has been around since the agency was created in 1970. In the years since its inception, Congress has passed numerous environmental statutes expanding the jurisdiction of EPA. As its jurisdiction has expanded, the agency has grown as well. Today, more than 18,000 employees work at EPA and it has an annual budget of $7.5 billion.

It is important to note that elevating EPA to a cabinet level department will not, in and of itself, change the agency's size, jurisdiction, or effectiveness. The act of creating a new cabinet level department is largely symbolic. But, how and why Congress elevates the EPA to a cabinet level department may fundamentally affect not only how the EPA operates but also perceptions of the agency and the importance of environmental issues.

Two bills have been referred to the Subcommittee to elevate EPA to a cabinet level department. H.R. 2438 introduced by Rep. Sherry Boehlert and H.R. 2694 introduced by Rep. Steve Horn. The two bills take radically different approaches. One offers no reforms to the agency and the other offers a multitude of reforms. The principal question facing our Subcommittee at this hearing is what, if any, reform should Congress explore in the process of elevating EPA to a cabinet level department?

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Last week, for example, the U.S. Geological Survey released a report on various chemicals in our rivers and streams. Chemicals like caffeine, which come not from some giant caffeine manufacturing plant, but from the coffee, tea and soda that we drink everyday. Are tiny amounts of chemicals such as caffeine in our waterways a problem? How big of a problem is this compared to our other environmental problems? What, if any, resources should we devote to solving it? These are the types of questions that will face EPA is the coming decades. I would point out that it was the Geological Survey and not EPA that produced this study, which itself raises questions about the role of EPA in dealing with the environmental problems we face as a nation.

At our first hearing in September we heard from the sponsors of the elevation bills. In addition, a number of policy makers from the academic community testified about the need for reform at EPA. Having heard from people who view the agency from arm's length, today we want to hear from those dealing with the agency on a more regular basis.

Our witnesses today bring with them a wealth of knowledge about EPA and environmental policy. EPA's Inspector General and the General Accounting Office (GAO) have spent countless hours reviewing, analyzing, and auditing the EPA's programs. Hopefully, their expertise will shed some light on the organizational and management challenges that EPA faces and what sorts of changes need to occur at EPA to ensure that it can achieve its mission.

After our first hearing, several members of Congress wrote me expressing concern about problems with EPA, citing numerous GAO reports and urging me to address these issues. I am pleased that we could have GAO here today to focus on those subjects.

The other dramatic change that has occurred since EPA's inception is the emergence of State agencies in protecting the environment. Most of our major environmental laws are delegated in some fashion to the States. In addition, States spend most of the public money committed to environmental protection. In Fiscal Year 2000, the States spent $13.6 billion on environmental and natural resource protection – nearly double the entire budget of EPA.

State agencies have emerged as not only the work horses of environmental protection but also innovative leaders. States are on the cutting edge of solving the complex environmental problems that we face today. Unfortunately, their innovative ideas often run into obstacles -- some at the EPA itself.

Hopefully, today's hearing will shed some light on the experience that State agencies have had in attempting to overcome these obstacles, and what lessons Congress should take from those experiences as we look at elevating EPA.

Witnesses include: Nikki L. Tinsley, Inspector General, EPA; John Stephenson, Director of Natural Resources and Environment, GAO; Karen Studders, Commissioner, Minnesota Pollution Control Agency; and Jane T. Nishida, Secretary, Maryland Department of the Environment.

Mr. OSE. Joining us today on our first panel are the Honorable Nikki Tinsley, who is the Inspector General for the EPA. Good morning. Also John Stephenson, who is the Director of Natural Resources and the Environment for the U.S. General Accounting Office. Good morning.

Now, in this committee we typically swear in our witnesses, and we're going to conform to that norm this morning. So if you'd both rise.

And we have others who might provide counsel.

[Witnesses sworn.]

Mr. OSE. Let the record show that all the witnesses answered in the affirmative. Now our typical approach here, as you may well know, is that we recognize the witnesses for 5 minutes each to summarize their testimony, which we have received and we will enter into the record and I have read, and I even have a marked-up copy to ask questions from. So Ms. Tinsley, you are first for 5 minutes.

STATEMENTS OF NIKKI TINSLEY, INSPECTOR GENERAL, U.S. ENVIRONMENTAL PROTECTION AGENCY; AND JOHN STEPHENSON, DIRECTOR, NATURAL RESOURCES AND ENVIRONMENT, GENERAL ACCOUNTING OFFICE

Ms. TINSLEY. Well, good morning. I'm happy to be here to testify and share information on EPA's top 10 management challenges. Not surprisingly, these challenges overlap areas in the President's management agenda. I'm going to highlight today the challenges that are particularly important to EPA working with States.

One challenge that EPA faces is linking its environmental and human health mission with its corporate management responsibilities. This challenge relates to three of the President's management agenda items, linking budget and performance, improved financial management, and competitive outsourcing.

EPA can be viewed as a business whose primary product is delivering improved environmental and human health protection to the public, its investors, at a reasonable cost. For EPA to show its investors that it is a company worthy of investing in, it needs to address regional, State, and local priorities as it develops environmental and human health goals and defines how it will measure and report its accomplishments.

Further, the investors and Agency managers need to know the cost of activities and resulting environmental and human health protections in order to judge EPA's overall performance. Without detailed information on what is working and at what cost, Agency management cannot make informed decisions on how to best deploy its resources to achieve results and the investors cannot assess the success of their investment.

EPA is the leader in its progress in integrating its budget and accounting structure with the Government Performance and Results Act architecture and accounting for costs by goal and objective. But EPA needs to improve its cost accounting system and processes so Agency managers have useful, consistent, timely, and reliable information on the cost of carrying out programs.

The Agency has output data on activities, but it has little data to measure environmental outcomes and results.

Another challenge that EPA faces relates to information resources management, which is closely linked to e-government. In many respects, sound IRM practices establish the foundation for enabling e-government. Our audits of EPA programs often have a component relating to environmental data information systems, and we frequently find deficiencies within these systems. Today most States have information systems based upon State needs to support their environmental programs. EPA and States often apply different definitions within their information systems, and sometimes collect and input different kinds of data. As a result, States and EPA report inconsistent data, incomplete data, or obsolete data.

Recent audit work on EPA's systems identified problems in EPA's enforcement, Superfund and water programs, and we illustrated problems in inconsistent, incomplete, and obsolete data. EPA is developing an information exchange network that will support efforts for States and EPA to share information, and EPA is working with the Environmental Council of States to identify and develop data standards that will ensure consistency in data reporting.

Unfortunately, right now the States get to decide whether or not they want to adopt these standards. If the exchange network is to work effectively, applying the data standards cannot be voluntary.

EPA is also working to produce its first State of the Environment Report to be issued in the fall of this year. The purpose of this environmental report card is to inform the public on EPA's progress in protecting the environment and human health. This initiative will actually give the Agency its next opportunity to honestly evaluate its data collection processes, quality, and costs.

A third management challenge relates to the President's management agenda item on human capital management. EPA recognizes that one of its biggest challenges over the next several years is the creation and implementation of a work force planning strategy that addresses skill gaps in its current work force, particularly competencies related to leadership, information management, science, and technical skills.

These skills gaps will intensify over the next 5 years as about half of EPA's scientific and senior managers are eligible to retire. These gaps can be addressed in part through employee development. The need for training has been highlighted in a number of our audit reports and in reviews by GAO and the National Academy of Public Administration.

Our work shows that a lack of training for EPA employees has hindered the Agency's ability to work effectively with States, and that EPA needed to better train managers to oversee assistance programs and to lead in a results and accountability oriented culture.

Assistance agreements constitute approximately half of EPA's budget and are the primary vehicles through which EPA delivers environmental and human health protection. It is important that EPA and the public receive what the Agency has paid for. Our recent audit work of EPA's assistance agreements disclosed that some recipients did not have adequate financial and interim controls to ensure Federal funds were properly managed. As a result, EPA has limited assurance that grant funds are used in accordance

with work plans and met negotiated environmental targets. Last May we reported that the Agency did not have a policy for competitively awarding discretionary assistance funds totaling over $1.3 billion annually. EPA depends heavily on States to fund and implement national programs as well as most environmental data. Our work shows problems with EPA and States working together to accomplish environmental goals.

Mr. OSE. Ms. Tinsley, if I might, we have this entire statement for the record.

Ms. TINSLEY. OK.

Mr. OSE. If you could summarize here briefly. I know we've got another page and a half on your testimony.

Ms. TINSLEY. How about if I just jump to the part on elevation?

Mr. OSE. That would be fine.

Ms. TINSLEY. Which is—I was actually getting there. In addition to having to work with State partners, EPA also relies on a host of other Federal departments and agencies to accomplish its mission. Right now EPA's budget represents only 20 percent of the Nation's environmental and natural resource programs. Our office has been working with other Federal IGs to develop an inventory of Federal environmental programs and we have identified more than 300 environmentally related programs managed by other Federal agencies. Because of that, the broad breadth of these programs, we think it is important that EPA sit at the table as a full partner with the other Federal agencies, and so we support the elevation.

[The prepared statement of Ms. Tinsley follows:]

Testimony of the Honorable Nikki Tinsley
Inspector General
U.S. Environmental Protection Agency
Before the
Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs
Committee on Government Reform
United States House of Representatives

Good morning, Mr. Chairman, and Members of the Committee, I am Nikki Tinsley, the Inspector General for the U.S. Environmental Protection Agency. I am pleased to be here today to share with you information on EPA's top 10 management challenges. The "top 10" is a list that has been developed annually in the last few years by each Inspector General's office in response to a request by Congress. Under the Reports Consolidated Act of 2000, it is now a required component of an agency's Annual Performance Report.

Many of the top ten challenges identified by the Inspectors General at other federal departments and agencies are the same, and not surprisingly, these are the same issue areas that the president's management agenda seeks to address. During my oral testimony, I will highlight the management challenges that are particularly important to EPA's working relationship with the states. For the record, I will submit our entire report, which includes all ten issues with detailed information on audit and evaluation work we have done in each area.

Linking Mission and Management

President's Management Agenda items - linking budget and performance, improved financial management, and competitive outsourcing.

EPA can be viewed as a business which must seek to deliver high-quality products and services -- improved environmental and human health protection to its customers, the taxpayers, at a reasonable cost. Over the years, we have recommended to EPA a number of improvements to enhance accountability for the resources it spends.

To tell its story of performance in relationship to its goals, EPA needs to strengthen its efforts to ensure that regional and state priorities and targets are considered when developing outcome based goals and defining measures. Further, Agency managers, Congress, and the public need to know the cost of activities in order to judge overall performance. Without detailed information on what is working, and at what cost, Agency management cannot make informed decisions on how to best deploy resources to achieve results.

EPA has integrated its budget and accounting structure with the Government Performance and Results Act (GPRA) architecture, and accounts for costs by Goal and Objective. However, more needs to be done to improve EPA's cost accounting system and processes so Agency managers have useful, consistent, timely, and reliable information on the cost of carrying out EPA's programs. The Agency has output data on activities, but few environmental performance goals

and measures, and little data that support the Agency's ability to measure environmental outcomes and impacts. This makes it difficult to provide the regions and states the flexibility to direct their resources to what they consider to be the highest payoff activities, as well as to assess the impact of the Agency's work on human health and the environment.

Better performance measurement and financial accountability can be achieved through clearly linked performance measures with defined environmental outcome goals. Over the past two years, the Agency has taken several steps to improve its ability to manage for results and account for its resources. In August 2001, the Deputy Administrator charged the Office of the Chief Financial Officer (OCFO) with convening a group of senior leaders from across the Agency to examine EPA's strategic planning, priority-setting, budgeting, and accountability structures and processes. EPA has started developing the process for linking costs to goals but now must follow through by working with its regional offices and state and federal partners in developing appropriate outcome measures and accounting systems that track environmental and human health results across the Agency's goals. This information must then become an integral part of EPA's senior management's decision-making process.

In recent years, cost accounting has become increasingly important to Congress. Additionally, key elements of the President's Management Agenda emphasize government-wide initiatives to improve financial management, and increase competitive outsourcing. To effectively address these priorities, agencies will need to develop timely, accurate, and detailed cost information for their programs and activities, and outputs. We believe EPA's cost accounting system does not completely satisfy these objectives. We believe the OCFO supports creating systems that can provide the detailed information to managers necessary to support results-based decisions, however, this process needs to be intensified.

Information Resources Management

President's Management Agenda item - e-government.

Information Resources Management (IRM) covers a broad area of inter-related activities. In many respects, sound IRM practices establish the foundation for enabling e-government. Audits of EPA programmatic areas often have a component relating to environmental data information systems, and we frequently find deficiencies within these systems. Today, most states have developed environmental programs with their own supporting information systems, based upon their own needs. Moreover, EPA and the states often apply different data definitions within these information systems, and sometimes collect and input different data. The result has been that states and EPA report inconsistent data, incomplete data, or obsolete data.

The Agency is moving in the right direction, but many pieces that influence the effectiveness of a data management program still need to be fully addressed. During recent years, the Agency has specifically targeted various components, but developing a robust data management program has proven to be a complex and elusive effort. As such, corrective action dates have been extended several times since this Agency-wide problem was first reported in 1994.

Data reliability is another major aspect of data management that needs further attention. Recent audits indicate systems used by EPA's Enforcement, Superfund, and Water programs have inconsistent, incomplete, and obsolete data. As a result of these shortcomings, it is unlikely EPA will have the foundation it needs to share comparable information, monitor environmental activities or compare progress across the nation in the near future. Moreover, EPA's ability to enforce environmental laws and evaluate the outcomes of its programs in terms of environmental changes will continue to be limited by gaps and inconsistencies in the quality of its data.

EPA continues to work with the Environmental Council of States to identify and develop additional data standards. Past experiences suggest that the overall process needs to move forward in a more timely and structured manner. To its credit, EPA also has already developed several key registry systems and expects to adopt four new data standards in FY 2002, however, EPA management is letting states decide whether they want to adopt these standards. If EPA's exchange network infrastructure is to work effectively, the use of data standards cannot be voluntary. EPA needs to continue its efforts to identify what data is necessary to manage its programs, and work with its partners to ensure that such information is captured and reported in a timely, accurate, and consistent manner.

At this time, EPA is working to produce its first State of the Environment Report to be issued in the Fall of 2002. The purpose of the report card will be to inform the public on EPA's progress in protecting the environment and human health, and verify the Agency's goals and objectives are being met. This initiative will provide the next opportunity to honestly evaluate the Agency's data collection processes, quality and costs.

Employee Competencies

President's Management Agenda item - human capital management.

EPA's leadership recognizes that one of its biggest challenges over the next several years is the creation and implementation of a workforce planning strategy that focuses its attention and resources on employee development. EPA needs to better integrate human capital into its strategic plans by more effectively defining and developing needed competencies in leadership, information management, science and technical skills. The need for training has been highlighted in a number of our audit reports and in reviews by GAO and the National Academy of Public Administration.

Our review of the National Environmental Performance Partnership System (NEPPS), which was created in recognition of the key role the states have in environmental protection, concluded that a lack of training for EPA employees has hindered the effective implementation of this program. Audits have repeatedly noted a need to better train managers in their oversight and administration of EPA's assistance agreements programs. Additionally, we found that EPA has not required, nor regularly provided, specific training for its managers or executives to lead a results and accountability oriented culture.

EPA's FY 2001 Strategic Plan also broadly recognized the importance of human capital as a key priority for the Agency. In addition, GAO reported that EPA needs to implement a workforce

planning strategy to determine the skills and competencies needed to meet current and future needs. This need will intensify as about half of EPA's scientific and senior managers become eligible for retirement within five years. In response, EPA has begun implementing a Human Capital Strategic Plan. EPA's workforce planning efforts call for identifying the skills needed in every program unit based on an assessment of future program needs, identifying skill gaps, and tying skill needs to future budget requests. EPA awarded a contract in early calendar year 2002 to develop a model workforce planning process and a system that will meet the Agency's competency-based workforce planning needs.

EPA's Use of Assistance Agreements to Accomplish Its Mission

Assistance agreements constitute approximately one-half of the Agency's budget and are the primary vehicles through which EPA delivers environmental and human health protection. Therefore, it is important that EPA and the public receive what the Agency has paid for.

Over the past several years, our audit work has repeatedly identified problems in the delivery of environmental protection activities through assistance agreements. For example, we reported in September 2000 that EPA Region 8 was not consistently awarding and monitoring tribal grants. Agency officials placed a higher priority on external relationships, generally with the tribes, and some grants included unallowable activities or had inadequate or untimely work plans and progress reports.

Recent audits of EPA's assistance recipients disclosed that some recipients did not have adequate financial and internal controls to ensure federal funds were managed properly. As a result, EPA had limited assurance that grant funds were used in accordance with workplans and met negotiated environmental targets. Further, in May 2001, the OIG reported that the Agency did not have a policy for awarding discretionary assistance funds, totaling $1.3 billion, competitively and recommended such a policy be developed. Without competition, EPA cannot ensure it is funding the best products based on merit and cost effectiveness, thereby achieving program objectives and accomplishing its environmental mission. The Agency agreed and is drafting a policy which will address competition in the award of discretionary assistance funds.

The Agency has completed a number of actions to improve its oversight controls over assistance agreements, including requiring additional training for all project officers and issuing policy on project officer and grant management oversight roles and responsibilities. We are reviewing those actions and will continue to work with the Agency to identify solutions to assistance problems.

EPA's Working Relationship With the States

During the last two decades, environmental and human health protection programs have grown in size, scope, and complexity. Many environmental problems transcend media boundaries and solutions may require innovative, cross-media approaches. EPA and states recognized that existing arrangements for implementing environmental programs and addressing environmental problems were not as efficient and effective as they could be.

EPA depends heavily on states to fund and implement national programs as well as provide most of the environmental data. EPA and states have not yet agreed on how states will have flexibility, while being accountable for environmental results. Relations between EPA and states have been impacted by disagreements over: 1) respective roles and the extent of federal oversight, 2) priorities and budgets, and 3) results-oriented performance measures, milestones, and data. EPA can improve its working relationship with states by establishing a structure to set direction, establish goals, provide training, oversee accomplishments, and ensure accountability of EPA program and regional offices for encouraging and facilitating joint planning and priority setting with the states.

In an audit of state enforcement of the Clean Water Act, we reported that the state programs could be much more effective in deterring noncompliance with discharge permits and, ultimately, improving the quality of the nation's water. EPA and the states have been successful in reducing point source pollution. However, despite tremendous progress, nearly 40 percent of the nation's assessed waters are not meeting the standards states have set for them. The state strategies we evaluated needed to be modified to better address environmental risks, including contaminated runoff. Contaminated runoff, including agricultural and urban runoff, was widely accepted as causing the majority of the nation's remaining water quality problems. We recommended that EPA work with the states to develop risk-based enforcement priorities and upgrade the Permit Compliance System to ensure the System meets federal and state needs.

In a series of audits on regional and state the National Environmental Performance Partnership System (NEPPS) program implementation (including PPGs), we found that NEPPS principles were not well-integrated into EPA because of the lack of: (1) leadership providing a clear direction and expectations, (2) training and guidance, (3) trust in NEPPS due to fear of change and losing control, and (4) goals and related performance measures to monitor and measure progress on achieving better environmental results.

The current Administration has taken steps to set Agency direction for NEPPS and to better integrate it into EPA. The Administrator has emphasized a personal interest in seeing NEPPS succeed and expand. She described NEPPS as an excellent model of how EPA should work with states, and asked Regional Administrators to provide her with regular reports on how NEPPS is working. She also asked the Assistant Administrators to work with the Regions and states in identifying areas where flexibility is available and to encourage the testing of new measures of program performance.

While the Agency has taken some notable actions, we believe much remains to be done to improve EPA's working relationship with states while ensuring maximum environmental and human health benefits to the public. For example, EPA and state managers continue to struggle with how to provide states flexibility to address their highest environmental priorities while continuing to implement and report on core program requirements. In addition, EPA has not defined its performance measures and related milestones to monitor EPA and state progress toward accomplishing NEPPS and PPGs goals. We will continue to monitor the Agency's progress in addressing this important issue.

EPA's Elevation to Cabinet Level Department

Despite the responsibility implied by its name, the Environmental Protection Agency cannot address all environmental issues on its own. Under a number of federal environmental laws, EPA must delegate to the states the primary responsibility for implementing those laws. In addition to EPA's state partners, EPA also relies upon a host of other federal departments and agencies to accomplish its mission. To give some perspective, EPA's budget makes up less than 20 percent of the nation's environmental and natural resource programs.

The OIG is working in conjunction with other federal OIG's to develop an inventory of federal environmental programs. To date, we have identified more than 300 environmentally related programs managed by other federal agencies. Strong relationships and good coordination with these agencies are essential for meeting current and future environmental challenges. However, we believe that in order for EPA to have the best opportunity for success, it is important to have seat at the table as a Cabinet level federal department.

I thank the Committee for their attention. This concludes my remarks. I am happy to answer any questions you may have at this time.

1. Linking Mission and Management

EPA can be viewed as a business which must endeavor to deliver high-quality products and services -- improved environmental and human health protection -- to its customers the American people, at a reasonable cost. Over the years, we have recommended to EPA a number of improvements to enhance accountability for the resources it spends.

The Agency has established a framework for "results-based management" by setting long-term goals and objectives, with strategies for achieving them; setting annual goals and measures linked to EPA's budget request; tracking progress annually and longer-term; and using the results to adjust the Agency's goal setting and strategy development. However, EPA needs to improve its planning, measuring and accountability by involving its partners in goal and priority setting, linking output and outcome measures to its goals, and accounting for the cost of achieving those results.

EPA's strategic planning and budget architecture is organized around ten separate strategic goals which do not generally address overlapping environmental issues or the needs and priorities of EPA's regions and its state partners, which implement the majority of the Agency's programs. The Agency needs to strengthen its efforts to ensure that regional and state priorities and goals are considered when setting its national goals, defining meaningful measures, and accounting for costs and performance.

To tell its story of performance in relationship to its goals, the Agency must develop more outcome-based strategic and annual targets with its partners. When the Agency merged the budget and the Government Performance and Results Act (GPRA) process, it adopted a set of goals and measures that reflected each aspect of EPA's budget. The Agency has output data on activities, but few environmental performance goals and measures and little data that support the Agency's ability to measure environmental outcomes and impacts. EPA's reliance on output measures has made it difficult to provide the regions and states the flexibility to direct their resources to what they consider to be the highest pay-off activities, as well as assess the impact of the Agency's work on human health and the environment. Better performance measurement and financial accountability can be achieved through clearly linked, meaningful performance measures with defined environmental outcome goals. To be accountable to the American people, EPA and its partners need to capture and report meaningfully environmental and human health results information in a timely manner.

As a result of EPA's integration of its budget and accounting structure with the GPRA strategic architecture, the Agency accounts for all costs by Goal and Objective. However, more needs to be done to improve EPA's cost accounting system and processes so Agency managers have useful, consistent, timely, and reliable information on the cost of carrying out EPA's programs. It is also critical that EPA timely reports the full costs of its outcome results, outputs and activities. In addition, EPA managers may need and want other types of cost information beyond cost per output.

The Office of the Chief Financial Officer (OCFO) should lead an effort to determine what other types of cost information may be useful to Agency managers. Once these needs have been determined, the OCFO should then develop other meaningful cost measures. Congress and federal executives may find this cost information useful in making decisions about allocating resources, authorizing and modifying programs and evaluating performance.

Over the past two years, the Agency has taken several steps to improve its ability to manage for results and account for its resources. In August 2001, the Deputy Administrator charged OCFO with convening a Managing for Improved Results Steering Group, comprised of senior leaders from across the Agency. The Steering Group is examining EPA's strategic planning, priority-setting, budgeting, and accountability structures and processes to identify potential improvements and to develop a change strategy that will operate on two fronts: (1) by identifying options for significant, far-reaching reforms to national processes and systems and (2) by pursuing incremental changes and smaller-scale improvements that can be effected immediately.

While the Agency has taken a number of actions, we believe much remains to be done. Overall, EPA needs a comprehensive system to accumulate, report, link and use environmental information on activities and outcomes, as a basis for determining environmental return on investment, sound resource decisions, and accountability to the American people. EPA has started developing the process for linking costs to goals but now must follow through by working with its regional offices and state and Federal partners in developing appropriate outcome measures and accounting systems that track environmental and human health results across the Agency's goals. This information must then become an integral part of EPA's senior management's decision-making process.

OIG Products

2001-B-000001	EPA's Progress in Using the Government Performance and Results Act to Manage for Results, June 13, 2001
2001-1-00107	Audit of EPA's Fiscal 2000 Financial Statements, February 28, 2001
2000-P-0028	RCRA Corrective Action Focuses on Interim Priorities-Better Integration with Final Goals Needed, September 29, 2000
2000-P-10	Biosolids Management and Enforcement, March 20, 2000
2000-M-000828	EPA Needs Better Integration of the National Environmental Performance Partnership System, March 31, 2000
1999-000209	Region 8 Needs to Improve Its Performance Partnership Grant Program to Ensure Accountability and Improved Environmental Results, September 29, 1999
1999-000208	Region 6 Oversight of Performance Partnership Grants, September 21, 1999
1999-P-00216	Region 4's Implementation and Oversight of Performance Partnership Grants, September 27, 1999
91000115	EPA Controls Over RCRA Permit Renewals, March 30, 1999

2. **Information Resources Management**

Information Resources Management (IRM) covers a broad area of inter-related activities, including fundamental concepts such as using enterprise and data architecture strategies to guide the integration and management of data; implementing data standards to facilitate data sharing; and establishing quality assurance practices to improve the reliability, accuracy, and scientific basis of environmental data. Industry is identifying strategically important data as an enterprise or corporate asset, and spending significant amounts of money collecting and managing such data. Audits of EPA programmatic areas often have a component relating to environmental data information systems, and we frequently find deficiencies within these systems. We have often identified deficiencies within the Agency's data information systems. Today, most states have developed environmental programs with their own supporting information systems, based upon their own needs. Moreover, EPA and the states often apply different data definitions within these information systems, and sometimes collect and input different data. The result has been that states and EPA report inconsistent data, incomplete data, or obsolete data.

The Agency is moving in the right direction, but many pieces that influence the effectiveness of a data management program still need to be fully addressed. During recent years, the Agency has specifically targeted various components, but developing a robust data management program has proven to be a complex and elusive effort. As such, corrective action dates have been extended several times since this Agency-wide problem was first reported in 1994.

To date, several areas remain to be completed. For example, the Agency has yet to implement a 1998, agreed-upon, OIG recommendation to formally revise its policies and procedures to support an Agency standards program. Also, over a 2 ½ year period, EPA developed and formally approved six data standards; however, management estimates that these standards will not be implemented in the Agency's major environmental systems until the end of fiscal 2003. EPA also continues to work with the Environmental Council of States to identify and develop additional data standards. Past experiences suggest that the overall process needs to move forward in a more timely and structured manner. To its credit, EPA also has developed a Facility Registry System and several metadata registries -- the Environmental Data Registry, Chemical Registry System, Biology Registry System, Substance Registry System, and Terminology Reference System. Additionally, EPA expects to adopt four new data standards in FY 2002 in the areas of Permitting, Enforcement and Compliance, Water Quality Monitoring, and Tribal Identifiers.

The Assistant Administrator for Environmental Information is responsible for developing and maintaining a strategic information resources management plan. However, EPA has not revised its outdated information technology strategy or fully developed an Enterprise Architecture Plan to address the integration and management of its environmental data to support EPA strategic goals. The informal target date for completing EPA's target Enterprise Architecture is September 2002.

Data reliability is another major aspect of data management that needs further attention. Recent audits indicate systems used by EPA's Enforcement, Superfund, and Water programs have inconsistent, incomplete, and obsolete data. On-going audit work indicates that data in two

major Agency systems contain significant error rates in crucial data fields. For example, over 85 percent of the cases reviewed within EPA's National Enforcement Docket System contained errors in at least one key field. Many of these data fields were Congressionally-reported and used to track environmental progress on Government Performance and Results Act goals and measures. The Agency has taken significant steps to be responsive to data quality concerns by instituting an Integrated Error Correction Process, which provides an effective feedback mechanism for reporting and resolving errors identified by the public on EPA web sites. From May 2000 to September 2001, EPA received 987 alleged errors and resolved 650 of them. The rest are under review by EPA and State analysts.

Moreover, while the Agency recognizes and is trying to address such data accuracy problems, it has not developed a strategic plan to address the fact that managers may not have the right environmental data to make sound decisions. This year, EPA began developing a Data and Information Quality Strategic Plan to prioritize recommendations for improving the quality of currently collected data. However, the draft plan does not include a methodology to address the long-recognized problem of data gaps.

As a result of these short-comings, it is unlikely EPA will have the foundation it needs to share comparable information, monitor environmental activities or compare progress across the nation. Moreover, EPA's ability to enforce environmental laws and evaluate the outcomes of its programs in terms of environmental changes will continue to be limited by gaps and inconsistencies in the quality of its data. EPA needs to continue its efforts to identify what data is necessary to manage its programs, and work with its partners to ensure that such information is captured and reported in a timely, accurate, and consistent manner.

3. **Results-Based Information Technology Project Management**

Six years after the Clinger-Cohen Act (Act) introduced new requirements for managing Information Technology (IT) investments, it is apparent that EPA still has much to accomplish in planning for and developing an IT infrastructure to manage an integrated investment portfolio approach for environmental information. Specifically, EPA's strategic IT plan is seven years old and does not reflect the current needs of the Agency, much less the Act's requirements.

The Clinger Cohen Act intended a central process with a Chief Information Officer (CIO) to manage IT investments across the Agency. Since enactment of the Act, the Agency has taken two significant actions. In 1998, EPA established the CIO position and assigned responsibility for establishing an IT Architecture and an IT Capital Portfolio Investment Control (CPIC) process. Then, in 1999, EPA reorganized its IT management structure and established a Quality Information Council to coordinate IT investments across the programs. Although these two actions were meant to bring about changes in the way EPA manages its IT investments, IT project management continues as it did before the CIO position was established and significant gaps exist in the way IT investments are proposed, reviewed, funded, and managed.

For example, we have significant concerns regarding the effectiveness of EPA's current management structure, the consistency of its IT investment process, and the Agency's inability to track IT development and implementation effectively. Our concerns regarding the lack of IT project management at EPA were echoed in a special report, *Federal Agency Compliance with the Clinger-Cohen Act*, issued by the Senate Governmental Affairs Committee in October 2000. EPA has attempted to address these problems, but after five years has yet to propose a final project management process for IT capital investments for OMB reporting purposes.

Further, the IT CPIC process needed for managing and monitoring IT projects, continues to evolve slowly, year after year, with no established completion date. In addition, the Agency's IT policies are outdated and do not implement the Act's requirements. Therefore, managers are not urged to follow new procedures. Moreover, after six years, the Chief Financial Officer has just enacted an OIG recommendation to establish an IT project cost accounting methodology. We have concluded that EPA has an evolving, decentralized, and unmonitored approach to integrating information using existing IT projects, which in themselves have not developed or implemented minimal project management controls.

These weaknesses have significant ramifications because EPA reported approximately $398 million in fiscal 2000 investments and planned investments of $428 million for fiscal 2001. In March 2001, the Agency also reported that it expects to spend at least $449 million in fiscal 2002. In addition, a recent OMB report card concluded that 61 percent of EPA's fiscal 2002 IT Investment Portfolio was at high risk of failure. OMB reached this opinion primarily because it could not tell whether or how the Agency was using an enterprise architecture approach to assess and manage it development, modernization and enhancement projects.

To facilitate improvements in environmental protection, EPA must provide environmental information to its diverse stakeholders. To achieve that goal, EPA needs to update its IT

strategic plan to address the Agency's programmatic and operational goals, complete developing a common Agency IT architecture for IT projects, and establish a CPIC process that supports program needs such as environmental data standards, geographical information, and electronic reporting.

OIG Products

2001-P-00013	State Enforcement of Clean Water Act Dischargers Can Be More Effective, August 14, 2001
2000-P-00019	EPA's Oversight of State Stack Testing Programs, September 11, 2000
2000-P-00010	Biosolids Management and Enforcement, March 20, 2000
2000-P-00018	EPA's Multimedia Enforcement Program, June 30, 2000

4. Employee Competencies

The Agency recognizes that one of its biggest challenges over the next several years is the creation and implementation of a workforce planning strategy that focuses its attention and resources on employee development. EPA needs to better integrate human capital into its strategic plans by more effectively defining and developing needed competencies in leadership, management, science and technical skills. Appropriate training for staff, including supervisors and managers, is critical to the credibility of EPA's actions in accomplishing its environmental mission. The need for training is highlighted in a number of our audit reports and in reviews by GAO and the National Research Academy.

Specifically, an audit of the Superfund program disclosed that the Headquarters program office and several EPA regions did not clearly identify the quality assurance training needs of program staff. Even in regions where training needs were identified, the training was not always provided. We also found that EPA employees in the hazardous waste program needed more rigorous training to calculate proposed penalties against violating facilities. As a third example, our review of the National Environmental Performance Partnership System (NEPPS) concluded that a lack of training for EPA employees has hindered the effective implementation of this program. Audits have repeatedly noted a need to better train managers in their oversight and administration of EPA's assistance agreements programs. Additionally, we found that EPA has not required, nor regularly provided, specific training for its managers or executives to lead a results and accountability oriented culture.

In an audit on Region 6's Supplemental Environmental Projects (SEP), we found that the region did not effectively implement the SEP policy to ensure that EPA and the environment/public health were the primary beneficiaries of such projects. Better training in SEP procedures and methods, improved controls and guidance in evaluating project quality and monitoring SEP implementation, and more effective coordination with the Justice Department would have improved the Region's implementation of SEP policy.

EPA recognized the need for broader management, leadership and technical skills in its "*Workforce Assessment Project*" report which discussed the implications of future changes in EPA's mission and role in environmental protection. The study identified competency gaps that EPA must close to ensure its workforce can meet existing and new challenges.

EPA's FY 2001 Strategic Plan also broadly recognized the importance of human capital as a key priority for the Agency. In addition, GAO reported that EPA needs to implement a workforce planning strategy to determine the skills and competencies needed to meet current and future needs. This need will intensify as about half of EPA's scientific and senior managers become eligible for retirement within five years. In response, EPA has begun implementing a Human Capital Strategic Plan. EPA's workforce planning efforts call for identifying the skills needed in every program unit based on an assessment of future program needs, identifying skill gaps, and tying skill needs to future budget requests. EPA plans to award a contract in early calendar year 2002 to develop a model workforce planning process and a system that will meet the Agency's competency-based workforce planning needs.

EPA's Human Capital Strategy specifically addresses the need for management and leadership competencies by implementing a series of management development programs. The Agency needs to further its commitment to deploy the strategy by dedicating resources, developing performance measures, implementing necessary systems for recruiting and developing needed competencies, and then holding managers accountable.

OIG Products

2000-P-00014	Region 6 Supplemental Environmental Projects, August 22, 2001
2000-M-000828	EPA Needs Better Integration of the National Performance Partnership System, March 31, 2000
1999-000209	Region 8 Needs to Improve Its Performance Partnership Grant Program to Ensure Accountability and Improved Environmental Results, September 29,1999
8100240	EPA Had Not Effectively Implemented Its Superfund Quality Assurance Program, September 30, 1998
8100256	Pre-award Management of EPA Assistance Agreements, September 30, 1998

5. Quality of Laboratory Data

The quality of laboratory data supplied to the EPA for regulatory compliance and remediation purposes continues to be a pressing issue. Environmental data of questionable authenticity can lead to concerns about the soundness of EPA decisions pertaining to the protection of the environment and public health. Furthermore, data integrity issues lead to additional costs and unnecessary delays when the EPA has to identify and assess the impact of the fraudulent data and undertake additional sampling.

In a June 1999 memorandum to the Acting Deputy Administrator, we suggested actions the Agency could take to better identify data of questionable quality. However, current, on-going lab fraud investigations indicate that despite Agency efforts to ensure data quality, manipulated data continues to be generated and supplied to the Agency.

Our reviews and investigations have disclosed a particularly disturbing trend in the number of environmental laboratories that are providing misleading and fraudulent data to the states for monitoring the nation's public water supplies. Several current lab fraud investigations involve severe manipulation of lab data used to evaluate the compliance of public water supplies with Federal drinking water standards. Some of these manipulations have masked potential violations of the drinking water regulations. Many of the Agency's other programs (e.g., Superfund, Resource Conservation and Recovery Act, National Pollution Elimination and Discharge System, air toxins; underground storage tanks, and pesticides) have also been impacted by laboratory fraud.

The number of on-going lab fraud investigations has doubled over the last year. One of the investigations resulted in the indictment of 13 individuals, with five convictions. The laboratory made a criminal plea of conspiracy to commit mail fraud, and received a $9,000,000 fine. Environmental decisions based on this manipulated data at numerous military and civilian waste sites had to be reviewed and, in many cases, verified through additional testing. One EPA region estimated that the consequential damages resulting from this activity were approximately $1 million.

The Agency has conducted extensive technical systems assessment audits at all EPA regional and research laboratories. In addition, EPA has provided fraud detection and awareness training and ethics training; studied electronic methods for screening data; and issued guidance discussing the level of quality assurance given the intended use of data. These efforts should help to improve the quality assurance systems and documentation throughout the Agency's environmental laboratories. However, until the impact of these and any other recommended actions is realized, EPA must continue to assess and improve its controls over laboratory data quality.

OIG Products

IG's open letter to the environmental analytical laboratory community, September 5, 2001.

2000-P-3 Review of Region 5 Laboratory Operations, November 22, 1999

Memo to the Acting Deputy Administrator: Laboratory Fraud: Deterrence and Detection, June 25, 1999

6. EPA's Information Security Program

EPA relies on its information systems to collect, process, store, and disseminate vast amounts of information used to assist in making sound regulatory and program decisions. Therefore, it is essential that Agency prevent intrusion and abuse of its information systems and protect the integrity of its data.

We have issued a number of reports that cited critical inadequacies in the Agency's information security program and recommended specific corrective actions. In addition, a July 2000 General Accounting Office (GAO) review of EPA's information security program found serious and pervasive problems within the Agency's information security program that "essentially rendered it ineffective." GAO's report identified the existing practices as weak and largely a paper exercise that had done little to mitigate risks to the Agency data and systems.

EPA has made substantial improvements to its Information Security Program. The Agency has improved its risk assessment and planning processes, implemented major new technical and procedural controls, begun the issuance of new policies, and finally, begun a regular process of testing and evaluation. Under the leadership of the Office of Environmental Information (OEI), the Agency has been working to achieve the Agency's goals of making information on EPA's computer systems available, while protecting the confidentiality and integrity of its information. While no security program is perfect, the Agency's Information Security Program is substantially stronger than it was.

The dynamic nature of security, however, requires continued emphasis and vigilance. More needs to be done to protect the Agency's information and systems. In our view, EPA needs to establish a strong centralized security program with oversight processes that would adequately address risks and ensure valuable information resources and environmental data are secure. Given the Agency's decentralized organizational structure, it is essential that OEI establish a strong leadership and monitoring role to ensure the success of its computer security program.

OIG Products

2001-P-00016	GISRA: Status of EPA's Computer Security Program, September 7, 2001
2001-P-00004	Environmental Protection Agency Payroll and Personnel Systems (EPAYS) Access Controls, March 22, 2001
2000-1-00330	RACF Security controls, June 30, 2000
2000-P-16	Security of Region VIII's Dial-Up Access, March 31, 2000

7. **EPA's Use of Assistance Agreements to Accomplish Its Mission**

Assistance agreements constitute approximately one-half of the Agency's budget and are the primary vehicles through which EPA delivers environmental and human health protection. Therefore, it is important that EPA and the public receive what the Agency has paid for.

Over the past several years, our audit work has repeatedly identified problems in the delivery of environmental protection activities through assistance agreements. For example, we reported in September 2000 that EPA Region 8 was not consistently awarding and monitoring tribal grants. Agency officials placed a higher priority on external relationships, generally with the tribes, and did not pay sufficient attention to grant management and internal organizational relationships. Some grants included unallowable activities or had inadequate or untimely work plans and progress reports.

Recent audits of EPA's assistance recipients disclosed that some recipients did not have adequate financial and internal controls to ensure federal funds were managed properly. As a result, EPA had limited assurance that grant funds were used in accordance with workplans and met negotiated environmental targets. For example, an EPA Region 5 grantee could not adequately account for almost $169,000 of the $300,000 in EPA funds. Also, a Region 2 grantee had submitted multiple financial status reports with different ending balances, had excess federal funds on hand, and could not support that it had met the minimum cost-sharing requirement. Misuse of grant funds also resulted in an agreement with the City of Cleveland to settle a civil lawsuit charging that the city's Air Pollution Control Program improperly spent a total of $429,158 in grant funds awarded by EPA.

Further, in May 2001, the OIG reported that the Agency did not have a policy for awarding discretionary assistance funds, totaling $1.3 billion, competitively and recommended such a policy be developed. Without competition, EPA cannot ensure it is funding the best products based on merit and cost effectiveness, thereby achieving program objectives and accomplishing its environmental mission. The Agency agreed and is drafting a policy which will address competition in the award of discretionary assistance funds.

The Agency has completed a number of actions to improve its oversight controls over assistance agreements, including requiring additional training for all project officers and issuing policy on project officer and grant management oversight roles and responsibilities. We are reviewing those actions and will continue to work with the Agency to identify solutions to assistance problems.

OIG Products

2001-P-00008 EPA's Competitive Practices for Assistance Agreements, May 21, 2001
2000-P-00021 Increased Focus on Grant Management and Internal Relationships Would Improve Region 8's Tribal Assistance Program, September 29, 2000
2000-1-0416 Grant Management Practices of Rhode Island Department of Environmental Management, September 21, 2000
2000-P-000020 Ohio Environmental Protection Agency Superfund Cooperative Agreement, September 15, 2000

8. **Backlog of National Pollutant Discharge Elimination System (NPDES) Permits**

The Clean Water Act specifies that NPDES permits may not be issued for more than five years. Permittees wishing to continue discharging beyond that term must submit an application for permit renewal at least six months prior to the expiration date of their permit. If the permitting authority receives that application but does not reissue the permit prior to expiration, the permit may be "administratively continued." These administratively continued permits are considered "backlogged."

Backlogged permits are an important issue because the conditions upon which the existing permit is based may have changed since the original permit was issued. These changed conditions might require that the permitee discharge less toxic waste or less volume of waste. The "backlogged" permit would not contain these new terms and conditions, thereby delaying potential environmental improvements to waters.

EPA is the permitting authority for six states and has delegated permitting authority to the remaining 44 states. The Agency recognizes that the backlog of NPDES permits is a nationwide problem and has developed a corrective action plan that includes a variety of strategies to reduce the backlog. These strategies include creating a streamlined process for developing permits by taking advantage of new technology; providing assistance to the states through both environmental assessments and permit assistance; and finally, communicating the importance of this issue to the states and EPA regional offices and receiving firm commitments to reduce the backlog from them.

EPA's goal is to reduce the backlog of NPDES permits for major facilities to10 percent by the end of calendar year 2001 and to10 percent for major and minor permits by the end of calendar year 2004. As of August 2001, the percentage of backlogged major permits was 23.5 percent, and 27 percent for minors.

EPA estimates that only Region 4 will meet the 2001 goal for major permits. According to EPA officials, the 2001 goal will not be met because of the dramatic increase in the complexity of writing NPDES permits over the past several years due to the number of parameters included in permits.

EPA realizes that its current permitting system needs to be reevaluated and that the Agency needs to find new ways of implementing the NPDES program or the problem will become worse. According to EPA officials, the number of point sources needing permits has increased five times in the past 10 years. EPA is considering a number of innovative methods to address the expanding scope of the NPDES program. For example, the use of general permits that are written for a class of similar facilities, and the use of information technology to expedite the entire permit development process, including electronic submission of permit applications, electronic files to develop permits, and electronic reports are all viable options.

We will continue to monitor the progress EPA makes in addressing this important issue. Eliminating the backlog and making the permit issuance process more efficient will free up resources for other important activities.

9. EPA's Working Relationship With the States

During the last two decades, environmental and human health protection programs have grown in size, scope, and complexity. Many environmental problems transcend media boundaries and solutions may require innovative, cross-media approaches. EPA and states recognized that existing arrangements for implementing environmental programs and addressing environmental problems were not as efficient and effective as they could be.

EPA depends heavily on states to fund and implement national programs as well as provide most of the environmental data. EPA and states have not yet agreed on how states will have flexibility, while being accountable for environmental results. Relations between EPA and states have been strained due to disagreements over: 1) respective roles and the extent of federal oversight, 2) priorities and budgets, and 3) results-oriented performance measures, milestones, and data. EPA can improve its working relationship with states by establishing a structure to set direction, establish goals, provide training, oversee accomplishments, and ensure accountability of EPA program and regional offices for encouraging and facilitating joint planning and priority setting with the states.

In an audit of state enforcement of the Clean Water Act, we reported that the state programs could be much more effective in deterring noncompliance with discharge permits and, ultimately, improving the quality of the nation's water. EPA and the states have been successful in reducing point source pollution. However, despite tremendous progress, nearly 40 percent of the nation's assessed waters are not meeting the standards states have set for them. The state strategies we evaluated needed to be modified to better address environmental risks, including contaminated runoff. Contaminated runoff, including agricultural and urban runoff, was widely accepted as causing the majority of the nation's remaining water quality problems. We recommended that EPA work with the states to develop risk-based enforcement priorities and upgrade the Permit Compliance System to ensure the System meets federal and state needs.

The National Environmental Performance Partnership System (NEPPS) established a new framework to reinvent the EPA-state working relationship to better focus on working as partners to accomplish complex environmental issues with scarce resources. As one of the primary tools for implementing NEPPS, performance partnership grants (PPG) allow states and tribes to combine multiple EPA grants into one. EPA began implementing PPGs in 1996.

In a series of audits on regional and state NEPPS program implementation (including PPGs), we found that NEPPS principles were not well-integrated into EPA because of the lack of: (1) leadership providing a clear direction and expectations, (2) training and guidance, (3) trust in NEPPS due to fear of change and losing control, and (4) goals and related performance measures to monitor and measure progress on achieving better environmental results.

Since we began issuing our reports in September 1999, the Agency has taken several steps to ensure that NEPPS fulfills its potential. To address the lack of leadership and clear direction for NEPPS, the Agency formally designated the Assistant Administrator for the Office of

Congressional and Intergovernmental Relations as the National Program Manager for NEPPS. The Agency also began drafting a handbook to promote understanding of NEPPS and included PPG project officer training as part of its national grants conference.

The current Administration has also taken steps to set Agency direction for NEPPS and to better integrate it into EPA. The Administrator has emphasized a personal interest in seeing NEPPS succeed and expand. She described NEPPS as an excellent model of how EPA should work with states, and asked Regional Administrators to provide her with regular reports on how NEPPS is working. She also asked the Assistant Administrators to work with the Regions and states in identifying areas where flexibility is available and to encourage the testing of new measures of program performance.

While the Agency has taken some notable actions, we believe much remains to be done to improve EPA's working relationship with states. For example, EPA and state managers continue to struggle with how to provide states flexibility to address their highest environmental priorities while continuing to implement and report on core program requirements. In addition, EPA has not defined its performance measures and related milestones to monitor EPA and state progress toward accomplishing NEPPS and PPGs goals. We will continue to monitor the Agency's progress in addressing this important issue.

OIG Products:

2001-P-00013	Water Enforcement: State Enforcement of Clean Water Act Dischargers Can Be More Effective, August 2001
2001-B-000001	EPA's Progress Using the Government Performance and Results Act to Manage for Results, June 13, 2001
2000-P-00008	Improving Region 5's EnPPA/PPG Program, February 29, 2000
2000-M-000828-000011	EPA Needs Better Integration of the National Environmental Performance Partnership System, March 31, 2000
1999-000209-R8-100302	Region 8 Needs to Improve Its Performance Partnership Grant Program to Ensure Accountability and Improved Environmental Results, September 29, 1999
1999-P-00216	Region 4's Implementation and Oversight of Performance Partnership Grants, September 27, 1999
1999-000208-R6-100282	Region 6 Oversight of Performance Partnership Grants, September 21, 1999

10. Protecting Infrastructure From Non-Traditional Attacks

Under Presidential Decision Directive (PDD) 63, initiated in May 1998, Federal Agencies are required to review by May 2003 their respective critical physical and cyber-based infrastructures to ensure the performance of their mission in the event of non-traditional attacks within the United States. The Directive also places additional responsibility with Federal agencies considered to have a major sector vulnerable to infrastructure attacks. EPA has been assigned the designated Lead Agency and Sector Liaison for the nation's water systems. The Agency, in cooperation with its private sector counterparts, is to address potential areas of vulnerability and critical infrastructure protection of the nation's water systems.

In June 2001, we reported that funding problems caused delays in attempts by EPA and the private sector to develop a national framework for protecting this critical infrastructure. Consequently, some key PDD 63 requirements, such as conducting vulnerability assessments and risk mitigation, as well as implementing a Vulnerability Awareness and Education Program for the water sector, had yet to be achieved. As a result, the OIG could not state whether EPA and its private sector counterparts would be successful in their attempt to develop a national framework for protecting the critical infrastructure of the nation's water supply.

In our report, we recommended that the Agency complete PDD 63 activities in process, fill gaps in critical infrastructure planning, and address resource needs. In response, the Agency generally agreed with our conclusions and recommendations. The Agency cited various actions to address security issues, including developing a vulnerability assessment methodology for the industry, training utilities to undertake vulnerability assessments, revising emergency operations plans to incorporate specific counter-terrorism measures, supporting the development of a secure Information System and Analysis Center, and awarding grants to study the use of advanced technology to produce devices for detecting dangerous microorganisms in water supplies.

In light of the events of September 11, 2001, the OIG and the Senate Committee on Environmental and Public Works asked the Agency in October to report its current and more immediate action plans to protect the nation's water systems from terrorist attack. In a November 19, 2001, memo to the OIG, the Agency reported that the Administrator has established a Water Protection Task Force with a staff working full-time on implementing PDD 63 and other related activities (this increased the staff working on water security issues from one full-time engineer to about 10 full-time staff and many part-time EPA specialists). Significant progress has been made on many of the tasks outlined in a 1998 draft plan to develop the National Infrastructure Assurance Plan: Water Supply Sector. Most of the tasks have been examined closely, revised if appropriate, and placed on an accelerated schedule so that the majority of activities will be completed by the end of 2002, with the remainder completed in 2003. Besides accelerating the work, the Agency has expanded the work to include support for all water systems, both drinking water and wastewater (original plan was to focus on the largest drinking water systems serving more than 100,000 people).

This is a major Agency initiative with national impact that merits continued attention to ensure that planned activities are implemented, milestones are met, and issues are reported, addressed, and corrected as soon as possible. We will monitor the Agency's progress on this important water issue.

OIG Products

2001-P-00010	Review of EPA's Adherence to PDD 63, June 25, 2001

Mr. OSE. Thank you. We appreciate your summary.

Mr. Stephenson for 5 minutes, if you would, please.

Mr. STEPHENSON. Thank you. Good morning, Mr. Chairman. I am pleased to be here today to discuss GAO's views on providing EPA cabinet level status and to also point out some of the major management challenges that the Agency must address regardless of whether it becomes a cabinet level department or not. Some of these views are going to sound very similar to what you just heard from Ms. Tinsley, so I will be very brief.

While ultimately it is up to the Congress and the President to decide, we believe that there is merit to elevating EPA to a cabinet level department. Since EPA was created in 1970, its responsibilities have grown enormously. Its mission, to protect human health and the environment, has become increasingly significant with the Nation's understanding of environmental problems. Today, EPA's mission, size, and scope of responsibilities place it on a par with many cabinet level departments.

Its 18,000 employees and $7½ billion budget make it larger or about the same size as the Departments of Labor, VA, HUD, Energy, Education, State, Interior, and Commerce. Other factors, although less quantifiable, include the highly significant environmental problems to be addressed, the need for environmental policy to be on equal footing with the domestic policies of other cabinet departments, and the need for international cooperation in formulating long-term policies.

The United States is the only major industrialized Nation in the world without cabinet level status for environmental issues. Regardless of its status as a department or Agency, there are longstanding fundamental management challenges that EPA needs to address. I'll highlight three of these.

First, EPA must address the challenge of strategic human capital management. Simply stated, that means having the right people with the appropriate skills where they are needed. Last October we reported that EPA had not done sufficient work force planning and analysis to determine the number of staff and the appropriate skill mix needed to carry out its mission. We also noted that the number of enforcement staff available to oversee State-implemented programs varied significantly among EPA's 10 regions, raising questions about whether enforcement may be more rigorous in some States than others. EPA has initiated actions to address our concerns, and we are doing followup work to assess this and other management challenges at EPA.

Second, EPA needs better scientific environmental information. Such information is essential if EPA is to establish priorities for its programs that reflect risk to human health and the environment, something we all believe it should strive to do. This type of information is also needed to identify and respond to emerging problems before significant damage is done to the environment, damage that directly affects human health and costs hundreds of billions of dollars a year to correct.

While EPA annually collects vast amounts of data, much of it is incomplete, inaccurate, and not well integrated. As a result, it is not useful information to credibly assess risk and establish corresponding risk reduction strategies.

Further, the lack of credible data has been a roadblock to EPA's efforts to develop a comprehensive set of environmental measures and indicators needed to evaluate the success of its programs.

And finally, I would like to highlight an area I will call regulatory innovation. Under the existing Federal approach, EPA, under various environmental statutes, prescribes regulations with which States, localities, and private companies must comply. This approach, commonly referred to as command control, has resulted in significant progress in some areas, but is increasingly being criticized for being costly, inflexible, and ineffective in addressing some of the Nation's most pressing environmental problems.

In recent years, EPA has encouraged wider use of innovative regulatory strategies that could streamline the environmental requirements, but our work has shown that EPA has had limited success in implementing such strategies.

This is due in large part to a strict interpretation of the existing regulations. Legislative changes are needed to overcome this barrier, changes that would give EPA broad statutory authority or a "safe legal harbor" for allowing States and others to pursue innovative approaches in carrying out environmental statutes. Of course, EPA would also need to develop the environmental indicators I alluded to earlier to assure that the new approaches are doing a better job than the command and control approaches they replace.

That concludes my statement. I would be happy to take any questions.

[The prepared statement of Mr. Stephenson follows:]

United States General Accounting Office

GAO

Testimony

Before the Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs, Committee on Government Reform, House of Representatives

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ENVIRONMENTAL PROTECTION

Observations on Elevating the Environmental Protection Agency to Cabinet Status

Statement of John B. Stephenson
Director, Natural Resources and Environment

GAO-02-552T

Mr. Chairman and Members of the Subcommittee:

We appreciate the opportunity to appear before you today in the Subcommittee's hearing on legislation to elevate the Environmental Protection Agency (EPA) to Cabinet status. As requested, my testimony discusses (1) our views on providing EPA with Cabinet status and (2) the major management challenges that the agency faces in meeting its mission, regardless of whether it becomes a Cabinet department or remains an agency.

My testimony today is based on a body of our reports on EPA's organizational structure, human capital activities, information requirements, and relationships with its state partners. We also have testified on elevating EPA before–as early as 1988, when we discussed EPA's increasing environmental policy role in shaping other domestic and foreign policies.

While the decision to alter EPA's organizational status is a policy matter for the Congress and the President to decide, we believe that there is merit to considering elevating EPA to a Cabinet department. Since EPA was created in 1970, its responsibilities have grown enormously, along with greater understanding of the environmental problems facing the nation. Today, EPA's mission, size, and scope of responsibilities place it on a par with many Cabinet departments. As a result, it is important to consider that (1) environmental policy be given appropriate weight as it cuts across the domestic and foreign policies that other Cabinet departments implement and enforce and (2) the head of the agency is able to deal as an equal with his or her counterparts within the federal government and within the international community as well. Providing Cabinet status would also clarify the organization's direct access to the President on environmental matters.

Regardless of its status as a department or agency, EPA must respond more effectively to the fundamental performance and accountability management challenges it faces if it is to achieve its mission. These challenges include

(1) placing the right people with the appropriate skills where they are needed and (2) gaining access to high-quality environmental, natural, and social data on which to base environmental decisions. Also, EPA must have the flexibility to use innovative approaches to address the most complex and intractable environmental problems. Meeting these challenges will require the sustained attention of the agency's senior leaders.

Issues to Weigh in Considering Cabinet Status for EPA

Organizational changes are common within the federal government, occurring when federal missions change, when certain activities are to be emphasized or de-emphasized, and when a new organizational structure is needed to improve the effectiveness of federal programs. In effect, the types of federal organizations and their activities reflect shifting perceptions of national problems and how the government can best deal with them.

Conferring Cabinet status on EPA would not in itself change the federal environmental role or policies, but it would clearly have an important symbolic effect. The United States is the only major industrial power without a Cabinet-level environmental organization. The additional visibility and prestige that comes with Cabinet status would send the symbolic, but important, message to other federal departments and foreign nations that the United States is fully committed to solving the most serious and complex domestic and global environmental problems.

Determining which federal activities should receive emphasis at the highest levels of government is not a straightforward task. That is, the criteria are not clear-cut for determining the type of organizational structure that would be most suitable for establishing and carrying out federal policy and programs for the activities.

Several factors, however, should be considered when deliberating the structure

and role of federal organizations. For example, budgetary and staffing levels provide some measure of whether an organization's programs warrant Cabinet-level emphasis. With an annual budget exceeding $7 billion and a staffing level of 18,000 employees, EPA is larger than several existing Cabinet-level departments.

Other factors, although less quantifiable than budgetary and staffing levels, should also be considered in determining the most appropriate organizational structure for formulating and implementing federal polices and objectives. They include the (1) significance of the problems to be addressed, (2) the extent and level of interaction and coordination necessary with other federal departments, and (3) the need for international cooperation in formulating long-term policies. Such factors are clearly applicable to EPA's role and responsibilities in managing the nation's response to domestic and foreign environmental problems. In this regard:

- Environmental problems are often long-term, complex, and enormously expensive, and pose significant threats to human health and natural ecosystems. As one measure of economic impact, in 1990, EPA estimated that total pollution control expenditures in the United States by industry, government, and households in the late 1980s were between $100 billion and $120 billion annually in 1990 dollars. These estimated expenditures were for air and radiation, water, solid waste, hazardous waste, leaking underground storage tanks, Superfund sites, and pesticides and toxic substances. The agency projected that total expenditures would rise from 1.9 percent of the U.S. Gross Domestic Product (GDP) in 1987 to between 2.6 and 2.8 percent of the GDP by the year 2000. Even as our government tries to solve old environmental problems, new ones, such as global warming and the depletion of stratospheric ozone, demand increasing attention. It is likely that these issues will be even more difficult and expensive to solve.

- As the agency responsible for establishing environmental policy, EPA must

interact regularly with the departments of Agriculture, Defense, Energy, the Interior, State, Transportation, and others. These agencies spend billions of dollars annually to comply with environmental laws and clean up past contamination. However, years of experience have demonstrated that these agencies do not always provide the support and cooperation necessary to further environmental goals. In this regard, environmental consequences were largely ignored at sites of the Department of Defense (e.g., in testing mustard gas at Spring Valley in Washington, D.C.); Department of Energy, (e.g., in using nuclear materials at Rocky Flats, Colorado); and Department of the Interior (e.g., in dealing with thousands of abandoned mines on federal lands). Such sites now are likely to cost the nation hundreds of billions of dollars to correct polluted conditions. Furthermore, jurisdictional conflicts have created roadblocks that are not conducive to cooperating with EPA and that have sometimes resulted in placing a low priority on environmental protection. Such conflicts could be addressed more effectively in the future by placing the head of the federal environmental organization on an equal footing with the heads of other federal departments. This would enable environmental issues to better compete with other national issues in policy, budgetary, and programmatic decisions as they are being made.

- International environmental problems involving climate change, stratospheric ozone depletion, and acid rain will require greater attention in the 21st century. On these and other issues, EPA's key international functions include providing technical expertise to the State Department in integrating environmental policies into environmental treaties and foreign trade agreements. For example, under the Clean Air Act, EPA played a major role in implementing the Montreal Protocol by issuing administrative changes to the final rule to phase out ozone-depleting substances in 1995, and provides data and funding that support the protocol. Cabinet status for EPA could enhance the ability of the United States to provide leadership and assistance to the rest of the world by conveying that the nation recognizes the seriousness of

domestic and global environmental problems, and that the problems are receiving adequate attention.

EPA Faces Major Management Challenges That Hinder Its Efforts to Meet Its Mission

Whether or not EPA becomes a Cabinet-level department, the challenges that await it are formidable. Department or agency, it must, first of all, pay greater attention to strategic human capital management to improve its performance and accountability in accomplishing its mission of protecting human health and the environment. It must also develop high-quality information to support its regulatory programs and measure environmental results. Finally, it must find alternatives to traditional regulatory approaches in order to streamline environmental requirements while encouraging more effective risk-based means of protecting the environment.

Implementing an Effective Workforce Strategy Would Help EPA to Achieve Its Mission

In the past, EPA, like most federal agencies, has not made strategic human capital management an integral part of its strategic and programmatic approaches to accomplishing its mission. To emphasize our concern about and the importance of this area, in January 2001, we included human capital management as a newly designated governmentwide high-risk area.[1] In addition, at the beginning of this

[1]U.S. General Accounting Office, *High Risk Series: An Update*, GAO-01-263 (Washington, D.C.: January 2001).

month, we released to federal agencies our "Model of Strategic Human Capital Management",[2] to help agency leaders effectively lead and manage their people and integrate human capital considerations into daily decision-making and the program results they seek to achieve.

We also note that the administration is giving increased attention to strategic human capital management. The President has placed human capital at the top of his management agenda and the Office of Management and Budget has assessed agencies' progress in addressing their individual human capital challenges as part of its management scorecard. Agencies have also prepared workforce analyses as an initial phase of implementing the President's initiative to have agencies restructure their workforces to streamline organizations

To its credit, EPA is one of the agencies that recently has recognized the importance of human capital and made substantial progress in developing a strategy to more effectively manage its workforce. The agency is now in a good position to move forward during the next few years toward implementing the human capital activities that are associated with high-performing organizations. Nonetheless, several key actions will be necessary to ensure that EPA's efforts to better manage its workforce become an integral part of the way it does business, and not just another paper exercise. In this regard, EPA must improve its strategic planning process to specifically address how human capital activities will help the agency achieve its goals, identify the specific milestones for completing actions to implement its human capital objectives, and establish results-oriented performance measures.

In addition, EPA must more aggressively manage its workforce to obtain the economies, efficiencies, and effectiveness associated with determining the appropriate size of its workforce, the deployment of its staff geographically and organizationally, and the skills needed to support its mission. For example, in

[2] U.S. General Accounting Office, A *Model of Strategic Human Capital Management Exposure*

October 2001, we reported that without workforce planning and analysis, EPA was not able to determine the (1) appropriate workforce size, (2) balance between staff carrying out enforcement functions and staff providing technical and compliance assistance, and (3) location of regional staff needed to ensure that regulated industries receive consistent, fair, and equitable treatment throughout the nation. We also noted that the number of enforcement staff available to oversee state enforcement programs varied significantly among EPA's 10 regions, raising questions about some regions' ability to provide consistent levels of oversight to the states.

As a result of our work, we recommended that the EPA Administrator collect and review complete and reliable information on regional workforce requirements and capabilities before transferring $25 million of EPA's fiscal year 2002 budget for a new state enforcement grant program and eliminating 270 of EPA's enforcement staff positions. (Citing our report, the Congress did not provide EPA with authority to carry out this transfer.) We also recommended that the EPA Administrator take agencywide actions to (1) develop a system for allocating and deploying EPA's workforce, (2) target recruitment and hiring practices to fill critical needs for skills such as those for environmental engineering, toxicology, and ecology, and (3) implement training practices that provide a link between developmental opportunities and the competencies needed to accomplish EPA's mission. EPA concurred with these recommendations and is in the process of implementing them.

EPA Needs Better Environmental and Scientific Information to Manage Risks and Measure Results

To ensure that it is meeting its mission effectively, EPA needs high-quality scientific and environmental information to establish priorities that reflect risks to human health and the environment, and that compare risk reduction strategies

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Draft, GAO-02-373SP (Washington, D.C.: March 2002.)

across programs and pollution problems. Such information is also needed to identify and respond to emerging problems before significant damage is done to the environment. While EPA has collected a vast amount of scientific and environmental data, much of the data is not complete and accurate enough to credibly assess risks and establish corresponding risk reduction strategies.

Likewise, primarily because of inadequacies in its scientific and environmental data, EPA has not been successful in identifying, developing, and reaching agreement with its stakeholders on a comprehensive set of measures to link EPA's activities to changes in human health and the environment. Spurred by the Government Performance and Results Act of 1993, (GPRA), EPA has made some progress in measuring the results (outcomes) of its programs but doing so has proved to be a difficult task for the agency, and relatively few outcome measures have been developed to date.

We note that the Subcommittee is considering a bill that would, among other things, create a Bureau of Environmental Statistics with broad authority to collect, compile, analyze, and publish a comprehensive set of environmental quality and related measures of public health. As a focal point for information collection within a new department, such a bureau, if managed properly, could not only inform the department and the public about the state of the environment, but it could also provide measures that can be linked to actions to protect the environment.

More Complete and Accurate Data Are Needed to Characterize Risk

Establishing risk-based priorities for EPA's programs requires high-quality data on the use and disposal of chemicals. To assess human exposure to a chemical, the agency needs to know how many people are exposed; how the exposure occurs; and the amount and duration of the exposure. To assess environmental exposure, EPA needs to know whether the chemical is released to the air, water, or land;

how much is being released; and how wide an area is being affected.

Historically, EPA's ability to assess risks and establish risk-based priorities has been hampered by data quality problems, including critical data gaps, databases that are not compatible with one another, and persistent concerns about the accuracy of the data in many of EPA's data systems. Thus, while EPA's priorities should reflect an understanding of the relative risk that a chemical poses to the environment and human health and values, good data often do not exist to fully characterize risk. For example:

- Substantial gaps exist in EPA's Integrated Risk Information System, a database of the agency's consensus on the potential health effects of chronic exposure to various substances found in the environment. This database lacks basic data on the toxicity of about two-thirds of the known hazardous air pollutants.

- EPA developed many program-specific databases over the years that contain enormous amounts of data that cannot be integrated with one another because they were developed and maintained to support specific programs and activities and lack common data standards (definitions and formats).

- EPA extensively relies on data provided by the states, but much of the data have not been verified, and EPA does not know the quality of the data.

We have made numerous recommendations over the years to help EPA improve its data, including a recommendation that EPA develop a comprehensive information management strategy to ensure the completeness, compatibility, and accuracy of its data. While concurring with the thrust of our recommendations, EPA has made slow and uncertain progress in addressing its long-standing information challenges and will require a much more focused approach and top management attention to meet its information needs.

Success in Developing Environmental Measures Will Depend on Data Improvements

Better data are also needed to measure the results of EPA's efforts and determine its effectiveness in meeting its mission. Well-chosen environmental measures inform policymakers, the public, and EPA managers about the condition of the environment and provide for assessing the potential danger posed by pollution and contamination. They are also indispensable to sound decisions on EPA's future priority-setting and budgeting.

GPRA requires EPA and other federal agencies to prepare performance plans containing annual performance goals and measures to help move them toward managing for results. Performance measures are the yardsticks to determine success in meeting a level of performance expressed as a tangible, measurable objective against which actual achievement can be compared. Although EPA has made progress under the act, our analysis of its fiscal year 2000 performance plan showed that over 80 percent of the agency's performance measures were program outputs, such as the number of regulations issued, rather than reductions in pollutants or their adverse effects on the ecology or human health.[3]

The EPA Administrator recently announced a major initiative aimed at developing measures of future environmental performance. The new "Environmental Indicators Initiative" is intended to collect measures of environmental quality and integrate them into a single agencywide information system for reporting measures of both activities and outcomes that reflect EPA's ability to show environmental progress. Significantly, the effort also involves an advisory group led by the Council on Environmental Quality (CEQ) that will collect environmental indicators tracked by federal agencies. This effort should help EPA to report health and environmental conditions beyond the agency's purview.

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[3] U.S. General Accounting Office, *Managing for Results: EPA Faces Challenges in Developing Results-Oriented Performance Goals and Measure*: GAO/RCED-00-77 (Washington, D. C., April 28, 2000)

While this step is in the right direction, EPA will face an enormous challenge in getting the scientific and environmental data that it needs to develop outcome-oriented performance measures. Such data on exposure to pollution and its effects is often difficult and costly to obtain because of the monitoring equipment and staff resources required. Consequently, EPA estimates the types and amounts of exposure on the basis of a chemical's physical properties, how it is used, the industrial processes for producing and processing it, production volumes, and the type and amount of releases to the environment. However, much of the basic data that EPA needs to develop its estimates are not available, and the agency must rely on models or other analytical techniques. Moreover, EPA rarely has sufficient data to permit full analysis of a chemical, and the agency has little assurance that its exposure assessments are accurate and complete.

Creating a Bureau of Environmental Statistics would place an emphasis on obtaining high-quality data and could considerably strengthen the agency's ability to manage its programs to obtain environmental improvements, provided that the bureau is given sufficient authority, resources, and staff expertise to accomplish its complex job. Aggressive actions to find out more about what aspects of the environment are most improved or most degraded should enable EPA to better link its knowledge of these conditions with its programs and activities. EPA could then determine which activities are successful in correcting problems and which are not.

The creation of a Bureau of Environmental Statistics could be particularly helpful with regard to obtaining the environmental, health, and economic impact information collected by other federal agencies but not currently integrated with EPA's data. The agency's Science Advisory Board has recommended that EPA do more to link the agency's databases with federal and other external databases, noting, "answering many health-related questions frequently requires linking environmental data to census, cancer or birth registry data, or other data systems

(such as water distribution maps) to determine whether there is a relationship between the environmental measures and health." While EPA officials recognize the importance of linking EPA's databases with those of other agencies, neither EPA nor the other agencies have made significant progress because data linkage is not specifically required and the agencies have higher priority funding demands.

Obstacles to Innovative Regulatory Programs

In the current federal approach to environmental protection, EPA, under various environmental statutes, prescribes regulations with which states, localities, and private companies must comply. This approach, commonly referred to as command and control, has achieved some important benefits, but the additional improvements to address some of the nation's most pressing environmental problems warrant new and more cost-effective approaches. EPA responded during the 1990s with a variety of initiatives intended to encourage its state partners and others to propose innovative regulatory strategies that could streamline environmental requirements while encouraging more effective means of protecting the environment.

As we and other organizations have reported in past years, however, EPA's effectiveness in promoting regulatory innovation has been limited. Most recently, we evaluated the particular problems facing states in their own efforts to pursue innovative regulatory programs. We found their most significant obstacles to be the detailed requirements of prescriptive federal environmental regulations, along with a cultural resistance among many EPA staff toward alternative approaches–

often manifested in lengthy and costly reviews of state proposals.[4] In some cases, the cultural resistance was traced back to the belief of EPA staff that strict interpretations must be applied to detailed regulations if they are to be legally defensible. This belief, in turn, has significantly hindered the efforts of states in their efforts to test innovative proposals to determine whether they could achieve greater environmental benefits at lower costs.

Acting on a recommendation of the EPA Task Force on Improving EPA Regulations, the agency plans to involve states early in the process used to develop regulations in order to help ensure that the regulations will be developed in a manner that encourages, rather than inhibits, innovation. This approach, however, is a limited response because it will not address prescriptive regulations that already exist. To overcome the constraints on innovation imposed by a strict interpretation of the existing prescriptive regulations, EPA would need legislative changes providing the agency with broad statutory authority, or a "safe legal harbor," for allowing states and others to use innovative approaches in carrying out federal environmental statutes. In the absence of such authority, the effectiveness of future innovative efforts will require close monitoring by EPA and its stakeholders and the continued attention of the Congress. In addition, EPA needs to make a strong commitment to improving its performance measures to ensure that the new approaches are more effective than the traditional approaches they replace.

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We recently initiated a comprehensive management review of EPA that will include many of the areas being considered by the Subcommittee as it deliberates the legislation before it to elevate EPA to Cabinet status. Our review will assess the agency's management, analyze problems, determine their underlying causes, and recommend actions to improve the management of environmental programs. As we complete our work over the coming months, we would be pleased to share our results with the Subcommittee.

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[4] U. S. General Accounting Office, *Environmental Protection: Overcoming Obstacles to Innovative*

Mr. Chairman, this concludes my prepared testimony. I would be pleased to respond to any questions that you or other Members of the Subcommittee might have.

Contacts and Acknowledgments

For information about this testimony, please contact John B. Stephenson at (202) 512-6225 or stephensonj@gao.gov. This statement is available on GAO's home page at http://www.gao.gov. Individuals making key contributions to this testimony were Ed Kratzer and Ralph Lowry.

(360192)

State Regulatory Programs, GAO-02-268 (Washington, D.C.:March 4, 2002.)

Mr. OSE. Thank you, Mr. Stephenson. We have reviewed both of your statements in writing, and we appreciate you attending this morning.

We do have some questions that we need a little expansion on. Ms. Tinsley, in your testimony, you talk about the information resources management issue. You stated that the result of the current system has been that States and EPA report inconsistent data, incomplete data, or obsolete data, I think those are your words, and your testimony suggests that EPA is not currently capable of monitoring environmental activities or comparing progress across the Nation. Is this primarily a problem of data not existing or a problem of how data is managed?

Ms. TINSLEY. It's both. First of all, I guess if you think about starting with the end in mind, the Agency and its partners, both in the States and also its partners in industry, has never decided what kind of information it needs to really address whether or not the environment is safe and what kind of indicators it actually wants to use. I think through this environmental report card, the agency may get there by default.

And second, you have the data standards kind of issue that I talked about. Unless people decide what level of quality they want in the data and then gather data using methods that provide that quality, they will have a problem as far as using that data to make decisions about what to do next.

Mr. OSE. Are you suggesting that the programs themselves lack prioritization within their objectives?

Ms. TINSLEY. Yes, and it is difficult to assign your priorities if you do not know what is working, if you do not know where your problems are and what is working to address them.

Mr. OSE. Do you know what the priorities of the EPA are?

Ms. TINSLEY. Well, I know from a mission standpoint what they are. They are to protect the human health and the environment.

Mr. OSE. But for instance, they do not have a top 10?

Ms. TINSLEY. They have their 10 organizational goals, several of which include the media programs.

Mr. OSE. Well, I noticed—I do not know if it was your testimony or Mr. Stephenson's testimony or a couple of the other witnesses—that one of the standards by which EPA judges its effectiveness is the number of regulations it issues, rather than an empirical reduction in pollution in, say, the Mississippi River.

Ms. TINSLEY. If you were designing an environmental program to be effective, you would have that kind of interim step. That is an outcome. But then you would want to have some means of measuring whether or not issuing your regulation really had an effect on the environment down the road. Right now it is difficult for EPA to measure the impact of a particular regulation or a particular output. You almost have to start when you design a program to determine what environmental impact you want to create, and then sort of back in to how you are going to do that, and then evaluate throughout the process to make sure that your hypothesis, if you will, is working.

Mr. OSE. Do the States have this data? Are the States suffering from the same problem that the EPA seems to be suffering from, in terms of the available data to evaluate their efforts?

Ms. TINSLEY. Well, much of EPA's data comes from the States, and States gather the data that they need to implement their program. In many respects States are ahead of EPA in gathering data, but what States decide they need differs on a State-by-State basis. So we do not have a coordinated approach to this, and to the Agency's credit they are trying to address that problem, but has not fully addressed it at this time.

Mr. OSE. Well, how do we get from where we are to where we want to be? And I'll tell you what my primary concern is. If we look at individual permits, like, let's say Doug Ose Manufacturing Plant gets a permit for the issuance of such-and-such effluent and then John Smith gets one and Susie Jones and whatever, you do not have any measurement of the aggregate impact. You only have a measurement of the piecemeal impact. Is that one of the problems here?

Ms. TINSLEY. Yes, it is.

Mr. OSE. So, if you will, the methodology is flawed? Is that what you are saying?

Ms. TINSLEY. I do not think that as they've thought about how they're going to do their work, they've stepped back and done it from a big-picture standpoint. I mean, the issue that you talked about, if you were talking perhaps about an NPDES permit, you know, would relate to Total Maximum Daily Loads, and how much pollution are you going to put in your stream, and what are you going to use your stream for—are you going to use it for swimming and fishing and drinking water—and then how would you decide what's coming into the stream based on the permits, as well as all the other uses, for example, farm and agricultural runoff and that kind of thing. Then how and where are you going to measure to make sure that you're taking care of your stream, and then how are you going to regulate all the people who are polluting the stream with some degree of fairness? And many times this—well, always this is an issue that goes beyond the boundaries of EPA. I mean, this is surely a big issue to States, but then you also have the agricultural community and a number of other players at the Federal level.

Mr. OSE. All right. My time is expired. I recognize the gentleman from Idaho for 5 minutes.

Mr. OTTER. Thank you, Mr. Chairman. My apologies to both you and to the members of the panel for being tardy this morning. I was at school. That's why I was tardy here instead of being tardy there. But I did have an opening statement and, Mr. Chairman, without objection, I'd like to submit that for the record.

Mr. OSE. Hearing none, so ordered.

[The prepared statement of Hon. C.L. "Butch" Otter follows:]

STATEMENT OF CONGRESSMAN BUTCH OTTER
"EPA CABINET STATUS HEARING"

• I am pleased that Chairman Ose has agreed to hold the 2nd of these important hearings. The issue of raising EPA to cabinet status provides a unique opportunity to examine the structure of the EPA, its effectiveness and its relevance more than 30 years after its formation.

• I wrote to Chairman Ose in December, along with 5 of my colleagues, that any legislation to elevate EPA to Cabinet Status must contain real structural reform of the agency. Creating an Environment Department without reform would be correctly seen as rewarding the agency for its past mistakes.

• Real reform of the EPA would include

1. Statutory independence for the EPA Ombudsman's office.
2. Strong safeguards to ensure that grants are awarded apolitically
3. Deferral to state environmental laws whenever possible
4. Stronger financial and technical help for states and communities
5. Enhancing EPA's scientific resources and making sure sound science is behind every decision

• Unless these steps are taken I must vote against EPA cabinet status.

• I am aware of the arguments behind promoting EPA to cabinet level and do not think they are urgent. EPA, through its statutory authorities, size and importance will always be at the table of any federal decision affecting the environment. This is particularly true

when an Administrator as experienced and influential as Governor Whitman leads EPA.

• I look forward to hearing from our witnesses and working together with Chairman Ose and my colleagues to reform the EPA.

Mr. OTTER. I do have a series of questions, but there was something in response to the chairman's question Ms. Tinsley, you indicated that you weren't quite sure that when a program was set up, you weren't quite sure of all the data that was going to go in. Yet in your written testimony that I read last night, almost everything that comes out of the EPA is outbased-intended. In other words, you already decide what the target is and hopefully that is clear water and clean air, and then all of the programs that you put in place hope to get us from wherever it is now in the status of level of pollution to usable, drinkable, swimmable, fishable. So I'm curious as to the conflict I see between your written testimony and your response to the chairman's question that you weren't quite sure what the outcome was going to be, so you had to put certain laws in place to see if the laws were effective in cleaning it up. If most of our science or most of our intent here, our mission, is outbased—in other words, we have a target here, and the target is clean water and clean air and cleaning up solid waste—does that create a conflict for you? It creates one for me. It seems to beg the question here.

Ms. TINSLEY. I'm not sure I'm clear on what your question is.

Mr. OTTER. I'm not sure I am either. I think the chairman's question was relative to setting standards or putting certain legal requirements and regulations in place, and your response to that was that you weren't quite sure what the outcome was going to be, and so in the transition, things had to be changed or something.

Ms. TINSLEY. No. What I'm saying is right now the Agency doesn't have a means always of measuring what the outcome is once it puts a regulation in place. If you think about, for example, compliance assistance versus enforcement activities on the Agency's part, right now the Agency doesn't have a system where it would know whether it works better to spend its limited resources helping industries learn how to comply with regulations or does it work better to go out and do enforcement activities and punish them? You know, how are you going to best use your limited resources to get the result that you're after?

Mr. OTTER. And what has been the result? What has worked the best?

Ms. TINSLEY. The Agency does not know at this time which works best. See, you have to remember, I'm representing sort of the outside view on what's happening at the Agency.

Mr. OTTER. I understand.

Ms. TINSLEY. Right now the agency doesn't have good systems to show what works best, which approach works best. No doubt, both approaches work, but when do you use one versus the other one?

Mr. OTTER. And which is the most productive? In 30 years, having punished a lot of people in 30 years, having encouraged a lot of people to do good things, we do not know which works best? In 30 years?

Ms. TINSLEY. Not that I'm aware of, no.

Mr. STEPHENSON. Could I add my 2 cents worth on this issue? Part of the problem is that the performance measures that EPA has set for itself are, as the chairman noted, largely activity-based and not outcome-based. The Administrator right now has an initiative to create some environmental indicators. We do not know

much about that yet. It's supposed to be a major element of a report card that she's going to issue in the fall. That may be a step in the right direction, but the data itself on which the indicators are based originate in the States and are problematic, too. First, there isn't enough environmental monitoring to get good data. The data quality varies significantly from State to State just like on the waters data base for polluted waters, States report information very differently from State to State. So if that sort of bad or mixed data is rolled up at the EPA level, it still isn't going to be very useful. So it's a long-term problem that needs to be corrected, and right now EPA's data bases for air, water, and waste cleanup are not integrated, and the data that originate within the States may be flawed depending upon the State they come from. It's a big problem and we've got to resolve it before we can get to deciding priorities or where the taxpayer dollars should be spent for environmental cleanup and pollution control.

Mr. OTTER. Well, Mr. Chairman, my time is up, and we really didn't get on to the issue. I hope we'll——

Mr. OSE. We'll have another round. We'll have as many rounds as you like.

Mr. Kucinich for 5 minutes.

Mr. KUCINICH. I thank the gentleman. To the witnesses, the two EPA elevation bills that have been introduced into the House take vastly different approaches. The bill that was introduced by Representative Boehlert is a clean bill that elevates the Agency, and the bill introduced by Representative Horn includes a number of additional provisions, some of which, as you know, are controversial.

Do you have any particular view or recommendations that you could provide at this time that would suggest whether we pass a clean bill or a bill that also changes the organization and the responsibilities of the EPA? Maybe Ms. Tinsley could start.

Ms. TINSLEY. We haven't done any work to analyze the two bills, but my personal perception is that it would be better to have a clean bill, just because it provides wider latitude for the agency to work with its partners to make decisions. If there were going to be some requirements in the bill, I would hope that they would be outcome-based and where you would let the people who have to solve the problems work together to solve those problems as opposed to trying to tell them how to solve them.

Mr. KUCINICH. Mr. Stephenson.

Mr. STEPHENSON. I'm going to stay politically correct and in the middle on this issue, but you guys are the experts on what works and what doesn't. The past attempts to elevate EPA have failed——

Mr. OSE. I want to remind Mr. Stephenson, you're under oath here.

Mr. KUCINICH. I was going to ask the Chair to do that. Thank you.

Mr. STEPHENSON. We were sworn in. The past history, as you all know well, the 1993 bill, failed in large part because of a minor amendment that the House couldn't agree to, so I think history has shown that a clean bill probably would work better and would be easier to pass, but I wouldn't want to let go of some of the manage-

ment issues that need to be addressed. We think they need to be addressed regardless of the status of EPA, whether it's a cabinet level department or an agency.

Mr. KUCINICH. I thank the gentleman. I think you testified that you disagreed with the recommendation of the EPA to cut about 270 staff positions from Federal enforcement activities. Is that right?

Mr. STEPHENSON. Our conclusion was that EPA didn't have the data to support that decision. We called for a work force analysis of the enforcement office.

Mr. KUCINICH. Has that been completed, by the way?

Mr. STEPHENSON. I do not know. We have some ongoing work looking at the 2003 budget to determine whether——

Mr. KUCINICH. Are you going to continue to recommend that they delay cuts to Federal enforcement until this analysis is completed?

Mr. STEPHENSON. That would be our recommendation, yes.

Mr. KUCINICH. Now this year the President again has recommended cuts to Federal enforcement at the EPA and at other agencies and, of course, this is after Enron and when we had the SEC fail to uncover Enron's accounting practices. Now the GAO recently found that part of the problem was that the SEC did not have sufficient staff, and although the President has recommended the increase in funding for the SEC, has recommended deep cuts in Federal enforcement at the EPA and numerous agencies or entities charged with ensuring compliance with civil rights laws and laws that protect our workers. So I'm concerned about this trend away from enforcement, that it would only encourage further violations, and could end up at a high price for safety, health, civil rights.

Mr. STEPHENSON. Well a lot of the implementation of environmental law is being pushed on to the States, and so in theory the States would need more resources. EPA would need less, but that is oversimplified. EPA's role would change from one of direct enforcement to assistance to the States in implementing environmental law.

Mr. KUCINICH. I'd like to quickly move to these questions about measuring EPA performance, that focusing on performance measures could lead to cuts in funding for complicated but important areas like the environment or global warming, because it's difficult to be able to assess what kind of success you're having in those areas. So we could end up redirecting our resources to either less dire problems or even less successful programs, because we can measure the success of those programs. I mean, how do you look at that in terms of, you know, trying to measure performance standards of certain areas that are big picture versus small picture?

Mr. STEPHENSON. There's not an easy solution. The results of our environmental efforts are often long term. Sometimes it takes 20 or 30 years to determine whether our programs for cleaning up water actually result in fewer cancer deaths, for example. So I do not have a simple solution.

Mr. KUCINICH. OK. Thanks, Mr. Chairman.

Ms. TINSLEY. Can I respond to that just a little bit? I really think that——

Mr. KUCINICH. Mr. Chairman?

Mr. OSE. I'd be happy to allow the response.

Ms. TINSLEY. I think that it's important that EPA and its partners sit down and develop a strategy to do just that, because if we do not ever decide what is important to measure and how we're going to measure it, then 30 years from now we still won't know what works and what doesn't work.

Mr. KUCINICH. I thank the Chair. Thank you.

Mr. OSE. I thank the gentleman. Mr. Stephenson, the GAO has issued several reports in recent years, from 1995 onwards. It just seems to be a constant delivery pattern, for which we're appreciative, by the way.

Mr. STEPHENSON. That's good.

Mr. OSE. On the environmental information that's available at EPA. Does the GAO feel that EPA is capable of effectively monitoring the environment and comparing progress across the Nation?

Mr. STEPHENSON. In a word, no. As I mentioned earlier, they do not have the data—they do not have accurate data in the form they need it and integrated well enough, not only within EPA, but among all of the other data bases available in the other agencies. Federal environmental data in general have not been integrated in such a manner to be useful in setting priorities for environmental programs.

Mr. OSE. Let me back up. I always like to use the phrase "flying blind." Are you saying we're flying blind after 30 years?

Mr. STEPHENSON. The way EPA has grown, as you know, is throuigh regulations in each of the media, in air, water, waste cleanup, and so forth. There's never been an attempt to integrate priorities across those programs. So in effect, EPA's managers do not know how effective their programs are. I think that's a fair conclusion.

Mr. OSE. Is it fair to say that might lead to a situation where we focus on one particular pollutant in the environment, which has a nominal impact, to the exclusion of another pollutant, which could have a very significant impact?

Mr. STEPHENSON. That's a fair conclusion.

Mr. OSE. Does that possibility exist?

Mr. STEPHENSON. That possibility exists until managers have better data to measure the effectiveness of their programs.

Mr. OSE. Right. Now, this issue of incomplete, inconsistent, or obsolete data, which I believe you've both testified to, could you give me, Mr. Stephenson, some specific examples of incomplete, inconsistent, or obsolete data that EPA currently collects?

Mr. STEPHENSON. The one I mentioned earlier is the most often cited example. In the water area, States list their waters as polluted or not, but they all adhere to very different criteria and standards in doing that. This leads to shared waters across State lines being listed as polluted in one State and not polluted in the other, and beyond that the standards that each State adheres to in creating their data bases vary greatly. Some States have data integrity laws and their data is very good, and others do not. So it's a very mixed bag, and therefore it is very useless in managing an overall program like clean water.

Mr. OSE. Let me make sure I understand the consequence of that. If you've got one State that designated a water as polluted because its standards specify X and the river flows across the State line and another State decides that its standard is Y and under Y the river is not polluted, you have Americans subject to two very different——

Mr. STEPHENSON. Exactly.

Mr. OSE [continuing]. Due processes of law.

Mr. STEPHENSON. Exactly.

Mr. OSE. Ms. Tinsley, do you have any specific examples of inconsistent, inaccurate, or obsolete data?

Ms. TINSLEY. I do.

Mr. OSE. Can you share them with us?

Ms. TINSLEY. I will add a little bit to John's water example results in a fish advisory in one State and not in another, and they share the same body of water.

Mr. OSE. What State?

Ms. TINSLEY. I think it was Tennessee, and who was the other? I'd have to look. We reported on it this year in one of our audit reports where we actually had that situation, where it was Tennessee on one side of the Mississippi River, and who's—I do not remember who is——

Mr. OSE. Arkansas?

Ms. TINSLEY. Yes. It was Arkansas, as a matter of fact, but that's not the only example. Some of the other things that we've found, we recently issued an audit report on the quality of enforcement and compliance data stored in EPA's docket system, and EPA uses that to estimate the amount of pollutants reduced as a result of environmental actions, and the data was incomplete and the Agency was making management decisions using it.

Mr. OSE. I actually think your testimony is that the information generated from the docket analysis is in large part speculative without any empirical background. So they're just making it up out of the—I do not—I mean, those are just my words. They aren't yours, but, you know——

Ms. TINSLEY. I do not think that they would say that they'd make it up.

Mr. OSE. Do they have any empirical data behind these docket conclusions?

Ms. TINSLEY. I would assume that initially it was based on some kind of scientific analysis. We did some other work on enforcement where the Agency actually reports in its GPRA report the results of compliance and enforcement actions, but what we found was that the Agency never followed up to find out if the companies actually did come into compliance. The companies promised to come into compliance. EPA reports it as an accomplishment, but as a matter of policy, did not go back and followup to see whether or not the companies really came into compliance.

EPA's Superfund system also has problems. The CERCLIS system is what it is called, and it measures what's going on in the Superfund program, and what we found was many times the Agency information about what States were doing on non-national priority list sites wasn't even included in the system. So the Agency was making decisions without complete information.

Mr. OSE. The gentleman from Idaho.

Mr. OTTER. Thank you, Mr. Chairman. I want to mention that actually there's one other bill by Mr. Ehlers that has also been advanced, and that should be the subject, if I'm correct here, Mr. Chairman, also of our discussions here this morning.

Mr. OSE. Mr. Ehlers' bill is part and parcel of this discussion.

Mr. OTTER. And I think his bill, along with much of the testimony that you two—although I didn't listen to your verbal testimony this morning, I did read what you had submitted, that the Environmental Protection Agency itself is fraught with lots of problems, lack of standards, lack of follow-through, lack of goal-oriented programs that are verified later on, 30 years of not knowing whether or not punishment or the stick or the candy, which is the most successful, and it seems to me that although I could certainly argue, I think, with a certain amount of reason for the elevation of the director to cabinet staff level, it seems to me that we're getting the cart before the horse here, that maybe we better clean up everything and get everything in order as perhaps suggested by Mr. Ehlers' bill, and then have an Agency that is fulfilling a mission. I would hate to think of what we would have done with the Secretary of State had we had problems all over the world, ineffective Secretary of State, and then all of a sudden decided, well, let's put him up to cabinet level, that will make everything OK.

I do not want to share a misguiding opinion or idea with the American people that because we've taken it up to cabinet level, which is not an easy thing to do, by the way, that everything is going to be all right. You think we need to continue to share that we've got 283 million people that need to worry about polluted waters, and polluted air, and collected solid waste disposal and that it cannot just be one person or Agency. It's got to be all 50 States; in Idaho, all 44 counties, all 202 cities. I'm a little concerned, not only from your testimony but also from the suggestions from Representative Ehlers that everything is not right, and I think we've pretty well established that here this morning.

Defend for me taking an inadequate organization that is missioned with a very important part of our Nation's health to cabinet level staff and still be inefficient.

Ms. TINSLEY. If you were to compare what EPA is doing from the standpoint of having a results-oriented culture with other organizations that I'm aware of through interacting with IGs, EPA is actually ahead and is a leader in many of these areas.

Mr. OTTER. Cabinet level position?

Ms. TINSLEY. Yes.

Mr. OTTER. Well, maybe we should remove those from the cabinet level.

Ms. TINSLEY. So if we're going to have a level playing field, then we might need to think about that, but as far as accomplishing its environmental mission, it is going to have to interact a lot with those other Federal agencies that are cabinet level position—you know, have cabinet level status as well as, of course, as I've said, with the States. I think that being an equal player at the table could give the Agency more influence in that area, because right now it really has to deal through personality and, not through hav-

ing an equal seat at the table, and that's a difficult thing to do, given that it's really only 20 percent, even at the Federal budget.

Mr. OTTER. Only 20 percent.

Ms. TINSLEY. I know "only" sounds like a lot, but when your goal is all about clean water, clean air, removing hazardous waste, they're taking that 20 and trying to leverage the other 80.

Mr. OTTER. But you understand there's a lot more than 20 percent of this Nation's budget that's spent in pursuit of a clean environment. I was the lieutenant Governor of Idaho for 14 years, and we busted our backs many times trying to match and trying to also advance the cause of the clean water, air, and solid waste disposal in Idaho. And we had to come up with an awful lot of money. If not the exact same amount, in many cases, it was a 40/60 split, and in some cases, although we were promised money, we got none. So there's an awful lot more money being spent than 20 percent of this Nation's budget, and it is an important position. But also when we come back on the next round, perhaps you can square up for me that if the States need to take a much larger role in this, is that going to diminish the actual role of the EPA as we see it on the enforcement level here and then become the counseling and become the activities adviser and that sort of thing for States.

Thank you, Mr. Chairman.

Mr. OSE. I thank the gentleman. I want to go to something, and I would appreciate both of your input on this. I look at the way EPA is structured today, and the analogy that was drawn for me was of a pin cushion. You have the Administrator; and then you have Region 9, and Region 3, and Region 6, and Region 5; and in each of those regions, you have air, water, land, stovepipe type of regulatory enforcement agencies; but you do not have any level between the regions and the Administrator that would take all of this information and sort through it for the purpose of setting priorities within the Agency itself.

Coming back to your point for instance, if I recall correctly, Tennessee being a polluted river on one side, but Arkansas it's not. How do you reconcile those? It's the same river. All it does is move 3 feet.

Now, Congressman Horn has within his bill a suggestion for a Bureau of Environmental Statistics, where this information that would allow the compilation and the analysis of these statistics would take place. Is this a good idea?

Mr. STEPHENSON. I think both of us would agree that any bureau or organization that would do a better job of integrating environmental data and providing meaningful data to measure progress and assess priorities across programs would be a good thing. EPA is organized—now as you have observed is partially media, water, and air and so forth and partially function, enforcement, compliance. So it's a mixed bag. It's a very strange organizational construct.

Mr. OSE. From an organizational construct position or perspective, are there other Federal agencies that are similarly structured?

Mr. STEPHENSON. I do not know.

Mr. OSE. OK. Ms. Tinsley, in your testimony, you talk about how these environmental problems we just talked about transcend media boundaries. You have some interaction between air, and

water, and land, and what have you, and solutions frankly require some innovative approaches rather than, if you will, a point source kind of analysis. Just to rephrase the question I asked Mr. Stephenson, does the current organizational structure lend itself to solving these cross-media problems?

Ms. TINSLEY. It does not lend itself to solving those kinds of problems, but it also doesn't preclude the Agency addressing problems across media. One of the things that recently the Agency has begun doing is looking at environmental protection from a watershed standpoint, and using that strategy. It's going to try and mix all of the different media things together so that you look at how the air pollution in fact impacts the water and things like that. So it's not impossible to get there with this structure. And I think any structure that you have will have some challenges to it. I think most important is the ability and the desire of the people who are working on the problem to work together to solve it.

Mr. OSE. Well, are we presently doing a good job of handling these cross-media issues?

Ms. TINSLEY. I think that if you were to ask people in the Agency, they would say no, not as good as they could be.

Mr. OSE. I want to examine this watershed issue. There's a situation down in South Carolina over the Tar River field that feeds into the Pamlico Sound. Going to your safe legal harbor issue that you mentioned in your testimony, the approach that was taken changed to measure an outcome rather than a specific effluent discharge, for instance. In other words, the agencies all got together. The stakeholders signed off on some safe harbor provisions, and they went and they measured what's the impact at the mouth of the river where it spills into the sound, because that's basically what they wanted to monitor. It changed the approach.

Now, I want to come back—I know my time is about up. In fact, it is up. I want to come back to this safe legal harbor issue in particular in this next round, Mr. Stephenson. It's your suggestion, I think, in your testimony that we need to address that. So Mr. Otter, 5 minutes.

Mr. OTTER. Thank you, Mr. Chairman. I want to go back to the question I left you with, and that is how do we square up—if we're going to ask the States to take a much larger role in enforcement, it would seem to me if the EPA is going to carry on the enforcement activities but sort of the advice and setting standards and that sort of thing, which is needed across State lines, and I think we've pretty well accomplished a mindset on that, but if we do have this transfer, if you will, to the States, do you think the elevation of the Administrator to a cabinet level position would be more effective for the States as a result of that? You know, I'm just concerned that if we do that, how does the Governors Association feel about it now? Do they want to see it elevated? Do they think it's an important thing to do? It seems to me that if they're going to be partners in this program, that they need to buy into the idea that we've got a cabinet level position here.

Mr. STEPHENSON. I do not know. I think that would be a great question for the second panel. You've got a lot of the State witnesses here. I think more importantly, EPA's role is changing from direct enforcement to assistance to the States and I do not know

what that means in terms of staffing levels. But assistance is certainly a very important function—it's trust by verifying. They're still going to have to perform some oversight functions to make sure that environmental laws are consistently applied across the States. So they haven't analyzed their staffing levels and their skill levels to determine if they're in a good position to do that yet.

Mr. OTTER. Ms. Tinsley.

Ms. TINSLEY. I've heard the Administrator testify on the funding that the Agency is asking for to give additional grants to States, that those grants are going to be competitive, and would probably be awarded to the States that are doing the best job in enforcement, which would have to make you wonder what's going to happen in those States that aren't doing a good job of enforcement because they're not going to get any more money. So the oversight and the involvement of EPA that John talks about is going to be very important. EPA is going to have to continue its enforcement role in addition to the compliance assistance.

Mr. OTTER. Well, I would agree, and perhaps the EPA's role of enforcement has not been as effective, and maybe that's because it isn't a cabinet level position. You know, I'm very much aware since 1994 without a permit, the Army Corps of Engineers has been dumping 200,000 tons of sludge into the Potomac River. In fact, into the habitat of the snub nose sturgeon, and yet without a permit, violating the law.

If the State did that, I would think that the EPA—are they just without power to make another agency obey the laws of this land?

Ms. TINSLEY. They don't seem to be real engaged in making that happen. Our audit says neither EPA nor the States do enforcement the way the regulations would anticipate it should happen.

Mr. OTTER. Which brings me back, I guess, to the question that I had earlier. Maybe we need to clean this mess up before we advance this mess in the very important and necessary role that it has.

In your supportive data that I read last night, Ms. Tinsley, I'm going to read for you a part of a paragraph: "our reviews and investigations have disclosed a particularly disturbing trend in the number of environmental laboratories that are providing misleading and fraudulent data to the States for monitoring the Nation's public water supplies. Several current lab fraud investigations involve severe manipulations of lab tests used to evaluate the compliance of public water supplies with Federal drinking water standards. Some of these manipulations have masked potential violations of drinking water regulations."

If we elevated the Director to the Cabinet level, would this help improve this, the qualification of labs, the verifications of labs, the veracity of labs? How is this going to help an inherent problem?

Ms. TINSLEY. I don't think that whether EPA is a Cabinet level office or not has any impact on that issue.

Mr. OTTER. So we will just make bigger mistakes at a higher level?

Ms. TINSLEY. Just not one way or another. That's a different issue.

Mr. OTTER. Thank you, Mr. Chairman.

Mr. OSE. I thank the gentleman. I want to come back to this safe harbor issue with Mr. Stephenson. This really boils down to the EPA relationship with the States in terms of what kind of insulation you can give them if they are going to do innovative things. Now you recently released a report on obstacles to State environmental innovation. What did you find were the chief obstacles that the States faced?

Mr. STEPHENSON. One of the chief obstacles is the rulemaking that EPA does based on the regulations. The rulemaking is very prescriptive and it is done that way to be legally defensible. But the impact that has is that it stymies innovation within environmental programs. And the safe harbor——

Mr. OSE. Before we leave that, I want to make sure I understand you correctly. When you say it is prescriptive, the regulations mandate that it will be done A, B, C?

Mr. STEPHENSON. In a specific way.

Mr. OSE. Rather than L, R, Q? It is A, B, C, or no way at all?

Mr. STEPHENSON. Right. In a lot of cases that is true. And what we're suggesting is that maybe there is more room for some flexibility in environmental programs. Just like I described, measuring pollution at the mouth of the river, rather than regulating everything that's put into the water along the way. It's an outcome-based indicator and that's what we advocate.

Mr. OSE. What sort of things do you recommend to help change that prescriptive culture that exists at EPA?

Mr. STEPHENSON. I think recognition in some of the legislation that employing some innovative practices may be acceptable would be the safe legal harbor that we are talking about. Right now, the legislation doesn't really allow for that, in our view. I believe there was a House bill last year that in some way addressed this, but I'm not that familiar with it.

Mr. OSE. I want to make sure I understand. Between rules and regulations and legislation, you think the prescriptive issue is legislative in nature, not regulatory in nature?

Mr. STEPHENSON. I think that because there is no provision for this in the legislation, then the rules are not written in such a way that would allow innovative practices to be employed.

Mr. OSE. Is there a provision in the legislation that prevents the innovation?

Mr. STEPHENSON. No.

Mr. OSE. It's just that the safe legal harbor issue——

Mr. STEPHENSON. And EPA chooses to implement the rules the way it does in large part so they will be defensible against, for example, the Clean Air Act or the Clean Water Act. That is the approach they think they have to take.

Mr. OSE. So your suggestion is that in order to allow that culture to evolve into something a little more innovative, we need more flexibility in the legislation?

Mr. STEPHENSON. Exactly. Exactly.

Mr. OSE. All right. Then, Ms. Tinsley, you indicate in your testimony that relations between the EPA and the States have been strained in some occasions. Is this the principal reason for that? Is it that the States think we can accomplish something by doing a little more innovative approach versus the EPA's prescriptive pat-

tern of operation? What are the principal causes of this difficult relationship between the States and EPA?

Ms. TINSLEY. In the past, EPA has monitored the States through requiring States to do certain activities, as you said. And States want to do other activities. It seems that it is difficult for EPA to give up the old way of doing business in favor of a new way. And EPA has also tried, as it has gone through a transition to try to work with States, to hold States accountable for showing changes in environmental results and States have not wanted to be held accountable to that level. So you have two different things going on.

Mr. OSE. Well——

Ms. TINSLEY. And they sort of work against each other.

Mr. OSE. Let me ask the question to the extent that I can. It would seem to me that somebody who lives in New Mexico, working at the State of New Mexico's Department of Environmental Regulation or whatever, is far closer to a problem than somebody at a desk at EPA here in Washington, in terms of what needs to be done. Are we just kind of saying, you know, we are the big dog, you are the little dog, you have to do what we say? Is that what is going on here?

Ms. TINSLEY. At least in some of the regions where we have looked at how the regions are interacting with the State, it is something like that. And part of this is even a training issue where, while the headquarters office at EPA said it was going to do business differently with States, the regional people said that they had not bought into it. And that's what they actually told us when we did our work, was that maybe headquarters wanted to do that, but that's not what they were doing. Because EPA doesn't have a good handle on what its work force is doing all the time, it did not even realize that was a problem.

It resulted in regional people who worked with the States actually asking the States to measure hundreds of things, all the old activities that they used to monitor, plus the new agreements with the States. And if you step back and looked at what was happening, it looked like the States would spend all of their time counting things and not much time protecting the environment.

Mr. OSE. Mr. Otter.

Mr. OTTER. Ms. Tinsley, in your capacity as the Inspector General of the Environmental Protection Agency, how many people do you have reporting to you?

Ms. TINSLEY. We have about 350.

Mr. OTTER. No, I mean to you.

Ms. TINSLEY. To me personally?

Mr. OTTER. Yes.

Ms. TINSLEY. I have eight.

Mr. OTTER. And, Mr. Stephenson, in your capacity as the Director of Natural Resources and Environment, how many do you have reporting to you?

Mr. STEPHENSON. Directly reporting about seven or eight.

Mr. OSE. Do you know that the President now has 14 on the Cabinet reporting directly—I mean in the chain of command, 14 different people reporting to him. I come out of the private sector, and generally we thought five to eight was about the max that you could really do a good job with. And part of my concern about this

has always been if we did not fold into another agency and have that agency representing the Environmental Protection Agency on the Cabinet level, were we going to diminish those that were already there or were we not going to do as good a job as we would with a little more independence? I think that's one of the things that we really have to concern ourselves with.

The other that I am concerned about is as recently as 2 weeks ago, the environmental community, along with many of the States, were quite upset when an individual was removed from the Department of the Interior because of an apparent disagreement with the administration. And as that person was removed, it was suggested that, you know, that the administration made sure that removal took place. Even though the separation just by command would offer a little bit of autonomy, I don't know of any of these 14 people that I have seen any disagreement with this administration, so they are all still sitting around the table.

One would have to wonder if the closer the Environmental Protection Agency got to the administration vis-a-vis the Administrator now sitting at the Cabinet table, that perhaps part of that autonomy and that creative individual willingness and focus on mission might be diminished, in light of what happened a couple of weeks ago in the Department of the Interior.

Mr. STEPHENSON. I don't have any basis for judgment, but——

Mr. OTTER. Well, you are the Inspector General. You guys should have investigated that. You don't have an opinion on that?

Ms. TINSLEY. Well, I do not investigate things that happen at the Department of Interior. I'm pretty busy at EPA.

Mr. STEPHENSON. I think the management challenges are independent of Cabinet level status. Maybe we shouldn't reward EPA until it gets its act together, but based on the President's management agenda and the OMB report card that it just issued, no agency is doing a good job. There were reds everywhere on their green, yellow, red checklist. So that is not really a criteria.

To me, it is the importance of the job that EPA is doing and the U.S. standing in the international community. If every other country says this is Cabinet level status, then why don't we? I guess that is kind of where I am.

Mr. OTTER. And I'm sure you are aware that there is a major difference in government structure between the U.S. Government——

Mr. STEPHENSON. Of course.

Mr. OSE. Does Mexico, for instance, do they have a Cabinet level position?

Mr. STEPHENSON. To my knowledge, yes.

Mr. OTTER. I will take my environment, and this is no great disparagement to our friends south of the border.

Mr. STEPHENSON. I am no way suggesting that elevating EPA to Cabinet level is going to solve all of its problems and make it a better agency. That is not what I am suggesting at all. EPA has to address its management concerns regardless of whether it is a Cabinet level agency or it remains an independent agency.

Mr. OTTER. My expectation would be if we do elevate it, if we increase the title—if I took a person in my company, if I went from Lieutenant Governor to Governor, I was expected to do a much greater role. If I took a person from vice president to a chief of a

department or to president of a company, I would expect them to have a much greater role, a much greater influence, and much more focus overall for their particular area of discipline. And I would expect it to improve.

Mr. STEPHENSON. Yes. Based on testimony from ex-Administrators in the Senate last year, they contend that they don't have an equal footing with other Cabinet level departments, they don't have a place at the table. That's debatable, I guess.

Mr. OTTER. I think it would be. And perhaps I'd like to get a Governor at that Cabinet level table as well. And so if we are going to go to 15, we might as well go to 16 and put a Governor on there. Thank you, Mr. Chairman.

Mr. OSE. I thank the gentleman. I keep coming back to this structure issue. In terms of the Agency itself, going back to the analogy I introduced of a pin cushion where the different assistant administrators and the different regional directors report directly to the administrator, I think there are 22 actual direct relationships there. If we are going to elevate EPA to a Cabinet level status, aren't we also obliged to look at how it will operate after the fact? If we can identify some clear organizational issues that are frankly contributing to the difficulty we are having in the aggregate of positively affecting our environment, aren't we obliged as we elevate to fix those structural problems?

Mr. STEPHENSON. Yes, I think they need to be fixed, whether EPA is elevated or not.

Mr. OSE. Do you share that, Ms. Tinsley?

Ms. TINSLEY. Yes.

Mr. OSE. All right. Now one of those that has been suggested, and I think Mr. Otter brought this up earlier, had to do with an office dedicated to science. Should the EPA have an office dedicated to science, separate and apart? A deputy administrator dedicated to the scientific function or functions?

Mr. STEPHENSON. If our policy is going to be based on sound science, I would think that such a position would be appropriate.

Mr. OSE. Do you share that opinion Ms. Tinsley?

Ms. TINSLEY. Yes, I do.

Mr. OSE. Now there has also been the suggestion at previous hearings regarding an office to quantify whether or not the programs are having an environmental impact, a positive environmental impact or a negative environmental impact. And I think, Mr. Stephenson, you talked about this previously. Should the EPA have an office, a deputy administrator, if you will, responsible for basically monitoring these programs to ensure that they're achieving their objective? So you would have a science guy, then you would have an enforcement office, you would have a "success or failure" office. I don't know what you call it.

How do you go about quantifying whether or not the money we are spending is actually having the effect that we want?

Ms. TINSLEY. If——

Mr. STEPHENSON. Go ahead.

Ms. TINSLEY. If you had the information you needed to measure what was happening in the environment, then you could hold the individual managers accountable. In normal business, every man-

ager is accountable for making sure their part of the organization works.

Mr. OSE. So you have to have an office of the data administrator, so to speak, into which all data flows and from which you can get good periodic reports evaluating the program.

Ms. TINSLEY. That would be one way to do it. One of the reasons that EPA doesn't have the data that it needs to manage is not because managers would not like to have that, but because there has sort of been, at least in the last few years, a collective decision-making process about what money gets spent on, and managers have a tendency to not want to take funds away from their individual programs for the greater good, if you will, because they are too busy trying to do the things that they hope are working to deliver environmental results.

Mr. OSE. But you both testified that there is little scientific data by which to judge those programs being funded.

Mr. STEPHENSON. Well, specifically data on environmental indicators, I would call them, supported by sound science. But, as you know, what does the data show in terms of how much cleaner the water is getting, how much cleaner the air is getting and so forth? The fact that EPA does not have a good set of outcome-based environmental indicators would suggest that it has fallen through the cracks in the Agency's current organizational structure.

So I wouldn't want to get hung up on the title of a bureau of environmental statistics or whatever. But that's a really important function for EPA to determine its priorities. They cannot employ risk-based environmental strategies unless they have that kind of data. So it is an extremely important function.

Mr. OSE. And we don't have that data now in a usable or consistent manner.

Mr. STEPHENSON. No, and I think the current Administrator would agree. That is why she has initiated the environmental indicators study.

Mr. OSE. My time is up. OK. I am going to get another round here. Both of you have testified about the human capital issue in the Agency itself, one comment being that the skill set within the work force is not necessarily aligned with the challenges we face, and the second issue being that we have this bulge, if you will, in the employee pool that is moving through chronologically and within 5 years we are going to lose a lot of senior people.

How do we deal with that? I mean, if we know they are coming, we know these retirements are pending within 5 to 10 years, we have a need for a change in the skill sets, is this an opportunity to frankly evolve the Agency—that is not a verb, but I just made it up—evolve the Agency into something a little more responsive or reflective of our current challenges?

Mr. STEPHENSON. Preparing for the future is part of good human capital strategic management in any agency. There are two problems. There is the succession planning problem and there is the change in the skill mix from a direct enforcement function, to more of an assistance to the States, to kind of an oversight function. So there are two problems which should be part of EPA's strategic human capital plan.

After we reported on it last year, they were going to undertake several initiatives to address these specific concerns. GAO has put out a human capital model for all agencies to use to help guide them through this process, but, we haven't been back in to look at how well they are doing in that endeavor.

Mr. OSE. Ms. Tinsley, would you agree that we have—I mean, we could look at it as lemons or lemonade in terms of an opportunity here to refocus the skill set, if you will, within the Agency. Is this an opportunity or an impediment?

Ms. TINSLEY. Well, we would have to look at it as an opportunity. But this is an opportunity that all of Federal Government has, which I think in part is why there has been legislation introduced to at least give managers more flexibility in how to address these problems. If you look at all these folks who could leave the Agency in 5 years, the Agency doesn't have any idea whether or not that is going to happen. So it needs, as John said, to have some strategic way of thinking about where it wants to get to and what skills it wants to replace, how it wants to do that through hiring versus training, so that 5 years from now the Agency is where it wants to be.

Mr. OSE. Now one of you in your written comments referenced a number of pending. EPA ordered a contract "in early calendar year 2002 to develop a model work force planning process and a system that will meet the Agency's competency-based work force planning needs." That is Ms. Tinsley's testimony. When will this contract be complete? Do you know?

Ms. TINSLEY. I do not know.

Mr. OSE. Is it an open-ended contract?

Ms. TINSLEY. I don't know the answer to that. I can get back to you for the record.

Mr. OSE. For the record? We may well want that.

And also there is a second mention in here, your office reported the Agency did not have a policy for awarding discretionary assistance funds competitively. You did testify a little earlier today about some change in the competitive grant process.

Your written testimony says that the Agency agreed with the OIG's observations and is drafting a policy which will address competition in the award of discretionary assistance funds. When will this be completed?

Ms. TINSLEY. I don't know when that is going to be completed, but I have heard discussions among the Agency managers, particularly the Assistant Administrator for the office that handles that. I think that draft will be out soon for our comment.

Mr. OSE. See, this is the kind of thing that makes it very difficult for us on this side, if you will, to evaluate what we're doing. I have heard nothing in terms of specific empirical objectives as they relate to the environment and I did not read anything in your testimony relative to EPA's mission in addressing those objectives, specific, empirical objectives. We have a contract on a work force planning process, for which I don't know the due date. In other words, when is that contract supposed to be finished?

And on the competitive grant process, I get the same question that we don't know when that will be finished. It almost seems like

we have a culture here that does not set priorities with due dates. I mean, am I accurate here?

Ms. TINSLEY. Yes. And you have a culture from an environmental standpoint that doesn't have the information to work with others to make those decisions.

Mr. OSE. To make those decisions.

Ms. TINSLEY. That is right.

Mr. OSE. Or a central collection point into which that data could come so priorities could be set and based on those priorities we could allocate resources accordingly.

Mr. Otter for 5 minutes.

Mr. OTTER. Mr. Chairman, I have no more questions for this panel, but I would like to draw your attention to and make a unanimous consent request that a letter received by you on December 20, 2001, relative to this very subject, the elevation of the Administrator to Cabinet level, signed by myself and five of my colleagues, be made a part of this permanent record.

Mr. OSE. Without objection.

[The information referred to follows:]

Congress of the United States

Washington, DC 20515

December 20, 2001

The Hon. Doug Ose
Chairman
Subcommittee on Energy Policy, Natural Resources, and Regulatory Affairs
B-377 RHOB
Washington, DC 20515

Dear Congressman Ose:

It has come to our attention that your subcommittee will be addressing the issue of elevating the Environmental Protection Agency (EPA) to a Cabinet-level department. In and of itself, elevating EPA is largely a symbolic gesture. We are concerned, however, that such symbolism would be perceived as rewarding the agency for its performance in executing our nation's environmental laws--a reward that the agency's past performance does not appear to merit.

In particular, the agency has problems in integrating science and environmental data into agency decisions, developing results-oriented performance measures, collaborating with State governments and ensuring consistent enforcement of environmental laws.

EPA's organizational structure must be changed in order to gain control of its many offices and ensure mishandling of scientific data does not continue. The current structure impedes internal communication and undermines accountability. More specifically, however, it is absolutely necessary for science to be injected early in the rulemaking process. EPA cannot continue to ignore or refuse to release scientific studies that do not agree with the political agenda set by the Administrator. Currently, the only check on new rules is by the Office of Information and Research Analysis (OIRA), but not until the end of the rulemaking process.

Reforms need to be made in the way EPA awards contracts and grants. In the past, grants awarded at the discretion of the Administrator's office-non-competitive grants and so-called "X" grants-have the appearance of being awarded based on political objectives. All projects funded by EPA should be based on scientific need rather than political considerations. Depoliticizing EPA's grants and contracts is essential if the agency is to function as an objective source and arbiter of environmental policy.

Many studies have outlined the shortcomings of the EPA. Among them are:
Environmental Protection: Collaborative EPA-State Effort Needed to Improve Performance Partnership System. Government Accounting Office Report: T-RCED-00-16
May 2, 2000

PRINTED ON RECYCLED PAPER

Managing for Results: EPA Faces Challenges in Developing Results-Oriented Performance Goals and Measures. Government Accounting Office Report: RCED-00-77 April 28, 2000

Water Quality: Key EPA and State Decisions Limited by Inconsistent and Incomplete Data. Government Accounting Office Report: RCED-00-54 March 15, 2000

Environmental Information: EPA Is Taking Steps to Improve Information Management, But Challenges Remain. Government Accounting Office Report: RCED-99-261 September 17, 1999.

Assessing the TMDL Approach to Water Quality Management. Committee to Assess the Scientific Basis of the Total Maximum Daily Load Approach to Water Pollution Reduction, Water Science, and Technology Board, National Research Council. National Academy Press 2001.

Reforming the Environmental Protection Agency. Bonner Cohen and Tom Randall. The Lexington Institute and The National Center for Public Policy Research. August 2001.

We hope that your subcommittee will address these issues as it considers legislation to elevate the EPA to a Cabinet-level department.

Sincerely,

C.L. "Butch" Otter

Richard Pombo

Don Young

Mike Simpson

Wally Herger

George Radanovich

Mr. OTTER. Thank you, Mr. Chairman.

Mr. OSE. I do appreciate you taking the time to come and visit with us today. I know it is not easy to constructively criticize, but I do appreciate the input. It is helpful to me to have you come and tell us what you found. I am interested in whether or not to elevate EPA. But I'm also cognizant that we are not going to repeat the problems we faced in the past. We are going to try to fix them.

So your testimony has been very helpful in that regard, and I want to thank you for coming. You are relieved of duty, so to speak, and we will call the second panel forward. We will take a 5-minute recess here, too.

[Recess.]

Mr. OSE. Our second panel today, we are joined by Commissioner Karen Studders from the Minnesota Pollution Control Agency. Thank you for coming. And also by Jane Nishida, the secretary of the Maryland Department of Environment. Ladies, as you know, we swear in our witnesses on this committee. Rise and raise your right hands.

[Witnesses sworn.]

Mr. OSE. Let the record show that the witnesses answered in the affirmative. We provide our witnesses with 5 minutes to summarize their testimony, which we have received in advance and we are grateful for that. So, Ms. Studders, you are going to be first. Thank you for coming.

STATEMENTS OF KAREN A. STUDDERS, COMMISSIONER, MINNESOTA POLLUTION CONTROL AGENCY; AND JANE T. NISHIDA, SECRETARY, MARYLAND DEPARTMENT OF THE ENVIRONMENT

Ms. STUDDERS. Thank you, Mr. Chairman and members of the subcommittee, for giving me this opportunity to appear before you today. I welcome the chance to provide Minnesota's perspective on elevating the EPA to Cabinet status.

Minnesota has consistently supported a Cabinet level department of the environment. I continue in this tradition today. It is more important than ever before that environmental protection is factored into decisions made at the highest councils of our land.

There are three reasons to justify this change. First, elevating EPA to a Cabinet level status would improve the department's ability to work laterally with other Cabinet members on what I call second wave environmental issues involving agriculture, transportation, and energy. I will explain those issues in a moment.

Second, pollution crosses State, regional, national, and international boundaries, thus requiring a Department of the Environment with access to policy discussions at the Cabinet level.

Third, a Cabinet level Department of the Environment provides leadership to States so that we can better do our jobs.

On my first point regarding the second wave of environmental problems, after more than 3 years as Minnesota's environmental commissioner, it is clear to me that the State regulatory agencies are facing very different problems today than we faced in the 1970's, 1980's, and the 1990's when Congress passed laws to deal with end-of-pipe emissions, which I call environmental protection's first wave.

This was met with hard-won success. However, today the greatest threats to our environment are not from our regulated factories and facilities, but they are from widely disseminated pollution arriving from transportation, energy consumption, agriculture and urban sprawl. In Minnesota we realized a few years ago that these complex problems could not be regulated out of existence; we needed new strategies, what I call the "second wave of environmental protection."

This relies on enforceable goals, partnerships, innovation, public stewardship, and is performance-based. In Minnesota, Governor Ventura has afforded me the latitude to work directly with my fellow commissioners in the State Department of Transportation, Agriculture, Commerce, Health and Natural Resources. By sitting at the table with the top managers of other agencies, Minnesota has achieved some remarkable success. And I won't go into a great deal of detail, but I would encourage to you read it in my written testimony, but I would like to cite two examples.

First, the environmental agency participated in writing the State Transportation Department's 5-year strategic plan so that when we design roads, we ensure we aren't increasing the congestion unnecessarily and causing us to have air quality problems.

Second, Minnesota just completed its first energy plan. It is a 10-year energy plan written by our State Department of Commerce. The entire appendix, more than half of the document, talks about the environmental consequences of the energy choices we make. And it literally costs that analysis down so we can look at what is the cost to the ratepayer if we add this piece of pollution control equipment to this plant in this area. That is a first for Minnesota. I am very proud to say that we have been able to do such work.

I do believe that EPA could forge more productive relationships and strategies with other Cabinet members if the department had a permanent place at table, as do I in the State of Minnesota.

My second point, a Department of the Environment provides clout for solving pollution problems crossing State, national and international boundaries. Just as today's pollution problems require national strategies, they also require stronger cooperative relationships. As a commissioner that shares a border with Canada, I know how important authority and credibility are to developing and maintaining such relationships.

My final point is that States need environmental leadership that provides flexibility in approaching environmental problems in the 21st century.

And now I'm going to differ a little from my written testimony and try to touch on some of the issues that you raised in your questions to the first panel, if I can. I do believe that to achieve this leadership goal, EPA needs to do three things.

First, we need a statute that—we need Congress' help in writing to allow EPA to operate effectively among the media programs. We need a safe harbor, and I will talk a little bit about that.

Second, we need to change the structure so that it helps us address cross media issues. However, I would not suggest changing structure until we do some things legislatively.

Third, we need to focus on environmental results. I, too, come from the private sector and am very interested in results.

First, in 1996, Minnesota passed a statute called the Environmental Regulatory Innovations Act to give my agency the ability to try new ways of working on environmental problems. This law leaves in place our existing laws related to air, water, and land, by allowing us to try approaches that are different, promoting reduction in pollution levels overall and reducing unnecessary administrative burdens. And it is allowed under State policy.

A similar overarching Federal law could help EPA deal with such innovations, one that leaves in place all of the major environmental acts but also gives EPA the flexibility it needs to do things differently and depart from statute when needed through variances like Minnesota's law, or another mechanism. This is the legal safe harbor I refer to.

Next, EPA needs a clear message from Congress that it wants EPA to be flexible. That is where a legal safe harbor sends such a message to EPA. In the meantime, a new overarching environmental law can be and needs to be written, eventually replacing the media laws that are currently on the books.

Then we need to address EPA's structure. Minnesota has experience in designing a structure responding to emerging environmental problems, such as smart growth, that cut across the media programs. In our experience, the EPA innovations staff tries very hard to do things differently, but they run into obstacles with the media program staff. Perhaps using a congressional task force with the administrator, congressional staff, State environmental staff, and environmental commissioners to design a new structure will give EPA the flexibility to do their job once a national environmental act is written.

Consider a functional organization with reporting similar to the corporate model, such as permitting and enforcement and research. But I will tell you I think we need a tight timeframe to do this. We do not need to get caught up in analysis paralysis. We need a flexible statute written. I think it could be done in a month.

Second, we need to write a national environmental protection act with a task force doing that work and getting stakeholder buy-in. That could be done in about 6 months. And then subsequently we need to redesign EPA. That, too, I think would take about 6 months.

Once the above are done, Congress could then reduce the number of committees that oversee EPA. I believe at present in excess of 15 congressional committees oversee EPA. There are not many other departments that have such a reporting relationship with Congress.

Then EPA and Congress could move further in reporting on as opposed to counting numbers of permits issued and numbers of enforcement actions taken to measuring how the results actually improved our environmental state. This is something that Governor Christie Whitman has made a priority in her administration, and a new statute allowing greater flexibility and structure designed to allow the department to work across media issues would give EPA the tools it needs to focus on environmental outcomes, which I believe are clean air, water, and land.

Finally, I'd like to share with you that I'm going to ask you this question as I close: How should we measure the quality of our air?

One, should we focus on the number of permits that are issued to major facilities; or, second, on the number of days when air has no negative health impacts? In Minnesota, we measure the latter.

Thank you for inviting me to provide Minnesota's perspective, and I apologize in advance, because I know I took more than 5 minutes.

[The prepared statement of Ms. Studders follows:]

Testimony of Karen A. Studders
Commissioner

Minnesota Pollution Control Agency

To the
Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs
Government Reform Committee
U.S. House of Representatives

Hearing on
Elevation of U.S. Environmental Protection Agency to Cabinet Status

March 21, 2002

Testimony of Karen A. Studders
Commissioner
Minnesota Pollution Control Agency
To the
Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs
Government Reform Committee
U.S. House of Representatives

Hearing on
Elevation of the U.S. Environmental Protection Agency to Cabinet Status

March 21, 2002

Mr. Chairman and members of the Subcommittee, thank you for the opportunity to appear before you once again to represent my state's position on important environmental issues.

My name is Karen A. Studders, and I was appointed the Commissioner of the Minnesota Pollution Control Agency by Governor Jesse Ventura in February 1999. Governor Ventura and I welcome the chance to provide Minnesota's perspective on the U.S. Environmental Protection Agency (EPA) elevation to cabinet status.

While I speak only for the State of Minnesota, my testimony also takes into account the position of ECOS, the Environmental Council of the States, a body of which I am secretary-treasurer. The Environmental Council of the States (ECOS) exists to improve the environment through collaboration among state environmental commissioners. ECOS champions the role of states in environmental management; provides for the exchange of ideas, views and experiences among states; fosters cooperation and coordination in environmental management; and articulates state positions to federal agencies and others on environmental issues. In August 2001, ECOS passed a resolution supporting the elevation of EPA to cabinet status.

The State of Minnesota has strongly and consistently supported the elevation of the U.S. EPA to cabinet-level status. I continue in this Minnesota tradition today, because I believe that it is more important than ever before that environmental protection is factored into decisions made in the highest councils of the United States.

The four areas that I would like to discuss today are:

- How a Department of the Environment at cabinet-level **would improve the department's ability to work laterally** with other cabinet members on "second wave" environmental issues involving transportation, energy and agriculture.
- Why **pollution issues that cross state, regional, national and international boundaries** require a department with access to policy decisions at the cabinet level.

- Why **states, the primary implementers of environmental policy**, need a cabinet-level department to provide the leadership we need to do our jobs and bring our innovative ideas to the nation.
- Why it is important to **enact a clean bill – one that retains the focus** on achieving a Department of the Environment.

I have spent my career working in environmental protection, as a research chemist for the EPA in Duluth, Minnesota; an environmental manager for a large multi-state utility, Reliant Energy; and the commissioner of the Minnesota Pollution Control Agency. These varied experiences have provided me with ample opportunities to observe the important interlocking connections among federal, state and local agencies – what works and what doesn't. It is from these experiences that I speak to you today.

1. **'Second-wave' environmental problems require cabinet-level strategies and communications.**
   After more than three years as commissioner of the Minnesota Pollution Control Agency, it is clear to me that state regulatory agencies are facing environmental problems dramatically different from those we faced in the '70s, '80s and '90s. The U.S. Congress passed laws such as the Clean Air Act, Clean Water Act, and Resource Conservation and Recovery Act to deal with end-of-pipe emissions from discrete point sources. Traditional regulatory approaches – environmental protection's first wave strategies – met with hard-won, substantial success in controlling pollution from point sources.

   Today, the greatest threats to the environment in Minnesota are not from factories and facilities, but from widely disseminated pollution arising from transportation, energy consumption, agriculture and urban sprawl, among others.

   - In Minnesota, 57 percent of toxic air pollutants comes from mobile sources such as automobiles, and 43 percent from business or industrial sources. In the U.S. as a whole, 50 percent of toxic air pollutants come from mobile sources. ("Air Quality in Minnesota: Problems and Approaches" report to the Minnesota Legislature, http://www.pca.state.mn.us/hot/legislature/reports/2001/airquality.html.)

   - Industries and municipalities in our state are responsible for only 14 percent of water pollutants, while nonpoint sources such as urban and agricultural runoff account for 86 percent of Minnesota's water pollution. ("Minnesota 2001 – 2005 Nonpoint Source Management Program Plan," http://www.pca.state.mn.us/water/nonpoint/mplan.html.)

   - Approximately 75 percent of Minnesota's electrical power is supplied by coal-fired power plants, which generate sulfur dioxide, nitrogen oxides, organic compounds, greenhouse gases, particulates and mercury. ("Minnesota Energy

Planning Report,"
http://www.commerce.state.mn.us/pages/Energy/MainEnergyPolicy.htm)

We realized a few years ago that these complex problems could not be controlled out of existence. We needed new strategies, what I call the "second wave of environmental protection", which relies upon partnerships, innovation and public stewardship.

As a member of Governor Ventura's cabinet, I have the latitude to work directly with my fellow commissioners in the state departments of Transportation, Agriculture, Commerce, Health and Natural Resources. Other states also prefer the environment to be represented at cabinet level. While eleven states have no formal cabinet system, the remaining 39 states do, and 34 have placed environmental protection at the cabinet level. By sitting at the table with the top managers of other agencies, Minnesota has achieved some remarkable progress:

- The Minnesota Pollution Control Agency's involvement in developing the Minnesota Department of Transportation's five-year strategic plan helped our state make certain that transportation improvements reduce pollution rather than exacerbate already existing environmental impacts. Minnesota is in attainment and wants to maintain that status. ("Moving Minnesota: Minnesota Statewide Transportation Plan, January 2000," http://www.oim.dot.state.mn.us/PDPA/2000PDF/moving_minnesota.pdf.)

- A 10-year state energy plan prepared by the Minnesota Department of Commerce included an entire appendix focused on the environmental impacts of energy policy, because the Minnesota Pollution Control Agency sat down at the table with state energy experts. ("Minnesota Energy Planning Report," http://www.commerce.state.mn.us/pages/Energy/MainEnergyPolicy.htm.).

- The September 11 attack on America brought leaders in several of Minnesota's state agencies together to develop coordinated emergency response planning for potential nuclear accidents, bioterrorism or impacts of future attacks. (Environmental emergency response plans for Minnesota, http://www.pca.state.mn.us/cleanup/ert.html#response.)

- These lateral partnerships involve big achievements and small. A small example with big outcomes involves the scientific discussion among Minnesota Pollution Control Agency staff working on the reduction of listed metals in products and Minnesota Department of Transportation staff evaluating highway-striping paint. This lateral communication resulted in discontinued use of paints containing lead and hexavalent chromium. This decision-making process will eliminate more than 70,000 pounds of lead and 17,000 pounds of chromium previously applied to Minnesota roads each year. (Listed Metals Program achievements, http://www.pca.state.mn.us/waste/listedmetals.html#conclusion.)

I personally attest to the value of working laterally and having a seat at the table. I know that without my involvement at the highest levels of state government, the Minnesota Pollution Control Agency could not have made certain that transportation, energy and agriculture policies factor in environmental considerations.

The EPA could forge more productive partnerships and strategies with cabinet members if the department had a permanent place at the table. EPA's current administrator, Governor Christie Whitman, enjoys the support and confidence of President Bush, as she has testified. (EPA Administrator Gov. Christie Whitman's Testimony before the U.S. Senate Committee on Governmental Affairs, http://yosemite1.epa.gov/administrator/speeches.nsf/b1ab9f485b098972852562e7004dc686/d25aa89b86d7ac2785256a9b006c1c04?OpenDocument.) This is encouraging, but is not the same as having a law that affirms that the environment be considered in cabinet-level decisions in every administration.

1. **Department of the Environment provides clout for dealing with pollution crossing state, national and international boundaries.**
Just as today's pollution problems require new national strategies, they also require strong, cooperative relationships among local, state, tribal and international environmental officials. As the Commissioner from a state that shares a border with Canada, shares the coastline of the largest and cleanest of the Great Lakes, and works strategically with other bordering EPA Region V states, I know how important authority and credibility are to developing and maintaining these relationships. Without cabinet-level status, I believe that the EPA lacks sufficient clout to make sure U.S. environmental policies are well represented in interstate and international forums.

My experience in Minnesota shows just how important this national presence can be:

- As a member of the Mississippi River/Gulf of Mexico Watershed Nutrient Task Force, I'm working with other states to mitigate the water quality impacts of nutrients – on my state's lakes and streams and on the "dead zone" of hypoxia in the Gulf of Mexico. The best estimates say that 7 – 9 percent of the nutrients affecting the Gulf originate in Minnesota. I can tackle nutrient-reduction with local partners. However, I have no authority to deal with nutrients coming from bordering states or countries. The Department of the Environment could lead the charge on interstate environmental problems of this magnitude – with the full force of cabinet-level status. (Information about the Mississippi River/Gulf of Mexico Watershed Nutrient Task Force, http://www.epa.gov/msbasin/hypoxia.htm.)

- Minnesota has developed productive relationships with Environment Canada, relative to environmental problems on our shared border. We have worked jointly on issues such as:

  1. toxics reduction in Lake Superior,
  2. airborne mercury deposition from Canadian power plants into Minnesota's lakes,
  3. large animal feedlot proposals,
  4. transforming the Rainy River from a river clogged with foam and sludge to a high-use resource, providing excellent habitat for fish, and
  5. flood-damage reduction projects to reduce sediment loading of Canada's Lake Winnipeg from Red River runoff.

However, a cabinet-level Department of the Environment could bring greater clout to bear in negotiations where progress is slow or stalled.

- In 2001, I was honored to represent Minnesota at The Hague in the Netherlands during discussions about global climate change and implementing the Kyoto Protocol. Cabinet-level environmental ministers from countries across the globe were represented at the bargaining table. EPA, our nation's most knowledgeable voice on global climate change, was not there as an equal, as the State Department represents the U.S. in these negotiations.

  In these times, global interdependencies are more crucial than ever before. A strong U.S. presence at such international forums, in the form of a U.S. Secretary of the Environment, would assure that our national interests were represented and that we could work authoritatively with our international partners on environmental problems that transcend all state and national boundaries. Indeed, the U.S. is the only developed nation of the world that does not have a cabinet level department of the environment.

2. **State agencies that implement environmental programs seek strong environmental leadership and better synergy between state and federal policy.** At the national level, Minnesota wants a Department of the Environment with the same access as other cabinet-level agencies to ensure that states' can effectively implement the law. States have demonstrated our effectiveness at implementing national environmental laws and policy. Minnesota puts environmental indicators on the Governor's Web site to show our progress in protecting air, water and land. (Environmental indicators for the state of Minnesota, http://www.departmentresults.state.mn.us.)

   Research by the Environmental Council of the States shows that:

- In fiscal year 2000, states spent $13.6 billion on environmental and natural resource protection – nearly double the entire budget of EPA.

- Delegation of federal programs to the states has grown from approximately 40 percent in 1993 to nearly 80 percent in 2001.

- States conduct at least 90 percent of environmental enforcement actions.

- Innovative strategies for environmental protection thrive at the state level, producing such "win-win" strategies as brownfield redevelopment, voluntary reduction initiatives, and expedited permitting, among others.

So why do states care whether a Department of the Environment has cabinet-level status? And make no mistake, we do care. We care because we need environmental leadership at the highest level to provide us with the guidance we need to do our jobs. In an August 2001 resolution, the Environmental Council of the States supported elevating EPA to cabinet status. (Environmental Council of the States resolution on elevating EPA to cabinet level is at http://www.sso.org/ecos/policy/resolutions/Resolution%2001-10.pdf.)

For example, the Bush Administration energy proposals initially focused on development of new sources and reducing regulatory barriers. The Minnesota Department of Commerce in its new 10-year planning report focuses on energy conservation, new fuels and technology, and increased attention to significantly reducing power-plant emissions. With a Department of the Environment at cabinet-level, informing states of federal approaches and bringing feedback to the Administration, crucial plans such as these might mesh more effectively, creating a powerful synergy.

A cabinet-level EPA could bring big national policy initiatives to us, so that federal decisions could shape and be shaped by state experiences. And while the states share successful strategies with one another through ECOS and other communication, a cabinet-level EPA could bring those successes with transferable elements more forcefully onto the national stage.

4. A clean bill, or no bill?

In summation, Minnesota strongly supports establishing a cabinet-level Department of the Environment because:

- Second-wave environmental protection requires cabinet-level strategies and communications.

- A Department of the Environment provides clout for solving pollution problems that cross state, national or international boundaries.

- State agencies that implement environmental programs seek strong environmental leadership and better synergy between state and federal policy.

Our support comes with one cautionary note.

As far back as 1988, Minnesota Senator David Durenberger was a powerful proponent of elevating EPA to cabinet status. Yet this desired outcome still hasn't been achieved years later. Bills proposing the change become cluttered with language reflecting other agendas and interests – and fail because of controversial provisions.

As this subcommittee evaluates bills to create a cabinet-level Department of the Environment, Minnesota urges you to focus on the main goal – a clean and straightforward bill that gets the job done. It is a fortunate time to pass such legislation. President Bush has indicated willingness to sign a clean bill. EPA administrator Governor Whitman has the President's confidence and support. Colleagues in other states to whom I have spoken think, as I do, that the easiest and fastest way to make this happen is through a clean bill.

The time is right to support a cabinet-level Department of the Environment and ensure that the nation's achievements include healthy and clean air, clean and clear water and uncontaminated land.

Thank you for inviting me to provide Minnesota's perspective, and I welcome any questions you may have.

Selected References and Web Sites

- "Air Quality in Minnesota: Problems and Approaches" report to the Minnesota Legislature, http://www.pca.state.mn.us/hot/legislature/reports/2001/airquality.html.
- "Minnesota 2001 – 2005 Nonpoint Source Management Program Plan," http://www.pca.state.mn.us/water/nonpoint/mplan.html.
- "Minnesota Energy Planning Report," http://www.commerce.state.mn.us/pages/Energy/MainEnergyPolicy.htm.
- "Moving Minnesota: Minnesota Statewide Transportation Plan, January 2000," http://www.oim.dot.state.mn.us/PDPA/2000PDF/moving_minnesota.pdf.
- Environmental emergency response plans for Minnesota, http://www.pca.state.mn.us/cleanup/ert.html#response.
- Listed Metals Program achievements, http://www.pca.state.mn.us/waste/listedmetals.html#conclusion.
- EPA Administrator Gov. Christie Whitman's Testimony before the U.S. Senate Committee on Governmental Affairs,

http://yosemite1.epa.gov/administrator/speeches.nsf/b1ab9f485b098972852562e7004dc686/d25aa89b86d7ac2785256a9b006c1c04?OpenDocument.

- Information about the Mississippi River/Gulf of Mexico Watershed Nutrient Task Force, http://www.epa.gov/msbasin/hypoxia.htm.
- Environmental indicators for the state of Minnesota, http://www.departmentresults.state.mn.us.
- Environmental Council of the States (ECOS) resolution on elevating EPA to cabinet level is at http://www.sso.org/ecos/policy/resolutions/Resolution%2001-10.pdf.
- The Minnesota Pollution Control Agency's Web site is http://www.pca.state.mn.us.

Mr. OSE. Ms. Studders, we are glad you are here. Your stuff is so good we decided to let you run. We figured it was productive. So, Ms. Nishida, if your stuff is as good we're going to let you run a little long, too.

Ms. NISHIDA. Thank you, Mr. Chairman and members of the committee. My name is Secretary Jane Nishida. I represent the Maryland Department of the Environment and I am privileged to be here today to testify about Maryland's position with regards to the elevation of EPA. You have my written testimony, and what I would like to do in light of the number of questions that you asked the panel one witnesses, is to forgo reading or summarizing my written testimony but instead try to answer some of your questions in the context of three questions that were posed to me originally.

The first question is whether or not the original charter of EPA is still valid today, 30 years later. The second, whether improvements should be made in elevating EPA. The third is whether EPA should in fact be elevated.

With regards to the first question, that is whether or not the original charter of EPA is valid today, I want to answer that in the context of an experience that we have in Maryland, and that is our restoration of the Chesapeake Bay.

The earlier panel testified that they had run into experiences where States may be treating a water body differently from across State lines. I am happy to tell you that with regards to the Chesapeake Bay, it is an unprecedented level of cooperation that we have with regards to the protection of the Chesapeake Bay between the States of Maryland, Pennsylvania, Virginia, and the District of Columbia. As well, we have included other States who are not technically a part of the Chesapeake Bay restoration efforts but who do play a role in terms of contributing to the water quality.

As a result of that and such things as trying to designate a TMDL for one of the tributaries of the Chesapeake Bay, the Potomac River, we are working jointly with those States that share the Potomac River. So we believe that as a result of the cooperation fostered by the Chesapeake Bay program, we will not see the inconsistencies that are occurring in the other parts of the country with regards to different standards and perhaps different protections for a water resource.

Likewise, with regards to the question of whether the EPA charter is flexible in addressing the Chesapeake Bay concerns, as you have pointed out, there has been evolution of environmental problems over the years from the command and control approach of point sources. What we're finding in the restoration of the Chesapeake Bay is that many of the sources of pollution are not from our factories, they are from agricultural runoff and sediment erosion from land use and from air deposition. Twenty-five percent of the NO_x that enters the Chesapeake Bay comes from the air.

The EPA is one of our partners in this Chesapeake Bay restoration, one of our strongest partners, and they have worked with us in terms of flexible interpretation of their standards and approaches. They are able to apply to the States the flexibility that we need collectively to protect the Chesapeake Bay.

The second question that I would like to address is what other improvements should be made with regards to EPA. I will acknowl-

edge that all the points that were raised by Commissioner Studders and the other panelists are very valid. We need to look at pollution and environmental protection in the future from a multipollutant strategy, from a cross media strategy. We need to look at an entire facility, not just a single media within a facility. We need to look more closely at incentive-based approaches. We need to look more at compliance assistance.

One of the difficulties that we have had with EPA in the past, when they look at our enforcement record, they only look at the number of NOVs and enforcement actions taken and not what compliance assistance we have rendered.

You have raised a question with regards to data management. Yes, more integration needs to occur in data management. One of the difficulties that we have at the State level, as an example, is that because everything is media-driven, my agency data base cannot communicate with each other and this prevents us from doing community-based profiles in addressing such things as environmental justice.

We also need to look at outcome performance indicators, as you indicated. In the State of Maryland, we have been working with our regional office, Region 3, to develop a performance partnership agreement that establishes environmental indicators in exchange for more flexibility with regards to funding that comes to the States. And these environmental indicators look at number of wetlands that we restore, the number of lead-elevated children that we reduced, the reduction of ozone days within the State. So they are, again, environmental performance indicators.

Which leads me to the final question, and that is whether or not to elevate EPA. As you have indicated, there are several proposals before you. One, H.R. 2438, which is the clean bill in terms of elevating EPA; H.R. 2694, which has more in terms of reforming EPA.

While we support aspects of the reform bill in terms of EJ, IT, and public access, we would urge this committee to pass out the clean bill, 2438, because we believe that the structural problems are complex, require further evaluation, and further dialog with important stakeholders like the States is needed.

I would add that when my agency was elevated to an environmental agency in the mid 1980's, it was not a perfect solution. Over the last 15 years I have been before the General Assembly where there have been reforms in my agency, where certain programs have been shifted and certain organizational structures have been made.

I think the important thing is that we need to send a message to our public, we need to send a message to the world that we believe that environmental protection is on equal footing with the other Cabinet level responsibilities. I think the public deserves no less and the time is long overdue. Thank you.

[The prepared statement of Ms. Nishida follows:]

House Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs

"Cabinet Elevation for U.S. Environmental Protection Agency"

Testimony of Secretary Jane T. Nishida, Maryland Department of the Environment

March 21, 2002

Good morning, Chairman Ose, and Members of the Committee. My name is Jane Nishida and I am Secretary of the Maryland Department of the Environment. Maryland appreciates this opportunity to provide its views on the status of the U.S. Environmental Protection Agency. As a State regulatory agency, my agency, like those of my colleagues on the panel, has a long history of working with EPA.

Maryland works closely with EPA in many capacities. Of course, we work in the regulatory arena, implementing programs delegated to States by EPA to control air, water and waste emissions and discharges. Maryland also receives significant and crucial funding to assist local jurisdictions in the construction of wastewater and water treatment plants. Over the years, while we may not always agree, Maryland has developed a good working relationship with EPA. Where problems have arisen, we have usually worked together to resolve differences.

I understand that one question you have is whether the original charter to EPA is still valid today, thirty years after it was developed. As the Committee has rightly observed, the state of our nation's environment has changed dramatically. We now have in place regulatory programs that have significantly reduced and controlled emissions and discharges from our major industries, public works facilities, and smaller facilities. As the Committee has also pointed out, there are now eleven major statutes that govern environmental issues. The sophistication of environmental protection efforts continues to grow. Where once we focused on command and control regulation, we now have an array of tools from incentives to reduce costs through pollution prevention to watershed based planning. Where once we focused on a single media, hazardous waste, water pollution or air pollution, today we recognize that multi-media approaches are necessary. Much attention has been focused on the fact that many of the innovations in environmental policies and programs have been initiated by the States, such as voluntary cleanup programs for brownfields sites. These significant developments and the level of innovation prompted by States have lead some to question of whether the EPA model created thirty years ago works in today's world.

Maryland's experience with the Chesapeake Bay Program suggests that the EPA model created thirty years ago not only has the flexibility needed, but the agility to adapt to the evolving challenges of today. I'd like to use the Chesapeake Bay restoration

efforts to demonstrate how the EPA model has successfully worked to accommodate an increasingly complicated and overlapping set of environmental issues.

As Representatives Morella and Cummings know, Marylanders hold a deep affinity for the Chesapeake Bay. The Chesapeake Bay has been in the forefront of Maryland environmental issues for over thirty years. As a treasured national resource and as an economic engine for the State, restoring the Chesapeake Bay has been an effort that has engendered an unprecedented level of collaboration and commitment.

In the 1970's the restoration of the Chesapeake Bay was a disparate and unfocused effort by the States in the region. We were faced with seemingly daunting challenges in the regulatory, educational and political arenas. How to involve States far upstream – Pennsylvania and New York – in the restoration efforts when their residents did not connect their actions to the Chesapeake Bay. How to transition from command and control regulations for point sources to the more difficult challenges of controlling non-point source run-off. How to address the impacts of our growing population on land use and the environment, particularly in coastal areas.

Thirty years later, the Chesapeake Bay Program has become a national and international model of environmental management and cooperation. EPA, as a partner in the Chesapeake Bay Program, has been one of its strongest and innovative players. EPA has redirected its resources and used its policies to address a broad range of environmental issues confronting the Bay – the depletion of natural resources, the impact of regional air transport, the impairment of water quality – issues faced across the Country. It has also included a broad array of scientific research needs and, perhaps, most importantly, involved a broad array of stakeholder interests ranging from industry to watermen to developers to farmers. Using the experience of the Chesapeake Bay as a gauge, we believe the EPA of today is well equipped to address the nation's environmental challenges of tomorrow.

That is not to say that there are not improvements to be made in the environmental framework and laws. As a nation we must move away from a single pollutant focus to look at multi-pollutants and entire facilities, watersheds, and airsheds. We must develop more incentive based approaches that reduce compliance costs, like pollution prevention, while at the same time, ensure strong environmental enforcement. We must address the basic infrastructure needs, like water and sewer systems, to maintain our older cities and towns. The solutions to many of these problems are complex and require great attention in the review of our major environmental statutes. The Committee has asked whether, in elevating EPA to a cabinet level position, other improvements to EPA should be made.

Maryland supports many of the new priorities outlined for the Environmental Protection Agency in H.R. 2694, such as the emphasis placed on environmental justice, information technology and public access to information. However, as noted above, many of the other changes that may need to be made are complex, necessitating careful

evaluation and further discussion. Maryland, therefore, would support the more streamlined approach in elevating EPA to a cabinet level status.

Given the fact that Maryland believes that EPA, as currently configured, is generally able to adapt to new priorities, you may ask why should EPA be elevated to a cabinet level Department? Maryland believes that environmental protection is as critical to public health, public security, and economic vitality as the other important areas currently falling under the purview of Cabinet level departments. And as our Nation grows from its current population of 250 million people to a projected 500 million people over the next century, environmental issues will grow and become more paramount.

In Maryland, not a week goes by, when one environmental issue or another is not on the front pages of our papers – the quality of the air we breathe, the safety of the water we drink, to the chemical spill affecting our streams. Like all citizens, Marylanders care about their environment and expect that protecting the environment is a mission on equal footing with other public responsibilities. By evaluating EPA to a cabinet level department, Congress will appropriately recognize the importance of environmental issues to the American public.

I would also add that most of our States and many countries have established an independent cabinet level environmental agency. While I do not represent the Environmental Council of States today, it is noteworthy to point out that State Environmental Commissioners from around the country recently voted to support elevating EPA to a Cabinet level department.

And as we increasingly move toward a global economy and become more globally interdependent, environmental issues will increasingly receive international attention. For example, Maryland recently formed a partnership with Chiang Mai, Thailand to improve air quality. As a world leader, the United States must set the example. What message do we send to other nations about the importance of environmental protection when our own environmental agency is not on equal footing as other Cabinet level agencies? By elevating EPA to a cabinet level department, EPA will be better poised in the international arena to negotiate on our behalf and foster greater international environmental cooperation.

In conclusion, Maryland respectfully urges this Committee to support H.R.2438 and elevate the Environmental Protection Agency to a cabinet department. It is long overdue. Thank you.

Mr. OSE. Thank you, Madam Secretary. We appreciate you coming today.

We are going to go to questions now. Ms. Studders, is it an agency or commission you run? I just need to be clear in my own head.

Ms. STUDDERS. My agency's name is the Minnesota Pollution Control Agency.

Mr. OSE. OK. Now, that agency, it is my understanding that your agency was reorganized here several years ago and that the manner in which you approach the issues before you changed. How was the agency organized before and how is it organized now?

Ms. STUDDERS. Mr. Chairman, the agency was actually created 3 years before EPA was created. And it was arranged exactly like EPA is today arranged, which was by media: air, water, land, a separate financial office, an administrative separate office.

The agency was reorganized in 1998, destroying those media organizations for all of the reasons that each of the panelists have spoken about today with the second wave environmental issues, and it was set up to deliver services geographically. Minnesota is a northern State and we broke the State down geographically and we dealt with the large communities differently. So if you were a large community greater than about 100,000 in population, services were rendered differently to you than in the smaller communities.

What we did originally was try to put every single program out into that service delivery system, if you will. We also centralized a planning function, which I think is very critical for planning and analysis before new rules are promulgated, before a new standard is set, to have independent staff look at that rule of standard and see if it was indeed warranted. And we set up another division that had to do with environmental results. We call it the environmental outcomes division. And that group created the Minnesota Environment 2000 report which I brought before this committee last year, and is looking at our indicators quarterly, and produces a report quarterly looking at what progress has been done.

But I will tell you that it is very difficult to measure environmental progress in a quarter. It very often takes years.

Mr. OSE. Before we leave that, how do you measure it in this report? Do you have specific quantifiers in the report? Or is it subjective? Tell us how you measure it.

Ms. STUDDERS. Mr. Chairman, that answer honestly depends on the breadth or wealth of the information we may have in the media. We have much better data on air in Minnesota than we do on water. I think that is true of most States, but not all. The number of parameters we have monitored air for in this country has been a finite amount and it is less than a dozen and it is manageable. In the water arena, it is thousands and it is less than manageable. The criteria pollutants are measured. And what we have seen is a movement of the criteria pollutants coming out of the Twin Cities, our primary metropolitan area, and extending north into our area north where our resort areas are. We are seeing deposition issues in those lakes. But we are measuring the pollutants, I believe, on a monthly basis and then looking at that data cumulatively over years and adding each subsequent month to that information.

Mr. OSE. Do you correlate the measurements with changes in the regulatory regimes? In other words, at such and such a date we had a measurement of X and we changed our regulation at that time to address something else? Is there any way to correlate your regulatory evolution with the empirical data that you are monitoring out in the field?

Ms. STUDDERS. Mr. Chairman, we started doing that last November. We made a structural change to our organization last November, which I think is important I share with this committee. The district service delivery system was a little flawed in that—I'll give you an example. In our main office we have 500 people. In a smaller regional office we may have 50. And to expect 50 people to operate over 50 environmental programs was really, I think, a laudable goal, but an impossible one. We pulled some of those programs back into our central Saint Paul office primarily for what we call our major facilities, those big emitters that have been regulated under the Clean Air Act, Clean Water Act, RCRA, for 20, 30 years, and have consolidated the major facilities in one division now and what we call our minor facilities in a second division.

We still have those regional offices but what we learned in the course of the last 3 years was that our staff needed different skills to go out and inspect and enforce a major facility versus providing some assistance and perhaps actually teaching an entity, like a farmer that had not been regulated before about the impact his or her phosphorous and nitrogen was having on that waterway down the block. And so now our service delivery system is looking at that skill issue and we actually have different skills in the two divisions that we ask our staffs to have.

Mr. OSE. I want to come back to this, but my time has expired. Mr. Otter.

Mr. OTTER. Ms. Studders, in your testimony, you provide us that you had worked for many years for the private sector and that is Reliant Energy.

Ms. STUDDERS. Yes, that is true, Mr. Otter.

Mr. OTTER. Tell me a little bit about Reliant Energy.

Ms. STUDDERS. I can tell you that—I think it is important I tell you this, I worked in the natural gas business originally and went through a series of seven acquisitions and mergers in my 17-year career in the energy business and wound up at Reliant Energy. As that ended, we were doing environmental regulatory work in 13 States and I was primarily involved in negotiations with the different regions of the Environmental Protection Agency, establishing standards and negotiating cleanup scenarios for very large sites that needed remediation, and then working on air quality agreements as well.

Mr. OTTER. And coming from that sector when you were working with the EPA, did you find them pretty easy to work with, relative to your position now as the head of the Environmental Protection Agency of Minnesota?

Ms. STUDDERS. I think what I would comment on is that I found working with each region unique. Region 5 is different, different than Region 7. The expectations in Region 8 are very different than those in Region 2, and I found that troubling in that to me what was good in New York should also be good in Texas. But the dif-

ferent regions would interpret the laws differently, and I fortunately worked for a company that said let's hold ourselves to the highest standard that one region of the EPA holds us to. So it made my job easier as I worked with fellow managers to teach them what standard they needed to comply with. But EPA themselves don't hold themselves to that same standard.

Mr. OTTER. Was Reliant generally under the auspices of the public utilities commissions of these relative states?

Ms. STUDDERS. Yes, it was.

Mr. OTTER. And so if you had an environmental problem that required a solution within a certain period of time, you needed to, as you stated in your testimony, you could cost-basis whatever it was going to cost for another 1,000 cubic feet of gas, what that abatement process was going to cost you in your product?

Ms. STUDDERS. Yes.

Mr. OTTER. And then with that knowledge, you could go to the PUC and say we need an increase from $1.80 up to $1.85 or $1.82?

Ms. STUDDERS. We could, but I will be honest, the people I worked for asked that I do a more thorough analysis of that, meaning look at different alternatives to grapple with an environmental scenario and cost that out, and then go to the public utility commission and ask them what they thought. So we did not necessarily always go in with one solution, we went in with several so that they could help determine if they wanted that issue addressed or not because there are different costs.

Mr. OTTER. In that capacity, was Reliant ever fined by the EPA?

Ms. STUDDERS. Reliant has been fined by EPA, yes.

Mr. OTTER. Did you believe that those were justifiable?

Ms. STUDDERS. I will be honest, Mr. Chairman, the fines I'm referring to actually happened to Reliant before I came to work with Reliant, because I only worked with them the last 4 years of my career. During the time I was there they did not have any fines that I'm aware of.

Mr. OTTER. Very good. I operated a plant in northern Minnesota, a little town called Claxton. I also operated plants in Idaho, Maine, California, and several other States, and several other countries. And I have to tell you that we were just as frustrated with the different rules and different—about the time we thought we had it figured out in one State or in one country and made those accommodations, then we found out because of the inconsistencies between regions that we no longer were doing the proper job.

And quite frankly, selling French fries is not the same as selling 1,000 cubic feet of gas. There is no PUC to go to. You have to go to McDonalds and Burger King and say we have to raise the price of your product. We have a problem here. It is not as easily accomplished in the private sector as it is in the quasi public sector that you talk of. There is no PUC. There is only the consumer. And if you happen to have been fortunate to have located your plant in a region which was more flexible, you could cost your product much cheaper. And if you did not, and your competition did, well, then actually it was the regulation by your own government that put you in a noncompetitive position because you happened to locate your plant in a different State and subsequently in a different region.

And so you can imagine what the private sector is faced with constantly when they have a multiplacement of plants or when some competition was a little more far-sighted and located in one of the regions that were more flexible. I will come back to this later in my second round. My time is up, Mr. Chairman, but flexibility is one thing that if we are going to establish flexibility, and I appreciate the fact that both of you have spoken to that, we need to make it consistently flexible. Otherwise, we disenfranchise in the marketplace and we disenfranchise States, to some extent one State is required to do something that other States are not. Thank you, Mr. Chairman.

Mr. OSE. I thank the gentleman. Ms. Studders, Ms. Nishida, I have a bunch of questions for you also. Just be patient with me.

Ms. Studders, you talked about how you have reorganized or Minnesota has reorganized to effectively go away from the air, water, land, to basically—these are my words, not yours—the stationary known air emitters that require major oversight, and then the smaller ones. You centralized the oversight of the major guys in an office that had staffing. Now the smaller offices, the satellite offices, if you will, retained jurisdiction on what emerging types of industries? I mean, how did you structure this? When you got the big emitters identified and centralized, how did you handle the ones that were less than big?

Ms. STUDDERS. Mr. Chairman, the large emitters are primarily identified by EPA, and the regulatory prescriptiveness to which we are held to show that we are complying with Federal law as we regulate them determined who was a major facility. And that's a finite group that we could put in that one division.

The second division is everything else. So it is much less tangible and it will have facilities in it that one could argue will have to operate under the same prescriptiveness. As an example, a smaller sized wastewater treatment facility still has to comply with the Clean Water Act.

But the volume of the discharge and the number of pollutants they need to test for is much smaller than a major facility is. That same staff will have to work with a farmer to implement Minnesota's new feedlot regulations, which also have two sets of rules. One set of rules is much more prescriptive for a small farmer, to tell them exactly what to do. And the second set of rules is performance-based, because the large operators with confinement animal feeding operations [CAFO's] told us they didn't want the prescriptiveness, they just wanted the goals they needed to meet. So we wrote our regulations that way.

Mr. OSE. Has that worked?

Ms. STUDDERS. I would say yes, Mr. Chairman. We've had the regulations on the books since last October, and when I came on board in February 1999, there was much contention in Minnesota about our lack of regulation of farmers and if you were even being too tough on farmers or too weak on them. And I can tell you the calls and the letters have dropped immensely since we've gotten those regulations in place.

Mr. OSE. Well, let me examine the CAFO thing that you've obviously dealt with, because I know that—I'm more familiar with the hog production in Iowa and cattle production in California than I

am with what's in Minnesota, but the concept is the same, in the sense that the discharge—I mean, you point out that the critical piece to the puzzle is what are you discharging at the end of the day, so to speak? Now, you apparently have taken it toward that end as opposed to the prescriptive end. Is that correct?

Ms. STUDDERS. With regard to the CAFOs, that is true, Mr. Chairman, yes.

Mr. OSE. And then you've taken that particular approach and expanded it in the satellite offices beyond just the CAFO/AFO situation, but perhaps to some more industrial uses?

Ms. STUDDERS. We are in the midst of doing that, Mr. Chairman. We are in the midst—we are now issuing permits that are multimedia in Minnesota, and from our perspective in 1996 when Minnesota passed that law giving our agency the flexibility, we were allowed to start doing those things.

Mr. OSE. Does the stovepiping of EPA, the air, land, water issue, is that one of our impediments here?

Ms. STUDDERS. Mr. Chairman, it's a double-edged sword. It is both an impediment and something that is very valuable, if that makes any sense.

Mr. OSE. It does.

Ms. STUDDERS. When we made changes to our organization last fall, we reinstituted what are called media leads. For us to interact with the Environmental Protection Agency [EPA].

Mr. OSE. Media leaks?

Ms. STUDDERS. Media leads.

Mr. OSE. I'm familiar with those.

Ms. STUDDERS. Not leaks; a lead. We did that because it was very difficult for EPA to talk to us. They didn't know who to talk to, who was in charge of water in Minnesota, because we had perhaps a dozen people handling water in Minnesota. And so we have both a hierarchical relationship in our State now as well as a lateral relationship.

And to simplify it, I'll tell you that if we have seven offices, each of the offices work on water, but there is one person now in charge of water, so that they have an indirect relationship reporting in to that individual as they operate their water programs. But they don't all report to that person, because as they are out there working in the field—as my fellow commissioner said—air deposition is very often impacting water; my staff need to be looking at the impacts of air and water together. And if I kept them organized by air and water, they just weren't able to do that. It was too difficult culturally for them to have that interaction. Now they are much more amenable to having such an interaction.

Mr. OSE. All right. My time is expired. Mr. Otter.

Mr. OTTER. Thank you, Mr. Chairman.

Ms. Nishida, in your testimony you indicated that you lack certain aspects of Mr. Horn's legislation which called for the establishment of a statistics bureau and creates an independent bureau within the EPA dedicated to environmental statistics. Is this something that you support, even though you indicated that you prefer the clean bill? But if in the restructuring of the EPA we were to establish that kind of a department, would you have a little more belief in the information that you get from EPA?

Ms. NISHIDA. I think as you have heard this morning, managing data is one of the challenges that EPA has, along with the States. And so I think by creating a bureau of statistics or however we name that bureau, we would assist States in being able to assure more complete and accurate data. So to that extent, yes, I think that this would be an improvement with regards to looking at the structure at EPA.

The question that I was pointing out was that some of the other provisions in the reform bill are more complex and may require more careful evaluation before proceeding and therefore might delay the elevation of EPA.

Mr. OTTER. Do you think it would be more advantageous for a Cabinet-level EPA Director to make those kind of important structural changes? Is the EPA director stopped from doing that now because she doesn't have Cabinet-level position to make those changes?

Ms. NISHIDA. No. I think it would be hard for me to say that the EPA Administrator is prohibited now from doing that because she doesn't have the Cabinet-level status. I think what is important to point out that in her ability to interact with other Cabinet-level agencies, she needs to have the same level playing field.

And I'll just give you one example. In the area of air quality regulations, she has to interact very closely with the Department of Energy and the Department of Transportation. What we have found at the State level, that some of the changes that are now being considered in air quality protection and statutes, EPA doesn't necessarily have the same level playing field and the same access to the information and to the decisions that we think that a Cabinet-level status might afford her. And as I mentioned, most of the States in the country have Cabinet-level environment departments. Certainly Minnesota and Maryland are two of them.

Most recently, at the last ECOS meeting, which is the environmental commissioners across the country, they supported a resolution where the State commissioners recommended to Congress to elevate EPA. So this is something that is important, I think, at the State level to give the Administrator that equal footing.

Mr. OTTER. The term "interaction," I'm a little confused by that. One of the other committees that I serve on is the Transportation Committee, and the subcommittee that I serve on, that has to do with water and also with pollutants, air pollutants. We've got a turnpike in New Jersey that is 6 years yet to be built because the EPA has not permitted it. We've got a bridge in Tennessee that's about the equal number of time. I've got a stretch of highway in my State that kills 34 people a year that we've not been able to go forward with on construction because we haven't gotten the EPA permit.

What kind of interaction are you talking about? I mean, they can deny the permit. We can't go forward with the construction in transportation.

Ms. NISHIDA. Well, again, certainly I'm not suggesting that there isn't communication between a Cabinet-level agency and an agency like EPA. What I'm suggesting, though, that on some of the important policy issues that are before this Congress in terms of what new steps that this country needs to move toward in terms of air

quality initiatives that you have heard about recently like the President's Clean Skies Initiative—that those are the types of issues that we believe from a State perspective, that EPA should be on a level playing field, on equal footing with the other Cabinet agencies, because the environmental aspects of those policy decisions are critical and need to be considered in that equal footing.

Mr. OTTER. I understand that, but I'm also, I guess, concerned and maybe perhaps a little confused when you overlay the Clean Skies with the Jobs Initiative and you see that we've got over $14 billion in highway projects that are being held up that could put over 400,000 high-paying jobs to work in this country, and they're being held up because of one of the three environmental considerations.

And the question is, are they dealing with true science? There's a conflict between the two that is greater—and not necessarily that the two goals can't be achieved, but right now it appears that they can't be achieved. And so whether it's agreements or whether it's ability to sit at the same table and make these kind of decisions, I would hate to arrive at a structure, whether it's at the Cabinet level or what, that makes it worse.

Ms. NISHIDA. Well, I think you raise the issue of the dichotomy between economic development and environmental protection. And like you, I know that we can achieve both goals. They don't need to be mutually exclusive. They don't need to be necessarily adversarial in terms of their outcomes. And Congress has passed a law that requires that any transportation project, whether it's a highway project or a transit project, be able to conform with the Clean Air Act that you have also passed. And as a part of the responsibilities that EPA has to assure transportation and clean air conformity, they have had to take a close look at some of these transportation projects. I'm not familiar with the one, obviously, you're referring to. I can tell you that with regards to the transportation projects in the State of Maryland, we work very closely with our transportation counterparts. We work very closely with EPA in trying to resolve the conformity issue, because it is a very complicated and difficult issue to resolve. But I think that the fact that I'm a Cabinet-level agency gives me the greater ability in terms of dealing with my transportation colleagues. That's not to say that I want to put an obstacle to any transportation projects. We just have to understand what the environmental impacts are so that when we submit our State implementation plans to EPA to meet the Clean Air requirements, there is conformity.

Mr. OTTER. I understand that. Mr. Chairman, in the second round, I will come back and I will wonder out loud why the EPA took Maryland's Clean Air standards back and is now operating your Clean Air.

Ms. NISHIDA. I can answer that.

Mr. OSE. I thank the gentleman. Ms. Studders, it's clear that you and the Governor of Minnesota are certainly trying to innovate in how you address these challenges we face, and I admit to significant admiration for your efforts. How frequently do you seek to innovate? I mean, is it an ongoing process?

Ms. STUDDERS. Mr. Chairman, innovation is a tool that we're trying to foster within our staff, just like enforcement is a tool, just

like writing a permit is a tool. I think what is interesting is that—I really do believe Minnesota has been an environmental leader in this country, and I think part of it is the pristine lakes we have in the Boundary Waters Canoe Area, and just the value that Americans place on that sort of real estate.

The innovations start at the States, and Minnesota was one of the prime States that pushed for the Environmental Council of States to negotiate the agreement that the GAO talked about in their report that I read last night, between the States and ECOS. That was Project Excel, one of the agreements that we were trying to help fix that had been passed.

I can tell you, Minnesota has similarly been very disappointed with the amount of hours we have put of staff time into innovations and for the lack of a result that's better.

Mr. OSE. What kind of obstacles have you run into?

Ms. STUDDERS. When we sit down and work with companies that want to innovate and sit down with regional EPA, it's not uncommon to put 1,000 hours of staff time into talking about doing something; yet the permit is not even issued.

Mr. OSE. Is it a conflict between a culture that relies on a prescriptive mandate versus a culture that looks at an outcome?

Ms. STUDDERS. Mr. Chairman, very much so. If you look at the Clean Air Act as an example, it's very prescriptive of how to protect the environment. It's not prescriptive as to what the goal is.

Mr. OSE. But those standards of how to protect the environment were written in 1971 or 1972. Is that one of the problems we have here?

Ms. STUDDERS. Mr. Chairman, I believe the Clean Air Act was actually amended a couple of times.

Mr. OSE. Well, the amendments that—we've had some amendments in the early nineties, for instance.

Ms. STUDDERS. Yes, I believe so; and that's why Minnesota wrote the Innovations Act that allowed us to not follow that prescriptiveness, so long as we were meeting the same CAA goals and allowed that to happen. I can tell you that we could not even have experimented with Project XCel if our State legislature had not passed that statute.

Mr. OSE. Now, I'm told that in the past year or so, you haven't sought any EPA approval of innovative programs at Minnesota. Is that accurate?

Ms. STUDDERS. What I would believe is accurate—it's yes and no. We have two that we have further pursued, one with the Anderson facility and another with—I apologize. I believe it's an IBM facility. I may have the wrong name, but we have not tried anything else. That is correct.

Mr. OSE. Why not?

Ms. STUDDERS. Because the amount of stakeholder time and the amount of staff time, in my mind, it's not cost-effective. And I'm probably the first MN commissioner that's saying, how cost-effective is this?

Mr. OSE. So someone at the State may vet a program, or a proposal, more accurately, that gives a better environmental outcome in terms of level of emissions or pollutants that are put into the environment than the current prescriptive mandate.

Ms. STUDDERS. Yes.

Mr. OSE. And the State of Minnesota has elected not to pursue that because the culture, if you will, at EPA doesn't seem to be very receptive to that?

Ms. STUDDERS. Mr. Chairman, I wouldn't be quite that broad. Minnesota still has its innovation statute on the books, and I have not asked that the legislature remove that by any means. We are operating under that statute with respect to several permits that we did successfully get through, where the State was able to make those decisions with delegated authority. But to the extent where we have to involve EPA, our success record has not been very good.

Mr. OSE. So once you get into an area where there's no clear delegation of authority, that's when you tend to bog down; when there's a prescriptive element to any consideration you're making, there's little flexibility provided?

Ms. STUDDERS. Mr. Chairman, that is correct. And in fairness, we very often can get the flexibility at the region, and then we get stuck at headquarters.

Mr. OSE. So the region might sign off on it, but then when it goes up the chain you get resistance?

Ms. STUDDERS. The closer you get to headquarters, the more you're involved with media management and very much the silos.

Mr. OSE. The stovepipe issue?

Ms. STUDDERS. Yes.

Mr. OSE. One of the things that occurs to me in listening to your earlier testimony is that you reengineered—these are my words, not yours—you reengineered your stovepipes in an effort to expedite this innovative process that you've created in Minnesota. It almost seems as if you reengineered to, frankly, more effectively deal with stovepipe challenges you face not the regional level but the national level. Am I accurate?

Ms. STUDDERS. I would say with our recent change, that is accurate.

Mr. OSE. OK.

Ms. STUDDERS. For point of information, I think it's important to understand—if I could, Mr. Chairman—if we can't interact with EPA well at the State level, we stand to lose a significant amount of Federal funding.

Mr. OSE. I understand.

Ms. STUDDERS. And in fairness to EPA, if we aren't organized in a way that can somehow interact with their existing structure, it does get to be problematic.

Mr. OSE. The situation I'm most familiar with—and this may be the case up around Minneapolis, St. Paul—is that there is a mandate in terms of what can go into automobile fuel, even though industry tells us now that they can accomplish a more efficient outcome if they're allowed to use a different chemical or manufacturing process. And it's this kind of innovation that I want to find a way to encourage, as opposed to frustrate. It's outcome-based rather than legislatively mandated, and that's the thing I keep driving at with Minnesota's success.

I'm trying to figure out how to, frankly, push that up the chain rather than have things sent down the chain. So I appreciate you coming.

Ms. Nishida, I want to go to Maryland's experience. I've particularly followed the Chesapeake Bay program, and I'm highly complimentary of that. I do want to enter into the record the short synopsis that I have here about the agreement between the States and EPA. I do want to note publicly that the signatories to this document dated December 9, 1983 are the Commonwealth of Virginia, the State of Maryland, the Commonwealth of Pennsylvania, the District of Columbia, United States of America, and the Chesapeake Bay Commission. So we've had for roughly 20 years some evidence of an ability to interact successfully in a manner that leaves EPA, as I read this document, leaves EPA as the Chair of the Chesapeake Bay Council. Is that accurate?

Ms. NISHIDA. No. What happens is—Mr. Chairman, the Chair rotates every year. And so this year it is Mayor Williams of the District of Columbia who was nominated by his peers to be the Chair of the Chesapeake Bay program.

Mr. OSE. The balance is accurate, though?

Ms. NISHIDA. Yes. The bay agreement that you're referring to is the one in 1983. Most recently, there was an agreement last year that set even higher goals with regard to our commitments, and actually set very ambitious goals that we are working now to achieve.

Mr. OSE. Briefly, if you would, summarize those goals. Are they empirical in nature, or are they——

Ms. NISHIDA. They are empirical in nature. One goal is in terms of wetlands. The Chesapeake Bay States have agreed to restore 25,000 acres of wetlands in the Chesapeake Bay area. Another goal is that we are going to reduce the negative impact of sprawl by 30 percent, I believe. I might have that exact percentage in error, but as you can tell from those two examples, they are empirical goals that the public can hold us accountable to.

Mr. OSE. All right. Is that a dynamic program? In other words, you say this was adopted last year.

Ms. NISHIDA. Yes.

Mr. OSE. Do you periodically review it and update it?

Ms. NISHIDA. Yes. It is a very dynamic program in which new goals are set. For instance, one of the goals that was originally set was that we were going to reduce the amount of nutrient pollution into the bay by 40 percent. That was to occur in the year 2000. We are now reevaluating that commitment, trying to understand whether we need to set new goals with regard to nutrient reduction and, as I alluded to, set new and different goals with regards to resource protection or land use.

Mr. OSE. How do you get the science to determine what the goal should be?

Ms. NISHIDA. We have a scientific advisory committee that is chaired by some of the eminent scientists within the region, and they essentially advise what we call the principal staff committee, which includes the Cabinet secretaries from amongst the region. They will make recommendations with regards to some of the scientific background and goals that the States should then set, and then we—it's our obligation to develop strategies to meet those goals. So there's a science and technical advisory committee that's created by the Chesapeake Bay program.

Mr. OSE. So the science and technical advisory committee will look at the bay as a whole and say, all right, our analysis indicated that we've got a problem here, here, here and here, and those may be different media, obviously different geographic areas. Does the science and technical advisory panel also make a recommendation as to the priority with which the Chesapeake Bay program should proceed?

Ms. NISHIDA. They do make recommendations with regards to priority areas that need to be addressed. One of the things that we have found over the years is that the Chesapeake Bay program is very comprehensive. It started out originally as a water pollution problem and had a water pollution focus. But in the last agreement I just referred to, there are goals on air pollution, there are goals on transportation, there are goals on brownfields.

And so we have now, since the evolution of—since 1983, gone to the other media, and it is truly a much more comprehensive approach. It's not just a watershed-based approach, though it is primarily water-based focused.

Mr. OSE. And EPA signed off on this?

Ms. NISHIDA. Yes, and EPA has signed off.

Mr. OSE. How is it that—I don't know how to put this delicately so I'm not going to try. How is it that you've been able to succeed in achieving, if you will, some cooperation on this, frankly, comprehensive approach, and yet Ms. Studders has some difficulty in creating the same kind of innovative approach in Minnesota?

Ms. NISHIDA. Well, not knowing enough about, obviously——

Mr. OSE. I mean, we may very well compare you to Minnesota, but I don't want to jeopardize Ms. Studders' job.

Ms. NISHIDA. Right. Well, let me, I guess, describe what we think are the features that created the success with regards to the Chesapeake Bay program. One, we had the commitment from the highest levels of government, as you can see, and that document—it is the Governors who signed the agreement.

Second, when the agreement was signed, all of the measures were voluntary, so that some of the goals that were to be achieved were going to be achieved through voluntary measures. What has evolved is we've realized it has to include a mix of regulatory measures.

The third thing is that even though we set an overall goal for restoration of the Chesapeake Bay, each individual State can adopt their own individual strategies, so it's not prescriptive to the States in that sense. Maryland and Virginia take very different approaches to land use. We have a land use goal, but each State can meet it according to its own approaches.

And then the fourth thing I would say is the very active involvement we have with our stakeholders. I mentioned the scientific community. We have also actively gone out to the regulated community—to the industry. We have businesses for the bay, which includes our chemical manufacturers. We have farmers for the bay. We have even, most recently, a homebuilders signed agreement to address the commitments in the Chesapeake Bay program.

And so I think that, again, unprecedented level of cooperation, both at the government as well as the private sector, has contributed to our success.

Mr. OSE. My time is expired. Mr. Otter.

Mr. OTTER. Ms. Nishida, when we left last, I had said that I would come back to you with a thought out loud about the EPA having to take over Maryland's air program. Why did that happen? Was Maryland not meeting these standards?

Ms. NISHIDA. No. I'm glad you raised that. That's the title V program. What happened was EPA determined there was a deficiency in our title V program. The deficiency did not have anything to do with the air quality and protections of our regulations. Rather, it had to do with a legal issue of citizen standing. The Maryland citizen standing law is much more restrictive than the Federal Constitutional protections for citizens in terms of access to court. So EPA advised us that we had to correct that deficiency.

We actually went into our legislature a number of times to correct environmental standing. Unfortunately, we were met with a lot of opposition from the business community, who were afraid of increased lawsuits as a result of having the broader standing. And, frankly, we were actually glad that EPA took the program back, because now as a result of that, the business community for the first time testified this January in our legislature in support of expanded standing, because they did not want to have to go to Philadelphia to get their permits.

Mr. OTTER. I understand that. We, I guess, had something like that happen to us similarly in Boise, and it is unfortunate, but you know when the question comes between the individual's Constitutional right, I don't think that ought to be diminished in any way. And having been a businessman, you know, I know how tough that can be.

So perhaps with some of the tort reform that we have engaged in and what we've already passed in the House—and Lord knows what's going to happen to it in the other body—but perhaps we can correct some of that, while not diminishing the Constitutional standing of the individual in favor of anybody else, including the government. Hopefully we'll be able to go forward with that.

Has the EPA ever taken over any other program, solid waste or water?

Ms. NISHIDA. In terms of the State of Maryland, no. That was the first program that we lost delegation for, and unfortunately we had the dubious distinction of also being the first State in the country of losing title V delegation. But our hope is, because the legislation has now passed, though it hasn't come to the Governor's desk for signature yet, that we can get the program yet. We have not lost anything else.

Mr. OTTER. So because of the legalism rather than the presence of any problem that was going to endanger the environment, you lost the title V; is that fair?

Ms. NISHIDA. That is fair.

Mr. OTTER. So that is not something that you would correct or try to find some sort of arbitration method for establishing a program where that didn't happen again?

Ms. NISHIDA. No. We have found, at least in our region, where we have had difficulties with regards to program delegation, that we have been able to work it out with the region satisfactorily, so that we've been able to retain the programs.

Mr. OTTER. During your testimony, you spoke of the Chesapeake Bay, and I have to tell you when I first came to Congress—and I've only been here a few months, I guess 14 now, 15.

Mr. OSE. Seems like yesterday.

Mr. OTTER. Seems like yesterday. That one of the first gentlemen I met was a fellow by the name of Wayne Gilchrest. And Wayne had made a statement in the Transportation Committee that I was really concerned about. And I talked to him about it, and I said, I want to make you a deal, Wayne. I won't make any decision that adversely affects Maryland without talking to you. It doesn't mean I'm going to vote your way necessarily. And you won't make a decision that adversely affects Idaho without talking to me first. And you don't have to vote my way; just listen to my argument.

I ended up voting for the Chesapeake Bay, I think it was $350 million for the Chesapeake Bay cleanup, simply because of that agreement with Wayne.

And, you know, I hope that's the kind of cooperation that I hope will continue for me in this Congress, because so many times we try to do things in our own States and within our own little world that can adversely affect anybody else. And this inconsistency that we have coming from the EPA, Wayne and I have since had many, many opportunities to talk about things that are happening in Idaho.

For instance, 3 years ago, we burned 880,000 acres of forest, and that's all on the watershed, and all of that water—and ostensibly we weren't allowed to go in and harvest or thin that forest on a sustainable yield, sustainable cut basis, because we would have degraded the watershed.

I have since asked the EPA if they will make an environmental assessment of whether we do more damage to the watershed by burning it or do more damage to the watershed by going in and selectively harvesting it. And, by the way, Wayne is not fully my way yet, but he's coming my way.

It is fortunate that States like Maryland have been able to work out a cooperative agreement on an important water body like the Chesapeake Bay, because it truly is a national treasure and something that we all ought to be concerned about. But I would have to tell you, if I hadn't had the opportunity to talk to Mr. Gilchrest, I probably would not have voted for that bill.

Ms. NISHIDA. Well, we are obviously very proud of Congressman Gilchrest. He is our strongest advocate in the State of Maryland and obviously here on Capitol Hill, and so I will certainly pass on your comments to the Congressman.

Mr. OTTER. It doesn't change the fact that he can be a pain in the tree stump sometimes, but he's a great guy.

Ms. NISHIDA. Me, too.

Mr. OTTER. Thank you. Thank you, Mr. Chairman.

Mr. OSE. Wayne did that to you, too? I have to give Congressman Gilchrest credit. He is quite an operator up here. He did that same little dance with me, too. And I do enjoy working with Wayne.

On the screen over here—you probably can't see it very well—but that is a chart of the organizational structure in the executive portion of the EPA under this and past Administrators. There are 22 direct reporters to the Administrator. The reason I put that up

there is that I keep coming back to this issue of why is it that we can make something happen in the Chesapeake Bay that has been so clearly beneficial to the environment and the surrounding States, and we have such difficulty in a different region in making the same kind of thing happen.

I've asked questions earlier, to the other panel in particular, about the various bills before us and whether an office of science, or office of implementation, or an office of enforcement are appropriate levels of management to basically collect and reconcile these decisions.

Now, Ms. Studders, you said earlier, in response to a question on innovation, that it's very frustrating from your perspective in terms of staff and the like to pursue these things.

Ms. Nishida, you indicate that last year the Chesapeake Bay program was updated to reflect a significant evolution in what its objectives were and that EPA signed off on it. Those are two diametrically different messages I'm getting here. And I'm trying to figure out structurally, is the problem in the structure where you have different regions who take different approaches? I mean, what is the impediment here? Ms. Studders.

Ms. STUDDERS. If I can, Mr. Chairman——

Mr. OSE. You need to turn on your microphone.

Ms. STUDDERS. I'm chomping at the bit here to tell you something, and I would draw this parallel: I think that Secretary Nishida's example is a good one of a success. I don't want to leave you with the impression that Region 5 or Minnesota is not capable of similar success. Please. I believe the Great Lakes are being handled exceptionally well. We have eight States involved. I think there are five States in Chesapeake Bay—four.

When you get multiple States involved, there's power in numbers at the State level. And when there's multiple States involved, I really do think EPA has come to the table a little differently, and I think part of that is because you have to go pretty high up at EPA when you're dealing with multiple States. I think we're managing the Great Lakes exceptionally well, considering they too are a treasure, and we're sharing them with an international partner, and I believe we have eight States around the Great Lakes.

A similar successful example I would cite is down in the Gulf of Mexico where we were dealing with the hypoxia down there. I'm honored to serve on the congressional task force, but I can tell you it's a very different relationship when there's multiple States at that table.

Mr. OSE. For what purpose, though? Why should that be different?

Ms. STUDDERS. I think it's pretty simple. I think when you're dealing with a permit with one State, you're dealing with an individual at EPA and that individual's supervisor or manager, and they're typically in a media-led program, and there's a right or wrong answer, primarily because they're concerned about litigation and having something upheld in court.

I think when you're dealing with a much more policy-orientation about how are we going to manage this resource and what sort of goals we should set to improve the quality of this resource, you're doing it much more methodically, much—very differently than the

Clean Air Act or the Clean Water Act, and you're applying normal management skills to a problem.

The issuance of permits and enforcements aren't normal management skills. They're very prescriptive output-measured ways of doing things.

Mr. OSE. Ms. Nishida, do you want to add anything to that?

Ms. NISHIDA. Well, I guess I would agree with my commissioner with regards to the two different aspects to interacting with the States and the structure that's before you. When you are dealing with a specific industry or a specific permit or enforcement issue and there are disagreements amongst the States, it's much harder to resolve. That is, even though we are obviously very successful with regards to our commitment to restore the Chesapeake Bay as a resource, as I mentioned, we were all left to our own devices in terms of how we protect that resource.

What it comes down to, I guess, is sometimes in individual permit issues, Maryland may take a very different approach than Virginia EPA has to come in and then negotiate this, and that is not always easy with regards to resolving a very specific permit issue or enforcement issue.

Mr. OSE. But you've proven that it can work?

Ms. NISHIDA. Well, we have proven that it can work, as I mentioned, in terms of broad goals that we are trying to address. As I mentioned—take, for example, the wetlands goal in terms of restoring——

Mr. OSE. 25,000 acres.

Ms. NISHIDA. The 25,000-acre goal. We may, in Maryland approach that from a regulatory standpoint. In other words, we may choose to impose more prescriptive regulations to get the 25,000 acres. Virginia may take a more incentive-based approach to do that.

What I guess the strength of the Chesapeake Bay program has been is, you have outcome goals that you prescribe for each individual State, but you let the individual States prescribe how you're going to perform those outcomes. And I think the more that EPA tries to prescribe outcomes on States, that's when you run into more of the difficulty.

Mr. OSE. You said that far more eloquently than I have been able to say that yet this morning.

Mr. Otter.

Mr. OTTER. Ms. Studders, in your answering a question to the chairman during this last go-round of questioning, you indicated how much easier it was for five States to get together, or, I should say, how much easier it was to get something, some reaction from the Environmental Protection Agency; because several States get together, and that's precisely the reason when we write a memo to the chairman, we get as many other of our colleagues to sign that as we possibly can, to say that this is not just one individual.

Now, let's take that from there to the private landowner or the private citizen, the private farmer, that you mentioned earlier. You know, for Archer Daniels Midland, or for some company like that to file for an environmental permit because they want to do something on 40 acres is much, much different than for the mom and

pop that own that 40 acres and that's their equity, that's their livelihood, that's everything.

And I don't know if you've ever filled out a—is it a 404 national permit? Have you ever seen those 404 national—on wetlands? But to ask mom and pop to sit down at the breakfast table and to fill that thing out is absolutely impossible. And what's even more frustrating is when they call you and they say, Congressman, we went down to the local EPA and we went down to the local Army Corps of Engineers folks and asked them to do it, and they said we had to go hire somebody for $182 an hour. We had to go hire an environmental engineer to do that.

If we're truly the servants of the people, why is it that we don't engage in the EPA, folks like we do in the IRS, and some now in the IRS; because if you walk in and you've got a major tax problem, they assign somebody to sit down, and they don't charge you, and they guide you through the process so that you can fill out something as important every year as your tax return.

Why can't we do that for folks with a 404 national permit so that they can dig an irrigation ditch on their property or so that they can build something on their property? Why don't you get those five States together and go to the EPA folks and say, why don't you simplify the permit so that it's a one-page thing and mom and pop can sit down at the breakfast table over a cup of coffee and have some sort of control over their life and their property?

Ms. STUDDERS. Mr. Chairman and Mr. Otter, I will see if I can do justice to that very well-worded question. I'm going to try to simplify it, because I think that's part of the core of what we're all grappling with in how we improve environmental protection in this country with limited resources.

The world of pollution has changed in America. And I can quote you the Minnesota statistics, not the national, so I'll keep it to my home turf that I'm much more familiar with. I won't use the 404 form per se, but I'll say when the regulations were written to create such a document, most of the air pollution and the water pollution was coming from large big sources, corporations, factories with many employees and very complicated equipment, and it was appropriate to start ratcheting down the emissions coming from that equipment.

In Minnesota, to give you an example, it was primarily our air pollution and our water pollution. Those complicated forms, they probably had an environmental engineer on staff who understood and actually operated that equipment and could fill it out. That's what the laws were written for.

Thirty years later in Minnesota, we have a very different story. Air is almost 50–50. It's 43 percent coming from our regulated businesses and 57 percent coming from things I can't even regulate, that the Clean Air Act doesn't touch—automobiles and energy. That's where our air pollution is coming from. It's not coming from the points that I regulate.

Water, it's much more disparate. Only 14 percent of our water pollution in our State is coming from the factories where we regulate their discharge from the pipes, from the wastewater treatment facilities, and from the businesses that are treating their water before it's discharged. We're the land of 10,000 lakes and we do not

have an ability to get our arms around 85 percent of the water pollution in our State with the existing Clean Water Act!

The way we have chosen to start remedying this in Minnesota was, we took the feedlot issue first. We are primarily an agricultural State. Our main source of revenue is agriculture, and we're very proud of our farmers. And we started inventorying our farms. We estimated that we had 80,000 farms in Minnesota. January of this year, we received applications for feedlots numbering 40,000, and we know we have not had the entire regulated community—we probably come in about 50 percent. We created a general permit, which the Clean Water Act does allow us to do and the Minnesota comparable law does, and we're issuing general permits to small farmers, a very simple form. He or she can sit down at the breakfast table and fill that form out with their spouse.

If you're a large CAFO in Minnesota, you're filling out a much more detailed form as prescriptively regulated by the Clean Water Act, but we feel you're capable of doing that. If you're Archer Daniels Midland, you have people on board that understand the ramifications of a facility of that size and understand how to operate a facility of that size responsibly and can fill that out. So we've handled it very differently.

Mr. OTTER. Thank you, Mr. Chairman. Thank you.

Mr. OSE. I have nothing further.

I want to thank our witnesses today. We're going to leave this record open for 7 days. We have some questions that may arise here as we think about this over the next 24 hours. We'd like your cooperation if we send them to you, to have a response in writing.

We stand adjourned. Thank you both for coming.

[Whereupon, at 12:12 p.m., the subcommittee was adjourned.]

EPA CABINET ELEVATION: AGENCY AND STAKEHOLDER VIEWS

TUESDAY, JULY 16, 2002

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ENERGY POLICY, NATURAL RESOURCES AND REGULATORY AFFAIRS,
COMMITTEE ON GOVERNMENT REFORM,
Washington, DC.

The subcommittee met, pursuant to notice, at 3:05 p.m., in room 2154, Rayburn House Office Building, Hon. Doug Ose (chairman of the subcommittee) presiding.

Present: Representatives Ose, Duncan, Otter, Cannon, Tierney, Waxman, and Kucinich.

Staff present: Dan Skopec, staff director; Jonathan Tolman, professional staff member; Yier Shi, press secretary; Allison Freeman, clerk; Greg Dotson, Elizabeth Mundinger, and Alexandra Teitz, minority counsels; and Jean Gosa, minority assistant clerk.

Mr. OSE. Good afternoon and welcome to today's hearing of the Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs. The subject today will be EPA Cabinet Elevation: Agency and Stakeholder Views.

Mr. Waxman has come in and Mr. Tierney will be back shortly.

The issue of elevating EPA to Cabinet level status has been around since the day after the Agency was created in 1970. In the years since its inception, Congress has passed numerous environmental statutes expanding the jurisdiction of the EPA. As its jurisdiction has expanded, the Agency has grown as well. Today with more than 18,000 employees at work, EPA has an annual budget of $7.5 billion.

It is important to note that elevating the EPA to a Cabinet level department will not in and of itself change the Agency's size, jurisdiction, or effectiveness. The act of creating a new Cabinet level department is largely symbolic. The important thing is how and why Congress elevates the EPA, as it may fundamentally affect not only how the EPA operates, but also perceptions of the agency and the importance of environmental issues.

Two bills have been referred to this subcommittee to elevate EPA to a Cabinet level department. The first, by Representative Sherry Boehlert, is H.R. 2438 and the other is by Representative Steve Horn, H.R. 2694. The bills take radically different approaches. One offers no reforms to the Agency and the other offers a multitude of reforms. The principal question facing our subcommittee at this hearing is what, if any, reform should Congress explore in the process of elevating EPA to a Cabinet level department?

At our first hearing in September, we heard from the sponsors of the elevation bills. In addition to them, a number of policymakers from the academic community testified about whether elevation should proceed with or without certain legislative reforms. At the second hearing last March, we heard from EPA's IG and the General Accounting Office. Both identified numerous organization and management challenges faced by the Agency. In addition, we heard from State Environmental Protection Agency heads. Most of our major environmental laws are delegated in some fashion or the other to the States. State agencies are not only the work horses when it comes to environmental protection, but are also innovative leaders. This as yet unchallenged assertion begs any number of questions, some of which I hope to get to today.

When EPA was created in 1970, this country faced widespread and daunting environmental challenges. We have made great progress in the cleanup of large industrial pollution that plagued our Nation 30 years ago. Many of the pollution problems we face today come not from large industrial sources but from the actions of every day citizens, from our cars, our yards, our homes, our cities, and our farms. These are more complex and intractable concerns that seem to defy the simple solutions mandated by the first wave of environmental laws.

While elevating EPA to a Cabinet level department is an important gesture, it is clear that more flexible and innovative approaches are needed to find solutions to the second wave or second generation of environmental problems, not just for the problems we face today, but for the environmental problems that we will undoubtedly face in the future.

By 2025, the population of the United States is expected to reach more than 335 million people. That means we will have 50 million more people than we have now. Think about the amount of food, water, housing, and energy consumed by an additional 50 million people. It understates the case that this could put a strain on our environment. If we are to prepare for these changes, we must begin to think about different approaches to environmental regulation. The old command and control approach won't get us where we need to go. It is largely inflexible and some of the compliance costs are excessive. The time has come for us to look at innovative ways to manage our environment. High standards of environmental protection are a must, but individuals must have the flexibility to meet those standards in new ways. Government bureaucrats should not be environmental bean counters but instead, environmental managers. The goal should not be the number of permits issued or the amount of money spent, but rather, the ultimate result which is a cleaner environment.

While we do face some daunting problems, there are some reasons to be hopeful, areas where environmental innovation and experimentation have worked. For example, the 1990 Clean Air Act amendments, in which many of my colleagues on this panel participated, introduced the novel concept for controlling sulfur emissions from powerplants. Instead of requiring specific clean technology at every plant, sulfur emissions were capped as a whole for the whole country. Powerplants were forced to either reduce their own emissions or buy credits from other plants that were in fact reducing

emissions even further than they were required. At the time, environmental economists predicted this would be a more efficient way to reduce pollution and in fact, the program was even more successful than had been predicted, with powerplants reducing sulfur pollution even more effectively than anyone had thought.

To its credit, this administration has seen the success of such emissions trading programs and is seeking to expand them. The administration's Clear Skies Initiative seeks to expand air emissions trading beyond merely sulfur emissions. In addition, EPA recently proposed a water quality trading policy that promotes the use of pollution reduction credits for trading in watersheds.

As our committee looks at elevating EPA, we want to ensure that the Agency has an organizational and management structure that allows such successful, innovative environmental policies to be the rule, not the exception. Today's witnesses include the Administrator of EPA, Governor Christine Todd Whitman; the chairman of the Council on Environmental Quality, Mr. James Connaughton; the president of Environmental Law Institute, Mr. J. William Futrell; vice president for Environment and Regulatory Affairs, U.S. Chamber of Commerce, Mr. William Kovacs; and a senior fellow for environmental economics, Natural Resources Defense Council, Mr. Wesley Warren.

[The prepared statement of Hon. Doug Ose follows:]

Chairman Doug Ose
Opening Statement
EPA Cabinet Elevation – Administration and Stakeholder Views
July 16, 2002

The issue of elevating the Environmental Protection Agency (EPA) to cabinet level status has been around since the day after the agency was created in 1970. In the years since its inception, Congress has passed numerous environmental statutes expanding the jurisdiction of EPA. As its jurisdiction has expanded, the agency has grown as well. Today, more than 18,000 employees work at EPA and it has an annual budget of $7.5 billion.

It is important to note that elevating EPA to a cabinet level department will not, in and of itself, change the agency's size, jurisdiction, or effectiveness. The act of creating a new cabinet level department is largely symbolic. But, how and why Congress elevates the EPA may fundamentally affect not only how the EPA operates but also perceptions of the agency and the importance of environmental issues.

Two bills have been referred to the Subcommittee to elevate EPA to a cabinet level department, H.R. 2438, introduced by Rep. Sherry Boehlert, and H.R. 2694, introduced by Rep. Steve Horn. The two bills take radically different approaches. One offers no reforms to the agency and the other offers a multitude of reforms. The principal question facing our Subcommittee at this hearing is what, if any, reform should Congress explore in the process of elevating EPA to a cabinet level department?

At our first hearing in September we heard from the sponsors of the elevation bills. In addition, a number of policy makers from the academic community testified about whether elevation should proceed with or without certain legislative reforms.

At the second hearing last March we heard from EPA's Inspector General and the General Accounting Office. Both identified numerous organization and management challenges faced by the agency. In addition, we heard from state environmental protection agency heads. Most of our major environmental laws are delegated in some fashion to the States. State agencies are not only work horses when it comes to environmental protection but also innovative leaders. That as yet unchallenged assertion begs any number of questions.

When EPA was created in 1970, this country faced widespread and daunting environmental challenges. We have made great progress in the cleanup of large industrial pollution that plagued our nation 30 years ago. Many of the pollution problems we face today come not from large industrial sources but from the actions of everyday citizens, from our cars, our yards, our homes, our cities and our farms. These more complex and intractable environmental concerns defy the simple solutions mandated by the first wave of environmental laws.

While elevating EPA to a cabinet level department is an important symbolic gesture, it is clear that more flexible and innovative approaches are needed to find solutions to this second

generation of environmental problems. Not just for the problems we face now, but for the environmental problems of the future as well.

By 2025, the population of the United States is expected to reach more than 335 million people. In other words, this country will have to accommodate an additional 54 million people. Think about the amount of food, water, housing and energy consumed by an additional 54 million people. To say that it could put a strain on our environment is an understatement.

If we are to prepare for these changes, we must begin to think about different approaches to environmental regulation. The old "command and control" approach won't get us where we need to go. It is inflexible and the compliance costs are too high. The time has come for our government to seek innovative ways to manage our environment. High standards of environmental protection are a must. But, individuals must have the flexibility to meet those standards in new ways. Government bureaucrats should not be environmental bean counters but environmental managers. The goal should not be the number of permits issued or the amount of money spent but, rather, the ultimate result – a cleaner environment.

While we face some daunting problems, there are also some reasons to be hopeful --areas where environmental innovation and experimentation have worked. For example, the 1990 Clean Air Act Amendments introduced a novel concept for controlling sulfur emissions from power plants. Instead of requiring specific clean technology at every plant, sulfur emissions were capped for the whole country. Power plants were forced to either reduce their own emissions or buy credits from other plants that were reducing emissions even further than they were required. At the time, environmental economists predicted that this would be a more efficient way to reduce pollution. The program was even more successful than originally predicted, with power plants reducing sulfur pollution even more effectively than the economists thought.

To its credit this Administration has seen the success of such emissions trading programs and is seeking to expand them. The Administration's Clear Skies Initiative seeks to expand air emissions trading beyond merely sulfur emissions. In addition, EPA recently proposed a Water Quality Trading Policy that promotes the use of pollution reduction credits for trading in watersheds.

As our committee looks at elevating EPA, we want to ensure the agency has an organizational and management structure that allows such successful innovative environmental policies to be the rule, not the exception.

Witnesses include: Christine Todd Whitman, Administrator, EPA; James Connaughton, Chairman, Council on Environmental Quality; J. William Futrell, President, Environmental Law Institute; William Kovacs, Vice President for Environment and Regulatory Affairs, U.S. Chamber of Commerce; and Wesley Warren, Senior Fellow for Environmental Economics, Natural Resources Defense Council.

Last Five Cabinet Elevations

Department	Date	Law	Agency Transfers of Power
HUD	9/9/1965	PL 89-174	all of the functions, powers, & duties of the Community Facilities Administration, Federal Housing Administration, Federal National Mortgage Association (Fannie Mae), Housing & Home Finance Agency, Public Housing Administration, & Urban Renewal Administration
Transportation	10/15/1966	PL 89-670	**DOC** (Bureau of Public Roads, Nat'l Traffic Safety Agency/Nat'l Highway Safety Agency, Office of High Speed Ground Transportation, & Great Lakes Pilotage Administration), **DOI** (Alaska Railroad), **Treasury** (Bureau of Customs' vessel documentation functions & Coast Guard), Civil Aeronautics Board, Federal Aviation Agency, Interstate Commerce Commission, & St. Lawrence Seaway Development Corporation
Energy	8/4/1977	PL 95-91	all functions of **DOC** (Office of Energy Programs), **DOD Navy** (various), **HUD** (various), **DOI** (functions relating to electric power & 4 power marketing agencies - Bonneville, Southwestern, Southeastern, Alaska - & certain functions of Bureau of Mines), the Energy Research & Development Administration, Federal Energy Administration, & the Federal Power Commission
Education	10/17/1979	PL 96-88	transfers from **DOD** (administration and operation of overseas dependents schools); **HEW** (Advisory Council on Education Statistics, Education Division, Federal Education Data Acquisition Council, Institute of Museum Services, Office for Civil Rights, & offices implementing the Rehabilitation Act of 1973); **HUD** (all functions relating to college housing loans); **DOJ** (all functions of the Attorney General & the Law Enforcement Assistance Administration with regard to the student loan & grant programs known as the law enforcement education & the law enforcement intern program); **DOL** (functions relating to programs for the education of migrant & seasonal farm workers); National Science Foundation (science education)
Veterans Affairs	10/25/1988	PL 100-527	Veterans' Administration (establishment & redesignation as a Department)

Prepared for Congressman Doug Ose

Government Agencies Producing Data on the Environment

Agency	Activities
USDA	
o Agricultural Research Service	o conducts research to develop & transfer solutions to agricultural problems of high national priority & provides information on a variety of agricultural issues (such as plant diseases, air quality, & energy alternatives)
o Forest Service	o conserves forests, grasslands & aquatic ecosystems & conducts research on all aspects of forestry, rangeland management, & forest resource utilization
DOC	
o National Oceanic & Atmospheric Administration	o describes & predicts changes in the Earth's environment, & conserves & manages the Nation's coastal & marine resources (research on atmosphere, fisheries, paleoclimatology, global warming, & oceans & coasts)
DOD/Air Force	
o Center for Environmental Excellence: PRO-ACT	o provides environmental research services for the Air Force
DOE	
o Office of Biological & Environmental Research	o develops the knowledge needed to identify, understand & anticipate the long-term health & environmental consequences of energy production, development & use (research topics include global change, climate prediction, atmospheric science, & terrestrial carbon)
o Energy Information Administration	o provides statistical data regarding energy & its interaction with the economy & environment (such as CO_2 emissions, climate changes, & environmental forecasts)
HHS	
o CDC: National Center for Environmental Health	o prevents or controls diseases, birth defects, disabilities, or deaths that result from interactions between people & their environment (research includes preventing lead poisoning in children, air pollution & respiratory health, & radiation studies)
o CDC: National Center for Health Statistics	o compiles health statistics data pertaining to the environment (such as % counties meeting air quality standards, ozone standards, CO standards, SO_2 standards, NO_2 standards, etc.)
o NIH: National Institute for Environmental Health Sciences	o reduces the burden of human illness & dysfunction from environmental causes by understanding each of these elements & how they interrelate

DOI o Geological Survey	o provides scientific information to: describe & understand the Earth; minimize loss of life & property from natural disasters, manage water, biological, energy, & mineral resources; & enhance & protect quality of life (research topics include earthquakes, geologic mapping, water quality, & acid rain)
o Minerals Management Service: Environmental Studies Program Information System	o develops workable solutions for industry activities that could adversely affect environmental resources (studies how marine biota would be affected by pollution or spills, gathers data on how offshore oil & gas programs affect the environment, & monitors human, marine, & coastal environments to identify significant changes)
Independent Agencies o Environmental Protection Agency	o protects human health & safeguards the natural environment

Prepared for Congressman Doug Ose

Mr. OSE. I would now like to yield to my friend from Massachusetts for the purpose of an opening statement.

Mr. TIERNEY. Thank you, Mr. Chairman.

I am going to submit my statement for the record and allow the witnesses to testify.

I would simply say I hope we can move the EPA up and elevate it to the status I think it deserves and warrants. I would note the Congressional Research Service found that of 198 governments worldwide, all but 9 include their environmental agency at the administerial level. I am hoping we will be able to do that with a clean bill and not get bogged down on the internal machinations of how the Environmental Protection Agency works.

With that, I yield the balance of my time and submit my statement for the record.

[The prepared statement of Hon. John F. Tierney follows:]

**Statement of Rep. John F. Tierney House Government Reform Committee
Subcommittee On Energy Policy, Natural Resources and Regulatory Affairs
Hearing on EPA Elevation
July 16, 2002**

Mr. Chairman, thank you for holding this hearing to further consider the issue of EPA elevation to cabinet-level status. As you know, even those who strongly support the EPA's work and would like the agency to become a full-fledged member of the president's cabinet have different ideas about the structure of a cabinet-level agency. I am pleased that we have before us today several experts on this issue, including the current EPA Administrator, Governor Whitman.

I thank her as well as all of our other witnesses for joining us.

The issue of EPA's elevation should not be contentious. Since its creation in 1970, the EPA has worked to enhance our nation's air, water and land resources for the benefit of future generations. Members on both sides of the aisle agree that the EPA's work is so essential to our environment's well-being that the agency should be included as a permanent and full-fledged member of the President's cabinet.

On several occasions, former EPA Administrators, including Carol Browner and William Reilly, have voiced their support for elevating EPA. Our current Administrator, Ms. Whitman, has also voice support for elevating the EPA with a clean bill.

The issue is – how do we accomplish the goal of EPA elevation quickly and in a bi-partisan fashion.

In past Congresses, elevation efforts have been thwarted by members who have tried to alter the basic structure of the EPA. We cannot afford to repeat that mistake this time. We should not let differences of opinion concerning EPA's internal structure distract us from our common goal of elevating EPA.

Making EPA a cabinet-level agency sends a signal to other federal agencies, state governments and the world that the United States takes the environmental protection seriously.

It bestows upon the EPA a status among other nations that it deserves. In fact, an analysis conducted a year ago by the Congressional Research Service found that of 198 governments worldwide, all but 9 included their environmental agency at the ministerial level. As the world's superpower, we should be setting an example to other nations about how to be economically prosperous and environmentally-friendly.

It is time to correct this glaring deficiency in our government's commitment to the environment. I look forward to the testimony of our witnesses and learning more about how we can elevate the EPA in a bi-partisan fashion.

Mr. OSE. The gentleman's statement is accepted for the record without objection.

The vice chairman of the subcommittee, Mr. Otter.

Mr. OTTER. No.

Mr. OSE. My good friend from Los Angeles and Beverly Hills, Mr. Waxman.

Mr. WAXMAN. Thank you very much, Mr. Chairman. As a result of redistricting, it is Los Angeles, Beverly Hills, and many other cities.

I am pleased to see Administrator Whitman here today.

I have long supported the elevation of EPA to a Cabinet level department because of the great importance of its job and the respect I have for the EPA staff. The American people should take pride in the performance of this Agency over the last decade. Most of the staff at the EPA are professionals who care deeply about their work. These government employees have chosen their careers because they want to protect public health and the environment. Over the past decade, they have had a long list of successes.

In the 1990's, EPA worked with industry, the States, and environmental groups on initiatives such as updating health-based air pollution standards, attacking powerplant emissions, cleaning up automobiles and diesel engines, and finally, working to clean up the Nation's rivers and streams, and starting to address one of the most serious environmental challenges we face, global warming.

EPA vigorously enforced the law. They caught diesel engine manufacturers redhanded. EPA found that the Caterpillar Corp. and some other companies had sold diesel engines that illegally emitted millions of tons of air pollution. EPA investigations revealed that electric utilities were flagrantly violating the Clean Air Act, spewing some 5 million tons of illegal air pollution each and every year.

Yet with grave disappointment, I have to note the sea of change that has occurred in the last year and a half. Under strong pressure from the White House, EPA appears to be in active retreat from the central purpose of the Agency. Indeed, the progress of the last decade is quickly being undone by the Bush administration. For this reason, I question whether this is the right time to be discussing elevating EPA to a Cabinet department.

Last month, Administrator Whitman announced that she would weaken the Clean Air Act's New Source Review provisions, placing EPA's pending enforcement actions in jeopardy. Then EPA joined the White House Office on Management and Budget in announcing it would consider weakening the recently upheld rules to clean up diesel engines. These actions, if carried through, will be a major rollback of our clean air program and could well leave children throughout the country exposed to unacceptable levels of air pollution.

It seems every day we learn of a new rollback being pushed by the Bush administration. Just this weekend, we learned that EPA is considering a plan to jettison efforts to clean up polluted runoff and yesterday the trade press reported that Administrator Whitman may backpedal on penalties for not complying with diesel engine emission standards. Without sufficient penalties, companies won't bother to clean up their engines and the health of the American people will suffer as a result.

Today I have learned that EPA is considering requiring the States to weaken their air pollution laws. I would like to introduce a letter into the record from the State Air Administrators on this issue.

It is a terrible thing for the Federal Government to ignore its duties to protect public health and the environment, but at least you would expect EPA to let the States do the job if EPA won't. News that EPA would consider preventing the States from more aggressively targeting air pollution is truly an outrage.

With regard to environmental policy, this administration has acted abysmally and EPA's interactions with Congress have been no better. Over the last year and a half, EPA has resisted necessary congressional oversight, apparently at the direction of the White House. In fact, EPA has been stonewalling information requests I have made for months. This is not a partisan issue. The Constitution provides Congress with oversight authority, yet both Republicans and Democrats alike have been critical of EPA's responsiveness to the congressional oversight requests.

Good government requires responsiveness without resorting to subpoenas. EPA must address congressional concerns in a prompt, non-partisan manner, and I am looking forward to hearing from Administrator Whitman on what changes she will make at the Agency to ensure that EPA's poor record in communicating with Congress is immediately improved.

Mr. Chairman, for more than 10 years, I have supported elevating EPA to a Cabinet level position and I still support this goal but I don't think it would do much good under this administration. The whole purpose of elevating EPA is to enhance environmental protection, but this administration seems bent on undermining, not strengthening, our environmental laws.

Mr. OSE. Does the gentleman have a letter he wishes to enter into the record?

Mr. WAXMAN. I have a letter I would like to submit for the record.

Mr. OSE. Without objection.

[The prepared statement of Hon. Henry A. Waxman and the information referred to follow:]

Statement of
Rep. Henry A. Waxman
July 16, 2002

Today's hearing is on elevation of the U.S. Environmental Protection Agency to a cabinet-level Department.

I have long supported the elevation of EPA to a cabinet level Department because of the great importance of its job and the respect I have for EPA staff. The American people should take pride in the performance of this agency over the last decades.

Most of the staff at the EPA are professionals who care deeply about their work. These government employees have chosen their careers because they want to protect public health and the environment. And over the past decade they have had a long list of successes.

In the nineties, EPA worked with industry, the states, and the environmental groups on initiatives such as updating health-based air pollution standards, attacking power plant emissions, cleaning up automobiles and diesel engines, finally working to clean up the nation's rivers and streams, and starting to address one of the most serious environmental challenges we face -- global warming.

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Yet with grave disappointment I have to note the sea change that occurred in the last year-and-a-half. Under strong pressure from the White House, EPA appears to be in active retreat from the central purposes of the Agency. Indeed, the progress of the last decade is quickly being undone by the Bush Administration.

For this reason, I question whether this is the right time to be discussing elevating EPA to a cabinet department.

Last month, Administrator Whitman announced that she would weaken the Clean Air Act's new source review provisions, placing EPA's pending enforcement actions in jeopardy. Then, EPA joined the White House Office on Management and Budget in announcing that it would consider weakening the recently upheld rules to clean up diesel engines. These actions, if carried through, will be major rollbacks of our clean air programs and could well leave children throughout the country exposed to unacceptable levels of air pollution.

It seems everyday we learn of a new rollback being pushed by the Bush Administration. Just this weekend, we learned that EPA is considering a plan to jettison efforts to clean up polluted runoff. And yesterday the trade press reported that Administrator Whitman may backpedal on penalties for not complying with diesel engine emission standards. Without sufficient penalties, companies won't bother to clean up their engines, and the health of the American people will suffer as a result.

Today, I have learned that EPA is considering requiring the states to weaken their air pollution laws. I'd like to introduce a letter into the record from the state air administrators on this issue. It is a terrible thing for the federal government to ignore its duties to protect public health and the environment, but at least you'd expect EPA to let the states do the job if EPA won't. News that EPA would consider preventing the states from more aggressively targeting air pollution is truly an outrage.

With regard to environmental policy, this Administration has acted abysmally.

And EPA's interactions with Congress have been no better. Over the last year-and-a-half, EPA has resisted necessary congressional oversight, apparently at the direction of the White House. In fact, EPA has been stonewalling information requests I have made for months. And this is not a partisan issue. The Constitution provides Congress with oversight authority, yet both Republicans and Democrats alike have been critical of EPA's responsiveness to congressional oversight requests.

Good government requires responsiveness without resorting to subpoenas. EPA must address congressional concerns in a prompt, nonpartisan manner, and I am looking forward to hearing from Administrator Whitman what changes she will make at the agency to ensure that EPA's poor record in communicating with Congress is immediately improved.

Mr. Chairman, for more than ten years, I have supported elevating EPA to a cabinet level position, and I still support this goal. But I don't think it would do much good under this Administration. The whole purpose of elevating EPA is to enhance environmental protection, but this Administration seems bent on undermining – not strengthening – our environmental laws.

STATE AND TERRITORIAL
AIR POLLUTION PROGRAM
ADMINISTRATORS

ASSOCIATION OF
LOCAL AIR POLLUTION
CONTROL OFFICIALS

S. WILLIAM BECKER
EXECUTIVE DIRECTOR

July 15, 2002

The Honorable Christine Todd Whitman
Administrator
U.S. Environmental Protection Agency
Ariel Rios Building, 101A
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Governor Whitman:

Earlier this year, the State and Territorial Air Pollution Program Administrators (STAPPA) and the Association of Local Air Pollution Control Officials (ALAPCO) brought to your attention a series of concerns regarding changes to the New Source Review (NSR) program being contemplated by the Administration. While we continue to hold those concerns, we are writing to you today to highlight an additional one, raised by EPA's recent announcement of the NSR reform package – the preemption of state and local authority. It is our understanding that EPA intends to make the five specific NSR reforms that it will soon issue as direct final rules – the clean-unit exclusion, plant-wide applicability limits, pollution control projects and two baseline calculation changes – mandatory elements of state and local NSR programs. We strongly urge that you reconsider this approach and, instead, offer these reforms as options for states and localities.

In 1996, when EPA first proposed its NSR reform package, the agency expressly stated its intent for any changes to the NSR program to be optional, not mandatory. Specifically, the agency concluded:

> In the past, EPA has essentially required States to follow a single applicability methodology. States could, of course, have a more stringent approach but most followed closely the EPA prototype. The EPA is proposing to break with this one-size-fits-all approach to applicability by proposing to adopt these changes as a menu of options from which a State may pick and choose in order to customize a specific approach for its individual needs. Thus, in its final action on this rulemaking, EPA will consider placing all or some of the applicability options presented today as permissible alternatives in its part 51 regulations containing minimum requirements for State NSR programs in nonattainment and attainment/unclassified areas. States will then be free to adopt any combination of these menu options into their own regulations and SIP to offer sources these alternatives. (July 23, 1996, 61 *Federal Register* 38253)

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As EPA appropriately recognized in 1996, in order to best address the specific needs of their respective jurisdictions and ensure the achievement of clean air goals, it is imperative that states and localities have flexibility to design tailored air pollution control strategies.

In addition, Section 116 of the Clean Air Act, addressing the "Retention of State Authority," specifically provides that "[e]xcept as otherwise provided...nothing in this Act shall preclude or deny the right of any State or political subdivision thereof to adopt or enforce (1) any standard or limitation respecting emissions of air pollutants or (2) any requirement respecting control or abatement of air pollution...," thus acknowledging the potential need for and ensuring the ability of states and localities to institute measures more stringent than those of the federal government.

STAPPA and ALAPCO are extremely concerned that EPA's current intent to make the five new NSR reforms mandatory program elements will impede or preclude state and local ability to retain or adopt programs that are more stringent than the federal program requirements. Further, while we understand that the agency is contemplating a process whereby a state or locality could seek EPA approval of an alternative NSR program, provided a demonstration is made, it is unclear to us how EPA will judge such programs and, moreover, why such a process is even necessary. Instead, STAPPA and ALAPCO strongly urge that those with existing NSR programs should not only be able to preserve and continue their programs, they should be able to do so without question or additional process. This is especially critical, in that many of EPA's NSR reforms will weaken the existing program. Similarly, those who may wish to pursue some, but not all, of EPA's reforms, should be enabled to do so, unencumbered, as should those who wish to adopt EPA's five reforms, but with variations.

STAPPA and ALAPCO are extremely concerned that EPA's mandatory "one-size-fits-all" approach, even if accompanied by some kind of opt-out demonstration process, will prevent state and local agencies from retaining or adopting programs that differ from the federal program, particularly if they are more stringent. We cannot overstate the importance of flexibility to state and local efforts to protect and improve our nation's air quality. Therefore, as EPA completes work on final NSR reforms, we urge that you ensure against any preemption of state and local authority and, instead, make the reforms optional.

Sincerely,

Lloyd L. Eagan
STAPPA President

Ellen Garvey
ALAPCO President

cc: Jeffrey R. Holmstead

Mr. OSE. The gentleman from Tennessee.

Mr. DUNCAN. Thank you, Mr. Chairman.

Thank you for calling this hearing.

After spending my 6 year limit chairing the Aviation Subcommittee, I now chair the Water Resources and Environment Subcommittee. In that role, we have many contacts with the EPA. I can tell you the EPA has been very responsive to that subcommittee, both to the majority and the minority. There is just no way they could have been more responsive.

My dad told me many years ago that everything looks easy from a distance. The longer I live, the more truth I see in that statement. It is easy to criticize but I said at one of the hearings of my subcommittee that I thought Administrator Whitman had perhaps the most difficult, if not the most difficult, one of the most difficult jobs in entire Federal Government because it is extremely difficult to reach that delicate balance that we need to make sure we don't hurt the poor, the lower income, and the working people in this country because if we go overboard on anything, you can take any good thing to extremes. If we go overboard in things that may sound good on the surface, you destroy jobs, drive up prices, and hurt the poor, and lower income, and the working people most of all.

I think Administrator Whitman has been doing a really outstanding job. I think we do have some serious questions we need to look at in regard to whether to elevate the EPA. The big question would be, what could the EPA do then that they could not do now. That is sort of the threshold question.

We got a Congressional Budget Office report last week that said it is going to cost us at least $3 billion to create the Homeland Security Department, just to implement it. I assume there would not be any similar type cost here, but we have to look into all of these things.

I just want to thank you and Chairman Connaughton for being here. He is also in a difficult position. I want to thank you. You didn't come to my district but you did come close, to the First District of Tennessee, a few days ago with Sandra Friez attempting to work with the Congress. I hope you had a nice visit to the Smokies. I represent about half of the Smokies. I have the Second District. I appreciate your being here with us today and I look forward to hearing your testimony.

Thank you very much, Mr. Chairman.

Mr. OSE. Thank the gentleman.

As our witnesses have come to know, in this committee we swear in everybody, it doesn't matter who you are. So if you would both please rise.

[Witnesses sworn.]

Mr. OSE. Let me again welcome you both to our humble committee.

We will first have the Administrator of the EPA offer her testimony and then we will have the chairman of the Council on Environmental Quality offer his. We have received your written testimony and it has been entered in the record. We would like you to summarize your testimonies within 5 minutes each, so we can go to the member questions.

Welcome, Administrator Whitman.

STATEMENTS OF CHRISTINE TODD WHITMAN, ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY; AND JAMES CONNAUGHTON, CHAIRMAN, COUNCIL ON ENVIRONMENTAL QUALITY

Administrator WHITMAN. I want to thank you and the members of the committee for the opportunity to be here this afternoon to talk about something I think is of great importance, particularly to the environment and to the American people, the elevation of the Environmental Protection Agency to the level of department.

It was over 30 years ago that President Nixon affirmed America's commitment to the environment by creating the Environmental Protection Agency. Since that time, the EPA has worked to fulfill its mission, protecting human health and safeguarding the natural environment. We have witnessed this mission take on a whole new meaning since the attacks of September 11th of this past year. As we have seen, EPA plays a critical role in protecting our homeland with responsibilities that range from responding to chemical or biological attacks to protecting our Nation's water supply. These responsibilities underscore the significance of the Environmental Protection Agency.

However, despite the crucial nature of these new responsibilities, the importance of the EPA is not a new phenomenon. Since its creation in 1970, the EPA has worked to preserve the quality and safety of some of our most basic needs—the water we drink and the air we breathe. The EPA has helped develop a national appreciation for our natural resources and an understanding of the integral role that they play, not just in our economic prosperity but also in our everyday life.

Economic prosperity and protecting the environment are two of the paramount goals of American life. EPA is charged with finding that balance between those two issues to ensure that America remains both economically strong, but as importantly, environmentally safe and healthy for the public that we serve.

Fortunately, over the years EPA has enjoyed the support of Congress and the White House. Establishing EPA as a Cabinet level department is not a new idea. The first bill to elevate the EPA was introduced in the Senate in 1988 and since that time, a dozen similar proposals have been introduced.

Similarly, former President Bush showed his support by becoming the first President to support elevating EPA to Cabinet level and involving then Administrator Riley in the Cabinet meetings and according him Cabinet level status. President Clinton and President George W. Bush have followed suit, both supporting legislation and including the EPA Administrator in the Cabinet. These actions emphasize the importance that past administrations and our current administration put on the environment.

Environmental protection is critical to our public health's security and economic vitality as are the responsibilities that are under the jurisdiction of other Federal level departments. Indeed, EPA works closely with many of those departments with areas of responsibility often overlapping. As an example, EPA is currently working with other Cabinet level departments, emergency response

teams, and independent experts to address bioterrorism threats and to develop effective remediation tools for protecting our Nation's critical infrastructures and the health and safety of the American public.

Elevating EPA to Cabinet status will ensure that this type of cooperation and integral working relationship will continue into the future. The environment is not just a domestic issue. It continues to play a central role in international relations as well. This legislation will bring the United States on a par with other G8 countries and more than 60 others by establishing a Secretary for the Environment. The time has come to establish EPA as a full member of the Cabinet. Doing so would be consistent with over 30 years of environmental work and accomplishments and with the status of our international partners.

I am pleased that many in Congress support this crucial step. The bill Congressmen Boehlert and Borski have introduced would elevate EPA to Cabinet level status and provide the Agency with the flexibility that it needs in that transition. I would like to urge the committee to avoid any extraneous amendments to the bill and to strictly limit any changes to those that would improve organizational efficiency and streamline management. I am requesting your support in achieving this goal.

Making sure all Americans have clean air to breathe, pure water to drink, and unspoiled landscapes to enjoy, and contributing to the safety and the security of our homeland, this encompasses the mission of the Environmental Protection Agency and it is a mission that deserves our full support, the full support of Congress, that Cabinet level status will bestow on the Agency. Creating the Department of Environmental Protection will ensure that our environmental and public safety mission will continue to be a high priority both today and in the future.

Thank you very much for your time and attention. I will be happy to answer questions once the chairman has finished his testimony.

[The prepared statement of Administrator Whitman follows:]

TESTIMONY OF
GOVERNOR CHRISTINE TODD WHITMAN
ADMINISTRATOR OF THE
U.S. ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE
SUBCOMMITTEE ON ENERGY POLICY,
NATURAL RESOURCES AND REGULATORY AFFAIRS
OF THE
COMMITTEE ON GOVERNMENT REFORM
U.S. HOUSE OF REPRESENTATIVES

JULY 16, 2002

Mr. Chairman and Members of the Committee, thank you for inviting me to appear before you today to discuss this topic of obvious importance to the environment – elevating the U.S. Environmental Protection Agency (EPA) to cabinet level status.

When the Environmental Protection Agency was created in 1970 by Richard Nixon, it was a combination of 10 different units from five departments and agencies. In a message to the Congress, President Nixon submitted his reasoning for the reorganization plan that would establish the EPA. He wrote: "As concern with the condition of our physical environment has intensified...it has become increasingly clear that only by reorganizing our Federal efforts can we...effectively ensure the protection, development, and enhancement of the total environment."

This statement rings true more than thirty years later. The environment continues to gain prominence in the American consciousness and is routinely ranked among the public's most important national concerns. The scope and significance of environmental protection calls for a strong institutional framework at the federal level.

Establishing EPA as a cabinet department is not a new idea. The first bill to elevate EPA to cabinet status was introduced in the Senate in June 1988.

Former President Bush was the first president to support elevating the EPA to cabinet level, mentioning it in his State of the Union address more than a decade ago and inviting then-Administrator Reilly to attend cabinet meetings. President Clinton and President George W. Bush have followed suit with both presidential support for the legislation and a seat at cabinet meetings for the sitting EPA Administrator. Elevation of EPA to cabinet level status would ensure that EPA maintains a visible presence in future Administrations.

In the history of the Agency, our work has helped transform the way America views the environment – planting in the American consciousness a clear sense of environmental stewardship. EPA has helped underscore the universal agreement that a clean environment is valuable, not just for economic prosperity but for sustained quality of life. No longer do we debate whether we need to act to protect the environment. Rather, we discuss how we can keep America green while keeping our economy growing.

The mission of the EPA is of vital importance to all of our lives. The actions of this Agency protect our environment and public health by ensuring the most basic of life's necessities – clean air to breathe and safe water to drink. The ability to accomplish our mission and continue to have a meaningful impact on the quality of life for all Americans to a large extent is based on our ability to more fully integrate science into our programs, policies and decisions. One of the first actions I took as Administrator was to improve the Agency's policy-making process to better integrate the highest quality science. As part of those improvements, I created the position of Science Advisor who advises me on all future science and technology issues and their relationship to Agency policies, procedures and decisions.

The importance of EPA's mission is comparable to other cabinet departments. Our mission – to protect human health and safeguard the environment – both complements and contributes to the overall service of the Cabinet. Environmental protection is as critical to public health, public security and economic vitality as the other important responsibilities currently falling under the purview of our federal cabinet level departments. As our nation's population grows over the next century, the importance of addressing environmental issues will require significant leadership and resources to meet these challenges.

With respect to homeland security, EPA plays a critical role with responsibilities that range from responding to a chemical or biological attack to protecting our nation's water supply. EPA plays a lead role in environmental monitoring, decontamination and long-term site cleanup. Our expertise in off-site monitoring, extent of contamination surveys, working with health officials to establish safe clean-up levels, conducting protective clean-up actions, and communicating technical information to impacted citizens is essential for a federal response to an act of terrorism that involves a release of biological, chemical, or radioactive material.

EPA's response to the terrorist incidents of September 11th and ensuing events (at the World Trade Center and the Pentagon) represented a major emergency management response. Later, when incidents of anthrax bio-terrorism occurred, EPA response personnel were among the first at affected sites and again led cleanup and decontamination efforts. During a crisis, the Agency works with our federal partners in every phase from the initial crisis to final cleanup. EPA also works closely with emergency response teams and independent experts to develop effective remediation tools to ensure the protection of the nation's critical infrastructures. No issue surpasses the need to protect our citizens from acts of terror, and EPA's elevation will ensure close coordination and planning with other Cabinet agencies and departments.

Already, I have found my participation at the cabinet level helpful in navigating the many important areas of overlap between the work of EPA and other departments including, Agriculture, Council on Environmental Quality, Energy, the Department of Health and Human Services, Housing, Interior, Justice, Labor, Office of Homeland Security, and the White House's Office of Science Technology Policy. Quite frankly, I cannot think of a cabinet department with which EPA does not interact. I would consider it vital to the work of future Administrators – and vital to our country – to assure similar cooperation and participation in the future.

As Governor of New Jersey, I felt it important to have my Environmental Commissioner as part of my cabinet. As President Bush calls for increased cooperation between federal environmental regulators and state and local governments, it is appropriate to follow their leadership on this issue.

Further, the environment continues to play a central role in international relations. This legislation would bring the United States on par with the majority of rest of the G-7 countries and more than sixty others by establishing a Secretary of the Environment. Reflecting the global nature of environmental issues, EPA is increasingly involved in environmental matters that are global in nature. The time has come to establish EPA as a full member of the Cabinet. Doing so would be consistent with observations of state governments as well as our international counterparts.

I am pleased that Congress supports this important step. H.R. 2438, sponsored by Congressmen Boehlert and Borski, would elevate EPA to cabinet status and, as currently drafted, excludes extraneous policy issues that in the past have derailed the legislative process to establish a Department of the Environment. It is important that the Committee avoid any extraneous amendments to H.R. 2438, and I urge the Committee to strictly limit any changes to those that would improve organizational efficiency and streamline management.

I believe that the Boehlert/Borski bill provides the Agency with the flexibility it needs to ensure that the transition to cabinet status goes as smoothly and efficiently as possible. I am looking forward to working with Congress to develop an approach that will serve EPA's mission and the American people.

The justification for placing EPA in the cabinet is compelling. Creating a Department of the Environment will ensure that environmental protection continues to receive high priority today and long into the future. As I have said repeatedly, my aim for this Agency is to leave America's air cleaner, water purer, and land better protected than when I arrived. I enjoy the full support of the President in pursuit of this goal. Elevating the EPA to cabinet level will assure that future Administrators are able to set – and achieve – similar goals in the years ahead. Taking this step, Congress will appropriately recognize the importance of environmental issues to the American public.

Thank you for allowing me to appear before you. I would be happy to answer any questions that you may have.

Mr. OSE. We thank you for your testimony, Administrator Whitman.

Now, we welcome the chairman of the Council on Environmental Quality, Mr. James Connaughton, for 5 minutes.

Mr. CONNAUGHTON. Good afternoon.

Thirty years ago, it fell to my predecessor, Russ Train, the chairman of the first Council on Environmental Quality, the task of helping advance the creation and the establishment of the Environmental Protection Agency. It is my pleasure to sit here today, as the current chairman of the Council on Environmental Quality, and take part in advancing the next critical step in this agency's evolution; that of a Cabinet level agency.

I am pleased to share this panel with my colleague, Administrator Whitman, with whom I have enjoyed a wonderful year of close collaboration and significant environmental progress.

In EPA's short history, its work has helped transform the way Americans view the environment. It has planted in the American consciousness a clear sense of environmental stewardship. Over this period, EPA has taken on the qualities we would expect and taken on the mission that we would expect of a Cabinet department. First, EPA carries out the work of a Cabinet department. EPA started out by overseeing four major environmental statutes. Today, EPA implements 15 major statutes and numerous others, as well as a full complement of grant programs, voluntary initiatives, technical assistance and educational programs, and citizen outreach throughout the Nation.

EPA advances the mission of a Cabinet department. EPA is reaching out to develop new approaches that promote stewardship, spur innovation, instill sound science in its decisions, advancing federalism through greater involvement of State and local government, and ensuring compliance.

EPA also plays the vital role of a Cabinet level department in defense of our homeland security. Their expertise is essential for a Federal response to an act of terrorism that involves a release of biological, chemical, or radioactive material.

EPA produces initiatives of national significance that one would expect of a Cabinet department. EPA designed and is advancing the President's Clear Skies Initiative, which would cut the Nation's powerplant emissions of sulfur dioxide, nitrogen oxide, and mercury by 70 percent. This initiative will enable hundreds of counties across the Nation to meet national air quality goals.

EPA possesses the international standing of a Cabinet department. Our laws, regulations and standards have been adopted by nations across the globe. EPA's scientific and technical expertise is respected worldwide and is increasingly being deployed worldwide.

Finally, EPA's Administrator fulfills the role of a Cabinet Secretary. When President Bush took office, he welcomed Governor Whitman to his Cabinet. As EPA Administrator, Governor Whitman serves the Nation as a core member of the President's leadership team.

In sum, in the Bush administration EPA carries out the work and advances the mission of a Cabinet department. In the Bush administration, the EPA Administrator has the stature, the standing, and the authority of a Cabinet Secretary. The Bush administration

therefore looks forward to working with the committee to advance EPA Cabinet status legislation, and to make official what in this administration is already a reality.

Thank you.

[The prepared statement of Chairman Connaughton follows:]

STATEMENT OF
JAMES L. CONNAUGHTON, CHAIRMAN
WHITE HOUSE COUNCIL ON ENVIRONMENTAL QUALITY

BEFORE THE
SUBCOMMITTEE ON ENERGY POLICY,
NATURAL RESOURCES AND REGULATORY AFFAIRS
OF THE
COMMITTEE ON GOVERNMENT REFORM
U.S. HOUSE OF REPRESENTATIVES
ON
ELEVATION OF THE ENVIRONMENTAL PROTECTION AGENCY TO CABINET STATUS
JULY 16, 2002

Mr. Chairman and Members of the subcommittee, thank you for the opportunity to appear before the subcommittee today to discuss the Bush Administration's support for elevating the U.S. Environmental Protection Agency (EPA) to cabinet status. I am pleased to share this panel with my colleague, Administrator Whitman.

Thirty years ago, President Richard Nixon created a small independent agency to take on the responsibility to "effectively ensure the protection, development, and enhancement of the total environment." Thirty years later, the United States Environmental Protection Agency has a long record of accomplishment in advancing that mandate.

America leads the world in its efforts to protect and preserve public health and the vitality of its natural ecosystems. America's environmental record is second to none in the global arena.

America's air quality is improving and continues to improve. Since 1970, aggregate emissions of the six "criteria" pollutants regulated under the Clean Air Act have declined 30 percent, at the same time that the U.S. economy grew 160 percent, auto travel increased by 145 percent, and total U.S. energy consumption increased 45 percent.

America's population is facing reduced risks from toxic chemicals. Releases of chemicals on toxic Releases Inventory toxic have declined 48.5 percent since 1988.

America's water quality, according to several measures, indicates substantial improvement. For example, wetlands losses have decreased dramatically in the last two decades. We are well positioned to achieve our goal of a net annual increase in wetlands of 100,000 acres by 2005.

In EPA's short history, its work has helped transform the way America views the environment – planting in the American consciousness a clear sense of environmental

stewardship. EPA has helped underscore the universal agreement that our natural resources are valuable, not just for economic prosperity, but for a sustained quality of life.

EPA carries out the work of a cabinet department. EPA started out by overseeing four major environmental statutes. Today, EPA implements 15 major statutes and numerous others, as well as a full complement of grant programs, voluntary initiatives, technical assistance and educational programs, and citizen outreach throughout the nation.

EPA advances the mission of a cabinet department. As we move forward in tackling our environmental goals for the 21st century, EPA is reaching out to develop new approaches that promote stewardship, spur innovation, instill sound science in its decisions, advance federalism through greater involvement of state and local government, and ensure compliance.

EPA plays a vital role in homeland security. EPA has the lead role in environmental monitoring, decontamination and long-term site cleanup. Their expertise in off-site monitoring, contamination surveys, working with health officials to establish safe clean-up levels, conducting protective clean-up actions, and communicating technical information to citizens is essential for a Federal response to an act of terrorism that involves a release of biological, chemical, or radioactive material. The Agency works with Federal partners in every phase from the initial crisis to final cleanup.

EPA produces initiatives of national significance that one expects of a cabinet department. EPA designed and is advancing the President's Clear Skies Initiative to cut the nation's power plant emissions of sulfur dioxide, nitrogen oxide and mercury by 70%. This initiative will enable hundreds of counties to meet national air quality goals. EPA's stewardship led to enactment of Brownfields legislation that President Bush signed into law to help cleanup thousands of the most difficult hazardous waste sites that remain in America.

EPA possesses the international standing of a cabinet department. EPA's influence and accomplishments now extend beyond our borders. Many nations turn to EPA for technical expertise and guidance in safeguarding the health of their citizens and the sustainable use and enjoyment of their natural resources. Our laws, regulations, and standards have been adopted by nations across the globe. Our scientific and technical expertise is respected world wide. Air pollution, global climate change, chemical use and transport, resource management, and a range of other issues are increasingly complex and global in scope. Perhaps our greatest future challenge is developing an agreed international approach to global environmental protection -- one which will lead to concrete actions based on sound science, cooperation, and shared environmental ethic.

EPA's Administrator fulfills the role of a cabinet secretary. When President Bush took office, he welcomed Governor Whitman into his Cabinet. As the President stated at the Brownfields legislation signing ceremony in Pennsylvania earlier this year: "America is getting to know what people in this part of the world understand, that she is an able

Administrator, a fine person, a person who cares deeply about the environment and our country. And she's going to go down as one of the best selections I have made in my Cabinet."

In the Bush Administration, EPA carries out the work and advances the mission of a cabinet department. In the Bush Administration, the EPA Administrator has the stature, standing and authority of a cabinet secretary. The Bush Administration therefore looks forward to working with the Committee to advance EPA cabinet status legislation and make official what is already a reality.

Mr. OSE. Thank you, Mr. Chairman.

We will now go to questions from Members. Each Member will be given 5 minutes. If a second round of questions is necessary, we will have one. I am going to claim time first.

My first question is for the Administrator. Governor Whitman, in the past you have talked about moving EPA toward a results oriented environment. I actually had the liberty of going back and reading some of your recent speeches, which I found enlightening because embedded in all your remarks is a real focus on making this results oriented policy approach stick.

The biggest problem is how do you change a large ship's direction in a short period of time? I guess the question we would have is how do we ensure that the agency will keep moving in the direction you are trying to lead, which is a results oriented approach? Is this legislation, whether Congressman Boehlert's, or Congressman Horn's, or some mix of that, is there something we can use to assist you in this task?

Administrator WHITMAN. Mr. Chairman, the legislation in and of itself is not going to change the focus or the purpose of how we administer the agency. The focus on the results oriented approach is one that we are integrating into all our planning now of budget and all of our prioritization.

As Congressman Waxman pointed out, we have an extraordinarily dedicated staff of professionals, people who are committed to making environmental progress. They have welcomed the idea of measuring environmental progress by real positive changes to the environment. I believe as we continue to move forward in this way, we are going to institutionalize this approach. As we develop our environmental report card, which we are in the process of developing and hope to have ready before the end of the year to show where we are today and the status of the environment and where we hope to go, that will also help determine that approach to the environment for the Environmental Protection Agency is one that is going to continue long after this Administration.

Mr. OSE. I do appreciate your touching on the future because I scribbled in a little note here that none of us lasts forever, so it is a concern that we find a way to get this results oriented, empirically measured policy approach in place.

Chairman Connaughton, the Government Performance Results Act has created a general framework for agencies to establish a mission, set goals and objectives to achieve that mission, and then measure empirically the outcome of these policies and projects to see if they achieve that. Would it make sense for Congress to more proactively establish a statutory mission statement for EPA?

Mr. CONNAUGHTON. I think right now we have a well established framework for EPA's mission, which began with the National Environmental Policy Act, in terms of its overall goals and then the kind of statement you just heard Administrator Whitman articulate, I think they have one at hand that could be looked at.

I think a goals statement is important but it is also important to leave the future Cabinet Secretary the flexibility to have that mission statement evolve as circumstances evolve. Certainly in your comments you reflected, Mr. Chairman, the fact that we have had a long and quite rewarding history of the regulatory apparatus

in place in terms of the benefits it has delivered, but we are at a stage where we need new tools and new focus to make even greater progress with greater innovation and less cost. Certainly I wouldn't want to lock us into a particular construct, so I would want to be flexible on the goals side.

Specifically, in terms of advancing the metrics and the mission of the Government Performance and Results Act, we are dedicated to making that happen. EPA has actually made substantial strides in making real progress in articulating the kinds of metrics you just discussed. Certainly the Office of Management and Budget is a key supporter of that and certainly in the President's budget submission this year, we made it a first and critical step in beginning to identify some key indicators on which we will measure agency performance. Those indicators were worked out in close collaboration with the agencies themselves.

Mr. OSE. Are those indicators, the metrics you speak of, available for congressional review or input or are they guidance documents?

Mr. CONNAUGHTON. The initial steps are actually articulated in the President's budget submission to Congress, so we are actually looking forward, as we get into the rest of the budget season, to quite an extensive conversation about those.

Mr. OSE. Thank you, gentleman.

The gentleman from Massachusetts.

Mr. TIERNEY. Thank you, Mr. Chairman.

I thank the witnesses for being here today.

During the course of your time in this office, there has been a great deal of criticism about what some perceive as an attempt to weaken the broad range of environmental protections, whether carbon dioxide, or the New Source Rule, the Clean Skies Initiative, things of that nature. Over the weekend, the Washington Post reported that you might be planning to reverse the previous administration's watershed protection rule that requires the EPA approval of State plans for cleaning up lakes and rivers. Is that an accurate report? Are you, in fact, planning to change those rules?

Administrator WHITMAN. We are looking and our mission is to see how we can best implement all the rules we have before us. We are looking at how we provide the States the kind of flexibility they need to deliver on a watershed-based approach. We are not talking about backing away from any of our water regulations, we are not talking about rolling back any of our Clean Water regulations or Drinking Water regulations. In fact, I spent the morning talking with all the regional administrators and assistant administrators on the budget, and water was one of the first areas that came up for discussion and a recommitment or an insurance that we are going to advance the goals of Clean Water in this country.

Mr. TIERNEY. How is it that you say that moving away from the current regulation put in by the last administration, how is that going to specifically move us forward in that direction?

Administrator WHITMAN. We are not moving away from any regulation that the Agency has developed. What we are looking at is a watershed-based approach as a more comprehensive way to get at the kinds of challenges we face today. As the chairman mentioned, one of the biggest issues we face is nonpoint source pollution, particularly to our watersheds. It comes from behavior of indi-

viduals in places far from where the waters drain along our coastal waters.

What we need to do is encourage a watershed-based approach, and we are looking at how do we help the States with that kind of planning and identifying their most vulnerable watersheds, what do we do to educate the public? But we are not in the process of rolling back any regulations that would ensure that we continue to comply with the Clean Water Act.

In fact, as you know, we have new standards that were put in place in 1998. What we are looking at is how do we enable the States to form a partnership that will leverage the enormous number of dollars that are going to be required to meet the new standards.

Mr. TIERNEY. So States will still need EPA approval before moving ahead with their plans?

Administrator WHITMAN. Excuse me?

Mr. TIERNEY. States will still need the EPA's approval before moving forward with any plans they have with respect to cleanup?

Administrator WHITMAN. At this point in time, we are anticipating continuing to work very closely with States and tribal governments as our partners. We will look and make sure that plans they put forward are going to achieve the goals of the Clean Water Act.

Mr. TIERNEY. Right now it needs EPA's approval before any plan goes forward? Are you still going to retain that aspect?

Administrator WHITMAN. At this point in time, we are still retaining everything, but we are looking at what is the best relationship to have and how do we ensure that we leverage all our resources.

Mr. TIERNEY. If you are going to attempt any action that would do away with the EPA's approval of those plans, would you do it through a public rulemaking process?

Administrator WHITMAN. Yes. If we did anything, it would be through a public rulemaking process. What you are talking about, I believe, is the Total Daily Maximum Load regulation?

Mr. TIERNEY. Yes.

Administrator WHITMAN. That article, that was put on hold by the Congress by the Clinton administration, so that regulation has been on hold. We have continued that hold as we have worked. It is an enormously challenging rule. It requires setting a standard for every single pollutant, of which there are literally hundreds in some States. Each State has to do that and we are trying to work with the States to see how do we best do that, what is the smartest way to do it, how do we enable them to do it, do we identify those that are most troublesome from a pollutant perspective first. At this point in time, we are not talking about rolling back; we are just trying to make it more effective.

Mr. TIERNEY. Thank you.

Mr. OSE. The gentleman yields back.

The gentleman from Idaho for 5 minutes.

Mr. OTTER. Thank you, Mr. Chairman.

Administrator and Mr. Chairman, thank you for being here today. I was particularly interested in the questions being framed by my colleague from Massachusetts in terms of watershed protection.

Madam Administrator, do you feel that elevating the position of the Administrator of the EPA to Cabinet level post would also probably provide you the opportunity to provide greater national focus on certain issues that may be facing the Environmental Protection Agency and watershed protection? Do you agree with that?

Administrator WHITMAN. Congressman, at this point we enjoy a very good relationship with the States, a very good relationship with our other Federal partners, and I am not sure the elevation would necessarily change that particularly. The issues that we face are of such national significance that they get a lot of attention, as we have seen recently, but certainly, having the Agency become a department can only help in our ability to implement some of the solutions, to get the attention of some that we may need to get in order to work in a collaborative way. It is only going to help us in that effort.

Mr. OTTER. Let me ask this in a bit of a different way. Part of watershed protection, it seems to me, would be to have healthy watersheds.

Administrator WHITMAN. Absolutely.

Mr. OTTER. Part of the Clean Water Act would be to have healthy watersheds. Healthy watersheds mean healthy forests, at least for us out west. Right now, we have overgrown forests, forests that are burning up, forests that are in a poor state of health to resist themselves from disease and bug infestation, all kinds of noxious and invasive weeds that are all degrading to the watershed.

My question goes to a position on the Cabinet, would that give you a position perhaps over the objection of say, the ESA, where you say we are going in to thin out these forests, have prescribed burns, create a healthy watershed so we have a healthy water supply?

Administrator WHITMAN. Again, right now I enjoy the kind of relationship with my colleagues that wouldn't be impacted by the elevation. The importance of the elevation is to ensure that continues no matter which administration it is. It might help in the future. The short answer is no.

Mr. OTTER. Let us stop right here then. Why don't we? If you agree with me that healthy watersheds are part of a healthy supply and healthy forests, which certainly clean up the air, they make their contribution to nature's cycle in cleaning up the air, why haven't we focused on resisting this effort to keep everybody out of the forests, everybody off the watershed, and gone in and thinned the forests, had the prescribed burns, created a healthy forest and therefore a healthy watershed?

Administrator WHITMAN. Congressman, as you know, the decisions on forests, on burns and such policy, rests with both the Department of Interior and the Department of Agriculture. The watershed initiatives you talk about—in fact, in this budget the President has requested an additional $21 million to enable us to focus on 20 of the Nation's most threatened watersheds and to work on a variety of watershed policies we believe could be used to start to draw attention to watersheds. The average person hasn't a clue what a watershed is. We need to do an enormous education job, work with the States to help them identify their watersheds, iden-

tify what is happening to them, but the actual policy to which you are referring on forest management rests with those two other departments.

Mr. OTTER. I am not going to get into a major disagreement with you, but it seems it is not out of character and not out of the purview of the Environmental Protection Agency to regulate the Department of Agriculture on what kinds of chemicals it might use on noxious and invasive weeds in order to eradicate those. It would seem to me that if the overall purpose of a watershed is to create healthy water, it would be within the purview of the Environmental Protection Agency to order the Department of Agriculture and the Department of Interior, like it can on the application of chemicals, to clean up the watershed and to manage it so we have a healthy environment.

Administrator WHITMAN. As we move forward with this new watershed initiative, it may turn up something such as that, but we are just beginning that process now. That has not been a focus of the Agency to date.

Mr. OTTER. I am sure we will come back to this on a second round of questions, but Chairman Connaughton, the Council on Environmental Quality was created prior to the EPA. The purpose of the Council on Environmental Quality was to advise the Government, including the President and the Cabinet, on questions of the environment. If we were to elevate the Administrator to Cabinet level position, do we get rid of the Council on Environmental Quality or do we have a collateral responsibility, a dual responsibility, for both you and now the new elevated Secretary on the Cabinet level?

Mr. CONNAUGHTON. I think the roles would continue. As Administrator and member of the Cabinet, Governor Whitman, just as the Secretary of Agriculture, the Secretary of the Interior, the Secretary of Commerce, reflecting on issues under the purview of NOAA, enjoy the direct role as Cabinet members and advisors to the President.

I would expect the Council on Environmental Quality would continue its key role as a policy coordinating body and as an interagency convening body to deal with the kinds of issues you describe, related to forest health and watershed health where not only is there a role for the Environmental Protection Agency but the Department of Agriculture, the Department of Interior, the Department of Defense, and the Army Corps of Engineers. They each have something quite substantial to contribute to a coordinated national response. That is where assuring continued Cabinet status for EPA comes in, because EPA can provide the kind of expertise you have described, the technical expertise to understand the health of water systems.

Just to give you an example in addressing the forest health issue, primary implementation would occur with the Department of Agriculture and the Department of Interior, and then in watersheds, we have a huge initiative, up to $47 billion, in the farm bill conservation title, a significant portion of which we need to tap and harness in an incentive-based way to promote stewardship among our farmers and ranchers to help clean up some of these watersheds, help preserve some of our forest habitat as well, but do it

in an incentivized way. That is where EPA brings forward the technical expertise, the agencies bring the outreach, the implementation, and the incentives to achieve our goals.

Mr. OSE. The gentleman's time is up.

Mr. OTTER. I would argue that the conservation title of the Agriculture bill does not speak to the watersheds that I am talking about. The managed watersheds is what the conservation and that $48 billion is directed to. It is the impact we have on the environment, not the impact we refuse to have on the environment.

Mr. CONNAUGHTON. I was just using that as an example. Certainly there are some affirmative programs specifically related to forest health that we are pursuing quite vigorously.

Mr. OSE. The gentleman from California.

Mr. WAXMAN. Administrator Whitman, as you know, I have been deeply disappointed by EPA's recent unresponsiveness to congressional inquiries and particularly I can't understand why you fail to provide information that I have requested. For example, 2½ months ago, the Assistant Administrator for Air, Mr. Jeffrey Holmsted, was quoted in the press as saying, "EPA rejected its own more stringent proposal for powerplant regulation based on information EPA received from the power sector and unions." In April, I asked you for the information referenced by Mr. Holmsted but have received no response. Is there any reason Mr. Holmsted can discuss this information with the press but EPA cannot provide it to the Congress?

Administrator WHITMAN. Congressman, we are doing our best to respond to all your requests. As you know, I think you have sent a dozen letters in the course of this year and received responses to nine of those. We have three outstanding. One of those is the one to which you refer.

We have an open process for reviewing our decisions and responding to your requests. We hope to get that request to you in very short order, but I will tell you that in order to ensure that the answers are complete and thorough, we do spend a great deal of time, and to date in response to the requests that just you have sent to us, we have spent about 800 hours of time to do it, so we don't take this lightly.

Mr. WAXMAN. I know you don't take it lightly, but it is hard to understand whether it is being taken seriously because we had a Subcommittee On Energy and Air Quality of Energy and Commerce meeting on May 1. I sent EPA a set of followup questions for the hearing record and I understand EPA answered followup questions from other subcommittee members but I haven't received a response to my questions. The record for that hearing has now been closed and EPA never responded to my questions, so EPA's lack of timeliness has resulted in an incomplete congressional record.

Do you believe EPA has a responsibility to respond to congressional inquiries in a timely manner and is there some reason I haven't received a response?

Administrator WHITMAN. Congressman, we absolutely do our best to provide answers in a timely fashion. I believe that letter included a 12 page list of questions on the Clean Air Act. As you may know, our decision was only recently made on the New Source Re-

view program to which most of that letter referred. So we are doing our best to get a comprehensive response for you because as you know, when we do send partial responses, it is not satisfactory, nor should it be. We take this responsibility very seriously.

Mr. WAXMAN. When do you expect that I will get these replies?

Administrator WHITMAN. Again, I would hope we would have it very soon.

Mr. WAXMAN. Are any of those responses currently undergoing White House review?

Administrator WHITMAN. I don't know whether any of those are. I believe they all rest with the Agency, those three letters at this point in time.

Mr. WAXMAN. So you don't know if there is White House review of those answers?

Administrator WHITMAN. I don't know where they are now.

Mr. WAXMAN. You don't know that there is any delay because the White House is reviewing EPA's response?

Administrator WHITMAN. No.

Mr. WAXMAN. Do you know that the EPA response is not being held up because the White House is reviewing the letters?

Administrator WHITMAN. I am saying I don't know exactly where in the process of our Agency it is at this point in time, but we can get back to you with that as quickly as possible.

Mr. WAXMAN. I would like to have that.

Can you tell us today any changes you will make at EPA to ensure that congressional inquiries are answered on a timely basis from now on? Can you tell us if you have any recommendations for CEQ, whether the White House is speeding the review of congressional inquiries?

Administrator WHITMAN. Again, we believe we respond as quickly as we possibly can, understanding the nature of the questions, as I indicated the one letter of yours was about 12 pages worth of very detailed questions. As you know, most of our work is very detailed and scientific, so we try to ensure we give you the most accurate answers possible. There are numerous documents that you have asked for, and we would have to go through and make sure we are in a position to provide everything you want. So we do try. As I say, we have 3 outstanding of the 12 you sent since the beginning of the year. I suspect we are not the only agency that has difficulty with this.

Mr. WAXMAN. I look forward to getting your response on those.

In the very brief time I have left, I want to ask you about the diesel engines. In 1998, there was an agreement to settle the largest ever Clean Air Act enforcement to make sure the diesel engines were going to meet the standards. Now Caterpillar is trying to back out of the deal. It wants EPA to cut a break on the penalties it will apply.

If the penalties are too low, it is going to be more profitable for them to pay the penalties than comply with the law and it will increase the amount of pollution, wouldn't it? The other part of it is, if Cummins is doing its job, aren't they put at a competitive disadvantage if Caterpillar can just pay a low penalty and they have gone ahead and done what they should have done, which is comply with the law?

Administrator WHITMAN. We are planning to move forward with the enhanced penalties. In fact, that is part of the Clean Air Act, a requirement that we continue to review penalties and there is a formula on how we do it. We have put forward a new set of penalties that would be sufficient, we hope, to ensure that we get those clean engines quickly, as fast as we need to get them.

There will always be some companies that, for their own financial and business decisions, decide they would rather produce the old engines and pay the penalties, but we are doing everything that we can at this point in time to ensure that we have the desired impact on the environment and that we move to the cleaner burning engines as quickly as we can.

Mr. WAXMAN. Will you commit to finalize the penalty rule before October and keep the penalty levels you have proposed?

Administrator WHITMAN. We are moving forward with that process. We will finalize by October. They are in the process now, the new recommendations at the new levels.

Mr. WAXMAN. At your proposed levels?

Administrator WHITMAN. Yes.

Mr. WAXMAN. Thank you.

Mr. OSE. The gentleman from Utah?

Mr. CANNON. I would like to apologize to you and to our distinguished panel for the fact I was a bit late but we get caught up sometimes, and this is an important hearing.

I would like to thank our panelists. The job you have is very difficult, often thankless, and very, very important. It is a matter of balancing our quality of life and the prosperity of Americans, especially those who are poorest who tend to be affected.

Without lecturing, let me point out in the last recession from March to March, we lost about 1.8 million jobs net but of those 1.8 million jobs, we had an offset of about 400,000 jobs of people who had college degrees or more and those 1.8 million jobs that were lost were people who had less than a college degree. So the decisions you make have a profound affect, especially on the poorest among us.

Good science seems to me to be the key to solving the problem of how we deal with these awful tradeoffs and if we can deal with science and agree to context for science instead of dogmatic beliefs that somehow creep into our society as absolutes, I think we will do much better.

To followup on Mr. Otter's questions, the mountain behind my house has just burned. It would have been national news except we had so many other huge fires all over the West. In fact, I have a canyon in the mountain to the south that burned 3 years ago and was national news, the mountain to the north burned and hardly got a moment's notice, although I will tell you the problem from that to our watershed and the loss of top soil and the floods we will have next spring is really daunting. I have several neighbors to the south whose houses were wiped out by the mud flows subsequent to spring rains.

It seems to me, Mr. Chairman, that you are in a particularly important position to be asked to do something aggressive about what I think has been a decade of neglect to our forests. Are you doing something actively and aggressively to turn this around? This is an

area where we have good science, we have good understanding. If you look at Utah, we have had two or three major forests that have been destroyed by pine bark beetles, which could have been saved if we had just gone in and eliminated those areas that were affected instead of destroying literally a third of all the trees in the State of Utah, which is devastating for top soil and for watershed.

Now that we have this crisis of fires, which I think lends itself to terrorism in a serious way, are we doing something radical to say we need to cut fire breaks, we need to take each forest in the country, and under your direction guiding the Forest Service and to some degree the BLM into taking steps that will preserve or optimize our environment?

Mr. CONNAUGHTON. The short answer is yes and with Congress's support, we need to do more. I had the privilege of being in Idaho in Boise City to sign with the Governors—including Governor Kempthorne, a very good friend of mine and I enjoy working with him—to sign the 10-year fire plan, which has some key immediate implementation steps that will be taken this summer to at least get better control over the devastating situation you describe so eloquently.

Then we have key implementation steps that will be occurring as we prepare for next year's fire season and beyond. We have to get into these forests. The science has caught up with us, we have had decades of mistaken policy, decades, not just one decade, but decades of mistaken policy. I think there is a much broader consensus that we can sensibly go in and produce a healthier forest as a result of some effective management actions and we now need to mobilize the resources and mobilize the local commitment and we have that now. It is a bipartisan local commitment toward more effective management.

We have some significant work internal to the government, the Forest Service, and BLM to preserve the environmental reviews that need to occur, but to do it in a more streamlined way so we can get these projects moving. We need to reduce the litigation holding up some of these projects. We know what we need to do, we can do it sensibly environmentally—so we are working on all those different levels.

Mr. CANNON. Tell me please that we are doing something radical. Because we have a radical problem, and we also have pretty good science, and the President has a great deal of power, and you are sort of the key to that power. Are we going to do something like cut fire breaks in areas that are significant?

Mr. CONNAUGHTON. The answer to that is yes. I would prefer the words "aggressive" and "environmentally responsible."

Mr. CANNON. I appreciate that but let me tell you, if I were a radical Islamic terrorist—I don't think I am giving away any secrets here—you could drop little firebombs around the western United States and have a huge effect on our economy, our livelihood, our water, our water reservoirs, and every other aspect of our life. Therefore, I think while you may need to speak in terms you have described, some radical action is probably justified.

Thank you.

Mr. OSE. The gentleman from Ohio?

Mr. KUCINICH. Thank you, Mr. Chairman.

Administrator Whitman, welcome. Welcome, to the chairman.

If it was up to me today, I would address you as Secretary. I believe the EPA deserves to be Cabinet level status. The priorities of environmental protection and public health are equally important and if not more important in some consideration as energy, commerce, and others, dedicated Federal departments.

Some opponents have criticized efforts to raise the EPA to Cabinet level status on the argument that such a move would be largely symbolic and wouldn't have any tangible meaning. I think the best way to counteract that argument is for the EPA to make a claim to Congress and the public that this would not be the case. I use that as a prologue to concerns I had when I read last Saturday's Washington Post that the EPA will "no longer exercise its duty over Total Maximum Daily Load, a significant Clean Water Act antipollution program." The Total Maximum Daily Load [TMDL] is the post child for a program where Federal oversight is essential because the States have refused to implement it.

As you know, I represent Cleveland. A few years ago, you and I were with Senator Voinovich touring Cleveland. We know years ago when the Cuyahoga River caught on fire, that was part of what spurred passage of the Clean Water Act. I represent the people of Ohio who petitioned the Federal EPA to help protect Ohio's environment when the Ohio EPA failed to do so. Ohio's EPA has undergone the deepest and widest evaluation of any State EPA ever.

It is with disappointment that after my constituents have experienced such precedent setting levels of pollution and have rallied and fought against it, that now the Federal EPA, in my opinion, is turning its back on the problem by weakening, by reopening the TMDL rules. It will simply result in a lowering of standards in order to meet such standards.

Proposed changes such as planning for entire watersheds instead of individual water bodies, in my view, are merely a tactic to lower standards to achieve compliance. As the proposed changes to TMDL say, "EPA will not review, approve, or back stop," State plans to comply with water quality standards. It seems EPA is not doing the job it has the duty to do, and not doing the job citizens are asking it to do.

My first question is how would the EPA improve water quality by removing itself from an oversight and enforcement role?

Administrator WHITMAN. I know it will come as a surprise, but the article isn't correct. Unfortunately, the newspapers, particularly of late—there have been a couple on major issues which have been very troubling for the Agency, because they simply have been filled with inaccuracy.

As you know, the Congress put the implementation of the TMDL rule on hold during the previous administration. We are continuing to work with that. Our object is to see how we best implement those TMDL standards, understanding that they are enormously burdensome and complicated in that they require individual standards to be set for every single type of pollutant that is found in the water bodies.

We are exploring a number of different ways to leverage the States' abilities with the Agency's abilities to ensure that we reach the result that is the object of the TMDL rule, which is cleaner,

healthier waters. We are committed to that; we are not backing away from it. The article unfortunately made some assumptions that were just inaccurate. I know all of you have been exposed to that kind of thing from time to time and know it can happen.

It becomes very troublesome, though, when it is talking about issues that are of such importance, and this one is of critical importance.

Mr. KUCINICH. I think it is important to go over this for the record. I have the article from the Washington Post, one of their environmental writers. Essentially, it characterizes the Administrator's position on this. If the Administrator is saying this is not true, then we will take her at her word.

Another disconcerting example, the EPA recently decided to relax the New Source Review program rules. Just as environmental advocates feared, EPA's decision has created a chilling effect on court cases brought by the Department of Justice and EPA to enforce New Source Review. While EPA claims the new rule would not weaken ongoing litigation, we have proof it has already done so.

On June 26, U.S. District Court Judge William M. Screteny, presiding over a case brought by the New York Attorney General for Clean Air violations instructed the Attorney General and the utilities to submit new briefs describing how the rule change would impact the issues brought by the case, and EPA's decision to roll back the Clean Air Act is harmful enough without the added impact of crippling governmental efforts to enforce the law. If you could answer the question, why does the EPA deserve to be a Cabinet level position if it rolls back air and water quality standards?

If we in Congress want to promote the EPA, how can we do that if it appears that the EPA is not realizing the authority it has now?

Administrator WHITMAN. As you may not know, in a hearing earlier today, the Justice Department testified to the fact that prospective regulations should not impact those cases. In fact, Attorney General Spitzer's spokesperson indicated they did not feel any prospective action by the Agency would impact those cases. We continue to vigorously enforce them.

The proposals that we have made on New Source Review, there are two different sets of proposals. One, there were regulatory changes that were first proposed during the Clinton administration in 1996 and have been subject to the full and open public process. Those really do not impact utilities at all.

Prospective regulations that have not even begun the rulemaking process but are contemplating, of those there are three and one is the critical one, as far as utilities are concerned, routine maintenance repair and replacement. That rulemaking process has not begun. It will be subject to the full public disclosure and it is responsive to a number of concerns that have been raised about ensuring that New Source Review is as effective and efficient as possible.

The real answer here, we all believe, whatever happens with New Source Review, that we enact the President's Clear Skies Initiatives, which include a very rigorous reduction in the emissions of SO_2 nitrogen oxide and mercury by 70 percent over the next 10 years—make it clear, make it mandatory, provide the flexibility for utilities to achieve those standards within what makes sense for

them economically, work with the acid rain program, and work extremely effectively.

We are continuing to ensure that we enhance the quality of our air. I would say to your last point that the elevation of the Environmental Protection Agency to department status should really be a reflection of the importance this country puts on the environment and not a reward, or not withheld as a punishment or given as a reward for particular behavior. This is broader than that. It is about where do we place the environment in our scope of government and how important it is.

As you indicated at the beginning, environment is something that is of enormous importance to the health and well being of this Nation. That is how the elevation ought to be looked at. It is not a reward for this administration or a previous administration. It is about how we value the environment.

Mr. KUCINICH. Thank you.

Mr. OSE. We will have a second round if the members so choose.

Chairman Connaughton, in terms of the Agency being elevated, should Congress statutorily require the Agency measure the environment to ensure that the policies and regulations are achieving those goals that are otherwise laid out? The question is a bit broader than it may appear, in that it is my understanding that the collection of information at the agency, because of the scope of the problem, leaves something to be improved. Would you care to comment on that?

Mr. CONNAUGHTON. I would first agree with you that data collection information and tying measures of performance and outcome to the specific actions and different things, regulatory programs, incentive programs, State oversight, is a very, very critical and near term, pressing priority. Certainly that has been recognized by the National Academy of Public Administration, some thoughtful analysis by the EPA Inspector General, and recognized first and foremost by Governor Whitman when she took the helm of the Agency.

Whether there is a specific legislative mandate is something I think we should discuss. I have seen lots of different proposals for that and at this time wouldn't be able to commit to one or another of those. Certainly the Bush administration supports linking programs to results. The best way to achieve that is something we would like to talk to you about.

Mr. OSE. Administrator Whitman, do you have any observations you might wish to share with us regarding collection of the information together with its correlation to programs and results?

Administrator WHITMAN. We are instituting a results oriented policy. That is how we are approaching our mission, that is how we are approaching the various programs we undertake, and any new regulatory process. We are strengthening our accountability based on performance information, and we are enhancing our performance information by elevating science at the Agency and ensuring that is at the very beginning of any kind of regulatory process, improving management decisionmaking based on information on the best way of doing business to accomplish our goals.

As I have said repeatedly, the measure of environmental success should not be on the amount of penalties we collect in a year or the number of enforcement actions we bring. It should be on is the

air clean, the water pure, the land better protected. That is the measurement of whether or not we are doing our job. We are moving now to institutionalize that kind of results oriented policy.

One of the gaps—I will say there is a gap—is the quality of the State level data. We cannot collect all the data. It is virtually impossible to do it all ourselves. What we are doing now is working closely with the States and tribes as partners to try to develop better ways to get data, to see how we leverage the dollars we give to make sure that we have some national standards on data, and we make it easier for them to collect and provide us with that kind of data, and we are not overburdening them, because it is a huge burden to collect the information required to make good decisions. That is something we have focused on a great deal and will continue to as we move forward.

Mr. OSE. How big an obstacle is the collection of data and its correlation to the results?

Administrator WHITMAN. Actually, the collection is the bigger challenge. Once you have the data, the correlation to results is pretty easy to do. Even the TMDL, as we have been talking earlier—Oklahoma is one State that has spent a lot of focus and time on the collection of data. They have been able to implement TMDLs without a great deal of effort and long maintained that data collection and good data has to be the basis for moving forward. Wherever we find those challenges, that is where we will be directing our resources to try to help the States do a better job of that and understand the importance of good data collection and making their overall job easier.

Mr. OSE. The reason I focused on data collection versus the empirical metrics that Chairman Connaughton mentions is at the end of my tenure here, I want to know that the environment is better than when I got here. How do we help either the Council or EPA find a way to measure these outcomes? I understand the stovepipe approach with the Clean Water Act, Clean Air Act, and what have you. Tell me how we in Congress can help you do that, to get to the information collection that leads to better results, less environmental damage?

Administrator WHITMAN. As you will see, we have requested in this budget proposal some additional dollars for science. That is going to be very helpful to us. We are trying to breakdown those stovepipes. That is something I believe has been an obstacle to our doing good planning for the environment. No one told Mother Nature that what is in the air can't come down on the water or the land, or what is in the water can't migrate into the land and vice versa.

We need to do a better job in the way we collect and manage environmental information and move away from that historic media specific approach into a wider, broader, more enterprise-wide management system. That is what we are in the process of doing. The dollars and the emphasis that we have put on enhanced science are going to help us with that and on information technology. We have put some additional dollars and will be requesting additional dollars in this budget on our information technology so that we can enhance that and do a better job in the way we collect that data and make it easier to share it and understand it.

Mr. OSE. Chairman Connaughton.

Mr. CONNAUGHTON. I would amplify on that from the perspective at a macro level: is the air cleaner, is the water cleaner? We can collect that information, the broad information, but we are missing this link, and the data flows and the science Governor Whitman talked about is critical, is the link to performance-based budgeting.

I think the Congress is critical, the House in particular, in supporting the President's management agenda approach that is actually trying to link these core indicators of environmental quality and health with the most effective programs so that we can begin to create a good old-fashioned, good Government competition for budget dollars, tied to the most effective programs.

Certainly we would want to see Congress support something like the Clear Skies Initiative that would result in no litigation and the most cost effective way of getting air pollution reductions. It is finding the data that allows you to link the program with the outcome that is critical, so you can compare a command and control program to a market-based program to an incentive-based program and say which is delivering more environmental protection for the taxpayer dollar? Congress getting behind that and actually giving us oversight, the importance of oversight with a performance oriented budget approach is really where I think we can advance this next generation of more effective environmental management.

Mr. OSE. I do want to tell you we are interested in you doing all the oversight you want. We are not going to give up our oversight, so we welcome you to that party.

The gentleman from Utah?

Mr. CANNON. You have raised the bar for what is thoughtful responses and I appreciate it. I have been an admirer from afar and it is nice to see you actually dealing with these issues and both of you have done so eloquently and well.

Ms. Whitman, you talked earlier about a report card and answered a number of questions by the chairman. Are you developing a report card that will have transparent data behind it so people can understand where we are going? Is that the same concept you are dealing with here?

Administrator WHITMAN. That is the whole point of it, to make it something the public can understand, something we would release on an annual basis. The importance here, and where we could use congressional support when we do come out with that report card, is an understanding that we are not going to meet our goals every year and we are not always going to be able to show the kind of advance we would like to see.

That doesn't mean we are not progressing. It doesn't mean we should give up what we are trying. We should just improve it. We shouldn't be afraid of self criticism but we are going to make it very public, a transparent process, and ensure the public can understand what we are saying.

Mr. CANNON. Among other things, we have made vast progress, not because of Federal rules and the administration, but because science has done some remarkable things for us that cannot be predicted, controlled, or managed. If we have goals, that will help direct resources, so I congratulate you on that and look forward to following how that works.

Let me talk about the role of the States. When EPA started, you had no State involvement. Now you have States with significant State law and in many cases, delegation of Federal authority to oversee laws. What do you see the role of the States being? I realize you are going to have to work with States and develop data, but how do you see the role of States evolving after you have developed the kind of transparency you are talking about of goals and information behind goals? Can they pick up more of the slack? Can we delegate more and more and the Federal Government become a more distant guide and let the States take more responsibility?

Administrator WHITMAN. I share the President's perspective that not all wisdom resides in Washington. Having come as a Governor, I also appreciate the work and innovation that is occurring at the State level.

We need to be able to provide the States the flexibility to meet the generally agreed upon standards that are protective of human health and the environment, standards we will work on in a transparent way based on sound science, but we will work with the States to allow them some flexibility in the implementation without backing away from our responsibility to ensure we are in fact protective.

We have a very good relationship with the States now. Some of our most effective programs are State partnership programs. We are looking for ways to expand those. The area of enforcement, which I know is of great interest to many members on the Hill, States do 90 percent of the enforcement now; they do 95 percent of the inspections. We are trying to see how we can help them do that better.

States right now are facing severe budget cuts and concerns. We need to be sensitive to that. We need to see where we can in fact help them do that job, understanding the stresses they find themselves in at the moment.

At all times, we are working with States and tribes as our full partners. We intend to continue that effort and look for other ways we can do that while being protective of the environment and human health.

Mr. CANNON. I agree with that. I tell my constituents the average IQ in Washington is still only 100 and while we have more power and maybe some more general view which is helpful to us, I agree with you about States and their ideas.

It is nice for me to see this administration with people who are articulate spokesmen. There is nothing we have to fear from science, and from peer review, and from the kind of processes that get people involved and are transparent. It is the other side who are dogmatic and religious in their beliefs, who plant links where they shouldn't be because they want that to be protected. That is where the problem existed.

If I could encourage good science, peer review, transparency, I think America will make great leaps forward, and I encourage you in that activity.

I yield back.

Mr. OSE. I have two more questions and we will wrap up this panel, because I know you both have busier days than I could ever imagine.

Mr. Chairman, would an Office of Science that integrates and coordinates all the science at EPA be helpful? First, is the science collection and corroboration a fractured effort in your opinion, at EPA? Could it stand improvement?

Mr. CONNAUGHTON. I will answer that in the affirmative. It can be improved and we are working to improve it throughout the government, the role of science, bringing it forward in the line Congressman Cannon suggested.

I would note EPA has taken the critical step of actually creating a science advisor post which I think was a very, very strong move. It also brings somebody with responsibility to look at science across the Agency, and also provides a key person to participate interagency in many of the processes that I am involved in and also spearheaded by the Office of Science and Technology Policy. So the role of a strong individual or group overlooking the science as well as the economics at the Agency is very important and consistent with where we want to take things, whether it is the Department of Interior or EPA.

Exactly how that would be structured, again, remains something we should discuss and I think with Governor Whitman's experience now and as she looks at the future, we would want to defer to the leader of the Agency to see how it is structured. Each Agency, the Department of Energy deals with it differently than the Department of Interior, than does NOAA. Each have structured science oversight in different ways. Before we pick one, I think we should look at those models to see how they were developed and how they were tailored and the particular organizational needs of the institution. A strong central scientific role is important.

Mr. OSE. Do you share that view?

Administrator WHITMAN. I certainly share the view. We can do a better job, and we have been focusing on enhancing the role of science in the decisionmaking at the Agency. My concern with establishing a Deputy Administrator for Science or a specific other position such as that is that science should be incorporated throughout the Agency. It should be part of every one of the Assistant Administrators job. I don't want anyone thinking the Deputy Administrator for Science will take care of that. It should be integral and form the basis for all of the work we do. That is why I have established the office and role of science advisor as someone who can take a more comprehensive look but is not seen as being the science person. But in fact we are continuing to integrate science in all the decisions we make.

We have enhanced the use of external peer review as we move forward with regulations. I think that is an important part to corroborate the science we have used. We are doing everything to ensure the level of our science is at the top of the range, the best we can come up with. And we have some fine scientists.

We have an innovation strategy that we are in the process of developing that will look for other ways to ensure that science is integrated into the entire and throughout the entire agency. So my only concern about isolating science to one particular part of the Agency is that I don't want any kind of isolation, I don't want any misunderstanding that there is one person that talks science. That

should be part of every single one of the program areas. They have to have good science and good reliance on science.

We are now doing it through the science advisor and also through the innovation strategy that is a place where every regulation will go and get looked at to see whether it needs science, more science at the beginning than not. So we are trying to integrate that but are willing to talk and work with the Congress on how best to ensure that continues to happen.

Mr. OSE. I have nothing else. Mr. Cannon.

Mr. CANNON. I have nothing else but one comment. We have a huge number of people in the private sector who thought a lot about these things. I hope you would consider integrating them either through contracting or your peer review process or other means into the system because good ideas can catch on very quickly and move mountains.

Mr. OSE. We will leave this record open for 10 days. Given the time constraints, we will dismiss this panel. We do have some questions we did not get to that we will submit in writing and we ask for a timely response. We are grateful for you.

Administrator WHITMAN. We will get you a timely response.

Mr. OSE. Governor, you have always been responsive, so I do appreciate it.

Again, the record will be open for 10 days, we will get you the questions. We appreciate your taking the time to come down and visit with us. We look forward to the next time. Thank you both.

We will take a 5-minute recess.

[Recess.]

Mr. OSE. We will reconvene this hearing.

We welcome our guests for this panel. As you saw in the previous panel, we swear in all our witnesses. Our witnesses in the second panel will be the president of the Environmental Law Institute, J. William Futrell; vice president for Environment and Regulatory Affairs, U.S. Chamber of Commerce, William Kovacs; and a senior fellow for environmental economics, Natural Resources Defense Council, Wesley Warren. Gentlemen, if you would rise.

[Witnesses sworn.]

Mr. OSE. Let the record show the witnesses answered in the affirmative.

It would appear we have a vote scheduled here. We will proceed, Mr. Futrell, with your testimony. We do have your statement in writing. I read it and it is comprehensive and universal. I do appreciate if you could summarize in 5 minutes.

STATEMENTS OF J. WILLIAM FUTRELL, PRESIDENT, ENVIRONMENTAL LAW INSTITUTE; WILLIAM KOVACS, VICE PRESIDENT, ENVIRONMENT AND REGULATORY AFFAIRS, U.S. CHAMBER OF COMMERCE; AND WESLEY WARREN, SENIOR FELLOW FOR ENVIRONMENTAL ECONOMICS, NATURAL RESOURCES DEFENSE COUNCIL

Mr. FUTRELL. Thank you for the opportunity to join this dialog on elevation of EPA to Cabinet status. We have two members of the House on our board of directors, Congressman Tom Udall of New Mexico and Sherry Boehlert of New York. Therefore, reviewing the testimony of the earlier hearings, I was interested to read

Sherry's judgment which I join in saying keep it simple and a clean a bill to elevate EPA to Cabinet status.

The invitation to the hearing asked me to comment about what next after Cabinet elevation. I was fascinated to read the comments by the other stakeholders in the hearing.

Mr. OSE. Mr. Futrell, I need to interrupt for a minute. I am advised I have three votes which is likely to be a 40 minute exercise. We can get each of your statements on records in abbreviated form and leave the record open for 10 days, or when the point comes where I have to bolt for the floor, we can be in recess, I can come back and we can be here a bit longer.

Mr. FUTRELL. Whatever your wishes are, Mr. Chairman.

Mr. OSE. I do not like to treat my witnesses this way. I feel as if I am being rude, but I do think in the interest of time, yours and mine, it might be best to get your statements in the record in an abbreviated form for each of you and let me leave here when there are about 2 minutes left. We will adjourn the hearing and send the questions in writing to each of you. Is that agreeable?

Mr. FUTRELL. Sure.

Mr. OSE. You have 2 minutes.

Mr. FUTRELL. I read the statements and many of the recommendations you are hearing from the National Academy of Public Administration, from Terry Davis, Unified Act, are prescriptions which will not cure the problem. My friend Bill Kovacs is going to have the same sort of difficulties for his companies as he has now because in our system of laws, we have a checkerboard of black squares and red squares. If you are on a black square, you are regulated beyond belief. That is Mr. Kovacs' company, the Dupont Corp., General Electric. If you are on the red square, you get away with environmental murder. That is the American mining industry. The American mining industry causes more damage to the waters of the United States than all of manufacturing industry combined.

The focus in our environmental statutes is on the middle process of turning raw materials into products. First, we cut down the tree, that is resource extraction. Then it is processed, that is manufacturing. Then it is thrown away and used. That is resource recovery.

The Congress' environmental statutes are focused on resource processing. If we were to rethink our laws and return to what I call sustainable development law, you would be able to ease much of the tension on the manufacturing sector. That really means taking on the agricultural sector, the mining sector, and others, and Congress has avoided that.

I note with approval your call, Mr. Chairman, for going to pollution reduction credits for trading. ELI believes in trading. The Clean Skies Initiative, Jim Connaughton's press release on that quotes the ELI research work. Here is our book, "The Clean Water Act TMDL Program." Unless you have a strong TMDL program, you cannot have a water trading permit system.

It is a real challenge. Congratulations on these hearings. I think my statement hangs together in written form.

[The prepared statement of Mr. Futrell follows:]

House Subcommittee on Energy, Policy, Natural Resources
and Regulatory Affairs

"Cabinet Elevation for U.S. Environmental Protection Agency"

Testimony of J. William Futrell,
President, Environmental Law Institute

July 16, 2002

Thank you for the opportunity to join the dialogue on elevation of EPA to cabinet status. The Environmental Law Institute is an independent and nonpartisan research and educational organization; accordingly, the views I express are my own since the Institute rarely adopts policy positions. ELI has worked frequently with EPA on many EPA projects over the last 30 years, often on matters of state environmental law, an area of ELI expertise. More than 60,000 attorneys and managers have gone through our training courses. We publish the *Environmental Law Reporter,* which gives full text of cases, statutes, and Agency regulations. Former Administrators William Ruckelshaus and Lee Thomas have served on the ELI Board, as well as have Senators Muskie and Stafford. Currently, we are privileged to have two members of the House on our Board: Congressmen Sherwood Boehlert and Tom Udall.

I noted with interest the testimony of Representative Boehlert at your September 2001 hearing. In no uncertain terms, he advised his colleagues to make H.R. 2354 "a straightforward clean elevation bill" and keep it separate from any other issues. I have to defer to that judgment and urge that Congress keep it simple and take the single incremental step that will get the job done.

That being said, I could end my remarks here, but the invitation to comment invites attention to the question of what next — after cabinet elevation.

I read the testimony of other stakeholders at the hearings with fascination. After the elevation of EPA to cabinet status, hopefully a new political climate will evolve that will allow passage of an Organic Act for the Agency which would give needed Congressional endorsement of the Agency's mission statement that has evolved over the years. From conversations with Bill Ruckelshaus and Lee Thomas, I know they believe deeply that Congressional involvement is needed before any of the litany of complaints about EPA can be resolved.

The polarized and poisoned environmental politics of recent years have made it important to reaffirm that there is indeed a broad, deep consensus in support of what environmental regulation has achieved, even as it is accompanied by a desire for an improved system. I, for one, when I follow the actions taken by EPA see much, much more that is being done right than things to pick at. The Organic Act should mandate a proactive planning approach in line with the thrust of the Government Performance and Results Act. Hopefully, it could remove some of the limitations that hobble EPA's performance. I know you are familiar with the history, but let me note for the record how the piecemeal nature of EPA's organization hinders tidy solutions.

Environmental programs are scattered throughout the government. Water pollution from strip mines is regulated by the Department of the Interior, water pollution from chemical plants by the Environmental Protection Agency, water pollution caused by soil erosion by the Department of Agriculture, and water pollution from dredge fill by the Department of Defense's U.S. Army Corps of Engineers.

Attempts to rationalize such administrative arrangements have failed. The original proposal to establish EPA envisioned one environmental agency that would include Interior; the Forest Service and Soil Conservation Service from the Department of Agriculture; and the U.S. Weather Bureau from the Department of Commerce. Then-Secretary of the Interior Hickel argued in favor of the proposal because it is impossible to separate the environment from natural resources. This bifurcation was not as important then as it is now when we are coping to create a new law of sustainable development.

After the plan to create one macro-environmental agency was dropped, President Nixon sent to Congress a reorganization plan to establish EPA on July 9, 1970. EPA was charged with administering air, water, hazardous and solid waste, pesticide, radiation, noise, and international programs. Interior maintained its original mandate to manage the public lands. Discarding the plan to create one environmental agency created a schism between pollution abatement legislation and natural resources laws that persists today. The schism is a false one; environmental laws would be better drafted and administered if we considered the environmental impact of resource extraction together with manufacture and disposal.

EPA's authority was assembled piecemeal from a dozen statutes governing specific media and was not informed by a unifying vision — a vision that was available from the contemporary National Environmental Policy Act. Critics of the Agency over the years have rebuked it, among other things, for lack of priority setting — priority setting that more appropriately would have been done by Congress, which passed the environmental statutes incrementally, often in reaction to crises such as Bhopal (EPCRA) and the Exxon Valdez shipwreck (Oil Pollution Act of 1990).

The first stirrings of a coordinated forward looking environmental policy came not from Congress, but from within the Agency itself with the Unfinished Business report in 1987, which resulted from a series of meetings with senior agency staff on ranking environmental risks. The report was not received well in some pro-environment committees of Congress, which thought EPA was being uppity in assessing risk. The report spotlighted major disconnects between regulatory programs and significant, but poorly addressed, risks.

The Government Performance and Results Act of 1993 (GPRA) forced EPA to do what Congress should have done for it in an organic act by causing it to define a mission statement. The GPRA requires that the plans contain: a mission statement; a discussion of long-term objectives for all major operations; strategies and resources needed; annual performance goals tied into achieving the long-term objectives; identification of external factors

impacting performance, including coordination with states and other federal agencies; and, finally, a description of how the agency will evaluate its planning and performance. The emphasis throughout is on outcome-related objectives on real world performance.

The EPA mission statement reads: "The mission of the Environmental Protection Agency is to protect human health and to safeguard the national environment — air, water, and land — upon which life depends." I met several times with Agency staff during the drafting of the Strategic Plan and asked for the source of this language. The EPA staff said it was a consensus statement developed by the regions and not from a specific statute. They were acutely aware that EPA did not have an organic act, the usual source of an agency's mission statement.

In its first Strategic Plan, the agency listed ten major goals: clean air, clean and safe water, safe food, pollution prevention, better waste management and site cleanup, reduced global risks, more right to know, better science, better enforcement, effective management. It also listed 45 major objectives as the agency's priorities for achieving these. These 45 top items are in response to congressional mandates — illustrating the confusing crush of congressional mandates on EPA.

Despite any flaws, the EPA Strategic Plan provides a road map for drafting an organic act for the agency. But even with elevation to cabinet status and with the advantage of congressional reaffirmation with an organic act, Congress will not have addressed the fundamental glitch in our environmental protection schemes. EPA is a reactive agency. Most of the real environmental problems arise out of the other agencies activities. And the times have changed; we have gone beyond environmental protection to a new goal of sustainable development.

A recurring theme in ELI's research and publications effort has been the need for coordination and executive leadership in this complex system. The dispersal of environmental programs over the federal agencies and the division of powers among state and federal officials is not necessarily a bad thing, but it does call for a strong effort at coordination by the White House,

an effort that has never been seriously made. The EPA plan points out its need to coordinate with at least 16 other federal agencies. The plan also points out the gaps in information that hobble agency effectiveness.

A further problem in achieving real world environmental improvement is that the EPA statutes are media-based and focused on end-of-the-pipe approaches that clean up pollution after it occurs instead of encouraging planning to prevent resource abuse. Land abuse has largely been unaddressed and unresolved. I believes we need a transition from environmental law to sustainable development law — focusing on human economic activity, such as agriculture and transportation and energy use, and the resulting degradation of the land.

The Environmental Law Institute treatise, *Sustainable Environmental Law* sought to address how natural resource laws and pollution control laws can be integrated. The book is not organized by chapters on individual media (such as air or water) or pollutants (such as toxic chemicals), but at areas of human economic activity. Timber, agriculture, fisheries, energy, metals — these are just a few of the industries that the treatise examines from "resource to recovery"; that is, through their entire life cycle. The first stage is resource extraction — cutting the tree down; the second state is resource use — turning the tree to paper; and the third is resource recovery — putting the paper in the landfill. The EPA statutes focus on the second stage and concentrate on large industrial processes. When the various laws that affect each industry throughout the cycle are analyzed in this way, it becomes readily apparent that our laws governing development and our laws governing the environment often act in conflict. We believe the burden on government programs and on the economy would be lessened significantly by better laws in the resource extraction stage. This is consistent with the principles of pollution prevention and of sustainable development.

Much of the needed legal effort is going to be on the state level. Getting the law right is crucial. Absent a change in the legal structure, there is no economic incentive for public or private enterprise to operate sustainably. Indeed, most incentives in current law discourage sustainable

decision-making and encourage wasteful, short-term decisions that sacrifice economic and ecological health over the longer term.

The old paradigms embodied in our law do not reflect ecological understanding and, indeed, actually compel unsustainable development. Sustainable development is impossible without transforming the legal structure within which human activities, transactions, and initiatives occur. Getting the law right is an essential precondition to success; continuing to get it wrong guarantees continued failure despite the best intentions.

The transition to sustainability and respect for the laws of ecology will not take place without a fundamental change in economics. While the market is an effective instrument for determining the best and most efficient route through the calculus of prices, it does not determine goals. The market system is unable to account for environmental degradation because the crucial link between the environment and the market has never been forged: prices fail to reflect the full costs to the environment. Indeed, environmental goods and services are undervalued or are free for the taking.

In order to forge the legal instruments for the new economy of sustainability, the law that matters is the deeper bedrock law of the American system — the property, tort, contract, liability, transactional, and constitutional laws that pick winners and losers.

Existing law limits the scope and durability of sustainability initiatives to a drastic extent. The first fundamental task in the transition to sustainable development law is to identify the inconsistent and conflicting legal institutions, doctrines, and programs that cancel out ecological protection and community development.

One of the greatest, yet often ignored, impacts of federal law on the environment is governmental promotion of projects through subsidies. Development subsidies often undermine expensive environmental protection efforts, destroying neighborhoods and natural resources. For instance, tariffs on sugar protect Florida sugar cane growers whose effluents, when dumped

in the Everglades, lead to massive water pollution cleanup efforts. The Florida sugar cane industry, notorious for its unfair labor practices based on seasonal laborers was immersed for years in litigation aimed at fixing liability for protecting the endangered Everglades. Yet the destructive activity itself would be uneconomic if not for the intervention of law in the marketplace. Similarly, subsidized timber sales by the U.S. Forest Service subvert wildlife protection measures under the Endangered Species Act. The spotted owl controversy was on the front page for years; the collapse of the Pacific salmon fishery resulting from over-cutting, erosion, and dams may be a jobs vs. environment disaster in the making.

Recurring newspaper stories portray these as jobs versus environment conflicts. In fact, many of these conflicts arise in sunset industries whose activities are economically viable only because of indirect or direct government subsidies that undermine sustainability. The list could be extended into every industry sector and every Congressional district. Taxpayer-supported energy projects promote air pollution, and below-cost sales of mining lands increase water pollution and the country's Superfund bill. States have their own versions of these perverse laws. For example, until 1992, it was illegal in Virginia for utilities to offer any incentives to their customers for energy conservation and efficiency. The regulation, which had been aimed at discouraging kickbacks, actually meant Virginia could not take advantage of cost-effective, ecologically sustainable energy strategies.

Reconciling these conflicts will require extraordinary acts of political skill and will. This necessary exercise will not be able to proceed without an exhaustively detailed road map that identifies the crosscutting impacts that promote or restrain sustainability. Such an analysis is needed to defuse the "jobs versus environment" debate and to show how communities can generate employment and sustain livelihoods while protecting the resource base necessary for ecological health and community stability.

U.S. laws are filled with incentives to take the short view of environmental goods. The litany is long. Agricultural marketing rules in

some states prevent the sale of organically grown fruits and vegetables that do not meet size and color specifications which are tailored to agricultural produce that is more typical of agri-chemical production. State courts have invalidated local development ordinances requiring infrastructure or impact fees.

The law's prejudice against sustainability continues into finance. The commercial and corporate law of fiduciary duties actually leads to the liquidation of slow-growing forests if better returns are available elsewhere. The law of secured transactions elevates the interests of creditors above environmental values and ecological functions, making the environment an unintended third-party victim in commercial defaults. Secured creditors may, for example, remove pollution control or resource recovery equipment without regard to the external effects on the environment.

The law's tilt against sustainability extends even after death. Inheritance taxes are another area of law that can produce unsustainable actions, even when a sustainable action is desired by all parties. Indeed, such laws can compel an estate to liquidate standing timber on privately owned woodlands even when the heirs would prefer to maintain a working forest or an unexploited wood lot for conservation and biological diversity. An analysis of state and federal inheritance laws would identify changes that would promote sustainability without eroding the social interests involved in family law.

Conversely, government policies can work for sustainability. The Ministry of International Trade and Industry in Japan, for example, requires lending agencies to require loan recipients to hire government certified environment monitors as a condition of the loan. In Japan, banking law regulations, not environmental standards, play the key role in promoting sustainability. Linking the secondary mortgage market to environmental assessment in the U.S. could produce profound favorable effects.

Development law brooks no interference with its emphasis on immediate use. Without a road map charting perverse incentives, reformers

will not be able to start out on the road to sustainable development law. With a road map, citizens will be able to work together on the thousands of politically achievable, incremental changes that are necessary for transforming the system.

Before our societies can begin to be effective in designing and implementing ecological economic incentives and other principles of sustainability, we have to clear away the debris of past programs and laws that — by design or inadvertently — promote rapid and heedless development, no matter how high the cost in waste of natural capital and community vitality.

In the coming years, ELI will seek to identify the perverse incentives in existing law that drive individuals and institutions to choose wasteful forms of economic development over sustainability. We will seek to spur thinking on new legal structures to incorporate ecological economics into law by unleashing the common law, which has deviated into the service of unsustainable concepts since the late 19th century.

Examples of the activities needed to effect the fundamental reform of development law include changes in the law to explore the use of expanded liability to internalize externalities. An empowered environmental justice movement can bring about a revitalized law of nuisance. State law needs to enable communities to plan for sustainability through changes in property law to reflect 21st century understandings rather than the law of the frontier.

The political momentum to achieve protective law and policy depends on the ever-enlarging public demand that new ethical and religious standards govern our use of the environment. Environmental law's greatest achievement is its codification of a change in ethics, a legal recognition that, in the last quarter of the twentieth century, individual — and government — responsibility extends to the natural world. During the next 25 years, the most important development will be to spread this consciousness beyond environmental law to sustainable development law.

Environmentalism and the hopes and expectations of the Earth Day generation cannot be understood without an acknowledgment of this ethical, indeed religious, shift — a shift as fundamental and disturbing to established social relations as earlier changes in thought leading to the end of slavery in the 19th century. The social response to the sustainability challenge can be either violent or peaceful. In the 19th century, the United Kingdom ended slavery in its colonies without bloodshed and with compensation for the slave holders. In the United States, emancipation came only as the result of a savage civil war. The United States and Mexico need to address the already critical challenge of water quantity and quality on the border in a peaceful manner. This is a sustainability challenge.

We have made great environmental progress since the creation of EPA in 1970, and both we and the men and women of the Agency should take great pride in our achievements. Most of the criticism of EPA sounds like nitpicking when seen in the context of the real environmental challenges of our time.

The changes suggested above may seem quixotic in light of the current political climate. Indeed, the political challenge is intimidating. But with knowledge comes the responsibility to act. The combination of science and public opinion heightens the possibilities for success in building processes and institutions for protection of life systems. Decision-makers must grapple for wise decisions not only across space — balancing the interests of the developer and the environment — but also act across time, balancing the interests of the present against the future seeking an equity not only among nations, but justice between generations.

Mr. OSE. Thank you for your brevity.

Mr. Kovacs.

Mr. KOVACS. We have been discussing how to better organize EPA for 30 years. Since the beginning, there has been a fundamental shift and that shift is that 90 percent of all enforcement and management activities are by the States. Business has spent $2 trillion on environmental protection over the last 30 years. It now spends $200 billion annually on environmental protection.

We expect EPA to do the impossible, we expect it to have a vast knowledge of law, science, technology, computer modeling, the acquisition, development, and analysis of data, federalism and the relationship of all these moving parts, and yet we straightjacket them into a budget which says it must spend on a specific program.

For example, EPA spends 64 percent of the budget on waste management and water and 6 percent of the budget on science and data information. The Chamber has some challenging recommendations in our testimony. One is EPA needs overarching statutory language, if it is going to be elevated, that allows it to move forward in a flexible system to do performance based standards and to remove the command and controls structure so it can address problems in a timely manner.

Second, we believe there can't be any second guessing of States. When the EPA authorizes the States to take over a program, they are doing 90 percent of it now anyway, EPA shouldn't be able to second guess it. If it doesn't like what the States are doing, EPA ought to remove the program authority.

EPA needs to be more focused on standard setting and technical assistance and it needs to expend more of its money in the realm of science. In particular, I refer you to a 1990 EPA report, "Reducing Risk," where the agency admits there is little correlation between relevant risk and their budget priorities. This is a key.

We need to address sound science and data quality. We now have the "Data Quality Act." We can't have good science, we can't have environmental protection unless you spend the money to get the good science. Without spending the money on data quality and science, we are not going to be able to reach the goal of flexibility within the program as well as the ability to address priority risks. It is a partnership between business, the States and the Federal Government. We all need to understand our roles and there are ways in which EPA can be efficient, give the goals to the States, set the sound science, while recognizing that business will continue to spend the money to implement environmental programs.

[The prepared statement of Mr. Kovacs follows:]

Statement of the U.S. Chamber of Commerce

ON: THE SUBJECT OF CABINET ELEVATION FOR THE ENVIRONMENTAL PROTECTION AGENCY (EPA)

TO: HOUSE SUBCOMMITTEE ON ENERGY POLICY, NATURAL RESOURCES AND REGULATORY AFFAIRS OF THE COMMITTEE ON GOVERNMENT REFORM

BY: WILLIAM L. KOVACS

DATE: JULY 16, 2002

The Chamber's mission is to advance human progress through an economic, political and social system based on individual freedom, incentive, initiative, opportunity and responsibility.

The U.S. Chamber of Commerce is the world's largest business federation, representing more than three million businesses and organizations of every size, sector, and region.

More than 96 percent of the Chamber's members are small businesses with 100 or fewer employees, 71 percent of which have 10 or fewer employees. Yet, virtually all of the nation's largest companies are also active members. We are particularly cognizant of the problems of smaller businesses, as well as issues facing the business community at large.

Besides representing a cross-section of the American business community in terms of number of employees, the Chamber represents a wide management spectrum by type of business and location. Each major classification of American business—manufacturing, retailing, services, construction, wholesaling, and finance—numbers more than 10,000 members. Also, the Chamber has substantial membership in all 50 states.

The Chamber's international reach is substantial as well. It believes that global interdependence provides an opportunity, not a threat. In addition to the U.S. Chamber of Commerce's 83 American Chambers of Commerce abroad, an increasing number of members are engaged in the export and import of both goods and services and have ongoing investment activities. The Chamber favors strengthened international competitiveness and opposes artificial U.S. and foreign barriers to international business.

Positions on national issues are developed by a cross-section of Chamber members serving on committees, subcommittees, and task forces. Currently, some 1,800 business people participate in this process.

Statement of William L. Kovacs
Vice President, U.S. Chamber of Commerce
Before the
House Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs
on
the Subject of Cabinet Elevation for the Environmental Protection Agency (EPA)
July 16, 2002

Thank you Chairman Ose, Ranking Member Tierney, and members of the Government Reform Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs. My name is William L. Kovacs and I am Vice President of Environment, Technology & Regulatory Affairs at the U.S. Chamber of Commerce ("the Chamber"). In this role, I am the primary officer responsible for developing Chamber policy on environment, energy, natural resources, agriculture, food safety, regulatory, and technology issues.

I appreciate the opportunity to be here this morning to discuss issues related to the legislative proposals to elevate the Environmental Protection Agency ("EPA") to Cabinet level status. The Chamber is the nation's largest business federation with more than 3 million members in every size, sector and region. EPA's far-reaching activities and regulations directly or indirectly affect millions of American businesses.

EPA is an organization that has been charged with implementing a series of complex statutes without the benefit of a legislative mission. As such, it has an organizational structure that works against both efficiency and innovation. Simple elevation of the Agency, without necessary reform, would have the effect of permanently locking EPA into its current structure. However, elevation accompanied by appropriate reform would allow the symbolic importance of our environment to be appropriately recognized while simultaneously fixing deficiencies that

impair the agency. With appropriate reform, EPA could be allowed to be more flexible, innovative and effective with the billions of dollars of assets provided it annually by Congress.

Two elevation bills are currently pending before this subcommittee. The Chamber is opposed to HR 2438, which would simply elevate EPA without any reform to its structure or functions. In contrast, the Chamber favors the general approach taken in HR 2694, which would, in conjunction with elevation, substantively reform the agency. Today, I will discuss several of the organizational and other changes that we believe are necessary – whether or not EPA is elevated – to ensure that the agency is better able to enhance environmental protection with its present assets.

I. OVERVIEW OF THIRTY YEARS OF ENVIRONMENTAL PROTECTION

A necessary part of an EPA reorganization, in our view, is ensuring that the agency no longer be structured along media lines. Today's discussion in this regard is the same discussion that took place when EPA was organized under Reorganization Plan No. 3 of 1970 ("the Reorganization Plan"). At that time, President Nixon was critical of the manner in which the national government was structured with regard to protection of air, water and land. In the Reorganization Plan, the President critically observed that many agencies' missions were "designed primarily along media lines – air, water and land. Yet the sources of air, water, and land pollution are interrelated and often interchangeable."[1] Thus was born the EPA, where research, monitoring, standard-setting and enforcement activities for each of these media would be consolidated in a single agency.

In the years that followed, Congress passed the Clean Air Act, the Clean Water Act, the Resource Conservation and Recovery Act, and others – all addressing single

[1] Reorganization Plan No. 3 of 1970, dated July 9, 1970, available at http://www.epa.gov/history/org/origins/reorg.htm.

media. Notwithstanding the goals of the reorganization plan and provisions in the respective laws authorizing the Administrator of EPA to coordinate implementation with the various laws, EPA was de facto structured to focus on media specific concerns. So here we all are today, more than 30 years after EPA was established, facing precisely the same problems raised by President Nixon in 1970. In order to ensure that a significant opportunity is not missed to make EPA work better, the Chamber believes it is essential that Congress ask certain fundamental questions before simply elevating EPA to cabinet level status.

Two essential questions come to mind:

(1) What should EPA be doing?

(2) What powers does the agency need in order to be effectively relevant?

These questions naturally lead not only to a reexamination of EPA's organizational structure, but also to consideration of EPA's relationship with the states, the Agency's establishment of priorities, the recognition that environmental problems simply change over time with the development of technology, science and instrumentation. Therefore, for EPA to be effectively relevant, it must be able to change, innovate, understand the problems of the day, and be able to organize its resources to address these problems.

It is fair to say that when EPA was created in 1970, and when the respective environmental laws were enacted later that decade, no one had a comprehensive understanding of the scope of environmental problems or the solutions to those problems. The various environmental laws were designed to allow the federal government to begin understanding the problems, while simultaneously beginning to solve them. To a

significant extent, the established command and control structures helped to redress past environmental problems and provided a framework for managing environmental issues. In the succeeding decades, science allowed us to better understand the problems, and as we solved the readily apparent problems, we came face to face with problems more complex and more difficult to address. The effectiveness of the 1970's command and control structure began to diminish.

Unfortunately, while the problems faced by the environment and our understanding of these problems has changed substantially over 30 years, EPA still utilizes a 1970's approach to environmental protection and enforcement. Since the advent of the EPA, American business has been an active partner, along with federal, state and local governments and others, in the effort to safeguard our natural environment. In fact, over the last 32 years, American industry has expended more than $2 trillion on environmental protection. In the coming decade, business will likely spend another $2 trillion on this effort. Business has become an invaluable partner in achieving environmental protections. Moreover, environmental protection has become a focus at every level of government and in every business. As a result, our air is cleaner and our water is safer. These are positive developments for which EPA, state and local governments, and industry should be commended.

Notwithstanding the contributions of business, EPA still appears to presume that business has a propensity to want to pollute and that state and local governments have a propensity to look the other way on environmental protection. Nothing could be further from the truth. Non-compliance is very rare, and a large number of violations are self-reported. For instance, in Fiscal Year 2000, EPA initiated a total of 6,027 enforcement

actions of all types – the most in EPA history – while 430 companies self-reported potential violations at nearly 2,200 facilities.[2] These numbers may seem large but become very small in light of the fact that more than 1.2 million businesses report to EPA and the total number of environmental transactions undertaken by these companies (reports, permits, monitoring, transportation, waste management operations) are in the tens of billions a year.

Consider the enormity of this against the mere 6,027 enforcement actions and approximately 2,200 self-reported violations. This violation rate is a small fraction of one percent. This high level of compliance strongly suggests that overall; the environmental performance of the American business community is remarkable.

II. EPA'S ORGANIZATONAL STRUCTURE

A review of EPA materials, such as its self-created mission and goals, leads to the inescapable conclusion that we are asking EPA to protect all human health and the environment, a task that requires enormous resources and knowledge. We expect EPA to establish health based standards to address countless issues that evade even the best scientists, and then to determine how to apply complex technologies, science, monitoring, sophisticated instruments and risk assessments to the problems. Yet we lock EPA into rigid programs and allocate staff and funding in a manner that makes it impossible to complete this task. A look at EPA's proposed FY2003 budget reveals that 64% of its resources are to be spent on clean water and better waste management, but only 6.8% of its resources are allocated to sound science or quality environmental information. Roughly the same ratio applies to the personnel assigned to these various tasks. This is

[2] U.S. EPA, "EPA Releases FY 2000 Enforcement and Compliance Assurance Data", Environmental News, January 19, 2001.

inexcusable in a time where science and information are so vital to the Agency's policies, and therefore to environmental protection.

Experience tells us that environmental issues change with time and circumstances. Therefore, innovation and flexibility are necessary if we are to be more effective in protecting our environment. It is therefore imperative that a legislative mechanism be implemented that allows and encourages innovation and flexibility.

1. EPA SHOULD BE AUTHORIZED TO PROMOTE MARKET-BASED MECHANISMS

For instance, legislation should promote the use of market-based mechanisms and economic incentives, which motivate businesses to adopt new technologies and processes resulting in environmental performance that goes beyond bare minimum requirements. Such an approach was used when 1990 legislation required power plants to reduce and cap their total SO_2 emissions, but allowed the practice of emissions trading to meet the requirement. The result: SO_2 emissions 22% below required levels, lower costs of compliance, and 100% program compliance achieved during Phase I.[3]

2. EPA SHOULD BE AUTHORIZED TO DEVELOP A PERFORMANCE-BASED REGULATORY STRUCTURE

Similarly, more flexibility should be encouraged through performance-based, rather than command and control, standards. For example, the bubble concept allows a company flexibility to choose which emissions sources to reduce to meet an overall limit for emissions from the

[3] http://www.epa.gov/airmarkets/arp/overview/html

"bubble." This approach regulates the ends, not the means, and improves overall performance.

3. THERE MUST BE AN INCREASED ROLE FOR STATE AND LOCAL GOVERNMENTS

A third innovation, and one which is absolutely necessary, is to allow an increased role for local and state governments. During the past 30 years, local and state governments have become as competent as the federal government in environmental protection. States spent $13.6 billion on environmental protection in fiscal year 2000, nearly double the entire federal EPA budget, and are responsible for more than 80% of all environmental enforcement actions.[4] Although most environmental problems are unique to regions, states, and local communities, by necessity EPA attempts to regulate on a "one size fits all" basis. This is inefficient at best, and can easily result in a failure to meet EPA's objectives.

Devolving responsibilities to the state and local level will allow a more streamlined process, and will allow for more innovations such as New Jersey's facility-wide permitting processes, which let companies make changes in their processes and equipment without prior approval. States should also have more freedom to, like Massachusetts, institute industry-wide compliance standards that base progress on actual environmental outcomes. Both programs have improved the environment at a lower cost.

[4] Report to Congress: "State Environmental Agency Contributions to Enforcement and Compliance" (p. 13).

No person, and no entity, is perfect. State and local governments do make mistakes. But their mistakes are a fraction of a percent in light of the almost countless number of environmental transactions that occur daily. Moreover, such mistakes even more rarely merit federal intrusion.

Equally of concern is EPA's frequent overfiling, where the federal government duplicates the enforcement actions of the states. Not only is this practice a tremendous waste of limited resources, but it runs counter to the basic principle of federalism. For these reasons, the Chamber strongly believes that, once EPA authorizes a state to assume responsibility for a federal program, EPA should be prohibited from second-guessing the state decisions. If EPA is unhappy with the implementation of a state program, it has the right to terminate authorization. EPA's consistent second-guessing is demeaning to state sovereignty, and a waste of public resources.

Recognizing the fact that states conduct more than 80% of implementation and enforcement activities in the environmental arena, EPA should be fundamentally transformed into an agency that conducts sound studies and sets solid standards and, in limited circumstances, such as where trans-boundary issues are involved, implements and enforces policies. Otherwise, EPA should authorize state programs and then get out of the way. EPA should not continue to second-guess state decisions, which merely causes unnecessary conflict between the states and the federal government. In other words, once authorized, a state should have

sole authority for implementation and enforcement of the federal program. Of course, EPA must maintain the ability to revoke state authority if the state is not properly implementing a program, but with businesses annually undertaking tens of billions of environmental transactions, EPA should not play the role of (or see its role as) a second-guesser. This federalism approach will best allow EPA to spend its resources to ensure the maximum public health and environmental benefits are achieved by EPA using sound science to develop the best standards for the states to implement.

4. EPA MUST PRIORITIZE THE RISKS IT WILL ADDRESS

A significant problem with EPA is a lack of cross-media risk prioritization. EPA attempts to address too many issues at too great an expense. The cost-effectiveness of regulations should also always be measured. Without proper risk assessment, funds can be – and frequently are – misallocated.

This leads naturally to a discussion of better resource allocation. A comparison of median cost per life-year saved among various agencies is revealing and problematic. For example, the Federal Aviation Administration's cost per life-year saved is $26,546, the Consumer Product Safety Commission's cost is $76,483, the National Highway Transportation Safety Administration's cost is $90,025, and the Occupational Safety and Health Administration's cost is $101,567. In

stark contrast, EPA's cost per life-year saved is $8,771,667.[5] Certainly, cost per life-year saved cannot be a measure of the value of a human life, but the measurement does focus us on how the agency allocates the expenditure of the limited resources of a society. The misuse of resource allocation was pointed out in an EPA report that found that the most serious risks in society "were not necessarily the problems that Congress and EPA had targeted for the most aggressive action." The authors found that "EPA's regulatory activities are not necessarily focused on the environmental problems that pose the greatest risks to public health and welfare. Rather, they are focused on the environmental problems defined in EPA's enabling legislation, which in turn reflects public concern about the effects of different contaminants in different environmental media. Yet neither the depth of public concern nor the stringency of environmental law is necessarily an accurate measure of the relative seriousness of the environmental risks facing us today." To remedy this divide, the authors suggested, "The Agency should assess and compare the universe of environmental risks and then take the initiative to address the most serious risks, whether or not Agency action is required specifically by law."[6]

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[5] A. Antonelli, "Regulation: Demanding Accountability and Common Sense" (p. 13), The Heritage Foundation: Washington, D.C., 1998

[6] U.S. EPA, "Reducing Risk: Setting Priorities and Strategies for Environmental Protection" (Sep. 1990)

5. SCIENCE AND DATA QUALITY MUST BE INCORPORATED INTO EVERY ASPECT OF EPA

Science and data quality must be a major component of every significant activity conducted by EPA. Only with mandated use of both sound science and good quality data can issues be adequately determined, prioritized, and addressed. Viewing it another way, this is an issue of integrity, which the agency must have if it is to address the most important environmental problems.

EPA has been plagued by the data quality issue. It's own Inspector General, on March 21, 2002, before this subcommittee testified that EPA lacks detailed information on what is working and at what cost. Therefore, the Inspector General concluded that, "Agency management cannot make informed decisions on how to best deploy resources to achieve results." Continuing, it was found that "The Agency has output data on activities, but few environmental performance goals and measures, and little data that support the Agency's ability to measure environmental outcomes and impacts."[7] In light of these findings, EPA must allocate its resources to developing a foundation that will allow it to ensure that its programs and regulations actually protect human health and the environment as it claims. EPA's regulations annually impose more than $250 billion in costs on business and state and local governments. To find out from the Inspector General that EPA may not have the data to justify

[7] Testimony of N. Tinsely, EPA Inspector General (March 21, 2002) before the House Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs, Committee on Government Relations

the huge burdens it imposes is a travesty. It simply demonstrates how little concern EPA has for the regulated community and the role of science and good quality data in the development of regulations.

6. THE MANDATED USE OF SCIENTIFIC INTEGRITY THROUGHOUT THE RULEMAKING PROCESS

Few topics resonate among members of industry like EPA's failure to consistently incorporate the use of sound science in its rulemaking. This problem, though hardly limited to EPA, is of considerable concern because of the nature and number of EPA-issued regulations. The subject matter of EPA rulemaking is inherently scientific.

A. EXAMPLES OF THE COST OF POOR SCIENCE

Poor science inevitably leads to poor regulation. When EPA regulates without first conducting sound scientific research, both government and industry pay a heavy toll. For instance, EPA's failure to adequately familiarize itself with the oxygenate MTBE led oil companies to spend $7 billion converting refineries. Only after these funds had been invested did EPA recommend reducing the use of MTBE because it could leak from gas stations and underground storage tanks into groundwater. Billions may yet be spent cleaning up MTBE in the environment. Similarly, EPA rules and guidance documents caused schools to spend between $7.5 and $16 billion removing asbestos during the 1980's, only to be informed by EPA in 1990 that health risks were in fact quite low, and that removing asbestos actually increased exposure levels.

The MTBE and asbestos examples demonstrate that a failure to apply principles of sound science can lead EPA to interfere with priorities even of agencies and entities outside of the environmental realm. The money spent on asbestos removal in the schools could have instead purchased millions of textbooks, or could have been used to hire tens of thousands of teachers. The funds invested by industry in MTBE refinery conversion, and the funds that will necessarily be spent in re-converting those refineries, could have instead been used to create permanent jobs. Businesses and schools, however, were kept from pursuing their priorities because EPA simply failed to use sound science.

B. HOW TO BETTER APPLY SOUND SCIENCE

In this regard, the MTBE and asbestos examples starkly demonstrate the importance of sound science being used throughout the rulemaking process. Sound science, which is objective, unbiased, and peer reviewed, should be used at every stage from policy planning to enforcement. And to ensure the use of sound science, sound science must be legislatively mandated. The Chamber applauds Congressman Horn for including a scientific integrity provision in HR 2694, which the Chamber is glad to see includes meaningful peer review and the creation of quality assurance guidelines and policies. However, we believe that a final elevation bill should include even more stringent requirements on the use of science.

In determining how to implement sound science requirements, it is useful to look at the scientific integrity provisions of HR 2694, which we believe could be improved in at least two fundamental ways. First, the current provision would leave the quality of science largely to the discretion of the DEP Secretary, requiring only that the Secretary "provide for the development and acquisition of the best credible and unbiased scientific information." We believe Congress should instead expressly define the term "scientific integrity" to ensure that science used is indeed itself objective, unbiased, and, where appropriate, peer reviewed.

A second concern about the science provisions of HR 2694 is that they would not apply principles of sound science to the promulgation of a rule, to guidance documents, to the permitting process, or to enforcement. Sound science should permeate EPA. Whenever EPA uses science, it should, as a matter of policy and law, be sound. There is no satisfactory rationale for excluding regulations and enforcement from the requirement.

It is important to note that sound science has a far-reaching effect. One cannot conduct a risk assessment if a bad model is used. Similarly, it is impossible to conduct a credible cost-benefit analysis if the science underlying the analysis is faulty or incomplete. In this latter regard, the ramifications of uncertainties must be made transparent. It is fundamentally impossible to establish proper priorities and spend money wisely if the Agency lacks a thorough scientific understanding of

environmental problems and the prospective solutions. It is obvious that without sound science, there can be no sound regulation.

C. WHAT IS SOUND SCIENCE

As we are all aware, the term "sound science" has become somewhat of a lightning rod. But contrary to the position of some advocates, "sound science" is not a dirty word. Rather, it is merely a manner in which to refer to science that meets certain basic standards. Because of the highly contentious nature of the debate surrounding the use of sound science, the Chamber is making a proposal that we believe would substantially advance the discussion. We believe that Congress should require EPA (or DEP), in consultation with the National Science Foundation and other scientific bodies, to establish (within one year of enactment of any Act elevating EPA to cabinet status) a harmonized view of what constitutes sound science. This guiding framework, which would consist of agreed upon principles, would then underlie all of science conducted by EPA or its successor, as well as the Science Advisory Board.

Although the scientific bodies would be free to define "sound science" in whatever manner they believe appropriate, we suggest that certain principles are inherently part of sound science. In this respect, we would anticipate that sound science at a minimum would be:

1. Documented: All research methods (plans, models, data, assumptions, presumptions, etc.) used must be detailed;

2. Rational: Plans, models, data, assumptions, presumptions, findings, etc. must make sense and must be believable given what is known;
3. Comprehensive: Conclusions must consider all relevant, valid information;
4. Factual: Findings must be driven by facts drawn from valid scientific studies;
5. Reliable: Plans, models, data, assumptions, presumptions, etc. must be demonstrably reliable in relation to their intended use;
6. Peer reviewed: The nature and requirements of peer review must be established and all work must be evaluated by competent experts. Flaws uncovered must be remedied;
7. Appropriate: The intended use of data, information, models, and conclusions must be legitimate;
8. Qualified: Limitations, errors, uncertainties, and the consequences of these factors must be addressed in a valid and comprehensive manner;
9. Reproducible: Findings must be demonstrably reproducible;
10. Validated: All data, models, methods, and findings must be validated;
11. Objective: Work must not be influenced by institutional or personal motivations, beliefs, or feelings;
12. Archivable: A complete record of work to which others may refer must be capable of being (and where necessary is) preserved;
13. Understandable: To the extent that work cannot be clearly understood, its value is diminished;

14. Communicable: To the extent that work cannot be clearly communicated, its value is diminished;
15. Adequate: The scope of work performed must be relevant to the problem being addressed; and
16. Responsive: Work must be capable of incorporating new information that is shown to be valid and reliable as it is uncovered.

While the Chamber supports elevation legislation that requires the use of sound science throughout EPA, it is worth noting that an existing Congressional mandate, the Data Quality Act, also addresses this concern. The Data Quality Act, which was passed as Section 515 of the Fiscal Year 2001 Treasury and Postal Appropriations Act, requires agencies to ensure and maximize the quality, objectivity, utility and integrity of all disseminated information.

Under OMB Guidelines issued to implement the Act, scientific data must be generated, and analytical results developed, using "sound statistical and research methods." Furthermore, influential scientific data must be reproducible under OMB's standards. The Chamber has been an active participant in the development of these standards – and further standards currently being developed by all agencies, including EPA – and looks forward to the improvements in information quality that are certain to follow. However, the data quality law is merely one step. A legislative mandate requiring EPA to use sound science – however that term is

defined by the collective efforts of the government's scientists – is a critical need in its own right.

D. STRUCTURE OF EPA'S SCIENCE ADVISORY BOARD

HR 2694 also creates a Science Advisory Board ("SAB"), although the bill is largely silent with regard to the Board's structure and function. The proposed legislation simply establishes the Board and provides that it shall "review and provide comments on the scientific contents of any rule promulgated by the Secretary." The Chamber believes that this provision is too restrictive in several respects: 1) the language does not currently apply to guidance documents, which have too frequently been used by EPA to regulate industry, 2) it does not establish the SAB's independence from DEP, and 3) it requires merely a review of scientific "contents," an unclear term, where a better rule would mandate that the SAB review the scientific "soundness" of a DEP proposal.

SAB's lack of independence is a substantial concern. Any scientific review by the Board should be performed solely and exclusively on the basis of science, without regard to politics, or even policy. The best way to ensure this result is to ensure that the SAB is as independent as possible. Without such independence, EPA has the opportunity, and perhaps motive, to obtain a "scientific" outcome supporting its regulatory policies. Whether the SAB is external to EPA or is a separate department within the Agency, legislation must make clear that the Board is to be independent of all EPA/DEP policy and media offices. To further ensure

independence, the legislation should require that the Board be balanced, including a fair representation for industry.

Interestingly, the current Science Advisory Board is often criticized for a perceived large number of industry affiliated scientists. Yet, according to EPA's data, a majority of the SAB for each of the past nine years has been made up of members of the academic community. In fact, industry affiliated members have made up less than ten percent of the SAB since at least FY1993.[8] If Congress intends to restructure the SAB, it must, in the Chamber's view, also explicitly recognize the need for balance among the SAB membership.

When it comes to environmental-decision making, just as there is a Rule of Law in this country, there must be a Rule of Science. And that rule must be that all EPA regulations and guidance be based on sound science. It is imperative to take a real step forward and break out of what has been the decades-long organizational impasse to efficient, sensible management.

7. THE MANDATED USE OF OBJECTIVE RISK ASSESSMENTS AND COST/BENEFIT ANALYSIS

The use of sound science is important in many respects. Perhaps in no manner is this truer than with regard to risk assessment and cost/benefit analyses. EPA cannot accurately assess risks or weigh costs and benefits unless the scientific data used is as precise and accurate as possible. The Chamber is pleased that HR 2694 contains not only a strong

[8] http://www.epa/sab/annreport01.pdf

risk assessment and analysis provision, but includes sound science principles within that provision.

Specifically, HR 2694 would mandate that risk assessments be supported by "the best available scientific data" and be evaluated by the Science Advisory Board. Importantly, the bill requires these scientifically sound assessments to be completed before a proposed or final rule is published in the Federal Register. This obligation is vital to ensuring that sound science is utilized at all regulatory stages, thereby substantially decreasing the likelihood of scientific rationalization, i.e., science being found and used merely to justify a pre-determined result.

The Chamber also supports the bill's requirement that the Secretary certify that all published regulations not only "substantially advance" public health and safety in relation to the identified risk, but produce benefits that "justify" the implementation and compliance costs to the Government and to the public.

Unfortunately, at least three potential loopholes exist in the bill that, in the Chamber's view, should not be included in a final elevation bill.

First, the bill does not apply to guidance documents. As long as guidance documents continue to be a commonly used method of regulation, and many times used in place of formal rulemakings, risk analysis requirements must be applied to them.

Second, HR 2694 gives the Secretary of DEP an express escape route by which risk assessment mandates could be avoided. While the bill generally requires the Secretary to certify compliance with the section, it allows a rule to become final if the Secretary determines that the required certification cannot be made. There are few, if any, circumstances where a rule can be justified if it cannot be supported by a scientific risk analysis.

Finally, HR 2694 expressly exempts the risk assessment from judicial review. Many agencies, including EPA, are seeking to exempt risk assessments from the congressionally imposed data quality requirements. The Chamber well understands concerns about excessive litigation. But, without judicial review, the Department is virtually invited to ignore the risk assessment requirements.

8. GUARANTEED ACCESS TO DATA USED IN RISK ASSESSMENTS AND COST/BENEFIT ANALYSES

The Chamber has for several years been involved in the battle to guarantee access to data and science used to support agency regulations. In 1998, the "Shelby Amendment" was passed, compelling federal agencies to produce, under the Freedom of Information Act, federally funded research data used in the rulemaking process. The Office of Management and Budget has since implemented regulations governing this process. Additionally, OMB's Guidelines implementing the Data Quality Act require transparency of research designs and methods used in connection with influential scientific, statistical or financial data. Thus, if

created, the Department of Environmental Protection will be under preexisting obligations to provide public access to much of its support data.

The Chamber is nevertheless pleased that HR 2694 contains provisions encouraging public access to, and use of, environmental information used by DEP. In particular, the Chamber applauds the bill's charge to the Secretary and the Chief Information Officer to develop policies encouraging even greater public access. Transparency is a fundamental key to securing regulatory efficiency and fairness, and the Chamber therefore strongly supports the applicable provisions of HR 2694.

9. THE CREATION OF A TRULY INDEPENDENT BUREAU OF ENVIRONMENTAL STATISTICS

Good science goes hand in hand with good data. EPA, for far too long, has had too little quality data, and too much bad science. Therefore, the Chamber supports those provisions of HR 2694 which create a Bureau of Environmental Statistics.

Of particular significance is the fact that the Director of the Bureau would have substantial independence in carrying out his or her duties. It is vital that the collection, compilation, evaluation, analysis and dissemination of data be done without interference or undue influence from the Department's policy or media offices. Poor data quality and the absence of data have negatively affected EPA rulemaking since EPA's

inception. In particular, if EPA does not have sufficient and reliable data to determine whether it is meeting its goals, it is hard for it to have credibility when promulgating costly regulations. The collection of objective data by a Bureau charged with collecting such data is a substantial step in the right direction.

The Chamber also favors those provisions that require both data quality, i.e., requiring that data is "accurate, reliable, relevant, and in a form that permits systematic analysis," and ready public access to collected information. The Chamber further supports the creation of an inter-governmental peer review team to annually review the statistical procedures and methodology used by the Bureau. With these provisions in place, DEP's regulatory actions should be much improved.

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Finally, the Chamber is very grateful to have this opportunity to present its recommendations for your consideration as to EPA's organizational structure should it be elevated to a cabinet-level department. During its debate over the status of EPA, Congress has a tremendous opportunity to help EPA become an innovative organization that can provide greater protection of human health and the environment while doing so in a cost-effective, scientifically sound manner. The Chamber appreciates being able to be a part of this debate.

Mr. OSE. Thank you, Mr. Kovacs.

Mr. Warren.

Mr. WARREN. The Natural Resources Defense Council supports elevation of EPA to a Cabinet level agency. We think it will improve attention and priority of the environment within the Federal Government, but we do not support it so strongly that we would accept substantive changes to their ability to protect the environment as part of that legislation. Therefore, we ask you to pass a clean bill, free of such extraneous provisions.

We have endorsed H.R. 2438, Congressman Boehlert's bill, but accordingly, we have opposed H.R. 2694, Congressman Horn's bill. We believe that it would be a mistake to hold this elevation of EPA hostage to addressing other issues, other than the elevation. In fact, just those kinds of controversies killed this legislation in 1994, which was the last serious time it was moving through the House of Representatives. We would not like to see that happen again.

I know the subcommittee has considered many so-called second generation proposals as part of its consideration of EPA's elevation bill and I have to assure you that they are quite controversial. In some cases, they would amount to a legislative wipeout of the underlying statute. The fact of the matter is the underlying statutes for the most part work quite well. They have brought us a generation of environmental improvement. As Congress takes them up one by one, we can suggest ways they can be improved further but to add them to this bill would be a very grave mistake.

The two most important things that should be done to improve environmental protection in this country is to use the current statutes better, more enforcement of the laws on the books and more funding for the provisions that exist in those statutes would make great progress in this area.

The budget this year for EPA would actually cut enforcement by 200 enforcement personnel or about 13 percent, and cut water quality investments by over $500 million. Many proposals in Congressman Horn's bill we consider controversial but two I would point out specifically, Section 120, which would have burdensome cost benefit and risk assessment requirements which would almost certainly lead to litigation and could be construed by some as a super mandate which would be laid on top of all existing environmental decisional criteria and some of the information provisions which would consist of extensive micromanagement of how the Agency does that work including a Bureau of Environmental Statistics which could conflict with and be duplicative of other parts of the Agency.

Finally, if it does become a legislative free for all, as the EPA Cabinet bill moves through the process, we would come forward with proposals we think would substantially improve environmental protection. The details are in our testimony.

They include improving sound science at the Agency by eliminating dependence, overdependence, on industry data and making sure peer review is free of conflicts of interest; second, reform, how regulatory impact analyses and cost-benefit work is done at the Agency so that costs are not overstated and benefits undervalued; third, improve the way in which children's health is protected in this country across the board in all environmental statutes; fourth, im-

prove transparency in terms of how the agency makes its decisions, especially since OMB seems increasingly involved in early decision-making at the Agency; fifth, ban reliance on human testing data that comes from the industry, and finally, make sure industry discloses data it has in its possession that shows adverse environmental impacts.

We would only recommend these if the legislation is thrown wide open and we strongly urge the subcommittee to move EPA Cabinet legislation free of such extraneous provisions that might undermine its ability to protect the environment.

[The prepared statement of Mr. Warren follows:]

Testimony of Wesley P. Warren, Senior Fellow
Natural Resources Defense Council

Before the Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs
Committee on Government Reform
U.S. House of Representatives

July 16, 2002

INTRODUCTION

Good morning, Mr. Chairman and members of the subcommittee. Thank you for inviting me to appear before you. My name is Wesley Warren. I am the Senior Fellow for Environmental Economics at the Natural Resources Defense Council. Prior to joining NRDC, I served as Associate Director for Natural Resources, Energy and Science at the Office of Management and Budget and the Chief of Staff at the Council on Environmental Quality in the White House.

NRDC is a non-profit organization of scientists, lawyers, and environmental specialists dedicated to protecting public health and the environment. NRDC was founded in 1970 and has more than half a million members nationwide. I am pleased to testify today regarding proposals to create a Department of Environmental Protection and to improve environmental quality.

CABINET ELEVATION: A "CLEAN" BILL IS CRUCIAL

I have a single plea for you today: pass as "clean" an Environmental Protection Agency (EPA) cabinet bill as possible. Last July, in a Senate hearing on cabinet elevation, the last three EPA Administrators cautioned against weighing cabinet legislation down with controversial amendments.[1] They did so with good reason. Elevating EPA to a cabinet position enjoys significant bipartisan support. After all, the United States is among a very small minority of nations that has not yet given its highest environmental official cabinet rank.[2] It is therefore tempting to use that political momentum to advance other proposals to improve the way in which EPA does business. The undeniable truth, however, is that people do not agree about what needs fixing at EPA or how to fix the things that do not work well.

As you are aware, previous attempts to create a Department of Environmental Protection have failed. They did so in large part because the bills contained provisions that were controversial. Avoiding similar legislative language may enable you to succeed where others have not. Accordingly, NRDC supports H.R. 2438, a narrowly tailored piece of

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[1] *See* John Heilprin, *EPA Meets Cabinet Agency Hurdle*, Associated Press (July 24, 2001).
[2] Testimony of Senator Barbara Boxer, Before the Senate Committee on Governmental Affairs (July 24, 2001) (hereinafter "Boxer Testimony") ("The United States is joined by nations such as Libya, Yemen,

legislation, which does no more and no less than transfer the functions of EPA to a cabinet-level Department of Environmental Protection. As Congressman Boehlert observed when he introduced the bill, it is "baggage-free," and stands the best chance of passing in that form.[3]

I'd like to briefly discuss a few issues that could be added to a cabinet bill, but in our view should not be. First, there has been some significant discussion, especially in the Senate,[4] about merging the cabinet bill with legislation that would create a Deputy Administrator for Science at EPA. A bill to create a science deputy, H.R. 64, has been passed by the House. NRDC opposed this legislation, and we strongly urge you to avoid linking the two issues as part of final EPA cabinet bill. H.R. 64 empowers the new Deputy "to ensure that Agency decisions are informed by the results of appropriate and relevant research, development, and demonstrations."[5] This language is vague and could be wielded in a sweeping fashion by someone with a political will to do so. Unfortunately, the bill makes that scenario more likely by vesting these authorities in a politically-appointed Deputy. In view of these problems, we think that it is unlikely that the new position will

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Qatar, and Uzbekistan in failing to grant permanent cabinet status to its environmental agency."), available online at http://www.senate.gov/%7Egov_affairs/072401_boxer.htm (visited March 18, 2002).

[3] 147 Cong. Rec. E689 (daily ed. May 1, 2001)

[4] *See* Edward Epstein, *Adding EPA to Cabinet Faces Conservatives' Science Test*, San Francisco Chronicle (July 25, 2001) ("This bill [elevating EPA] is a good vehicle to raise the question of the EPA's use or misuse of science, said Sen. Fred Thompson, R-Tenn.").

[5] H.R. 64, 107th Cong., 1st. Sess.

substantially advance the cause of science and instead think it is possible that this person will act as another political player in an already politicized process.

Beyond its structural flaws, H.R. 64 simply does not address the major science failings at EPA. In NRDC's experience, the greatest scientific shortcoming at the Agency is its influence by polluting industry. EPA commonly relies heavily, and sometimes exclusively, on studies created or funded by industry, often without access to the raw data underlying these studies. Armed only with the information industry gives it, EPA frequently underestimates the risk posed by a given environmental problem. To make matters worse, EPA's already biased product may then be subjected to review by an external advisory committee dominated by industry representatives and researchers. This subversion of peer review frequently results in a less environmentally protective position. (Please see attached article by Linda Greer and Rena Steinzor on this subject.)

Second, NRDC cannot support cabinet elevation as it is conceived in H.R. 2694. Although we have multiple objections to the bill, one element in particular bears discussion. This bill requires, before EPA proposes or promulgates a rule, an elaborate estimate of the risks addressed by the Agency action, the other risks to which people are exposed, and the

projected costs and benefits of the action.[6] It further mandates that the Agency make a detailed certification for each action, which includes a showing that the benefits of the regulation justify the costs, or produce a burdensome report.[7]

H.R. 2694's onerous procedures are unnecessary. An existing Executive Order requires essentially the same substantive review of significant agency actions. It specifies that, " [i]n deciding whether and how to regulate, agencies should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating."[8] But beyond being duplicative, the bill ignores a crucial fact: cost-benefit calculus is a fundamentally flawed tool for environmental decision-making. Although cost-benefit analysis can be useful in helping to organize information if done properly, it is also a biased tool with a built-in tendency to overstate costs and undervalue benefits.[9] Fortunately, a number of environmental statutes rely on more objective approaches such as health-based or technology standards, in some cases explicitly disallowing considerations of relative risk or cost.[10] Therefore, requiring additional

[6] H.R. 2694, 107th Cong., 1st Sess., § 120 (2001).
[7] *Id.*
[8] Executive Order 12866, "Regulatory Planning and Review" (Sept. 30, 1993).
[9] *See generally* Lisa Heinzerling & Frank Ackerman, *Pricing the Priceless: Cost-Benefit Analysis of Environmental Protection* (Georgetown Environmental Law and Policy Institute, 2002).
[10] Layering cost-benefit analyses over these preexisting statutory requirements ignores the fact that Congress – in enacting our Nation's environmental laws – already decided that the benefits from a healthy

certification or reporting of risks and costs before EPA can act to protect the public simply delays vital public safeguards and wastes taxpayer money on pointless paperwork. Furthermore, ambiguity in the drafting of the language could be interpreted as creating a new legal standard for all environmental rulemakings that the savings clause in the bill does not remedy. At worst, this new legal standard would constitute a "supermandate," overriding existing decision-making criteria in all EPA environmental statutes. At best, it would be a source of potentially endless and expensive litigation.

Obviously, attempting to legislate these kinds of analyses will be highly controversial. For that reason, former EPA Administrator Reilly – a supporter of cost-benefit analysis – stated at a Senate hearing last year that the concept "did not belong in cabinet legislation." He elaborated:

> At some later point it may make sense for the new Department in consultation with Congress to consider its organization and structure, whether its functions are grouped in the most sensible or effective fashion, and whether a single scientific template should be used to characterize threats and goals. But I would leave that until later. We needn't encumber this legislation with proposals that are sure to unleash protracted debate and maybe draw fire from friend and foe alike.[11]

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environment outweigh the costs of abating pollution. At least in the case of the Clean Air Act, Congress's judgment was unquestionably correct; in 1999, EPA issued a report to Congress showing that the benefits of the 1990 Clean Air Act Amendments exceeded costs by a four-to-one margin. U.S. EPA, "The Benefits and Costs of the Clean Air Act, 1990 to 2010 (Nov. 1999).

[11] Testimony of William K. Reilly, Former Administrator of EPA, Before the Senate Committee on Governmental Affairs (July 24, 2001), available online at http://www.senate.gov/%7Egov_affairs/072401_reilly.htm (visited March 18, 2002).

Third, at least two witnesses at your prior hearing on cabinet legislation suggested that elevation might be married with so-called "second generation" legislation;[12] but that legislation is a not a good idea on its own, much less as part of a cabinet bill. The "Second Generation of Environmental Improvement Act of 1999," introduced in the last Congress,[13] empowered EPA to enter into "innovative strategy agreements" with a regulated entity. While the legislation included some constructive efforts to improve reporting and monitoring for many environmental indicators, it also weakened protections by allowing EPA to waive environmental rules and even permit more pollution if the facility met one of several easily achieved performance goals.[14] Moreover, the legislation included a recipe for EPA paralysis by requiring the agency to review any application for regulatory relief within 90 days of its submission and to provide a written explanation for rejecting any one, no matter how antithetical to EPA's mission.[15]

Finally, just to be clear about how important we think a clean bill is, we have not called for adding provisions to the cabinet bill that we might

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[12] Testimony of J. Clarence Davies, Senior Fellow, Resources for the Future, Before the House Committee on Government Reform, Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs (Sept. 21, 2001); Testimony of Janice Mazurek, Director, Center for Innovation and the Environment, Progressive Policy Institute, Before the House Committee on Government Reform, Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs (Sept. 21, 2001).

[13] H.R. 3448, 106th Cong., 1st Sess. (1999).

[14] *Id.* §§ 203(a)(1) (requiring that agreements "reasonably be expected to produce better environmental results"); (c) (defining "better environmental results" to include, among other things, improved monitoring).

[15] *Id.* § 202(b).

otherwise support on their own. For instance, there were suggestions during previous attempts to elevate EPA that strong whistleblower protections should be incorporated into such legislation.[16] Likewise, H.R. 2694 mandates the continuation of the Office of Environmental Justice.[17] Although these both may be good ideas, we think they are ill-advised in the context of a cabinet bill for the simple reason that there may be controversy about how to accomplish either laudable goal. Indeed, if legislative provisions were added to an EPA cabinet bill that could weaken environmental protection in this country, then our support for the concept of a Department of the Environment would turn into strong opposition to the bill. The result could well be a legislative free-for-all as all sides (including the environmental community) pursue particular proposals for the agency, in the end dooming progress on the issue.

OTHER IMPORTANT REFORMS HAVE BEEN IGNORED

I hope that these examples illustrate the difficulty of agreeing on specific legislative reforms aimed at restructuring EPA and highlight the

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[16] William Sanjour & Stephen M. Kohn, *Environmental Whitstleblowers: An Endangered Species* (Environmental Research Foundation, Feb. 1994) (describing efforts of the National Whistleblower Center to enhance whistleblower protections as part of cabinet legislation), available online at http://pwp.lincs.net/sanjour/Endangered.htm.

[17] *See* H.R. 2694, 107th Cong., 1st Sess., § 112 (2001); *see also* Boxer Testimony, *supra* note 2 ("I . . . would like to see the EPA's Office of Children's Health and the Office of Environmental Justice written

necessity of passing a clean bill. However, at the first hearing on cabinet elevation, it seemed this Subcommittee was seriously considering linking cabinet status with an agency overhaul. In case the Subcommittee elects to proceed along that course, we feel compelled to point out that reforming EPA would be incomplete without several important improvements.

First, the legislation needs to include provisions to counteract the current influence over EPA science by polluting industry. To do so, EPA and the public should have adequate access to the data upon which industry-performed and industry-sponsored studies are based. In addition, Congress must enact meaningful reforms to improve the integrity of EPA's peer review process.[18] This should include a general ban on EPA peer review panelists who themselves (or whose funders or financial backers) have a financial stake in the outcome of the decision they are reviewing.

Second, cost-benefit analysis and risk assessments (including comparative risk analysis) should not be allowed to supercede the requirements of the underlying statute for environmental decision-making. To the extent that cost-benefit analysis is used by the agency to inform decision-making, the agency should more systematically reduce the biased

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into law. But when I wrote this [cabinet] bill in January, I resisted the attempt to use this bill as a vehicle.").

tendency of cost-benefit analysis to overstate costs and undervalue benefits. For instance, EPA should be prohibited from treating the value of human lives differently depending upon their income, age, race, and gender or the time at which they die following exposure to a hazard. The value of all human lives -- our children and grandparents, the elderly, the rich and the poor -- are equally precious.[19] EPA should also develop an analytical protocol by which nonquantitative benefits can be taken into account more fully and not simply ignored by the cost-benefit test.

Third, Congress should establish requirements for adequately addressing children's special environmental exposures and vulnerabilities. In a report that provided the impetus for Congress to mandate important changes to the way EPA regulates pesticide residues in food, the National Research Council stated:

> A fundamental maxim of pediatric medicine is that children are not "little adults." Profound differences exist between children and adults. Infants and children are growing and developing. Their metabolic rates are more rapid than those of adults. There are differences in their ability to activate, detoxify, and excrete xenobiotic compounds.[20]

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[18] *See generally* General Accounting Office, EPA's Science Advisory Board Panels: Improved Policies and Procedures Needed to Ensure Independence and Balance (June 12, 2001), available online at http://www.gao.gov/new.items/d01536.pdf.

[19] A common cost-benefit accounting tool is known as "discounting," in which any benefits of environmental protection that are realized in the future are discounted by an annual rate. This trick, however, systematically undervalues measures that are long-term in nature. "At a discount rate of 5 percent, for example, the death of a billion people 500 years from now becomes less serious than the death of one person today." Heinzerling & Ackerman, *supra* note 9, at 21.

[20] Pesticides In the Diets of Infants and Children 3 (National Research Council, 1993).

Legislation directing EPA to consider these special sensitivities and guard against harms to children in all environmental media should be a priority. Senator Boxer introduced a bill in the last Congress to help accomplish this important goal, titled the "Children's Environmental Protection Act."[21]

Fourth, the legislation should ensure transparency in environmental decision-making by making public the agency's policy negotiations with other parts of the administration. Existing requirements provide a starting point for such disclosures, but are not sufficient.[22]

Fifth, Congress should end EPA's role in the practice of unethically testing toxic chemicals on humans. Many such tests are sponsored by chemical manufacturers to help weaken health standards, lack benefits for the subjects of the study, and are of insufficient statistical power to be of any scientific value. Thus, they violate a number of standards regulating the propriety of human testing, not limited to the "Nuremberg Code," adopted in the wake of the Nuremberg trials of Nazi doctors after World War II.[23]

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[21] S. 1112, 106th Cong., 1st Sess. (1999).

[22] For instance, section 6(a)(3)(E) of Executive Order 12866 and section 307(d)(4)(B) of the Clean Air Act, 42 U.S.C. §7607(d)(4)(B), each demand that drafts of regulatory actions and the Office of Management and Budget's comments thereon be made public. Such a requirement omits interactions that occur prior to the generation of a draft, and is too narrowly focused on OMB.

[23] *See Trials of War Criminals before the Nuremberg Military Tribunals under Control Council Law No. 10* (Oct. 1946–April 1949) (requiring, among other things, that experiments on humans "be such as to yield fruitful results for the good of society, unprocurable by other methods or means of study"), available online at http://www.ushmm.org/research/doctors/Nuremberg_Code.htm; *see also Grimes v. Kennedy Krieger Inst., Inc.*, 366 Md. 29, 99 (2001) ("The breach of obligations imposed on researchers by the Nuremberg Code, might well support actions sounding in negligence in cases such as those at issue here.").

Sixth, the statute should require manufacturers of consumer and commercial goods to report any potential adverse health or environmental effects from their products to EPA, much in the same way that section 6(a)(2) of FIFRA regulates pesticide manufacturers. The federal government lacks the ability to independently test all of the tens of thousands of industrial chemicals on the market to ensure their safety. Therefore, requiring manufacturers to disclose the adverse effects information about which they are aware at least provides EPA and the public with the opportunity to review available information about a given product's hazards.

CONCLUSION

NRDC supports elevation of EPA to a cabinet agency as a "clean bill" but only if it is free of extraneous provisions, including so-called second generation ideas that could actually result in weakened environmental protection. If the subcommittee considers such sweeping reforms in legislation, it should adopt instead proposals that actually strengthen environmental protection instead of weakening them.

Attachment

Bad Science

EPA's industry critics urge Congress and the new administrator to upgrade the science used in regulatory decisionmaking. They are right that science at the agency needs improvement — largely because these same self-interested critics overwhelmingly dominate research agendas and peer review

LINDA GREER and RENA STEINZOR

"The right to search for truth implies also a duty: one must not conceal any part of what one has recognized to be true." —ALBERT EINSTEIN

In Washington circles, "sound science" has become the remedy of choice for most of what ails the regulatory system. Whether it's arsenic in drinking water or particulates in the air, proponents of this seemingly simple solution argue that if the Environmental Protection Agency would only get more scientists on board and listen carefully to their sage advice, we could eliminate or at least reduce those excessive health and safety regulations that squander public funds, freeing scarce resources to address far more urgent problems.

EPA indeed practices a great deal of "bad science," but not in the sense asserted by its industry critics. What really upsets regulated industry is not the agency's supposed failure to consider "good science." Instead, the business community is driven to distraction by the fact that EPA must make most decisions on the basis of incomplete or uncertain science. However, as we explain below, Congress and EPA administrators have long recognized that the agency must act in the face of uncertainty to achieve its mission. While it is important to debate the issue of how to operate in the face of scientific uncertainty, it is unhealthy to allow that debate to obscure far more profound and troubling problems with scientific practice at EPA.

Although agency scientists do many tasks, one of their most important responsibilities is to select the salient developments among various research methodologies and findings. It is critical that they perform this function with objectivity. If their analyses are infected with bias, their scientific practice, by definition, is unsound. Unfortunately, bias and secrecy increasingly compromise not only the work of EPA's in-house scientists, but also the ultimate failsafe intended to guarantee the soundness of agency science: peer review by the ostensibly independent and objective Science Advisory Board.

EPA science is dominated by self-interested industry research and peer reviewed by self-interested industry experts. The impact of these influences on the agency's rules is magnified by a lack of transparency about what pieces of research were used as the basis for important policy conclusions and why others were rejected. These problems are compounded by the fact that "science" at the agency is increasingly thrust into the role of final arbiter of all decisionmaking. Science cannot serve this purpose because the evidence on most issues considered by EPA is not definitive.

Two case studies support our diagnosis and suggest prescriptions for a cure. The first involves the inexplicable decision by EPA's Office of Research and Development (the primary location of in-house research and analysis) to revisit the toxicity profile of vinyl chloride and downgrade its estimate of the chemical's carcinogenic effects. The second involves a misguided opinion issued by the Science Advisory Board challenging an EPA staff conclusion that dioxin is significantly more toxic than first supposed. In both cases, experts working for chemical manufacturers dominated the process, managing to manipulate the pace, content, and final outcome of those deliberations.

At this point, readers may well wonder why, if the state of EPA science is as bad as we say it is, we don't agree with the critics who call for "sound science" — or "more science" or "better science, " etc. Many reputable people, including several generations of EPA administrators, have recommended the expansion and elevation of science within

the agency, arguing that it is the crucial, missing element of wise decisionmaking. In fact, this spring Congress may consider a bill by Representative Vernon Ehlers (R-Michigan) that would establish a deputy administrator for science, to centralize administration and evaluation of the agency's research. (See "A View from the Hill," page 30.) But, as we indicate at the top of this article, the call for sound science collapses two separate issues into one.

The first of these issues is the appropriate role of science in EPA decisionmaking: should scientific evidence serve as the sole determinant — or gate-keeper — of agency decisions whether to regulate? The second issue concerns the fundamentals of what *we* would call "sound" science: when EPA evaluates available technical information, what core principles must govern its deliberations to ensure scientifically valid results? An explication of where we stand on the first issue will make it clearer why we are so concerned about the second.

EPA mismanages the scientific function to the point that it can no longer be relied upon to be either objective or fair

The unavoidable reality is that, despite widespread demands that EPA employ more science, the scientific information available to the agency rarely gives definitive answers to the difficult questions that confront it. Toxicology, epidemiology, conservation biology, ecology — these and related fields have yet to produce research results that map a straightforward path to uncontroversial policy solutions. In many, if not most, cases EPA faces the conundrum of implementing environmental statutes that command it to protect public health and the environment from risks that are unknowable, understudied, or poorly understood from a scientific perspective.

Congress appreciated this problem when it passed the statutes that define EPA's mission. Look at the language of the basic laws that protect the air we breathe and the water we drink. The Clean Air Act commands the agency to protect public health with an "adequate margin of safety." The Safe Drinking Water Act requires the EPA administrator to regulate contaminants that "may have an adverse effect on the health of persons" where "there is a substantial likelihood" that the contaminant will be "of public concern" and present "a meaningful opportunity for health risk reduction." The Clean Water Act's central purpose is to "restore and maintain the chemical, physical, and biological integrity of the nation's waters," a phrase that has no defined meaning in science and requires human judgment.

As recently as last year, in *American Trucking Associations v. Whitman*, a unanimous decision authored by no less a regulatory skeptic than Justice Antonin Scalia, the Supreme Court reaffirmed Congress's Clean Air Act mandate that EPA protect public health with an adequate margin of safety and without regard to costs. Recognizing that this and similar mandates mean acting in the face of scientific uncertainty, Governor Christine Todd Whitman told the National Academy of Sciences in a speech delivered in 2000: "The absence of certainty is not an excuse to do nothing. . . . Environmental policy should always be based on the soundest information available at the time." The Earth Summit's action plan, Agenda 21, used similar language, admonishing all signatories (including the United States): "Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation." Under all these formulations, the crucial challenge is to ensure that the available science is factually correct and appropriately interpreted, and is then weighed with other factors in making final decisions.

Consider EPA's efforts to reduce cancers caused by exposure to toxic chemicals. Despite decades of research, cancer remains a mysterious disease. Because we do not understand how it is triggered in the body, no scientist can tell how many people will suffer cancer following exposure to a given level of a suspected carcinogen. Given these and other gaps in our understanding of the toxi-

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A VIEW FROM THE HILL

Both Sides Are Right: EPA Needs To Improve Science Function

The public discourse over how Environmental Protection Agency decisionmakers use science when determining controversial regulatory action or inaction always seems to fall into two camps. One view comes from the regulated community, who claim a controversial decision ignores the underlying science, which, in their view, shows the decision does more harm than good. Another view comes from environmental and public advocacy communities, who claim that the agency ignores the underlying science while letting the regulated community unduly influence the process. While these constituencies may forever diverge on the merits and effectiveness of a controversial decision, one theme is common to both camps — that science does not adequately imbue the regulatory decisionmaking process at the EPA.

Rep. Vernon Ehlers

The next stop for this debate is usually the halls of Congress and the judiciary, where these decisions are thoroughly scrutinized. Time and again I have heard my colleagues say, "What I really want is the use of sound science at the EPA." Time and again I have seen court decisions overturn a regulation because it did not have a proper scientific foundation. That science is not infused throughout EPA's regulatory process becomes a credible argument to wage both just and unjust legislative and legal battles over EPA action or inaction. Members of Congress and the judiciary do not have confidence that the agency uses science appropriately in its decisions. Science should not be used as a cudgel to win a battle, or as an afterthought to the regulatory process; rather it should serve as a decision's foundation.

Congressional and judicial doubt about EPA's process is borne out of both right and wrong motivations. However, it is not unfounded. Several independent reviews commissioned by Congress and EPA have concluded that there are significant problems with how science is used within the agency's decisionmaking structure. It is worth noting that these studies, for the most part, did not quarrel over the quality of the scientific research at EPA, but how it is used as proposed regulations move through the agency's bureaucracy.

In 2000, the National Academy of Sciences concluded a series of four reports collectively titled *Strengthening Science at the U.S. Environmental Protection Agency*. The NAS reviewed how science was conducted at EPA and incorporated into the regulatory decisionmaking process. The report concluded that while the use of sound science is one of the agency's avowed major goals, both intramural and extramural science should be more fully integrated into its management and decisionmaking structure.

The NAS concluded with this important statement: "The importance of science in EPA decisionmaking process should be no less than that afforded to legal considerations. Just as the advice of the agency's general counsel is relied upon by the administrator to determine whether a proposed action is legal, an appropriately qualified and adequately empowered scientific official is needed to attest to the administrator and the nation that the proposed action is scientific."

In a 1998 science policy report, approved by the House Science Committee and the full House, titled *Unlocking our Future: Toward a New National Science Policy Study*, I had reached similar conclusions about the use of science in decisionmaking — that science should not be used as a mere adjunct to the regulatory system; rather, it should be used at the beginning, middle, and end of an agency's decisionmaking process — and about its proper place in an agency's bureaucracy.

I introduced H.R. 64, The Strengthening Science at the Environmental Protection Agency Act, to capture the two primary recommendations of the NAS report and meet the goal I laid out in the science policy report. First, the legislation would establish a new Deputy Administrator for Science and Technology to serve as an advocate for and reviewer of science at the most senior levels of the agency. Second, the legislation would convert the position of the Assistant Administrator of the Office of Research and Development to a set term and give that position the title of the agency's Chief Scientist.

The Deputy Administrator position will bring a much needed change to the culture of the EPA and ensure that science has a higher profile in the agency's decisionmaking process. This person would not only be accountable to the administrator for improving and overseeing science at the agency, but would also be accountable to Congress. This relationship would bolster Congress's confidence in the appropriate role of science at EPA, and therefore in regulatory decisions.

The Deputy Administrator is also needed to coordinate research between the regulatory and scientific arms of the agency. A common problem with trying to ensure that science is involved throughout the regulatory process is that the head of the scientific arm of the agency, the Assistant Administrator for ORD, shares the same rank as the heads of the regulatory offices. The authors of the NAS report argued that since the new Deputy would rank higher than the existing AAs, this person could foster research relationships between ORD and the regulatory offices.

Furthermore, the Deputy Administrator could develop and oversee an agency-wide inventory of scientific activities. Various efforts to do this inventory have all died after fits and starts because there is no central science policy authority to administer this work. The Deputy Administrator would have the appropriate authority to ensure that the best possible peer-review and research-plan-

ning practices are used for all of the agency's scientific endeavors.

While the first recommendation of the legislation and the academy report is intended to increase the political clout that science has at the agency, the second recommendation, to establish a set term for the AA of ORD, seeks to decrease political pressures on this office. The report notes, "Although the political aspect of the Assistant Administrator's job often receives considerable attention, the most important aspects of the job are not political." Since the Deputy Administrator could bear many of the political pressures inside the agency, the AA for ORD could refocus on his or her role as the agency's Chief Scientist and running a world-class scientific organization.

The tenure of an AA for ORD averages two to three years and is typically a lower priority appointment in new administrations. Under the current political appointment model, this position changes at least as often as the administration changes. The NAS noted that frequently changing goals, priorities, practices, structure, or funding are particularly disruptive to research organizations because of the long-term nature of research activities. Research endeavors cannot be easily stopped and then started again without significantly hurting productivity. A longer tenure for the AA would help insulate the office during changes in the administration, thereby providing more continuity for research conducted at the agency.

The NAS report captured the challenge that EPA's science mission faces in the future and the need to strengthen science at the agency by saying, "In the three decades since the U.S. Environmental Protection Agency was created, great progress has been achieved in cleaning the nation's worst and most obvious environmental pollution problems. Belching smokestacks and raw-sewage discharges are now scarce, and air pollution alerts and beach closings are more rare. EPA deserves a significant share of the credit for the accomplishments, but some of the most difficult and challenging tasks remain. Many past illusions about simple and easy solutions to environmental problems have been replaced by greater realization that environmental protection is a complicated and challenging mission." It is time that Congress and EPA rise up to meet this challenge by passing and implementing the provisions of H.R. 64.

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cology of common chemicals, EPA must act in advance of definitive scientific evidence in order to fulfill its statutory mandate to protect human health. If scientific evidence is called upon to resolve policy disputes where definitive answers are unavailable, science will lose the unique value it has to policymakers, converting the interpretations of scientific findings into an exercise in advocacy rather than an ongoing quest for truth.

Since such a broad and authoritative range of policymakers, over the course of several decades, have recognized that scientific uncertainty is inevitable, why is it so difficult to resolve the equally inevitable question of how much uncertainty is too much? Recent developments suggest that regulated industries use routine scientific data gaps opportunistically, by insisting that until EPA has "better science," it should not act. The infamous case of how much arsenic should be allowed in drinking water illustrates this phenomenon perfectly. In 1996, a unanimous Congress told EPA to change the 50-year-old standard that scientists conceded was not adequate to protect public health. The agency's in-house scientists worked diligently over a period of several years, supplemented with expert panels convened by the National Academy of Sciences. EPA conducted an exhaustive rulemaking that gave affected constituencies ample time to submit information. Cumulatively, the research demonstrated that EPA should lower the standard dramatically to avoid unacceptable adverse health effects, although the scientists could not reach a consensus on the appropriate numerical level. As is usually the case, there was no science that indicated precisely when exposure levels stop being "safe."

Operating competently in the face of remaining uncertainties, EPA Administrator Carol Browner was close to making a new standard final late in the Clinton administration when congressional appropriators invoked the specter of incomplete — and therefore "bad" — science in order to delay promulgation of the rule into the new administration. Browner nonetheless published the standard as final right before George W. Bush took office as president. Then, as the appropriators and their allies, mining interests and drinking water system operators in the West, had hoped, Whitman moved to delay the rule's effective date, declaring that she wanted to review the adequacy of the underlying science. Subsequently confronted

with consistent support from NAS experts for an even tougher standard, Whitman ultimately was forced to reverse her decision and allow the promulgated standard to go into effect. The arsenic episode is a powerful example of how, even when the National Academy of Sciences concludes that there is sufficient basis to lower allowed exposures to a toxic chemical, enough is never enough for those whose true intent is to hold back government intervention to protect public health.

Scientists are comfortable with data gaps and uncertainties. They view them not as "problems" but as future research agendas. It is policymakers who are plagued by these realities because they must make decisions in the face of uncertainty or stop trying to protect public health until some indefinite, far-off day. As the arsenic example reveals, the call for "more science" heard in the halls of Congress and from regulated industries often serves as nothing more than a ruse for indefinite delay on a rule, sometimes for decades. Given the political muscle of those who have mounted this campaign, scientists watching these developments from the sidelines would do well to take note: the fruitless quests for more and more definitive evidence from environmental policymakers unwilling to suffer political consequences for restricting pollution will inevitably make scientists the whipping boys for the consequences of regulatory gridlock. Unless we recognize that "science" cannot determine all that EPA is required by law to do, the agency will never have the breathing room it needs to craft wise policy.

Congress and EPA administrators have long recognized that, as required by its core statutes, the agency must act in the face of uncertainty to achieve its mission

As important as the issue of what role science can and should play at EPA is the issue of the fundamental principles that should govern the agency's on-going scientific deliberations. In this long-overlooked area, we have found problems that would shock most traditional, academic scientists. The remainder of this article is devoted to demonstrating our case that too much of the science used by EPA is intrinsically unsound, straying far from the principles that have long served as the ground rules of the discipline. Too often, EPA deems scientific evidence supporting more rigorous standards to be marginal and more readily accepts research suggesting that standards can be loosened. We begin with a review of the principles that define *truly* sound science and then apply those standards to the recent vinyl chloride and dioxin reassessments.

Science enjoys a unique reputation as an objective and dispassionate human endeavor. Because we consider it to be inherently unbiased, science is accorded a privileged role in deliberations about the organization of human affairs. Unlike many other human endeavors, scientists preserve the integrity of the scientific process exclusively through self-regulation. Although there are isolated examples of outside, lay investigations challenging the credibility of scientific research, the repetition of experiments by fellow scientists and objective peer review are the routine methods for uncovering mistakes and assessing when progress in understanding a topic has been made.

For centuries, scientists have engaged in their search for the truth by circulating the results of original research among their colleagues, first for informal discussion and then for formal, outside peer review. Colleagues first repeat work accomplished by others and then extend the experiments into additional areas. By exposing all of the underlying elements of one's work to inspection by dispassionate peers, and revealing details sufficient to replicate results, researchers build on others' successes and avoid others' failures.

The transparency of results and the impartiality of conclusions derived from those results are the indispensable foundation of science. Peer review and replication are the only reliable methods to ensure that experiments are conducted in a scientifically appropriate manner and that the results and conclusions presented by the researchers are supportable by the data generated. The peer-

review process is often challenging and difficult. But without it, results and conclusions cannot be accepted as valid.

The public trust in science depends on its unique reputation for objectivity. Scientists are expected to have opinions, but are also expected to resist bias. They are expected to reach careful conclusions and limit their conclusions to those supported by data. Or, to put this central principle more crassly, a scientist's quest for the truth and expression of opinion at the end of the quest should not be for sale or subject to control by self-interested sponsors, supervisors, the government, or any other entity with control over the scientist's career. Once financial considerations and legal constraints interfere with a quest for scientific truth, the public trust is broken, and science loses its power and authority.

Unfortunately, funding for the replication of experimental results and peer review of scientific research is most abundant in the context of topics that have captured public attention or, to put it another way, where the results of the research are of widespread economic or social importance. Claims that a scientific team had created cold fusion were immediately dissected because of the potentially monumental implications of such a discovery on the world's need for safer and cheaper energy. Similarly, discovery of a wonder drug to treat such widespread ailments as diabetes or stroke would inspire careful and extensive inspection — by the discoverer's competitors, potential allies, the larger medical community, and the government.

If scientific evidence is called upon to resolve policy disputes where definitive answers are unavailable, science will lose the unique value it has to policymakers

In a modern world overwhelmed by information and disinformation, extensive peer review or replication of certain other types of scientific findings is difficult to instigate, especially in the private sector. So, for example, efforts by a chemical manufacturer to prove that a given substance is not as toxic as EPA had originally assumed are unlikely to be scrutinized, much less validated, by other private sector scientists. Competitors have a low interest in refuting such results because they typically manufacture the same chemical and like the way the results came out. Only producers of an arguably safer alternative have an economic incentive to second-guess, and they would likely place a higher priority on testing their own compounds.

For better or worse, these economic incentives mean that the government must play an active, rigorous role in reviewing and challenging scientific research developed by self-interested private parties. The National Academy of Sciences, the National Institutes of Health, and the Centers for Disease Control, to name just a few, have erected infrastructures of in-house scientists and external peer-review panels to undertake these functions. Unfortunately, these outside institutions have limited resources and too rarely are able to double check EPA's work.

Science at EPA supports decisionmaking through two main activities. In-house scientists assigned to the Office of Research and Development analyze the outside studies that are relevant to the issues at stake. They maintain the Integrated Risk Information System, or IRIS, an internationally influential compendium of "toxicological profiles" that describe the characteristics of specific chemicals and set quantitative levels for safe exposures to them. Our case studies involve reassessments of long-standing toxicological profiles. The second activity is peer review, performed by panels of outside experts convened by the EPA Science Advisory Board and several other, smaller boards, such as the Science Advisory Panel, which focuses on pesticides. The SAB receives inquiries from agency staff working on regulatory issues and responds with advice based on its assessments of relevant scientific research. Our dioxin case study concerns an SAB peer review.

Many of EPA's in-house scientists and SAB experts serve the agency and the public with distinction, laboring diligently to produce informative and dispassionate science to guide policymaking. Too often, however,

both enterprises flout the fundamental precepts of scientific research: first, the disclosure of methods, data, and calculations sufficient for appropriate experts to review the work or evaluate whether the conclusions reached were adequately supported by the study's findings and, second, conducting peer-review that is free of conflicts of interest.

Even a cursory look at the science EPA has practiced over the past decade shows that it has strayed far from the mandates of transparency and impartiality. Much of the science that EPA uses as a basis for decisions with far-reaching implications for public health is not peer-reviewed, and it is often based on confidential information or analysis. As a result, it would not be considered credible by disinterested researchers.

At the root of this crisis in credibility is the dominance of industry funding as the source of support for environmental health research. The vast majority of research on the toxicological properties of common chemicals occurs outside of the government (or sometimes in other agencies). EPA's toxicological profiles are based on this outside work. Corporate sponsorship does not, in and of itself, render such research invalid. But it does unquestionably put industry in the driver's seat for both the pace and focus of data development to support EPA rulemaking. More insidiously, it also puts industry in charge of deciding what information it would like to disclose and what analyses it would like to do, presenting ample opportunities for industry-funded researchers to keep underlying data and discrepancies confidential and to make strategic decisions as to whether to submit research studies for EPA's consideration.

Vinyl chloride is notorious for causing liver cancer among workers handling it. Studies have also linked vinyl chloride to a number of other cancers, including brain cancer

For several decades, the scientific community has achieved a rare consensus that three substances — lead, asbestos, and vinyl chloride — are not just extraordinarily toxic but produce well-characterized consequences of exposure, known colloquially as "fingerprint diseases." Vinyl chloride, a volatile industrial chemical used since the 1930s to make plastics, is notorious for causing a rare and serious tumor, angiosarcoma of the liver, primarily among workers manufacturing and handling the compound. Studies have also linked vinyl chloride to a number of other cancers, including brain cancer.

In 1975, following a series of animal and epidemiological studies demonstrating the chemical's hazards, the Occupational Safety and Health Administration used the evidence on liver cancer as the basis for tough regulations limiting workplace exposure. These regulations resulted in sharp reductions in the prevalence of the chemical in the workplace and, as a result, the environment.

So it was a surprise when, in May 2000, EPA completed a 20-fold downgrading of the toxicological profile for vinyl chloride. EPA's decision to review vinyl chloride's toxicity was especially startling because the OSHA regulations, among other factors, have had their desired effect. At the same time that worker exposures have plummeted in the last decade and public exposure to the chemical has been minimal, industry has been able to continue using it, producing such goods as upholstery and waterpipes from its polymerized form. Given the demonstrated benefits of the regulations to both workers and industry, and the greatly lowered risk to the public, vinyl chloride should be off the list of chemicals requiring toxicological review, leaving the agency free to pursue more prevalent, less understood chemicals.

The decision to revisit the well-trodden ground of vinyl chloride toxicity appears especially irrational because EPA has faced extensive criticism for failing to assess the toxicity of many other chemicals produced and used in large amounts annually. EPA has *no* toxicity information on 43 percent of the nearly 3,000 organic chemicals produced or imported in amounts above one million pounds annually, and a full set of basic toxicity information is available for only 7 percent. Toxicological studies of these chemicals should be its overriding priority.

Further, little new technical information on vinyl chloride's toxicity has become available since the agency's last review of the chemical, in 1994. Instead, EPA staff based the reassessment on animal studies completed in 1991 and earlier. Only one unpublished epidemiological study update was new, and it reached conclusions similar to previous analyses.

Although no changes in existing regulations were made when EPA made its decision, the revised characterization of the hazards posed by vinyl chloride exposure will prove very valuable to manufacturers of the chemical now engaged in toxic tort litigation with workers who contracted brain cancer following exposure on the job, as well as companies still facing liability at Superfund sites contaminated by the chemical. (Vinyl chloride has been found at one-third of the sites on the National Priorities List.) The decision will have these effects because EPA's toxicological profiles play the crucial role of informing regulatory and judicial decisions — not just domestically but internationally. Regretfully, given the potential implications of this change, the details of EPA's reevaluation of the science reveal biased technical judgment that resulted in poor selection of evidence practices and disproportionate reliance on information generated by self-interested parties.

OSHA regulation of vinyl chloride has worked. So it was a surprise when, in May 2000, EPA completed a 20-fold downgrading of the chemical's toxicological profile

EPA made two fundamentally flawed decisions in justifying the downgrade. First, the agency decided to confine its reassessment to statistically significant liver tumors, ignoring the various other cancers that frequently appear in both animal and epidemiological reports. Second, although the reassessment continued to rely on animal data, EPA decided to abandon certain default "safety factors" it has historically used when applying animal data to humans. Instead, the agency relied on a newly developed, "pharmacokinetic" model designed to predict an internal concentration of vinyl chloride in the human body.

Epidemiological studies of vinyl chloride workers have generally reported the occurrence of many cancers besides liver angiosarcomas, including cancer in the lung, lymphatic and blood tissue, and the brain, with the last of particular concern. Richard Monson first found an excess of brain cancers in his study of Swedish workers in 1974, as did Irving Tabershaw and William Gaffey in 1974 and Richard Waxweiler in 1976. In 1981, W. Clark Cooper enlarged the Tabershaw and Gaffey study and found statistically significant increases in brain and central nervous system malignancies. In a 1991 update of the Cooper study, Otto Wong confirmed statistically significant brain cancers. The evidence concerning brain cancers is sufficiently convincing that in 1989 the Vinyl Institute, an industry-funded advocacy group, acknowledged brain tumors as a valid concern in a letter to the California Air Resources Board: "For brain cancer, three out of five studies demonstrate statistically significant findings, although the results were somewhat variable. Positive findings occurred in studies with the greatest statistical power."

Written correspondence included in the EPA docket on vinyl chloride reveals that the Chemical Manufacturers Association, the trade association that recently was renamed the American Chemistry Council, became quite upset with Wong for publishing his positive results on brain tumors without first submitting the study to its scientists for review. Wong did the work under a research contract with CMA that apparently included a "prior review" clause giving it the right to comment before publication.

In what was likely a response to the trouble that the Wong update caused industrial users of vinyl chloride, CMA commissioned yet another study of the same worker cohort, updating some data post-Wong but also re-analyzing some of Wong's data in a way that raised questions about his conclusions. This study was never published in a peer-reviewed journal, but it was submitted to EPA

and became a primary basis for its 2000 reassessment.

In justifying its decision to focus exclusively on liver cancer in recalculating the vinyl chloride potency factor, EPA cites this unpublished work, as well as two peer-reviewed research review articles. The unpublished CMA study was not, by itself, a sufficient basis for EPA to eliminate brain cancers from its list of concerns. To the contrary, this study also reported statistically significant incidences of brain cancers.

As for the two articles reviewing available research (as opposed to reporting the results of original research), the first was written by Sir Richard Doll in 1988, two years before the publication of the Wong study. Without the benefit of the Wong or subsequent epidemiological updates of vinyl chloride workers, Doll had raised questions about the strength of the data supporting brain tumors, but had concluded with the relatively mild statement: "There is too little evidence either to confirm or refute the suggestion that vinyl chloride might cause melanoma or cancers of the thyroid, brain, and lymphatic and hematopoietic systems." This equivocal conclusion from an outdated paper hardly provided a reliable basis for ignoring the numerous studies in EPA's decisionmaking docket that found statistically significant incidences of brain tumors. Indeed, Doll has cautioned against using epidemiological results to dismiss chemical hazards in this and other publications.

The other cited research review article was authored by Jan Storm and Karl Rozman in 1997, but it does not address the issue of brain or other tumors caused by vinyl chloride exposure. Rather, the paper compares various risk assessment extrapolation models used and proposed by EPA. Given the weakness of Doll's conclusion, and the inappropriateness of the Storm and Rozman citation, EPA is left without evidence to support its decision to limit its reassessment of vinyl chloride's carcinogenicity only to tumors of the liver.

In justifying its downgrade of vinyl chloride, EPA cites an unpublished review and two reviews of technical literature, one outdated, the other irrelevant

EPA's second technical misstep was the decision to abandon the conventional approach used to apply animal data to likely human health effects. When scientists conduct animal studies, they expose the animals to increasing doses of a chemical, and then perform an autopsy on the animal to see how many tumors were generated at each dose. Because chemicals may take a different course within the bodies of rats, mice, and other creatures than they do in the human body, and may be metabolized at different rates, animal studies using traditional dose measurements can either overstate or understate the consequences of comparable human exposures. Up until recently, the best way to eliminate such uncertainties would be — hypothetically, that is — to intentionally expose people to different amounts of a chemical and then track the "fate and transport" of the chemicals within their bodies by drawing samples, taking biopsies of organs, etc. Such studies should be unthinkable for obvious reasons.

Pharmacokinetic models are an emerging, as yet experimental, alternative method designed to bridge this gap. Such models estimate internal concentrations within the human body by using a computer program to predict how fast the chemical is absorbed in the bloodstream, whether it reaches the brain, etc. The models then derive an "effective" dose for a given organ over the time that the human body metabolizes the chemical. If doses of vinyl chloride at X levels caused Y incidences of tumors in rats, but pharmacokinetic models show that humans metabolize the chemical more effectively than rats, and therefore experience lower internal concentrations, the model provides support for downgrading estimates of the chemical's carcinogenic effects on people.

The catch here is that pharmacokinetic models are at the cutting edge of the already highly uncertain science of environmental modeling as a whole. It is certainly true that reputable scientists are working to refine

such models in order to better predict effects of exposure. It is also likely that, once they are developed, such models should allow us to better understand the correlation between internal concentrations of toxic compounds and adverse health effects. But at this point in the evolution of scientific understanding, these models cannot be validated with respect to exposures at environmentally realistic concentrations. This uncertainty means that pharmacokinetic modeling unquestionably does not put EPA in a position to remove default safety factors.

Mindful of these concerns, when EPA staff considered the application of pharmacokinetic models in a proposed reassessment of the toxicological profile of trichloroethylene, they made a concerted effort to compare several versions of the models, as well as to quantify the level of uncertainties in each model's estimates of liver, lung, and kidney tumors in response to the modeled doses. This analysis quantified uncertainties so huge (as high as 20,000-fold) that EPA staff insisted on continuing to apply default safety factors, thereby sharply curtailing their reliance on any of the models. This carefully qualified application of an emerging scientific methodology stands in stark contrast to the wholesale reliance on pharmacokinetic modeling results in the context of the vinyl chloride reassessment. Such extraordinarily high rates of uncertainty raises obvious concerns about modeling accuracy, as well as concerns about "model shopping" by researchers trying to find a model that gives a desired outcome rather than one that predicts outcomes accurately.

The agency removed default safety factors in applying animal data by relying on an unproven computer program designed to model how a chemical behaves in the human body

The general problems of pharmacokinetic models are severely compounded in the case of vinyl chloride by EPA's decision to confine its consideration of modeling to a single version developed by Harvey J. Clewell. The Clewell model was not validated for exposures that occur routinely in the environment. It thus could not and was not validated for its intended purpose — to accurately predict effects in humans. The inadequate verification of the Clewell model makes it a very poor policy choice as a basis for the reevaluation of vinyl chloride toxicity. Furthermore, the Clewell model was confined to liver tumors, ignoring all the other tumors of concern. Using such a limited model to justify dropping safety factors for cancers other than liver cancer added insult to injury.

The fatal blow to the technical credibility of EPA's vinyl chloride decision is that industry scientists drafted the final decision-making document. The revised toxicological profile, known formally as the 2001 Vinyl Chloride Toxicological Review, is known in the world of science as a "technical review paper," consisting of a literature collection, analysis, and interpretation. Vinyl chloride is but the first of four chemicals where industry is drafting the review. (The others are styrene, ethylene oxide, and toxaphene.)

In the scientific community, it is widely understood that technical reviews, like similar efforts in other disciplines, are heavily influenced by an author's subjective judgment regarding such issues as which studies to include, which studies to declare flawed or irrelevant, and which methodologies to favor. The danger of tainting a technical review with the unrestrained bias of its author provoked the prestigious *New England Journal of Medicine* to prohibit "editorialists and authors of review articles" from having "*any* financial connection with a company that benefits" from the subject of the article. The *Journal's* decision was announced in a lengthy editorial published in 1996 expressing mortification about its earlier publication of such a paper authored by two industry experts with obvious, but undisclosed, conflicts of interest.

In theory, EPA's Science Advisory Board is where the buck stops on bad scientific practice within the agency, serving as a safety net to protect against the types of abuses that run rampant when the generation of scientific evidence and the

selection of salient research are both determined by industry. In reality, the SAB suffers from many of the same weaknesses that were manifest at the staff level in the vinyl chloride reassessment. Too often, the SAB operates in a context where self-interested research dominates the agenda of the outside experts recruited for peer review. The seriousness of these problems is exacerbated when studies important to EPA, such as those specifically delineating the potency of a certain carcinogen, have not been published in a peer-reviewed journal and therefore were never subject to an objective evaluation by a disinterested party.

Last June, a General Accounting Office report evaluating the SAB review process found that "to be effective, peer-review panels must be . . . free of any significant conflict of interest and uncompromised by bias." In the report, "EPA's Science Advisory Panels: Improved Policies and Procedures Needed to Ensure Independence and Balance," GAO auditors examined the procedures employed by SAB staff to ensure panel effectiveness. GAO found that, despite the requirements of the Federal Advisory Committee Act, agency staff often failed to obtain conflict of interest disclosures from candidates and that EPA did not have either the information or processes in place that would preclude the appointment of panelists with direct conflicts of interest. The result of these omissions is the appointment of too many panels disproportionately influenced by industry experts motivated to clear chemicals of prior findings of toxicity. Many SAB panels escape this fate, but enough suffer from these ethical lapses to undermine the credibility of the entire EPA peer-review process.

One example of these problems is EPA's star-crossed effort to strengthen public health standards for arsenic in drinking water, mentioned earlier. An SAB review panel took on no less an entity than the NAS arsenic panel. NAS experts typically spend two or more years reviewing available science on an issue, and this particular panel had clearly mastered the data before it recommended tightening the standard. In contrast, SAB panels too often make recommendations within a period of a few months and with many fewer world-renowned experts. Only after an additional NAS panel took the SAB panelists to task for flaws in its analysis did the SAB panel back off its contention that EPA's in-house scientists had erred. Although this episode had a happy ending, the SAB arsenic toxicity panel was part of the problem, not the solution, of this contentious public health debate.

After a decade of research pursuing claims that dioxin is not as toxic as initially thought, agency staff concluded that the chemical is in fact more toxic than original estimates

But perhaps the best case study of the weaknesses that increasingly overwhelm the SAB is its participation in the reassessment of dioxin, which is released by incineration of chlorinated materials and also by paper bleaching. Starting in 1990, EPA staff spent a decade pursuing claims that dioxin was not as toxic as initially thought, producing a final report consisting of several thousand pages that concluded the opposite: that dioxin is even more toxic than the agency's original estimates. But an SAB panel appointed to peer review a draft of the study concluded in 2001 that in-house scientists had exaggerated the risks posed by exposure to the chemical. These assertions not only challenged the competence of the EPA staff who wrote the report, they erected a barrier to its release. During the public outcry that followed, it emerged that a large number of panel members had worked for — or received funding from — industries with a clear financial stake in the outcome of the deliberations.

For example, John Graham, a political scientist appointed to the panel, served as director of the Harvard Center of Risk Analysis, which receives extensive funding from companies facing liability for dioxin contamination of the environment. (Graham now serves as head of the White House's Office of Information and Regulatory Affairs, which evaluates the

costs and benefits of rules before they are published as final. The Natural Resources Defense Council opposed his nomination.)

Appointment of a second panelist, Dennis Paustenbach, was questioned for similar reasons. Research by the Center for Health and Environmental Justice found that fully a third of the panel members received organizational support from 91 dioxin-producing companies. As a result, members of Congress accused EPA of setting up a panel dominated by industry bias. Witnesses at the public hearing on the results of the SAB peer review repeated these charges, questioning the credibility and the integrity of the panel.

Yet the clear appearance — and likely existence — of impropriety is only a threshold conclusion that should prompt further investigation. Regardless of the panelists' links to self-interested industries, the crucial point is the soundness of the SAB's assertion that EPA staff did not consider alternative scientific theories about dioxin's toxicity and, as a result, overstated the degree of scientific certainty regarding the overall toxicity of the compound. Stung by these attacks, William Farland, the acting deputy assistant administration in charge of the reassessment, took the unusual step of entering the fray. In defending the agency's work, Farland provided the SAB's Executive Committee, which must ratify all SAB panel reports, with nine pages of blistering comments on the panel's draft. He said that the review contained "numerous errors or distortions of fact" and that its major conclusions "defied logic." He added that the panel's report was internally inconsistent with the discussion of the science held in open session at prior review meetings; was inconsistent with advice provided by SAB panels on earlier versions of the reassessment; and was inconsistent with EPA's general risk assessment procedures.

Farland was particularly critical of the SAB's review of the dioxin risk assessment methodology, asserting that the panel had a poor understanding of both EPA guidance on risk assessment and the research available on dioxin. For example, the panel had questioned whether a "linear dose response curve" for cancer was warranted because there is some evidence that dioxin is a promoter of the disease, rather than an initiator. A linear dose response curve is a line that runs all the way down to a dose of zero. It is used when evidence is inconclusive as to whether there is a threshold dose below which exposure does not cause cancer. In the interest of safety, where data are inconclusive, a linear curve assumes that any dose — no matter how small — will lead to an adverse health effect.

The SAB attacked the staff report. It said that dioxin does not initiate cancer but promotes existing cancers. And it said that low doses of dioxin might actually be beneficial

The SAB panel argued that exposure to dioxin exacerbates the growth of cancerous cells that have already begun to grow in the body as a result of another cause, but does not itself initiate the cancer. In other words, there is a threshold, the panel said, below which dioxin exposure is unimportant because some other factor is causing the disease. The panel further complained that use of a nonlinear model would have resulted in a significant downgrade of the chemical's overall toxicological profile because it would have shown that small doses of the chemical are not harmful. "Belief is one thing," Farland responded, "data is another." EPA policy commands the use of a linear model when use of alternative models cannot be justified from the available data, as was the case here. There were neither data nor policy justifications to diverge from a linear default model for dioxin's cancer effects.

Similarly, Farland was incredulous that the SAB panel gave credence to the possibility that very low doses of dioxin were actually beneficial, resulting in decreases in cancer rates. The panel had urged EPA to give this counter-intuitive possibility additional scrutiny. However, EPA's extensive data showed that dioxin could cause adverse health effects at the relatively low levels that already occur in the general population. Farland pointed out that animal data are unequivocal on this point and that human data, though limited, are also compelling.

Ultimately, the controversy triggered by the panel's report on dioxin compelled the SAB Executive Committee to substantially rewrite the summary and conclusions of the report, producing a credible outcome — but illustrating the perils of lax ethical rules in lower-profile proceedings. Recognizing that this incident and the GAO report threatened the credibility of the SAB itself, the Executive Committee agreed to set up a subcommittee that will recommend reform of SAB policies and procedures on bias and conflict of interest.

As it crafts these policy and procedural guidelines for release later this year, the SAB will undoubtedly consider the approach taken by 12 medical journals that have faced equally serious challenges to their reputations as sources of credible life science in the context of pharmacology, a discipline that is the genesis of environmental toxicology. The crisis in the medical community started simmering in 1988 when the Boots Company, a British pharmaceutical manufacturer, hired Betty Dong, a researcher at the University of California in San Francisco, to do a research study designed to demonstrate the superiority of the company's bestselling thyroid medication, Synthroid, in comparison to generic versions. With Synthroid sales in the $600 million range in the United States alone, Boots had a large stake in demonstrating that generic versions are not "bioequivalent," and therefore should not be substituted for its name brand. To Boots's horror, the study found that the generics were in fact bioequivalent. The company then spent four years working to discredit the research, raising a litany of technical objections to its protocols and their implementation. Despite this campaign, extensive investigation upheld the soundness of the study.

In 1994, in the midst of this maneuvering, Dong submitted an article based on the study to the *New England Journal of Medicine*. The article, accepted for publication following peer review by five outside experts, explained that the finding of bioequivalence meant U.S. health care costs could be cut by $356 million annually if patients substituted generic medications. The company immediately threatened to sue Dong, citing a provision in her research contract that required her to obtain the company's written consent before publishing. The University of California began to waver in its support, and Dong pulled the piece, triggering an intense investigation by the publication.

The *Journal* finally published the article in 1997, along with an article reporting that in a survey of 2,100 life science researchers, nearly 20 percent reported having delayed the publication of research results for more than six months. Of the 410 researchers willing to report such delays, 28 percent said the reason was "to slow dissemination of undesired results." A subsequent Carnegie Mellon University canvass of contracts at university-sponsored research centers found that 35 percent of signed agreements allowed sponsors the right to delete information from publication; 53 percent allowed publication to be delayed; and 30 percent allowed both. To medical journal editors, these troubling findings were the unavoidable byproduct of sharp increases in industry funding and increased blending of business interests and science at both the individual researcher and university levels.

> *The agency must reserve for its staff the sensitive task of writing toxicological profiles and should never again delegate such work to self-interested industry scientists*

What are the implications of this all-pervasive industry funding of university research? In a recent article published in *Risk Policy Report*, David Clarke, a longtime observer of the controversies involved in toxic regulation who now participates in the sound science debate on behalf of the American Chemistry Council, argued that the simple fact that a study is funded by industry does not mean that it is wrong, or even biased. Regardless of whether you accept this counter-intuitive argument that money does

not buy influence, it is certainly true that industry-sponsored research will remain the primary source of information on toxics for the foreseeable future and that effective reform must be premised on that fact.

Empirical studies have documented the correlation between funding and results. For instance, one analysis found that 98 percent of industry-funded research reported positively on the efficacy of specific drugs, versus 79 percent of independent research. Because we cannot eliminate our dependence on such research, but suspect that funding may affect the outcome, all the other checks and balances — from disclosure of funding sources to peer review — become all the more important.

EPA should establish a peer review process that eliminates panelists with actual or potential conflicts of interest and balances competing scientific views

Last September, in reaction to stories and statistics like these, the editors of the world's leading medical journals announced that they would no longer "review or publish articles based on studies that are conducted under conditions that allow the sponsor to have sole control of the data or to withhold publication." The editors promised to release detailed guidelines on this prohibition, and on their intention to require authors to disclose conflicts of interest related to a study, in early 2002. "I am not against pharmaceutical companies," Catherine DeAngelis, editor of the *Journal of the American Medical Association*, told the *Washington Post*. "What I object to is the use of my journal as an advertisement mechanism rather than a vehicle for the distribution of sound medical science."

The journals' new policy is expected to have a profound effect on the way medical research is funded and conducted. The journals are crucial to the dissemination of pharmaceutical research among the practicing physicians who serve as purchasing agents for all prescription drug sales. Television and print advertising are poor seconds to the influence they wield. Although these same reforms are necessary in the arena of environmental research, they may prove much harder to accomplish, especially given the fundamentally different economic incentives at work in investigations of the toxicological properties of common chemicals. In too many cases, chemical manufacturers have powerful incentives *not* to know whether their products are toxic; ignorance may help them sidestep liability and increased regulation. Unlike medicine, where publicizing efficacy is the quid pro quo for selling drugs, documenting the possible consequences of chemical exposure can only have a negative impact on sales. In fact, the only kind of scientific inquiry with potentially substantial financial benefits is research that exonerates chemicals — such as the two examples featured in our case studies.

As Wong's experience with the American Chemistry Council shows, the corporate funders of investigations into chemical toxicity, like the pharmaceutical companies, impose restrictive arrangements on their grantees. Given the dearth of government funding for such basic research, and the fact that it is unlikely to bring prestige to any truly independent research institution, these restrictions are likely to persist in the absence of strong action by EPA and other regulatory agencies.

Six categories of reform are needed to restore the credibility of science at EPA. First, the agency must focus on encouraging research that will close the gap in our understanding of the toxicity of common chemicals, rather than spending scarce resources on efforts to exonerate chemicals with a proven track record. Second, EPA must refuse to consider, in any context, the results of research that does not satisfy the central tenets of sound science: full disclosure of underlying data and no sponsor interference with the design of the study or release of results. As with the medical journals, EPA should disclose the sponsor of the research for all the key articles it relies upon for its decisionmak-

ing. Third, EPA must establish a peer review process that eliminates panelists with actual or potential conflicts of interest. Given the problems reported by the medical journals, it cannot rely exclusively on peer review by others, even peer-reviewed articles that have been published. Fourth, since many scientists are biased in the sense that they have strong opinions, peer-review panels must be balanced with regards to scientific view. To achieve the crucial objective of preventing the domination of peer review by one or another self-interested constituency, EPA must conduct expanded recruitment of experts who have no conflicts and represent a full range of scientific view. Fifth, EPA must reserve for its staff the sensitive task of writing toxicological profiles and should never again delegate such work to self-interested industry scientists. Last, increased government funding for basic research would go a long way toward making the first five reforms possible.

To implement the first reform, EPA scientists should make it their overriding priority to compile a research agenda based on such factors as the prevalence of a chemical in commerce and in the environment; the seriousness of its suspected adverse health or environmental effects; and the state of our ignorance of the chemical's toxicological properties. Once a list of priorities is developed, and the expense of further research can be estimated more accurately, the agency will be in the position to convince the executive branch and affected industries that further research is urgent.

Suspending decisions until scientists tell us exactly what will happen makes no more sense than forcing people to self-insure or refusing to engage in long-term military planning

Ending any consideration of studies that breach core principles of research ethics is the easiest reform to implement, and is most akin to the joint policy statement announced by the world's leading medical journals. Indeed, it is hard to imagine anyone arguing the converse of this proposition: namely, that EPA staff should rely on research findings to revise regulatory requirements even when they have never seen the underlying data that supports those conclusions. This principle is particularly important in the context of studies funded by entities with a financial stake in the regulatory decisions that the studies ostensibly inform, although it should by rights apply across the board to any piece of scientific evidence offered for EPA's consideration. It is worth noting that the government gives agencies specific powers in this regard for studies that they fund. Office of Management and Budget Circular A-110 specifies that an agency is entitled to unrestricted access to grantees' records related to the award, including research data. To accomplish this reform, EPA should require that authors of studies submitted for its consideration sign comprehensive statements regarding their funding sources and the limits imposed by their research contracts. EPA should publicize the sources of funding for each major study it relies upon for its decisions.

As for the troubled peer-review process, EPA should not recruit candidates with actual or potential conflicts of interest to serve on SAB advisory committees (including subcommittees) or any other panel of scientific experts convened to provide EPA with advice. Conflicts of interest should encompass any financial interest that would impair the individual's objectivity, including such characteristics as stock ownership or employment by an organization with a direct financial interest in the outcome of the review, such as the award of research grants. If the prohibition on nominees with conflicts of interest makes it impossible to convene a panel consisting of members with sufficient expertise to give EPA the advice it is seeking, the administrator should waive such conflicts in written, individualized determinations subject to public review. EPA may include candidates with actual or potential bias regarding the issues to be addressed by the panel, provided that the panel's overall membership is balanced. In this context, bias should encompass any predisposition resulting from professional affiliation, previous work, social relationship, or conflict of interest that could influence the

candidate's views of the information or policy alternatives at stake in the panel's deliberations.

At the moment, candidates for EPA peer-review panels and other scientific advisory functions are selected from an existing list kept by the SAB staff. The agency clearly needs to develop a larger pool of scientific experts qualified to serve on SAB committees and panels. Within legal constraints, the administrator should explore ways to compensate scientific experts at the prevailing market rate for their services, both to expand the pool of candidates and to eliminate the advantage of industry-funded scientists who are able to earn a living doing such work.

The precautionary principle lies at the heart of the controversy over the role of science in the regulatory state. The principle means taking action to prevent harm to human health or the environment, even if the relationship between the cause and the effect is not fully established scientifically. As applied, it can mean taking preventive measures to reduce pollution; shifting the burden of proving the safety of polluting activities to those who wish to engage in them; or searching for safer alternatives to releasing the pollutant into the environment. Or, as Governor Whitman put it so well: "The absence of certainty is not an excuse to do nothing."

Some commentators have argued that application of the precautionary principle is essentially a policy choice, implicitly suggesting that scientists leave the room when such decisions are made. At the opposite end of the spectrum, conservative commentators argue that when science becomes uncertain, the only alternative is to work harder to make it better, forestalling regulatory action until a reasonable level of certainty can be achieved.

While both arguments are extreme, the second is transcendent at the moment and is likely to prove far more harmful to the credibility of science over the long run. By cloaking a decision not to act as a purely scientific judgment, scientists are saddled with the burden of being wrong, of failing to take protective action in the face of what emerges as a real threat. When the sources of financial support for additional research are obviously self-interested, the public will be left with the clear impression that science was sold to the highest bidder.

We cope with uncertainty in all aspects of modern human endeavor. The whole concept of insurance is based on the proposition that we can try to predict the future on the basis of facts about the past, but in the end are willing to pay a fee to ameliorate the consequences if we end up among the injured. If we were certain what the future would bring, insurance would be unnecessary because we could either save funds to address the risk, or make plans to avoid the risk.

Only by acknowledging that it is the exceptional case where we will have definitive data can we hope to restore science to its rightful place in environmental decisionmaking

Similarly, as the United States becomes the world's dominant peacekeeper, we are constantly faced with the imperative of predicting the worst case scenarios that could occur in such situations and doing everything possible to ensure both the success and the safety of our military forces. No public official would consciously decide to absorb more casualties in order to lower the costs of equipping our troops to cope with such scenarios, although those precautionary measures often are triggered by no more than an educated guess by experts.

Like insurance underwriting or defense, environmental regulation needs to encompass the best information available at the time a decision must be made. Suspending decisions until scientists tell us exactly what will happen makes no more sense than forcing people to self-insure or refusing to engage in long-term military planning. Only by acknowledging that it is the exceptional case where we will have definitive data can we hope to restore science to its rightful place in environmental decisionmaking. •

Mr. OSE. Gentlemen, I do thank you for your brevity. I apologize for the circumstances we find ourselves in. I feel badly. You came down, testified, and it will not go unnoted.

We will leave the record open for 10 days. We will send you the questions we otherwise would have posed in person to you, and hope for a timely response.

Again, thank you for taking time to come. This hearing is adjourned.

[Whereupon, at 4:40 p.m., the subcommittee was adjourned, to reconvene at the call of the Chair.]

[The prepared statement of Hon. John Sullivan and additional information submitted for the hearing record follow:]

Mr. John Sullivan
Opening Statement
Government Reform Subcommittee on Energy Policy, Natural Resources, and Regulatory Affairs
Hearing on "EPA Cabinet Elevation: Agency and Stakeholder Views"
July 16, 2002

I would like to thank Administrator Whitman for coming to testify. As the newest Member of the Subcommittee, I am interested in hearing the testimony today. Elevating the EPA to Cabinet level is a major proposition, and one we should not enter into lightly. There are many organizational questions to be answered. My district has serious water quality issues. Last year alone the City of Tulsa spent more than $1.4 million to try to rid the city's water of the foul taste and smell. The EPA has been helpful in this regard by appointing a point person to oversee the water quality issues between the states of Oklahoma and Arkansas.

For *most* environmental problems, however, states are now the lead government agencies for implementing solutions on the ground. However, given the broader number of environmental challenges the country now faces, the mission, organization and focus of the EPA must change.

In previous testimony, we have heard from several witnesses from the academic community, the GAO, and state environmental protection agencies. It is now time to hear from the EPA directly, and the environmental community and the regulated community. I look forward to the testimony and yield back the balance of my time.

CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

WILLIAM L. KOVACS
VICE PRESIDENT
ENVIRONMENT, TECHNOLOGY &
REGULATORY AFFAIRS

1615 H STREET, N.W.
WASHINGTON, D.C. 20062
(202) 463-5457

July 26, 2002

Honorable Doug Ose
Chairman
United States House of Representatives
Subcommittee on Energy Policy, Natural Resources
and Regulatory Affairs
B-377 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Ose:

Thank your for the opportunity to present the comments of the United States Chamber of Commerce to your subcommittee on the elevation of EPA to cabinet level status. As you requested we are providing answers to the questions you were unable to ask at the hearing.

If you should have any questions regarding my responses, please do not hesitate to contact me directly at (202) 463-5457.

Thank you again for the opportunity to testify before the Subcommittee.

Sincerely,

William L. Kovacs

Attachments

cc: Jonathan Tolman

ANSWERS OF WILLIAM L. KOVACS TO WRITTEN QUESTIONS POSED BY CHAIRMAN DOUG OSE, SUBCOMMITTEE ON ENERGY POLICY, NATURAL RESOURCES AND REGULATORY AFFAIRS, FOR HEARING ON JULY 16, 2002 CONCERNING ELEVATION OF EPA TO CABINET LEVEL STATUS

In your testimony you talk about EPA's organizational structure and how resources are allocated.

Q: Are you also advocating that EPA move away from its current media specific organization?

A: Yes. As I indicated in my testimony, simple elevation of the Agency, without the necessary reforms, would lock EPA into its current structure. Elevation with the appropriate reform, however, would allow the symbolic importance of our environment to be recognized while at the same time fixing deficiencies that impair the Agency. With a revised organizational structure, EPA could be allowed to be more flexible, innovative, and effective with the billions of dollars of assets provided it annually by Congress.

EPA should no longer be structured along media lines. To reiterate a critical point from my testimony, this is the same discussion that took place when EPA was organized under Reorganization Plan No. 3 of 1970 ("the Reorganization Plan"). At that time, President Nixon was critical of the manner in which the national government was structured with regard to protection of air, water, and land. In the Reorganization Plan, the President critically observed that many agencies' missions were "designed primarily along media lines - air, water and land. Yet the sources of air, water, and land pollution are interrelated and often interchangeable."[1]

In the years that followed, Congress passed the Clean Air Act, the Clean Water Act, the Resource Conservation and Recovery Act, and others - each addressing a single medium. Notwithstanding the goals of the reorganization plan and provisions in the respective laws authorizing the Administrator of EPA to coordinate implementation with the various laws, EPA was de facto structured to focus on media-specific concerns. So today, more than 30 years after EPA was established, we are facing precisely the same problems raised by President Nixon in 1970.

[1] Reorganization Plan No. 3 of 1970, dated July 9, 1970, available at http://www.epa.gov/history/org/origins/reorg.htm.

Environmental issues change with time and circumstances. Innovation and flexibility are therefore necessary if we are to be more effective in protecting our environment. A legislative mechanism must be implemented that allows and encourages innovation and flexibility. To ensure we are not discussing the same concerns 30 years from now, Congress should use this opportunity of elevating the EPA to cabinet level status to provide a structure to EPA that allows it to address changing environmental circumstances. Some of our recommendations are set forth below.

1. **MARKET BASED MECHANISMS**

EPA should be authorized to promote market-based mechanisms. Market-based mechanisms and economic incentives motivate businesses to adopt new technologies and processes, resulting in environmental performance that goes beyond bare minimum requirements. This approach has been very successful. For example, the Clean Air Act Amendments of 1990 required power plants to reduce their CO_2 emissions, but allowed emissions trading to meet this requirement. This program resulted in CO_2 emissions 22% below required levels, lower costs of compliance, and universal program compliance.

2. **A PERFORMANCE BASED REGULATORY STRUCTURE**

EPA should be authorized to develop a performance-based regulatory structure. More flexibility should be encouraged through performance-based, rather than command and control, standards. If EPA sets a goal, and allows the regulated community to determine the best methods of meeting that goal, companies will have an incentive to explore new technologies and develop cost-effective means of meeting that goal. If, on the other hand, EPA mandates a specific method of meeting an emission level, that creativity and flexibility is lost. The regulated community will be forced to meet the goal in the single way federal regulators have pre-determined. For example, a plant-wide emissions limit, often referred to as a "bubble," allows a company to choose which emissions sources to control to meet an overall plant-wide limit. This approaches encourages flexibility, to use of the most cost-effective controls, and improves overall performance.

3. EPA SHOULD NOT CONTINUOUSLY SECOND-GUESS STATES

There must be an increased role for state and local governments. During the past 30 years, local and state governments have become as competent as the federal government in environmental protection. States now are responsible for more than 80% of all environmental implementation and enforcement activities. Most environmental problems are local in nature, and would benefit from a local solution, which considers local conditions. EPA regulations are necessarily broad and national, and often do not fit local circumstances. In addition, devolving responsibility to the state and local level allows for innovations, such as New Jersey's facility-wide permitting process, which lets companies make changes in their processes and equipment without prior approval. This flexibility cannot exist if EPA is micro managing state environmental programs. States are not perfect, but they do a good job, and should be allowed to operate without undue federal intrusion. A particular concern is EPA's frequent overfiling, where the federal government duplicates the enforcement actions of the states. As I indicated in my testimony, not only is this practice a tremendous waste of limited resources, but it also runs counter to the basic principles of federalism. Accordingly, the U.S. Chamber strongly believes that once EPA authorizes a state to assume responsibility for a federal program, EPA should be prohibited from second-guessing the state by overfiling a federal enforcement action. If EPA believes that the state performance is inadequate, EPA would retain the right to terminate authorization. Short of that unusual circumstance, EPA's constant second-guessing is demeaning to state sovereignty, and a waste of public resources.

4. RISKS MUST BE PRIORITIZED

EPA must prioritize the risks it will address. A significant problem with EPA is a lack of cross-media risk prioritization. Without proper risk assessment, funds can be - and frequently are - misallocated. The problem with the way EPA allocates resources was pointed out in an EPA report entitled "Reducing Risk: Setting Priorities and Strategies for Environmental Protection" (Sep. 1990). That report found that the most serious societal risks "were not necessarily the problems that Congress and EPA had targeted for the most aggressive action." The report further noted that, "EPA's regulatory activities are not necessarily focused on the environmental problems that pose the greatest risks to public health and welfare. Rather, they are focused on the environmental problems defined in EPA's enabling legislation, which in turn reflects public concern about the effects of different contaminants in different environmental media. Yet neither the depth of public concern nor the stringency of environmental law is necessarily an accurate measure of the relative seriousness of the environmental risks facing us today." This critique

of EPA's risk allocation remains as strong today as when it was written. EPA should assess environmental risks and then allocate resources accordingly. Its present media-based structure does not encourage, and often even prohibits this common sense approach.

5. SCIENCE AND DATA QUALITY MUST BE INCORPORATED INTO EVERY FACET OF AGENCY ACTIVITY

Science and data quality must be a major component of every significant activity conducted by EPA. Only with the mandated use of both "sound science" and good quality data can issues be adequately determined, prioritized, and addressed. Scientific integrity is particularly important in the rulemaking process. When EPA regulates without having first conducted sound scientific research, both government and industry pay a heavy toll. Scientific integrity, defined by Congress, and mandated for all EPA activities would greatly improve EPA's regulatory efforts. As discussed at greater length in the U.S. Chamber's testimony, we believe that EPA can establish a generally agreed upon view of what constitutes "sound science." Our testimony suggested 16 basic elements, which may provide a starting point for discussion. In sum, "sound science," which is objective, unbiased, and peer reviewed, should be used at every stage from policy planning to enforcement.

6. INDEPENDENT BUREAU OF ENVIRONMENTAL STATISTICS

The U.S. Chamber recommends the creation of a truly independent Bureau of Environmental Statistics. For too long, EPA has used bad science, and, as a result, bad data in its rulemaking. It is critically important that the Director of the Bureau have substantial independence in carrying out his or her duties. The policy offices at EPA have many goals; a Bureau of Environmental Statistics would have only one - producing the best quality data possible. To avoid the inevitable pressures to reach a pre-determined result, it is vital that the collection, compilation, evaluation, analysis, and dissemination of data be done without interference or undue influence from the Department's policy or media offices.

Your testimony also talks about the need for EPA to prioritize risks.

Q: Does some of the problem with the agency not prioritizing risks stem from how the agency is organized and resources are allocated? (*i.e.*, if a lot of money is being spent on superfund sites that aren't a big risk, why would the superfund office want the agency to prioritize the risks?)

A: EPA's budget is in large part divided along media lines. Controlling waste accounts for 22.2% of EPA's FY 2003 budget. Other goals receive substantially fewer resources. For example, safe food accounts for only 1.4% of EPA's budget, and clean air only 7.7%. "Sound science," which should be the foundation for all of EPA's regulatory efforts, accounts for only 4.2% of the budget. If an accurate assessment of risk were performed, not just within media, but also on a cross-media basis, it may turn out that the risk from food contaminants pose far greater risks than improper waste disposal. Under the current system, however, EPA will continue to spend far more on managing waste than on clean air or pollution prevention (4.2%). This situation is aggravated by off-budget expenditures. The Superfund Trust Fund has provided additional billions of dollars for waste management activities. EPA cannot say with any assurance, however, that these allocations are a proportionate response to the risks posed. Only with "sound science," and accurate risk assessment on a cross-media basis, can EPA properly allocate its resources. This is not entirely EPA's fault. It is the current organizational structure that creates both EPA's media specific focus and current budget allocations. Reforming EPA's organization would allow its resources to be better allocated, based on risk, not media.

Q: Does the media specific organization of EPA interfere in its ability to set priorities and assess risks?

Yes. As I indicated in my testimony, EPA's current organization along media-specific lines strongly influences the way resources are allocated. Each office typically looks only at the risks to its medium, which results in a less than optimal prioritization of risks.

The U.S. Chamber respectfully suggests that this is an opportunity for better resource allocation. As I noted previously, the misuse of resource allocation was pointed out in an EPA report that found that the most serious risks in society "were not necessarily the problems that Congress and EPA had targeted for the most aggressive action." The authors found that "EPA's regulatory activities are not necessarily focused on the environmental problems that pose the greatest risks to public health and welfare. Rather, they are focused on the environmental problems defined in EPA's enabling legislation, which in turn reflects public concern about the effects of different contaminants in different environmental media. Yet neither the depth of public concern nor the stringency of environmental law is necessarily an accurate measure of the relative seriousness of the environmental risks facing us today." To remedy this divide, the authors suggested, "The Agency should assess and compare the universe of environmental risks and then take the initiative to address the most serious risks, whether or not Agency action is required specifically by law."[2]

Another issue raised by EPA's current media-specific organizational structure is the reallocation of resources. EPA funds are appropriated on a media-specific basis. This prevents EPA from transferring resources from a lower risk rulemaking to a higher risk problem in a different media. Congress needs to grant EPA greater flexibility in allocating its resources. To the extent Congress retains these choices for itself, Congress must also accurately assess the risks posed by threats to human health and the environment. Science, not public concerns, should be the determinant in how society's scarce resources are allocated.

EPA spends far more of society's resources indirectly than directly. The business community spends more than $200 billion each year, much of it in response to EPA requirements. To the extent EPA misallocates its own resources it is likely to cause many more private resources to be spent remedying lower priority concerns. In addition to the misallocation of monetary resources, EPA requirements on the wrong priorities cost lives if society's limited resources are not focused on the areas with the greatest health benefits.

Accordingly, EPA's difficulties in prioritizing risks are partly the result of its organization along media-specific lines. An organization based on the principles of "sound science" and risk assessment will result in a more productive EPA and a healthier society.

[2] U.S. EPA, "Reducing Risk: Setting Priorities and Strategies for Environmental Protection" (Sept. 1990).

In your testimony you talk about the importance of data quality. In particular the importance of transparency. I'm not accusing you of agreeing with NRDC, but the data quality issue you raise sounds much like the transparency and impartiality issues they have raised.

Q: Are you talking about essentially the same fundamental problem?

A: In short, I believe the answer is yes. Both the U.S. Chamber and NRDC share a common concern that EPA too often bases its policy and regulatory decisions on science that is not publicly available. Moreover, we share NRDC's concern that data and models used to achieve scientific results are often unavailable even to EPA itself. Therefore, we wholeheartedly agree with the principle set forth in Mr. Warren's testimony that EPA and the public "should have adequate access to the data upon which" studies are based.[3] Without such access, it is impossible for EPA, the U.S. Chamber, or NRDC to determine whether the science underlying a policy or regulation is sufficiently "sound." (The definition of "sound science," a topic of much debate, is discussed in greater detail below).

The common ground held by the U.S. Chamber and NRDC is perhaps less surprising when one considers that we have arrived at the same place by taking very different routes. NRDC believes, as stated in Mr. Warren's testimony, that "the greatest scientific shortcoming at the Agency is its influence by polluting industry." Our disagreement with this statement could not be stronger. We believe the greatest EPA scientific shortcoming is the Agency's willingness to (1) use science that, regardless of its quality, supports predetermined EPA policies, and (2) to ignore scientifically sound countervailing studies.

Nevertheless, NRDC and the U.S. Chamber come to a similar conclusion – that EPA and the public should have access to data and models upon which studies and conclusions are based. For example, Mr. Warren states in his testimony that "EPA and the public should have adequate access to data upon which industry-performed and industry-sponsored studies are based." Presumably, Mr. Warren and NRDC would further agree with the U.S. Chamber that unfettered access should granted to *all* studies used by EPA, regardless of who performs or sponsors them, and that uncertainties and data gaps identified by researchers should also be made public. While not the only criteria, such access and transparency are essential to ensure that scientific soundness can be judged.

[3] Written testimony of Wesley P. Warren, provided July 16, 2002, p. 9.

The importance of data access and "sound science" are two of many reasons the U.S. Chamber has been a leading supporter of the Data Quality Act that was signed by President Clinton in 2000. OMB Guidelines implementing the Act, which becomes effective at the beginning of Fiscal Year 2003, require transparency of data and methods with regard to certain influential scientific, financial or statistical information. However, the OMB Guidelines contain exceptions where confidentiality protections would not permit full transparency. Therefore, in comments submitted to numerous agencies, including EPA, the U.S. Chamber has recommended that agencies avoid using confidential or proprietary data or models in the formulation of policy and regulations. It seems, based on Mr. Warren's testimony, that this is a position NRDC would share with the Chamber.

Notably, the principles shared by the U.S. Chamber and NRDC go even further. Mr. Warren's testimony and the article he attaches both suggest that EPA should be required to consistently use "sound science." NRDC, of course, believes that the science currently used by EPA is too often overly influenced by regulated industry and is therefore biased and unsound. Again, we strongly disagree with this supposition. But we do agree that EPA science – whether referring to that which is created by the Agency or that which has been adopted from a third party – should always meet certain minimum quality standards.

This is the reason the U.S. Chamber has proposed, as set forth in my written testimony, that Congress mandate a process by which the term "sound science" be defined. Neither the business community nor the environmental community should solely define the term "sound science." Rather, we should collectively seek to establish a harmonized conception of the term's meaning. The need for such an approach is demonstrated quite well by the article appended to Mr. Warren's testimony, entitled *Bad Science*. The article sets up a classic strawman argument, suggesting that industry equates "sound science" with absolute certainty. Based on this incorrect premise, the authors conclude that, because absolute certainty is rarely possible, industry's calls for "sound science" should simply be disregarded. We can argue for years about how industry defines "sound science" vis-à-vis environmental groups – or we can find common ground and unquestionably improve the quality of science conducted and used by EPA, a goal shared by all. The U.S. Chamber suggests the latter process is preferred.

Therefore, we have recommended that a broad cross-section of government scientists be called upon to establish a harmonized view of what constitutes "sound science." My written testimony included 16 principles that the U.S. Chamber believes are inherently part of "sound science," such as objectivity, reliability, and peer review. But the final framework would be left entirely to the federal government's scientific community. Obviously, certain of the 16 principles suggested by the U.S. Chamber may be excluded from the final framework. Similarly, certain principles that NRDC would advance may also fail to find their way into the final product. But, ultimately, a number of agreed to principles would emerge, thereby establishing a baseline by which the soundness of all science can be measured. Future legislation could and should then refer to the new framework, requiring that it be incorporated into governmental programs or policies in which science plays a role. We believe that this approach will remove much of the politics that naturally have an impact on the discussion of "sound science."

While the issue of soundness and reliability of *specific* data involves questions somewhat beyond the current discussion, I would like to briefly address one topic that arises from Mr. Warren's testimony and the *Bad Science* article. A consistent theme of both the testimony and the article is that the objectivity of industry-generated or industry-sponsored data should inherently be questioned. Certainly, the U.S. Chamber agrees that industry-backed data and studies should, if industry expects EPA to use such information, be based on "sound science." But it must be noted that information provided by the regulated community under a statute, regulation, permit, order or other mandate carries with it an indicia of authenticity, given that providing false information under such circumstances is a crime.[4] We therefore believe this information is properly used by EPA, but only because it inherently passes the test of soundness.

Industry accepts its responsibility to play the role of partner in the effort to protect human health and the environment. The U.S. business community will spend two trillion dollars over the next decade toward this goal. The imperative question is *how* the money will be spent. That is the primary reason why the U.S. Chamber favors cross-media risk prioritization. But adequate risk prioritization cannot occur unless the Agency, in conducting risk assessments, follows sound scientific principles. Ultimately, risk prioritization will involve at least some level of political evaluation on which the U.S. Chamber and NRDC will vehemently differ. But we do agree that science used by EPA should be sound and transparent. Accordingly, the U.S. Chamber respectfully suggests that Congress would be wise to use this ample area of agreement as a starting point for legislation designed to improve the science used by EPA and other agencies that use science in the formation of policy or regulation.

[4] 18 U.S.C. §1001.

We respond also to a written question from the Committee to Wesley Warren of the Natural Resources Defense Council, which asks, per the need for a greater focus on children's health: Does the media specific structure of EPA hinder the agency's ability to look at cross cutting issues like children's health?

RESPONSE:

We submit that the more effective EPA becomes in wisely allocating resources such as money, labor, time, and materials, the better positioned it will be to address not only children's health, but also the multitude of environmental issues with which the nation is confronted.

We believe that progress toward realizing this objective requires considering problems in terms of all media compartments considered together. Most environmental problems are not single-media problems. Children's exposure to chemicals, for example, must be considered in terms of all pathways of exposure.

Second, a comprehensive reexamination of resource expenditures across all media and programs considered together is essential if problems such as children's health are to be adequately addressed. The present media specific structure of EPA is a hindrance. Present budgetary allocations, for example, putting 64% of EPA's FY2003 resources into clean water and better waste management, while expending only 6.8% of resources for "sound science" and quality environmental information, can hardly be expected to be the best resource remedy for addressing children's health and other issues. We are not alone in this view. EPA's own Science Advisory Board concurs with this view. For example, in the 1990 EPA Science Advisory Board report, *Reducing Risk: Setting Priorities and Strategies for Environmental Protection*, one finds the observation that "EPA's current framework of statutory mandates and program structure helps to maintain artificial distinctions among environmental problems, and those distinctions are conducive neither to sound evaluation of relative risk nor to selection of the most effective actions to reduce risk."[5]

[5] Science Advisory Board, U.S. EPA, Reducing Risk: Setting Priorities and Strategies for Environmental Protection (Sep. 1990), Chapter 2.

Third, to better identify where, when, and how best to allocate resources, the agency must prioritize risks according to some harmonized mechanism to accomplish this task. Here too, the EPA Science Advisory Board weighs in, commenting in the 1988 report, *Future Risk: Research Strategies for the 1990s*, that "EPA's regulatory activities are not necessarily focused on the environmental problems that pose the greatest risks to public health and welfare. Rather, they are focused on the environmental problems defined in EPA's enabling legislation, which in turn reflects public concern about the effects of different contaminants in different environmental media. Yet neither the depth of public concern nor the stringency of environmental law is necessarily an accurate measure of the relative seriousness of the environmental risks facing us today."[6] It is particularly troubling that Mr. Warren annexes to his testimony a report ("Bad Science") that denigrates the SAB. We suggest that the above cited reports have merit, and that they deserve due consideration by an informed Congress.

We suggest in our testimony that all EPA regulations and guidance be based on "sound science." This, surely, will benefit children's health, and certainly will be of great value to EPA in setting priorities and allocating resources effectively. If not "sound science" as a basis for making wise decisions, what possibly can this nation do? Shall we instead guess at how to protect the health of children? Guessing and faulty science are too problematic an approach in which to vest our hopes for improvement. Poor science led to the MTBE and asbestos debacles, which we note in our testimony. One can hardly say that EPA's decisions to use MTBE and remove asbestos were a benefit to children's health. As a result of EPA's unsound decisions to mandate the use of MTBE, countless thousands of children will now be exposed to MTBE contaminated well water. And the consequence of EPA's mandating the removal of asbestos has exposed countless thousands of children to this health threat. The historical record reveals the extent to which some advocates for the environment wholeheartedly favored use of MTBE and asbestos removal. These were unwise decisions that could have been avoided had "sound science" principles been applied.

Further, as raised in Mr. Warren's commentary and in the report annexed to his testimony, there is the claim that "sound science" is just an industry-motivated delaying tactic, because it is not possible to know everything about everything. Leaving aside the above observations about MTBE and asbestos, which issues certainly could have benefited from knowing more, Mr. Warren's observation is specious.

[6] Science Advisory Board, U.S. EPA, Future Risk: Research Strategies for the 1990s, 1998, Chapter 2.

In our commentary, we have addressed this issue, wherein we have tried to suggest a framework for establishing what constitutes a harmonized view of "sound science." Specific to the issue of uncertainties, we certainly acknowledge that it is not possible to know everything about everything. However, attending to this matter, we suggest (point 8 of what at a minimum "sound science" would be) that: "Limitations, errors, uncertainties, and the consequences of these factors (as discussed in our testimony) must be addressed in a valid and comprehensive manner." This exercise is absolutely essential. GAO, in its 2001 report *Major Challenges and Program Risks* notes of EPA activities that data gaps have hindered EPA's efforts to perform critical human exposure and risk assessments, to consider risk in setting program priorities, and to obtain a comprehensive understanding of environmental conditions and changes over time. Clearly, beyond just producing quality data, EPA must address uncertainties.

We observe that for many years now, countless thousands of scientists have been engaged in investigating scientific phenomena and reporting their findings. Surely it is not unreasonable to suppose that among this learned body there is a sense of what "sound science" is and from which can be distilled some harmonized framework of guiding principles.

The "Bad Science" article annexed to Mr. Warren's testimony includes a quote from Albert Einstein that "The right to search for truth implies also a duty: one must not conceal any part of what one has recognized to be true." We submit that Mr. Einstein himself would certainly agree that one cannot find the truth in the first place by guessing at it.

* *

The U.S. Chamber is grateful to have had this opportunity to again present its recommendations on EPA's organization structure. Congress has a tremendous opportunity to help EPA become an innovative organization that can provide greater protection of human health and the environment while doing so in a cost-effective, scientifically sound manner.

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July 26, 2002

VIA FAX: 202-226-1298

The Honorable Doug Ose
United States Congress
1508 Longworth House Office Bldg.
Washington, DC 20515-0503

Dear Congressman Ose:

Thank you for the opportunity to testify on the elevation of EPA to cabinet status at the Subcommittee's July hearings. I am pleased to submit answers to the questions presented me after the hearing. Again, let me remind you that the views I express are personal and do not represent an official position by the Environmental Law Institute.

Results Oriented Environmental Policy

Congress should codify the mission statement of EPA, either with the language used in the GPRA strategic plan, or similar language in an organic act for the agency. This should be separate from the process of elevating it which should be done in a clean elevation bill such as H.R. 2354.

By all means, Congress should set goals for EPA. I think they should tie into the National Environmental Policy, Act which has been greatly weakened by the courts in the last 23 years. Congress has set many ambitious goals for EPA in the Clean Air Act and the Clean Water Act and other environmental statutes (e.g.; nondegradation of air, visiblity, fishable and swimmable water). In addition to ambitious goals, the federal statutes prescribe detailed performance and procedures in sharp contrast to the more goal oriented statutes governing the public lands. For instance, many of RCRA's requirements have hammers.

I believe that Congress should require EPA to measure environmental quality to ensure that the policies and regulations are meeting these goals. There are glaring gaps in environmental data. Much of the environmental reporting infrastructure has been dismantled (OMB Circular A-133) or allowed to decline through lack of funding (U.S.G.S.).

A specific data gap that I think is critical is data on water quality. A series of more than 30 lawsuits revealed that the states and EPA simply were not only not implementing the water quality requirements of the Clean Water Act, they were not even measuring water quality under the Total Maximum Daily Loads (TMDL) program. The current TMDL regulations are being bitterly resisted in some quarters. Many people point to the emissions trading system under the Clean Air Act as a great success. One recent report revealed that a Louisiana bank lacked data

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on what was being banked. While much, if not most, American businesses are solid responsible citizens — especially in the manufacturing sector — there are many companies that are "lying in the weeds." When the press does its job on reporting these stories, they will undoubtedly be characterized as environmental Enrons.

The needed gaps need to be identified in legislation that will be implemented with the funding necessary to compile the data. A reorganization plan that combined NOAA and the weather services capability might be considered.

Let me emphasize again that EPA is hobbled by many restrictions.

Media Specific Agency Organization

I do not think the media-oriented organization should be radically changed. This is rearranging deck chairs. The problems that states and industry have with EPA will not be addressed by any of the proposed reorganization schemes. EPA is a reactive agency which cleans up after its sister agencies and the destruction caused by massive subsidies.

Next Steps After Elevation

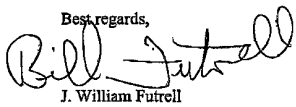
The longest journey begins with the first step. That first step is passage of H.R. 2354 or a similar clean elevation bill. Get something done. Congratulations on passage of the long-stymied Brownfields bill.

I wonder if the next incremental step after elevation might be hearings to identify the data gaps and the best means to address them.

Having been engaged in hearing of Congress for more than thirty years, let me assure you that it has always been difficult. The supposed golden era of bipartisanship in the Muskie/ Stafford era applies to the leaders of the Senate Environment and Public Works Committee. Beyond those doors, the debate was fierce. Progress was made by incremental steps. Progress came because the Committee staffs took the time for repeated hearings and built a records — an effort similar to the studied and professional leadership you are showing on H.R. 2354.

Thank you again for the opportunity to submit testimony. If I can be helpful to the Committee on this or other matters, please do not hesitate to call me.

Best regards,



J. William Futrell
President