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September 2, 2003

MEMORANDUM FOR MEMBERS OF THE GOVERNMENT REFORM SUBCOMMITTEE ON ENERGY POLICY, NATURAL RESOURCES AND REGULATORY AFFAIRS

FROM: Doug Ose 

SUBJECT: Briefing Memorandum for September 9, 2003 Hearing, "Elevation of the
EPA to Department Level Status: Federal and State Views"

On Tuesday, September 9, 2003 at 2:00 p.m., in Room 2154 Rayburn House Office Building, the Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs will hold a second legislative hearing on two bills seeking to elevate the Environmental Protection Agency (EPA) to department level status. The hearing is entitled "Elevation of the EPA to Departmental Level Status: Federal and State Views."

In the last Congress, the Subcommittee explored EPA elevation at three hearings held on September 9, 2001, March 21, 2002, and July 16, 2002. At the time, two EPA elevation bills were referred to the Subcommittee: H.R. 2438 introduced by Congressman Sherwood Boehlert, and H.R. 2694 introduced by former Congressman Stephen Horn. Witnesses testified to both the merits of elevating EPA to department level status and the various problems at EPA that hinder effective environmental protection. During the 107th Congress, the Subcommittee did not markup either EPA elevation bill.

In the current Congress, two EPA elevation bills have been referred to the Government Reform Committee: H.R. 37 and H.R. 2138. H.R. 37, introduced by Congressman Sherwood Boehlert, is identical to H.R. 2438, as introduced in the 107th Congress, and simply elevates EPA to department level status. H.R. 2138, introduced by Congressman Doug Ose, provides for elevation while instituting structural changes to EPA's organization and a Bureau of Environmental Statistics¹.

¹ Several departments have independent statistical agencies, including the Commerce Department's Bureau of the Census, the Education Department's National Center for Education Statistics, the Energy Department's Energy Information Administration, Health and Human Services's National Center for Health Statistics, and the Labor Department's Bureau of Labor Statistics.

On June 6, 2003, the Subcommittee held a legislative hearing on both bills. Several experts from think tanks and academia testified to the merits of both bills. Witnesses testified to the need to improve the quality of science at EPA and the need for an independent statistical agency, such as the Bureau of Environmental Statistics, to report on meaningful environmental and human health performance indicators. Moreover, witnesses reported that, to improve EPA's ability to meet the next generation of environmental challenges and implement cross-media analyses, the Agency's stovepipe structure should be reorganized.

Specifically, H.R. 2138 would reorganize EPA into three Under Secretaries: (1) Policy, Planning, and Innovation; (2) Science and Information; and, (3) Compliance, Implementation, and Enforcement (see Chart A). The Under Secretary for Policy, Planning, and Innovation would have authority over all program offices, regulations and policy development. The Under Secretary for Implementation, Compliance, and Enforcement would supervise the Regional offices and facilitate coordination with program offices. The Under Secretary for Science and Information would coordinate centralized scientific activities and ensure dissemination throughout the Department. Finally, the bill creates a Bureau of Environmental Statistics to collect, analyze and report on environmental and human health conditions, also supervised by the Under Secretary for Science and Information.

Many Federal departments utilize statistical agencies to provide independent and reliable data for decisionmaking and program evaluation. However, EPA does not systematically gather and analyze statistical data on environmental conditions to determine the success of EPA activities. Instead, EPA primarily uses output measurements (such as the number of permits and enforcement actions) instead of outcome measurements (such as cleaner water, fewer illnesses, and less days off from school or work) to determine whether EPA is reaching its goals. Under the leadership of former Administrator Whitman, in June 2003, EPA published a draft State of the Environment Report in an effort to move towards outcome measurements. However, the EPA science's lack of credibility, extensive use of policy advocacy, and revisions made by the Administration prior to issuance, caused many people to criticize EPA's report and discount its value. While EPA's report is a step in the right direction, only a statutorily-required, peer reviewed, and independent Bureau of Environmental Statistics will move EPA towards the goal of implementing meaningful outcome measurements.

Both H.R. 37 and H.R. 2138 redesignate EPA as the Department of Environmental Protection. Congress previously reorganized existing departments when creating new departments, such as the recently-enacted Homeland Security Act of 2003 (Pub. Law 107-296), Department of Education in 1979 (Pub. Law 96-98), and Department of Energy in 1977 (Pub. Law 95-91) (see Chart B). A question to be addressed at the hearing is whether Congress should include management and organizational changes in conjunction with the elevation of an existing Agency.

Under the current regime, EPA made great progress in the cleanup of the large industrial and municipal wastes that served as the impetus for EPA's establishment by President Nixon over 30 years ago. However, this nation faces a new generation of environmental challenges that stem not from major point source pollution, but from non-point

sources, such as agricultural and urban runoff, dry cleaners and mobile sources. The Subcommittee learned from both the June 6, 2003 and the last Congress' hearings that, in the face of these new challenges, the current fragmented structure and culture of EPA may hinder the Agency's ability to efficiently and effectively protect the environment and human health in the future.

Originally, the first EPA Administrator created a relatively small Agency with 4,084 employees, three Assistant Administrators, ten Regional offices, and five environmental commissioners. In the subsequent 30 years, EPA has grown to over 18,000 employees. Despite this expansion, EPA is organized into ten Regional offices, nine Assistant Administrators (program offices), and numerous other offices, each of which still reports directly to the Administrator and Deputy Administrator (see Chart C). In addition, since EPA's inception, Congress has passed at least 11 major environmental statutes based on environmental media or pollution source, each expanding EPA's jurisdiction. Hearing witnesses testified that this "stovepipe" structure hinders the dissemination of scientific data, innovative programs, and cross-media analysis. Witnesses reported that the lack of coordination and information sharing between program offices is particularly detrimental to successful policymaking.

Moreover, as a practical matter, scientific research is conducted in the program offices and the Office of Research and Development. During the Subcommittee's hearings, several witnesses testified that EPA's scientific decentralization requires regulators to search for data in multiple locations, facilitates incompatibility of databases, results in inefficient research planning, prevents adequate peer review, and fosters an uncooperative "fiefdom" culture within the program offices that stymies thorough scientific review. During the June 6, 2003 hearing, witnesses testified that, while science and policy are linked, too often regulators undermine scientific integrity by influencing the scientific studies and its interpretation.

Importantly, States play a vital role in the implementation of our environmental protection laws. Most States develop their own policies, regulations, and enforcement mechanisms based on the delegated authority of Federal environmental statutes. With these increased responsibilities, however, States face obstacles in coordinating with EPA program offices. Moreover, EPA Regional offices typically interpret Federal environmental laws inconsistently, causing uncertainty among States and the regulated community. Finally, States, faced with difficulties working with Regional and program offices, generally have no mechanism for resolving issues at a higher level.

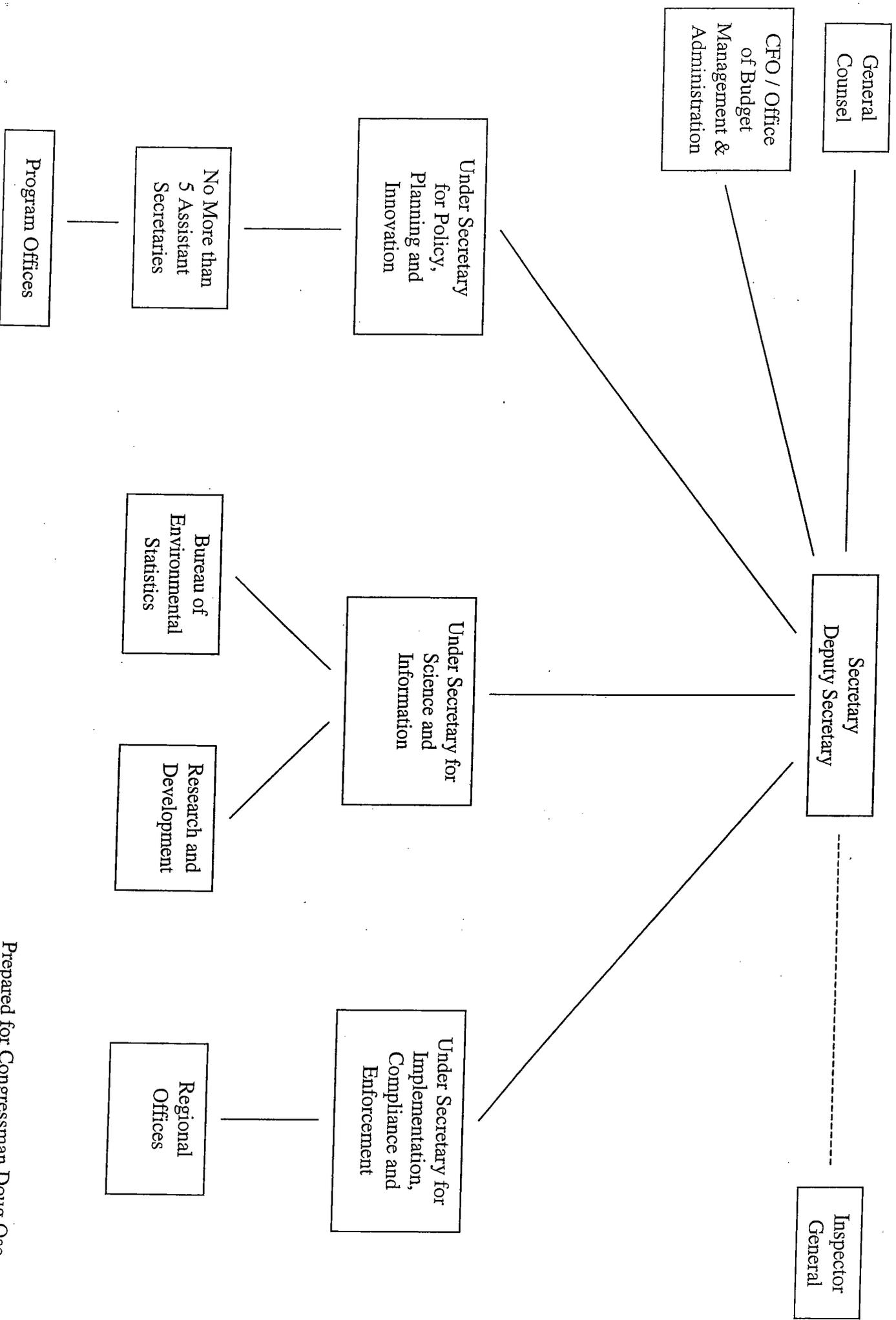
EPA is charged with one of the most important tasks in government: protecting this Nation's environment and human health. Every President since President George H.W. Bush has asked the Administrator of EPA to sit on the Cabinet without formal designation as an executive department. In most industrialized nations, the leading environmental official is a formal member of the Cabinet or its equivalent.

The invited witnesses for the hearing are: Marianne L. Horinko, Acting Administrator, EPA; James L. Connaughton, Chairman, Council on Environmental Quality; State Representative Warren Chisum, Texas House of Representatives; Howard Roitman, Director of

Environmental Programs, Colorado Department of Public Health and Environment; Ron Hammerschmidt, Director, Division of Environment, Kansas Department of Health and Environment; Dr. A. Alan Moghissi, President, Institute for Regulatory Science; and Donald Elliott, former EPA General Counsel and currently a Partner in Willkie, Farr & Gallagher LLP.

Attachments

DEPARTMENT OF ENVIRONMENTAL PROTECTION (H.R. 2138)



LAST SIX 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)

LAST SIX CABINET ELEVATIONS (Continued)

Department	Date	Law	Agency Transfers of Power
Homeland Security	11/25/2002	PL 107-296	<p>USDA (agricultural import & entry inspection activities under the covered animal & plant health protection laws, & Plum Island Animal Disease Center)</p> <p>DOC (NOAA's Integrated Hazard Information System)</p> <p>DOD (National Bio-Weapons Defense Analysis Center)</p> <p>DOE (chemical & biological national security & supporting programs; nonproliferation & verification R&D program; nuclear smuggling program activities; proliferation detection program activities; nuclear assessment program; assessment, detection & cooperation program activities of the international materials protection & cooperation program; life sciences activities of the biological & environmental research program related to microbial pathogens; Environmental Measurements Laboratory; & Lawrence Livermore National Laboratory)</p> <p>HHS (Metropolitan Medical Response System, National Disaster Medical System, Office of Emergency Preparedness, Strategic National Stockpile, etc.)</p> <p>DOJ (Office of Domestic Preparedness, Domestic Emergency Support Teams; FBI's National Domestic Preparedness Office, Critical Infrastructure Assurance Office & National Infrastructure Protection Center; & INS' specified law enforcement & border management functions)</p> <p>DOT (Coast Guard homeland security missions & Transportation Security Administration)</p> <p>Treasury (Customs Service, various Secret Service functions, & Federal Law Enforcement Training Center)</p> <p>FEMA</p> <p>GSA (Federal Protective Service)</p>

Prepared for Congressman Doug Ose

ENVIRONMENTAL PROTECTION AGENCY

