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March 18, 2002

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

FROM: Doug Ose 

SUBJECT: Briefing Memorandum for March 21, 2002 Hearing – EPA Cabinet Elevation
Federal and State Agency Views

On Thursday, March 21, 2002, at 9:30 a.m., in Room 2154 Rayburn House Office Building, the Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs will hold a hearing on elevating the Environmental Protection Agency (EPA) to a cabinet level department. The hearing is entitled, "EPA Cabinet Elevation—Federal and State Agency Views." This is the second hearing on EPA cabinet elevation. The first, entitled "Elevating EPA: Creating A New Cabinet Level Department," was held on September 21, 2001.

In 1970, President Nixon created EPA by combining portions of the Department of the Interior; Department of Agriculture; Department of Health, Education, and Welfare; Atomic Energy Commission; Federal Radiation Council; and Council on Environmental Quality.

Since then, EPA has more than quadrupled in size and now includes more than 18,000 employees, but the basic organizational structure has hardly changed. Today, nine assistant administrators, the Chief Financial Officer, Chief Information Officer, Inspector General, General Counsel and all ten regional administrators still report directly to the Administrator and Deputy Administrator.

This organizational configuration confronts a myriad of changes induced by 30 years of environmental legislation. In the years following the creation of EPA, Congress has passed numerous environmental statutes expanding EPA's jurisdiction. Eleven major statutes now form the basis for most of EPA's actions, shaping the activities and performance of the agency.

These laws typically focus on pollutants in particular media (e.g., air, water, solid waste) and from particular sources (e.g., agricultural pesticides, abandoned industrial sites). Moreover, the policy and regulatory tools authorized by each of these laws vary. This creates a highly fractured approach to controlling pollution, which varies from program to program within the agency.

In addition to changes at the Federal level, there have been dramatic changes in environmental law at the State level as well. In many cases, States have assumed the primary responsibility for Federal programs. For example, 48 States have been delegated authority for supervision of public water systems under the Safe Drinking Water Act. For most environmental problems, States lead government agencies implementing solutions on the ground.

The country has made great progress in the cleanup of large industrial and municipal wastes that first instigated the creation of EPA 30 years ago. Now, the major sources of environmental concern are more intractable problems. Many argue that to deal with the complex environmental challenges the country now faces, environmental laws as well as the status, mission, function, and organization of the EPA must change.

Two bills have been introduced to elevate EPA to a cabinet level department. H.R. 2438 introduced by Rep. Boehlert and H.R. 2694 introduced by Rep. Horn. In addition, Rep. Ehlers has introduced legislation, which would reform science at EPA and create a specific deputy administrator for science. Collectively, these three bills suggest the need for an evaluation of how the agency achieves its mission.

At the first EPA elevation hearing, the Subcommittee took testimony from several witnesses from the academic community, including Resources for the Future, the American Enterprise Institute, the Progressive Policy Institute, and the National Academy of Public Administration. They all generally agreed that if Congress chooses to elevate EPA it should take the opportunity to make improvements in the agency's structure and function. This second hearing builds on the recommendations of the first and seeks input from Federal and State agencies.

Invited witnesses include: Nikki L. Tinsley, Inspector General, EPA; John Stephenson, Director of Natural Resources and Environment, General Accounting Office; Karen Studders, Commissioner, Minnesota Pollution Control Agency; Robert Shinn, Former Commissioner, New Jersey Department of Environmental Protection; and Jane T. Nishida, Secretary, Maryland Department of the Environment.