

TOM DAVIS, VIRGINIA,
CHAIRMAN

DAN BURTON, INDIANA
CHRISTOPHER SHAYS, CONNECTICUT
ILEANA ROS-LEHTINEN, FLORIDA
JOHN M. McHUGH, NEW YORK
JOHN L. MICA, FLORIDA
MARK E. SOUDER, INDIANA
STEVEN C. LATOURETTE, OHIO
DOUG OSE, CALIFORNIA
RON LEWIS, KENTUCKY
JO ANN DAVIS, VIRGINIA
TODD RUSSELL PLATT, PENNSYLVANIA
CHRIS CANNON, UTAH
ADAM H. PUTNAM, FLORIDA
EDWARD L. SCHROCK, VIRGINIA
JOHN J. DUNCAN, JR., TENNESSEE
JOHN SULLIVAN, OKLAHOMA
NATHAN DEAL, GEORGIA
CANDICE MILLER, MICHIGAN
TIM MURPHY, PENNSYLVANIA
MICHAEL R. TURNER, OHIO
JOHN R. CARTER, TEXAS
WILLIAM J. JANKLOW, SOUTH DAKOTA
MARSHA BLACKBURN, TENNESSEE

ONE HUNDRED EIGHTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5074
FACSIMILE (202) 225-3974
MINORITY (202) 225-5051
TTY (202) 225-6852

www.house.gov/reform

May 30, 2003

HENRY A. WAXMAN, CALIFORNIA,
RANKING MINORITY MEMBER

TOM LANTOS, CALIFORNIA
MAJOR R. OWENS, NEW YORK
EDOLPHUS TOWNS, NEW YORK
PAUL E. KANJORSKI, PENNSYLVANIA
CAROLYN B. MALONEY, NEW YORK
ELIJAH E. CUMMINGS, MARYLAND
DENNIS J. KUCINICH, OHIO
DANNY K. DAVIS, ILLINOIS
JOHN F. TIERNEY, MASSACHUSETTS
Wm. LACY CLAY, MISSOURI
DIANE E. WATSON, CALIFORNIA
STEPHEN F. LYNCH, MASSACHUSETTS
CHRIS VAN HOLLEN, MARYLAND
LINDA T. SANCHEZ, CALIFORNIA
C.A. DUTCH RUPPERSBERGER,
MARYLAND
ELEANOR HOLMES NORTON,
DISTRICT OF COLUMBIA
JIM COOPER, TENNESSEE
CHRIS BELL, TEXAS

BERNARD SANDERS, VERMONT,
INDEPENDENT

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

FROM: Doug Ose

SUBJECT: Briefing Memorandum for June 6, 2003 Hearing, "Elevation of the Environmental Protection Agency to Departmental Level Status: H.R. 37 and H.R. 2138"

On Friday, June 6, 2003, at 10:00 a.m., in Room 2154 Rayburn House Office Building, the Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs will hold a legislative hearing on two bills seeking to elevate the Environmental Protection Agency (EPA) to department level status. The hearing is entitled "Elevation of the Environmental Protection Agency to Departmental Level Status: H.R. 37 and H.R. 2138."

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. Several experts, representatives of the regulated community, State representatives, and EPA and other Administration officials 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.

The current hearing will examine two new EPA elevation bills that were referred to the House Government Reform Committee. H.R. 37, introduced by Congressman Sherwood Boehlert, is identical to H.R. 2438, as introduced in the 107th Congress. H.R. 37 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 provides for a Bureau of

Environmental Statistics¹. 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. The bill also provides for an Under Secretary for Science and Information in order to centralize 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.

Unlike many Federal departments, EPA does not gather and analyze statistical data on environmental conditions to determine the success of EPA activities. Indeed, many Federal departments utilize statistical agencies to provide independent and reliable data for decisionmaking and program evaluation. 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.

Both H.R. 37 and H.R. 2138 redesignate EPA as the Department of Environmental Protection. In the main, 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 sources, such as agricultural and urban runoff, dry cleaners and mobile sources. The Subcommittee learned from 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,

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.

nine Assistant Administrators (program offices), and numerous other offices each of which still reports directly the Administrator and Deputy Administrator (see Chart C). In addition, since EPA's inception, Congress has passed 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 policymakers 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.

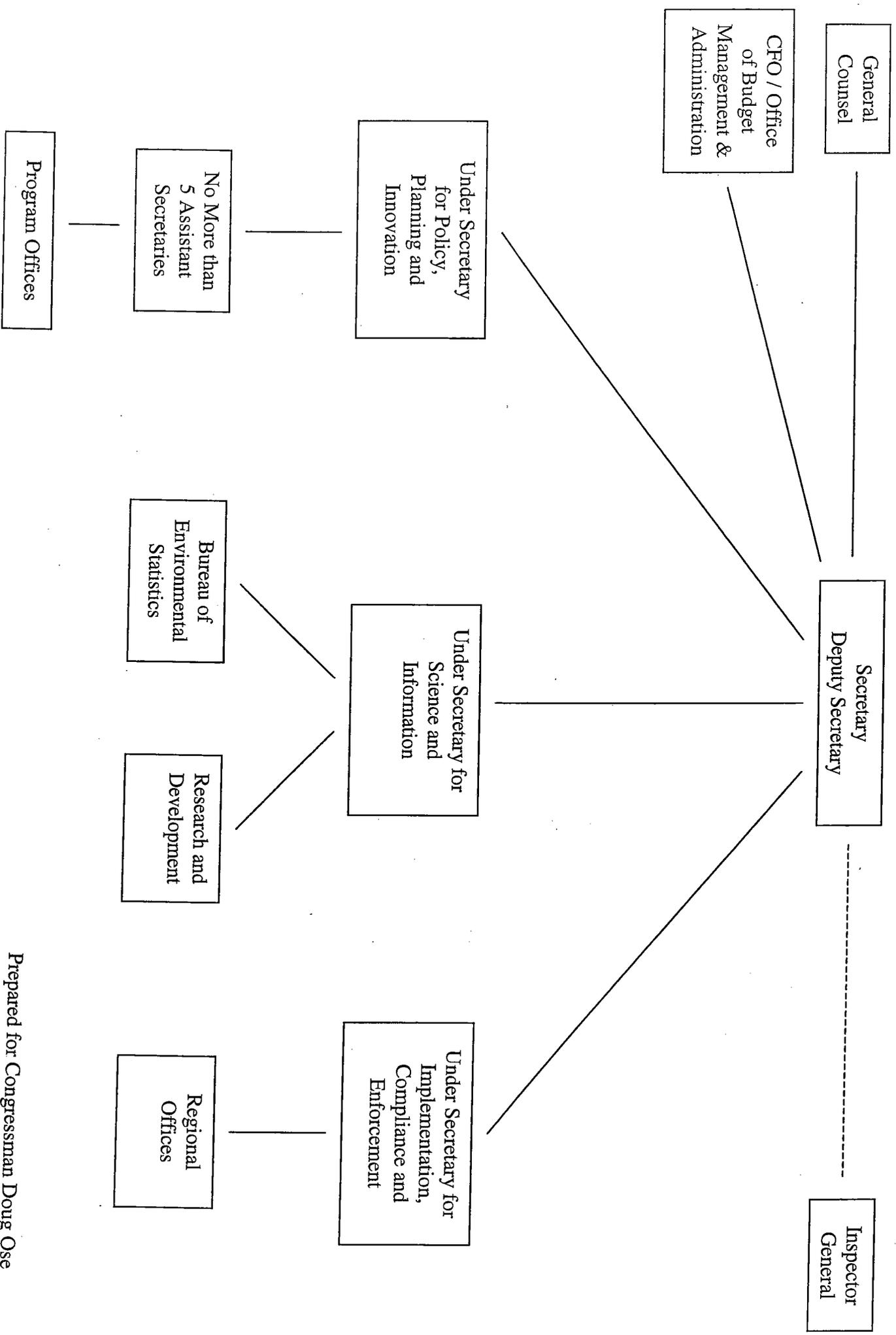
Importantly, States play an increasingly vital role in the implementation of our environmental protection laws. Most States develop their own policies, regulations, and enforcement mechanisms based on the delegated authority of Federal environmental statutes. According to The Environmental Council of the States (ECOS), States spent \$13.6 billion in Fiscal Year 2000 on environmental protection, a 64.8 percent increase since 1986. Moreover, States reportedly collect 94 percent of the environmental data found in EPA's databases; yet, all States do not collect data in a uniform manner, leaving EPA with an incomplete picture of the state of the environment.

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: Dr. Paul Portney, President, Resources for the Future; Jan Mazurek, Director for Innovation and the Environment, Progressive Policy Institute; Dr. George Gray, Deputy Director, Harvard Center for Risk Analysis, Harvard School of Public Health; Dr. Steven Hayward, F.K. Weyerhaeuser Fellow, American Enterprise Institute; Wesley Warren, Senior Fellow for Environmental Economics, Natural Resources Defense Council; and, Center for Progressive Regulation.

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

