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July 11, 2002

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

FROM:

Doug Ose 

SUBJECT:

Briefing Memorandum for July 16, 2002 Hearing – EPA Cabinet Elevation: Agency and Stakeholder Views

On Tuesday July 16, 2002, at 3:00 p.m., in Room 2154 Rayburn House Office Building, the Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs will hold a hearing on whether to elevate the Environmental Protection Agency (EPA) to a cabinet level department. The hearing is entitled, "EPA Cabinet Elevation: Agency and Stakeholder Views." This is the Subcommittee's third hearing on EPA cabinet elevation.

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 has 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.

Congress has typically contemplated extensive changes when it has created a new cabinet level department. (See attached chart.) The current debate over the creation of a Department of Homeland Security provides an additional example of organizational changes in the process of creating a department. The current Homeland Security legislation contains extensive organizational changes to many of the agencies being brought under one cabinet head. While there is a substantial difference between the creation of an entirely new cabinet department and the elevation of an existing functioning independent agency, past experience suggests that Congress has often considered management and organizational changes in conjunction with cabinet elevation.

EPA's 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 also been dramatic changes in environmental law at the state level. 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 are now the lead government agencies for 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, held on September 20, 2001, 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.

At the second hearing, held on March 21, 2002, the Subcommittee took testimony from EPA's Inspector General, the General Accounting Office (GAO) and from state environmental protection agencies. Both EPA's Inspector General and the GAO identified numerous organization and management challenges faced by the agency. In addition, state environmental protection agency heads testified about the obstacles that they face in dealing with the agency when implementing the various statutes for which states have primacy.

This third hearing builds on the recommendations of the first two and seeks input from EPA and the Administration as well as other agency stakeholders, including the environmental community and the regulated community.

Invited 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)