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The Possible Elevation of the US EPA to Cabinet Status

Testimony Prepared for Presentation to
Subcommittee on Regulatory Affairs
Committee on Government Operations
U.S. House of Representatives
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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 coauthored 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 halfway 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.

Sec. 301(b) In undertaking its mission the Department shall be guided by the goal of improving overall environmental quality as effectively and efficiently as possible.

Sec. 301(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 nongovernment 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 are 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 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 less 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 1990s 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, XSI, 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 State, 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.

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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.