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**ELEVATION OF THE ENVIRONMENTAL
PROTECTION AGENCY TO A
CABINET-LEVEL DEPARTMENT**

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HEARINGS
BEFORE THE
ENVIRONMENT, ENERGY, AND
NATURAL RESOURCES SUBCOMMITTEE
AND
LEGISLATION AND NATIONAL
SECURITY SUBCOMMITTEE
OF THE
COMMITTEE ON
GOVERNMENT OPERATIONS
HOUSE OF REPRESENTATIVES
ONE HUNDRED THIRD CONGRESS
FIRST SESSION

MARCH 29 AND MAY 6, 1993

Printed for the use of the Committee on Government Operations



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JOINT HEARINGS
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ELEVATION OF THE ENVIRONMENTAL PROTECTION AGENCY TO A CABINET-LEVEL DEPARTMENT

MONDAY, MARCH 29, 1993

HOUSE OF REPRESENTATIVES, ENVIRONMENT, ENERGY,
AND NATURAL RESOURCES SUBCOMMITTEE, AND LEGIS-
LATION AND NATIONAL SECURITY SUBCOMMITTEE OF
THE COMMITTEE ON GOVERNMENT OPERATIONS,

Washington, DC.

The subcommittees met, pursuant to notice, at 1 p.m., in room 2154, Rayburn House Office Building, Hon. Mike Synar (chairman of the Environment, Energy, and Natural Resources Subcommittee) presiding.

Members of the Environment, Energy, and Natural Resources Subcommittee present: Representatives Mike Synar, Karen L. Thurman, John M. McHugh, and John L. Mica.

Members of the Legislation and National Security Subcommittee present: John Conyers, Jr., Cardiss Collins, Al McCandless, and William F. Clinger, Jr.

Environment, Energy, and Natural Resources Subcommittee staff present: Sandra Z. Harris, staff director; Ruth Fleischer, counsel; Sheila C. Canavan and James V. Aidala, professional staff members; and Elisabeth R. Campbell, clerk.

Legislation and National Security Subcommittee staff present: Bennie B. Williams, clerk.

Full committee staff present: Frank Clemente, senior policy advisor; Judith A. Blanchard, minority deputy staff director; and Charli E. Coon and Monty Tripp, minority professional staff.

OPENING STATEMENT OF CHAIRMAN SYNAR

Mr. SYNAR. Today the subcommittee is pleased to be joined by the Legislative and National Security Subcommittee in opening hearings for the 103d Congress on proposals to elevate the Environmental Protection Agency to Cabinet-level status.

In my view, there are important reasons for a Cabinet-level Department of Environmental Protection; indeed such action is long overdue.

EPA, with a budget of almost \$7 billion and over 14,000 employees, is bigger than some other Cabinet Departments. Unlike some other Departments, EPA's constituency includes every citizen of the Nation. As if working conditions at the Waterside Mall were not dismal enough, denying EPA Cabinet status would be an insult to

the Agency's employees, to the vital work they do, and to the environment itself.

This lack of status denies environmental protection the prominent role it deserves, and puts the Administrator and the EPA staff at a significant disadvantage when resolving differences with other Cabinet Departments.

In international settings, where status and rank is of no small importance, the United States is almost alone among industrialized nations, joining only France, in denying its environmental agency Cabinet rank. Canada, Germany, Japan, Italy, and Great Britain are a few of the many which give cabinet rank to their chief environmental official.

There are some who feel that a simple elevation to Cabinet status is enough for now. Although sensitive to their arguments, I strongly disagree with that approach. Notwithstanding the dedication of thousands of professionals at the Agency, the track record in many cross-cutting areas is poor, and fundamental changes are required in the way EPA does its job. Years of investigations by our subcommittee have revealed consistent problems in EPA's ability to fulfill its mandates and deliver its services. These investigations and others have shown that many of the problems are common across the entire Agency.

Today we will hear some particulars about problems in contract management, information gathering and reporting, inconsistency between regions and headquarters, and conflicting requirements between programs imposed on the same industry, to cite a few. Contracting is just one example of an area deserving immediate attention.

Last year, for example, we learned that the Agency allowed the taxpayers to reimburse contractors for Rolex watches and for reindeer suits for contractors' Christmas parties. It is time for EPA to stop playing Santa Claus to all its contractors.

Similarly, information resources is another area vitally in need of reform. EPA and the public should have reliable and accessible information on whether the environment is getting cleaner. Currently, no single agency collects accurate and objective information about environmental quality or properly measures our progress in meeting important environmental goals. Without such data, Americans cannot tell how well EPA and our environmental laws are doing the job. That is why I supported creation of a independent Bureau of Environmental Statistics within the new Department.

In my opinion, a perfectly "clean" bill would be an abdication of Congress' responsibility to address management and performance problems at this Agency. The taxpayers of Oklahoma and across this country, as well as the regulated community, deserve better.

Simply providing EPA with a new name and new stationery is not good enough. That is why I hope current proponents of the bill will join us in crafting a somewhat broader bill to address some of the pressing issues confronting EPA.

At the same time, we recognize that other organizational and management problems besetting EPA defy easy or quick resolution. Moreover, there is a growing consensus that we must reexamine EPA's historical method of regulating environmental pollution,

most specifically to encourage environmentally effective and cost-efficient approaches to pollution prevention and regulation.

Because I believe these questions deserve critical attention and efforts toward consensus, I have supported the establishment of a special Commission to analyze these and other important issues facing EPA. I continue to support such a Commission and believe it would be money and effort well spent.

We owe it to the Agency, to the regulated community, and to all our citizens to provide a mechanism for identifying structural, management, or other obstacles to better environmental protection, to make sure what is wrong with EPA is ultimately fixed and to look at the most cost efficient, environmentally beneficial methods of regulation possible.

In my view, the time to start that important work is now, not next year, and not in the next Congress. That is why I remain hopeful that the elevation bill will include provisions to establish a Commission to address these and similar matters. I for one would welcome a package of objective, sensible recommendations from such a Commission and hope it would serve as a catalyst for meaningful reform and significant cost savings.

Last week the Senate Governmental Affairs Committee reported their version of the Cabinet bill. I truly feel that with the leadership of the White House and the continued cooperation of the House and Senate, we can have a bill by Memorial Day.

I look forward to working with the administration and my House and Senate colleagues to achieve this goal.

Let me make one last observation: Over the years I have been one of the most severe and vocal critics of EPA and its implementation record.

Let me not be misunderstood, to paraphrase the President's Inaugural speech, there is nothing wrong with EPA that cannot be fixed by what is right with EPA. Its professional career staff may not always do what I want them to do but no one should question, and I don't, their dedication to the mission of protecting our environment. Our investigative work and our work on the Cabinet bill is always designed to help EPA do its job better, more quickly, and more efficiently. I think everyone shares that goal.

Mr. Clinger.

Mr. CLINGER. Thank you, Mr. Chairman.

Today we begin consideration of legislation to elevate EPA to a Cabinet-level Department. As you know, I recently introduced H.R. 824 along with a number of my colleagues on this committee to provide for a clean elevation of the Agency. The choice is really simple. We either do a straight-up elevation of EPA that can be done quickly and simply to ease the pain to the taxpayer or ultimately we create a larger and, not necessarily, improved bureaucracy that will cost taxpayers millions more.

According to CBO estimates, my bill has a price tag of less than \$30,000 a year. Given this country's skyrocketing deficit and the extraordinarily difficult choices we face in allocating precious taxpayer dollars, it is hard to justify spending millions to expand the scope of this Agency.

In addition, a lot of what we will discuss today can and should be achieved without legislation.

In some cases, EPA is already performing these functions, while in other cases, it is clearly an internal management issue which needs to be resolved within the Agency.

I urge my colleagues to look at what we can do without new legislation, and to support a "clean" elevation bill so we can avoid getting bogged down one more time. Once the door is cracked even slightly, there will be no way we can ever close it again.

Finally, I must note one area of concern. I recently learned that the morale of the EPA employees is poor. The employees, along with the previous administration, are not being given due credit for correcting and starting to correct some tough management problems. These are problems that are common to many Federal agencies. This situation is exacerbated by the current lack of leadership at the Agency. With the exception of Ms. Browner as Administrator, no other appointments have been confirmed. In fact, no one to date has even been nominated to run the air, water, Superfund, pesticides, and all the other environmental programs at the Agency. It is ironic that we are talking about elevating the Agency, yet there is no one there to elevate other than the Administrator. I am hopeful that the administration will quickly turn this situation around.

Thank you, Mr. Chairman, and I look forward to hearing from our witnesses today.

Mr. Chairman, I ask unanimous consent that a letter from the Center for Marine Conservation in support of a clean bill and representing over 110,000 members, might be entered into the record at this time.

Mr. SYNAR. Without objection.

[The information can be found in the appendix.]

Mr. SYNAR. Mr. Conyers.

Mr. CONYERS. I want to commend you, Chairman Synar, for all the work that you have done in this area. This is not a new subject, by any means, to you.

I think we have a big job to do and I am here to help.

I just got back from Mississippi over the weekend and, EPA, if you think it is bad up here, wait until you find out what it is like down there, or probably you know what it is like down there.

We are trying to cooperate with the Administrator, who everybody agrees is a breath of fresh air. I am very happy to announce that I am working with her very closely.

We are here to get a job done. Now for everybody who wonders what is taking the House so long, we did this two Congresses ago. So we are not reinventing the wheel.

We are coming back to do a job which now we know more about than we did then. So I am happy to join you here and thank you for allowing me to make this statement.

[The opening statement of Mr. Conyers follows:]

OPENING STATEMENT OF REP. JOHN CONYERS, JR.

CHAIRMAN, SUBCOMMITTEE ON LEGISLATION AND NATIONAL SECURITY
HEARING ON THE ELEVATION OF THE ENVIRONMENTAL PROTECTION AGENCY
TO A CABINET DEPARTMENT
MARCH 29, 1993

Today the Government Operations Committee begins the first of two or three hearings to consider making the Environmental Protection Agency the 15th cabinet department. The issue before us is not whether to put the EPA on an equal footing with other Federal departments. The issue is how best to do it.

This hearing is being conducted jointly by the Legislation and National Security Subcommittee, which I chair, and the Environment, Energy and Natural Resources Subcommittee, chaired by Mike Synar. Both Committees are working together to review the problems at EPA and to craft the best possible legislation. I want to acknowledge the tremendous work of Chairman Synar and his staff over the years at being the burr under the saddle of the EPA, putting a spotlight on its numerous problems, and dogging the agency to correct those problems. The American public owes them a big debt of gratitude.

There is little opposition to giving the EPA Administrator a seat at the President's cabinet table and bestowing upon her the authority and recognition that is granted to the heads of other cabinet departments. This is a bipartisan effort. In fact, the House of Representatives approved the Government Operations Committee's legislation that would have conferred cabinet status by a lopsided margin of 371 to 58 back in the 101st Congress. President Clinton and Vice President Gore have told me they want the elevation done as soon as possible.

I have maintained throughout the Committee's past deliberations on cabinet status that it is not enough simply to rearrange the deck chairs or change the letterhead. If we're going to acknowledge the importance of environmental matters through this elevation then we should also have the courage to acknowledge the problems of the Agency that is charged with correcting them -- and attempt to fix those that can be remedied through this legislation.

The Committee's own staff report entitled "Managing the Federal Government: A Decade of Decline," published in December, describes a plethora of poor management problems at EPA that are hazardous to the nation's environment and public health. The General Accounting Office, in its transition series on EPA for President Clinton, and the Inspector General, in numerous reports, have both outlined substantial weaknesses in the Agency.

There's a consensus in all of these reports that EPA's contracting procedures are a mess; information systems are often incompatible, inaccurate, and incomplete preventing EPA from answering even the most basic questions about whether the environment is getting cleaner or dirtier; enforcement is often neither timely nor effective; accountability and action in response to identified problems is often nonexistent; and budget and staff resources are inadequate given the Agency's mandates from Congress. In fact, the Agency's fiscal year 1993 operating budget, in constant dollars, is roughly where it was in 1979, despite being given a raft of major new responsibilities since then.

Administrator Browner has committed her time and energy to correcting many of the Agency's problems. And so should this Committee by giving her the legislative tools to accomplish the task.

Mr. SYNAR. Thank you, John, and thank you for your leadership and attention to this issue which is very important.

Mr. McCandless.

Mr. MCCANDLESS. Thank you, Mr. Chairman.

We considered legislation in the 101st Congress to elevate EPA. We considered legislation in the 102d Congress to elevate EPA. Now here we are in the 103d Congress and we are starting all over with the same thing.

This is a long way of saying that EPA elevation is not a new idea. It is not something that has been dreamed up in the last 2 months.

In fact, former President Bush supported elevation of EPA to Cabinet status. In a letter to Senator Roth in 1981 he stated:

15 months after you and others joined me in calling for the elevation of EPA to a Cabinet level, Congress has not yet passed the legislation. I continue to believe that the Nation's environmental policies and the work of EPA are sufficiently important to merit the making of the agency a Cabinet Department.

Now let's give credit, Mr. Chairman, where credit is due. It was this body and this committee that chose not to move forward in the last Congress with legislation, not the administration. It is yet to be seen whether we will be able to pass legislation in this Congress.

I predict that if we load up the bill with all kinds of congressional goodies that we will again end up with no bill. Maybe that is not all bad.

I continue to believe that EPA has serious problems and I intend to discuss them with Ms. Browner when she testifies. Nevertheless, I have supported a clean EPA bill and will work with this committee to promote its passage.

In that light, I ask my colleagues to support a clean elevation bill as we hear from witnesses today. Keep in mind that we do not want to micromanage the Agency.

There is a lot EPA can do and should do on its own, especially if we are considering making it a Cabinet-level Agency.

Thank you, Mr. Chairman.

I would like unanimous consent to insert into the record the letter that I referred to from President Bush to Senator Roth.

Mr. SYNAR. Without objection.

[The information can be found in the appendix.]

Mr. SYNAR. Mrs. Thurman.

Mrs. THURMAN. Thank you, Mr. Chairman.

I am probably one of the few members of this committee who has actually had the chance to work with Ms. Browner, coming from the great State of Florida. She served in our Department of Environmental Regulation and was Secretary during the time I served in the State senate.

I had the opportunity to work with Administrator Browner at that time on many pieces of environmental legislation since I was a member of the Florida State Senate Natural Resources Committee. I can tell you that you will find her to be very bright and to have a clear understanding of where this committee might go. I also think she will be very sensitive to some of the criticisms that have come to this particular Agency.

So I hope that we all will be able to work with her and give her the opportunity and the chance to bring about the change that I think the people are looking for.

Mr. SYNAR. I would like to ask unanimous consent that the record be left open for statements from other Members.

[The information can be found in the appendix.]

Mr. SYNAR. Last week a series of articles in the New York Times outlined a number of issues concerning U.S. efforts to safeguard human health and protect the environment from pollution. That series, "What Price Clean-up?" offers a glimpse into the monumental task that EPA and the new Department will have ahead of it.

Also, today's Wall Street Journal contains an article on the Amoco Yorktown pollution project.

I ask unanimous consent that both of those be made a part of the record.

[The information can be found in subcommittee files.]

Mr. SYNAR. Our first panel today is Mr. Richard Hembra, Director, Environmental Protection Issues, Resources, Community, and Economic Development Division, U.S. General Accounting Office.

He is accompanied by Jayetta Z. Hecker, Director, Resources, Community, and Economic Development Information Systems; Bernice Steinhardt, Assistant Director, Environmental Protection Issues; David L. McClure, Project Director, Environmental Information Systems.

As you know, it is the policy of this committee, in order not to prejudice past or future witnesses, to swear in all of our witnesses. Do you have any objection to being sworn?

Mr. HEMBRA. No, sir.

[Witnesses sworn.]

Mr. SYNAR. We look forward to your testimony.

We appreciate your study of this issue.

Richard, why don't you begin?

STATEMENT OF RICHARD L. HEMBRA, DIRECTOR, ENVIRONMENTAL PROTECTION ISSUES, RESOURCES, COMMUNITY, AND ECONOMIC DEVELOPMENT DIVISION, U.S. GENERAL ACCOUNTING OFFICE, ACCOMPANIED BY JAYETTA Z. HECKER, DIRECTOR, RESOURCES, COMMUNITY, AND ECONOMIC DEVELOPMENT INFORMATION SYSTEMS; BERNICE STEINHARDT, ASSISTANT DIRECTOR, ENVIRONMENTAL PROTECTION ISSUES; AND DAVID L. MCCLURE, PROJECT DIRECTOR, ENVIRONMENTAL INFORMATION SYSTEMS

Mr. HEMBRA. Thank you, Mr. Chairman.

Over the years we have reported often numerous problems that have affected individual EPA programs such as problems with toxic substances, pesticides, clean air, and what have you. Today I would like to focus on what we believe are agencywide poor management issues which affect all programs.

One of the most pressing issues facing the Congress and EPA is the limited resources available to carry out environmental mandates.

As our first chart illustrates, over the last decade or so, EPA's responsibilities have substantially increased while its operating budget in constant dollars has remained about the same. While

proposed environmental spending initiatives would fill some of the gaps, the overriding need to reduce the budget deficit makes it unlikely that all EPA's resource needs can be met.

Rather than use the resource shortfall as a reason for inaction, we believe that with Congress' help, EPA needs to concentrate its efforts in ways to make its programs more cost effective. Key among these is setting priorities across EPA programs on the basis of risk to public health and the environment.

This change will be difficult, however, as long as environmental legislation and budget allocations are more reflective of public perceptions of risk rather than scientific and expert judgment.

At our second chart on the wall would indicate, these views of priority-risk areas differ substantially. Some of the disparity between risk and budget priorities stems from the numerous statutes from which EPA derives its authority.

As a result, EPA has little flexibility to base agencywide priorities on assessment of risk across the spectrum of environmental problems. A possible solution might be a single, unified environmental statute for the Agency.

In commenting on bills to create a Cabinet-level environmental Department, we have suggested that the study Commission called for in each bill could address this issue. Even in the absence of legislative changes, it may be possible to bring about a more integrated approach to environmental management through changes in EPA's organization.

In the past, we have suggested that Commission can call for new bills and could also consider a more effective Department structure. It might, for example, consider whether to reorganize the Department entirely by function, by pollution sectors, or by geographic regions.

A second area that demands attention is scientific and environmental monitoring information. While my colleague, Ms. Hecker, has submitted a statement that addresses this issue in more detail, let me highlight a few points.

Although EPA's regulatory programs depend heavily on health and environmental effects data, such data often do not exist or EPA has chosen not to use the authority to acquire the data. Even data that do exist are often inadequate and poorly managed. As a result, EPA's efforts to control harmful pollutants is impeded and the public does not receive timely information about potential risks.

EPA is also often missing the information necessary to judge the success of its programs. While EPA has developed some out measures of environmental outcomes, it generally relies on activity-based indicators such as numbers of permits issued or enforcement actions taken to track its environmental progress.

EPA has begun to reorient its management and its systems toward environmental results rather than activity measures. However, further progress could be enhanced by an adequately funded central unit for collecting, analyzing, and disseminating environmental data. Such a unit has been mentioned in the bills to elevate EPA to a Cabinet Department.

In addition to the problems EPA faces in managing resources and information, EPA historically, has not held management accountable for correcting identified deficiencies. After reporting for

many years on weaknesses that affected the efficiency and effectiveness of virtually all of EPA's programs, we have continued to see the same basic problems, despite recommending numerous corrective actions.

Although EPA frequently issued policies or procedures as first steps toward corrective action, it seldom followed through to ensure its directives were carried out. To its credit, EPA has begun to improve management accountability, also.

EPA created the senior council on management controls to focus attention on problems and solutions. The council, in our view, was extremely valuable and we believe it should be a permanent mechanism for highlighting important management problems.

It has to be accompanied, however, by a long-term commitment by senior managers to review the results of their corrective actions to make sure that they have in fact been successful.

In providing this overview of management issues at EPA, I want to emphasize that none of the problems I have discussed are ones that are simple or have quick fixes. In the past we might have addressed some of these problems simply by increasing resources or creating new programs. Clearly, today that is not an option.

EPA or a Cabinet Department for Environment will have to look within to realize greater efficiencies and effectiveness with the resources available. Along with the Congress, EPA must give these issues the sustained effort and attention that are essential to their resolution.

Mr. Chairman, that concludes my prepared remarks.

We will be happy to respond to any questions at this time.

[The prepared statements of Mr. Hembra and Ms. Hecker follow:]

United States General Accounting Office

GAO

Testimony

Before the Legislation and National Security Subcommittee and
the Environment, Energy and Natural Resources Subcommittee,
Committee on Government Operations U.S. House of
Representatives

For Release on Delivery

Expected at

1:00 PM EST

Monday

March 29, 1993

Management Issues Facing the Environmental Protection Agency

Statement of Richard L. Hembra
Director, Environmental Protection Issues
Resources, Community, and Economic Development Division



GAO/T-RCED-93-26

Chairman Conyers, Chairman Synar, and Members of the Subcommittees:

We appreciate the opportunity to appear here today in the first of several hearings that your Subcommittees will be holding on management issues at the Environmental Protection Agency (EPA) and proposals to elevate EPA to a Cabinet-level department. Since the Congress began considering EPA's elevation several years ago, we have been very supportive of the concept. But we have also cautioned that a number of important management problems would have to be addressed whether EPA becomes a Cabinet-level department or remains an agency. As requested, my testimony focuses on the management problems discussed in our December 1992 report on environmental protection issues. The report was part of GAO's series of 28 transition reports, discussing the major policy, management, and program issues facing the Congress and the new administration.¹

In summary, whether or not EPA becomes a Cabinet-level department, the challenges that await it, as outlined in our report, are formidable. Department or agency, it must, first of all, address the challenge of meeting high public expectations and numerous environmental requirements with limited resources. It must also develop adequate and accurate information to support its regulatory programs and measure environmental results, and it must

¹Environmental Protection Issues (GAO/OCG-93-16TR, Dec. 1992).

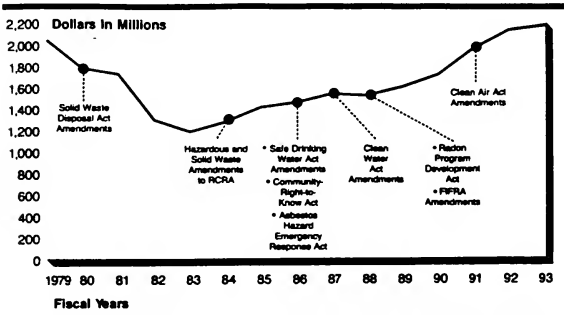
establish clear accountability for correcting existing program weaknesses. Finally, the U.S. government as a whole, including EPA or a new Cabinet-level department, must devise the means to strengthen global environmental protection efforts.

Let me discuss these issues in turn.

MEETING ENVIRONMENTAL REQUIREMENTS WITH LIMITED RESOURCES

One of the most pressing issues the Congress and the new administration will have to contend with is the limited resources available to carry out environmental mandates. As the following graph illustrates, over the last dozen or so years, the Congress has substantially increased EPA's responsibilities for regulating hazardous waste, drinking water, and water and air pollution, among other things. However, the agency's fiscal year 1993 operating budget, in constant dollars, was roughly the same as it was in fiscal year 1979.

GAO EPA's Budget Has Not Kept Up with Program Growth



Abbreviations: RCRA, Resource Conservation and Recovery Act; FIFRA, Federal Insecticide, Fungicide, and Rodenticide Act.

Notes: All figures are in 1987 dollars and cover operating programs only.

Source: GAO's analysis of EPA data.

With the widening gulf between EPA's responsibilities and the resources available to carry them out, EPA has often been unable to meet statutory mandates and to implement plans for addressing pollution. For example, although EPA developed an ambitious plan to deal with nonpoint sources of water pollution--which EPA believes is the source of most the nation's remaining water quality problems--it has hardly acted on key elements of the plan for lack of resources.²

²Water Pollution: Greater EPA Leadership Needed to Reduce Nonpoint Source Pollution (GAO/RCED-91-10, Oct. 15, 1991).

While President Clinton's proposed spending plan would fill some of the gaps in the nonpoint source pollution program, this is only one of a number of areas in which funding has not kept pace with program demands. Moreover, the need to reduce the budget deficit makes it unlikely that EPA's resources can be substantially increased. As a result, we believe that the agency has to focus its efforts on broad management improvements that can make its programs more cost-effective. We have recommended a number of such improvements, and EPA has begun to undertake some of them. But ensuring that these improvements, which are inherently long-term in nature, are made will require the sustained attention of both the Congress and the new administration.

Risk-Based Priorities Could Better Allocate Resources

Key among the initiatives that we have recommended is the establishment of priorities among EPA programs on the basis of risk to public health and the environment. Setting priorities in this way will be difficult, however, as long as public policy and, in particular, budget allocations are more reflective of public perceptions of risk rather than scientific and expert judgment.

Many environmental problems that EPA senior managers and technical experts judged to be of relatively low risk, such as contamination from hazardous waste sites, have received extensive public attention and federal resources, while problems judged to be

of greater risk, such as global warming and radon and other types of indoor air pollution, have received less attention and fewer resources. In fact, as illustrated by the next chart, EPA experts' views of priority risk areas differed substantially from perceptions of risk reflected in public opinion polls.

GAO Rankings of Selected Environmental Risks by EPA and the Public

Rankings by EPA	Rankings by the Public
Higher Risk	
Global warming	Chemical waste disposal
Indoor air pollution, including radon (high health risk)	Water pollution
Exposure to chemicals in consumer products (high health risk)	Chemical plant accidents
Surface water pollution (high ecological risk)	
Lower Risk	
Hazardous waste sites-active and inactive	Indoor air pollution
Underground storage tanks	Exposure to chemicals in consumer products
	Global warming

Source: GAO's analysis of EPA data reported in the Unfinished Business report. Rankings by the public are based on a Roper Organization poll and are therefore not directly comparable to rankings by EPA.

Recognizing that risk assessments alone are not sufficient and that public opinion plays a significant part in setting environmental policy, we have pointed out that the public must also be kept better informed about environmental risks. We have therefore recommended that EPA direct some of the agency's

educational activities under the National Environmental Education Act specifically toward informing the public about the relative seriousness of the nation's environmental problems. We have also recommended that Congress and EPA work together to find opportunities to shift resources according to the level of risk involved.³

This disparity between risk and priorities also stems from EPA's statutory authority, which is derived from a dozen or so environmental statutes, each with its own, and often different, philosophies and standards. As a result, EPA has little flexibility to base agencywide priorities on an assessment of risk across a spectrum of environmental problems, taking into account also the cost and feasibility of various approaches. These numerous legislative mandates have also led to the creation of individual program offices within EPA that have tended to focus solely on reducing pollution within the particular environmental medium for which they have responsibility, such as air or water, rather than on reducing pollution overall.

One possible solution to this might be a single, unified environmental statute that forms an organic act for the agency. In commenting on previous bills aimed at creating a Cabinet-level department, we suggested that it would be particularly worthwhile

³Environmental Protection: Meeting Public Expectations With Limited Resources (GAO/RCED-91-97, June 18, 1991).

for the study commission called for in each bill--the Commission on Improving Environmental Protection--to consider whether it would be more effective to have a single, unified environmental statute--one that better reflects the cross-cutting nature of environmental problems and offers greater flexibility in response to changing conditions and knowledge.⁴

Even in the absence of legislative changes, it may be possible to bring about a more integrated approach to environmental management through changes in EPA's organization. In the past, we have suggested that the Commission on Improving Environmental Protection might, among its other responsibilities, consider an appropriate structure for the new department.⁵ The commission might, for example, consider whether to reorganize the department entirely by function, so that instead of having program offices dedicated to environmental media, as is now the case, the department might have a single office of regulatory development, an office of enforcement, an office of science and research, and so on. Alternatively, the department might be organized by pollution sectors--industry, transportation, and municipalities, for example--

⁴Creation of a Department of Environmental Protection (H.R. 3847) (GAO/T-RCED-90-25, Feb. 7, 1990); Creation of a Department of the Environment (S. 2006) (GAO/T-RCED-90-26, Feb. 8, 1990); Creation of a Department of the Environment (GAO/T-RCED-93-6, Feb. 18, 1993).

⁵Environmental Enforcement: Alternative Enforcement Organizations for EPA (GAO/RCED-92-107, Apr. 14, 1992).

-or by geographic regions. The commission could also consider the roles and responsibilities of headquarters and regional offices.

DEVELOPING NECESSARY SCIENTIFIC AND MONITORING INFORMATION

A second area to which attention must be directed is the development of the scientific and monitoring information that is fundamental to carrying out EPA's mission. Although EPA's regulatory programs depend heavily on scientific information on the health and environmental effects of chemicals and pollutants, these data often do not exist.

Let me cite an example that this Committee is well aware of. The Toxic Substances Control Act (TSCA) gives EPA specific legislative authority to obtain health and environmental data from chemical manufacturers, but the agency has made very little use of its authority to require these data in the 16 years since TSCA's passage. As a result, EPA has identified for testing less than 1 percent of more than 70,000 chemicals and has complete test data for only 22 chemicals.⁶

Even data that EPA has available are often inadequate and poorly managed. For example, EPA has three data bases for regulating disinfectants, yet EPA officials believe that as much as

⁶Toxic Substances: EPA's Chemical Testing Program Has Made Little Progress (GAO/RCED-90-112, Apr. 25, 1990).

60 percent of the data on disinfectant product claims is inaccurate or incomplete.⁷

EPA is also missing the information necessary to judge the success of its programs. While EPA has developed some measures of environmental outcomes--meeting national air quality standards, for example--the agency has generally relied on activity-based indicators, such as numbers of permits issued or enforcement actions taken, to track its progress in cleaning up or preventing unacceptable levels of pollution.

Let me give you an example of what can happen when an agency relies on activity-based measures alone. As EPA itself reported several years ago in a case involving Puget Sound, its program was a success story according to activity-based indicators: All water pollution discharge permits had been issued, all applicable waivers of program requirements were being processed, and so on. However, once EPA shifted its attention to environmental accomplishments, it found that shellfish beds were being closed at an increasing rate, contaminated sediment was being found almost wherever researchers looked, and fish tumors and other signs of poor biological health abounded. In another case in the same region, EPA assumed that requiring specific treatment equipment at two pulp mills discharging toxic wastes into Washington State's polluted Grays

⁷Disinfectants: Concerns Over the Integrity of EPA's Data Bases (GAO/RCED-90-232, Sept. 21, 1990).

Harbor would improve the survival rate among young salmon passing through the harbor on their way to sea. The action did not solve the problem, nor was anyone clearly responsible for following up to resolve the issue.⁸

Historically, EPA has relied on activity-based measures because of the inherent technical difficulties of establishing linkages between program activities and environmental improvements and conditions. Although EPA has had a national environmental monitoring program, which is designed to measure the success of the agency's activities, the program has been cut back over the years as a result of leadership changes and decreased funding. Because EPA has traditionally considered itself to be primarily a regulatory agency, it has focused its attention and resources almost exclusively on setting standards and issuing permits rather than on developing the information necessary to measure environmental results.

EPA has made some effort to refocus its management information system on results and has begun to develop environmental indicators to use in this system. However, considerable work remains to be done, which could be enhanced by a central unit for collecting, analyzing, and disseminating environmental data. Again, in our earlier testimony on elevating EPA to a Cabinet-level department,

⁸Environmental Protection Agency: Protecting Human Health and the Environment Through Improved Management (GAO/RCED-88-101, Aug. 16, 1988).

we endorsed the idea of a bureau or center for environmental statistics as a means to strengthen the agency's ability to measure environmental results. We would add, however, that the center would have to be adequately funded if it is to serve its purpose.

ENSURING ACCOUNTABILITY FOR CORRECTING PROGRAM WEAKNESSES

In addition to the problems it faces in managing resources and information, we have observed that EPA, historically, has not gone far enough in ensuring accountability for correcting problems that it can do something about. After reporting for many years on weaknesses that affected the efficiency and effectiveness of virtually all of EPA's programs--very often at the request of the Committee on Government Operations--we have continued to see the same basic problems, despite recommending numerous corrective actions. The result is persistent inefficiency, as programs continue to incur costs without necessarily achieving the anticipated results.

In a 1990 report on EPA's drinking water program to Chairman Synar's Subcommittee, for example, we found that drinking water problems were going undetected, that many of the problems that were detected were not being reported to EPA, and that enforcement was often neither timely nor effective in bringing water systems back

into compliance.⁹ To correct the problems, we recommended that the agency ensure that regions and states improve compliance with drinking water regulations. EPA responded to our findings and recommendations with written guidance to regions and states. But without substantially improved oversight by headquarters to ensure that this guidance is followed, it is not clear that the problem will be adequately addressed.

Likewise, although problems with Superfund contractor cost control persisted for years, EPA managers did not pay sufficient attention to contract management or follow through on promised reforms. EPA is heavily dependent on contractors, spending more than \$1 billion in fiscal year 1991, most of it in the Superfund program. Because of Superfund's vulnerability to fraud, waste, and abuse, we identified the program as one of our high-risk areas in the federal government.

As we highlighted in our report on the high-risk Superfund program, its largest contractors work under cost-reimbursable contracts that promise to pay all of a contractor's allowable costs.¹⁰ This requires the agency to have in place effective controls to ensure that such costs are proper. We found, however, that EPA does not adequately review contractors' spending plans

⁹Drinking Water: Compliance Problems Undermine EPA Program as New Challenges Emerge (GAO/RCED-90-127, June 8, 1990).

¹⁰Superfund Program Management (GAO/HR-93-10, Dec. 1992).

before approving them, check bills for reasonableness before paying them, or verify charges later by timely audits of contractors' records. While EPA has not addressed all of our concerns, it has begun several initiatives to improve contract oversight, including the development of independent cost estimates against which it can compare contractors' spending proposals.

In other areas as well, EPA has frequently taken the first step toward corrective action but seldom followed through to ensure that its directives are carried out. For example, in our 1988 transition report, we reported that EPA was developing an integrated financial management system and recommended that the agency provide sustained leadership and a high priority for its effort. However, 3 years later the EPA Inspector General's Office found that the system had still not been implemented because EPA has not devoted adequate resources or management attention.

A lack of follow-through has also characterized attempts made by EPA to improve its enforcement programs. Following numerous GAO and EPA Inspector General reviews pointing out that EPA's regional offices and the states were not assessing penalties against violators at least as great as the amount by which the companies benefit by not being in compliance, EPA responded in a memorandum reminding its regions to adhere to agency policies and to document the reasons for any penalty reductions. In a subsequent review, however, we found that little had changed; two-thirds of the closed

cases we examined did not document penalty calculations, making it difficult to determine whether agency policies were followed.¹¹

To their credit, EPA's former Administrator and Deputy Administrator attempted to improve management accountability by using the annual process for assessing and reporting on material weaknesses, which is required by the Federal Managers' Financial Integrity Act (FMFIA). To oversee FMFIA, EPA created a Senior Council on Management Controls to focus high-level management attention on problems and solutions. The Council, in our view, was extremely valuable, and we believe it should become a permanent mechanism for highlighting important management problems. It has to be accompanied, however, by a long-term commitment by senior managers to review the results of their corrective actions to make sure that they have been successful.

STRENGTHENING GLOBAL ENVIRONMENTAL PROTECTION EFFORTS

Finally, we believe that EPA or a Department of the Environment, along with the Department of State and other parts of the federal government, will increasingly have to turn their attention to global environmental protection efforts. Today, the United States participates or has a significant interest in roughly 170 international environmental agreements. At the United Nations

¹¹Environmental Enforcement: Penalties May Not Recover Economic Benefits Gained by Violators (GAO/RCED-91-166, June 17, 1991).

Conference on Environment and Development held in Rio de Janeiro last June, the United States signed a convention to address climate change, and under the Clinton Administration, the United States may revisit its participation in the convention to protect biological diversity. The United States also participated in the development of Agenda 21, an action program for environmentally sustainable development.

But while these agreements may, in themselves, be noteworthy accomplishments, their effectiveness in correcting problems depends on how well the agreements are implemented. Moreover, because the costs of compliance are high, uneven implementation may place the countries that carry out the agreements at a competitive disadvantage with those that do not. Yet, little is known about how environmental agreements are being implemented. From our work in this area, we know that the reports that parties are supposed to provide on their compliance are often late, incomplete, or not submitted at all, and that the secretariats responsible for overseeing the agreements lack the authority or resources to monitor implementation independently.¹² In addition, many parties, particularly developing countries, lack the technical and financial capability to comply. Strengthening agreements will therefore involve greater efforts to improve the availability of information on implementation and access to it. It will also

¹²International Environment: International Agreements Are Not Well Monitored (GAO/RCED-92-43, Jan. 27, 1992).

require that the United States and others provide some help to those countries that are unable to comply with the agreements for lack of resources and know-how.

The environment has also become a critical element in trade agreements and will have to be addressed directly in negotiations, as is now the case with the North American Free Trade Agreement. It has become apparent that as the United States and its trading partners seek to phase out tariffs and traditional barriers to free trade, incompatible environmental standards can themselves be perceived as trade barriers, which, in turn, generates concern about the potential for trade agreements to encourage the adoption of "lowest common denominator" environmental standards. Even when standards are similar, governments may have markedly different enforcement and monitoring capabilities.

As the nation enters this new age in which environmental issues become integrated into foreign policies, the United States has an opportunity to provide leadership and assistance to the rest of the world. While EPA has been to some extent involved in past efforts, as the Department of the Environment, it may assume an even larger and more clearly defined role in those efforts.

CONCLUSIONS

Chairman Conyers, Chairman Synar, in providing this overview of management issues at EPA, I want to emphasize that none of the problems I've discussed--resource constraints, information gaps, insufficient corrective action, and the need for institutions capable of solving international environmental problems--are ones that have simple or quick fixes. These issues are complex and of long standing. In the past, we might have addressed some of these problems simply by increasing resources or creating new programs. Clearly, today that is not an option. EPA or a Cabinet-level department for the environment, like other government agencies, will have to look within itself to realize greater efficiencies and effectiveness with the resources it has. And along with the Congress, EPA must give these issues the sustained effort and attention that are essential to their resolution.

Chairman Conyers, Chairman Synar, this concludes my statement. I would be happy to answer any questions.

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Testimony

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and the Environment, Energy, and Natural Resources
Subcommittee, Committee on Government Operations,
House of Representatives

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ENVIRONMENTAL
PROTECTION

EPA's Actions to Improve
Longstanding Information
Management Weaknesses

Statement for the Record by JayEtta Z. Hecker, Director
Resources, Community, and Economic Development
Information Systems
Information Management and Technology Division



GAO/T-IMTEC-93-4

Chairman Conyers, Chairman Synar, and Members of the Subcommittees:

I appreciate this opportunity to discuss our completed and ongoing work on information resources management (IRM) at the Environmental Protection Agency (EPA).¹ Because much of this work has been specifically requested by Chairman Synar's Subcommittee, he and some of the other members are keenly aware of the information management problems and challenges that lie ahead for the newly appointed Administrator. At Chairman Synar's request, we are currently evaluating such problems with EPA's existing chemicals review program under the Toxic Substances Control Act (TSCA). Additionally, we are examining EPA's actions to address longstanding agencywide information management deficiencies. We will be issuing reports on both matters in the near future, which will discuss the results of our work in a more comprehensive manner.

In his testimony before you this afternoon, my colleague, Mr. Hembra, addressed the scientific and monitoring information gaps that impair EPA's analyses supporting its regulatory decisions. He also pointed out how much of the agency's information is largely activity-based indicators that by themselves do not directly address program success or measure environmental results. I would like to amplify the importance of these information concerns by first discussing specific agencywide IRM deficiencies at EPA and demonstrating how they translate into program ineffectiveness; second, outlining EPA's recent responses to its longstanding information management

¹Information management involves identifying needs and sharing information; ensuring standardization, security, and integrity of data; and managing records. Information technology management involves controlling computer hardware, software, and telecommunications used to help manage information. The integrated management of information and technology is achieved under what is called information resources management, or IRM. Federal requirements for an effective IRM program are broadly established in section 3506 of the Paperwork Reduction Act of 1980 and OMB Circular A-130.

problems; and finally, sharing our observations on key factors that may affect the agency's success in meeting its challenges in this area.

INFORMATION IS VITAL TO EPA'S MISSION

Information itself is one of EPA's most important resources. How well the agency manages this resource directly influences its ability to perform its statutory responsibilities. Although top management ultimately shoulders the burden of achieving EPA's missions, their success is closely tied to the quality of support provided by the agency's information systems. Collecting, processing, storing, analyzing, reporting, and sharing environmental data are all essential to the agency's environmental monitoring and protection responsibilities. Without complete and dependable data, EPA cannot make accurate environmental risk assessments, establish its priorities, or track its progress. Equally important is the fact that much of the scientific data it collects are unique and invaluable to others involved in separate but related environmental analyses. The increasing importance of information is reflected in EPA's 18-percent average annual growth in IRM investment over the last decade. In fiscal year 1993, EPA expects to spend nearly \$320 million for its major IRM expenditures.²

²This figure accounts only for EPA's major automated data processing (ADP) expenditures, as reported to the Office of Management and Budget (OMB) under Circular A-11. Because it does not include other related IRM costs such as data collection, preparation, and maintenance, this figure significantly understates EPA's actual IRM expenditures.

LONGSTANDING INFORMATION MANAGEMENT PROBLEMS PERSIST

Despite previous Administrators' recognition of EPA's dependence on information, the agency has longstanding IRM problems that we have repeatedly reported to EPA and the Congress and that have been echoed in numerous EPA Inspector General (IG) reviews (see attachments). EPA is an agency with hundreds of information systems that are mostly separate and distinct, with their own structures and purposes. This plethora of systems impairs EPA's ability to easily share mutually beneficial information across program boundaries, fosters data duplication, and precludes more comprehensive, cross-media assessments of environmental risks and solutions. EPA's managers and analysts find many of the agency's automated systems too difficult to use or ill-designed to measure and assess environmental results, because few were designed for this purpose. Instead, the information systems with the bulk of the agency's data contain activity-related data--chiefly designed to record, count, track, and report on such items as the number of permits issued, levels of pollutants discovered, or types of enforcement actions taken. Additionally, data quality and integrity remain a chief concern because of inattention to strong quality assurance and data administration practices. These problems, I might add, are not necessarily unique to EPA, but are common across many federal agencies.³

IRM WEAKNESSES TRANSLATE INTO PROGRAM SHORTCOMINGS

These data problems reflect EPA's deficiencies in adhering to existing governmentwide policies and standards guiding the acquisition and use of automated data processing

³Information Resources: Summary of Federal Agencies' Information Resources Management Problems (GAO/IMTEC-92-13FS, Feb. 13, 1992).

resources. However, to view these weaknesses solely as a compliance issue risks minimizing their larger impact. Cumulatively, IRM deficiencies seriously impair EPA's ability to effectively carry out its program responsibilities. Let me illustrate with a few examples from our completed work on EPA's use of information systems to support cross-media enforcement, the reregistration of pesticides, and EPA's toxic substance information systems. Other work done under the direction of Mr. Hembra on compliance with the agency's enforcement policies, management of hazardous wastes, and controls over drinking water quality likewise highlight serious data collection and management problems.

In the cross-media enforcement area, deficiencies in developing information systems to integrate data on regulated facilities' noncompliance with environmental regulations--combined with the absence of a complete strategy for cross-media information management--are impeding EPA's ability to enforce environmental laws and regulations. EPA cannot readily bring together and correlate data from its various programs--such as air, water, hazardous wastes, and pesticides--to comprehensively assess environmental risks, identify and target the most important enforcement priorities, and conduct general program oversight. Consequently, EPA cannot identify and rank the nation's worst polluters and set enforcement priorities accordingly.

Despite spending some \$14 million on information systems, EPA still cannot easily assemble accurate, reliable, complete information on chemicals in the pesticide reregistration process because it lacks integrated databases. As many as nine separate databases are used to track information about pesticides awaiting reregistration, including the results of health and environmental studies. As a result, compiling information about pesticides undergoing reregistration remains difficult, labor-intensive, and time-consuming. For example, in the summer of 1991, when a trainload of metam

sodium spilled into the Sacramento River, EPA was unaware of the information in its files indicating that metam sodium can cause birth defects. It was weeks before the agency warned pregnant women and workers in the area of the pesticide's hazards. Information management problems have also compounded the already difficult task facing the agency in meeting the pesticides registration deadlines imposed by the Congress. Twenty years after Congress directed EPA to reregister older pesticides, only 31 of the 20,000 pesticide products subject to this process have in fact been registered.

In the toxic substances control area, inadequate information resources planning and poor data management impair EPA's efforts to set priorities for assessing the risks posed by thousands of toxic chemicals to which people and the environment are exposed. For example, EPA is not effectively using data from approximately 12,000 studies submitted by manufacturers on potential health and environmental hazards from chemicals to set its assessment priorities. It is too difficult and time-consuming for the private contractor implementing EPA's priority-setting methodology to identify and retrieve these data or ascertain their quality. While the Toxic Substances Control Act requires EPA to design effective and efficient systems for the retrieval of toxicological data, information management deficiencies have impeded other EPA offices and government agencies from obtaining the data they need. Indications are that agencies that have a time-critical need for these unique data--to respond to food contamination incidents or evaluate chemical spills--often do not attempt to retrieve EPA's chemical toxicity data because of the cumbersome, time-consuming, and labor-intensive process required to do so.

SYSTEMIC ISSUES AFFECT AGENCYWIDE APPROACH
TO INFORMATION MANAGEMENT

Our past work, and that of EPA's IG, point to underlying, systemic matters that have weakened EPA's ability to more effectively manage its information. Strategic IRM planning, which is critical to the successful management and use of IRM resources, develops and documents the direction of the information management and technology programs within the agency and specifies necessary IRM activities and resource requirements. A strategic IRM plan should describe the agency's current and long-term environment in terms of IRM, its overall mission and goals, how information investments are expected to help attain these goals, and the funding required to support the plan. In reviewing EPA's strategic IRM plan, we cannot find clear linkages among IRM investments, strategic management goals or objectives, and the agency's budget. Furthermore, information needs have not been well defined for different levels of the agency, the linkages among ongoing information initiatives are not well explained, and little consensus exists among senior managers on EPA's agencywide IRM priorities. EPA agrees that inadequate attention has been given to agencywide IRM strategic planning and has declared this a material weakness in its 1992 Federal Managers' Financial Integrity Act report.

EPA also suffers from the effects of a highly fragmented, decentralized IRM environment that lacks adequate oversight and controls. Each major office independently controls how it plans and spends its information resources and has been largely responsible for designing, building, and maintaining systems under its direct control, often with outside contractor assistance. Central oversight has been highly fragmented among four groups under two different assistant administrators without clear lines of authority established between them. As a result, enforcement of agency

and governmentwide IRM guidelines and procedures has often been disregarded by program offices.

To further complicate matters, EPA uses outdated and vague IRM standards, policies, and procedures governing the design, acquisition, and use of computer resources. According to existing federal guidance, strategic direction for managing an agency's information resources must be clearly communicated to agency users. Agencywide standards for managing information and coordinating technology should reflect the fundamental principles of an agency's IRM program and support the agency's overall goals and objectives. A lack of specificity in EPA's IRM policies has contributed to numerous system-specific problems, including poor specification of users' requirements, inadequate systems software documentation, and failure to adhere to defined systems development practices.⁴ The IG has also recently reported that EPA lacks adequate standards in several ADP areas, including information systems hardware and software maintenance, application software programming, and system training and documentation.⁵

EPA also lacks an established, agencywide data management program to ensure the integrity of the organization's information. Data administration is a crucial activity for effective information management. It encompasses the responsibilities for managing and maintaining the corporate data resources with respect to standardization, integrity, and sharing. Despite having drafted policy guidance for some areas, EPA does not have either (1) well defined quality assurance procedures for monitoring and improving

⁴Environmental Enforcement: EPA Needs a Better Strategy to Manage Its Cross-Media Information (GAO/IMTEC-92-14, April 2, 1992); Pesticides: Information Systems Improvements Essential for EPA's Reregistration Efforts (GAO/IMTEC-93-5, Nov. 23, 1992).

⁵Computer Systems Integrity: EPA Must Fully Address Longstanding Information Resources Management Problems (E1NMF1-15-0032-2100641, Sept. 28, 1992).

data quality and consistency or (2) agencywide mechanisms for implementing uniform standards for data definitions and naming conventions. EPA is making progress in defining and issuing some data standards, such as its locational data policy. However, agencywide progress in implementing these standards has been slow. As a result, basic data, such as the location and identification of regulated facilities, remain inconsistent.

EPA's CORRECTIVE ACTIONS SHOW PROMISE

To its credit, EPA's Office of Administration and Resources Management (OARM) has started several initiatives in recent months designed to address key agencywide IRM problems surfaced by us and by the IG. These actions have the potential to make a real difference. First, EPA is acting to comply with existing governmentwide IRM policies and guidelines embodied in the Paperwork Reduction Act and OMB circulars. For example, the Assistant Administrator for OARM has been formally designated as the agency's senior official for information management and chair of the IRM Steering Committee. In addition, an Oversight and Compliance Support Team has been created within the Office of Information Resources Management (OIRM) to ensure program offices develop systems in compliance with federal and EPA IRM policies, standards, and procedures. This team, with contracted assistance from the General Services Administration's Federal Systems Integration and Management Center (FEDSIM), is also reviewing and approving agencywide information processing-related procurements.

Second, EPA has begun to address its systemic IRM planning and data administration weaknesses. EPA's OIRM has initiated a project to define and implement an agencywide, strategic information management planning process. Currently, the individual program offices exercise wide discretion in conducting and implementing

IRM planning. In the past, some of these offices failed to submit formal IRM plans to OIRM for review and approval. According to some senior IRM officials within EPA's major offices, agencywide IRM strategic plans have been constructed by OIRM with little input from or consultation with the program offices. A final action plan outlining the steps necessary to broaden the depth and scope of agencywide IRM planning is scheduled for completion in the next few months. To address data management problems, OIRM's Information Management/Data Administration program is focusing on establishing data management policies and standards to improve and maintain data integrity, including an effort to construct an agencywide data dictionary.⁶ This group is also developing an information architecture for the agency that will better accommodate agencywide data integration.⁷

Lastly, EPA is developing specific information systems solutions intended to improve access to agencywide data and to facilitate analyses based on integrated information. These efforts are largely attempts to better accommodate needs for cross-media information. EPA's Gateway/Envirofacts data integration project is intended to enhance users' access to EPA databases through a standard software interface. At present, a data repository has been created that contains extracts from existing program systems, including the Permit Compliance System, the Toxic Release Inventory System, the Facility Identification System, and the Comprehensive Environmental Response, Compensation, and Liability Information System. EPA's OIRM is working with the Office of Water to use Gateway/Envirofacts as the test platform for its water systems modernization. EPA is investing in the acquisition of geographic data for use

⁶A data dictionary describes all the files, programs, and elements of a database system.

⁷An information architecture defines information requirements, flow, and system interfaces, and shows how individual systems and major components fit together to form a comprehensive whole.

with geographical information systems (GIS). EPA intends to use GIS software applications to demonstrate the effectiveness of visualizing environmental data in an integrated fashion.

FACTORS AFFECTING EPA'S SUCCESS IN IMPROVING INFORMATION MANAGEMENT: SOME OBSERVATIONS

EPA's task to fundamentally improve its information management capabilities is a significant and complex one. Because its corrective actions are in their early stages, we are unable to assess their success or failure in any comprehensive manner. Nevertheless, we would like to share some general concerns that emphasize critical factors most likely to affect EPA's ability to make lasting IRM improvements.

Efforts to reexamine EPA's basic data needs and the information processing requirements associated with its responsibilities should be built into the agency's IRM reform. EPA could do much more to define and prioritize its information needs, including its goals for data integration and sharing. These information refinements, however, must be driven by a strategic "business" plan for the agency--a projection of what the agency expects to accomplish by a specified time and the activities and strategies that are needed to achieve its mission, goals and objectives. This process is essential whether or not EPA is elevated to Cabinet status, but it takes on even further meaning should the agency's scope of responsibilities be expanded or legislatively couched in fundamentally different ways.

While the designation of a senior IRM official is a positive step, we are concerned that it may be impractical for EPA's designated official to be responsible for the agency's IRM in addition to that official's many other existing responsibilities. Given the enormity of the IRM tasks to be accomplished we believe that EPA's senior IRM

official should report directly to the Administrator and have no other significant duties not related to information resources management.

We also remain concerned about the extent of management commitment to agencywide IRM improvements. We believe EPA could do more to strengthen the partnership between the program offices that carry out the agency's mission and OIRM as the agency devises IRM initiatives that support and help solve its existing and evolving business challenges. In particular, we are concerned that OIRM's efforts to develop strategic information architectures and data standards may be too isolated from program office IRM planning and subsequently may not receive the program office commitment and resources needed to succeed.

Finally, we are concerned that all of EPA's IRM initiatives suffer from insufficient resources and personnel. Successfully tackling agencywide IRM initiatives of the size and complexity outlined by EPA require funding and trained personnel commensurate with the tasks. For example, agencywide responsibilities for conducting oversight and review of compliance with federal IRM guidelines and regulations, designing an information systems quality assurance process, and standardizing a systems development process has been placed on just four employees.

I would like to thank Chairman Conyers and Chairman Synar for providing me the opportunity to include this statement as part of their hearing.

RELATED GAO PRODUCTS

Environmental Protection Issues (GAO/OCG-93-16TR, Dec. 1992).

Information Management and Technology Issues (GAO/OCG-93-5TR, Dec. 1992).

Pesticides: Information Systems Improvements Essential for EPA's Reregistration Efforts (GAO/IMTEC-93-5, Nov. 23, 1992).

Information Resources Management: Initial Steps Taken But More Improvements Needed in AID's IRM Program (GAO/IMTEC-92-64, Sept. 29, 1992)

Water Pollution Monitoring: EPA's Permit Compliance System Could Be Used More Effectively (GAO/IMTEC-92-58BR, June 22, 1992)

Environmental Enforcement: EPA Needs a Better Strategy to Manage Its Cross-Media Information (GAO/IMTEC-92-14, April 2, 1992).

Waste Minimization: Major Problems of Data Reliability and Validity Identified (GAO/PEMD-92-16, Mar. 23, 1992).

Geographic Information Systems: Information on Federal Use and Coordination (GAO/IMTEC-91-72FS, Sept. 27, 1991).

Waste Minimization: EPA Data Are Severely Flawed (GAO/PEMD-91-21, Aug. 5, 1991).

Toxic Chemicals: EPA's Toxic Release Inventory Is Useful But Can Be Improved (GAO/RCED-91-121, June 27, 1991).

Hazardous Waste: Data Management Problems Delay EPA's Assessment of Minimization Efforts (GAO/RCED-91-131, June 13, 1991).

Disinfectants: Concerns Over the Integrity of EPA's Data Bases (GAO/RCED-90-232, Sept. 21, 1990).

Hazardous Waste: EPA's Generation and Management Data Need Further Improvement (GAO/PEMD-90-3, Feb. 9, 1990).

Environmental Protection Agency: Protecting Human Health and the Environment Through Improved Management (GAO/RCED-88-101, Aug. 16, 1988).

ATTACHMENT II

ATTACHMENT II

RELATED INSPECTOR GENERAL PRODUCTS

Computer Systems Integrity: EPA Must Fully Address Longstanding Information Resources Management Problems (OIG Report No. E1NMF1-15-0032-2100641, Sept. 28, 1992).

Software Integrity: EPA Needs To Strengthen General Controls Over System Software (OIG Report No. E1NMF1-15-0055-2100591, Sept. 22, 1992).

Contract Management: EPA Needs To Strengthen The Acquisition Process For ADP Support Services Contracts (OIG Report No. E1NMF1-15-0032-2100300, Mar. 31, 1992).

EPA's Management of Computer Sciences Corporation (CSC) Contract Activities (OIG Report No. E1NME1-04-0169-2100295, Mar. 31, 1992).

Special Review of EPA's Major Information Systems (OIG Report No. E1RMG1-15-0041-1400061, Sept. 30, 1991).

Inert Ingredients In Pesticides (OIG Report No. E1EPF1-05-0117-1100378, Sept. 27, 1991).

Significant Savings Possible By Increasing IBM 3090 Computer Operations Efficiency (OIG Report No. E1NMBO-15-0021-1100152, Mar. 29, 1991).

Integrated Financial Management System: Managing Implementation Of The New Accounting System (OIG Report No. E1AMFO-11-0029-1100153, Mar. 29, 1991).

Flash Report On Computer Security (OIG Flash Report, April 25, 1989).

Report on the Permit Compliance System, (OIG Report No. E1NWF8-15-0021-9100192, Feb. 15, 1989).

Needed Security Improvements over Programs and Data in the NCC ADABAS Environment (OIG Report No. E1NWF8-15-0021-9100025, Oct. 20, 1988).

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Mr. SYNAR. Thank you, Mr. Hembra. We appreciate it.

The Chair recognizes himself for 5 minutes.

As you know, for years this subcommittee has criticized the contract management program, so have you and GAO, so has the inspector general, that EPA is not paying enough attention to the problems that exist and the promised followthrough on reform.

What should the Agency do to try to address the accountability problems?

Mr. HEMBRA. To begin with, the Agency should not be restudying the problems. There is plenty of information out there. You have to begin by putting management emphasis on oversight and accountability.

As you clearly pointed out, over the last year or so countless problems effecting programs within that Agency have surfaced. There has been recognition by EPA. There have been a number of initiatives which started both within EPA in terms of identifying specific recommendations to improve contracting. There have been OMB SWAT teams that have identified both Agency specific and governmentwide contracting problems and numerous recommendations have been made.

It is clear in a recent hearing before Chairman Dingell, that Administrator Browner has pledged to begin to turn that around. But what I would like to emphasize is that promising to make a change is something that we see quite often in EPA. We have said this many times over the last several years before your subcommittee.

What usually does not happen is sufficient followthrough to make sure that the changes do occur, and when those changes do not occur, that people are held accountable for failing to act.

Mr. SYNAR. Let's delve into that a little bit.

The Agency spent more than \$1 billion in fiscal year 1991 on contractors, mostly on the Superfund program. Isn't it true, Mr. Hembra, that it is basically a growth area that they have increased the contracting during the 1980's while there were ceilings on personnel and spending?

Mr. HEMBRA. That is true, yes, sir.

Mr. SYNAR. What kind of functions do those outside contractors perform?

Mr. HEMBRA. Contractors provide a range of functions for the Agency, including conducting research, conducting studies, gathering data, providing professional engineering services, providing support functions such as housekeeping, facilities operations, and facilities maintenance.

Mr. SYNAR. Didn't you all find and didn't the inspector general find that these contractors were taking on functions that were described as inherently governmental?

Mr. HEMBRA. Certainly a lot of questions have been raised about whether or not the contractors were performing work that was naturally suited for them or in fact were carrying out functions that were inherently governmental.

Let me give you one example, which I think drives home the dark side of the contracting issue. Back in March 1992, the EPA inspector general had reported on one of the contractors EPA used for many years, Computer Sciences Corp.

EPA had, in fact, in 1990, contracted with them for followup work in the order of about \$350 million. What CSC was supposed to be doing was developing, operating, and maintaining a majority of the Agency's information and financial systems.

What you saw happening was that the contractor was in fact doing that, resulting in the Agency losing a lot of its in-house capability. You had CSC setting its own work requirements, drafting its own contracts, reviewing its own bills and billing, and in fact basically contracting with itself and using the taxpayers' money to do so.

Mr. SYNAR. The argument you are making, if am I correct, is that you would prohibit contractors from performing those inherently governmental activities?

Mr. HEMBRA. Let me mention a couple of things I think are important. First of all, the agencies have difficulty themselves because we don't have a clear definition of what is inherently governmental. In fact, one of the recommendations that came out of OMB's work was the need to take a look at that definition.

There is nothing inherently wrong with using contractors. The whole purpose of allowing an agency to contract out was that the Federal Government would not be in competition for certain services if, in fact, they were cost effective.

What has happened is you have such a broad general definition of inherently governmental, that you have had budget situations where agencies have found it easier to get money than people, that they have opted more and more to contract out to get the work done. You have to start with the definition and hold the Agency's feet to the fire to make sure that if it is more cost effective to have work done in-house that in fact it gets done in-house rather than be contracted out.

Mr. SYNAR. If your son or daughter came home from school with a report card that they filled out themselves, would you believe it?

Mr. HEMBRA. At a minimum, you would hope that the Agency is in a position to verify and validate.

Mr. SYNAR. Mr. Clinger.

Mr. CLINGER. Thank you very much, Mr. Chairman.

Mr. Hembra, it is always a pleasure to have you before the committee. We appreciate your testimony.

You said in your testimony that the Agency should be prioritizing its resources toward the higher-risk environmental problems and attempt to focus on those that are most serious.

On the other hand, you state the Agency has very limited flexibility to do this because of statutory constraints that have been imposed by us. Doesn't this really place the Agency in a kind of catch-22 situation, and if so, how would you recommend that might be resolved or how should the Department resolve the dilemma?

Mr. HEMBRA. I don't believe, without some other changes, whether it is an Agency or whether it is a Cabinet-level Department, that type of organization can, on its own, resolve that problem fully. In discussions we have had over the years with top EPA officials, what you find is in fact they have very little flexibility to shift funds between programs, probably on the order of less than 5 percent.

What it is going to take is some legislative fixes, that is going to enable EPA or a Department to have the confidence that Congress is willing to allow the Agency to make those shifts and put that money in the right places to deal with the greatest risk.

Now there have been other hearings where I have been criticized when I pointed that out. I want to make one thing clear, that does not suggest that you no longer deal with hazardous waste or no longer have a Superfund or RCRA program.

It suggests that within the resources that would be made available to EPA as an Agency or as a Department, that that organization has the flexibility, based on scientific judgment, to make shifts so that a greater amount of resources can be directed to those problems that pose the greatest risk.

Mr. CLINGER. So it really requires action from the Congress?

Mr. HEMBRA. That is right.

There is no way the Agency or even if it becomes a Department is going to be capable of dealing with that itself.

Mr. CLINGER. You suggest that one of the functions of establishing a new Commission would be to look at the appropriate structure of the Department prior to that. However, elevation legislation presently being considered already includes a number of restructuring proposals. Isn't this an example of getting the cart in front of the horse?

If the Commission is going to be examining a restructuring of the Agency, doesn't it make more sense to delay enacting the legislation to elevate the Agency to a Cabinet level to allow that Commission to make those kinds of determinations?

Conversely, given that there is a new administration, doesn't it make more sense to have the Agency itself look at its structure and resolve these types of management issues?

Mr. HEMBRA. Certainly you could have the Agency look at itself. But I think the fact that you have to face in today's environment is that this is an Agency, as our chart indicates, whose resources have not kept pace with the requirements placed on the Agency itself.

Quite frankly, they have trouble making the people available to manage the programs that they have. I think asking an agency to look at itself and determine whether there is a need for reorganization is probably not going to be very realistic.

One of the benefits of creating a Commission is to set aside a number of experts who can devote full attention to whether or not organizational changes would be needed.

I should also mention that in the bills to elevate EPA to Department status you may have the introduction of some new offices within the Agency, but basically that Agency has aligned itself along the legislation and the specific programs that have been created over the years. While that organizational structure may have been perfectly fine in the 1970's or 1980's, I think it is legitimate 20 or 25 years after that Agency was created to step back and revisit whether or not it is the most cost-effective structure to carry out environmental programs.

Mr. CLINGER. Why couldn't we just wait and do it all at once? Is it right to be doing it piecemeal?

Mr. HEMBRA. I don't necessarily think it would be done all at once. I think the elevation of EPA to Department status can occur and I don't think the Commission will come up with organizational solutions in a very short period of time. If it is done right.

I believe the value of the Commission is to look holistically at our environmental problems and the type of solutions that we need, which could have ramifications both for the legislation from which that Agency derives its authority and the best type of organization to properly carry out those authorities.

Mr. CLINGER. One of the problems the previous administration had with the bills that were under consideration during the last Congress was the inclusion of the Bureau of Environmental Statistics. You endorsed that concept in a new Department.

I understand that there is already within the Department an Office of Strategic Planning and Environmental Data and there are about 68 people working in that Agency. Do you know what the functions of that group are and what they are currently doing?

Is this something that would be duplicative if we established a new Bureau of Environmental Statistics?

In other words, why do we want to create a new Bureau when we have an existing office which perhaps could be expanded to do those kinds of things.

Mr. HEMBRA. What we have not endorsed, as a matter of fact—we have not commented on it because we didn't believe we are the appropriate body to do that—is whether such a Bureau should be independent or be a unit within the existing organizational structure. That is not to suggest that there is not some activity going on within EPA to try to do a better job of moving from activity based to results-oriented indicators.

But quite frankly, what you see happening is insufficient resources having been brought to bear, the right type of investment has to be made to retorque the Agency so that the programs are being geared and driven by results as opposed to specific activities that they carry out.

I would suggest that in finally determining the value of the Bureau of Environmental Statistics that you would naturally look at any existing functions that are going on within the Agency and then the basic question is where best to house those.

Mr. CLINGER. So, you are saying it could be that we could use the existing Office of Strategic Planning and Environmental Data?

Mr. HEMBRA. What I am saying is I am not sure whether the solution is to just turn that over to the Agency either. What you have to keep in mind, historically, you know when EPA was created it was created to be both a science and regulatory Agency. Over the years the resources have been directed more toward the regulatory responsibilities than the requirements to carry out science. That is an area that has been somewhat of a stepchild when it comes to money being made available.

The question you have to ask yourselves is does it make sense to leave it where it is and give it more money or step back and think about redefining what those responsibilities would be. I am suggesting that some that already exist within the Agency would certainly come into play as well as, I might mention, activities that

are being carried out in some other agencies throughout the government that have an environmental focus to them.

Mr. CLINGER. Thank you.

Mr. SYNAR. Mr. Conyers.

Mr. CONYERS. Thank you, Mr. Chairman.

Congratulations again to GAO for some fine work that you have been doing.

In your testimony here today you make us proud to have you under our jurisdiction.

Mr. HEMBRA. Thank you.

Mr. CONYERS. You are welcome.

Have you ever looked or do there exist, Mr. Hembra, studies about the relationship of EPA to Superfund and how effectively that is working?

Mr. HEMBRA. There has been a lot of work with regard to the EPA Superfund program and how the Agency has carried that program out, both from the standpoint of contracting, and I mention contracting because Superfund is a program that uses a lot of money for contracting, as well as the basic responsibilities the Agency has in managing and implementing that Superfund program and getting the hazardous wastesites cleaned up, both by us and others, I might mention.

Mr. CONYERS. I know Chairman Dingell and Chairman Synar have been working on that area for years in their other committees.

Now with reference to the computer systems inside the Agency, it is incredible, where you don't have weapon systems it seems the next big thing that can get messed up in the Federal Government is the computer systems since they don't have any bombers or cargo planes or nuclear submarines, but everybody has a computer system. Sometimes it runs into the billions of dollars.

Mr. HEMBRA. Let me turn that over to our expert on information resource management systems, Ms. Hecker.

Ms. HECKER. This is an area that we have studied for a while and have a range of comments on. But to be brief, I would suggest that it ought to be clear that information is an inherent part of the mission of EPA and is vital to the achievement of every single one of its responsibilities: Collecting information, issuing permits, and making judgments about regulations and enforcement.

So information is central and yet it has been our observation that information has not been well-managed and it has not been viewed as a strategic resource. Systems are everywhere. There are 200 alone in the toxics program, dozens in the pesticide program and that is all within one organizational unit within EPA.

In short, there has been a real absence of the appreciation of strategic information management. There are some modest steps to turn around there. As you may know, the Agency recently declared its absence of information resource planning and its data management practices as a material weakness. That is certainly a positive recognition that without better information management the Agency is completely impaired to make cost-effective decisions in almost every single program.

Mr. CONYERS. Thank you very much.

Thank you, Mr. Chairman.

Mr. SYNAR. Mr. McCandless.

Mr. MCCANDLESS. Thank you, Mr. Chairman.

Mr. HEMBRA, you referred to the various responsibilities of the EPA relative to current events as we know them. You said science and regulation, and if I understood your comment correctly, EPA by and large has been relegated to a regulatory body because of a lack of funding and that the regulatory process, because of the mandate, has taken precedence over the scientific aspect of it. Did I understand that correctly?

Mr. HEMBRA. Yes. The point I was trying to make is that as time has gone on and through reauthorization, the different programs have been put in place, the resources have tended to be directed more toward the regulatory activities thus providing fewer resources for more of its science activities, research and development activities, information activities, and things of that nature.

Mr. MCCANDLESS. My reason for asking this is that in another life I was involved in air quality management rather intensely and put a lot of blood, toil, sweat, and tears in that area of southern California. We were taken aback by EPA's position in the 1970's that they had the only scientific answers to the problems and that, when other scientific information was brought to them from others in the private sector, they were not necessarily responsive to accepting this, in general, for purposes of building on it but that they wanted to go back to the drawing board and reinvent the wheel and call it EPA. Then if it turned out to be the same way, OK.

In the meantime, a lot of money was spent. So I am not necessarily sympathetic to the fact that EPA needs to have an MIT as part of its table of organization. There are all kinds of scientific activities going on in all fields and neutral areas of the academia, not the oil companies and not the auto agencies or automobile manufacturers, that is good solid scientific data.

Now, based on that and my comments and your response, what level of scientific involvement do you think EPA should have?

Mr. HEMBRA. First, I would not argue with you that all information should be generated within the Environmental Protection Agency, in fact, I would suggest that there is plenty of activity going on out in the private sector, the universities, and at the local level in terms of scientific information that EPA should be taking advantage of. When I suggest that EPA has not necessarily been able to focus as much attention to the science side of the house as it should, that is not to suggest that they should be the point of generation of that information but, in some cases, a clearinghouse and facilitator for acquiring access to that information, to help it carry out its responsibilities better in terms of setting standards, the imposition of requirements, as well as positioning itself and others that have environmental responsibilities to gear their activities toward results as opposed to just measuring their success in terms of activities that they undertake.

Mr. MCCANDLESS. Now with respect to a table of organization of a proposed new Cabinet-level Agency, the presiding chairman has a thought process here, if I understand it correctly from previous legislation, that the Congress in its infinite wisdom should structure to a degree the new Agency and that would be the basis upon which to move toward the upgrading of its status.

Conversely, we are talking here about the executive branch that has the responsibility for administering laws that the Congress passes and it would appear to me that the executive branch would be the primary party responsible for an organizational chart, absent possibly any existing laws which mandate a certain segment of the Agency by definition. What are your thoughts on that?

Mr. HEMBRA. As I mentioned earlier to Mr. Clinger, I would not disagree that the Administrator or the Secretary should have the prerogative to structure his or her organization to most effectively carry out the Agency or Department's responsibilities. What I am suggesting is that the organization of EPA has evolved over the years and it has been closely aligned with the creation of legislation and within the legislation specific programs, which means that there are plenty of opportunities for duplication and a tendency to look at environmental problems based on a specific medium.

What we are finding today is the crosscutting nature of environmental problems, the movement away from the value of traditional command and control regulation to the use of market-based incentives suggests that the organization today is not necessarily organized to adequately carry out the responsibilities in that fashion. What has been suggested in bills to elevate EPA to Department status is that a Commission would offer the opportunity to take a look at that along with whether or not there is a need for some legislative changes that would present that Agency or new Department with more flexibility in terms of where resources get directed.

Mr. MCCANDLESS. For contracting issues, can you explain why it is an inherently governmental function? What does this mean and how is it defined?

Mr. HEMBRA. It is not defined very well, as I pointed out. I think that is the problem. What happens is that when that definition is not very specific, contractors find it easy to charge the government for a number of activities that, at a minimum, are questionable and in some cases prove to be unallowable. That is the only point I am trying to make, that agencies are actually in somewhat of a disadvantage as they negotiate the contract provisions with a contractor which makes it difficult for them to go back in later on and identify unallowables or make a determination as to whether the work should be done by a contractor or carried out in-house.

Mr. MCCANDLESS. Thank you.

Mr. SYNAR. Mrs. Thurman.

Mrs. THURMAN. Thank you, Mr. Chairman.

My questions will probably be more on the line of the issues that those of us who have come from State government and have had to deal with Federal mandates. All of us know that States feel that they have not received money from the Federal Government but instead have been given a lot of mandates. Is that something we need to look at?

Is there a better way to do this?

I have not read all of these reports. Is there something in here that tells us of a better relationship that can be formulated to better carry out the duties and functions and produce a better partnership between Federal, State, and local governments?

Mr. HEMBRA. Without question, and from two standpoints because, one, a lot of the requirements are shifting from the Federal

level to the State and local government level, which means that State and local governments not only are taking the responsibility for implementing programs but also for finding the money to get those programs done.

The other is, there certainly is an opportunity for the Federal Government, EPA as an Agency or Department, to revisit the relationship it has with State and local governments. In fact, back in 1988, as part of a broad general management review of EPA, we suggested that EPA look at the relationship it has with State and local governments and stop looking over the shoulder of States and local governments and move more to a more rational recertification process geared to determining whether or not States and local governments were achieving the environmental results that were expected. So that suggests a whole new relationship. Ms. Steinhart, do you have additional comments?

Ms. STEINHARDT. Forty percent of Federal programs are now implemented by the States under delegation. So the success of the State programs is really intrinsic to the success of Federal environmental legislation and how well EPA functions or a Cabinet Department functions in overseeing the States' implementation of Federal relation is really critical to how well these laws work.

As Mr. Hembra mentioned, when we looked at the quality of that relationship several years ago, we found it was not terribly successful. There is unhappiness on the Federal side and certainly unhappiness on the State side. Certainly, it is time to reassess it and figure out a way to make it work better.

Mrs. THURMAN. Can you maybe go into a little bit more detail of where that breakdown started happening or what has maybe caused the breakdown here?

It is easy to say it is not working, but can we be more specific?

Mr. HEMBRA. I think the starting point is EPA as an Agency, although in the legislation it works with the States and delegates a lot of authority to the States to run the different environmental programs, from an organizational culture standpoint, it has never willingly said, "Let's let the states carry it out." EPA has always felt that they as an Agency ultimately are the ones that Congress is going to turn to judge whether or not there has been a success or failure, and in the case of a failure, that failure would be identified with EPA as opposed to a State and local government, even though the States may have in fact taken responsibility for carrying out the program.

So I think that is, at the core, at least a starting point for why you see the relationship as it is now.

The other has to do, I think, with the points we were trying to make of moving away from activity-based indicators to environmental-results indicators. With activity-based indicators, there is a tendency for EPA that does have a legitimate responsibility to oversee how States carry out their programs under an activity-based indicator, to just constantly look over the shoulder of the States to see if the "Ts" are being crossed and the "Is" are being dotted, as opposed to setting out a reasonable set of expectations for the States and allowing the States to report back on whether that is happening.

If it is not happening, then EPA could step in to work with the States to figure out how to make it happen.

Mr. SYNAR. The gentlelady's time is expired on this round.

Mr. Mica.

Mr. MICA. Thank you, Mr. Chairman.

I just got a copy of the report. I guess this was just released; is that correct?

Mr. HEMBRA. That is correct.

Mr. MICA. I read through this first, on page 2, it says during this fiscal year, "EPA expects to spend nearly \$320 million for its major information resource management expenditures;" is that correct?

Ms. HECKER. Yes, sir. That is out of my statement.

Mr. MICA. Then you go to page 3, it says: "This plethora of systems impairs EPA's ability to share mutually-beneficial information across program boundaries, fosters data duplication, and precludes more comprehensive, cross-media assessments of environmental risks and solutions," and goes on.

The next page, I guess page 4, third paragraph, it says: "Despite spending some \$14 million on information systems, EPA still cannot easily assemble accurate, reliable, complete information on chemicals in the pesticide reregistration process because it lacks integrated databases." Further on you talk about, I think there was a requirement that you were assigned—I think I have lost it here—they were assigned a responsibility a number of years ago. It says on page 5: "Twenty years after Congress directed EPA to register older pesticides, only 31 of the 20,000 pesticide products subject to this process have in fact been registered." Is that all correct?

Ms. HECKER. That is correct, sir.

Mr. MICA. Coming from the private sector, is there any reason why everybody should not be summarily fired for participating in this kind of fiasco?

Ms. HECKER. Unfortunately, we have found similar problems with information management across the government. The state of managing information, using resources to build systems to really help an agency make decisions, is in a generally deplorable state. So I am afraid we would have significant challenges across the board. Basically, a lot of the information systems that have been built have complemented the mandates that are very activity oriented, as Mr. Hembra reported.

The systems, for example, built to support the pesticide registration are merely cataloging various requirements for studies in different areas and they are just tracking them. They are not helping to make decisions, they are not codifying the state of scientific knowledge and expediting the decisionmaking process. They are tracking an exorbitant amount of information associated with the very way the Department is organized.

Mr. MICA. We are spending \$320 million this year. We spent \$14 million on this pesticide program and you are coming here to ask to have this Agency—I won't say elevated, I don't want to say elevated, because that is another issue, but have a separate Bureau in control of this matter; is that correct? Is that what the report is trying to justify?

Ms. HECKER. No. The report was really done to try to understand the magnitude of the information management problems within the

organization, assess what kinds of improvements were going on and what kinds of changes were needed, whether the Agency is elevated to Department status and whether a Bureau of Environmental Statistics is created or not.

So my statement, if you notice, makes no statement whatsoever about a Bureau. It is about endemic problems in the management of information, the need for recognition right at the top, and of the strategic importance of information. This is very well-established in the private sector.

Mr. MICA. If I were in the private sector looking at trying to organize the problems that are outlined here, wouldn't it make sense to have someone with some management expertise or a private management group look at how to organize this best?

That has not been done to date. I didn't see that proposed in here.

Ms. HECKER. I think that may be compatible with the Commission's proposal and some of the legislation to do exactly that.

There is another issue that we think stands alone and that is getting professional management of the information resources. We do support the appointment of an experienced chief information officer, with expertise and success in building and managing information systems, to support the mission and functioning of the organization.

Mr. MICA. Thank you, Mr. Chairman.

It looks like we have some real problems here.

Mr. SYNAR. Thank you, Mr. Mica.

You are right. In recognition of the problems and also because of the efforts of the public employees who oftentimes succeed in spite of all these handicaps, I will state for the record that when we write the Cabinet bill to include a better data systems integration, I am going to suggest that it be called the "Logical Organization of Information Systems" or "LOIS" in honor of Lois Rossi, an OPP employee who helped our subcommittee and EPA with this issue.

Mr. MCHUGH. Mr. Hembra, I understood you to say that EPA should direct funds to tell the public about the seriousness of environmental problems. Doesn't the Agency currently have an Office of Environmental Education? I assume it does.

Can you inform me as to exactly what functions that office is carrying out at the moment?

Mr. HEMBRA. There is an Environmental Education Act. There is an office. There have been educational efforts that have been going on.

What we want to do is have the Agency focus in on that, because to me it is critical to setting risk-based priorities. There is a recognition of being able to reconcile the scientific judgment that exists on a potential health and environmental risk that problems pose and the public's perception of the magnitude and extent and severity of the environmental problems.

Since a lot of policies tend to be developed based on the public's perception of risk, you want to ensure that the public has a full appreciation for what those risks are and what those risks are relative to other environmental problems. So what we are suggesting is that attention be directed specifically toward that.

It is not to suggest that there is no education going on right now.

Mr. MCHUGH. It is to suggest, however, that the current office has not been addressing the question of risk assessment; is that right?

Ms. HEMBRA. It suggests that the public needs to better understand the true measure of risk.

Mr. MCHUGH. That answers the public side. I would like to deal with the office. The office has not been involved with risk assessment education?

Mr. HEMBRA. Not as sufficiently as we believe it should.

Mr. MCHUGH. You also indicate there is a need to strengthen global environmental efforts at EPA. I would like you to share with me what you envision EPA doing in that regard, as compared to, say, the State Department, and ultimately do you feel that the EPA should monitor and become directly involved in international agreements?

Mr. HEMBRA. Let me have Ms. Steinhardt respond to that.

Ms. STEINHARDT. EPA has already been involved in negotiations of earlier international agreements along with the State Department, as a kind of technical advisor, and certainly that role will continue. But the United States is now a partner to about 170 international environmental agreements and clearly there will be more.

In addition to those environmental agreements, we also recognize that environment plays a part in trade agreements as we negotiate NAFTA and GATT.

So the Department's role, EPA's role will have to grow in providing the technical basis for the agreements and the standards incorporated into the agreement, and also making sure that the other parties to the agreement have the capability to carry out the agreements, that is EPA could provide technical assistance in enforcement, as we are doing now with Mexico, and having the scientific information and capability to carry out those agreements.

So I think as the United States becomes a party to more and more agreements, either directly or indirectly, with environmental implications, that the Agency's role will expand.

Mr. MCHUGH. I take it by your comments that you envision EPA's role as advisory, in-house technical, versus getting into direct-line negotiations such as the State Department would; is that correct?

Ms. HECKER. The U.S. Government's position in negotiations is spoken as one voice. Normally they are, yes. EPA has been at the table with the State Department in previous negotiations.

Mr. MCHUGH. Could give me an example?

Ms. STEINHARDT. Montreal protocol.

Mr. MCHUGH. NAFTA?

Ms. STEINHARDT. I am sure EPA would be happy to describe it more fully, but I believe they have been involved, I know they have sent delegations to Mexico to work with the Mexican Government in providing technical assistance on enforcements, in analyzing their environmental standards and statutes.

Mr. MCHUGH. Thank you.

Thank you, Mr. Chairman.

Mr. SYNAR. Thank you.

Do you think contractors should be required to disclose or rectify any organizational conflicts of interest before receiving an EPA contractor grant?

Mr. HEMBRA. Yes.

Mr. SYNAR. The subcommittee has found over the years that EPA has been reimbursing contractors for expenses expressly unallowed under Federal cost reimbursement guidelines, such as liquor and spouse travel. We found that DOD had to certify that the costs that are submitted comply with Federal Acquisition Regulations or FARs.

Do you think EPA contractors should be subject to similar types of certification and penalty policies?

Mr. HEMBRA. Absolutely. In fact, that was one of the recommendations OMB made and, hopefully, it will be carried through.

Mr. SYNAR. We found also some examples of costs reimbursed such as a beach house for rentals for contract employees, tickets for contractor's employees to attend sporting events, Christmas parties, Rolex watches, trips to Disney World. Do you think taxpayers should reimburse EPA contractors for those kinds of gifts or entertainment?

Mr. HEMBRA. Certainly not. We have pointed that out on numerous occasions.

Mr. SYNAR. Given the Agency's growing responsibility and its problems of depending too heavily on the contract organization, how do you solve the problems, is there a need for more expertise at EPA?

Mr. HEMBRA. Over the years there have not really been requests for full funding for full-time employees. As a result, you are contracting out and the Agency is not in a position to provide adequate oversight.

Mr. SYNAR. Isn't it true that Congress is not fully funding all EPA's full time employee positions FTEs?

Mr. HEMBRA. Yes.

Mr. SYNAR. Do you recommend raising the number of FTEs or at least full funding?

Mr. HEMBRA. At least the latter, that there be full funding.

Mr. SYNAR. Is it cheaper to hire outside contractors than it is to hire government employees? Have you ever conducted a study to see which would be cheaper?

Mr. HEMBRA. GAO and our General Government Division has from time to time taken a look at the issue. You find some mixed results. There is not a simple answer to that.

You have to look at a specific activity that the Agency wants to get carried out before you have make that decision. The question is whether or not enough attention has been brought to determining whether or not it is more cost effective to go outside than to do it in-house. I think the situation at EPA with the limited number of employees tends to make that decision easier and that was to opt to contract out.

Mr. SYNAR. The Office of Administration and Resource Management within EPA has truly become a mega-office. Isn't a lot of that jurisdiction too much for one division in an agency and shouldn't those functions be divided?

Mr. HEMBRA. It is a lot of responsibility for one Assistant Administrator. It would certainly warrant revisiting that issue given all the responsibilities that currently fall under that position.

Mr. SYNAR. Ms. Hecker, your statement implies that after all the time and money EPA has spent on information gathering and reporting, it is almost impossible to answer simply basic questions such as whether or not there is improvement in environmental quality; is that right?

Ms. HECKER. Yes, sir.

Mr. SYNAR. Now EPA can tell us what they are doing in great detail, what you call in your testimony "activity-based indicators" but you cannot tell whether or not it is protecting the environment? Is that correct?

Ms. HECKER. Yes, sir, that is correct.

Mr. SYNAR. Counting the permits and evaluating compliance with those permits, I suspect it is important since that is the intent of the legislation. But you are saying the EPA has no way to link that information with the underlying question of the environmental results?

Ms. HECKER. That is correct, sir.

Mr. SYNAR. Now, can you explain to the subcommittee how the information management problems impede accomplishing the mission?

Ms. HECKER. It happens in many ways. One important one is because requirements are not well-defined to run the programs and make the kind of decisions that are required.

The Agency really is not in a position to strategize, prioritize, and conduct risk assessments, to target their efforts. In addition, there are stovepipe systems that make it so that units cannot share the information or integrate the information to look at a whole ecosystem or a problem in a large area.

Your example of Lois, the woman managing the pesticide program, showed that the only way they could manage the program was to have somebody have a card file to pull together the critical information that was in 10 different systems.

Mr. SYNAR. LOIS is going to be there forever. Have you been doing ongoing work for us in the toxic substances program?

Ms. HECKER. Yes, sir, we have.

Mr. SYNAR. How many independent data systems have you found in that program alone?

Ms. HECKER. We have identified over 200 systems serving about 400 employees in the program.

Mr. SYNAR. I see in your testimony you mention how the toxics program cannot use that information from those studies submitted by chemical companies in order to determine assessment priorities because it is too difficult and too timeconsuming. How can that be? If the toxics program determines priorities not based on studies, what are we going to use, tea leaves?

Ms. HECKER. One of the initiatives that is really a positive thing is that the Agency is trying to identify priorities in the TOSCA program. Unfortunately, they have had to contract that out. We have been told that it is too difficult for the contractor to access information that the Agency has received.

I think it is over 10,000 reports of serious problems or potential problems with different substances. But they have not been codified, they have not been organized, they are not accessible on systems. Therefore, what this contractor is doing is basically using other agencies' systems, using private systems because that information has not been properly managed.

I don't think that answers your question, what is the basis on which they are making them? It is the best available information other than the ones they have actually received from the regulated industry.

Mr. SYNAR. As you know, the Cabinet bill approved by the Senate Government Affairs Committee last week contains provisions for designating the Assistant Secretary responsible for information and management as the Department's new chief information officer or CIO. Among the duties of that new CIO would be the responsibility for implementing guidelines with respect to information collection and dissemination, and periodic evaluation and implementation of improvements in the accuracy, completeness, and reality of the data records.

The Bureau of Statistics is also given certain information collection responsibilities. Now, I am sure that this arrangement is not unique. But I want to be sure we understand exactly how in practice the different responsibilities between the CIO and the Bureau of Statistics is coordinated. Will you explain the differences in the two functions?

Ms. HECKER. I will do my best. I have not done any detailed analysis of the legislation regarding the Bureau. I have some information on some studies that were done by contractors of the potential role of the Bureau. But I am more familiar with the appropriate role and leverage that a CIO can bring to an organization. The key thing that a CIO brings is a strategic view of information and bringing together the business planning or the mission planning of an organization with all the separate parts.

No matter how you organize, there is always going to be overlapping information and overlapping missions. The chief information officer will support the business planning to make sure that the information is available to support not just the activities but the overall mission of the organization.

They do the operating plans to get those systems in place. They set standards to make sure that the data can be exchanged and shared, not only within a program like the pesticide program, where it was not shared, but even across other agencies and even among State governments which have a lot of that data. There is a very vital in-house role for a chief information officer to play.

As I said, I am less familiar with the defined functions for a Bureau, my understanding is that clearly there is a lot of uncertainty in the science. There has been an absence of systematic collection of data on the state of the environment.

So it is my understanding that the Bureau would have some priority attention to these problems. So I think there is potentially an overlap that should be carefully defined, understood, and clarified before the legislation proceeds.

Mr. SYNAR. Thank you.

Mr. Clinger.

Mr. CLINGER. Mr. Chairman, I may have some additional questions I would like to submit for the record.

Mr. SYNAR. That is fine.

Mr. Conyers.

Mr. CONYERS. Thank you, Mr. Chairman.

No further questions.

Mr. SYNAR. Mr. McCandless.

Mr. MCCANDLESS. I will be very quick.

I understand the chairman has a desire to move along.

In our previous discussion we talked about science versus the regulatory process. In very recent times, particularly in the area of public works project negotiations of a municipal or tax-supported nature, the EPA has begun to surface as another government signoff Bureau, which they never were before. Is this recently discovered or mandated by Congress, or has somebody discovered that they haven't been doing this, or what?

Let me give you an example. It is not clear unless you have something.

For 12 years a number of jurisdictions worked toward a major flood control project that would protect millions of dollars of property and many lives. It was a problem between the flood control district of jurisdiction, a tribal council, an Indian tribe, the Bureau of Indian Affairs, the Fish and Game Bureau of California, the Fish and Wildlife Bureau of the United States, and a number of other agencies to find the right configuration. Everybody agreed after 12 years, the tribal council gave it its blessing and they are on their way, and all of a sudden a lady from EPA, out of San Francisco, came and said wait, you cannot go ahead with this unless we look at it.

The sum total of this was the comment about: "Don't you think you ought to reinterpret this and put the debris basin further downstream?" Needless to say, EPA was not well liked with the family working on this project because it did not make sense that the persons involving themselves wanted to re-engineer the project. That was confusing to all involved as to what was EPA's role in public works projects.

Did you get involved in this in your review at all?

Mr. HEMBRA. We looked at some projects where multiple agencies were involved in public works projects. This is not a new requirement for EPA. The example you give reflects, in my mind, the timing of EPA to resolve any outstanding issues.

I don't think it is so much a question of does EPA have the responsibility, but what I would call in the question is the last minute introduction of new requirements or revisiting issues that apparently had already been resolved.

Mr. MCCANDLESS. This would not be a new regulatory burden put on EPA, but simply an assessment of what they already have in the way of responsibility.

Ms. HEMBRA. You are correct.

Mr. SYNAR. Mrs. Thurman.

Mrs. THURMAN. I am trying to go back to the line of questioning I was on before. You talked about the one-pipe-at-a-time regulatory approach, where it was fostering a lot of duplication and confusion, something we see all of the time in a lot of these kinds of situa-

tions. But do you think the EPA should study issues of how much they could resolve the problem of the multiple burden on small businesses?

Mr. HEMBRA. Absolutely, I think it would warrant the study by the Commission. It should look at opportunities to reduce redundancies on media-specific programs where, in fact, there is agencywide application.

Mrs. THURMAN. Senator Lieberman offered an amendment to the Senate bill about an ombudsman's office; is that something that would be beneficial?

Mr. HEMBRA. I think that is consistent with the other point I am trying make. In fact, some of the legislation, some of the programs require ombudsmen such as its RCRA program and the asbestos program.

So I think it would clearly make sense to look at whether all the programs could warrant possibly having someone speaking for small business or taking into consideration small business concerns.

Mrs. THURMAN. Let me carry this one more step, and it relates back to the States as well, because they have so many different agencies that do those kinds of things, particularly in the State of Florida. One pressing issue we grappled with over the last few years is one-stop permitting.

Do you think it might be advantageous for EPA to be working with these particular agencies and Departments to set up at the local level so that as we go through the permitting process, it might be advantageous for them to work together versus separately?

Mr. HEMBRA. Point in fact, we have not looked at this but EPA has some pilots out there looking at single permits. I am just not quite sure how that is working but I think there is a lot of merit to looking at whether or not there is some value through reorganization to move to a single-permitting process.

Mrs. THURMAN. Mr. Chairman, whoever might have the information about where those pilot programs are, I would certainly like to be aware of them to see how they are working.

Mr. SYNAR. We will see if we can gather that information.

Mrs. THURMAN. Thank you.

Mr. SYNAR. Mr. Mica.

Mr. MICA. Thank you, Mr. Chairman.

I finished reading this report again. It doesn't seem to come to any conclusion. It talks about a little bit of hope on the horizon.

Has there, in fact, been any private management firm contract let to look at how information should be integrated within the Agency, or is it all being done internally?

Mr. McCLURE. EPA is in the process of doing an examination of its strategic IRM planning with the assistance of outside contractors.

Mr. MICA. I don't know if you have time to do this now, but can you cite on here where you think this Bureau, this information Bureau should go, the consolidated group, so the right hand knows what the left hand is doing?

Ms. HECKER. As I said earlier, we have not analyzed the role of the BES and where it would fit. The role of the CIO though is to report directly to the Agency head. That is a very important prece-

dent in the private sector. It is only if you have somebody responsible for coordinating information and getting good planning right at the top in levels comparable to the senior managers of the organization that you really have a chance to improve the use of information in the organization.

Mr. SYNAR. Tell Mr. Mica who gathers all that information today?

Ms. HECKER. LOIS.

Mr. SYNAR. Also tell him this is all being done by private contractors; isn't it?

Ms. HECKER. Yes, of course.

Mr. MICA. I am trying to figure out how one-third of \$1 billion is being spent.

Ms. HECKER. I should warn you that I don't believe that one-third of \$1 billion is anywhere near what is really spent on information in the Agency. That excludes all the data collection. That is really the technology side of it. There is probably an order of magnitude above that, if you count all the data collection.

Then if you throw in the data collection at the State and local level, you see how serious the mismanagement of data really is, as it affects the environment.

Mr. MICA. Sounds like a data disaster.

Thank you.

Mr. SYNAR. Mr. McHugh.

Mr. MCHUGH. You indicate that EPA focused attention on pollution prevention within programs rather than between them. It is my understanding that there was previous legislation that enacted an Office of Pollution Prevention supposedly for that purpose. Did you discover what was occurring in that office in regard to between programs?

Mr. HEMBRA. There is an Office of Pollution Prevention. It is being staffed up. They are beginning to look at some opportunities to increase the emphasis on pollution prevention as opposed to end-of-pipe solutions to the problem.

At issue with the Agency is the resources that are made available and the way the programs are structured across the board to deal with pollution prevention. In some cases, you have legislation that contains pollution prevention features and others that do not, and the amount of information resources being made available.

Mr. SYNAR. Let me thank the panel. I appreciate your indulgence this afternoon.

Our next witness is John C. Martin, inspector general, Environmental Protection Agency; and he will be accompanied by Kenneth Kunz.

Welcome, gentlemen. Do you either of you have any objection to being sworn in?

[Witnesses sworn.]

Mr. SYNAR. Welcome back to our committee, John. We look forward to your testimony.

STATEMENT OF JOHN C. MARTIN, INSPECTOR GENERAL, U.S. ENVIRONMENTAL PROTECTION AGENCY, ACCOMPANIED BY KENNETH KUNZ, ASSISTANT INSPECTOR GENERAL FOR AUDIT

Mr. MARTIN. Thank you, Mr. Chairman. I would like to summarize the written statement that I have given you, but highlight some things we think are important. I want to provide an overview of my perspectives of significant problems confronting EPA, which we think have to be addressed in an efficient, effective, and economical manner.

I believe the broad concerns we are going to address are not in need of new legislation as a remedy. Existing laws and regulations provide a lot of authority and administrative guidance that a strong management team can use successfully to address the problems. The areas are EPA's management of extramural resources, information resources management; financial management; and internal control systems at EPA. Although I will use samples relating to specific EPA programs, these areas are not restricted to the specific programs mentioned and have occurred as problems in other EPA programs and activities.

When Administrator Browner appeared before the Energy and Commerce Committee a few weeks ago, she said much more remained to be done to improve contracts management at EPA. Our continuing audit work supports this assessment, and we believe the problem extends to other types of resources as well.

EPA relies extensively on outside entities to assist in carrying out its mission to clean up past pollution problems, develop national policy, and set the environmental agenda for the future. In a recent review of one EPA lab, we found it had used the small business set-aside program for 9 years to avoid competition and obtain repeated sole-source procurements with the same contractors. After one of these contractors became too big to be considered a small business, the laboratory removed the contract from the small business program without adequate justification so that the incumbent contractor could compete for a new award. The EPA laboratory then wrote technical qualifications that favored the incumbent contractor and put other firms at a competitive disadvantage. This contractor easily out scored the competition and won a \$16.8 million contract.

EPA not only mismanaged its procurement authority, but it has misused extramural cooperative and interagency agreements. Cooperative agreements were never intended for the direct, exclusive benefit of Federal agencies, but rather to support projects undertaken by non-Federal organizations to accomplish a public purpose.

This week we expect to issue an audit report which discusses how parts of each of 11 cooperative agreements EPA had with various universities did not contribute to a cooperative project that involved the universities, but only benefited the EPA. One \$5.2 million cooperative agreement was used to provided the EPA laboratory with at least 14 university employees. They provided services that either directly supported EPA scientists or provided administrative support to the EPA laboratory staff. One university scientist was so concerned about this that he complained that cooperative agreements were "little more than a vaguely veiled way of the local

EPA laboratory getting more funds for their own research by pretending to fund investigators at this university." I cite additional examples to illustrate this problem in my full written testimony.

EPA has also improperly used interagency agreements to its advantage. For instance, they entered into interagency agreements with the National Aeronautical and Space Administration to transfer extramural funds to NASA. NASA, in return, entered into an interagency agreement with us, providing us with extramural resources from NASA. The value of four interagency agreements between EPA and NASA was over half a million dollars for a 3-year period. The allocation for the first year shows that EPA intended to send \$76,000 in funds to NASA for travel to NASA, and in return would receive \$80,000 to be used for travel expenses for our employees. The effect of all of this was the unauthorized reprogramming of extramural funds which allowed for additional travel for Federal employees.

The secondary consideration given to management of contractors and other external resources in the past has resulted in this being a significant problem at EPA. Recently top management has taken decisive steps to address this problem, but it will take time to correct.

Mr. Chairman, you had an extensive discussion about information resources management with the previous panel. In the interest of saving time, I will skip over that part in my testimony and go on to a few comments about financial management.

EPA needs a financial accounting system to provide complete, consistent, reliable, and timely data for decisionmaking and control of assets. One important function of a financial management system is to record and manage accounts receivable to ensure they collect all the funds to which they are entitled. The Agency is working hard to correct the problems in the accounts receivable program. In the last audit report issued on the Superfund Trust Fund, for instance, we found that for half of our \$30 million sample, EPA took an average of 7 calendar weeks to set up an account receivable. These delays create other problems. For example, it is more likely that followup on delinquent accounts will be delayed, and that payments will arrive with no corresponding account to credit them to.

In fact, it is a common situation we see at EPA where people who owe us money send us the money before we ever set up an account indicating that they ever owed us any money.

The last area I would like to mention is internal controls. One goal of establishing good internal controls is to find and correct weaknesses before they cause significant problems. For the last 5 years, one EPA region reported no internal control weaknesses at all, even though audits had disclosed significant weaknesses in their operations. In our review of this region, we found that although regional managers themselves were aware of problems, they did not understand how to assess or report them. They filled out the paperwork, but the risk assessments were so superficial that they were inadequate to provide assurance that no significant program weaknesses or mismanagement had gone undetected.

At EPA laboratories, we found EPA managers did not believe management of extramural resources was a weakness, but conducted no reviews of internal controls to verify this assumption. To

the contrary, our audits found significant problems with the way external resources were managed at the laboratories.

In conclusion, the other day I read the remarks Administrator Browner made to the Senate Committee on Governmental Affairs. I was so struck by their pertinence to what I have been discussing this morning that I would like to mention it in conclusion.

In speaking of a Cabinet level Department of the Environment, the Administrator said we:

must also serve as a model for responsible fiscal practices and responsive accountable management. Financial integrity and sound contract management are critical to fulfilling our environmental mission and to safeguarding the taxpayer's dollar.

The Office of Inspector General is committed to helping EPA become such a model for financial integrity and accountable management. We will continue to work with the Agency to achieve this goal. Thank you.

[The prepared statement of Mr. Martin follows:]

TESTIMONY OF JOHN C. MARTIN
INSPECTOR GENERAL
U.S. ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE

THE SUBCOMMITTEE ON LEGISLATION AND NATIONAL SECURITY, AND
THE SUBCOMMITTEE ON ENVIRONMENT, ENERGY AND NATURAL RESOURCES
OF THE COMMITTEE ON GOVERNMENT OPERATIONS

MARCH 29, 1993

Good afternoon. I appreciate the opportunity to be here today. Elevation of EPA to cabinet level status is an important matter that is of great interest to all of us, and I want to make it clear right from the beginning that I fully support this initiative. Today, however, I would like to provide an overview of my perspectives on significant problems that confront EPA today, and which must be addressed to ensure that its programs are conducted in an effective, efficient and economical manner. I believe that the broad areas of concern I will address are not in need of new legislation as a remedy. The Chief Financial Officer Act, the Federal Managers' Financial Integrity Act, the Federal Grant and Cooperative Act, the Competition in Contracting Act, and all the implementing OMB Circulars, and Agency regulations provide a lot of legislative authorities and administrative guidance that a strong EPA management team can use successfully to address the problems I will discuss.

The areas I will discuss are: EPA's management of its extramural resources (including contracts, cooperative agreements and interagency agreements); information resources management; financial management; and internal control systems at EPA. Although I will use examples relating to specific EPA programs,

these areas of concern are not restricted to the specific programs mentioned and have occurred as problems in other EPA programs and activities.

Over the years EPA has given top priority to achieving its program goals and carrying out its environmental mission. But in pursuing its environmental goals, EPA has not given sufficient priority to the administrative and management activities that I will focus on today. The secondary consideration given to these areas has resulted in their becoming significant problems that will take time to correct.

Recently, EPA has made major efforts to bring about a change in the "culture" which allowed various kinds of mismanagement to occur. But unfortunately our audits continue to find abuses in current activities at EPA, and this leads me to believe that the battle for good management of the Agency's extramural resources is far from over. When Administrator Browner appeared before the Energy and Commerce Committee recently to discuss contracts management she said that much more remains to be done, and I fully agree with her assessment.

Extramural Resources

EPA relies extensively on outside entities to assist in carrying out its mission to clean up past pollution problems, develop

national policy, and set the environmental agenda for the future. These outside groups may be commercial firms that EPA has contracts with to provide goods and services; they may be public organizations, such as universities or State and local organizations that EPA funds to pursue areas of mutual environmental concerns through cooperative agreements; or they may be other agencies of the Federal Government that provide assistance through interagency agreements. All of this work is paid for using extramural funding -- that is, funding appropriated for other than in-house Federal employees.

Extramural resources may frequently be used to perform work that is similar, or sometimes the same, as that performed by EPA employees, but there are important distinctions. Employees of non-Federal organizations owe their primary allegiance, not to the Government as Federal workers do, but to the contractor or organization they work for. They do not have the same obligation, therefore, as Government employees to always put the public interest first, and cannot be viewed as mere extensions of Agency staff.

Extramural funding is provided to accomplish a variety of objectives. There are restrictions on how these outside organizations obtain funding and the nature of the work that they can do. For instance, contracts should be competitively awarded when possible to get the best price; cooperative agreements are

required by law to benefit outside organizations rather than EPA; and interagency agreements must not be used in lieu of the more controlled contracting process to procure goods and services. The type of services or goods that can be provided is limited to what is specified in the statement of work of a contract or agreement. Organizations receiving contracts or assistance agreements are generally prohibited from providing personal services, such as secretarial duties, to Federal employees since this would circumvent Federal staffing limitations that the Congress approves in EPA's appropriation bills.

In a series of recent reviews focusing on extramural resource management at EPA laboratories, we have documented numerous cases where the awards of contracts and assistance agreements were questionable. And we found repeated instances where EPA managers and project officers improperly used extramural resources to augment their Federal workforce and to obtain goods and services for the Agency. There may be a number of reasons why this happened. At one EPA laboratory, we believe it was at least in part a response to the laboratory's growing research mission and the lack of Federal staff needed to accomplish it. From 1986 to 1991, the workload of this laboratory more than doubled, yet its EPA staff actually decreased by 4.6 percent.

Contract Management

EPA obviously has an interest in obtaining the services of

contractors which have a good track record, but we believe the Agency has used procurement mechanisms such as the small business program as shields to avoid legitimate, open competition. For example, an EPA laboratory used the 8(a) small business set-aside program for nine years to avoid competition and obtain repeated sole-source procurements with the same contractors. After one of these contractors became too big to be considered a small business, the laboratory removed the contract from the 8(a) program without adequate justification to allow the incumbent contractor to compete for the new award. The EPA laboratory wrote technical qualifications that favored the incumbent contractor and put other firms at a competitive disadvantage. In fact only one other contractor submitted a proposal, and the incumbent contractor easily outscored its opposition and won this \$16.8 million contract. At the time of the competitive award, we believe EPA had become as reliant on the contractor as it was on its own staff to perform critical work at the laboratory.

We have found that similar problems exist in EPA headquarters. In a recent review of an EPA headquarters office, we found that it repeatedly authorized contractors to perform work without taking necessary steps to ensure that goods and services were obtained in accordance with the Federal Acquisition Regulation. This office allowed one contractor to conduct training for EPA without an approved purchase order, even though the contractor said she was told several months before she conducted the

training that the purchase order was being processed. With this assurance, she completed the training, but after repeated unsuccessful attempts to get paid, the contractor contacted our office. After we initiated a review of this matter, EPA took action to ratify the unauthorized procurement after-the-fact which finally allowed the contractor to be paid six months after she performed the work.

Assistance Agreements

EPA has not only mismanaged its procurement authority in relation to contracts, it has also misused extramural cooperative agreements and interagency agreements. Cooperative agreements were established by the Congress as a mechanism "to accomplish a public purpose" and not for the acquisition of goods and services by the Federal government. In amendments to the Federal Grant and Cooperative Agreement Act, Congress warned that the goals of achieving economy and efficiency in Federal programs was subverted if agencies ignore the economies of competitive procurement and indiscriminately use assistance agreements in place of contracts.

However, this week we expect to issue a report which discusses how parts of each of 11 cooperative agreements EPA had with various universities did not contribute to a cooperative project that involved the universities, but only benefitted EPA. In some cases the entire cooperative agreement was used to provide

services exclusively for EPA -- not university -- research projects. As I mentioned, cooperative agreements are not designed for the direct, exclusive benefit of Federal agencies. A \$5.2 million cooperative agreement awarded noncompetitively to a state university in 1991 was used to provide the laboratory with at least 14 university employees who worked on-site at the EPA laboratory providing services that either directly supported EPA scientists or provided administrative support to EPA laboratory staff.

EPA even used university employees working under the cooperative agreement as secretaries for EPA managers. In April 1991 a university employee began serving as a senior administrative secretary for a branch manager at the EPA laboratory. After an internal review in June 1992, EPA removed the university employee from this position, and placed her in another job from which she was terminated after a few months due to lack of work. One might contend that this action shows EPA was trying to do the right thing by removing the employee from the secretarial position. It was unfortunate, however, that the employee ended up out of a job through no fault of her own. If EPA had filled the secretarial position by using a Federal slot to begin with, this situation could have been avoided.

A project manager with a university which had numerous cooperative agreements with EPA told us that the university

received no benefit or added value from much of the work undertaken at the EPA laboratory. Rather, it was EPA who primarily benefitted. This violates the stated purpose of cooperative agreements to benefit outside organizations. In fact, one university scientist wrote to complain that the EPA laboratory listed university faculty as "principle investigators" (or project leaders) without even informing them. He went on to write: "I have felt all along this was little more than a vaguely veiled way of the local EPA laboratory getting more funds for their own research by pretending to fund investigators at the University."

We found instances where EPA was very creative in obtaining funding for projects it wanted. An EPA laboratory employee wanted to pursue a PhD program at a university. He applied for an EPA long-term training program, but was not approved. Shortly after this, he was sent to the university under the Intergovernmental Personnel Act which permits temporary assignments of Federal, State and local employees to other government offices to promote the sharing of technology and knowledge among different levels of government. The IPA agreement did not mention that the EPA employee would be receiving PhD training, nor did it mention that the 51 percent of the employee's salary that the university was responsible for would be funded through an EPA cooperative agreement. Cooperative agreements cannot be used to train EPA staff. The

total cost for this temporary assignment was estimated at \$200,000, which the EPA approving official stated "was really not a bad deal."

Interagency Agreements

EPA's creativity with extramural funds also extended to interagency agreements which were used to circumvent EPA travel ceilings. EPA entered into interagency agreements with the National Aeronautical and Space Administration on two occasions to transfer extramural funds to NASA. NASA, in return, entered into interagency agreements with EPA providing it with extramural funds from NASA. The value of all four interagency agreements was over a half million dollars for a three-year period. The allocation for the first year shows that EPA intended to send \$76,000 in extramural funds for travel to NASA, and in return would receive \$80,000 from NASA to be used for travel expenses of EPA's employees. The effect of all this was the unauthorized reprogramming of extramural funds which allowed additional travel for Federal employees.

Another way EPA has made use of interagency agreements was to obtain the services of a particular contractor without going through the lengthy process of a competitive procurement. An EPA Headquarters office entered into an interagency agreement with the Air Force to tap into a contract the Air Force had with a contractor that EPA wanted to use. The original agreement was

for \$123,500. Three years later in 1992, EPA's funding for this contractor through the interagency agreement had increased to over \$3 million. When the Air Force contract hit its monetary limit, EPA entered into a new interagency agreement with the Tennessee Valley Authority so it could continue to obtain services of this same contractor. We believe EPA took these measures to avoid the competitive process and obtain the services of the contractor-of-choice.

Information Resources Management

I would now like to discuss EPA's Information Resources Management program. EPA has over 500 computerized information systems providing data on a wide range of environmental programs. In performing 15 internal audits of these systems over the last four years, we have reported serious deficiencies -- both in the overall management of the information resources program and with individual information systems and computer centers.

In 1991, we reported that EPA's main computer center had not effectively implemented the most important part of the mainframe security software. This allowed hundreds of government and contractor employees access to EPA's computer-based payroll and personnel files. Over 18,000 files in EPA's contractor payment system, which processes an average of \$5 million per day in contractor payments, were not protected from unauthorized access.

Last year, when we conducted a followup review, we found that the situation had gotten worse. In 1991 we recommended that EPA reduce the number of users with complete access to all sensitive files, but in 1992 we found that the number of users with complete access had actually increased by 73 percent. Security problems like this allow too many people to have complete access to EPA's mainframe computer system, which houses the majority of the Agency's most mission-critical information systems.

EPA does not have an integrated long-range planning and budgeting process for its information systems. It did put out a five-year strategic plan, but this plan was more of a vision statement reflecting EPA's philosophy and goals at the highest levels. Uncoordinated development of systems that should have been planned to work together has resulted in about 40 significant systems that Agency management has identified which do not "talk" to each other.

EPA does not have a comprehensive quality assurance program to ensure the reliability of its information systems. This has led EPA offices to question the accuracy and completeness of data generated by many of EPA's computerized systems. As a result many offices have developed their own systems which they consider more trustworthy -- a wasteful duplication. We found at least six systems which contain data on the ADP inventory, four which

accumulate budgetary data, and twenty which track financial information.

Many of EPA's directives and standards for information resources management are incomplete and outdated and often do not distinguish between mandatory policies and optional guidance. This left EPA personnel confused and has contributed to the problems I have discussed. The costs of EPA's integrated financial management system now being developed have more than tripled from \$7.7 million to a reported \$27 million. The lack of good system development standards was a major reason for this increase.

Although the Paperwork Reduction Act of 1980 required agencies to formally name a Designated Senior Official for Information Resources Management, EPA did not designate this official until a few months ago. This is indicative of the lack of top management involvement in the development of computerized systems at EPA in the past. EPA's information management steering committee, normally a method for top management to provide ongoing leadership and direction, only met 12 times between 1985 and 1992, and really functioned as more of an information exchange group than a decision-making body.

Just as contract management at EPA has been viewed as secondary to the Agency's environmental mission, information resources

management has also been pushed into the background and not given the attention it deserves. These are both problems in the "culture" at EPA which must be changed.

Financial Management

EPA needs a financial accounting system that provides complete, consistent, reliable and timely data for decision making and control of assets. Over the years we have repeatedly reported on problems with EPA's financial accounting system.

Accounts Receivable

One important function of a financial management system is to record and manage accounts receivable to ensure that the Agency collects all the funds to which it is entitled. This function becomes even more critical in times of financial constraint that the government is now experiencing. At the beginning of this fiscal year EPA had total receivables of over \$237.5 million. We have repeatedly found that EPA has not posted receivables in a timely manner, and have reported instances where collections from debtors were received before the receivables were recorded in EPA's accounting system.

In the Superfund program alone, over \$128 million is due EPA from outside parties. In a recent summary of our audits of the Superfund Trust Fund, we reported that from 1983 to 1990, \$94 million of accounts receivable were not posted in a timely

manner. It stands to reason that EPA will have trouble managing its Superfund cost recovery program if the accounting system cannot give us complete, accurate and up-to-date information. The Agency is working to correct deficiencies in accounts receivable, but the most recently issued audit of the Trust Fund still found that \$15 million of accounts receivable out of a \$30 million sample took an average of seven calendar weeks to get from the point a document was finalized establishing the amount owed EPA to the time when it appeared in EPA's financial management system as an account receivable. A big part of this delay was because EPA's finance people were not promptly receiving from the originating offices the documents they needed to set up the accounts receivable.

Personal Property

Another area I would like to mention briefly is accounting for personal property. Over a ten year period, \$12 million out of a total of \$76 million of property in the Superfund program was purchased and received, but not properly recorded in the Agency's property accountability system. From 1983 up to the most recent audit of property purchased in the Superfund program, auditors were unable to locate over one million dollars of personal property items during physical inspections. Since 1990 EPA property officials have performed annual inventories at all locations to control personal property, and we have noticed an improvement in the number of items we were able to locate.

Further improvements should occur when EPA's new tracking and accountability system for personal property is operational.

The Chief Financial Officers Act requires EPA to prepare audited financial statements covering its revolving funds, trust funds and commercial activities. Superfund, which I have been discussing, is the largest EPA trust fund subject to the requirements of the Chief Financial Officers Act. Another example is the Oil Spill Liability Trust Fund. This trust fund provides money to finance oil pollution prevention and cleanup. EPA received \$18.4 million from the oil spill trust fund in 1992.

In our review of this fund, we discovered that EPA had neglected to make any of the \$18.4 million available for disbursement. Although EPA was aware of the Fund, it was only after we questioned Agency personnel that they requested a transfer of EPA's portion from the Oil Spill Liability Trust Fund so it could make disbursements. This transfer did not occur until nearly seven months into the fiscal year. Another problem relating to this fund was that EPA had not set up all the accounting controls to track oil spill obligations and expenditures. EPA has indicated that it has taken corrective actions to address these deficiencies.

These examples illustrate some of our concerns with EPA's financial management. We view the Chief Financial Officers Act

as a new opportunity to recognize and correct financial management problems. As part of EPA's implementation of the Act, EPA performed an extensive review of Agency directives and delegations to ensure that lines of authority and responsibilities were clearly defined. EPA's delegations of authority were revised to provide EPA's Chief Financial Officer with some oversight over employees in regional finance and Headquarter program offices. We believe this is a step in the right direction because EPA's decentralized organizational structure has defeated attempts in the past to hold regional finance offices and program offices accountable for their performance in carrying out financial management responsibilities. The basic, pervasive, and persistent nature of the findings in our audit reports over the last decade indicate that sound financial management was secondary to what Agency managers viewed as their environmental protection mission.

Internal Controls

Federal Managers' Financial Integrity Act

The process of analyzing operations to determine areas vulnerable to fraud, waste, mismanagement, or misappropriation is outlined in the Federal Managers' Financial Integrity Act. The goal is to find and correct weaknesses before they cause significant problems in programs and financial systems.

For the last five years, one EPA region has reported no internal control weaknesses, even though audits had disclosed significant weaknesses in its operations. In our review of how this region was assessing its internal control responsibilities through the Federal Managers' Financial Integrity Act we found that although regional managers themselves were aware of certain program control weaknesses, they did not understand how to assess or report them. Managers in this region had not been trained to conduct effective vulnerability assessments or evaluate internal management controls. They filled out the paperwork, but their risk assessments were so superficial that they were inadequate to provide assurance that no significant program weaknesses and mismanagement of resources had gone undetected.

This incident illustrates that some EPA managers still have not internalized the message that they are primarily responsible for ensuring that internal controls are in place to protect EPA resources and promote efficient, economical operations.

As we have reported in numerous internal and management audits, the FMFIA process often is not rigorously conducted to identify major program control weaknesses. Last year, we reported on the many problems in EPA's management of the multi-million dollar contracts awarded to the Computer Science Corporation. Conflicts of interest and mismanagement went undetected because the FMFIA process was not properly used as a tool to detect these

weaknesses. We recently found the same situation in EPA laboratories, where EPA managers did not believe management of extramural resources was a weakness, but conducted no reviews of internal controls to verify this assumption. To the contrary, our audit found serious problems with the way external resources were managed. In fact, most of the major weaknesses in Agency operations have been reported by the Office of Inspector General or the General Accounting Office. In the latest EPA FMFIA Assurance Letter, the Agency reported eight new material weaknesses. Six of these weaknesses were identified through Office of Inspector Reviews.

EPA has taken initiatives over the last few years to improve the FMFIA process. It established a Senior Council on Management Controls made up of top level officials which normally meets monthly to discuss vulnerable areas identified through risk assessment processes. My participation in this group has convinced me that EPA management is serious about this process and in developing corrective action plans for identified weaknesses. By keeping attention focused on this important process, we believe that it can be a more effective tool for detecting high risk deficiencies in EPA operations.

Audit Followup

For the last four years EPA has included the issue of audit followup in its annual FMFIA assurance letter. This level of

attention has brought about significant improvements in EPA's system to track corrective actions taken in response to audit recommendations.

Unfortunately improvements in the system to track audits has not resulted in decreases in the number of audits that are unresolved because corrective actions have not been completed. From 1987 to 1992, the number of past-due unresolved audits has increased five-fold. At the end of fiscal 1992, there were over 100 audits with overdue management decisions on corrective actions.

Our experience at EPA has proven that it is not enough for managers to issue a memorandum announcing corrective actions for problems. Recommended corrective actions must be tracked to verify that they are indeed implemented and that they actually correct the deficiencies reported. Even more startling, we found that EPA's Management Audit Tracking System sometimes showed that corrective actions recommended in an audit report were completed even though they had not even been initiated. The Office of Inspector General has increased its efforts in this area by conducting followup reviews on a selective basis to help ensure corrective actions were implemented and effectively remedied the problem.

Conclusion

The other day I read the remarks Administrator Browner made

recently to the Senate Committee on Governmental Affairs, and I was so struck by its pertinence to what I have been discussing this morning that I would like to mention it in conclusion. In speaking of a cabinet level Department of the Environment, the Administrator said we "must also serve as a model for responsible fiscal practices and responsive accountable management. Financial integrity and sound contract management are critical to fulfilling our environmental mission and to safeguarding the taxpayer's dollar." The Office of Inspector General is committed to helping EPA become such a model for financial integrity and accountable management, and we will continue working with Agency management to achieve this goal.

This concludes my prepared statement. I will be pleased to answer any questions you may have.

Mr. SYNAR. Thank you. Would you agree that the Agency has become too dependent on outside contractors to perform functions?

Mr. MARTIN. Yes, I do.

Mr. SYNAR. You have a lot of investigations going on, EPA laboratories, cooperative agreements, grants, and interagency agreements. You have information resources management investigations, financial management areas. Mr. Martin, why can't this Agency get their act together?

Mr. MARTIN. I think a simple answer that cuts across all the issues that are raised is, you are talking about basically good practices; and at EPA that takes a back seat to the environmental mission. It is a theme that was recognized several years ago, mission over management. In every area that you talked about, we find the same problem; nobody cares.

Mr. SYNAR. Contract management, for example, and financial management are basic. It is like a builder saying, I want to build a skyscraper, but I don't want to lay the foundation, isn't it?

Mr. MARTIN. That is right, but if you don't care about the foundation, it is not going to matter to you.

Mr. SYNAR. To what extent does the Agency rely on extramural resources to accomplish its mission?

Mr. MARTIN. Recently, the Administrator sent out a letter to Agency employees expressing her concern about how they were handling extramural resources. She pointed out that two-thirds of the Agency's budget is devoted to extramural funding. It is a tremendous amount.

Mr. SYNAR. You mentioned an example of that, the EPA lab which made an attempt to circumvent the competition with an 8-A set-aside program. Can you explain to this subcommittee why you thought EPA was so determined to keep it in that particular contractor's hands?

Mr. MARTIN. Unfortunately—and it is a situation which we pointed out even with this committee 1 year or so ago—sometimes we become captive to our own contractors. We keep them for so long, they become so valuable to us, they know so much about how we do business, that sometimes we cannot break the relationship.

This particular contractor had worked at that lab longer than the EPA workers had worked there.

Mr. SYNAR. You also found instances of other sweetheart deals with the Agency. Tell us the story about the enterprising lab employee who wanted a Ph.D.

Mr. MARTIN. An EPA employee wanted a Ph.D., and wanted to get it at a western university. He was turned down in the normal screening process. So he, with the cooperation of his supervisors, decided to take a different approach. They arranged for him to go to the university on assignment under the Intergovernmental Personnel Act. Basically, on the public record, it looked like the university was paying half of this person's salary. But what was not disclosed was that the laboratory entered into a second agreement with the university by which we gave them money to pay the other half of the employee's salary plus a lot of other expenses involved under a cooperative agreement that the employee would do some type of research work while at the university. So he wound up

doing all the educational work required for the Ph.D. It ended up costing us something over \$200,000.

Mr. SYNAR. He got the Ph.D., and we got the \$200,000 bill?

Mr. MARTIN. That is pretty much the way it looked.

Mr. SYNAR. That is a pretty expensive doctorate; isn't it?

Mr. MARTIN. Very expensive.

Mr. SYNAR. Did we, like Northern Exposure, get anything of it like a commitment from this Federal employee that he would give us some years of service back?

Mr. MARTIN. There is an standard provision in the IPAI that employees are supposed to serve a period of time. However, the real point here is that this was a complete circumvention of the legitimate vehicles the government has in place to train its employees.

Mr. SYNAR. Do you think it would be more cost efficient for EPA to hire more in-house expertise instead of relying on smoke and mirrors, as they have in the past, to get the job done?

Mr. MARTIN. As Mr. Hembra said, that is difficult to answer. He said, you have to look at the situation. I think that No. 1, we should fund the full level of authorized FTEs in EPA. That is something that has been sorely needed for a while. On the other hand, the Agency needs to study and provide to people like yourself and the other members of this subcommittee and the Appropriations Committee real indepth analysis to illustrate that they can trade off from the contractors for EPA employees.

Mr. SYNAR. Mr. Clinger.

Mr. CLINGER. Thank you, Mr. Chairman.

Mr. Martin, thank you for your testimony. One of the last panelists indicated that a lot of the management problems you discussed with regard to EPA were not unique to that Agency, that in fact pretty much exist governmentwide. You are not suggesting that this is unique to EPA, are you? Are there similar kinds of deficiencies across the board, as you have discussed this with your colleagues in other agencies?

Mr. MARTIN. I am not suggesting it is unique. I have the pleasure of being inspector general of the EPA and don't have the broader jurisdiction that GAO has, so necessarily my comments are restricted to the Agency. But I have read GAO's work in this area, and they point out extensive, governmentwide problems in various parts of the problems that we are discussing today.

Mr. CLINGER. You indicate the Agency has indeed undertaken steps to correct contract management problems. It is my understanding that in June of last year the Agency completed a comprehensive contractor report which identified numerous actions the Agency is taking, or was taking then, and future actions that could be taken to address these contract management problems.

Can you tell us what some of those steps are and what specific steps the Agency has taken? Can you give examples of how they are attempting to address these problems that they seem to have in the management of the Agency?

Mr. MARTIN. One thing they have done is to create a separate Deputy Assistant Administrator who focuses the responsibilities for finance and acquisitional concerns.

Let me tell you that it has been my experience over the years that I have been at EPA, again as GAO has pointed out, EPA gen-

erally will be very receptive to lay out plans and ideas and solutions. The problem is actually getting them to accomplish those things. There really has not been enough time since EPA made many of the pronouncements that you are referring to, for us to go back and take a look at whether they have actually implemented long-lasting structural changes that will make a difference in the Agency.

Mr. CLINGER. Is it likely that a lot of the efforts have been in limbo since November. We have had an administration on its way out and an administration on its way in, and that new administration is not fully fleshed out. Is it likely that many reforms have been put on hold until the administration gets its act together?

Mr. MARTIN. I think there are two parts to that. In the contact I have had with the new Administrator, I can tell you that no one that I can ever recall at EPA has had a more personal or stronger interest in cleaning up the problems that we are talking about. She has made it abundantly clear that she wants this to be done.

On the other hand, as I have talked to her about my experiences in EPA in the past, we are dealing with a cultural problem at EPA that is not going to change overnight. We are dealing with employees who have basically, in many cases, had their whole Federal career operating under a system that created the problems that we are talking about. So changing that mind-set and that culture—while many of these employees truly are valuable, excellent people who have the mission of the organization in mind, that does not change the fact that when it comes to the management kinds of things that we are talking about, that they have a real interest in changing.

So I think, to answer your question, it will be a combination of Mrs. Browner's interest in seeing the problems corrected with a change in the cultural attitude of the Agency to really see things change in the long run.

Mr. CLINGER. But it is going to depend on the political leadership of the Agency to drive that agenda?

Mr. MARTIN. There is no question about that. If for any reason the political leadership decides these are not important issues, I can guarantee you absolutely that nothing will happen.

Mr. CLINGER. In terms of information resources management, didn't the Agency's managers agree that there were problems in this area, and they are taking steps or were taking steps last year, to correct some of these deficiencies as a result of your reports?

Mr. MARTIN. As I said earlier, we often get agreement from the Agency on their willingness to identify a problem and to move toward correcting it. The problem is that rarely does anything happen. However, we have noticed that in the area of information resources management, the last two audits we have done, they have been most responsive and concrete with us as far as what their corrective action plans are.

Normally, we tend to get more vague kinds of predictions on what they might do to fix something, but in these two cases lately, they are much more specific; they have timetables in mind, and we think they are doing a much better job of addressing these issues.

Mr. CLINGER. Thank you.

Mr. SYNAR. Mr. Conyers.

Mr. CONYERS. Thank you, Mr. Chairman.

Welcome, Mr. Martin.

Mr. MARTIN. Thank you.

Mr. CONYERS. You have done well by the inspectors general in your work over the years.

Mr. MARTIN. Thank you very much.

Mr. CONYERS. We have had, in the committee bill that was passed in the 101st Congress, language requiring contractors to disclose organizational conflicts of interest surrounding contract awards. Do you think that that is the correct way to go, what we did in the language that year?

Mr. MARTIN. EPA has had a contractor disclosure requirement for about the last 10 years. Your proposal is much broader and covers a much broader range of providers. So I think from that point of view, plus making it a legislative requirement, I think you are on the right track.

Mr. CONYERS. Couldn't we extend legislation to really deal with a lot of these irregularities that you have reported, with more legislation, rather than letting management get around to correcting it—and we hope they will?

Mr. MARTIN. Unfortunately, as I was explaining to Mr. Clinger, one of the real problems that we have to deal with here is the hearts and minds of the people themselves.

Let me just read one paragraph from an assessment that was recently done. In part to the response to cleaning up contractors at EPA, last year EPA brought in experts from the Air Force to teach a contracts management course for all senior executive employees in EPA. As part of the evaluation of that course, the instructors wrote a letter back to EPA about what they observed. In that letter they said this:

Motivation seems to be the key to strengthening EPA's contract management program. It appears to us that the EPA problem is probably more a management problem than a contracts management problem. As outsiders, we were struck repetitively by the resentment, the anger, and the negativity of significant numbers of the participants and their readiness to express it.

This was just a few months ago.

Mr. CONYERS. What does that mean?

Mr. MARTIN. What it means is that we have yet to reach the hearts and the minds of many of the people, even the executives in the Agency, to correct the problems that you are so concerned about. So I am very worried that more legislation, if it is not combined with strong and effective management of the Agency, really won't be enough. These people violate rules and regulations all the time.

Mr. CONYERS. But there is nothing requiring contractors to certify costs in the EPA?

Mr. MARTIN. No, and that is a very, very worthwhile thing, absolutely.

Mr. CONYERS. You are for that?

Mr. MARTIN. Absolutely. I thought you were referring to legislation that had more to do with the employees themselves.

Mr. CONYERS. No.

Mr. MARTIN. Absolutely.

Mr. CONYERS. What we are talking about is the unallowable costs problem.

Mr. MARTIN. There are two very good legislative proposals which I hope OMB will get behind soon because their Office of Procurement Policy has already done that. One has to do with basically excessive employee claims for employee morale and another is the certification requirements that they certify as to the reliability of their costs. Both of those are very important factors we should pursue in legislation.

Mr. CONYERS. Let's look the at the hearts-and-minds strategy. How do you get into the hearts and minds of wayward management?

Mr. MARTIN. I think the Administrator has already done it.

Mr. CONYERS. All right.

Mr. MARTIN. Yes, she has. She has been very aggressive in announcing her views about how EPA should be run as an efficient and effective organization. They have held several meetings with the senior staff. I have every hope she will be successful in moving that problem along.

Mr. CONYERS. If we can take that strategy and apply it across the board, we may be able to get rid of a lot of laws.

Mr. MARTIN. Well, I don't know about that, but I do know that this Administrator has done a lot already to try to solve the problem.

Mr. CONYERS. I am glad to hear that. I believe she is doing very well, too. If she can use hearts and minds as a strategy that is effective, we have a new tool in the Federal Government.

Mr. MARTIN. Well, we may have that.

Mr. SYNAR. Mr. McCandless.

Mr. MCCANDLESS. Mr. Martin, I have listened to your comments with a great deal of interest. For my purposes and that of my colleagues, give me your definition of the inspector general's responsibilities over at the Environmental Protection Agency.

Mr. MARTIN. It is the same as every other inspector general, we have a responsibility to focus on the economy, efficiency, and effectiveness of the EPA programs and operations.

Mr. MCCANDLESS. How long have you been in that position?

Mr. MARTIN. Ten years.

Mr. MCCANDLESS. All these things we have been doing this afternoon, and Mr. Synar and others have been doing before that, are all a part of these areas where you say you have a responsibility?

Mr. MARTIN. Absolutely. We have been reporting on these issues for many many years, Mr. McCandless.

Mr. MCCANDLESS. We have had a number of Directors within the last 10 years.

Mr. MARTIN. Yes, this is the fourth.

Mr. MCCANDLESS. One would assume then that you have pointed out all these deficiencies as a result of your basic job specification, to one or more of these Directors and that virtually nothing has been done about it to change the hearts and minds of these people?

Mr. MARTIN. That is why I said what a difficult job it truly is.

Mr. MCCANDLESS. So then you have reported this and all of the other shortcomings to the Director.

You report directly to the Administrator?

Mr. MARTIN. Yes, I do.

Mr. MCCANDLESS. So the Administrator knows what it is that you have spent your time and the staffers' time doing, and in 10 years has done nothing about it?

Mr. MARTIN. There have been four different Administrators who have had varying degrees of interest in correcting the problems that we are talking about. As I said earlier, no one has expressed more personal interest than Ms. Browner, who just recently took over.

I am not going to say nobody did anything, but it is clear that the problem still exists.

Mr. MCCANDLESS. I am using this line of discussion because I don't want to sound partisan, but you know if we have a problem, I don't care where it started or where it ends, the problem needs to be solved.

What you are saying to me is that there are violations and that we have not had any Administrators who were willing to understand and take the necessary steps to correct situations within the last 10 years, other than maybe a few to which you alluded.

Mr. MARTIN. Well, as unfortunate as it is, I think both GAO's testimony where they mentioned about repeated instances over the years—we have just issued a report within the last month or so that lays out 10 years worth of audit work in the Superfund program. It lays out the whole history of how the problems in that program have existed after repeated warnings and repeated urgings that they be corrected. And they continue in existence.

Mr. MCCANDLESS. So the final report is nothing more than a series of building blocks of previous reports with reference to those previous reports which were ignored?

Mr. MARTIN. It also has, of course, current information in it to point out the history of the whole problem, bringing everything current to today.

Mr. MCCANDLESS. Here is a statement. Tell me whether you agree with it or not. The problem with the Environmental Protection Agency is that it is full of environmentally oriented technicians or professionals who have no desire or willingness to be Administrators.

Mr. MARTIN. You cannot be that broad. That would be unfair to many people in the Agency who try to do the right thing. Unfortunately, as I read to you, this evaluation from the Air Force people, who are experts in the area they were brought in to instruct in, and how negative they were, really set upon by many senior management people just because they were coming in with proper ideas about how to run contracting. It was sad.

Mr. MCCANDLESS. This boggles the mind that we have this. Obviously, many of us, as you heard my comments previously, have dealt over the years with the Environmental Protection Agency, much to the chagrin of—the fact that they didn't want to, or whatever the situation was, address the issue in question.

But, Mr. Chairman, I will tell you, I think Mr. Mica's comment a little earlier about, I don't remember the exact terminology, but I think it led to the general phraseology, "the place needs to clean house" would certainly be in order.

When you are not relying upon following or in any way adhering to Federal regulations because of whatever spin you placed on it, irrespective of your feelings, then it is time for somebody to move on or be moved on.

Thank you, Mr. Chairman.

Mr. SYNAR. Mr. Mica.

Mr. MICA. Again, I have to tell you where I am coming from. I don't know if you were in the audience.

Mr. MARTIN. Yes, sir.

Mr. MICA. I am new to the Congress. I come from business. You just described what sounds like a house of horrors for the taxpayers.

Let me ask you this. Some of the scenarios that you describe, are they still there, the lower management folks?

Mr. MARTIN. I would say they are virtually all there and they are not lower management folks.

Mr. MICA. I believe below the EPA Administrator.

Some of what you described sounded like it edged on the criminal. Has any of this been turned over to the U.S. attorney for prosecution, or have there been no attempts to have these people fired?

Mr. MARTIN. Let me answer that. Part of my responsibility in the Inspector General Act, which is the same for all inspectors general in the Federal Government, is to deal directly with the U.S. attorneys on any matters that we believe have a criminal possibility. We routinely do that. We present cases all the time to the U.S. attorneys for their consideration for prosecution.

In most cases, in the matter we are talking about here today, the U.S. attorneys tell us that they cannot prosecute the cases because—the most common word I have heard—because of the “complicity” of the EPA managers in the process itself. In other words, in order to violate the criminal statute, there has to be an intent that is just not present when the system itself generates the improper activities.

Mr. MICA. But the incompetence perpetuates itself by their staying in these positions.

Mr. MARTIN. Many of these people are extremely bright. If you look through the testimony, you can see how they devised ways to scurry around every rule or regulation the government has.

Mr. MICA. Can you get us a list of who was involved in some of these situations and also the people involved in the hanky-panky between EPA and NASA, switching the funds around? Are they are still there, too?

Mr. MARTIN. Yes.

[NOTE.—The above request was satisfied in a subsequent meeting between Congressman Mica and EPA Inspector General Martin as well as majority and minority staff members.]

Mr. MICA. You also said before this committee, these people violate the rules all the time. I think that was part of your defense. Well, I would like to see a list of those people. I would like to get with the chairman of this committee and members of this committee. I would like to get with the new Administrator and see if these people cannot be fired and dismissed and clean up this mess.

The only reason this goes on is because the taxpayers are footing the bill. In business—last month I had some fraud in one of my

businesses, the cellular business; I said prosecute the bastards, they are stealing money from me. My wife had a \$500 bad check in her small business. We can't continue to operate with that kind of operations in a small business. The only difference is that this Agency is operating with unlimited taxpayers' funds.

I will tell you what, I will be down there, as one Member. I just came from the Postmaster General's office when I got off the plane. He told me I was the first Member of Congress to be in the Postmaster's office since he was there.

I will be down there. I will put those names in the Congressional Record, and we will raise hell until those people are gone, until they are history.

Can you give me the list?

Mr. MARTIN. We will provide you with all the information. We have worked with the subcommittee on all kinds of issues, and we will definitely work with you on this.

Mr. MICA. Thank you.

Mr. SYNAR. Mr. McHugh.

Mr. MCHUGH. Most of the questions I had an interest in with respect to your testimony were already asked by other Members. You noted that many, if not most, of the people who were responsible for these situations described in your testimony were still on board and were not low level—in other words, high-level people. Is that correct?

Mr. MARTIN. Many of the people involved in the situations we are talking about are in the Senior Executive Services. They would certainly be high-level people in the Agency.

Mr. MCHUGH. Can you share with me what Administrator Browner may have done, as yet, to replace those kinds of people?

Mr. MARTIN. In fairness to the individuals involved, there is an administrative process that would have to take place, a personnel disciplinary procedure involving anyone the Agency chooses to take action against.

Mr. MCHUGH. None of these are political appointees?

Mr. MARTIN. No, none of them are. These are all career people.

Mr. MCHUGH. I have here a letter I don't believe anyone else has yet referred to, that William Reilly submitted to President Bush, dated December 29, as required under the Federal Managers Financial Integrity Act. In the first paragraph,

In our annual review of the financial integrity program the IG has cited examples of the Agency's efforts to implement the requirements of the act in a reasonable and prudent manner. The IG has identified some areas for improvement in selected EPA offices.

Can you confirm or deny what Mr. Reilly was saying, and if so, what were those positive examples? I know it is difficult for you to speak on that.

Mr. MARTIN. That letter, I am sure, was prepared with our concurrence because we do work together in presenting letters to the President. I might turn to Ken Konz my assistant inspector general for audit.

Mr. KONZ. We will be happy to give you specifics on the positive. One was the creation of a senior management council which the IG sits on, along with the Assistant Administrator or OARM. In retrospect, in looking over all the process, I think when we looked at

the eight new major areas that were added to the list of vulnerables last year, of those eight I think six were raised by our office and the General Accounting Office.

Let me get back to you with the specifics regarding the improvements.

Mr. MCHUGH. I would appreciate that. On page 3 of Mr. Reilly's letter,

Further, we have developed in cooperation with EPA's own inspector general a process to identify early on the top 30 most significant audits affecting the Agency, an effort so successful that the GAO has expressed a strong interest in doing the same.

Is that correct?

Mr. MARTIN. That is correct. It was part of a proactive effort Mr. Reilly wanted to do to get an early alert on the issues we were bringing to the Agency's attention. That had a lot to do with the issue Mr. McCandless and I discussed earlier, where he started to realize that many of the problems he was confronting were not new problems but had been reported over and over, that he became more active and interested in dealing with them and getting early warnings about these problems so he could start to correct them. Those are some of the things he was referring to in the letter.

Mr. MCHUGH. Mr. Reilly showed an active interest in this area?

Mr. MARTIN. He was the first Administrator to step up to the box there and start to deal with some of these problems.

Mr. MCHUGH. With regard to all of these examples that you have shown, how many cases were referred to the U.S. attorney in the last 4 years on these issues?

Mr. MARTIN. I would have to check our records to give up the number of referrals to U.S. attorneys. I can tell you the results of them, whereas I said typically we get a declination because of complicity in the issue. We then deal on an administrative level.

I think the last time I checked there were something like 23 disciplinary actions that have been taken over the last 18 months or so against EPA employees for procurement related violations.

Mr. MCHUGH. If you would supply that information, I would appreciate it.

[The information follows:]

During the period from July 10, 1990 through March 29, 1993 10 cases involving 32 EPA employees were referred to U.S. Attorneys. One case is still pending. All of the other nine cases were declined by U.S. Attorneys with two of the nine being presented to Grand juries. Seven of the nine cases have resulted in administrative personnel actions through March 29, 1993.

Mr. MCHUGH. Mr. Chairman, I would ask if you would submit the letter from Mr. Reilly for the record.

Mr. SYNAR. I would under unanimous consent.

Mr. MCHUGH. Thank you, Mr. Chairman.

Mr. SYNAR. You are welcome.

[The information can be found in the appendix.]

Mr. SYNAR. Mr. Martin, you said in your testimony that EPA lacks a system of accountability. They have ignored your recommendations over all the years to restrict government and contractor employees' access to EPA's computer-based payroll and personnel files. During your followup and review, the number of these users I think you found with access to these sensitive files had ac-

tually increased by 73 percent. These folks don't seem to be listening to you down there. Do you believe Administrator Browner's remarks before Mr. Dingell's subcommittee for accountability and disciplinary action should apply to the services?

Mr. MARTIN. We think her remarks, which are supportive of the good management practices you referred to earlier, should apply across the board.

Mr. SYNAR. Do you believe there needs to be more top-level attention to financial management?

Mr. MARTIN. Financial management is crucial to the Agency. I think one of the key things that this subcommittee should focus on in its consideration of EPA for Cabinet status is the question of whether there should be a separate chief financial officer in the Agency or whether those duties should be combined, as they are now, with other duties of an Assistant Administrator for Administration.

Mr. SYNAR. Let's talk about the top-level attitude problem which seems present.

I would ask unanimous consent that exhibit 1 be entered in the record. It is a copy of the July 5, 1989 memorandum from the Denver regional office on the Financial Integrity Act and also the development of the 5-year Management Control Plan displaying areas of vulnerability to waste, fraud, and abuse.

[The information can be found in the appendix.]

Mr. SYNAR. Even though the Assistant Administrator wrote the memorandum, he apparently showed his real feelings in the handwritten part on the note, "This is a minimalist approach. Let's not spend any more time on this than necessary." Would you say that manager is sending the right message?

Mr. MARTIN. Absolutely, no. Here you see the problem we are talking about where the face of this document talks about an extensive plan, but the handwritten note overrides the printed document. So you see how this cultural thing about trying to really get at what people believe, as opposed to what they are doing on the surface, is an excellent illustration, Mr. Chairman.

Mr. SYNAR. Let me ask you another question in connection with Mrs. Thurman's statement earlier. There is a tendency to pass to regional offices accountability for their performance. Do you agree that the regional office headquarters issue is one a Commission might examine in order to improve the relationship?

Mr. MARTIN. I am not endorsing the Commission concept, but the whole question of the regional structure in EPA again gets at the fundamental problem at how the organization can be managed.

In all the years I have been in EPA, they have been extremely proud of the independence of their regional administrators. We can understand that when you have to apply complicated environmental laws from the plains to the cities, all across the country.

We have taken it to an extraordinary length in EPA, to the point where things like we are talking about today, financial management, information management, there is no one at headquarters who has the authority to issue instructions down to the regional level on implementing these things. So sometimes we cannot get a financial management issue settled because of the independence of the regional administrators.

Mr. SYNAR. Let's go back to that personnel file issue that we talked about. You said the number of people with access went up 73 percent, correct?

Mr. MARTIN. Yes.

Mr. SYNAR. Does that mean contractors or EPA employees could be in a position of writing checks to themselves?

Mr. MARTIN. We have an investigation of that subject going on right now involving the U.S. attorney's office.

Mr. SYNAR. Let me put it to you this way: There is about \$5 million worth of checks in contractor payments every day; is that not correct?

Mr. MARTIN. Yes, that is right.

Mr. SYNAR. And the controls are pretty loose, aren't they?

Mr. MARTIN. Well, I think the information you have seen here today illustrates that.

Mr. SYNAR. We have a potential problem, don't we?

Mr. MARTIN. We have a problem and we have something going on right now that relates to that.

Mr. SYNAR. Your office performed 15 audits of over 500 separate financial systems. Does the Agency respond to your findings by fixing the problems, or do they wait until the next audit to reveal other problems?

Mr. MARTIN. It seems like they respond, but as I said earlier, the problem is even getting them to respond. They rarely object, but they rarely accomplish what they need to.

Mr. SYNAR. Mr. Clinger.

Mr. CLINGER. Earlier the GAO testified in response to a question from me that Congress had to bear some of the blame here; there were restrictions placed upon the way EPA could operate that made it difficult for them to have the flexibility to address the problems.

You took exception to that, or at least your written testimony stated the problems are totally internal management problems and not in need of a legislative fix.

How do we decide between the two issues here? I mean on the one hand GAO says it really does need some legislation to give EPA the kind of flexibility it needs. And you say you don't think it is necessary.

Mr. MARTIN. It depends what we are talking about. I don't think either position applies to everything we have talked about today. As I spoke about with Mr. Conyers earlier, there are certain issues involving contracts, the Federal Acquisition Regulations and how they are going to be fixed and how they require the contractors to certify their cost submissions. Those are legitimate legislative fixes that have to be done. But some of these other things I have tried to stress to you, unfortunately you can pass all the laws that you want and the Agency can issue regulations and whatever, but we still have people who intentionally subvert all that.

Just look at the examples of our work, as illustrated. They sit down and figure out how to get around what the law is or what the regulations are. How can you, as a legislator deal with that? That is a management problem. That is why I am saying that some of these things are truly management issues as opposed to what you can accomplish as a legislator.

Mr. CLINGER. You are never going to get rid of the ability of the bureaucracy to manipulate the programs that they are dealing with. That has been a fact of life ever since we have had government because at least some bureaucrats work that way.

It does seem to me we have a responsibility here to look at some of these things. You talk about the EPA's dependence and overreliance on extramural resources and contracting in carrying out its statutory mission. But isn't this occurring, really, because of the way the money is appropriated?

Mr. MARTIN. Absolutely, there is no question.

Mr. CLINGER. That is what drives that overreliance?

Mr. MARTIN. It is well recognized that for many years EPA could receive plenty of contract money but virtually no money for new employees. So you have a skewed problem here.

Mr. CLINGER. Isn't that still the case, there is more money for contracts than employees?

Mr. MARTIN. Two-thirds of our entire appropriation goes for extramural funding.

Mr. CLINGER. If there is a skewing, we have to address it here in the appropriations cross-session.

Mr. MARTIN. That is correct.

Mr. CLINGER. Thank you.

Mr. SYNAR. Mr. Conyers.

Mr. CONYERS. You have had some experience with umbrella contracts?

Mr. MARTIN. Yes.

Mr. CONYERS. And have you found them to be faulty in terms of your Agency, EPA?

Mr. MARTIN. It is a serious problem. It is really the problem that Mr. Clinger was just asking me about, because with umbrella contracts, which are very vague, vaguely written contracts that you can get the contractor to do just about anything that you want him to do, that opens us up to tremendous abuse because then the contractors and EPA employees have every incentive to just sort of build the contract up because the contractor is sort of treated as another employee and is just helping out at EPA.

Mr. CONYERS. What about the storage tank program with RCRA? Do you happen to recall anything involving the IG there?

Mr. MARTIN. No, Mr. Chairman, I am sorry I don't.

Mr. CONYERS. I want to thank you again for your testimony. You seem to be very popular on the House side. You come before Mr. Synar all the time. You come before me sometimes. You come before Chairman Dingell all the time.

Mr. MARTIN. That is always a pleasure.

Mr. CONYERS. There are others who don't look upon it with the same aplomb that you do, but that is what 10 years in a job will do for you.

Who else do you testify before?

Mr. MARTIN. Senator Glenn quite a bit.

Mr. CONYERS. Thank you very much.

Mr. SYNAR. Mr. McCandless.

Mr. MCCANDLESS. Mr. Martin, given what we have talked about here, particularly our discussion relative to the inspector general and the 10 years experience and the reports that you have written,

on top of reports which were altered in your final report, it would appear that the inspector general's assignment and his job classification have some problems in that you are trying to do your job—if you are doing your job and as a result of doing that job you are pointing out the deficiencies of the Agency for which you have the inspector general's assignment, whether it be EPA, agency X, Y, or Z, that the inspector general is somewhat restricted beyond that of the Administrator of the Agency if the Administrator of the Agency and his assistants do not want to follow through and do what you, as their auditor or comptroller, view as necessary.

Where are the weaknesses here or are there weaknesses?

Mr. MARTIN. The Inspector General Act in its inception created the inspector general as a person to do audits and investigations, but we have absolutely no power to order anyone to do anything in the Agency. We cannot direct any changes whatsoever. It is a distinction between us presenting our findings and convincing the Administrator that it is the right thing to do, or perhaps they might have another solution that is equally acceptable, but somehow reaching a meeting of the minds and then going ahead to do it; but we have no authority to instruct people to do anything.

Mr. MCCANDLESS. Let's play "what if."

What if after 5 years of nonresponse, based upon the fact that you reflect what you consider to be the problems of a certain department of this operation; and they thank you for coming in, but the next time you do your audit not much has been done. Is there flexibility there to go beyond the Administrator, say to OMB, and to try to discharge what you consider to be the basic responsibility of your office?

Mr. MARTIN. Our basic responsibility is to come to you. The law requires me to report basically simultaneously to two reporting channels. One is to the Administrator and the other is to the Congress. Part of what, as Mr. Conyers pointed out, why we testify a lot, is because we want to be sure that the story of what we are finding is in front of you so that perhaps, through your good offices, something can get done.

As an office that we have, we have no authority to order anything. So we routinely come to you, either in a session like this or through our written reports, sending them to the committees, to individual Congressmen who have an interest in a matter so that these issues are all known to everyone.

Mr. MCCANDLESS. That somewhat opens another door, if I may, Mr. Chairman. If I understood that correctly, you have been carrying out your function and reporting to Congress the deficiencies of the EPA for 10 years, and Congress has done nothing about it.

Mr. MARTIN. You might want to say that. I am not sure that I would.

Mr. MCCANDLESS. You said one of your responsibilities is to testify in front of the various committees.

Mr. MARTIN. And we do routinely.

Mr. MCCANDLESS. Which means the committees have not responded to what you consider to be the shortcomings?

Mr. MARTIN. Don't think so. I think this subcommittee, certainly Mr. Conyers' subcommittee, the Senate side, they have taken some pretty strong positions in the past, certainly Chairman Dingell, to

encourage in whatever way they have available to them, improvements in the Agency's operations. It is not a case, like I say, the Agency—it is not a case where they never do anything.

I mentioned earlier Mr. Reilly taking a very active involvement in fixing some of these things; it is not a situation where no one is doing anything.

Mr. SYNAR. The gentleman's time has expired.

Mrs. Thurman.

Mrs. THURMAN. Mr. Martin, first of all, let me thank you for your testimony today. I think that the inspector general's office is probably, in any of these agencies, one of the most important since it gives us an opportunity to look at what we are doing right or wrong.

Maybe to the chairman, and maybe with a response from Mr. Martin, and in the legislation that has been introduced over the last two terms, or since the 101st Congress and then the 102d, what were some of the issues that we are talking about today in those pieces of legislation that would have helped clean up these problems that keep coming back to bother us?

Mr. MARTIN. They were in financial management and contract management. There have been discussions today about elevating to a higher level, either a chief financial officer to fix responsibility at a very high level in the Agency. Some of the other proposals we talk about restructuring are valuable to consider.

These proposals, particularly EPA, which I happen to be familiar with, are not going to go away without intensive effort on the part of people personally responsible for fixing the problems. If you can do anything to fix that responsibility in a way, at least for the issues that we are talking about, so that people know they are on the line to make this better.

Mrs. THURMAN. Thank you.

Mr. SYNAR. Mr. Mica.

Mr. MICA. Well, it sounds like you described sort of an agency out of control. Chairman Conyers asked you the question: As far as any legislative action that this committee could take? And the ranking member, Mr. Clinger, also asked the question: Is there anything we can do as far as legislation to empower the positions you just talked about to deal with this problem?

You said we need a chief financial operating officer and the information management system is sort of out of control. Can you point to something we should be doing that would empower someone to deal with this situation?

Mr. MARTIN. I honestly believe, as frustrating as it might be to you if I say this, that we have plenty of laws, regulations, and rules to accomplish all the things in good government that you would like to see.

As we talked about earlier, if you look at my testimony, you see people who had to go around the results, fix the regulations and the laws and skirt them to do what they did. That is the frustrating thing. I realize you have a concern and from your perspective you might want to fix things in a different way. But much of what has to be done, unfortunately, has to be done in the executive branch, by the people who are actually in charge of this particular Agency.

Mr. MICA. Thank you, Mr. Chairman.

Mr. SYNAR. Mr. Martin, given what you have talked about today and outlined for us, why shouldn't we abolish EPA?

Mr. MARTIN. EPA is a wonderful Agency that has a tremendous mission.

Mr. SYNAR. Thank you. Thank you, Mr. Martin.

Mr. CONYERS. And a great inspector general.

Mr. MARTIN. Thank you.

Mr. SYNAR. Our final panel is J. Clarence (Terry) Davies, Ph.D., former executive director, National Commission on the Environment, and director, Center for Risk Management, and Resources for the Future, Washington, DC, Paul R. Portney, vice president and senior fellow, Resources for the Future, Washington, DC; Manik Roy, Ph.D., pollution prevention specialist, Environmental Defense Fund, Washington, DC; and Randall G. Farmer, general manager, environmental health and safety, Amoco Corp.

Do any of you gentlemen have any objection to being sworn in.
[Witnesses sworn.]

Mr. SYNAR. I know it has been a long afternoon. I appreciate your indulgence.

Mr. Davies, why don't you begin.

STATEMENT OF J. CLARENCE (TERRY) DAVIES, Ph.D., FORMER EXECUTIVE DIRECTOR, NATIONAL COMMISSION ON THE ENVIRONMENT, AND DIRECTOR, CENTER FOR RISK MANAGEMENT, AND RESOURCES FOR THE FUTURE, WASHINGTON, DC

Dr. DAVIES. Mr. Chairman, I am here in a double capacity, one to brief the committee on the Train Commission, the National Commission on the Environment. That was a commission chaired by Russell Train of the World Wildlife Fund, a private commission, although we did have liaison representatives from major congressional committees and the executive branch.

With your permission, I would like to enter into the record a list of the Commission members and a summary of the report.

Mr. SYNAR. Without objection.

[The information is on file in the subcommittee office.]

Dr. DAVIES. Basically, the Commission supported the creation of the Department of Environment. However, they felt strongly that simply to elevate EPA to Cabinet status was missing an opportunity to really meet the current challenges that we face in terms of getting environmental quality in this country; that there were a set of functions and abilities and authorities that were required to bring about sustainable development and to build environmental considerations into the structure of the Federal Government, as a whole, and into the structure of this country, as a whole, in terms of decisions; and that EPA did not have the authority or the ability to do that kind of thing and needed it.

The Commission suggested a mechanism, a national environmental strategy, which could be designed, in part, to give the new Department that kind of ability. That is spelled out in the report in more detail.

With regard to a Bureau of Environmental Statistics, the Commission felt quite strongly that some of the kinds of problems that

had been spelled out here today did require creation of a Bureau of Environmental Statistics.

With regard to a Commission, the third question that this subcommittee is considering, the Train Commission did not take any position on that. They did not consider that.

Let me make a few quick personal observations. I do fully support the Train Commission's recommendations, having had something to do with them.

However, I would like to supplement them with a few quick views of my own.

First, with regard to the Bureau of Environmental Statistics, this is something which I have been involved with for a long time and when I was a part of EPA, I did take whatever steps I could to try administratively to get a Bureau at least somewhat off the ground.

However, there is one clarification that needs to be made because I think it has been a source of confusion in the testimony and in some of the questions here today. That is that at least in my conception, and I think my colleague and friend, Dr. Portney here, whose idea the Bureau was, may want to comment on this.

The Bureau will not deal with all environmental information. So that if you are dealing with things like a chief information officer, that is something that is different from a Chief of Environmental Statistics as to what information is covered.

The Bureau of Environmental Statistics would focus on data about conditions in the natural environment, not all kinds of data. That is a subset of environmental information. There are a lot of different kinds of information. For example, most of what the Office of Toxic Substances collects would not be dealt with by a Bureau of Environmental Statistics.

With regard to a Commission, my own view is that such a Commission could be useful if its mandates were drafted broadly enough. In my view, EPA and our environmental programs in this country are not equipped to face the situations we face today, much less what we will face in the future. Therefore, you need some fundamental rethinking about the kinds of programs that are required and what a new Department should have.

It seems to me, those are the kinds of questions a Commission could most usefully ask. If it is limited to Agency management alone, I seriously doubt the Commission's findings and results will do much good.

So let me stop there, Mr. Chairman.

Mr. SYNAR. Thank you, Mr. Davies.

[The prepared statement of Dr. Davies follows:]

**Testimony of Dr. Terry Davies
Resources for the Future
before the Subcommittee on
Environment, Energy, and Natural Resources
Committee on Government Operations
U.S. House of Representatives**

March 29, 1993

Thank you for inviting me to appear here today.

I am testifying in a two-fold capacity. First, I am here to brief the subcommittee on the report of the National Commission on the Environment and, in particular, the views of the Commission on legislation elevating EPA to a cabinet-level department. I served as the Executive Director of the Commission. Second, I have been asked for my personal views on the same subject. I agree fully with the Commission's findings, but I doubt that all the commissioners would fully agree with my personal views, so I will try to keep the two separate.

The Commission supported creation of a Department of the Environment, but it felt that a vital opportunity would be missed if creation of such a department were done by simply elevating EPA. This is true for two reasons. First, "To be truly a Department of the Environment...it would have to be much more than a regulatory agency. It would have to take responsibility for expanding environmental research and improving environmental monitoring...as well as for such service functions as providing weather information." (NCE report, p. 50) The Commission stressed both the need to expand environmental research and the need to provide some separation between research and regulatory functions.

The second reason the Commission felt that simply elevating EPA was inadequate was that, "The time has come for leadership to spearhead the effort to incorporate the environmental dimension into all policy areas," and that part of such leadership should

come from the Department of the Environment (p. 47). The Commission recommends that Congress and the President work together to develop a National Environmental Strategy; that the strategy should include specific quantitative goals, priorities, and steps that agencies must take to achieve environmental objectives; and that a principal function of the new Department of the Environment should be the formulation and oversight of the National Environmental Strategy. EPA, as it currently exists, could not undertake such a function, which is why the Commission did not think elevation was a sufficient response to the environmental problems the United States faces.

With regard to a Bureau of Environmental Statistics, the Commission report (p. 109) observes: "'Improved Coordination' is a standard recommendation for good government, but in no area is there a greater need for coordination than in environmental monitoring." The Commission recommends (p. 110) that, "A Center for Environmental Statistics should be established in the Department of the Environment."

As I mentioned, I agree fully with the National Commission's findings and recommendations. As the Commission observed, "Comprehensive reform is imperative to refocus the regulatory system on coherent policies that can bring about sustainable development, encourage environmentally benign technologies, and institute effective incentives for innovation and behavioral change" (p. 8). That comprehensive reform should begin with the creation of a Department of Environmental Protection that has a broad mandate (EPA has never had an agency-wide mandate of any kind) and the wherewithal to fulfill the mandate.

A Bureau of Environmental Statistics is essential. It is disgraceful that this country has no central repository of environmental data. It is shameful that we cannot answer such basic questions as whether water quality in the United States is getting better or worse. A Bureau of Environmental Statistics would address these problems.

With regard to some type of commission to examine how EPA can be improved in the context of a new department, I think much depends on the scope of the commission's

mandate. If the proposed commission is barred from looking at statutory questions or asking what functions are appropriate for the new department, then it will probably be a waste of time and taxpayer's money. If the scope of the commission is sufficiently broad, then it could make a significant contribution.

We need some way of stepping back and reexamining our approach to regulating pollution. The National Commission, which included three former EPA Administrators, found that "Many of the (environmental) statutory provisions and implementing regulations are antiquated, cumbersome, counterproductive, and even incomprehensible" (p. 8). A commission with an adequate mandate should examine such questions as the need for a national environmental strategy, how to bring about true integration across media-oriented statutes and programs, how to institute pollution prevention as a basic way of doing business, the use of risk in setting environmental priorities, the place of research in the new department, how to base enforcement and other programs on environmental results, and the role of the department in international negotiations. These questions urgently need to be addressed, and a commission could be an appropriate vehicle for addressing them.

The Congress has a rare opportunity to overcome the parochialism of committee jurisdiction and make a historic contribution to the environment of the nation and the world. I hope that it can rise to the occasion.

Mr. SYNAR. Mr. Portney.

STATEMENT OF PAUL R. PORTNEY, VICE PRESIDENT AND SENIOR FELLOW, RESOURCES FOR THE FUTURE, WASHINGTON, DC

Mr. PORTNEY. Thank you very much for having me here today. I, too, strongly support the elevation to Cabinet status of the EPA. Environmental protection is a very serious national objective. I would add, contrary to the impression one might get here this afternoon, that most of the people who work at the EPA bust their tails to implement very complicated environmental statutes, sometimes with unrealistically short deadlines, often with insufficient financial resources, and they do it working in miserable physical surroundings.

Mr. SYNAR. By my history you would not think I believed that, but that is a good summary of my beliefs about it.

Mr. PORTNEY. Good. I think it is important. Any agency that has 17,000-plus employees will have some people that from time to time everybody will be mad at. But the tenor this afternoon is that the entire place operates like the Mafia, and I don't think that is true. I appreciate your allowing me to say that.

In addition to recommending the elevation of EPA, I want to say that while I do not consider it a sine qua non for elevating EPA to Cabinet status, I would hope that elevation of EPA would include the creation of a Bureau of Environmental Statistics.

Now, truth in advertising compels me to say I have some parentage in this matter since it was in 1986 or 1987 that I wrote a couple of Op-Ed pieces that said it is time we created such a Bureau.

There are several reasons why I think that is important: We spend \$120 billion or \$130 billion each year complying with Federal environmental regulations. Given that that is the case, I don't think it is too much to ask that we have an Agency or component within EPA that gives us some sense as to which programs are working and which are not working. If we are going to spend those kinds of national resources, then we owe it to ourselves and to your constituents, my fellow citizens, to have some idea of what is working right and what isn't. I think a Bureau of Environmental Statistics can contribute to that.

Second, we need to report not only to the Administrators in the Federal Government and you, the legislative branch of government, what is working, but we need to report to the public which environmental measures are improving over time and which are not improving, and to begin to provide answers to them as to why, for instance, water quality may not be improving as dramatically as air quality is, even though we are spending \$30 or \$40 billion a year on water quality programs.

Finally, I would suggest that in the same way that we would view it impossible to make sensible economic policy in the United States without a Bureau of Labor Statistics that tells us how many people are unemployed, how many people are entering or leaving the labor force. Similarly, it would be impossible to make good economic policy if we did not have a Bureau of Economic Analysis within Commerce telling us whether GNP is increasing or decreasing or investment is on the wax or on the wane.

Similarly, I don't see how we can make sensible environmental policy without comprehensive measures of whether or not environmental trends are improving or going into the dumpster, to put it crudely.

Finally, I will not say too much about a Commission on improving environmental regulation, but I want to make two brief observations about it. First of all, one of the motivations behind such a Commission, I take it, is the concern about our inability to cost-effectively target for remediation the worst environmental problems in the country.

I would make the observation that we will never be able to cost-effectively address the worst environmental problems if our major pieces of environmental legislation prohibit us under the major standard-setting provisions from even taking cost into account. You cannot be cost effective if you cannot think about costs in setting environmental standards. Period.

So regardless of what you do or don't do with respect to elevating EPA in Cabinet status, I would suggest that each and every time a RCRA or a Clean Water Act or a Safe Drinking Water Act comes up for reauthorization, you seriously consider giving the EPA Administrator the flexibility to at least make cost one of the things that he or she takes into account in setting standards. That is very controversial, but you can't be cost effective if you can't think about costs.

I also think we need a strong policy office at the EPA if we are going to try to do any of what I have heard you talk about today. I don't think you are going to get a strong push for integrated environmental management from the program offices. I don't think you are going to get people in the individual program offices stepping forward and saying the programs that I draw my pay administering are not serious problems and we should not be worried about this stuff. I don't think you will get a strong push for innovative regulatory techniques coming out of the program offices where you have people who have worked for 20 years mastering command-and-control approaches and for whom every incentive is in the opposite direction in terms of thinking about new innovative ways that would at least temporarily make their jobs more complicated but might improve regulatory management in the United States.

With that let me clam up.

Thank you.

Mr. SYNAR. Thank you, Mr. Portney.

[The prepared statement of Mr. Portney follows:]

TESTIMONY
OF
PAUL R. PORTNEY*

Vice President and
Senior Fellow
Resources for the Future

Before the
Committee on Government Operations
United States House of Representatives

March 29, 1993

*The views expressed herein are those of the author only. Resources for the Future takes no official position on any proposed legislation.

Chairman Synar and distinguished members of the House Committee on Government Operations. Thank you very much for inviting me to appear before you today. My name is Paul R. Portney and I am Vice President and Senior Fellow at Resources for the Future (RFF), an independent, non-profit research and educational organization located here in Washington, D.C. For more than 40 years, RFF has been conducting studies on a wide variety of topics related to natural resources and the environment. However, I am here today not as a representative of RFF but rather on my own to express my strong support for legislation that would elevate the Environmental Protection Agency to Cabinet-level status. I will keep both my written and my oral remarks brief; however, I would appreciate your including in the Congressional Record the attached article related to the subject of my testimony today.

My support for the creation of a Cabinet-level Department of the Environment (or Department of Environmental Protection) from the existing EPA is unreserved. Environmental protection is deserving of the same attention now being given to other important national objectives such as safe and accessible transportation, affordable housing, a quality education, and a sound defense. Bringing EPA into the cabinet will not only add statutory legitimacy to environmental concerns in intra-governmental debates and deliberations; it will also help reassure our foreign trading partners and other nations with whom we must negotiate important international environmental agreements that we are serious about the role of environmental protection in our government and our lives.

Moreover, by creating a federal Department of the Environment, I hope we might hasten the day when this Department is empowered by a single, all-embracing "organic" statute rather than the current welter of separate and often conflicting (or at least inconsistent) statutes aimed at air

pollution, water pollution and a variety of other individual environmental media and/or problems. This system has made it almost impossible to take the integrated approach to environmental management that is so badly needed in the United States today. I trust that this is exactly the kind of issue you intend to see addressed by a proposed Commission on Improving Environmental Protection. I strongly support the creation of such a Commission so long as it is given the latitude to consider such things as reform of our nation's basic environmental statutes, or the possibility of returning to the states certain regulatory responsibilities now the province of the federal government.

One of my major reasons for appearing here today is to argue as strongly as I can for the creation of a semi-independent Bureau of Environmental Statistics within the new Department of the Environment. As you may know, I feel some sense of parental responsibility for such a Bureau. To be sure, others before me had decried the poor condition of environmental data and discussed ways to improve it. But it was about five years ago, in several published articles and op-ed pieces, that I first called for the creation of such a Bureau. And it is with a mixture of surprise, delight, and also humility that I have watched the concept begin to take shape and attract support.

First, former EPA Administrator Lee M. Thomas set aside resources for, and threw his personal support behind the administrative creation of a statistical center within the EPA. Then former EPA Administrator William K. Reilly, with considerable support from then-Deputy Administrator Henry Habicht, from my colleague and co-panelist today J. Clarence Davies, and from others, accelerated administrative activity on environmental statistics. Now Mr. Chairman, you and your colleagues, with the enthusiastic support and backing of President Clinton, are on the verge of

taking the final and most important step: the introduction and passage of legislation that would add the force of law to administrative fiat and breathe real life into an important function.

While referring you to a longer piece I have written on the need for an independent Bureau of Environmental Statistics within the EPA, I want to briefly summarize the reasons why I think the creation of such a Bureau is essential.

First, more than ever before environmental problems are coming to be seen as being of equal importance with economic concerns. Yet data concerning the environment have only been collected systematically over the last ten years or so (and only for some dimensions, at that), as compared to more than fifty years worth of comprehensive data for many economic series. The various environmental monitoring programs that do exist are often inadequate. For example, even though the monitoring and reporting of air quality data is now the clear high spot of environmental statistics, there is no national program that monitors all the toxic air pollutants; moreover, at least some of the data on air pollutants that are monitored are insufficient.

Moreover, data gathered on the environment are not subject to the same quality control, careful measurement protocols, or subsequent thorough analyses to which data on the economy are. It is impossible to imagine modern government operating wisely in the absence of reliable measures of economic activity. It seems similarly unlikely, therefore, that government can legislate wisely in the absence of equally reliable measures of environmental quality. A Bureau of Environmental Statistics like the one you are considering would provide much needed information about the environment by coordinating data collection activities and by taking on

primary responsibility for ensuring that the quality of the data collected is high.

Second, there exists no one organization that gathers all U.S. environmental data and presents it in one annual report. Not only is there a lack of data concerning the environment, but the data that do exist are not at all accessible to interested parties. One reason for this poor state of affairs is the diffusion of effort among many federal agencies, including the Environmental Protection Agency, the U.S. Geologic Survey in the Department of the Interior, the Forest Service in the Department of Agriculture, the National Oceanic and Atmospheric Administration in the Department of Commerce, and the National Aeronautics and Space Administration. Supposing that this far-flung network of data collectors were well-funded and operating smoothly (which they are not), it would still be necessary to gather together the relevant measures of environmental quality and disseminate the most important among them in a single, timely, accessible source such as an annual report on the order of the Economic Report of the President, prepared every year by the Council of Economic Advisers. The Bureau of Environmental Statistics could and should perform this function of data collection, coordination, and dissemination.

Third, in the absence of comprehensive environmental data, reliably and regularly gathered and reported, it is very difficult to evaluate the success or failure of past environmental programs and to address potential environmental problems in the future. The United States now spends about \$120 billion dollars annually to comply with federal environmental regulations -- or about 2.2 percent of our GNP. If we are willing to spend this much money to protect our environment, we ought to pay more attention to whether the programs we establish actually make it better. Creation of an environmental data collection and reporting system would make serious

program evaluation a possibility; it would also make it easier to separate serious from less serious environmental problems and would provide information needed to tailor programs to effectively address these problems.

Fourth, there already exist models in the U.S. government for a Bureau of Environmental Statistics like the one I envision. For more than a half century, the Bureau of Labor Statistics within the Department of Labor has collected and published data about current rates of unemployment, labor force participation, layoffs, and related matters. The Bureau of Economic Analysis within the Department of Commerce has performed a similar function for data on foreign trade since 1921, national income since 1942, and other economic measures. And the Bureau of the Census, also a part of Commerce, has been responsible for our decennial population count since 1902, although the census itself goes back to 1790. All three bureaus were created in part to ensure the independent and nonpartisan treatment of data and measures that might be politically sensitive. Certainly there is a need for such independence and nonpartisanship in the gathering and reporting of environmental data and measures. The creation of a Bureau of Environmental Statistics would go a long way toward preventing environmental data from being misreported.

While I will say less about a Commission on Improving Environmental Protection, I have two brief observations to make about it and the important role it can play in U.S. environmental policy. First, one of the most important roles such a commission can play is to make recommendations about ways in which our country can better direct its limited resources to the most serious environmental problems. As the series of articles in last week's New York Times richly demonstrated, that is something at which we are currently not very good. But we will never be able to focus our

resources cost-effectively on the worst problems -- however "worst" may be defined -- so long as a number of our major environmental statutes explicitly prohibit costs from being taken into account in standard-setting. I would ask you to think about the obstacles to cost-effective risk reduction you inadvertently create every time you reauthorize a statute -- e.g., the Clean Air Act, the Safe Drinking Water Act, the Resource Conservation and Recovery Act -- that forbids the EPA Administrator from even considering costs as one bit of information when setting certain standards.

Finally, let me suggest that no Commission on Improving Environmental Protection -- regardless how cogent its recommendations may be -- will ever be effective at reorienting the EPA (or the Department of the Environment) unless that EPA has a strong and vital policy office. Only such an office -- like the current Office of Policy, Planning and Evaluation (or OPPE) -- can rise above media-specific parochialism to show the way to truly integrated environmental management. Only such an office can point to regulatory programs that, while well-intentioned and conscientiously managed, are nevertheless aimed at relatively minor environmental problems. Only such an office can lead the way in thinking about new, innovative, cost-effective ways of meeting our nation's ambitious environmental goals.

In my view, none of these things can reasonably be expected to come from offices charged explicitly with implementing specific statutes. There, almost every incentive leads in the direction of a single-medium focus and an understandable reluctance to admit, first, that problems may be minor and, second, that the old command-and-control techniques have outlived their usefulness. Yet this is exactly the role that a vital policy office can and should play. I mention all this because there appears to be in some quarters now a sentiment for de-emphasizing the size,

budget and responsibilities of the policy office at EPA. I think this would be exactly the wrong thing to do at a time when there is growing interest in rational risk management and least-cost approaches to environmental protection. The lead role in helping the new Department of the Environment accomplish these goals simply has to come from a broadly focused, competently staffed and managed, and well funded policy office.

Mr. Chairman, this concludes my prepared remarks. I would be happy to answer any questions you might have for me.

Mr. SYNAR. Dr. Roy.

STATEMENT OF MANIK ROY, Ph.D., POLLUTION PREVENTION SPECIALIST, ENVIRONMENT DEFENSE FUND, WASHINGTON, DC

Dr. ROY. Thank you, Mr. Chairman.

I am Manik Roy a pollution prevention specialist with the Environmental Defense Fund in Washington. The Environmental Defense Fund has long been on record supporting the elevation of the EPA to a Cabinet-level Department.

I would like to specifically discuss the challenge of promoting cross-media pollution prevention and the implications that has for the Department of Environment's structure and management.

Some of what I am about to say might sound like criticism of EPA—I am sorry Mr. Mica is not here to hear this—such criticism is not intended. I have tremendous respect for the public servants at EPA. No doubt, we have learned a lot in the last 20 years of the Agency's existence.

It is now time to take what we have learned and go to the next step, especially if we are interested in preventing pollution at the source, and if we are interested in eliminating needless transaction costs for both business and government. It is time to reexamine the way we do our environmental protection.

There is a fable about a group of blind monks who came upon an elephant in the road. One grabs the tail, one grabs the ear, and one grabs the trunk. In their mind's eye they each see completely different animals.

To a large extent, we as a society have dealt with our environmental problems that way. One group of us specializes in air problems, one in water, one in the management of hazardous waste. These, however, are not separate problems, they are all different facets of the exact same problem.

This one-pipe-at-a-time approach has more or less three important negative consequences: First is the pollution shell game, in which we shift wastes across media, in some cases with no real benefit to human health and environment. There are regulations which strongly encourage, if not actually require, the use of pollution shifting technologies. Second, there is a tendency of the one-pipe-at-a-time approach to put cure before prevention by focusing companies so much on the one-pipe approach that the companies take an end-of-the-pipe view and do not look at the source of the pollution in the first place. This cripples their ability to identify the pollution prevention opportunities.

Third, there are the unnecessarily high transaction costs. When a company is trying to reconcile the air, water, and waste requirements, it is wasting resources that could be better spent protecting the environment. There is also a certain amount of inefficiency that goes on the government's side due to redundant or conflicting regulatory programs.

The whole-facility approach, which is an alternative to the one-pipe-at-a-time approach, would treat each company as a whole entity made up of people living and dying in the competitive marketplace, not in the business of polluting but polluting as an inadvertent consequence of doing business. The whole-facility approach is

not just a stitching together of our existing one-pipe-at-a-time programs.

Let me illustrate the whole facility approach with a project that the Environmental Defense Fund is starting up with the Council of Great Lakes Governors. In that project, EDF and the Council of Great Lakes Governors are going to be picking an industry sector that is economically and environmentally important to the Great Lakes States, that is about to see a raft of EPA regulations coming its way, and that is enthusiastic about participating in the projects.

We are going to put a team together from the industry, its customers, suppliers, labor, the State and Federal agencies, and environmental groups. We are then going to step back and see if there is anything that can be done in the way we design the regulations, the way we write the permits, provide technical assistance, set specifications, to target our R&D to make pollution prevention a natural part of doing business in that industry.

In publishing those recommendations, we will be sketching out a whole-facility approach to environmental protection for that industry.

What are the implications of such a whole-facility approach for the environment and the structure of the U.S. Department of the Environment?

There are a number of structures that might support a whole-facility approach rather than the one-pipe-at-a-time EPA structure. The question is how you get there, how you get to that ultimate structure from where we are now.

In the short term, the Environmental Defense Fund recommends that the USDE establish a Commission that includes environmentalists, labor, industry, and State and local agencies, and that the Commission look in particular at three issues.

First, the Commission should recommend a protocol to establish cross-media technology based performance standards. Take, for example, the case in which USDE is setting performance standards for a particular industry sector.

USDE has identified two technologies that are competing to be the basis of the performance standards and they have differing impacts to air and water. USDE has to decide which one is actually most protective of human health and the environment.

We don't have a good, explicit way of doing that now. By taking our one-pipe-at-a-time approach we are answering that inadvertently and I would argue in some cases with unintended results.

Second, the Commission should identify provisions in environmental laws that would actually prevent USDE from writing cross-media standards and that would prevent USDE from using prevention as the underlying technology for setting these standards.

Third, based on those first two, the Commission should recommend an ultimate USDE structure to support the whole-facility approach as part of the plan for the transition from the current Agency structure.

Thank you.

Mr. SYNAR. Thank you.

[The prepared statement of Dr. Roy follows:]

TESTIMONY

OF

MANIK ROY, PH.D.
POLLUTION PREVENTION SPECIALIST
ENVIRONMENTAL DEFENSE FUND

BEFORE THE

ENVIRONMENT, ENERGY AND NATURAL RESOURCES SUBCOMMITTEE

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COMMITTEE ON GOVERNMENT OPERATIONS

MONDAY, MARCH 29, 1993

TESTIMONY OF MANIK ROY, PH.D.
POLLUTION PREVENTION SPECIALIST, ENVIRONMENTAL DEFENSE FUND
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**PROMOTING CROSS-MEDIA POLLUTION PREVENTION:
IMPLICATIONS FOR US DEPARTMENT OF THE ENVIRONMENT STRUCTURE**

Thank you, Chairman Synar, members of the Subcommittee on Environment, Energy and Natural Resources. I am Manik Roy, Ph.D., Pollution Prevention Specialist with the Environmental Defense Fund, in Washington DC. The Environmental Defense Fund, a leading, national, New York-based nonprofit organization with over 200,000 members, links science, economics, and law to create innovative, economically viable solutions to today's environmental problems.

Before coming to EDF, I worked for nearly five years in the pollution prevention program of the Massachusetts Department of Environmental Protection. Then at the U.S. Environmental Protection Agency's (EPA) Office of Solid Waste, I ran effort to develop an EPA action plan to promote the prevention and recycling of hazardous waste.

The Environmental Defense Fund has long been on record supporting the creation of a cabinet-level U.S. Department of the Environment (USDE). Today I would like to discuss the challenge of promoting cross-media pollution prevention and the implications for USDE structure and management, should such a department be created. I will argue four main points:

- The single-media or one-pipe-at-a-time structure of EPA hampers pollution prevention and creates needless transaction costs.
- Both the environment and the U.S. economy would be better served by a cross-media "whole facility" approach to environmental protection which treats each business like a business, rather than a collection of smokestacks and drainpipes.
- USDE should establish a commission to recommend both an ultimate USDE structure that best supports the whole facility approach, and a plan for growing into that structure from the current EPA one.
- A cross-media whole facility approach would probably not require sweeping reform of U.S. environmental legislation. Rather USDE could, with some straightforward measures, harmonize its implementation of those laws with a whole facility approach.

Some of what I am about to say may sound like a criticism of the Environmental Protection Agency. It is not intended to. I have tremendous respect for the public servants who work in EPA and its state partners, and no criticism of them as individuals is intended. No doubt we have learned a tremendous amount in the twenty-two years of EPA's existence and have made progress in protecting human health and the environment.

To go much further, however, particularly to prevent pollution rather than shuffle it across media, and to reduce needless transaction costs for business and government, USDE must develop an approach to environmental protection that treats each business like a business.

The Problem: Protecting the Environment One Pipe at a Time

Despite its complexity, for pollution control purposes the environment must be perceived as a single interrelated system. Present assignments of departmental responsibilities do not reflect this interrelatedness. Many agency missions, for example, are designed primarily along media lines - air, water, and land. Yet the sources of air, water and land pollution are interrelated and often interchangeable.

President Richard M. Nixon, 1970

There is a fable about a group of blind monks who come upon an elephant in the road. One monk grabs the elephant's trunk, one its tusk, one its ear, one its leg, and each monk sees in his mind's eye a completely different animal than that seen by his co-travelers.

In developing environmental protection policy, our society has been similar to this group of monks. The regulation of wastes generated and sent to air, water and land have evolved independently and in an ad hoc manner. These different approaches are manifested in the structure of EPA and state environmental agencies, in federal and state statutes, and in regulations and procedures, which (with important exceptions) each tend to focus on only one "pipe" through which pollution can leave a facility. This one-pipe-at-a-time approach has three negative consequences:

Less Environmental Protection with the Pollution Shell Game. Over two decades ago, President Nixon's message upon the founding of EPA warned against compartmentalized decision-making:

Control of the air pollution may produce more solid wastes which then pollute the land or water. Control of the water-polluting effluent may

convert it into solid wastes which must be disposed of on land...Similarly, some pollutants -- chemicals, radiation, pesticides -- appear in all media. Successful control of them at present requires the coordinated efforts of a variety of departments.

Until recently, this warning has been largely ignored. The Hazardous and Solid Waste Amendments of 1984 were created partly to control the residues generated from water and air pollution control. Wastewater treatment impoundments built to satisfy water pollution control requirements release millions of pounds of toxic chemicals to the atmosphere. Regulation under the Clean Air Act may drive thousands of businesses toward aqueous solvents that may create new water quality problems. Even EPA's new voluntary programs are not immune -- do we know how will we dispose of the mercury-containing light bulbs installed in response to the Agency's Green Lights program?

Putting Cure Before Prevention. A company facing a one-pipe-at-a-time regulatory environment often responds with a compliance strategy developed one pipe at a time, missing more cost-effective pollution prevention measures. For example, take a company required (a) to control its volatile organic compound emissions to the air one year; (b) control the total toxic organic content of its wastewater two years later; and (c) account for the ban on land disposal of solvent waste two years after that. This company might logically treat these requirements as individual problems, sinking time, capital, and employee training into separate air, water, and waste strategies. On the other hand, presented with all the requirements simultaneously, the company might have found it more cost-effective to reduce or eliminate its use of the solvent.

Also, many companies react to the uncertainty and confusion surrounding compliance requirements by giving one person or group of people primary responsibility for compliance. It is not unusual to meet industry environmental compliance officers who say, "I am probably one of the few people at my company who does not know how the production line works." They are busy enough staying informed of the regulatory requirements faced by their companies and operating their companies' pollution control equipment.

Internal politics may also keep environmental staff, and therefore the issues they represent, peripheral to the corporate mainstream. For example, how many companies build production or marketing decisions around strategic opportunities created by environmental issues? And the real test: in how many companies is work on environmental issues seen as a stepping stone to a top management position other than VP for Environmental and Public Affairs?

This separation of production from environmental protection severely constrains a company's choice of environmental compliance strategies, and can even lead companies past important business opportunities. Many companies assume that the chemicals used in and discarded from a production line are fixed and not to be influenced by environmental considerations and that the corporate

environmentalist's job is to manage what comes out. This assumption rules out the possibility of changing the method of production to prevent pollution, for example, substituting less toxic chemicals for more toxic ones or modernizing the production process to make more efficient use of chemicals. It also rules out the possibility of changing the product in a way that makes environmental compliance easier and in some cases may make a "greener", more marketable product, such as aerosol cans that no longer use ozone layer-depleting CFCs.

Unnecessarily High Transaction Costs. The miscoordination of one-pipe-at-a-time regulatory programs wastes both industry and government resources just by raising transaction costs.

For example, a company may be required to report some of the same information using different forms, different nomenclature, at different times of the year to the same agency. Similarly, a company may be visited first by an OSHA inspector who tells it to ventilate a room by installing a fan to the outside, and later by an air inspector who tells it to shut off the fan and plug the vent. While the company may find a way of resolving the apparently conflicting messages, it could have done so quicker and at less cost if the government had itself first resolved the apparent conflicts.

While less apparent to the practitioners, this redundancy exacts its toll on the government as well. And in a world of scarce resources, unnecessarily high transaction costs steal resources needed for environmental protection.

Environmental Policy that treats each Business like a Business

The "whole facility" approach, an alternative to one-pipe-at-a-time, would treat the environment as an interrelated ecosystem, and each company as a whole entity made up of real people¹.

Most importantly, the whole facility approach is more than the simple tying together of existing one-pipe-at-a-time programs. The whole facility approach would stop treating each American business as a collection of smokestacks and drainpipes and begin treating it as a business.

While a business may pollute, pollution is incidental to its existence; its primary concern and resources are devoted to producing a product or providing a service. Because pollution is incidental, a business may deny or misunderstand its pollution problem. It may solve one pollution problem, only to exacerbate another. And it may adopt pollution control strategies that treat rather than prevent pollution, which cost more than they should and protect human health and environment less than they could. Any environmental protection system that imposes mandates and responsibilities must address these characteristics.

Up to this point I have been speaking in the abstract. Let me illustrate my points with by briefly discussing two whole facility projects: the Massachusetts Blackstone Project and a project that the Environmental Defense Fund has recently started with the Council of Great Lakes Governors.

The Massachusetts Blackstone Project. Any project started under Democratic Massachusetts Governor Michael Dukakis and greatly expanded by the seceding Republican Governor William Weld has to have something going for it.

In 1989, the Massachusetts Department of Environmental Protection, under then-Governor Dukakis, decided to do something about the confusing and sometimes conflicting signals sent by the separate air, water, and waste inspectors that could visit any given Massachusetts company.

Like US EPA and nearly all state environmental agencies, DEP's air, water, and waste programs were separate and often not closely informed of each other's actions. This one-pipe-at-a-time approach often had unfortunate consequences for the businesses regulated by these programs, along the lines mentioned earlier.

DEP wanted to change this and, in particular, wanted to transmit the message that pollution was a problem regardless of media, and that the best way to approach the pollution problem was to prevent it. To do this, DEP came up with the Blackstone Project².

In the Blackstone Project's first pilot year, the project tested different methods of

- coordinating air, water, hazardous waste, and Right-to-Know inspections;
- issuing enforcement actions that led violators to use pollution prevention as the primary means of compliance; and
- coordinating regulatory activities with technical assistance.

At the project's core was an attempt to treat each business like a business, rather than a bundle of smokestacks, drainpipes, drums of waste.

The project was a success. Among other things:

- Blackstone inspectors were better able to detect hitherto unpermitted wastestreams and were able to perform inspections in less time than typically allotted for those inspections.
- Companies inspected by Blackstone inspectors were found more likely to seek technical assistance in preventing pollution.

- Over 80% of the companies inspected said in a later survey that they preferred Blackstone inspections over standard single-media inspections -- even though most of them were subject to enforcement actions resulting from the Blackstone inspections.

Under Republican Governor William Weld, who came to office with an emphasis on "reinventing government", the project has flourished and the Blackstone approach is being expanded statewide.

EPA has taken steps to promote this type of work nationwide by issuing an Agency-wide guidance that encourages flexibility in the use of state grants to support pollution prevention initiatives like Blackstone. The guidance is subject to any applicable legal restrictions, and EPA programs and regions are required to report on successful projects and specifically identify barriers that prevent funding of a particular state proposal.

The EDF - Council of Great Lakes Governors whole facility pollution prevention project. Last November the Environmental Defense Fund and the Council of Great Lakes Governors started a whole facility pollution prevention project. (Note: the project's title will probably be changed when the industry is chosen.)

The goal of this project is to make aggressive pollution prevention the first choice of a key Great Lakes industry sector in meeting and exceeding its environmental and human health protection obligations. The project will be the first in the nation to seek to create an entire business environment conducive to pollution prevention for a single industry sector.

Over the next several years, businesses in the Great Lakes region will be subject to new federal, state and international standards regulating pollutants released to the air, water, and in waste. To comply with these regulations, the businesses will invest millions of dollars in capital, consultant fees, and training to protect human health and the environment. Once invested, established compliance strategies may be difficult to rethink. The businesses will make their important environmental protection decisions while taking into account an array of factors, including:

- o future federal and state air, water, and hazardous waste standards;
- o the permitting, reporting, and enforcement methods used to implement the standards;
- o customer demands;
- o labor safety and health requirements;
- o the availability of pollution prevention and pollution control

technologies; and

- o the availability of capital

EDF and the Council of Great Lakes Governors is now in process of identifying an industry partner for the project. The industry sector being chosen is important economically and environmentally to the Great Lakes Region, and it consists primarily of small businesses.

In addition, the industry sector is one of the seventeen subject to EPA's Source Reduction Review Project (SRRP). In this project the Agency has chosen industry sectors already scheduled for new air, water, or waste rules, and has committed to writing the rules in a way that accounts for cross-media impacts and promotes pollution prevention. The EDF-CGLG project is essentially an attempt to make best use of the opportunity created by EPA's Source Reduction Review Project.

Once chosen, representatives of the industry sector, EDF and CGLG will assemble a team that includes representatives of the industry, its customers and suppliers, federal and state regulators, state technical assistance providers and the National Institute of Standards and Technology's Manufacturing Technology Centers, labor and environmental groups.

This team will take a year analyzing the industry and the pending changes in its environment to recommend the best method of writing and implementing the regulations, providing technical assistance, setting customer specifications, carrying out research and development, and so on to enable the industry to make best use of pollution prevention.

In so doing, the team will be designing a whole facility approach to environmental protection for that industry.

Implications for Agency Structure

What are the implications of the whole facility approach for U.S. Department of the Environment structure?

In the long-term, implementing the whole facility approach would require USDE to move freely across program boundaries in pursuit of common objectives. While EPA has made important progress in this direction, this movement will inevitably be slowed by the balkanized bureaucracy that is an outgrowth of the Agency's single media management structure. Substantial inefficiencies arise when staff must constantly reconcile conflicts between the resource requirements of multi-media initiatives with demands from their home offices. Moving toward a whole facility approach will mean breaking out of the single-media straightjackets that bind the Agency's flow charts today.

There are doubtless a number of organizational structures that could support the whole facility approach, each with their own strengths and weaknesses.

One straightforward approach to this would be to consolidate USDE programs by industry sector, for example, establishing assistant administrators for primary extraction industries (e.g., mining and petroleum), manufacturers of intermediates and finished products, agriculture and natural resources (covering pesticides and wetlands), etc. Each office could, in turn, be subdivided into divisions similarly based on groupings of related economic activities.

Because each program would be responsible for administering the various statutes affecting activities within its sector, multimedia coordination would be a natural phenomenon at USDE rather than the artificial one it is today. Staff would develop the more comprehensive understanding of regulated industries essential to the whole facility approach. Congressional committee jurisdictions would not need to change, as USDE would continue to be accountable under existing laws.

This of course is a long-term vision. Obviously, we cannot move an environmental protection regime based for twenty years on the one-pipe-at-a-time approach to one based on a whole facility approach overnight. We would lose too many of the important lessons learned in two decades and burn up scarce work-years of effort in unproductive power struggles in both Congress and USDE if we presumed, for example, to reorganize the Agency overnight around the whole facility concept.

Like the businesses whose humanity the whole facility approach recognizes, Congress, EPA, and their state-level counterparts have very important human attributes which must be accounted for and drawn from.

What is needed instead is an approach that builds on the promising steps already taken by EPA with the establishment of the Pollution Prevention Policy Staff, the Source Reduction Review Project, and Pollution Prevention Grant Guidance.

Recommendations: Study Commission

In the short term, we recommend that USDE establish a commission representing environmental groups, labor, industry, and state and local government. Among other things, the commission should be given three tasks.

First, the commission should establish a protocol for setting cross-media technology-based performance standards. Currently EPA sets performance standards for individual industry categories that are based on the performance

of the "best" pollution control technologies for a given environmental medium for a given industry category. Given two technologies, one which better protects the air and one which better protects water, the Agency has no protocol for explicitly deciding which is most protective of human health and environment. Instead the matter is decided implicitly and without careful deliberation, and is embodied in the collective effect of the single-medium standards faced by any one industry.

(Note that this problem can exist even within one media program. For example, if the EPA's air program finds for one industry category two technologies, one which better reduces emissions of all volatile organic compounds and one which better reduces emissions of just air toxics, despite the focus on only air emissions, the Agency still has no protocol for explicitly deciding which is most protective.)

Second, the commission should identify provisions in existing environmental statutes that would have to be modified to allow USDE to set a cross-media standard for any one industry category, or to base a standard on a pollution prevention technology.

Third, the commission should recommend an ultimate USDE structure to support a whole facility approach, and a plan for the transition from the current Agency structure to the recommended one. The transition plan should build on the strengths of the current structure and fully consider the training resources that would be needed to "grow" the ultimate structure from the current one.

For example, an EPA division may have a particular expertise with regard to one type of industry category, albeit restricted to one medium. That current division should be a prime candidate for growing into the USDE division that ultimately oversees that industry category for all impacts to human health and environment.

Finally, the commission should base its recommendations on a careful study of current whole facility projects, such as the Massachusetts Blackstone Project, EPA's Source Reduction Review Project, and the Environmental Defense Fund - Council of Great Lakes Governors project.

Recommendations: Harmonizing One-Pipe-At-A-Time Statutes

It has been suggested that Congress should replace the many federal environmental statutes with one unified environmental statute. We, however, do not feel that it would be necessary to make such a sweeping change in order to move to a whole facility approach. Rather three steps -- perhaps requiring no specific legislative action -- could sufficiently harmonize the separate statutes.

First, the different media programs should be made to use a single USDE-wide approach to categorizing the regulated community. For example, if the air

program designates an industry sector as "plastic furniture manufacturers", the water program should use the same designation in developing standards.

Second, the different media programs should be made to follow the same schedule in developing the standards addressing any one industry category. For example, if the air program is going to propose a rule for plastic furniture manufacturers in November 1996, with the final rule scheduled for November 1997, the water program should follow the same schedule.

Third, the USDE should be required, whenever it develops a rule that sets a standard for one industry sector, to set standards for all impacts to human health and environment from that industry sector, regardless of environmental medium.

Conclusion

In conclusion, the establishment of a U.S. Department of the Environment creates the opportunity to build on the lessons of the 22 years of EPA's existence and move forward. We have argued for a cross-media whole facility approach to prevent pollution and to avoid needless transaction costs. The emphasis in our recommendations on growing from current experience is not accidental: however we proceed, our best progress will come by joining the effort of the visionaries with that of the veterans.

1. There is a growing literature on the integration of environmental protection programs. For a recent survey of the field, see "Integrated Pollution Control: A Symposium", Environmental Law, Volume 22, Number 1, 1992, Northwestern School of Law of Lewis and Clark College.
2. "FY90 Report on the Blackstone Project", Massachusetts Department of Environmental Protection, 1990, Massachusetts State Bookstore, Boston.

Mr. SYNAR. Mr. Farmer.

**STATEMENT OF RANDALL G. FARMER, GENERAL MANAGER,
ENVIRONMENTAL, HEALTH AND SAFETY, AMOCO CORP.**

Mr. FARMER. I am Randall Farmer, general manager, Environmental Health and Safety, Amoco Corp., refining and marketing sector of the Amoco Corp. We have prepared written statements relating to the elevation of EPA to Cabinet level and ask that they be included in the record.

Mr. SYNAR. Without objection.

Mr. FARMER. For the past several years, we have had the privilege of working on a unique effort of meshing a safe environment with a sound economy. The site was the refinery in Yorktown, VA, near the Chesapeake Bay. The players came from different organizations, but primarily from Amoco Oil, EPA, and the Commonwealth of Virginia.

Based on a handshake agreement, we worked together on this pollution prevention project to improve our understanding of how we might better address pollution from industrial activities. We had three goals: First, we made an inventory of all pollutants to the environment from the refinery. Second, we developed and ranked alternatives that might reduce these emissions. Third, we identified what incentives there were for implementing the best alternatives, as well the barriers we faced.

Through this cooperative effort, we learned very important and very revealing lessons. We learned it was possible to obtain similar environmental results more cost effectively than the current laws and regulations allow.

At Yorktown, we found we could achieve at least 95 percent of the release reductions required by current regulations for about 20 percent of the cost of these programs. We could have saved about \$30 million and attained an equivalent environmental benefit.

We learned we got better information about the specific site and its emissions so that we could make better decisions for environmental protection. We need more appropriate information, not just more information.

We learned that by working together we could make much more progress than when we were working as adversaries. Frankly, we expected to have lots of disagreements. Instead, participants agreed on which management and protection options were the most effective and which were the least for this facility.

Unfortunately, the current system usually mandates other approaches, namely, command and control. Much regulation and legislation follows a "command-and-control," "one size fits all" model, how much, and which technology to use.

Innovation, one of America's greatest strengths, is neither encouraged nor rewarded in a command-and-control framework. Because there is no workable banking or credit system for emissions, companies that make early reductions find themselves at a competitive disadvantage once specific regulatory requirements are issued or if they wish to expand their facilities.

Based on our experience at Yorktown Amoco, we believe we need to make four different approaches in the way we approach environmental problems: One, we need a system that encourages coopera-

tion to achieve pollution prevention. Government, industry, and the people of the United States can together address the environmental and resource management problems.

The high cost of our current approach provides strong reasons to change. We have encouraged EPA to undertake more partnerships with a wide cross-section of industries to develop solutions that are cost effective and environmentally effective solutions.

Second, we need more demonstration projects. We recognize the administration's interest in pollution prevention, a sound economy, a clean environment, and more effective government. More Yorktown-type projects can help us determine the value of multimedia permitting, site-specific environmental performance goals, and coordinating environmental requirements.

We can learn where alternative compliance protocols can offer essential information and insights for this generation of environmental protection. EPA can provide environmental leadership that is sound for the economy. The demonstration program can be examined by a National Commission on the Environment.

Third, we need to set priorities based on relative risks. Only with this information can we focus on the most serious problems first and achieve maximum benefits from finite resources. In the report, "Reducing Risks," senior EPA officials confirmed that a significant amount of their current resources are directed to low-risk issues. Setting protection standards or performance goals could encourage facility managers to seek innovative approaches to pollution prevention.

Fourth, we need to improve environmental research, science, and technology. Both government and industry should expand the role of science in understanding risks and setting environmental priorities.

If established, an EPA chief science officer could provide input to environmental policy and identify further information needs. Better science can help focus emission reduction and pollution production strategies, improve our decisionmaking, and enhance environmental monitoring capabilities.

A Bureau of Environmental Statistics and a national Commission could encourage these goals, if structured appropriately.

Finally, I want to thank you for this opportunity to talk about our Yorktown experience.

I would like to thank Dr. Roy and Dr. Portney for their help in the process. I think we have demonstrated that industry and government can work together to help this country and the environment.

I believe we have something very special in the Yorktown project and we should keep it moving forward. This is real a win-win for everything.

Thank you for your time.

[The prepared statement of Mr. Farmer follows:]

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Vice President

March 29, 1993

The Honorable Mike Synar
Chairman
Subcommittee on Environment,
Energy and Natural Resources
House Committee on Government Operations
2157 Rayburn House Office Building
Washington, DC 20515-6143

Dear Mr. Chairman:

Comments on Elevation of the Environmental Protection Agency
to Cabinet-Level Department

With reference to the March 29 Committee hearing pertaining to the elevation of the Environmental Protection Agency (EPA) to a cabinet-level Department, Amoco Corporation requests that the enclosed written statement be included in the hearing record. Amoco has recently completed a joint study with the EPA to evaluate pollution prevention opportunities at Amoco's Yorktown, Virginia refinery, which we believe provides insights for legislative and regulatory policy affecting environmental management and environmental innovation. Our statement highlights the findings of this study as it relates to specific concerns of the Congress and of the EPA as it takes up the EPA Cabinet elevation. In addition to the written testimony to the subcommittee, we are enclosing a four-page summary of the recommendations of the joint EPA/Amoco Yorktown study and a copy of our verbal statement to the subcommittee.

If there are questions or clarifications about this written statement, please contact Karen St. John at (202) 857-5311, Mike Brien at (202) 857-5310 or Ron Schmitt at (312) 856-2713.

Sincerely,



Enclosures

WRITTEN STATEMENT

STATEMENT ON BEHALF OF
AMOCO CORPORATION

ELEVATION OF THE ENVIRONMENTAL PROTECTION AGENCY TO
CABINET-LEVEL DEPARTMENT

SUBMITTED TO THE COMMITTEE ON GOVERNMENT OPERATIONS
SUBCOMMITTEE ON ENVIRONMENT, ENERGY AND NATURAL
RESOURCES

UNITED STATES HOUSE OF REPRESENTATIVES

HEARING OF
MARCH 29, 1993

AMOCO CORPORATION'S COMMENTS ON THE
ELEVATION OF THE ENVIRONMENTAL PROTECTION AGENCY
TO CABINET-LEVEL DEPARTMENT

On behalf of the Amoco Corporation and its operating companies, we appreciate the opportunity to provide comment on the issues surrounding the elevation of the U.S. Environmental Protection Agency (EPA) to Cabinet level. Amoco has recently completed a joint study with the EPA to evaluate pollution prevention opportunities at Amoco's Yorktown, Virginia refinery, which we believe provides insights for legislative and regulatory policy affecting environmental management and environmental innovation. A summary of the Amoco/EPA project is attached to this statement. Our statement highlights the findings of this study as it relates to specific concerns of the Congress, of the EPA, and as EPA reviews its functions in the name of improving environmental regulatory performance.

Amoco offers its insights and recommendations from the perspective of an entity that is subject to the full panoply of environmental and other regulatory requirements. We are fully supportive of the need to stimulate innovative environmental solutions and to further better utilization of good science and good data. As such, we offer the following comments:

- I. The EPA (or Department of the Environment) Should Explore Opportunities to Improve Its Regulatory Program Effectiveness In The Name of Pollution Prevention and Environmental Innovation
 - A. EPA (or Department) Should Ensure A Review of Current Regulatory and Statutory Obstacles That Hinder Pollution Prevention and Environmental Innovation

The joint Amoco/EPA study at the Yorktown refinery identified certain obstacles to achieving pollution prevention goals. For example, the current system encourages short-term fixes at the expense of more effective, long-term solutions. In addition, incomplete or inaccurate data regarding emissions often diverts energies to problems of less significance relative to others.

The EPA (or Department) should verify the benefit of improved environmental protection that could be obtained by removing regulatory obstacles by investigating specific issues including:

- 1) Regulatory compliance deadlines - determine the extent that different regulatory deadlines aimed at the same source and/or constituents of concern impede pollution prevention and multi-media environmental management approaches (e.g., emissions from waste systems under the Benzene Waste NESHAP and emissions from waste management facilities under RCRA Phase II Air Emissions).

- 2) Different environmental performance goals and measures - identify the barriers or obstacles in regulations (e.g., prescriptive regulation of technology to be applied) that hinder the use of innovative environmental management methods and techniques, and how different compliance measures (e.g., different requirements to demonstrate compliance) hinder development of innovative pollution prevention technologies.
 - 3) Role of risk - identify the advantages, limitations and obstacles to the use of risk assessments and risk management techniques in developing and prioritizing both EPA (or Department) and facility risk reduction goals.
- B. The EPA or Department of the Environment Should Examine Means to Allow Alternative Regulatory Compliance Protocols to Promote Environmental Innovation, Pollution Prevention, and Cost-Effective Environmental Compliance

The Yorktown study also found that better environmental benefits can be achieved at lower cost. Each facility is different, with its own operations, equipment, and number of emission sources. At the Yorktown facility, the study found that over 95% of the mandatory emission reductions could be achieved at 20-25% of the cost. Thus, the study recommended that the EPA evaluate options for setting a goal or target for reducing emissions, then allow the facility the flexibility to develop a strategy to meet the target.

The current system discourages innovative solutions to complex environmental problems. Environmental investments have focused on single-issue regulatory requirements as they were developed. There has been little coordinated management of multiple regulatory requirements because the regulations themselves do not recognize or allow for this, and there is little sound data to support the incentives of this approach.

Many other experts in the environmental policy arena also support the use of alternative regulatory compliance mechanisms to encourage greater environmental benefits than the current system allows.

In A New Generation of Environmental Leadership, the World Resources Institute has proposed that "Congress should, on an experimental basis, allow qualifying companies to opt into an alternative regulatory track. There, within careful confines, novel

regulatory approaches could be tested and companies could come forward with their own innovative approaches, as long as the end result is just as good or better for the environment."

In The Greening of America's Taxes: Pollution Charges and Environmental Protection, Harvard University Assistant Professor Robert Stavins concludes that "Command and control rules can hamper technological innovation by locking firms into outdated pollution control equipment. They ignore important differences among individuals, firms, and regions."

The EPA (or Department of the Environment) should pursue further demonstration projects where the following can be evaluated:

the extent that regulatory incentives, such as the modification of the requirements imposed by terms of all or part of any permit, can be more effective in preventing pollution than current regulations allow. For example, investigate instances where control of alternative sources of emissions at a facility could be more cost-effective than mere compliance with specific source control permit requirements.

whether a multi-media approach to facility permitting will be more effective in reducing the overall risk from a facility, and whether a multi-media permit approach will be more likely to ensure that environmental risks are not shifted from one medium to another.

These demonstration projects may require a legislative amendment, possibly to the Pollution Prevention Act. Amoco would be willing to work with Congress, its appropriate Committees, and the EPA (or Department of the Environment) and other parties to explore this idea within the appropriate forum.

II. EPA (or the Department of the Environment) Should Ensure the Collection of Useful Data for Environmental Risk Prioritization Efforts and Responsible Investment

The availability and use of good scientific data is critical to the successful achievement of the Department's goals of protecting human health and the environment. With limited resources, both within the Department and in the private sector, the Department must formulate a national environmental strategy that identifies and addresses the highest risks first, and maximizes the environmental benefits obtained for the resources invested.

A. Establishment of the Bureau of Environmental Statistics

If a Bureau of Environmental Statistics is established, and if appropriately structured and with adequate controls, the Bureau could be a useful ingredient in the development of good scientific data and sound science. A central clearinghouse of environmental information could open up the opportunity to leverage resources with the private sector.

- 1) In addition to reporting on the amounts and effects of pollutants on the environment, the Department should include information on the improvements to environmental quality resulting from a multitude of environmental programs (e.g. from annual TRI reports or voluntary reduction program reports, such as 33/50).
- 2) The Department should perform external audits and provide detailed reports on major spending programs which it oversees as a public trustee, such as Superfund.
- 3) The Department should evaluate the quantity and quality of the data currently being collected, to ensure that the right data is being collected to ascertain both absolute and relative risks of reported pollutants, and to ensure that redundant or unnecessary data is not being collected. The Department should evaluate other options for data collection management, such as data collection by industry sector, and data collection of compound groups instead of individual speciations.
- 4) Congress should consider establishing a National Environmental Sciences Institute to provide a focused, world class, center of excellence for environmental research, in the same manner as the National Institutes of Health provide medical and public health research.
- 5) Regarding the implementation of all government-wide and the Department information policies and standards, the Department should evaluate using 4-digit SIC codes for each Federal Register publication to facilitate use of computer technology to deliver, search, and categorize regulations and other information.
- 6) In order to ensure the accuracy and completeness of records contained with the Department information systems, the Department should evaluate what systems and guidelines would be required to allow regulated facilities to submit required data electronically.

B. EPA (or the Department) of the Environment Should Develop a Sound Basis for Prioritizing Environmental Risks

Since the goal of the EPA (or Department) is to protect human health and the environment with the resources available, the ranking of relative risk is an important technique for ensuring environmental protection.

- 1) To ensure that the greatest risks are identified and that the environmental laws are applied in such manner as to accomplish the intended results of the laws, the EPA or Department should establish an expert advisory committee whose purpose is to provide advice concerning the relative ranking of risks, identify the need for new laws, and set priorities for existing laws within the constraints of statutory authority. The committee should identify different alternative options for reducing risks, as well as the cost to regulatory agencies and the private sector.

This expert advisory committee should be independent of the Science Advisory Board, and include representation from industry, public interest groups and the States. The committee should report on their findings at least annually to Congress.

- 2) The EPA or Department should also develop guidelines to ensure consistency and technical quality in risk assessments by setting minimum standards for different risk assessment approaches, depending on the magnitude of the environmental problem, level of scientific understanding, and the available data. In addition, the EPA or Department must resolve and reconcile the different risk assessment approaches used by various federal agencies, such as EPA, FDA, CDC, etc.

III. Conclusion

Amoco appreciates the opportunity to provide comments. As demonstrated by Amoco's involvement with the EPA in the cooperative study at the Yorktown refinery, Amoco is committed to protecting human health and the environment, and continually strives to ensure that our investments benefit both our environment and our economy. A four-page summary of the joint EPA/Amoco Project, as well as our verbal statement, is attached to this written statement.

March 29, 1993

Amoco/USEPA Pollution Prevention Project

ABSTRACT

In late 1989, Amoco Corporation and the United States Environmental Protection Agency began a voluntary, joint project to study pollution prevention opportunities at an industrial facility. The Amoco/EPA Workgroup, composed of EPA, Amoco and Commonwealth of Virginia staff, agreed to use Amoco Oil Company's refinery at Yorktown, Virginia, to conduct a multi-media assessment of releases to the environment, then to develop and evaluate options to reduce these releases. The Workgroup identified five tasks for this study:

1. Inventory refinery releases to the environment to define their chemical type, quantity, source, and medium of release.
2. Develop options to reduce selected releases identified.
3. Rank and prioritize the options based on a variety of criteria and perspectives.
4. Identify and evaluate factors such as technical, legislative, regulatory, institutional, permitting, and economic, that impede or encourage pollution prevention.
5. Enhance participants' knowledge of refinery and regulatory systems.

Project Organization, Staffing, and Budget

Workgroup: Monthly Workgroup meetings provided Project oversight, a forum for presentations on different Project components, and an opportunity for informal discussion of differing viewpoints about environmental management. Although attendance varied, each meeting included representatives from various EPA offices, the Commonwealth of Virginia, and Amoco.

Peer Review: At the Workgroup's request, EPA arranged for Resources for the Future to assemble a group of outside scientific and technical experts. This Peer Review Group provided evaluation and advice on the Project workplan, sampling, analysis results, and conclusions. Members of this group were paid a small honoraria for their participation.

Workshop: A special Workshop, held during March 24-27, 1991 in Williamsburg, Virginia, reviewed sampling data and identified reduction options and ranking criteria. More than 120 people from diverse backgrounds--EPA, Amoco, Virginia, academia and public interest groups--attended the Workshop.

Participants: More than 200 people, 35 organizations, and many disciplines were involved in this Project. This reflected a central belief of this Project that solving difficult environmental problems must draw on many of society's "partners."

Cost: Total cost for this Project was approximately \$2.3 million. Amoco Oil Company provided 70 percent of the funding and EPA the remainder.

Lessons and Results

Refinery Release Inventory

- A. Existing estimates of environmental releases were not adequate for making a chemical-specific, multi-media, facility-wide assessment of the Refinery.
- B. A substantial portion of pollution generated at this refinery is not released to the environment.
- C. The Toxic Release Inventory database does not adequately characterize releases from this Refinery.
- D. Site specific features, determined during the facility-wide assessment, affect releases and release management options.

Reducing Releases

- A. A workshop approach, drawing on a diverse group representing government, industry, academic, environmental, and public interests, developed a wide range of release reduction options in a multi-media context more quickly than either EPA or industry alone would do.
- B. Pollutant release management frequently involves the transfer or conversion of pollutants from one form or medium to another.
- C. Although the Refinery is highly efficient in handling materials (currently recovering 99.7 percent of its feedstock in products and fuel), four source reduction options identified show positive rates of return ranging from one to nineteen percent.
- D. Source reduction is not necessarily practical for all release management options, despite its cost effectiveness. Effective release management requires a combination of source reduction, recycling; treatment and safe disposal.

Choosing Alternatives

- A. Ranking the options showed that better environmental results can be obtained more cost-effectively. At this facility, about 97 percent of the release reductions that regulatory and statutory programs require can be achieved for about 25 percent of today's cost for these programs. Table 1.3 summarizes several management options.

These savings could be achieved if a facility-wide release reduction target existed, if statutes and regulations did not prescribe the methods to use, and if facility operators could determine the best approach to reach that target.

- B. All participants agreed on which options were the most effective and which were least, regardless of their institutional viewpoints and preferred ranking criteria.

Obstacles and Incentives to Implementing Pollution Prevention

- A. EPA does not have the policy goal and may not have the statutory authority to simply set an emissions reduction "target" without prescribing how this target should or could be met. Current administrative procedures discourage such an approach, including the analysis of tradeoffs in risks, benefits, and costs of managing residual pollutants in different media.

The Agency is required to implement media-specific legislation enacted by Congress. In addition, EPA does not have the technical and analytical skills to determine if multi-media, facility-wide reduction plans are meeting the requirements established in single medium-specific legislation. This would make compliance monitoring and enforcement more difficult than present approaches.

- B. Many legislative and regulatory programs do not provide implementation schedules compatible with design, engineering, and construction timeframes. Consequently, short-term "fixes" which meet legal deadlines are used at the expense of more cost- and environmentally effective, long-term, solutions.
- C. Well established problem-solving approaches are difficult to change. Congress, EPA, and much of industry are used to command-and-control, end-of-pipe treatment approaches based on twenty years of experience. Many of today's problems could benefit from a different approach.
- D. Inadequate accounting for both the benefits and costs of environmental legislation and regulations is an obstacle to developing a more efficient environmental management system.

Responsibility for pollutant generation and accountability for environmental protection are difficult to quantify.

Recommendations

1. Explore Opportunities to Produce Better Environmental Results More Cost-effectively.
2. Improve Environmental Release Data Collection, Analysis and Management.
3. Provide Incentives for Conducting Facility-wide Assessments, and Developing multi-media Release Reduction Strategies. Such Strategies must Consider the Multi-Media Consequences of Environmental Management Decisions.
4. Encourage Additional Public/Private Partnerships on Environmental Management.
5. Conduct Research on the Potential Health and Ecological Effects of VOCs.

Mr. SYNAR. Thank you, Dr. Farmer.

I thank all of you gentlemen for excellent testimony.

I have been concerned, as some of you clearly are, over the contrast in terms of how much money various programs get and where the actual health risks are.

I asked CRS to examine their budget and break out what the funds are used for by media. I would like to enter exhibit 2, CRS report entitled, "EPA Funding and Offsetting Receipts."

[The information can be found in the appendix.]

Mr. SYNAR. Pages 7 and 8 detail where EPA's money is going. Almost one-third, \$1.8 billion, goes to Superfund and underground storage, \$2.6 billion goes to overall environmental media combined. Page 8 shows a further breakdown of the \$2.6 billion we are spending by media.

I would like each of you to tell us if you think EPA's spending priorities as reflected in these charts on those two pages make sense. Tell me why or why not, briefly.

Dr. Davies.

Dr. DAVIES. I guess after having given this a number of years of thought, the answer is simply no, these don't make sense. On the other hand, it is hard to be definitive about that because I have less confidence than some of the witnesses before you today, that we can simply pick up scientific results based on the number of deaths and injuries and say that is how we ought to set our program priorities. The world is not that simple.

I think it is germane that the EPA group that was referred to by the gentleman from Amoco, in fact, itself could not come up with priorities. They were not able to write priorities based on scientific evidence. That is an indicator of one of the problems.

There are others. There are a lot of factors other than simply deaths and injuries that ought to be considered in ranking priorities. I would submit that the scientific evidence by itself would not give you an adequate priority ranking. That is not to say the current priority is right.

I think the Congress and EPA could do a better job of ordering the priorities.

Mr. PORTNEY. I share Terry's assessment, but I guess by virtue of being more foolish I am willing to hazard some opinions about that. I am looking over here at the chart Rich Hembra put up when he was here. I guess I am a little bit more confident that although the underlying scientific data are much less good than we would like them to be, and certainly less good than they ought to be given how much money we are spending on some of these regulatory problems, and although there are certainly some Superfund sites that pose serious risks to human health, if you said to me, is it a good way to spend the Nation's money, to spend \$30 million per average Superfund cleanup, and to spend \$100 million or more than that at some of these Superfund sites, I would say the answer is no, that is probably not a very good way to go about protecting human health.

Now the difficulty the Administrator of EPA faces and, quite obviously, the difficulty that Members of Congress face, is that sometimes these are the environmental problems about which constituents are most vocal—they tend not to complain about radon, be-

cause there is no one to blame except Mother Earth for radon problems. But they do tend to complain about Superfund sites because they think it results from shoddy industrial practices in the past. Oftentimes it is from poor landfilling practices by the community to which they send their garbage, of course.

But, in general, I think we probably are spending somewhat too much money on hazardous waste problems, in my opinion.

Again, based on pretty sketchy data, I think we probably tend to overregulate some of the drinking water contaminants that local governments are now struggling to come up with financial resources to implement.

I think we probably do too little in the way of alerting to people about the problems associated with radon. I recognize that this is very controversial.

In my opinion, we spend more than we should dealing with hazardous air pollutants where, although there are some risks, I don't think these are commensurate with the amount of resources we are about to devote to them under the 1990 Clean Air Act amendments. That is a personal opinion and it is based on data that is not as good as we would like them to be.

Mr. SYNAR. Dr. Roy.

Dr. ROY. I won't speak to Superfund's funding versus other program funding. I happen to think that cleanup of hazardous wastesites is very important. I will say, however, that our relative environmental spending priorities are pretty much unexamined. I think it probably would be a good thing to examine them more closely.

That being said, I would say that you cannot simply go out and get a handful of numbers and use them to answer your questions.

In the first place, we often don't have the information to attribute chemical "X" or chemicals "X," "Y," and "Z" with a certain health effect.

But maybe more importantly, there are important social issues underneath all these seemingly scientific questions. How do we compare "Mrs. A's" death with "Mr. B's" illness? How do we compare an event that happens now with another one that happens in 20 years?

We tend to dismiss the political forces that Congress and EPA respond to in setting those priorities, but those political forces are an important part of the way society is going to deal with the environmental issues. We should give them their due weight.

Mr. SYNAR. Dr. Farmer.

Mr. FARMER. I don't know what would be the way to divvy these up, but I think under the command-and-control structure and especially the impact that politics does have in making these decisions, frankly, this probably is not surprising. But I think again, going back and looking at Yorktown where we worked with the community, we worked with the regulators, and the decisions that were made there, could have been made, would have been different from a command-and-control structure.

Mr. SYNAR. Let me ask this, maybe just a yes or no answer. Does the present structure and the statutes produce a closer match than what we see here, or do we really need a Commission to rethink this whole thing and put priorities in place?

Dr. DAVIES. I think the latter. The Train Commission thought that also, and the Commission included three former EPA Administrators.

Mr. PORTNEY. I agree.

Dr. ROY. We need the Commission.

Mr. FARMER. I agree.

Mr. SYNAR. Mr. McCandless.

Mr. MCCANDLESS. Thank you, Mr. Chairman.

Mr. Farmer, I was very encouraged to hear somebody else, particularly on the East Coast talk in terms of your four objectives in working together, set priorities based on relative risks; more demonstration projects; incentives to cooperate to achieve pollution prevention; and improve environmental research, science, and technology.

Again, I don't recommend necessarily going back to my other life. We did everything in the world in the air pollution field to work with business and industry, and to encourage them to work with us, rather than pulling them to the altar kicking and screaming. The various and sundry words and phrases about the responsibility we had, this is obviously a future goal, a Utopian goal that we would like to see with all Administrators and bureaucrats.

We are talking here about elevating an organization to Cabinet status when to date they can't seem to handle what they have in the way of responsibility satisfactorily, based on the testimony so far and what I have been given to read, in their current form.

We are talking then about when we elevate them, we are going to have a Commission take a look at this and straighten it all out. And therefore, these people who have been used to doing what they are going to do are not going to do that any more because the Commission has told them they will not be able to do anymore.

But the inspector general who has a responsibility for this is not going to be able to do that himself. It seems to me we have a lot of conflicting things here. Then we throw in the Bureau of Environmental Statistics. We are currently spending a lot of the EPA budget to develop talents.

If I am wrong, I would like to be corrected here about what it is that we are talking about in terms of the EPA and the statistical analysis.

Aren't we collecting statistics? Aren't these things what policies and procedures are based upon currently in the EPA administration?

Dr. DAVIES. No, we are not. I mean, we collect a lot of data. It suffers from various kinds of problems. But the bottom line is that it varies from moderately good to terrible.

A lot of the air quality data that is collected nationwide by EPA directly is reasonably good; and, therefore, we have a reasonable fix as to whether air pollution programs are working and what air quality conditions are in major cities, at least.

That has limitations, too. But it sure beats water quality where we don't even know whether things are getting better or worse. A lot of the monitoring of natural conditions is done by the States. And the problem, therefore, is imposing some kind of quality control conditions and some kind of ground rules as to how and what kinds of data the States collect for EPA.

Mr. MCCANDLESS. All right. Let's be more specific. The South Coast Air Quality Management District is required to provide the State Air Resources Board of California with reports about the improvement or lack thereof of all the elements under which they have responsibility in terms of air quality.

Under the State implementation plan, which the California Air Resources Board approves for all of the districts within California, that State implementation plan is forwarded to EPA; and that is a composition of all of the statistics past, present, which can be analyzed by EPA from the State of California.

Now, those are collected by the agencies who have the requirements, under law, to provide that information.

What else would you need about air quality in California—

Mr. PORTNEY. If I could respond?

Mr. MCCANDLESS [continuing]. In the area of improvement or lack thereof?

Mr. PORTNEY. Not a doggone thing I don't think, Mr. McCandless. Air quality, as Terry has pointed out, I think, is the big success story. And because we have a very organized system of air quality reporting in the United States, EPA, each year, can put out a book called Air Quality And Emissions Trends Reports which gives a very useful picture of whether Los Angeles is doing better in air quality—in fact, they are—and how all of the other major metropolitan areas in the country are doing with respect to air quality.

But I think Dr. Davies' point is that there is no similar requirement for water quality, no similar requirement for other environmental media. And in my opinion—and it is just an opinion—there ought to be one annual document that the EPA puts out each year in which somebody can not only find out about air quality but also water quality, hazardous waste, solid waste, et cetera, in the same way you can look at the appendixes to the Council of Economic Advisors economic report to the President and see how we did in 1992 with respect to all of the data series that we have collected going back to 1926, 1927.

To me, the air quality statistics in the United States are the model for what we should be doing in these other environmental areas. And I think we can quite easily come up to speed and begin to produce data series for other ambient environmental conditions and trends that would match that for air quality.

Mr. MCCANDLESS. California has a similar relationship to its water programs also. You have the California Water Quality Control Board, which monitors the various regional areas and the level of quality or lack thereof, the parts per billion of dissolved solids, how that applies to the regulations under which they have to operate. Then you throw in a few things periodically, as you mention in your testimony—in particular radon—that blows people's minds.

We are saying, then, that other States do not have this information available which could be compiled as the air quality is and put into one final document.

Is that what I am understanding?

Mr. PORTNEY. Or even when the other States do collect that data, they are not reported as systematically to EPA nor does EPA seem to feel the responsibility to compile all of this to make sure that

it is comparable with the data from other States and issue as timely an annual report as they do in the air quality area. Yes.

Mr. MCCANDLESS. So the Bureau of Environmental Statistics, then, would have the responsibility of saying to the States, to the levels of water distribution, we want you to forward certain information at certain intervals from which then we will compile this document and make it public.

Would that be your perception of the Bureau of Environmental Statistics?

Mr. PORTNEY. What I would like to see them do—I don't see this as being some new part of EPA.

As you pointed out earlier, there is now an Office of Statistical Collection that Terry Davies and others helped implement administratively. I see that office saying to the States, here is the form in which we want water quality data collected; here is the schedule on which we need the reports so that we are all measuring the same thing, so that the monitors are calibrated in the same ways; you don't have one State using a 1956 water quality measuring device and somebody else using a different device so that their response readings are completely incomparable; establishing baseline reference conditions so that all of the data that are produced are similar, yes, and as you say in saying we need it by a certain time; and you are going to have to produce it by then.

But, basically, just approving the data that we already collect in many cases, pulling it together in a central location and getting it out to the public on a regular time schedule.

Dr. ROY. Mr. McCandless, may I tie something that is being said here to something we were talking about earlier, this issue of the political influence on our environmental priority setting.

If there is a problem with the way that we establish our environmental priorities, some people's reaction is to say we should insulate our decisionmaking more from the political system. My approach would be to inform, to provide better information to the public, to enrich that public debate which is driving and always will drive environmental priority setting.

Mr. MCCANDLESS. I think my time is up, Mr. Chairman.

Thank you.

Mr. SYNAR. Mrs. Thurman.

Mrs. THURMAN. Following through on that, on the issue of independents, are you saying that you think they should be an independent Bureau to whom they should report. What should happen here? I need some help with that.

Mr. PORTNEY. Let me take a crack at it. What I have said all along—and I have deliberately left this, I guess, somewhat fuzzy—is that it should be a quasi-independent Bureau of Environmental Statistics.

All I mean by that is that it ought to have the same stature within the Environmental Protection Agency that the Bureau of Labor Statistics has within the Department of Labor or the Bureau of Economic Analysis has within the Department of Commerce. That is to say, it is not a political appointee, someone who contributed to somebody's campaign. It is a high-level civil servant who is obviously a man or woman who has a reputation, an expertise in a particular area.

This is not a rogue office, though, within EPA that is not at all answerable to the Administrator of EPA. I would want the head of the Bureau of Environmental Statistics to work closely with the Administrator to make sure that he or she made it easier for the head of this office to collect the kind of air quality and water quality and other ambient environmental media data that are required to inform you Members of Congress and the members of the general public.

So by saying "independent," I don't mean that this person somehow operates in a way that he or she isn't even a part of the Agency. But I would like to see it be a nonpolitical spot in the sense that—yes, in the same sense that the head of the Bureau of Labor Statistics is not jerked around by administrations, to put it quite crudely.

Mrs. THURMAN. The reason I—

Dr. DAVIES. Could I just supplement that rather quickly. I agree entirely with what Paul just said, that you need some degree of independence but not a rogue agency. It has got to tie into some existing Department, presumably a Department of the Environment.

There is another reason, though, which is hard to deal with, but another reason for the Bureau to be somewhat independent, namely, a lot of this data is not EPA data. It belongs to other agencies. And if the Bureau is too much an instrument of EPA, it will have difficulty getting data from the Geological Survey in the Department of Interior or NOAA in the Department of Commerce and so on. So that is just another reason why you need some quasi independence on the part of the Bureau.

Mrs. THURMAN. That probably brings us back to the whole information networking issue that was brought up prior to this on how we get that information.

Dr. Roy, you described a model of how EPA should work. Has that actually been put into place?

Dr. ROY. There are a handful of whole facility projects that I commend to your study. One was done by the Commonwealth of Massachusetts and was called the Blackstone project. In that project they took an air, a water, a waste, a right to know inspector, and some technical assistance providers, and they set them loose on the same group of similar companies in the Worcester metropolitan area. It was very successful.

They found that the inspectors were more efficient in finding environmental problems. Also, through the coordination between good cop and bad cop, more of the companies went to the technical assistance program to find the pollution prevention solutions.

The second was the Amoco project, which I worked on when I was at EPA. We could talk about the strengths and weaknesses of the Amoco project; but I think, overall, that was a pretty good one to take a look at, too, especially in that it looked production unit by production unit at a 35-year-old refinery and found some new things, things that weren't known before.

The project I referred to in my testimony is a project we are putting together now, Environmental Defense Fund, Council of Great Lakes Governors, and an industry partner that we are now in the process of choosing. Both EPA and State people are going to be on

this team. We are going to be coming out with recommendations probably in about a year, sometime in the summer of 1994, that will talk about how you go at those regulations, the permits, the customer specs and all that sort of thing.

Dr. DAVIES. There is a lot of European experience that is germane here. I mean, the Scandinavians, for example, from the beginning of time have issued integrated permits for a single facility. The Dutch do it, to a great extent, now. And the British are just entering upon this. The United States is way behind in this as in most other organizational aspects of environmental quality.

Mr. SYNAR. Mr. Davies, you have endorsed the Commission, and—Mr. Conyers, I am sorry.

Mr. CONYERS. Just a few questions, Mr. Chairman.

I wanted to thank all of these witnesses. I find that normally the public sector witnesses frequently come on last and have the best information of all. I am always worried about the protocol that prevents us from putting you on first and then hearing from the government.

But that being said, what I want to find out is what are the similarities and differences between the various organizations that you represent, gentlemen?

I will get to Amoco, formerly Standard Oil, in a minute.

Mr. PORTNEY. Well, let me take a crack at Resources For The Future. We are a think tank. I mean, you are familiar with that term, having been around Washington for as long as you have.

We differ from other think tanks in that we only work on natural resources and environmental issues. But we are a nonadvocacy group, and we are not an environmental advocacy group as is Dr. Roy's organization but a research organization concentrating on environmental and natural resource issues.

Dr. ROY. The Environmental Defense Fund is very much an advocacy group started 25 years ago in New York State working, on DDT in the eggshells of birds, and is now working on a variety of issues.

EDF has over 200,000 members nationwide and links science, economics, and law to approach these issues in an innovative way. We consider the economic aspects of the issues as well.

Mr. CONYERS. Great.

Dr. Davies.

Dr. DAVIES. Dr. Portney and I are from the same organization, so I fully subscribe to his description.

Mr. CONYERS. Now, have all three of you had some connection with EPA in the course of your professional careers; I mean, working for them?

Dr. DAVIES. Yes. I personally have been in the government three times now. My first government job was with the old Bureau of the Budget, and I was the first environmental examiner they ever had.

In 1970, I worked for the Council on Environmental Quality and spent 3½ years there. And then, most recently, in 1989, having worked for a number of years with Bill Reilly in the Conservation Foundation, I went to EPA as Assistant Administrator for Policy and spent 2 years in that position.

Mr. PORTNEY. I have never worked at EPA, but for 2 years I was the chief economist at the White House Council on Environmental Quality in 1979 and 1980.

Dr. ROY. I worked at EPA for 1 year. Before that, I worked for 4½ years for the Massachusetts Department of Environmental Protection.

Mr. CONYERS. In all fairness, Dr. Farmer, have you worked for EPA?

Mr. FARMER. No. I worked as a regulator for the State of West Virginia once a long time ago.

Mr. CONYERS. Now, how did Amoco leap to the front as the good guys in the oil business?

Mr. FARMER. I thank you for that. There was an interesting article in the Wall Street Journal today. I don't know whether you had a chance to see it. Basically the idea was started by an individual who worked with Amoco. The story was very accurate. It was—it took a while to sell that within the company.

We have had, traditionally, an adversarial relationship as a company, personalities may not necessarily have, but once people began to think about it and, more importantly, as we looked at what was going on, we are getting nowhere with the way the system works now. And I have heard a lot today about this needs fixing and this needs fixing. We wanted to find a better way to do this. And it was not without some rancor—I don't think anyone would disagree with that—but I think we learned some very important lessons that we could work together and that, indeed, in this I share some concerns of the Commission or the Bureau of Statistics that we don't expand just for the sake of expanding but that those can play very legitimate roles if their role is to really reform what is occurring in setting environmental policy.

So I believe that the framework was established on an airplane that they would do this. And I think, fortunately, the senior management in both organizations decided to give it a try.

Mr. CONYERS. Well, I thank all of you very much.

Thank you, Mr. Chairman.

Mr. SYNAR. Thank you, Mr. Chairman.

Let's go down the panel. Let me explore some things with each one of you.

Dr. DAVIES, what would the Commission's strategy entail if we created it?

Dr. DAVIES. In terms of subjects covered, you mean?

Mr. SYNAR. Yes.

Dr. DAVIES. I have tried to give a brief outline of them on page 3 of my written testimony. Let me just quickly read them.

The need for a national environmental strategy, how to bring about—

Mr. SYNAR. What would that include?

Dr. DAVIES. It is basically the problem of how do you get environment injected into energy policy, transportation policy, agriculture policy, and so forth, which seems to me essential.

Then there is the question about integration, media oriented statutes. That is essentially what Dr. Roy was talking about.

Mr. SYNAR. Why can't they do that under present statutes?

Dr. DAVIES. Because the existing statutes are totally media driven in effect. And the Agency is totally driven by those statutes. And while, in theory, you might figure out some way to run counter to that, organize the Department differently from the way the statutes are organized, in practice it isn't going to work.

That is why I have problems with a Commission that is prohibited from looking at statutes because the statutes are such a dominant influence on what the Agency does. I don't see how you can ask the important questions without—

Mr. SYNAR. Go ahead. What is the third one?

Dr. DAVIES. Pollution prevention as a basic way of doing business because I think that is critical, and it isn't the basic way of doing business in the Agency now.

The Agency, in part—again, this derives from the statutes, but not totally, is oriented toward the old end-of-the-pipe approach. Risk in setting environmental priorities, that was covered here already I think.

The place of research in the new Department. This is a complicated subject that a number of different groups around this town have been looking at recently, a question of should you just have a regulatory Agency; should it be both a research and a regulatory Agency; if it is both, how do you prevent the research from being too manipulated by the regulatory needs; what kind of research do you need and how much of it can be done in universities; how much needs to be done in-house; what is the position of non-EPA agencies like NOAA and USGS that do research. Just a whole set of related questions. How to base enforcement and other programs on environmental results. Again, I think we have covered that pretty well this afternoon.

The role of the Department in international negotiations, again we have touched on that. There is no final answer to that. It has got to involve both EPA and the Department of State and probably other agencies as well. But I think there could be a useful delineation of respective roles which has not taken place yet.

Mr. SYNAR. Would having a Bureau of Environmental Statistics, which we have talked about today, help coordinate this research and monitoring?

Dr. DAVIES. Certainly monitoring and research insofar as it utilized monitoring data, but clearly the focus would be primarily on monitoring not on research about health or ecological effects.

Mr. SYNAR. How important would a Bureau of Environmental Statistics be to the environmental mission that we have talked about today?

Dr. DAVIES. I think it is absolutely essential. In effect, the monitoring data provides the reality context in which EPA operates. That is just fundamental for the setting of good policy and for knowing whether policies are working or not working, for knowing what the problems are, and for knowing which are the important problems and which aren't and so forth.

It is just absolutely fundamental and essential, and the Agency is not doing a good job now of getting that information.

Mr. SYNAR. The last Government Operations bill, Mr. Portney, made the Director of the Bureau immune from EPA political con-

trol and his or her removal by the President possible only for cause like the Director of EIA.

Do you have a position on whether or not that should be a political appointee or a civil servant?

Mr. PORTNEY. Not really. I guess my feeling has always been that I don't object to the Administrator of EPA or the Secretary of the Department of Environmental Protection, if that should happen, making that appointment. But I think it should be made clear to him or her that the person who should be appointed head of Bureau of Environmental Statistics should be somebody with a lifetime of professional experience in this area and not someone who is a political friend of the Administrator. You are looking for professional expertise, and that the job of the head of the Bureau is to produce reliable, annual information that edifies both the Congress, the regulatory decisions of the Department of Environmental Protection, and perhaps most of all the public.

Mr. SYNAR. I agree with you. Give me some examples, to your knowledge, of where we have had unreliable or nonexistent data which really made it—or we went the wrong way and wrong decisions were made.

Mr. PORTNEY. I don't know if this is a perfectly responsive example, but you pointed out and in this exhibit that you have circulated amongst us, one of the things it points out is that a very large share of the Environmental Protection Agency's budget goes to subsidizing the construction of wastewater treatment plants in communities like the ones that we all live in.

Nevertheless, as Terry Davies has suggested earlier, we have no real sense at all as to whether water quality in the United States has improved or gotten worse and where that has happened. And more importantly, even in areas where water quality has improved, it is very difficult to say whether or not those improvements are due to the construction of an expensive sewage treatment plant, whether it has been due to control of industrial effluents or whether it has been due to the control of nonpoint source pollution, runoff from agricultural fields or city streets that may have nothing to do with regulatory programs.

And that is a big ticket resource in the EPA's budget. And of course it is an even bigger ticket item for regulated parties like Amoco or other companies who were affected by water pollution regulation. So that is one example, off the top of my head.

Mr. SYNAR. Tell me the kind of data we should be collecting so that we are analyzing better.

Mr. PORTNEY. Well, actually to stick with the current example here, the U.S. Geological Survey has a fairly ambitious water quality monitoring program which has nothing to do with the regulatory programs of the Environmental Protection Agency but which I think could edify, if EPA and USGS could work more closely on targeting the monitoring that USGS does, then the USGS network could not only provide us with background data on water quality but could also let us know whether that new sewage treatment plant in Ada, OK, led 5 or 6 years later to improvements in water quality downstream.

If it has, then that is some justification for continuing that program. If we are not getting water quality improvements when we

are putting in expensive sewage treatment plants, then that is money that ought to go to some other kind of program, it seems to me.

Mr. SYNAR. Alternatives seem to be one of two. Either we are going to have to integrate solutions for all the environmental problems, or we are going to have to have an Organic Act. Which way do you fall?

Mr. PORTNEY. Well, the same way I may be considered the father of the Bureau of Environmental Statistics, the dad of the organic statute is to my left. I am going to quietly slide the microphone over here.

Mr. SYNAR. Which way, Dr. Davies.

Dr. DAVIES. Well, I guess I do opt for an organic statute. It is not going to be easy. It is probably impossible politically. And it is going to be difficult, at best, substantively. I think in the long run, it will be necessary; and I think it can be done.

As Paul says, I did, a number of years ago, take a crack at doing one. I wouldn't do quite the same one today if I were doing it over again. But it is doable. And, again, I would point to the European experience. I mean, you have a different legal tradition there, so it is not totally conveyable. But the Norwegian statute that covers air pollution, water pollution, and solid waste, noise, and about seven other things runs 25 pages, so—

Mr. SYNAR. We would put a lot of people around here out of business if we did that. Let me ask you all, and if you can answer with a yes or no answer, should we have a chief science officer down at EPA?

Dr. DAVIES. There is one.

Mr. SYNAR. I mean in this new creation that we are putting together?

Dr. DAVIES. Well, yes, I think there should be one. It depends, in part, of course, what one envisions in the long run.

If one envisions research as being even more a major component, and not just of the new Department, than it is now of EPA and you envision it conducting research not just to support the regulatory requirements but independently just to increase the store of knowledge, then you need some separation between the research and the regulatory functions. And one way of separating them would be to create a high-ranking person who is in charge of just the research.

Mr. SYNAR. Dr. Portney, do you agree with that?

Mr. PORTNEY. A slightly different view, I guess. It seems to me that if the Administrator of EPA wants to take science seriously, he or she is going to find a way to do that, even if you have got a requirement for a chief science officer.

If the Administrator of EPA doesn't want to pay attention to science, then, even though you have someone in that position, I think science won't play an important role in environmental regulatory decisions.

So I am—I don't object to the idea, but I don't think necessarily by itself it is going to get EPA to take better science into account.

Dr. ROY. I would agree with that. Respect for good science, as for good financial management, as we were talking earlier, will come as an artifact of good management.

May I go back to something.

Mr. SYNAR. Go back to the Organic Act. My staff tells me you need to say something.

Dr. ROY. The Organic Act is theoretically a good idea. Given that it is politically impossible, though, as Dr. Davies himself said, I have a suggestion that, at least with respect to the whole facility approach, can tie together the existing statutes.

My first suggestion might not even require legislative amendment. It might require just a different way of doing business at EPA. First, across the EPA programs, pick a common unit, an EPA-wide unit of industry. Let me explain. Right now the water program divides industry into one set of categories and the air program divides industry into another set, so EPA uses different ways of categorizing industry across program. Instead we should have one way of categorizing industry used by all programs in the Agency.

Second, for each of those categories, come up with a simultaneous set of deadlines across all programs, so you don't have the air program coming out with a set of regulations 1 year, water 2 years later, and hazardous waste 2 years after that.

And third, require the Agency, when it comes out with a rule, to address all the environmental and human health impacts in those rules.

Mr. SYNAR. Across all lines?

Dr. ROY. Across all lines.

Mr. SYNAR. Dr. Farmer, what about the Organic Act? What about the chief science officer?

Mr. FARMER. I have never seen the Organic Act. It sounds like I should have. I haven't seen that.

I guess the concern—one thing I think we have to be careful with is that we don't expand just to expand. We can't get into needless expansion.

I am not sure I agree politically that the Organic Act is something that will work. But, certainly, if the Agency receives direction from Congress that pollution prevention alternative compliance or strategies is the way we want them to go, they can begin to look more holistically at facilities.

I am not sure you can regulate that in a 25-page bill. Maybe you can.

Dr. DAVIES. No. No. My Organic Act is 400 pages.

Mr. SYNAR. Yours was 400 pages? You didn't learn much from Norway, did you?

Mr. FARMER. I think we want to stay away from that, but certainly we want to look at Congress providing the Agency the direction that those types of programs, if we are going to maintain a competitive nature in this country, are critical to follow.

As far as the science officer, I think if that person's assignment is really to evaluate policy, to evaluate data needs, then it makes sense for that individual to be there.

Mr. SYNAR. Dr. Roy, let me ask you: Do you have any opinion on the need for the independent Bureau of Environmental Statistics and what form it should take?

Dr. ROY. As we are saying with the financial management and the issue of science, so much depends on the personalities involved and on how much leadership the administration, the White House

is willing to take on the environment, how many political risks the Agency is able to run.

For most of EPA's life, in fact, EPA has been something of a marginalized Agency and, with a few important exceptions has not been able to cash in a lot of the political capital that the White House has to give out. That is why you see a lot of the game playing, a lot of the gaming with extramural money, the avoided priority setting and all of that sort of thing.

All that being said, I think on the issue of a Bureau of Environmental Statistics, it probably would make sense to have it a career position within the Agency, something that tries to get the factually based numbers out there to the extent possible.

But I would also repeat what I was saying earlier. I would urge us not to just turn away from the political process. Your constituents are telling you very important things through that political process. Granted, maybe they are not always working on the best information. So maybe it is a question of getting better information out to them. But let's not decry the influence of politics on policy.

Mr. SYNAR. Dr. Farmer, with reference to the excellent story reported today in the Wall Street Journal, I would like to get you to summarize a couple things. What was the biggest surprise and biggest disappointment in that whole cooperative effort?

Mr. FARMER. I think the biggest surprise was that we could cooperate. That probably goes without saying. But I think we believe, in Amoco, that there were gains to be made that we weren't necessarily doing things the smartest way but the idea of cooperating with what had been your adversary, getting through that took a long time.

I think the biggest disappointment has been mainly the barriers that are in place to prevent, really, implementing what we learned at Yorktown, that there are alternative ways to look at a facility and that the command and control structure we have currently just does not allow that to occur.

Mr. SYNAR. You were surprised that solid waste and air and water people at EPA very seldom talk to each other in your experience; isn't that correct?

Mr. FARMER. That is true.

Mr. SYNAR. You wouldn't allow that in your own corporation, would you?

Mr. FARMER. We try not to.

Mr. SYNAR. What are the chief benefits of having that kind of cooperation between EPA and the industry?

Mr. FARMER. I think you can avoid some of the shell games that have been mentioned earlier, and you can look at a multimedia approach as well as make decisions if a contaminant is, really, a problem in water or is it the air. Where do we need to spend our finite resources.

And that is what I think that type of approach allows you to do is address the economics so that you know you have finite resources. Where can I get the biggest bang for the buck?

Mr. SYNAR. Do you think the Yorktown model is the type of thing a Commission could look at, maybe duplicate?

Mr. FARMER. That is the type of thing I would foresee a Commission doing.

Again, with that and with the environmental—the Bureau of Statistics, the concern I would have is that it not just become an entity, kind of a self-sustaining entity. I think the Bureau of Statistics would need to look, for example, not just where do we need to obtain data, but where are we getting results for our money being spent, what are those results, and where are we spending money and we are not getting results, let's relook.

The Commission certainly should look at demonstration projects and go that extra step of saying, let's ask people to opt in this type work and move them away from command and control, we will let them opt into an alternative compliance scheme.

Mr. SYNAR. I would be interested, Dr. Roy, Mr. Portney, and Dr. Davies, in observations or comments on the Yorktown project's success or failure. Can we use it, was it an aberration, was it a miracle that can't be repeated?

Mr. PORTNEY. No, I have absolutely no reason to think it is a miracle that couldn't be repeated. I just did a little simple multiplication when you asked him what would be the advantage of this type of approach nationally. If we spend \$130 billion a year on environmental protection and we really could save 80 percent of it and still get the same environmental improvement, we would save \$100 billion.

Now, that is not money that passes through the Federal budget. But I don't have to tell you who are struggling to deal with the problems of the deficit that anytime you have got an opportunity to get the same benefits and save yourselves \$100 billion, that is a great opportunity. I mean, that is worth spending a little bit of time seeing how generalizable that finding is.

Mr. SYNAR. Dr. Davies.

Dr. DAVIES. I agree. No, I think it could be repeated and should be repeated probably, as Dr. Farmer says.

I would add one thing, though, in terms of why it is important, which is that, as we try and move away from end of the pipe to pollution prevention, we have got to be more and more concerned with things like internal manufacturing processes, relations with customers, relations with suppliers, a bunch of things that EPA doesn't know enough about to regulate in any direct fashion and, therefore, has to cooperate with industry in terms of solutions.

Mr. SYNAR. Dr. Roy.

Dr. ROY. I would say the Amoco project was a terrific project, but like all human endeavors it had its strengths and weaknesses.

The biggest problem with the Amoco project was that it didn't have a lot of environmentalists involved. During the course of the project the Agency was developing its benzene air toxics rule. Some of the projects findings may have been relevant to the rule, and there developed a huge argument within the Agency over the project. I can't help but think that had we had enviros, for example, from the NRDC, involved from the beginning, it might have been easier to show them that, in fact, there are some real environmental benefits to be made through the approach indicated by the Amoco projects findings. As it was, the enviros working on the benzene air toxics rule were suspicious of the project, as were the air program people in the Agency. As a consequence, we lost some of the lessons that might have been learned through the project.

With all that in mind, the lessons of Amoco are not so much of government-industry cooperation, nor of any alternative to the command and control approach but rather of the idea of looking at a refinery, not the refinery's stacks, not the refinery's drain pipes, at the group of people who are making a product, who, by the way, happen to generate this waste, and saying now what are we going to do about it.

Mr. SYNAR. Mr. McCandless, any final questions for the panel?

Mr. MCCANDLESS. Well, first, gentlemen, you have been very patient and generous with your time, and I thank you for that.

I would ask the chairman unanimous consent that we be able to submit questions to this panel and other panels rather than take the rest of the time here, which would be beneficial to us in developing further questions.

Mr. SYNAR. Without objection.

[The information can be found in the appendix.]

Mr. SYNAR. At this time, gentlemen, we are on a fast track. If we ask it, answer quickly, OK?

Mr. MCCANDLESS. We are looking at a 2-week timeframe, Mr. Chairman. I have a concern here. If we statutorily put together an agency which includes such things as a Bureau of Environmental Statistics and either the parties involved in operating the Department lack interest or the information becomes such that it is put on a shelf and dust collects on it but we still have, statutorily, a Bureau of Environmental Statistics which cannot be changed by an Administrator who sees a waste because the application originally intended did not bear fruition as opposed to letting the organization—whatever framework it takes in the future, be it a Department continuing or a Cabinet level Department—be the work of the organizational process.

Aren't we better off to have that flexibility within the administration of the Department rather than statutorily lock it in?

Dr. DAVIES. Well, I guess if I were the President of the United States, I would fire any EPA Administrator who wasn't smart enough to see the need for a Bureau of Environmental Statistics.

I think you are going to have to have that function regardless of what it is called and no matter how it is organized. So I don't see any kind of reorganization that would get rid of that function. And if you call it a Bureau of Environmental Statistics, you can work around what the internal organization would be, and I think—I mean, you could do this administratively. That much is true.

And in fact, as somebody pointed out, the nucleus of such a Bureau does exist now within EPA. There are a number of things, however, that you can't get without a statute. You can't get much credibility with OMB to get money to put in a Bureau, you can't protect confidential data and industry information without statutory authority to do that, you can't have much influence in terms of other agencies and their data without some statutory base to do it. And to the extent that we want to give some independence to the head of the Bureau, that can't be done without statutory authority.

So, in short, there are a bunch of things where you need the statute to do it, even though the basic function can be done administratively.

Mr. McCANDLESS. Thank you. Thank you, Mr. Chairman.

Mr. SYNAR. Mr. Chairman, Mr. Conyers, any closing thoughts?

Mr. CONYERS. None.

Mr. SYNAR. Let me thank this panel, too. I would like to thank Mr. McCandless for being patient with us. We will keep the record open. I also want to thank all the panelists in the previous panel. We will be asking for questions from the Members who are not here. I think the chairman and I in our visits privately have really tried to put this on a fast track, and we are going to continue on that basis.

I want to thank Mr. Conyers and Mr. Clinger. Mr. Hastert, our subcommittee's ranking member, couldn't be here. He is on an airplane getting back here. But he has been very helpful in this.

Thank all of you. This concludes today's hearing.

[Whereupon, at 4:40 p.m., the subcommittee adjourned, to reconvene subject to the call of the Chair.]

ELEVATION OF THE ENVIRONMENTAL PROTECTION AGENCY TO A CABINET-LEVEL DEPARTMENT

THURSDAY, MAY 6, 1993

HOUSE OF REPRESENTATIVES, LEGISLATION AND NATIONAL SECURITY SUBCOMMITTEE, AND ENVIRONMENT, ENERGY, AND NATURAL RESOURCES SUBCOMMITTEE, OF THE COMMITTEE ON GOVERNMENT OPERATIONS,

Washington, DC.

The subcommittees met, pursuant to notice, at 10:08 a.m., in room 2154, Rayburn House Office Building, Hon. John Conyers, Jr. (chairman of the Legislation and National Security Subcommittee) presiding.

Members of the Legislation and National Security Subcommittee present: Representatives John Conyers, Jr., Cardiss Collins, Glenn English, Corrine Brown, Al McCandless, William F. Clinger, Jr., and Dick Zimmer.

Members of the Environment, Energy, and Natural Resources Subcommittee present: Mike Synar, Karen L. Thurman, James A. Hayes, J. Dennis Hastert, and John L. Mica.

Legislation and National Security Subcommittee staff present: James C. Turner, staff director.

Environment, Energy, and Natural Resources Subcommittee staff present: Sandra Z. Harris, staff director, Ruth Fleischer, counsel; Sheila C. Canavan and James V. Aidala, professional staff members; and Elisabeth R. Campbell, clerk.

Full committee staff present: Julian Epstein, staff director; Frank Clemente, senior policy advisor; Charles C. Wheeler III, chief investigator; Marilyn F. Jarvis and Ann-Marie Carrington, staff assistants; Matthew R. Fletcher, minority staff director; and Judith A. Blanchard, minority deputy staff director.

Also present: Representatives Henry A. Waxman and Craig Thomas.

OPENING STATEMENT OF CHAIRMAN CONYERS

Mr. CONYERS. Good morning, ladies and gentlemen. The two subcommittees will come to order.

We are pleased to join with Chairman Mike Synar of the Environment, Energy, and Natural Resources Subcommittee and my own Legislation and National Security Subcommittee to continue the third joint hearing on the consideration of making the Environmental Protection Agency the 15th Cabinet Department. I believe there is strong bipartisan support to make the Administrator a Sec-

retary. We all understand many of the reasons. This is a subject that has been before the Congress for a considerable period of time.

We are delighted to have the dean of the Michigan delegation and the chairman of Energy and Commerce, John Dingell, to begin our testimony. But before we recognize my dear friend from Michigan, I would like to yield to the gentleman from Oklahoma, Chairman Synar, for any beginning observations.

[The opening statement of Mr. Conyers follows:]

OPENING STATEMENT OF REP. JOHN CONYERS, JR.

CHAIRMAN, SUBCOMMITTEE ON LEGISLATION AND NATIONAL SECURITY

HEARING ON THE ELEVATION OF THE ENVIRONMENTAL PROTECTION AGENCY

TO A CABINET DEPARTMENT

MAY 6, 1993

This is the third of the joint Subcommittee's hearings to consider making the Environmental Protection Agency the 15th cabinet department.

I believe there is strong bipartisan support to give the Administrator of the Environmental Protection Agency a formal seat at the President's cabinet table. We all recognize that is necessary symbolically, because of the broad scope of the Agency's powers and the impact it has on the lives of all Americans.

But it is also necessary for practical reasons. Together with the State Department, the EPA Administrator negotiates treaties with foreign governments on ocean dumping, global warming, and many other critical matters. It is important that our environmental chief hold the same ministerial rank that is the norm in virtually every other country.

Here at home, the EPA Administrator has to coordinate more laws that affect more Federal agencies than any other Department head. Her officials down the line have to fight more intragovernmental battles with other Federal officials to get them to comply with laws that Congress has passed. EPA personnel need as much power behind them as we can possibly give them. Cabinet status would confer that.

I have circulated a "Discussion Draft" of cabinet legislation. This proposal is based substantially on legislation that passed the full House by an overwhelming vote of 371 to 58 in March of 1990. A few major additions have been made to the draft bill, which seek to correct a plethora of longstanding management problems at the Agency.

These problems have been documented by the Committee staff report "Managing the Federal Government: A Decade of Decline," and by numerous GAO and Inspector General reports. Key activities of the Agency are held hostage to a "shadow government" of contractors who are accepted as part of the EPA "family." Pesticides and toxic chemicals go unregulated decades after laws were passed requiring EPA to do so. EPA enforcement policies often treat polluters with kid gloves. Its scientific data is often inaccurate or incomplete, preventing the proper

assessment of dangers to the environment and public health. The Agency's computer systems are expensive and incompatible, making it difficult to assess environmental risk and set priorities.

Thus, it is incumbent upon our Subcommittees that we not only elevate the Agency -- but seek to "reinvent" it. The bill would create an independent Bureau of Environmental Statistics to provide specific measures of environmental conditions and how much they improve, or get worse. We require the new Secretary to establish "performance measures" for many of the Department's programs so that Congress and the taxpayers can determine their effectiveness and efficiency.

The bill would create a Chief Information Officer who's responsible for coordinating the hundreds of information systems at the Agency. Information systems are EPA's lifeblood, yet so many of them are separate, poorly designed, duplicative and inhibit the sharing of vital information across offices.

Nearly one 1 out of 3 people working on EPA matters is employed by a contractor, leaving the Agency wide open to rip-offs. Title III in this draft legislation would go a long way towards correcting contracting abuses that have been brought to light in recent years by Mr. Synar and the distinguished Chairman of the Energy and Commerce Committee.

Finally, the draft bill would provide the new Secretary with the statutory authority to implement her recent pledge to make environmental justice one of her top four priorities. For too long minorities and low-income Americans have suffered a disproportionate burden of pollution. I congratulate the new Administrator for her commitment, and I look forward to working together to see that she is successful in this most important initiative.

Administrator Browner has committed her time and energy to correcting many of the Agency's problems. The Government Operations Committee has the responsibility to give her the legislative tools to accomplish that task. I believe we can quickly put the finishing touches on this "Discussion Draft" and together with the Administration expeditiously move this legislation.

SUMMARY OF CHAIRMAN CONYERS "DISCUSSION DRAFT" --
DEPARTMENT OF ENVIRONMENTAL PROTECTION ACT

The 1990 House-passed bill (H.R. 3847) forms the basis of much of Chairman Conyers' draft legislation, which is still under review by the Administration. Major sections have been added to reform the contracting process at EPA, improve the management of information resources that are vital to the Agency's scientific mission and fiscal integrity, and provide greater attention to minority and low-income communities that often bear a disproportionate burden of exposure to pollution.

Major features of the legislation include the following (note that section designations may change as the legislation is revised prior to the hearing):

Redesignation of EPA as a Department; Structure and Duties of the Department (Secs. 101-109)

- The administrator, deputy administrator, and nine assistant administrators would be redesignated as the Secretary, Deputy Secretary and Assistant Secretaries. A tenth Assistant Secretary [to be added in revised draft] would be designated for Indian Affairs, recognizing the special status of tribes as sovereign governments and to consolidate and promote better coordination of Indian programs currently scattered throughout the Agency.
- EPA's ten regional offices, each headed by a regional administrator, would continue under the new Department, but regional administrators would be required to be appointed on the basis of managerial competence, not solely on the basis of political qualification.
- International responsibilities of the Secretary include assisting the Secretary of State with coordinating, negotiating, implementing, and participating in conventions and other international agreements.
- Pollution prevention responsibilities of the Secretary include developing, implementing and coordinating a Department strategy to promote source reduction, municipal solid waste reduction, and the reduction of all other pollutants to any media.

Strategic Management, Planning, Performance Measurement, Information Resources Management (Secs. 110-111)

- Section 110 describes the management responsibilities of the Secretary to include developing and maintaining a

strategic "business" or mission plan for the Department; establishing and maintaining a performance measurement system to measure program performance in fulfilling assigned missions; and establishing a permanent departmental senior management committee to assist the Secretary in managing the Department.

- Section 111 describes the information resources management (IRM) responsibilities and functions of the Secretary, an IRM steering committee, and the Chief Information Officer (CIO) of the Department.

- The CIO, who is to be an Assistant Secretary who reports directly to the Secretary, has primary responsibility for assisting senior agency management in ensuring that information and technology resources are managed to maximize benefits and promote public accountability. The CIO shall have direct and substantial experience in successfully achieving major improvements in organizational performance through the use of information technology and demonstrated technical competence and ability to work effectively with senior program managers. The CIO is precluded from being assigned any significant duties not related to IRM.

Bureau of Environmental Statistics (Sec. 112)

- The Bureau is charged with determining the quality of the environment over the short and long-term, collecting and analyzing a comprehensive set of environmental quality and related public health statistics, coordinating data collection with other Federal agencies, and publishing reports.

- The Director of the Bureau shall be a career official with extensive experience with environmental statistics; be appointed for four years; be removed only for malfeasance, maladministration or neglect of duty; not be required to obtain the approval of any officer of the Department in connection with the collection, analysis or dissemination of information; and not be required to get approval of the substance of Bureau reports from any other Federal agency.

- An Advisory Committee on Environmental Statistics is established to ensure that the statistical analyses and reports are useful, of high quality, publicly accessible, and not subject to political influence. An Interagency Council is established to ensure that there is coordination between the more than one dozen Federal agencies collecting environmental data. A Peer Review Team of Federal statistics officials is established to do an annual peer review of the Bureau.

Scientific Integrity (Sec. 113)

- The Secretary shall provide for the development and acquisition of the best credible and unbiased scientific information and develop, publish and implement, within one year of enactment of this Act, rigorous peer review and quality assurance guidelines for all science-based products and information of the Department.

Public Access to Information (Sec. 114)

- Requires the Secretary to encourage greater public access to and use of the Department's information by maintaining an inventory of the Department's information services, products, and systems; establishing a locator system for obtaining information about facilities, chemicals and regulatory activities; developing policies and programs for linking the Department's information pertaining to the environment, public health, and environmental justice; developing a strategic plan on the use of computer telecommunications to facilitate information dissemination; and ensuring that trade secrets and confidential information are protected.

Conflicts of Interest of Members of Advisory Bodies (Sec. 116)

- Members of all Department advisory committees shall file an annual report disclosing their principal employer, and their membership on corporate boards and organizations and identity of sources (but not amounts) of income that are relevant to the advisory committee's purpose. This information will be available to the public.
- Each advisory committee shall have balanced representation from the affected industry, consumer, environmental, and other public interest groups and state and local governments, where appropriate.

ADMINISTRATIVE PROVISIONS -- TITLE II

- Sets out various administrative requirements for the acquisition of copyrights and patents, receipt of gifts and bequests, official seal of the Department and the use of its likeness, and the use of stationery, forms and supplies.

PROCUREMENT REFORM -- TITLE III**Subtitle A -- Government-wide Reform**

- Section 501 adds to the Office of Federal Procurement Policy Act a new section 29, applicable to all executive branch agencies, governing performance of "inherently governmental functions" by contractors. The provision substantially tracks OMB Policy Letter 92-1, September 23, 1992.
- Section 502 adds to the Office of Federal Procurement Policy Act a new section 30, applicable to all executive branch agencies, governing circumstances in which a contractor has a conflict of interest in performing or competing for a government contract. These circumstances are now governed by Part 9.5 of the Federal Acquisition Regulation.
- Section 503 adds to the Office of Federal Procurement Policy Act a new section 31 governing cost allowability under executive branch contracts. It is patterned substantially after 10 U.S.C. Sec 2324, which governs defense contracts. This provision generally is intended to codify existing rules and procedures in Part 31 of the FAR. Subsection (d), however, includes significant revisions to existing rules and provides that certain costs specifically shall be unallowable, including:
 - (1) costs of entertainment, gifts, or recreation for contractor employees or members of their families to improve employee morale; and

(2) costs of travel, unless allowable under section 24 of the Office of Federal Procurement Policy Act and supported by detailed documentation.

Subtitle B--Department of Environment Reforms

- Section 511, "Umbrella Contracts for Advisory and Assistance Services for Department," governs long-term, level-of-effort contracts for advisory and assistance services, commonly known as "umbrella contracts," at the Department.
- Section 512, "Inherently Governmental Functions of Department," sets forth specific requirements for the new Department in implementing statutes and regulations that govern performance of inherently governmental functions.

ENVIRONMENTAL JUSTICE -- TITLE IV

- Section 403 establishes in the Secretary's office an Office of Environmental Justice headed by a Director appointed by the President with the advice and consent of the Senate. The Office will develop a Department-wide strategic plan to ensure equal environmental protection; evaluate the extent to which people with the highest exposures to environmental pollution are being served; identify opportunities for preventing or reducing exposure to pollution for such populations; ensure public participation through an Advisory Board; and administer training and technical assistance grant programs for citizen groups.
- Section 404 requires development of an environmental justice research strategy within the Department to investigate the relationships between environmental pollution and race, ethnicity, socio-economic status, and geography. This section authorizes a competitive matching grant program to fund university and other non-profit research; permits, at EPA's discretion, the establishment of multi-disciplinary research centers; and provides state and local government grants to facilitate the processing of environmental data by geographic region.
- Section 405 requires EPA to identify Environmentally Disadvantaged Populations (EDPs), which are those communities highly exposed to potentially harmful substances in their environments.
- Section 406 requires the Department to enforce Title VI of the Civil Rights Act of 1964 to ensure that Departmental programs and policies do not discriminate against minority

populations. It also targets enforcement actions to protect EDPs with the greatest need for environmental protection services.

- Section 407 increases citizen participation in remediating and preventing pollution through small technical assistance grants to community groups and by providing citizens with the right to petition for environmental studies in their neighborhoods.

COMMISSION ON IMPROVING THE ORGANIZATION, MANAGEMENT, AND EFFICIENCY OF THE DEPARTMENT -- TITLE V

- Section 501 establishes an 11 member Commission with 3 members appointed by the President and 8 members appointed by the majority and minority parties of both the House and Senate. A total of \$4.5 million is authorized for the Commission.
- Section 503 charges the Commission with studying specific matters designed to identify management and organizational obstacles to more efficient and cost-effective approaches to pollution prevention and regulation (including those that would eliminate duplication and overlap between programs and provide better cross-media activities and results), improve EPA's relationship with states and local governments, and provide cost-efficient small business compliance/technical assistance programs.
- The Commission also would look at potential management improvements from better linkage between identified risk priorities and allocation of Departmental resources, consolidation of other Federal environmental programs into the new Department, and consider other corrective measures -- beyond those specified in other parts of the bill -- to improve overall management and efficiency of the Department, including further improvements in contract and information resources management, and internal controls and accountability.

Mr. SYNAR. Thank you, Mr. Chairman. I am pleased to join with you and your subcommittee again on the proposals to elevate EPA to a Cabinet-level position. I am especially pleased to see Administrator Browner here before us today on this proposal, and particularly my dear friend and mentor, John Dingell, who is the father of several of the most important environmental laws of this country.

I provided a lengthy statement at the March 29 hearing and laid out in some detail my reasons for supporting the Cabinet elevation and for including in that legislation a number of provisions designed to correct the longstanding management problems of the Agency. I will not take the time to reiterate those points.

However, I will briefly note that the draft proposal addresses many problems we addressed in the 1990 bill. These areas, such as contracting and statistics collection and analysis, remain in critical need of reform. In other areas, such as information resources management, new provisions have been included to address very significant problems which my own subcommittee and others, such as Mr. Dingell's, have focused on recently.

I am well aware that many of these problems can be addressed administratively, but the unfortunate fact is that they have not been. And like many other issues we confront on a daily basis, we cannot merely assume that they will be adequately addressed in the future without substantive directives from Congress.

In that regard, I am pleased to see that the inspector general and GAO, two offices with extensive experience in many of these areas, have endorsed this effort to legislatively correct longstanding management deficiencies in the Agency.

I am also pleased that the draft proposal contains my title for establishing a temporary Presidential Commission which would examine other management and organizational problems at the new Department, with special emphasis on improving the efficiency and cost effectiveness of permitting and other programs.

As I noted on March 29, a package of objective, sensible recommendations from such a Commission could serve as a much-needed catalyst for additional reform and savings. I believe we owe it to the Agency, to the regulated community, and to our citizens to provide this mechanism for identifying further structural, management, and other obstacles to better, more cost efficient and more environmentally beneficial methods of regulation. Such reforms have become far more important as we attempt to reconcile our increasing needs with dwindling resources.

The proposal before us will need certain revision before we consider it. I look forward to working with you, Mr. Chairman. This legislation provides us a vehicle for meaningful management reform, and I look forward to working with you on this as we proceed through.

Mr. CONYERS. Thank you, Chairman Synar.

I now recognize Mr. Bill Clinger of Pennsylvania, the ranking full committee minority member.

Mr. CLINGER. Thank you very much, Mr. Chairman. Today, we are brought together by a common goal, which is to elevate the EPA to a Cabinet-level Department. It should be a relatively easy

goal to attain, but it clearly has not been, since we have been dealing with this for some time now.

At the beginning of this session, I, along with several of my colleagues, introduced a "clean" elevation bill because it really seems to be the easiest, most expeditious, and certainly the least costly means to elevate the Agency. In addition, the road we traveled during the 101st and 102d Congress has shown us that keeping it simple is key. If instead we insist on weighing the bill down with legislative baggage, my fear is that we will find ourselves once again in the same predicament. Although individual pieces may have merit, when joined together the bill comes controversial and passage is, in my view, jeopardized.

In addition, though, I am frankly very concerned about the cost of the legislation. The "clean" bill has a price tag of \$30,000 per year according to CBO. The Senate-passed version has a price tag of approximately \$8 million each year. The bill that is on the table today goes beyond either of these two bills by adding new offices, studies, and other mandates to the Agency. So I would ask that we obtain an official CBO estimate as soon as possible on the legislation so that we can provide this framework and have this kind of comparison.

Most Americans, including the President, don't want to see an expanded Federal bureaucracy. However, in order to implement all requirements in the legislation before us today, there would be no other choice. EPA is having difficulty implementing programs already enacted by Congress, and the budget just submitted by President Clinton decreases the EPA budget. I am afraid that we may be moving in the opposite direction by expanding the Federal bureaucracy, adding to the Agency's workload, and increasing costs.

We also need to examine this issue within a larger context, Mr. Chairman. We are faced with almost a \$300 billion deficit. We have so many pulls now on a very limited Federal pie—health care, unemployment insurance, and entitlements just to name a few. If we took a poll of Americans on the street, it is hard to imagine that in setting national priorities, the expansion of EPA would be high on anyone's list. We can neither afford nor justify enacting a bill that will cost taxpayers millions more each year.

One additional issue, Mr. Chairman, that I have raised in each previous hearing regarding EPA Cabinet status is my concern about the lack of leadership at the Agency. Although Ms. Browner has been confirmed, there are not other confirmed policy officials at the Agency. In fact, there is no one even nominated to run the water, Superfund, pesticides, or other environmental programs. This is a very serious management problem, which I understand is affecting morale at the Agency. So I look forward to hearing Ms. Browner's explanation, discussion about this, as well as when she realistically expects to have her team in place.

As I indicated previously, it is ironic that we are considering EPA elevation legislation when there are very few people to elevate.

So, Mr. Chairman, I look forward to today's witnesses. I am delighted to welcome our esteemed colleague, Chairman Dingell, to the witness table.

Mr. CONYERS. That is a good line. Thank you very much.

We are pleased now to recognize another chairman, of the Health and Environment Subcommittee, and a ranking member of Government Operations, the gentleman from California, Mr. Henry Waxman.

Mr. WAXMAN. Thank you very much, Mr. Chairman. I commend you for holding today's hearing on legislation to elevate the Environmental Protection Agency to Cabinet status. I strongly support transforming EPA into a Cabinet Agency. Certainly the Agency's vitally important mission and its broad range of important mandates merits Cabinet status, and we would all benefit from greater EPA participation in deliberations at the highest levels of our government.

It is not my view, however, that this is an objective which should be pursued at any price, certainly not at the price of undercutting EPA's effectiveness. Unfortunately, this is the choice presented by the Cabinet bill approved by the Senate earlier this week. Amendments added to this bill on the Senate floor impose nefarious and burdensome new mandates designed to undermine the Agency's efforts to protect our Nation's health and environment.

As amended, the bill would sacrifice vitally important health and environmental protection gains we have achieved for the American public through years of hard fought battles here in Congress. In particular, the Johnston amendment raises serious concerns. This amendment directs that as part of any final regulation EPA must undertake an extensive cost-benefit analysis and which requires a broad comparison of the risk addressed by any new regulation with all other risks to which the public is exposed. This comparison is presumably to consider all forms of risks including those wholly unrelated to the environment and EPA's mission, such as dietary risks, car accidents, and smoking.

It is clear that an objective of this amendment is to rewrite all of EPA's environmental and health protection mandates to fit into an economist's cost-benefit view of the world. The problems with this approach are legion. To begin with, cost-benefit analysis is not the precise science that the Johnston amendment presumes. In fact, in practice the results often depend on the assumptions that are put into the calculations. Fundamental questions needed for comparing cost and benefit are left unanswered. How much in dollars and cents is it worth to prevent one child from being lead poisoned? What is the price that we put on a life saved or a case where control of a toxic chemical has avoided permanent neurological damage? What is the value of a life made more enjoyable by virtue of cleaner skies and less polluted air? How many dollars is it worth if we are available to prevent the ecosystem destruction and skin cancers expected to accompany depletion of the stratospheric ozone layer? And how do we put a price on the ability of an elderly citizen to be free of pollution-induced emphysema?

When we look at the range of cost and benefit estimates which would be cited in support of a given result, it seems clear that in the end the result of any cost-benefit exercise will be arbitrary, essentially depending on the biases of whoever is conducting the analysis. Time and again Congress has concluded that devoting scarce Federal resources to this approach is not a sensible way to make public policy. Legislation we have adopted has provided more

concrete guidance to assure that public health and the environment are protected.

In the 1990 Clean Air Act amendments, for example, we have a mixture of health-based standards, technology-based standards, and standards based on economic and technical practicality. These are carefully considered judgments which Congress designed to fit the specifics of each of the problems in question. It makes no sense now to throw over the regime of existing health and environmental protection measures, not just in the Clean Air Act, but in all the statutes within EPA's jurisdiction and for the Senate's rash new "one size fits all" solution.

In conclusion, I favor EPA's elevation to Cabinet status. But I will strongly oppose this effort if it is used, as it was in the Senate, to undermine the Nation's health and environmental protection laws. It is simply not worth the price.

Thank you, Mr. Chairman.

Mr. CONYERS. I thank you very much for your sound advice, sir.

The chair is pleased to recognize the ranking subcommittee minority chairman, Mr. Al McCandless of California.

Mr. MCCANDLESS. Thank you, Mr. Chairman. I appreciate your calling this hearing and look forward to today's witnesses.

At our first hearing on EPA we heard from three panels of experts, both governmental and private sector, who testified to an Agency in trouble. The General Accounting Office's tale of contract mismanagement, procurement inadequacies, and administrative conflicts was truly a parade of horrors. The inspector general admitted to an Agency fraught with ineptitudes, but maintained his own nonculpability, claiming "I tell everyone what's wrong but nobody listens." And finally, our panel of outside experts unanimously concurred in the need for an independent Commission's review of EPA management structure and practices.

It was not a pretty picture. Subsequent hearings featured panels of citizens who discussed problems with the adequate and consistent enforcement of environmental regulations in their own communities. Today's witnesses will be describing more of the same.

On top of that, I have my own experiences with EPA which lead me to question the Agency's ability to fairly and impartially administer uniform program regulations. My questions today will detail some of these concerns.

Mr. Chairman, I am cosponsor of H.R. 824, the clean elevation bill, but based upon facts as they have been presented to date, I wonder why. I hope that today's witnesses can dispel my concerns, and I look forward to hearing from them.

Thank you, Mr. Chairman.

Mr. CONYERS. Thank you, Mr. McCandless.

I invite all the other members with opening comments to submit them. Without objection, they will be included in the record.

We recognize the dean of the Michigan delegation, chairman of Energy and Commerce, the chairman of his oversight subcommittee, and the person who has probably held more hearings on the substantive work of this Agency that is proposed for Cabinet status than any other person in the House or the other body. He has examined and sponsored and oversighted the legislation and the specific conduct of this Agency more than anyone that I know, and it

is a distinct honor that he would begin the discussion here this morning.

We in both subcommittees welcome you, Congressman—Chairman Dingell, to these hearings.

**STATEMENT OF HON. JOHN D. DINGELL, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF MICHIGAN**

Mr. DINGELL. Thank you, Mr. Chairman, members of the committee. I want to express my personal appreciation for your kindness and courtesy to me this morning. I would like to express my delight in seeing members of our committee here—Mr. Synar, Mr. Waxman, and Mrs. Collins—who serve on and have important responsibilities on the Committee on Energy and Commerce. I also want to express my appreciation to you for your kind introduction, for the long and happy association that you and I have shared in the Congress, and also for the way that our two committees over the years have worked together on matters of important concern.

I would ask unanimous consent that my entire statement be inserted in the record, and I will try and excerpt from it in the interest of time.

Mr. CONYERS. Without objection, so ordered.

Mr. DINGELL. Mr. Chairman, you are embarked upon a difficult, and probably politically necessary task, the creation of a new Cabinet-level Agency.

It is fair to observe that when all else seems to fail the Peter principle commands us to reorganize. It appears that we are engaged in that exercise today.

If you want a wholesome environment, there is no real need to elevate EPA to Cabinet status. The only need is to see to it that it carries out its functions and it is properly organized and constituted—something which is a very apparent failure on the part of that Agency.

We have seen over the years that the Congress is constantly called upon to create new Cabinet-level agencies. The veterans wanted an Office of Veterans' Affairs, or rather a Cabinet-level agency, but that agency is accomplishing very little in terms of bettering the affairs of the veterans. A similar situation exists with regard to education. Education is not significantly better off because we are now spending a lot more money to have a hierarchy of Secretaries, Assistant Secretaries, and so forth. And, if you look around you, you will find that the same situation obtains on almost every elevation of Cabinet officers.

Usually the result is that the serious business of the Agency does not get done while the reorganization takes place, automobiles suitable to Cabinet and subcabinet officers are purchased, a new building is constructed, with appropriate dedication ceremonies, more secretaries are hired for the Cabinet officers. A large number of important Deputy Secretaries, Assistant Secretaries, Deputy Assistant Secretaries, and Special Assistants to the Secretaries are selected, and a great period takes place while we figure ways to spend more money on the administration rather than actually carrying out the mission of the Agency.

Now, I am willing to hold my nose and support this. And I suppose this committee is going to do the same thing. But I would

urge that there are certain things that you are going to have to address before you can make this Agency work. The simple creation of another Cabinet-level agency is not going to do very much in terms of the environment, except to spend significant amounts of money to divert important efforts from cleanup to administration and leave us generally with a significantly larger Federal budget deficit.

However, it appears that this thing has a head of steam and we should probably hold our nose and accept the judgment that this thing is going to go forward, but try and constrain and control the obvious abuses which now exist or which could flow from the creation of such agency. First of all, I think that if this Agency is to be created, it should not be permitted to change substantive statutes. The Agency is literally awash in substantive statutes not now being administered fully, and the frustration of the Congress, including the members of our committee, is well known. I would urge you, first of all, that substantive statutes not be changed.

The Agency needs to collect in an honest fashion information and data, and it needs to do so, as I said, in an honest fashion. That information must be collected and it must be done in a way which is open and in which the information is held up so that it may be tested in the light of good science and good information.

Now, there is a question of regional administration. The regional administration is most curious. EPA is really a collection of independent fiefdoms which function differently according to the whim and caprice of the local administrators without a great deal of either accountability to or effectiveness on the part of the Washington office and the Administrator.

There needs to be a reliance on good science, and I will discuss that in a minute. But quite honestly, EPA has functioned on the basis of cooked science, cooked information, and has not made fair information available either to the public at large or the Congress in connection with the consideration of legislation. And I would point out that that very specifically has happened in connection with things like that Clean Air Act, Superfund, and so forth.

We have to see to it that this reorganization does not exacerbate serious personnel problems which now exist inside the Agency. I think that if you are to do this, you must address the question of contracting. Contracting has increased by better than 200 percent in terms of expenditures, while the growth of EPA's own work force has been restrained. The result has been that we have seen now a creation of a shadow government of contractors who are exercising governmental functions to circumvent restrictive Federal personnel rulings. The result is that you have seen high cost contractor employees, computer specialists and things of that kind, doing work like cleaning animal cages. Why? Because the policy was that we were going to have contractors. So we have got highly skilled contractor employees costing lots and lots of money doing low-skill Federal jobs which would pay vastly less were they to be administered by Federal employees.

Now, there is approximately \$12 billion in umbrella contracts which are being administered by EPA. EPA hasn't got any idea what those contractors are doing. As a matter of fact, you have got contractors supervising contractors. And one little story about EPA

was that we at the Oversight and Investigations Subcommittee had the opportunity to run into some of the expenditures and we found that they were buying amongst other improper things like clown costumes and reindeer suits.

And we asked them, "Now tell us, please, whether the supervisory contractors wear the reindeer suits or whether they wear the clown costumes?" Perhaps that is a question that you should address to the Administrator when she comes forward to discuss this process.

In any event, we found haphazard management of more than \$1 billion in contract obligations. In a single investigation alone, GAO found that one contractor was billing \$167,000 for contractor employee parties and picnics, including \$19,600 for entertainment, \$300 for party invitations, \$850 for photographers, \$100 for a dance instructor, \$3,200 for a dance band, and, it should be noted, a wonderful reindeer suit.

Another GAO audit found billings for retirement gifts of a video recorder or grandfather clocks costing some \$2,850—this included delivery and installation—as well as a number of other questionable items. GAO also documented charges for golf outings and tickets to professional sports events, all billed to the taxpayers as a part of the careful administration of contracts, which appear to be an advantage less to the public at large than it does to the contractors. So you are going to have to address with considerable care the question of contract administration. Contract administration down there is simply out of hand.

One of the things that you will have to address is to see to it that there are enough people to administer the contracts and audit the contracts. You are going to have to see to it that there is a strong inspector general and that the audit function is vigorous and active, because of the climate that you have with regard to contracts. I would point out that a similar situation obtains at DOE into whose affairs we are now looking, and we expect to find other enjoyable evidences of contractor benefits.

Ms. Browner—and I want to say I think she is going to be a good Administrator, and she will probably be a good Secretary if you elevate this Agency to that particular task—appears to be determined to try and correct the abuses which exist down there. She described already the management problems at EPA as appalling, and she described them as an intolerable waste of the taxpayers' money. She is committed strongly to administrative reform, but this needs to be buttressed by statutory authority closing loopholes and vigorously addressing situations which provide for inadequate administration, unwise contract administration, and a number of other abuses which we found over the years.

Now, one of the things that we have found that is a source of constant aggravation at EPA is they don't seem to have a good data base. They don't seem to have sound information. They have had the practice of refusing to make information on these subjects available to the Congress. One of the noteworthy things that we found during the time we were dealing with clean air is, first of all, they didn't seem to know what they were doing, had no information, and what information they had was a proprietary model which was run by—guess who—a contractor, and that contractor

refused to make that information available to the Congress. So we had to go to the Energy Information Agency at the Department of Energy to get the information that we needed to do the job that we had to do in terms of writing an intelligent Clean Air Act, because you can't write a good law without adequate information to know what the facts are, what the problems are, what the consequences are of different actions that the Congress would mandate as a result of significant statutory change.

Now, this committee under the leadership of former colleagues of yours, Mr. Brown of Ohio and Mr. Moss of California joined me in pushing through a requirement that there be an Energy Information Agency at the Department of Energy. That was because we had the same kind of inability to know what our energy situation was, and because there were a large number of people who were lying for profit out there, including at some of the Federal regulatory agencies, and we never knew quite what the facts were with regard to energy, so we had to do something of this kind.

Well, we got this in the Department of Energy and we desperately need it. There must be an independent agency within the Department of the Environment. It must be an agency which has the authority to gather, collect, and to make available the truth on facts relative to the environment.

One of the things which we found we asked for natural gas information from the Energy Information Agency after we had set this Agency up, was that the Secretary of Energy sat on the report for a long time. We finally pried it out of the Department of Energy's hot little hands, and guess what happened. We took the information which was gathered by the Energy Information Agency, and it showed that the President's proposed natural gas legislation before us was flawed, and guess what happened: the administration fired the head of the Agency for simply telling the truth and doing his job and providing the information that the Congress requested. You must see to it that that kind of unfortunate event is not replicated in connection with the new Agency.

Now, so I would urge strongly that the information provisions of the 1990 House-passed EPA Cabinet bill should be the basis for the legislation, and that you take steps to assure that there is adequate independence and protection of that Agency to ensure that it provides us truthful information with regard to the environment.

Now, I will tell you that we have looked at some of the way the rules are made down there. They are made in a most curious fashion. Not infrequently there is excessive input by contractors who are exercising in that capacity an executive function. Now, this should probably not surprise you because this Agency uses contractors to open mail, it uses them to pay themselves, it uses them up to the brink of auditing—they certify that expenditures made are correct and all that sort of thing, and as a result we have all these curious expenditures for public money by contractors. In addition, contractors treat information down there as a proprietary matter, and as a result we are not able to get the information which we need to have to do the work which we need in terms of either overseeing the Agency or writing legislation or seeing to that the law is properly carried out.

We saw one individual who prepared the underlying basis for the carbon monoxide standards. He engaged in practices which later brought down around his ears the wrath of the Food and Drug Administration. He signed one of the well-known consent decrees in which he said he had never done anything wrong but he wasn't going to do it again.

But we still have the carbon monoxide standards in place, and we don't know whether they are adequate to protect the public health, inadequate to protect the public health, or costing excessive expenditures. This is all because of carefully cooked work which was done to provide us with the basis for regulatory and legislative enactments. I would beg you to protect us against that kind of misfortune again, because it serves no one well.

Now, the legislation, I reiterate, Mr. Chairman, should not be to address substantive questions. We have a huge number of environmental laws dealt with by many committees in the Congress, which are usually quite carefully supervised by the committees—Clean Air, Clean Water, Superfund, RCRA, laws relative to pesticides and things of that kind—and there are many people rushing around out there who want to use this legislation as a device to change substantive law. I would beg you not to do that. That would be an unwise intrusion into the jurisdiction of other committees, but it also would be something in which you would probably legislate unwisely because you simply would not have a proper underlying basis for that legislative action.

I would hope that it would not be used for the creation of new programs. There are a lot of people rushing around who want to create new programs, and, incidentally, spend new money, probably unwisely. I would beg you to be careful about adding provisions that will delay regulations. EPA now has a huge number of regulations which were mandated by law. We asked at the time of the Clean Air Act consideration whether or not they could meet the deadlines for rules. They said, "Oh, of course, we can meet the deadlines. Have no fear." In point of fact it turned out that they couldn't, and the matter is now in the hands of the courts.

But I think that to change even that unfortunate situation would be unwise since you ought not be doing things like changing deadlines or burdening EPA with new analysis not required by existing law.

Now, I would note that there are a lot of people who have decided that this is going to be their passport to a new Federal job as an Assistant Secretary, or Deputy Secretary, or Deputy Assistant Secretary, or Special Assistant to the Secretary—for all manner of purposes that they happen to think would be very good, and they are going to come to you and urge you to increase the number of subcabinet-level positions over that which could be defined by an ordinary upgrade of existing EPA positions. I would beg you not to do this. There is no great need for all three deputies.

The problem at EPA is very simply over the years, that they have not been doing their job. They have fixed unwise deadlines for themselves. They have said they could do things which they couldn't. They have not established a proper pattern of sensible and intelligent administration. They have not done the job that the Congress has mandated them to do. They have hired contractors,

whom they have paid splendidly for doing very little, except feathering the contractors' nests.

There are now a huge number of chiefs down there and what we need is more Indians. And we need a few contract supervisors. We need a few contract administrators, and we need a good number of auditors to find out how this money is being wasted and misspent.

Now, I want to express particular thanks to you, Mr. Chairman, and to your staff, and to Chairman Synar and to his staff, for working with us. We want to continue. We want to work closely with you on setting this Agency up so that it will run well and in the public interest and won't simply continue the squandering of money as it has done.

And if you have some questions, I probably have some useful comments which we all might enjoy. So I will thank you for your kindness to me this morning and respond to any questions you wish to ask, Mr. Chairman.

Mr. CONYERS. Well, thank you very much, Chairman Dingell.
[The prepared statement of Mr. Dingell follows:]

TESTIMONY OF
THE HONORABLE JOHN D. DINGELL (D-MICH.)
BEFORE THE COMMITTEE ON
GOVERNMENT OPERATIONS
ON
PROPOSALS TO ELEVATE THE
ENVIRONMENTAL PROTECTION AGENCY
TO CABINET STATUS

MAY 6, 1993

Mr. Chairman, I appreciate the opportunity to discuss proposals to elevate the Environmental Protection Agency (EPA) to a Cabinet agency. In general, I have found it difficult to support the creation of new Cabinet agencies. For example, when President Carter proposed the Energy Department, he sought to abolish an independent regulatory agency, the Federal Power Commission. I joined two former Members of this Committee, Congressmen John Moss and Bud Brown, to amend the legislation. More than 300 Members voted with us to retain the present Federal Energy Regulatory Commission. With that and other changes, I ultimately supported such legislation.

I could support the elevation of EPA if the legislation does not change substantive statutes within our Committee's jurisdiction, if it addresses several provisions on contract management, information collection and analysis, regional administration, and reliance on good science, and if it does not exacerbate EPA's already serious personnel problems. Let me be more specific.

EPA's Shadow Government

As the authorizing committee for most of the major environmental statutes administered by the EPA, our Committee has gained a certain insight and understanding about the agency's operations. Further, since 1980, the Oversight and Investigations Subcommittee, which I chair, has held thirty-five formal oversight hearings on all aspects of EPA activities. Most recently we focused on contractor abuses, ineffective contract management, and, in general, runaway contracting at the Agency.

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EPA's contract program has increased by more than 200 percent during the last decade while the growth of EPA's own work force was restrained. This created what I call a "shadow government" of contractors exercising governmental functions in order to circumvent restrictive federal personnel ceilings imposed by previous Administrations. EPA managers have become heavily reliant on them.

A recently completed review of the vulnerability of EPA contracts to fraud, waste, and abuse by the Agency's Office of Acquisition Management reveals that one major office reported that it "had lost virtually all fiscal controls over subcontracted work" and that "most project officers ... do not come to their jobs equipped with either the book knowledge or 'gut sense' needed to identify and resolve contracting improprieties."

EPA's mission must include careful management of taxpayer funds as well as strong protection of the environment. As families struggle to tighten their belts, they simply will not tolerate wasteful payments to EPA contractors for items like lavish employee parties and golf outings, the granting of award fees for shoddy work, and other abuses. They will not accept haphazard EPA management of the more than \$1 billion in annual contract obligations.

Administrator Browner, in testimony before the Subcommittee on March 10, 1993, described the contract management problems at EPA as "appalling" and an "intolerable waste of taxpayers money." She committed to aggressive administrative reform in several key areas. I applaud that commitment, but administrative action must be buttressed by statutory authority to close loopholes to provide the impetus for greater controls and needed reforms.

New Certification and Penalty Authority

The Department of Defense (DOD), currently has legislative authority to require that contractors certify that their proposals for settlement of indirect costs exclude unallowable costs. DOD can impose financial penalties on contractors who fail to comply.

EPA lacks similar penalty authority to deter contractor abuses. Our hearings have documented a "catch me if you can" attitude by EPA contractors and subcontractors in their billing of unallowable costs. Too often those costs slip through and the taxpayer pays. Extending the DOD authority to EPA

would enhance the deterrent effect of the Agency's limited audit and contract management resources.

Employee Morale Loophole

At a March 1992 hearing, the General Accounting Office (GAO) questioned \$167,000 for contractor employee parties and picnics claimed in 1990 by CH2M Hill, one of the EPA's largest contractors. The amounts claimed included \$19,600 for entertainment, \$300 for party invitations, \$850 for photographers, \$100 for a dance instructor, \$3,200 for a dance band, and even a reindeer suit for a Christmas party. The contractor sought to have EPA pay these costs.

In addition, recent audit work by the GAO disclosed billings by Arthur D. Little, Inc. for retirement gifts of a video recorder and four grandfather clocks (costing \$2,815, including delivery and installation), and other questionable items. The GAO also has documented charges by Metcalf & Eddy for golf outings and tickets to professional sports events.

Contractors have relied repeatedly on the "employee morale" loophole in the current procurement regulations to justify such outlandish charges for entertainment, gifts, and recreation by employees and their families. We must close the loophole and require that the regulations be tightened to clearly specify that the "employee morale" costs of entertainment, gifts, and recreation cannot be charged to the government in any amount. The contractors can still provide for the morale of their employees. They just cannot charge these costs to the taxpayer. This approach is identical to the August 1992 recommendation of the EPA and its Inspector General to the Office of Management and Budget.

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Documentation of Records

We also have discovered that EPA auditors have had problems with travel documentation and records retention by contractors. My proposal would require certain minimum information to support travel claims, including the time, date, and purpose of the trip, and the identities of all travelers and their titles or relationship to the contractor. This mirrors the type of information required by the Internal Revenue Service to support travel claims and would

make it easier for Agency employees to review travel expenses claimed by contractors.

Further, a legislative clarification is needed to ensure that costs are allowable only to the extent that they are supported by sufficient documentation to permit audits. This common sense provision would address a problem revealed in our investigation of the Computer Sciences Corporation. That contractor asserted that it should be reimbursed even though it had lost key payroll records. Reportedly, its janitorial service had accidentally thrown these records away. That is unfortunate. But contractors must operate in a business-like manner. The burden of adequate documentation rests on the shoulders of the contractor.

Umbrella Contracts and Inherently Governmental Functions

Our investigations also revealed that the Agency relies heavily on large mission contracts or "umbrella" contracts, which are extremely difficult to manage and lack incentives for cost control and effective performance. A recent compilation of such contracts indicates that there are hundreds, with a total potential value of \$12 billion.

These contracts are issued with broad statements of work by one program office and, over the course of their term, other EPA's offices "piggyback" onto them for services without competitive bidding. Subcontractors are also added without competition. In addition, too often these contractors engage in governmental functions.

We must curb these contracts by limiting their term, increasing competition, severely restraining "piggybacking" or "contract shopping," and ensuring that contractors are not performing functions that should be handled by the Federal work force. We also need a clear statement of policy against transferring inherently governmental functions to private sector contractors.

Reliability of Information Collection and Analysis

Facts and analysis should shape policy; policy should not shape fact and analysis. Sound policy development depends on accurate objective data and analysis. This was the reason the independent Energy Information Administration (EIA) was formed in the 1970's within the Department of Energy.

Similarly, an independent Bureau of Environmental Statistics is essential to the creation of this new Department.

An example of this problem was the Environmental Protection Agency's (EPA) handling of acid rain legislation. EPA and its contractor developed a proprietary or "black box" model to evaluate the emissions from powerplants. When any Member of Congress wanted an evaluation of the effects of an alternative policy, EPA could refuse to do it or if they did, they did so in secret. The Members never knew the assumptions EPA used. There was no independence.

As an alternative to EPA, we went to EIA to use its data base to undertake the analysis. Using peer reviewed data and analysis, EIA was able to analyze alternative policies. Even though EPA fought EIA's involvement, after the legislation was enacted, EPA used EIA as the source of their information in developing the acid rain regulatory program. The value of independently developed, peer reviewed data and analysis was recognized.

In the early 1980's, a problem with EIA's independence arose. One of the difficult issues in the early 1980's was natural gas wellhead pricing regulation, and the so-called "contract problem." I requested EIA to evaluate the problem and several proposed legislative solutions. The then-Administrator, Erich Evered, undertook the analysis. As with other draft studies, a copy was given to the Office of Policy Analysis at DOE to make its comments. DOE was not happy with EIA's evaluation. EIA argued that the take-or-pay proposal was a significant problem and that the Administration's bill did not do much to affect the problem. Former Secretary Hodel embargoed and then released the study. Erich Evered was fired shortly thereafter.

Thus, I submit that in order to ensure independence, such as with the Census Bureau, the new head of the Bureau of Environmental Statistics should be appointed for a fixed term, not to be removed without cause. Again, I recommend that the information provisions in the 1990 House-passed EPA Cabinet bill be used as the basis for this legislation. That bill included an independent Bureau of Environmental Statistics headed by a Director appointed by the Secretary. The Director could only be removed for malfeasance, maladministration, or neglect of duty, thereby assuring a measure of independence. Also, that bill assured that the new Bureau must honor Congressional requests for data and analysis.

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I understand, however, that there are proposals for extensive provisions for information resources management and a Chief Information Officer that may go beyond the provisions of current law in title 44 of the U.S. Code. I am concerned that such provisions could undermine the independence of this important Bureau. I want to avoid that.

Credible Science

In 1984, our Subcommittee, with the help of the GAO, found that the EPA sought to revise its carbon monoxide standard under the Clean Air Act after relying heavily on several studies published in medical journals by a cardiologist employed by the Veterans Administration in California, Dr. William Aronow. Unknown to EPA, however, in June 1979 the Food and Drug Administration (FDA) began an investigation for Dr. Aronow's drug-related research activities for alleged violations of its regulations. In June 1980, FDA notified Dr. Aronow of the results of the investigation. In October 1982, a consent agreement, apparently in lieu of an FDA disqualification proceeding, was signed limiting Dr. Aronow's access to drugs and service as a clinical investigator of drugs. Dr. Aronow admitted, however, to none of the allegations.

In June 1982, FDA read a Federal Register notice about an Aronow study for EPA. In July 1982, FDA notified EPA's Pesticides Office of its investigation. The written notice was reportedly lost in the maze at EPA, going uncovered until our hearing.

More recently, in March 1992, a panel of experts reported to the EPA that the agency lacked a coherent science agenda and operational plan to guide scientific efforts throughout the agency; that EPA has not clearly conveyed to those outside or even inside the agency of its desire and commitment to make high-quality science a priority; that appropriate science advice and information is not considered early or often enough in the decisionmaking process; and that science should never be adjusted to fit policy. Yet, a perception exists at EPA that it lacks adequate safeguards to prevent this from occurring; and that there is a need for a peer review and quality assurance program at the EPA.

This legislation must establish that EPA develop and acquire the best, most credible, and unbiased science and use it in EPA programs. Also, it must require effective peer review and quality assurance guidelines for all

science based on dependent products and technical information, including those from contractors.

Regional Administration

One of the most common complaints we have heard from industry, states, and the environmental community about EPA over the last twelve years is that each of the ten Regions are independent fiefdoms, that apply national program priorities inconsistently and with minimal accountability. Ironically, at times we have had senior headquarters officials suggest that we hold oversight hearings with Regional officials to get them to implement national program priorities and mandates. In other cases, such as implementing de minimus settlements with small contributors at Superfund sites in order to minimize transaction costs, national priorities and policies were ignored by particular Regions.

While not a panacea, a strong directive in this legislation that the Regions shall implement, execute, and enforce national program priorities and policies established by the Secretary, Deputy Secretary, and Assistant Secretaries -- all Presidential appointees -- will send an important signal and improve coordination between EPA Headquarters and the Regions,

From a broader perspective, this legislation should not be used as a vehicle to address substantive environmental policy matters, authorize new programs, or provide such authority to the EPA. I will strongly oppose any such efforts. Further, provisions should not be added which will delay regulations required by the authorizing legislation. The EPA is currently experiencing difficulty meeting many statutory deadlines under the Clean Air Act, RCRA, and other programs. In this respect, I am particularly concerned about several provisions added last week during Senate consideration of the bill which will cause delay and adversely affect existing programs. I have indicated to the Parliamentarian that they appear to relate to matters within our jurisdiction.

Delegations of Authority

EPA has numerous delegations of authority. Our Subcommittee tried last year to identify all of them. We found many were outdated and overly broad. The delegations are not centrally located and easily accessible to the public.

Further, important policy issues are not being decided by policy people appointed by the President. In fact, only a few days ago EPA sent a letter to a New York official modifying, without public input, a long-standing policy "effective immediately" regarding cross-border sales of vehicles subject to different emission standards. This policy was signed by a division director of an office established under the Air and Radiation Assistant Administrator's Office. I had written to the EPA urging that such a policy change be carefully considered, with public comment. The legislation needs to require that all delegations are centrally located, public, and periodically reviewed. Also, policy issues should be decided by policy offices.

Finally, at a time when Administrator Browner is embarked on an effort to fully fund full time EPA personnel to administer these programs while accepting some personnel cuts, this legislation should not result in a proliferation of Assistant Secretaries, Deputy Secretaries, and Regional offices at the EPA. I note some want 20 or more Deputies and numerous Assistant Secretaries. EPA does not need more chiefs. EPA needs real workers. The EPA budget and personnel ceilings are already under great stress.

In closing, let me express my appreciation to you, Mr. Chairman, and your staff and Mr. Synar and his staff for working with me on these legislative issues as you develop a bill. I want to continue to work closely with you so that jointly we can support a sound bill throughout the process, including any conference. I also want to assure you that I am working with the Administrator on many of these matters.

Thank you.

Mr. CONYERS. If there is anybody in the room whose ardor to rush to elevation of this Agency to a Department hasn't been dampened, I would like to know who they are. [Laughter.]

I want to, first of all, seriously comment that the issues and the cautions that you have highlighted are right on. They are directly within the parameters that we have examined, frequently together. Our committees and you and I personally have worked in many areas together and this certainly will be included in it.

Your experience with the actual operation of this Agency is one that we will rely on in formulating how we resolve many of these sticky questions, and to that extent you have been extremely helpful. I would like to discuss with you, and we don't need to do it particularly today or on the record, but the procurement and contractor reforms, obviously, will have to be addressed. I would like to bring to your attention the chief information officer and the necessity to deal with that. The Bureau of Statistics, all of these items which you have referenced, the conflicts of interest that have in some instances been flagrant, and many of these other issues are absolutely essential.

And I want to invite my Republican colleagues to join us in this inquiry. This is not a partisan move. We are not trying to pull a fast one. As we all know, the House acted on this legislation during a previous administration, and in that regard I think that your experience and your continuing comments will be helpful not only to ourselves but to the other body as well.

And so my thanks to you for starting this discussion off. The Director is going to be our next witness, and I am glad that you expressed confidence. In the short time that she has been on the job, she has had the good sense to make herself available to you, and I think that this is going to lead us all to work in a kind of way that will, if this comes to pass, it will be done so in a way that we can all reflect upon it, that it was done with good judgment and excellent leadership of several committees working together.

I note that Dave Finnegan, your long-time staff director, is on board, and we wanted to, just for the record, make sure that he is included in it.

Do any of the members of the subcommittees have any comments or questions they would like to direct to Chairman Dingell? If there are none, then I would like to thank you. Did someone raise their hand? Oh.

Mr. ZIMMER. Thank you, Mr. Chairman.

Mr. CONYERS. Is that Mr. Zimmer down there? Well, I recognize the gentleman, at his own peril, to ask any questions of Chairman Dingell that he sees appropriate. [Laughter.]

The gentleman is recognized.

Mr. ZIMMER. Thank you, Mr. Chairman. Just seeking some guidance and wisdom from Chairman Dingell on an issue that he raised about reliance on good science, and he said some of the data, scientific data had been cooked. That brought to my mind the issue that Congressman Waxman had referred to, which is the Johnson amendment adopted in the Senate.

Are you familiar with the text of the Johnston amendment?

Mr. DINGELL. I have not read it yet. We will look at it very carefully. If you like, I will be happy to give you comments.

Mr. ZIMMER. Yes.

Mr. DINGELL. Our staff will be happy to review that for us and we will share with you the best information we can get on it.

Mr. ZIMMER. In view of the fact that only 3 Senators voted against it, I think it may have something to commend it.

Mr. DINGELL. That should probably frighten you to death. I have found that it is usually the practice of the Senate to have great difficulty with things which are easy and sensible and to vote through, with great enthusiasm, matters which probably are of doubtful wisdom.

Mr. ZIMMER. In marked contrast to this House, I have noticed. Thank you very much, Mr. Chairman.

Mr. CONYERS. Mr. Hayes, the gentleman from Louisiana seeks recognition?

Mr. HAYES. John, I just noticed Synar left. He told me yesterday it was about time somebody put you in your place. I just wish he was here. He was all set to go. [Laughter.]

You might mention that to him back at the committee later on.

Mr. DINGELL. We will do so.

Mr. CONYERS. The gentleman from Illinois, Mr. Hastert.

Mr. HASTERT. Well, Mr. Chairman, I certainly appreciate your being here today. I think you do bring some due caution in looking at the elevation, and some cautions, in fact, that when it does become elevated we should look at.

I sit also on Environment, Energy, and Natural Resources, and I think your counsel will be well followed. I look forward to ongoing cooperation between those two committees to make sure that there is a measured view of what happens. So I appreciate your being here. Thank you.

Mr. DINGELL. Thank you. I would like to thank all of the members of the committees, Mr. Chairman, particularly those who you share with the Commerce Committee. We are very proud of our members. You chair a great and distinguished committee, and I know you will do careful and wise and good work on this matter.

Mr. CONYERS. Thank you very much, Chairman Dingell.

The gentleman from Florida, Mr. Mica, has sought recognition, and he is recognized at this time.

Mr. MICA. Thank you, Mr. Chairman. I have looked at the situation that you have described, just as a new Member of Congress, and we had a couple of hearings and the testimony was absolutely appalling on the activities of this Agency.

I have some real reservations about elevating incompetence, and I am really concerned about us moving forward with raising this Agency to a Cabinet-level position.

I asked my staff just to give me some of the copies of reports. Have you got them?

[Pause.]

Mr. MICA. I cannot believe that we can sit here as a committee and a Congress and elevate this total incompetence, mismanagement, waste, and abuse of taxpayers' funds to a Cabinet-level position. And this is just part of the evidence.

Mr. DINGELL. First of all, I want to thank the gentleman, and his comments are I am sure bottomed on genuine concern and sincerity. The outrage on the Committee on Energy and Commerce is not

partisan. In the hearings that we have held everybody was just outraged about the way the Agency was run.

Now, I want to say about Administrator Browner I think you are going to find she is going to try and do a good job. She is capable. She has a good record of accomplishment in other administrative tasks, and I think she will do her best.

I am not here to plead for the creation of this Agency. I have not heard a convincing argument for the creation of this Agency. I am willing to support it if it is done in a way which obviates the abuses, the failures, the waste, the fraud, and the incompetence that we have seen in the Agency over time. It is an Agency which views itself as having a mission, and therefore it hasn't got the responsibilities that ordinary citizens have in terms of—or ordinary government employees have in terms of carrying out their governmental responsibilities, and the rights of people before that Agency are handled in the most extraordinary fashion, very much inconsistent with what you and I would regard as ordinary due process.

Now, if this committee is going to recommend that this Agency be elevated, you are going to find, first of all, that in a couple of years it is going to cost one heck of a lot more than it does right now. And so it is going to be your responsibility to see to it that if this Agency is set up as a Cabinet-level Agency it should do the things that are necessary now to structure it so that you are going to bring a halt to the abuses which are clearly and readily evident to anybody.

It took us years to figure out what was going wrong down in that Agency, and the hard fact of the matter was—the basic problem is that they don't audit. The contractors run the place. There are limits on administration of contracts and auditing of contracts. The contractors are totally without responsibility and almost devoid of control.

And the sad thing that you should note is that when Secretary Browner came up and testified before our committee she did a superb job. She said this nonsense is going to cease. She went back down to the Agency, had a meeting of the Agency, and everybody in the Agency was outraged about the fact that she had admitted that there was rank, complete and outrageous incompetence.

Now the contractors even have their names in the telephone books, and it is impossible sometimes to tell who a contractor and who an employee is. One of the interesting things we found about contract administration in the Agency, it is so bad that people walk in, start doing work, bill the Agency, and they get paid as a contractor.

So you have got to bring under control the contracting abuse, and there are enormous savings of money in doing that. You are going to have to spend some to see to it that the Agency can administer, audit, and do things of that sort.

There are other abuses which you are going to have to attack in terms of seeing to it that information is properly stored, is truthful, and is available to people who need it, and shows up in the administrative process. Because most of the time down there they are not functioning on the basis of information, just on the basis of prejudice and a lot of wishes by people who want to do something. They need full funding of their government personnel because the con-

tractors are going wild, cutting a fat hog, costing a lot more, and are virtually running the Agency.

So those are some of the things which you can do. You are going to have to see to it that they do good science, which they do not now do down there, and you have got a bunch of other serious responsibilities. Frankly, I wouldn't want your responsibilities setting up the Agency. I would just simply say it is probably better to ignore the whole subject, tell them to clean house, and then come on back up here and we will talk to you about whether you ought to be a Cabinet-level Agency.

But this thing has a head of steam that I don't think can be stopped, so I am saying that as the best alternative to a miserable collection of choices that you confront, for the love of God, try and correct this situation and make a structure where they can and will do a decent job, and I hope that the members of the committee will look with sympathy on the amendments that we have been suggesting to try and clean up some of the sorry situation we found down there.

Mr. CONYERS. The gentleman from Florida's time has expired.

Mr. MICA. Thank you.

Mr. CONYERS. The chair is pleased to recognize the gentlelady from Florida, Mrs. Thurman.

Mrs. THURMAN. Chairman Dingell, in the bill that the chairman has put forth to us I think that in response to Mr. Mica from Florida, one of my colleagues, there is several pieces within this bill that I think answer a lot of the questions that you have raised. One with the chief information officer, which I think is just a very valuable tool for a new Administrator or, in that case, a new Secretary.

Mr. DINGELL. He has also got to be independent, and he has also got to make information available to people, and he has got to be protected against abuse if he tells the truth.

Mrs. THURMAN. And the second one being the chief financial officer. The question I was going to ask you—that you have just answered—was that I would like to make sure as we go through this piece of legislation that we make it very strong and tight to, in fact, achieve those very concerns that you have raised as our colleagues have raised.

And I will add to your comments that I had the opportunity to—and I will call her Secretary Browner because that is what I knew her as in Florida, to work with her in the Florida Legislature, serving on the Natural Resources Committee, and I can tell you that my experience is, while we not always agreed, we were able to work together and come to final conclusions that I think made a better Department of Environmental Regulations in the State of Florida.

So I am looking forward to her new management skills and the ability that she will bring to this particular—whether it be at this level or at a Cabinet level, the experiences that she has felt as a State person coming back into the Federal Government, I think it is going to provide us some real good information.

Mr. DINGELL. Well, I think she is a fine woman. I think she is going to do the best she can, and I think she will do a good job.

I would just say one thing. The chief information officer is important, but the Bureau which will collect and hold the statistics and the information and its independence is equally important. The two are not the same, and I would beg you to see to it that—you are going to have to watch out. The chief information officer is liable to become a PR operation and a PR individual. My prayer would be that—you are going to have a hard time stopping that, so that you see to it that the Bureau which is going to deal with information and statistics is independent, strong, and is sheltered against political pressures, because you are going to have political pressures from industry and you are going to have political pressures from the environmentalists, and neither of them are going to particularly like the fact that somebody is going to be telling the truth.

If there is anything that the Congress needs to legislate well or to supervise the affairs of that Agency it is to have them telling the truth and functioning on the basis of the truth. Because if you don't have the truth when you go into a regulatory process, God knows what the end result is going to be.

Mrs. THURMAN. Thank you, Mr. Chairman.

Mr. CONYERS. The gentlelady's time has expired.

I am pleased now to recognize Ms. Brown, the gentlelady from Florida.

Ms. BROWN. Thank you, Mr. Chairman.

I have a question for my colleague, Congressman Mica from Florida.

Mr. CONYERS. Just a moment. Wait a minute. We are going to ask questions to Chairman Dingell, if you have any.

[Pause.]

Mr. CONYERS. OK. Chairman Dingell, you have been awfully sobering this morning. Those of us who had thought that this would be a flight of fancy, that we could do this quickly and easily, have now had our enthusiasm tempered with the experience that you have brought us. We are deeply grateful and look forward to working with you, not just this morning, but from now until the day, if and when this legislation is passed into law. We would want you to be supporting the efforts of this committee, just as we enjoy supporting the efforts of your committee that works on this same subject. And we are honored to work with you, sir.

Mr. DINGELL. Thank you, Mr. Chairman. You and I have had a long personal friendship, and we have worked together very well for many, many years. This committee and our committee have had a great relationship going back all the years that you and I have served on them, and I anticipate that those relationships will continue and I look forward to working with you, Mr. Chairman, and with the committee.

Mr. CONYERS. Thank you very much.

Mr. DINGELL. Thank you.

Mr. CONYERS. We are now pleased to call the Administrator of the Environmental Protection Agency, Ms. Carol Browner, an attorney, a former director of EPA in the State of Florida, who has had Federal and national legislative experience within the U.S. Senate with former Senator Gore, and has a tremendous record of concern and ability in this area.

We are pleased to have you before us, Ms. Browner. It is more difficult that you would follow, perhaps, the single most powerful individual in the entire Congress, but there will be days like this in your career and I am sure that you will handle it admirably. Welcome to the committee.

We will put your full statement in the record, and you may proceed in any way you choose.

**STATEMENT OF CAROL M. BROWNER, ADMINISTRATOR, U.S.
ENVIRONMENTAL PROTECTION AGENCY**

Ms. BROWNER. Thank you, Mr. Chairman, and members of the committee. I am always honored to follow Chairman Dingell. He, of course, makes it more difficult because he is able to address very difficult issues with such straightforwardness and even humor. I don't know if I will be as capable in those regards but I will certainly try.

Thank you for the opportunity to be here this morning, and I want to personally commend your leadership and the leadership of this committee in moving this issue forward.

I believe that we all share a strong commitment to the environment. Environmental quality is inextricably linked to our Nation's and the world's hope for a better quality of life for our children and our children's children. However, without an adequate institutional framework, even principled commitment can be rendered abstract. I believe the question is not whether to create a Department on the Environment but when, and that the answer is now, at the beginning of this Nation's third decade of Federal environmental protection, a decade in which we must move from command and control, end of the pipe, media-specific regulation to alternative approaches oriented toward pollution prevention, ecosystem protection, and incentive-based policies. It is time for a Department of the Environment to function as a permanent and equal partner in the President's Cabinet, integral to any equation in Federal decisionmaking.

In the past 20 years, this country has created most of its existing environmental infrastructure and body of law. It was 23 years ago that the Clean Water Act came into existence. To be sure, the national debate among Federal, State, local, and tribal governments, industry, and the public on environmental matters has not always been successful. Nevertheless, significant progress has been achieved. The air, water, and land are demonstrably cleaner as a result of our joint efforts. Our command and control approach has worked well, but has tended to focus on a relatively small number of large point sources of pollution. In addition, its limited scope ignores creative opportunities for pollution prevention and ecosystem approaches.

The facts show that we have had tangible successes in some areas, that we are learning to better anticipate and meet new challenges, and that our successes depend very much on cooperation among the parties: government, business, and the public. Yet our many environmental successes sometimes seem dwarfed by the growing agenda of environmental challenges, both domestic and international.

Nineteen ninety-three is a pivotal point in time. We now have the opportunity to establish an environmental infrastructure ready

to meet the challenges of the 21st century. We understand that we live in an enormously complex global ecosystem: "solving" one environmental problem can create a new one. Clean up of surface water has sometimes resulted in contaminated ground water. Solutions to ground pollution have sometimes polluted the air. Actions taken by one country can affect the health of the citizens of another thousands of miles away, and for generations to come.

We also know that assessment of environmental achievement is a relative measure. Our successes are meaningful only in terms of reducing overall risk. We have learned that we must not limit ourselves to cleanup, but must also seek to prevent pollution at the source. We must adopt a comprehensive and understanding approach that avoids unintended consequences of our actions and decisions. We must force ourselves to address long term, and not just short-term consequences. We must move upstream and examine individual pollution sources as elements of larger systems. Preventing pollution by elimination or reduction of waste at the source is key to this Administration's commitment to providing a healthy economy that meets our needs today, while preserving the environment for our children and future generations to enjoy.

A Cabinet Department of the Environment will be well-positioned to accelerate efforts to integrate pollution prevention and multimedia decisionmaking into regulatory and compliance programs governmentwide, to promote the use of incentive-based policies, to improve technical assistance to small businesses and communities, and to encourage corporate commitment to clean manufacturing processes and green products through innovative programs.

A Cabinet that includes an environment Department will ensure that the environment is fully engaged and integrated into the President's examination of and decisions on national and international issues.

We meet today at a unique time in history, a time when modern concerns about environmental degradation are coming face-to-face with concerns about racial and economic discrimination. Today, we realize that these historically separated issues interrelate. Environmental degradation and discrimination combine as a fundamental issue: environmental justice.

At the beginning of the environmental movement in this country, the concept of environmental justice was rarely discussed. It was widely presumed that environmental risk was blind, that it posed similar problems to all people, regardless of their racial or economic differences. There is no longer any doubt that as we undertake programs to reduce risks we must explicitly recognize the ethnic, economic, and cultural makeup of the people we are trying to protect. We now believe that people of color and low income are disproportionately affected by some environmental risks—the risk of living near landfills, municipal waste combustors, hazardous wastesites; the risks posed by lead or asbestos in old, poorly maintained housing; the risk of exposure to pesticides in farm fields; and the risk of eating contaminated fish when fish is a mainstay of their diet.

We have begun to address these issues. Over the past 3 years, EPA has established an Office of Environmental Equity. We have

expanded our education and outreach programs to communities of color and those of low income, and we have increased technical and financial assistance to communities with special environmental concerns. But we must do more.

I have made environmental justice one of the key policy themes of my administration. Environmental justice must be woven into all aspects of EPA operations: rulemaking, permitting, enforcement, education, hiring, and outreach. Our program offices are expanding their data collection efforts in communities located near large sources of pollution in order to help us assess health impacts. The President's fiscal year 1994 budget includes an increase of \$15 million to address lead paint hazards, which are of concern with respect to children nationwide, but particularly severe in inner city neighborhoods.

We are looking at new ways to target inspections, enforcement, compliance monitoring, and pollution prevention projects in these communities. Environmental justice must be considered a shared responsibility in the actions of all Federal agencies, and ultimately at the State, local, and tribal government level. To this end, we have acted to implement the President's Earth Day announcement by establishing an interagency group to address environmental justice issues across all Federal agencies.

In this review, we will be looking at regulations and enforcement actions that affect low income and communities of color to properly collect data on actions that disproportionately affect those communities. We will shortly finalize an interagency agreement with the Department of Commerce, the Department of Housing and Urban Development, and the District of Columbia government to create entrepreneurial and job opportunities to build and sustain a green movement throughout the inner city.

On another front we are working with the Federal health agencies, including the National Institute of Environmental Health Sciences and the Agency for Toxic Substances Disease Registry within Health and Human Services, to strengthen the scientific and health effects data related to communities of color and those of low income.

We have initiated several environmental justice projects with the Department of Justice. For example, we are working with the Civil Rights Division using its computerized data base to identify and evaluate low income and communities of color. We are working with the Environmental and Natural Resources Division to identify ongoing litigation in which environmental justice goals can be implemented. This information will be used in establishing enforcement priorities. We hope to make the EPA/Justice relationship a model for working with other Federal agencies, collectively drawing upon our individual areas of expertise to address the spectrum of challenges presented by environmental justice needs.

Finally, I am committed to making EPA's work force more culturally and racially diverse. If EPA is expected to be sensitive to the environmental risks facing all races and socioeconomic groups in this country, then EPA's work force must reflect the cultural diversity of the Nation as a whole. President Clinton, myself, and this administration share a deep and enduring commitment to fairness, environmental equity, and justice.

EPA long has been a proponent of public access and has been a leader in the Federal Government in this area. Public access to environmental information is fundamental to increasing environmental awareness, spurring the public and the regulated community to greater environmental responsibility. The toxics release inventory created by title III of SARA clearly demonstrates how periodically reported information builds individual and corporate responsibility across this country.

The Bureau of Environmental Statistics, as Chairman Dingell indicated, will also improve our information collection and analysis capabilities. Experience has shown that sharing information with the public advances the mission of the Agency by leveraging additional environmental protection efforts at the grass roots level. This contributes significantly to the public's understanding of our programs and builds support for our decisions. So many of our personal choices—what we buy, how we transport ourselves, how we dispose of our waste—affect the environment, our health, and our economy.

EPA has made substantial progress in making its information available to the public despite a myriad of legislative mandates and strained resources. I am committed to expanding EPA's efforts in information integration and making our information more easily accessible by the public.

The Department must also serve as a model for responsible fiscal practices and responsive, accountable management. Financial integrity and sound resource management are critical to fulfilling our environmental goals and to safeguarding the taxpayer's dollar. The EPA of today is a highly leveraged Agency, focused increasingly on complex, cross-cutting health and environmental issues. I have made a commitment that resource management will be a cornerstone of my administration.

In testifying on this issue March 1, I outlined three major themes to integrate management with mission at EPA. We will develop an overall management scheme and measures for success, construct a rigorous system of accountability, and establish clear standards of discipline. I have already begun several initiatives to make these themes a reality, including focusing the highest levels of the Agency on all aspects of managing financial resources.

In the same spirit of improving our financial management, I believe that a Commission that would address organizational, efficiency, and cross-media issues could play a useful role in enhancing coordination of the Department's efforts to protect public health and the environment. I look forward to Commission recommendations on management improvements and efficiencies among the Department's programs.

Environmental protection is not a mere footnote, but will encompass all of the Earth's resources and human activity. Its front page, banner headline news is woven throughout newspapers, scientific and medical journals, business and law publications. It shapes our daily thinking, strategies, and budgets in every conceivable issue area.

We are moving beyond thinking of environmental quality as a luxury or a hindrance to economic growth. The growth of our economy depends on the availability of a clean, safe environment and

the long-term availability of natural resources. We can best join the need for balancing growth and the environment by unleashing American ingenuity and creativity to revive our economy and create a new generation of cost effective, incentive-based environmental policies and technology, which will make us more competitive in a fast-growing international marketplace.

I appreciate the opportunity to be here today to speak to this very important issue and to answer any questions that the committee or the chairman may have.

[The prepared statement of Ms. Browner follows:]

**STATEMENT OF
CAROL M. BROWNER
ADMINISTRATOR
U.S. ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE
GOVERNMENT OPERATIONS COMMITTEE
UNITED STATES HOUSE OF REPRESENTATIVES**

MAY 6, 1993

I am honored to testify before you today in support of creating a Cabinet Department of the environment, and to affirm this Administration's commitment to improving environmental quality. I commend the leadership that this Committee has demonstrated in pursuing this matter. The Administration supports elevation of EPA to a Cabinet Department and will provide our comments to Chairman Conyers' legislation once it is introduced.

We all share a strong commitment to the environment. Environmental quality is inextricably linked to our Nation's and the world's hopes for a better quality of life. However, without an adequate institutional framework, even principled commitment can be rendered abstract. The question is not whether to create a Department on the environment, but when. The answer is now, at the beginning of this nation's third decade of Federal environmental protection—a decade in which we will move from command and control, media-specific regulation to alternative approaches oriented toward pollution prevention, ecosystem protection, and incentive-based policies. It is time for a Department of the environment to function as a permanent and equal partner in the President's Cabinet, integral to any equation of Federal decision-making.

In the past twenty years, this country created most of its existing environmental infrastructure and body of law. To be sure, the national debate among Federal, State, Local and Tribal governments, industry, and the public on environmental matters has not always been successful. Nevertheless, significant progress has been achieved. The air, water, and land are demonstrably cleaner as a result of our joint efforts. Our "command and control" approach has worked well, but has tended to focus on a relatively small number of large point sources of pollution. In addition, its limited scope ignores creative opportunities for pollution prevention and ecosystem approaches.

The facts show that we have had tangible successes in some areas, that we are learning to better anticipate and meet new challenges, and that our successes depend very much on cooperation among the parties: governments, business, and the public. Yet our many environmental successes sometimes seem dwarfed by the growing agenda of environmental challenges, both domestic and international.

1993 is a pivotal point in time. We have the opportunity now to establish an environmental infrastructure ready to meet the challenges of the 21st century. We understand that we live in an enormously complex global ecosystem: "solving" one environmental problem can create a new one. Clean-up of surface water has contaminated ground water, and solutions to ground pollution have polluted the air. Actions taken by one country can affect the health of the citizens of another, thousands of miles away, and for generations to come.

We also know that assessment of environmental achievement is a relative measure: our "successes" are meaningful only in terms of reducing overall risk. We have learned that we must not limit ourselves to clean-up, but must also seek to prevent pollution at the source. We must adopt a comprehensive and understanding approach that avoids unintended consequences of our actions and decisions. We must force ourselves to address long-term and not just short-term consequences. We must move "upstream" and examine individual pollution sources as elements of larger systems. Preventing pollution by elimination or reduction of waste at the source is key to this Administration's commitment to providing a healthy economy that meets our needs today, while preserving the environment for our children and future generations to enjoy.

A Cabinet Department of the environment will be well-positioned to accelerate efforts to integrate pollution prevention and multi-media decision-making into regulatory and compliance programs Government-wide, to promote the use of incentive-based policies, to improve technical assistance to small businesses and communities, and to encourage corporate commitment to clean manufacturing processes and green products through innovative programs. A Cabinet that includes an environment Department will ensure that the environment is fully engaged and integrated into the President's examination of, and decisions on, national and international issues. Elevating EPA to a Cabinet level department will give environmental issues a formal seat at the Cabinet table. I recognize that important

environmental functions already are being performed by other members of the Cabinet including the Departments of Agriculture, Commerce, Energy, and the Interior.

In 1993, concern for the environment affects individual, corporate, and governmental behavior. The nation's environmental ethic has evolved and is taken seriously across economic, cultural, geographic, and governmental sectors. Just as civil rights issues gripped our nation in the 60's, and nuclear/cold war concerns dominated the 70's and 80's, integration of economic and environmental policy has seized the public's attention in the 90's. A 1992 Roper/Johnson poll on environmental behavior indicated that 60% of the population of North America is concerned about the environment.

We meet today at a unique time in history—a time when modern concerns about environmental degradation are coming face-to-face with age-old concerns about racial and economic discrimination. Today, we realize that these historically separated issues interrelate. Environmental degradation and discrimination combine as a fundamental issue: "environmental justice".

At the beginning of the environmental movement in this country, the concept of environmental justice was rarely discussed. It was widely presumed that environmental risk was blind, that it posed similar problems to all people, regardless of their racial or economic differences. There is no longer any doubt that as we undertake programs to reduce risks, we must explicitly recognize the ethnic, economic, and cultural makeup of the people we are trying to protect. We now believe that people of color and low income are disproportionately affected by some

environmental risks—the risk of living near landfills, municipal waste combustors, or hazardous waste sites; the risks posed by lead or asbestos in old, poorly maintained housing; the risk of exposure to pesticides in farm fields; and the risk of eating contaminated fish when fish is a mainstay of their diet.

We have begun to address these issues. Over the past three years, EPA has established an Office of Environmental Equity; we have expanded our education and outreach programs to communities of color and those of low income; and we have increased technical and financial assistance to communities with special environmental concerns. But we must do more.

I have made environmental justice one of the key policy themes of my Administration. Environmental justice must be woven into all aspects of EPA operations: rulemaking, permitting, enforcement, education, hiring, and outreach. Our program offices are expanding their data collection efforts in communities located near large sources of pollution in order to help us assess health impacts. The President's FY-94 budget includes an increase of \$15 million to address lead paint hazards, which are of concern with respect to children nation-wide, but are particularly severe in inner city neighborhoods. We are looking at new ways to target inspections, enforcement, compliance monitoring, and pollution prevention projects in these communities. Environmental justice must be considered a shared responsibility in the actions of all Federal agencies and ultimately at the state, local, and Tribal government level. To this end, we have acted to implement the President's Earth Day announcement by establishing an interagency group to address

environmental justice issues across all Federal agencies. In this review, we will be looking at regulations and enforcement actions that affect low income and communities of color to properly collect data on actions that disproportionately affect those communities. We are working to finalize an interagency agreement with the Department of Commerce, the Department of Housing and Urban Development, and the District of Columbia government to create entrepreneurial and job opportunities to build and sustain a "green movement" throughout the inner city. On another front, we are working with Federal health agencies including the National Institute of Environmental Health Sciences and the Agency for Toxic Substances Disease Registry within Health and Human Services to strengthen the scientific and health effects data related to communities of color and those of low income.

We have initiated three environmental justice projects with the Department of Justice. First, we are working with the Civil Rights Division using its computerized database to identify and evaluate low income and communities of color. We are working with the Environmental and Natural Resources Division to identify ongoing litigation in which environmental justice goals can be implemented. This information will be used in establishing enforcement priorities. We also are exploring a possible agreement with the Department of Justice Community Relations Service to provide outreach, conciliation, and mediation to communities affected by sources of pollution or contamination where racial or ethnic concerns are involved. We hope to make the EPA/DOJ relationship a model for working with other Federal agencies, collectively

drawing upon our individual areas of expertise to address the spectrum of challenges presented by environmental justice needs.

Finally, I am committed to making EPA's workforce more culturally and racially diverse. If EPA is expected to be sensitive to the environmental risks facing all races in this country, then EPA's workforce must reflect the cultural diversity of the nation as a whole. President Clinton, myself, and this Administration share a deep and enduring commitment to fairness and environmental equity and justice.

Public access to information and environmental education are linchpins to making environmental equity, pollution prevention, and waste reduction work. EPA long has been a proponent of public access, and has been a leader in the Federal government in this area. Public access to environmental information is fundamental to increasing environmental awareness, and spurring the public and the regulated community to greater environmental responsibility. The Toxics Release Inventory created by Title III of SARA clearly demonstrates how periodically reported information builds individual and corporate responsibility across this country.

Experience has shown that sharing information with the public advances the mission of the Agency by leveraging additional environmental protection efforts at the grass roots level. This contributes significantly to the public's understanding of our programs, and builds support for our decisions. So many of our personal choices—what we buy, how we transport ourselves, how we dispose of our waste—affect the environment, our health, and our economy.

EPA has made substantial progress in making its information available to the public—despite a myriad of legislative mandates and strained resources. I am committed to expanding EPA's efforts in information integration and making our information more easily accessible by the public.

The Department must also serve as a model for responsible fiscal practices and responsive, accountable management. Financial integrity and sound resources management are critical to fulfilling our environmental mission and to safeguarding the taxpayer's dollar. The EPA of today is a highly leveraged Agency, focused increasingly on complex, cross-cutting health and environmental issues. I have made a commitment that resources management will be a cornerstone of my Administration. Our financial systems and processes must be designed to meet the highest standards of effectiveness, to satisfy identified customer requirements, and to support program needs. In testifying on this issue in March, I outlined three major themes to integrate management with mission at EPA: we will develop an overall management scheme and measures for success, construct a rigorous system of accountability, and establish clear standards of discipline. I have already begun several initiatives to make these themes a reality, including focusing the highest levels of the Agency on all aspects of managing financial resources. I want to instill an Agency culture that supports both the letter and the spirit of the acquisition rules and regulations; I want to develop prevention-based approaches; and I want to make financial integrity an integral part of our everyday work ethic.

I support efforts to reform contracts management, particularly in the area of large umbrella contracts and the use of subcontractors. Reforms should limit "contract shopping" in the Agency, and eliminate the improper practice of directed subcontracting. In addition, I support the efforts of the Congress to address inherently governmental functions and to define restrictions on allowable costs on a Government-wide basis as a matter of good government. I am committed to moving the Agency forward to safeguarding our environmental programs, achieving our mission goals, and upholding the public trust.

In the same spirit of improving our financial management, I believe that a Commission that would address organizational, efficiency, and cross-media issues could play a useful role in enhancing coordination of the Department's efforts to protect public health and the environment. I look forward to Commission recommendations on management improvements and efficiencies among the Department's programs.

EPA increasingly is called upon to focus its attention on international environmental issues. EPA's international environmental programs provide cooperation with and technical expertise to developing and newly democratic countries and our industrialized partners. Cabinet status will be important to make the head of EPA a peer with Cabinet colleagues in foreign environment ministries and promoting international cooperation on the environment. It will also make EPA a more effective collaborator with other Cabinet Departments involved in international environmental activities, including UNCED follow-up, programs in Central and Eastern

Europe and the former Soviet Union, and environmental cooperation with Canada and Mexico.

Environmental protection is not a mere footnote, but encompasses all of the Earth's resources and human activity. Its front-page, banner-headline news is woven throughout newspapers, scientific and medical journals, and business and law publications. It shapes our daily thinking, strategies, and budgets in every conceivable issue area. We are moving beyond thinking of environmental quality as a luxury or as a hindrance to economic growth. The growth of our economy depends on the availability of a clean, safe environment and the long-term availability of natural resources. We can best join the need for balancing growth and the environment by unleashing American ingenuity and creativity to revive our economy and create a new generation of cost-effective, incentive-based environmental policies and technology-- which will make us more competitive in a fast-growing international marketplace.

I strongly believe that environmental protection and economic growth are compatible. Environmental opportunities can be economic opportunities. The Roper Organization's 1992 Green Gauge Poll showed that a strong majority (63%) of Americans believe economic development and environmental protection go hand-in-hand. The 80's have shown us that environmental action or inaction has economic consequences, in turn affecting our environmental and business choices in a never-ending cycle of cause-and-effect. Money spent by companies to comply with environmental laws and regulations translates into revenues and jobs for other American businesses. At the same time, regulations must be as cost-effective as

possible. For example, the acid rain Clean Air Act Amendments are the latest example of how Congressional and EPA action can drive major economic growth and innovation in the pollution control sector.

Our experience over the last few months in fashioning the President's economic plan is illustrative of the role that environmental considerations should play in our Federal decision-making process. As the numerous options for energy taxes were explored, environmental concerns and impacts were analyzed in a matrix alongside energy, economic, social, and trade considerations. This Administration is committed to identifying the dynamic relationship between economic and environmental needs and to ensuring that environmental assets are reflected in our accounting of national well-being.

Any student of democracy and public policy must acknowledge a missing building block in the list of structures in the top tier of the Federal government. Currently, EPA sits in the Cabinet room at the President's invitation, but President Clinton agrees that we should validate its presence as a statutory matter, regardless of who sits in the White House Oval Office. It is time for a permanent chair at the table, institutionalizing the environment as a critical ingredient in the mix of any Federal decision-making. EPA as an institution is grappling with today's challenges, but the EPA created by Reorganization Plan Number 3 in 1970 is positioned now to function as more than a regulatory agency. This Administration embraces successful new approaches and the essential dynamic of environmental management handled in partnership across Department and governmental lines. An environment Department

will work closely with both its Cabinet counterparts and its State, local, Tribal, and other government partners, and remain responsive to the individual citizen. We must rely carefully on sound science and research to better understand environmental issues such as biodiversity, global climate change, environmental equity, risk, and persistent toxic chemicals, and to better develop policy and solutions. An environment Department must be a model environmental steward both domestically and internationally.

Both our national environmental ethic and the nature of the ecosystem itself tell us that the President's Cabinet currently is incomplete. In today's world, a successful strategy for any public policy issue requires a comprehensive perspective that crosses traditional Departmental boundaries. There is virtually no such thing as a policy or problem that does not have environmental aspects or that is simply "environmental". A sound approach to the environment is essential to the success and sustainability of our Nation's economic, social, and trade policies. The President's Cabinet must be able to function as a collaborative and interdependent mechanism, integrating the best public policy thinking across Department lines. It is not enough that environmental considerations be part of Cabinet discussions: the environment must be there in its own right as an equal priority and member.

Public concern about the environment drives our need to consider how all of our policies affect quality of life for ourselves and our children. A 1992 survey conducted for the World Wildlife Fund by Peter D. Hart Research Associates found that America's youth are among the most environmentally conscious and concerned

segment of our population. As our children, pre-kindergarten through college, study the structures that define our democracy and government, I want to make sure that an environment Department is part of their original understanding of what makes our Nation strong. In addition to our children, students of democracy everywhere in the world should comprehend that an environment Department is key to America's identity. The United States should join the majority of our major partners who count an environment minister as an equal among the top government tier. Not to do so sends the wrong message about our government's priorities here at home; it also prevents us from asserting the kind of leadership that the rest of the world is looking to us to provide on environmental problems affecting the entire planet.

In conclusion, I assure you that the creation of an environment Cabinet Department means more than a new chair. As public officials we must judge ourselves not only by what we accomplish today, but by the legacy we create for tomorrow. Joining the Cabinet ensures direct access to the President, and consequently, a voice on behalf of citizens concerned about the environment their children will inherit and industry seeking to mesh environmental and business concerns. An environment Department's involvement in the Federal government's domestic and international agenda will improve the quality and efficiency of Federal decision-making as the Cabinet addresses all of the Nation's challenges. Creation of an environment Department signals at home and abroad the highest commitment of the United States to environmental stewardship.

Mr. CONYERS. Thank you, Administrator, for a thoughtful statement. We welcome your presence here. I recognize the chairman from our subcommittee, the gentleman from Oklahoma, Mr. Synar.

Mr. SYNAR. Thank you, Mr. Chairman. And welcome, Carol.

Given the wonderful legislative product that we have inherited from the Senate, I would like to get your opinion on a variety of issues, if I could.

As you know, there is an amendment on the Bureau of Environmental Statistics which would do a number of things. First of all, do you believe the Bureau should be independent from EPA?

Ms. BROWNER. I believe that the creation of an Bureau of Environmental Statistics is absolutely essential to the work that not only we do, but to the work done by a variety of Federal agencies on environmental concerns. We have supported the head of the BES being a Presidential appointment with Senate confirmation. We believe that that gives that position the stature that it deserves in terms of the relationships that it will need to work with other Federal agencies to complete its task.

Mr. SYNAR. That means they would be fired only by the President?

Ms. BROWNER. Presidential appointments with Senate confirmation serve at the will of the President; that is correct.

Mr. SYNAR. Do you believe that that Bureau will be able to evaluate the costs and benefits of regulations that the Senate would like them to be equipped to do?

Ms. BROWNER. I think the most important thing for the Bureau to undertake is the statistical analysis. As you are very aware, there was a great deal of discussion in the Senate on cost/benefit analysis, and while we appreciate the need to use cost/benefit analysis as a tool in how we make decisions, I don't know that the Bureau is the appropriate place for that function to be vested.

Mr. SYNAR. Isn't it more appropriate for Congress to do that in each individual piece of authorizing legislation, to show our intent of what we would like?

Ms. BROWNER. It certainly is very helpful to us and, obviously, it is something the Congress has historically undertaken.

Mr. SYNAR. The Senate would also move the entire issue of wetlands to the Soil Conservation Service. Maybe you could summarize what you are doing on that issue right now. They want to put it in one single agency to make the decision. Maybe you could summarize for us what you are doing now and whether or not you think that is a good idea?

Ms. BROWNER. We are right now working across several agencies to deal with the wetlands issue. We are aware, and having come from a State that had a large number of wetlands, I can say I am personally aware of the complications that have grown in the permitting and mitigation of wetlands activities.

We have recently signed an agreement between EPA and the Army Corps of Engineers in an effort to streamline the process, and as I understand the provision in the Senate legislation it would require us to report back 90 days after passage on further actions that we could take.

I have to tell you that I believe there are many things that we can do administratively as an Agency to address the concerns that

have been raised around the wetlands permitting issues, address the delays in permitting—

Mr. SYNAR. Are you the best Agency to do that?

Ms. BROWNER. I think we have a significant responsibility. Wetlands are a part of the broader issue of ecosystem protection.

Mr. SYNAR. I know you are sensitive to the need to give environmental issues that affect Native Americans more attention. Do you support the provision for an Assistant Secretary for Native American Affairs within the Department?

Ms. BROWNER. I think it is extremely important that we address the concerns that you raise. I think that many in the Agency would agree that we have not done the type of job that we need to do. We are starting to put in place mechanisms to reach out to Native Americans.

In terms of elevating that to Assistant Secretary level, what we would ask is flexibility in terms of the Assistant Secretary, so that we could work together to determine what is appropriate.

Mr. SYNAR. As you know, the draft bill that Mr. Conyers introduced would include governmentwide language which would prohibit contractors from charging the government for things like Rolex watches and tickets to Disneyland. You do agree that we shouldn't reimburse contractors for those types of things?

Ms. BROWNER. Oh, absolutely. And we welcome the language the chairman has sought to include.

Mr. SYNAR. The OMB "SWAT Team" recommended that civilian agency contractors be subject to the same cost certification and penalty clause that our Department of Defense contractors are subject to. Do you think that is a good idea?

Ms. BROWNER. Absolutely.

Mr. SYNAR. Finally, the draft bill would also include language prohibiting contractors from performing "inherently governmental functions." Do you think that that is a good provision within the bill?

Ms. BROWNER. I think all of the provisions relating to contracting that speak to the governmentwide problems are really, quite frankly, essential.

Mr. SYNAR. Since I am noted as the one who hates EPA employees more than any other person next to John Dingell, let me ask this question on behalf of all of the employees. If you get Cabinet-level status, will you convince the President to get a new building and headquarters for your people?

Ms. BROWNER. We are working very diligently on the building issue. As some of you may be aware, we presently occupy 10 different locations in the Washington, DC area at a cost of \$35 million a year in lease. We do not own any of the facilities we occupy. We spend another million dollars a year on buses to move employees from location to location, the effect being that we lose the equivalent of 90 work-years every year in time spent on the buses.

This is an extremely important issue for us. We need to consolidate our work force, and we need to get us into a building that gives us the kind of space we need to do the job we do.

Mr. SYNAR. One final question. You talked about cross-media efforts in this bill. You talked about interagency work. You talked

about other Federal agencies, et cetera. What particular element of this bill is going to make it easier for you to coordinate all that?

Ms. BROWNER. The fact that we will be equal to the other members of the Department. It is, I believe, absolutely essential as we move forward in the field of environmental protection to look cross media, and there are many of our sister Cabinet agencies, Departments, that have responsibilities that if we could work together we would be able to do a much better, more efficient job and be able to serve the public in the way that we should.

And it makes us an equal. It puts us at the table in an equal way.

Mr. SYNAR. And the Commission that we would create also would help?

Ms. BROWNER. The Commission, I think, would be extremely helpful in terms of looking internal to the Agency to make sure that we are an Agency, a Department that speaks to the future needs of this country.

You know, when EPA was created we didn't fully understand the integration of air, land, and water. We now understand that, and perhaps it is so simple it is hard to realize that at one point in time we didn't understand it. We have got to have the flexibility to manage ourselves to deal with that interrelationship.

Mr. SYNAR. Thank you, Mr. Chairman.

Mr. CONYERS. Thank you for your line of questioning, Chairman Synar. There is not much left for anybody to ask now, but I will recognize Mr. Clinger, the gentleman from Pennsylvania, for a few minutes.

Mr. CLINGER. Thank you, Mr. Chairman. Oh, I think we will find one or two things that we might want to address.

Ms. Browner, one of the concerns I have—you heard my opening statement—is you can't run that place alone, and you have a daunting task. And, as you have already indicated, there are problems that need to be addressed and need to be addressed urgently. I know that every administration has trouble filling their positions and getting up to speed, but it does seem to me that this has taken an inordinate period of time. I understand you had indicated earlier you expected to have a team in place by February. We are now moving into May. We have got Superfund. We have got a whole range of major program responsibilities at the Agency that just don't have everything in place.

Give me some assurance that this is not going to go on very much longer.

Ms. BROWNER. Well, I, like you, understand the importance of getting the team in place. We do have several people that are moving through the confirmation process now. The Deputy Administrator's hearings have been completed. He has been voted out of committee on the Senate side, and hopefully will proceed to the full Senate shortly.

We are working very closely with the White House on a next round of appointments, and I remain optimistic that that will come sooner rather than later.

I want to say one thing. As difficult as this has been, and I recognize that it is not only difficult for us but it has also been very difficult for the Congress, it has provided me with an opportunity to

work with the people in the Agency in a way that I am not sure I would have been given had there been this extra level of people there. I have gotten to know people. We have got to work together on difficult issues, to build relationships. So there is a little bit of a silver lining in an otherwise dark cloud.

Mr. CLINGER. But this has to have some impact on morale at the Agency.

Ms. BROWNER. I think it is very hard for people, I absolutely agree, and that is why we are working very carefully to expedite this with the White House.

Mr. CLINGER. Do you think by June we might see a fully staffed—

Ms. BROWNER. Oh, I would certainly hope so.

Mr. CLINGER. OK. One of the concerns also that I have—Mr. Mica had a 5-foot shelf, I have got my own 5-foot shelf here having to do with Commission reports. These are just Commission reports. We have identified 22 Commission reports over the preceding years, and I would ask, Mr. Chairman, that that list might be submitted for the record.

Mr. CONYERS. Of course. Without objection.

[The list follows:]

Commission Reports

- **National Commission on the Environment.** A private-sector initiative, convened by the World Wildlife Fund (WWF), assessed the need for change in national environmental policy to address the challenges of the future.
Report: *Choosing a sustainable Future.* 1992
- **Advisory Commission on Intergovernmental Relations (ACIR).** In 1990, Congress made an appropriation to the U.S. Army Corps of Engineers to develop a Federal infrastructure strategy in consultation with other Federal agencies, State and local governments, and private organizations. The ACIR assisted by convening a series of workshops and preparing the report. The Commission looked at a broad range of infrastructure issues, including those related to environmental protection.
Report: *Toward a Federal Infrastructure Strategy: Issues and Options.* 1992
- **The Alm Commission.** A blue-ribbon Science Advisory Board panel, appointed by former Environmental Protection Agency (EPA) Administrator Lee Thomas, and headed by former Deputy Administrator Al Alm, to assess and compare environmental risks and to make recommendations on long-term research and environmental protection strategies for EPA.
Report: *Future Risk: Research Strategies for the 1990s.* 1988
Reports by EPA in response: *Protecting the Environment: A Research Strategy for the 1990s*, and *Pollution Prevention Research Plan: Report to Congress.* 1990
- **EPA Task Force.** Former Administrator Lee Thomas requested a task force of EPA career staff to examine relative risks to human health and the environment posed by various environmental problems. The report "represents a credible first step toward a promising method of analyzing, developing, and implementing environmental policy" and provided a basis for the Alm Commission report, *Future Risk.*
Report: *Unfinished Business: A Comparative Assessment of Environmental Problems* 1987
- **Administrative Conference of the United States.** Established by Congress in 1964, the Administrative Conference of the United States is to promote improvements in the efficiency, adequacy and fairness of procedures by which federal agencies conduct regulatory programs, administer grants and benefits, and perform related government functions. The Conference's 1985 report focussed primarily on analyzing environmental regulatory procedures and issues.

Report: *Administrative Conference of the United States: Reports and Recommendations*. 1985

- **Council on Environmental Quality and Department of State.** Commissioned by President Carter, these two agencies coordinated with other Federal agencies to study "the probable changes in the world's population, natural resources, and environment through the end of the century."
Report: *The Global 2000 Report to the President*. 1980.
In 1980, the President directed the agencies to undertake the next step, i.e., to review existing government programs related to long-term global environmental issues, assess their effectiveness, and recommend improvements. CEQ chaired the effort.
Report: *Global Future: Time to Act*. 1981.
- **National Commission on Air Quality.** Created by Congress in 1977 to make an independent analysis of air pollution control and alternative strategies for achieving the goals of the Clean Air Act. The 13-member Commission was charged with compiling and assessing information on environmental, technological, scientific, and social issues relating to air quality policy.
Report: *To Breathe Clean Air*. 1981
- **Commission on Natural Resources.** In appropriations legislation for FY 1974 (P.L. 93-135), Congress directed EPA to contract with the National Academy of Sciences (NAS) for a series of analytical advisory studies in the areas of environmental regulatory decision making and analysis of selected environmental issues. The National Research Council of the Academy designated the Commission on Natural Resources as responsible for supervising the program.
Reports: 10 studies of various environmental issues
- **National Commission on Water Quality.** Established by Congress under the Federal Water Pollution Control Act amendments of 1972 (P.L. 92-500) to make a "complete investigation and study of all of the technological aspects of achieving, and all aspects of the total economic, social and environmental effects of achieving or not achieving, the effluent limitations and goals set forth for 1983 . . ."
Report: *Final Report of the National Commission on Water Quality*. 1976 (H. Doc. No. 94-418)
- **National Water Commission.** In 1968, initiated a 5-year comprehensive study of U.S. water policy. Report recommended sweeping changes in outdated policies and programs, including full-cost user fees to pay for water projects and implementation of "polluter pays" principle.

Report: *Water Policies for the Future*, Final Report, and *New Directions in U.S. Water Policy, Summary, Conclusions, and Recommendations*. 1973.

- **President's Advisory Council on Executive Reorganization.** The "Ash Council" was established by President Nixon, chaired by Mr. Roy Ash, to take a thorough review of the organization of the executive branch of Government, including environmental and natural resources policies and functions. The Council was instrumental in the creation of EPA.
Report: *Memorandum for the President of the United States: Establishment of a Department of Natural Resources*. 1971.
- **Ad Hoc Committee on Environmental Quality Research and Development.** Established in 1970 by the Federal Council for Science and Technology to study and prepare a report on the research and development activities of the Federal Government related to environmental quality.
Report: *Environmental Quality Research and Development: A Review and Analysis of Federal Programs*. 1971.
- **U.S. Water Resources Council.** Established by Congress in the Water Resources Planning Act of 1965 (P.L. 89-80) to implement a national strategy for planning of water and related land resources in 21 water regions, coordinate Federal water policies, study the effectiveness of State-regional programs, laws, and policies, and to recommend Federal programs and policies. Abolished in 1980 after mixed success.
Reports: various
- **President's Science Advisory Committee, Environmental Pollution Panel.** Convened a consortium of Federal, academic and private sector engineers and scientists to evaluate pollution problems and make recommendations for Federal environmental protection policies and research priorities.
Restoring the Quality of Our Environment. 1965

Organization Reports

- *Memorandum to the President-Elect.* A report containing recommendations to improve coordination and organization of environmental functions in the Federal government. Carnegie Endowment for International Peace and the Institute for International Economics. 1992
- *Environmental Research and Development: Strengthening the Federal Infrastructure.* A report setting forth a series of recommendations to strengthen and improve the nation's

environmental research and development and to redirect environmental priorities. Carnegie Commission. 1992

- *Environment: A Place at the Table, The Case for Creating a Department of Environmental Protection.* Reviewed Federal environmental policies and organizational structure and presented a case for establishing a cabinet-level department of environment. National Wildlife Federation. 1989
- *Blueprint for the Environment: Advice to the President-Elect from America's Environmental Community.* A cooperative effort by a coalition of 18 national environmental organizations to develop comprehensive recommendations to the President-elect in 1988 "concerning the actions our Federal government should take to solve the environmental problems that confront the United States and the world." 1988
- *State of the Environment: A View toward the Nineties.* A review of the Nation's environmental progress and long-term assessment of issues, including background information and policy recommendations to support policy makers in addressing environmental issues in a global context. Conservation Foundation. 1987
- *State of the Environment: An Assessment at Mid-Decade.* Examines the need for new environmental policies, evaluates emerging problems, institutional arrangements, scientific basis for decision-making, and offers policy recommendations. Conservation Foundation. 1984
- *A Review of the U.S. Environmental Protection Agency Environmental Research Outlook FY 1976-1980.* At the request of the House Committee on Science and Technology, the Office of Technology Assessment (OTA) prepared an analysis of EPA's five-year research plan which included analysis of EPA's overall environmental management strategies. Office of Technology Assessment. 1976
- *Cleaning Our Environment: The Chemical Basis for Action.* Examines the status of the science and technology of environmental improvement, and recommends measures to accelerate the development and use of that science and technology to solve environmental problems. American Chemical Association. 1969.

Mr. CLINGER. And I guess my question is do we really need another Commission? I know you said in your opening statement that you wanted to have another Commission. I would call to mind the statement by OMB Director Panetta, who testified before this committee not long ago and said, "Anytime we establish a Commission it is because somebody in a position of authority has failed to do what they are supposed to do." So we have had a lot of Commissions over the years.

And he then goes on to ask us not to establish any more Commissions, and I guess the question is—that really seems to be a little inconsistent with where we are going here—can't we do this internally? Do we really need to have a whole bunch of other people looking at this thing? Can't you assume the responsibility for doing this?

Ms. BROWNER. I believe there is a lot we can do internally, but I also believe there is a lot we can learn from people who may have served in the Agency previously or from outside of the Agency. We need to be responsive to the public. We need to be responsive to State governments, to local governments, to industry, and we would certainly hope to bring people from those areas into a Commission to help us structure ourselves internally so that we can do the very, very best possible job.

Mr. CLINGER. Well, I just—you know, I really question how much of the material contained in all of these reports—you know, too often I think we have Commissions that labor long and hard and issue reports and then they sit on a shelf someplace and nobody pays much attention to them. Again, where it is under your direct responsibility I think you are going to pay attention to what you are doing. So I do have some concerns about establishing another Commission.

And I guess the other concern I would have would be with regard to the timing of this. As I understand it, one of the purposes of the Commission would be to look at the appropriate structure for the new Department, and yet we are in the process now of taking under consideration pretty complex and fairly far-reaching legislation which, in effect, will define, or redefine what the structure of the Department is going to be. Aren't we, in effect, getting the cart before the horse? I mean, in other words, what do we need a Commission for? If we are going to establish what the Department is going to look like by statute, the Commission's work, by the time it becomes due, will be pretty much moot.

Ms. BROWNER. Well, I think that the legislation before the committee provides, you are quite right, a framework, if you will. There are many things that we can do and decisions that will need to be made within that framework that the legislation will not specifically speak to. That will change and hopefully streamline how we do the job that we have to do. I mean we have already begun some efforts internally to work cross media. We need to look at other opportunities to increase those sorts of activities. We will have as the legislation, as it proceeds forward, obviously, a Bureau of Environmental Statistics. It will be important to understand how the information generated by the Bureau would be helpful to the media programs.

I absolutely agree with you that we don't need another Commission report, and this is something that I would want to be, obviously, personally involved in. I think it can be a very useful tool for the Agency to look at how it has been structured, not just at the very top, but down lower, and see how we can restructure.

Chairman Dingell spoke about accountability in the regions. I would hope that that is something that can be talked about in terms of what is a structure that makes sure that there is an integration between the regions and the headquarters that works for both.

Mr. CLINGER. As you may know, I have introduced a clean bill which would simply elevate the Department, if that is our objective. One of the overriding purposes of this elevation, which, you know, I still have trouble really contemplating, but one of the overriding purposes stated is to put you on a level with your colleagues in other nations when you are dealing with—we are dealing with a global environment now—so if that is an overriding purpose, it would seem to me that just a simple elevation could accomplish that. Elevation would give you the stature that you need to be on an even playing field with your colleagues.

It is a lot cheaper. I think one of the concerns we clearly have to look at here is, and Chairman Dingell pointed it out, I mean we are talking about substantially increased cost if we go to a much more expansive sort of a thing. And yet, I think it is fair to say the administration seems to be going the other way. I mean we give you a lot of responsibility, but they are cutting your budget. I just am really concerned that you are not going to have the tools to do the job.

Ms. BROWNER. Well, I appreciate that concern. I think the elevation itself does not—we do not anticipate expenditures of money associated with that. We have agreed that we won't do any new printing. We will just do things in the regular course of business.

The Bureau, the creation of the Bureau, we think we can deal with that, at least in the next 2 fiscal years, within existing resources. Obviously, there are other issues that are important that will be addressed in the bill that do have a cost. We believe on balance they are important issues.

Mr. CLINGER. What kind of a cost are we looking at in terms of this? Have you costed any of this out?

Ms. BROWNER. We are working with the committee staff right now to look at the cost of the proposal, of the legislative proposal, and I am sure we will have that available to all of the committee members shortly.

Mr. CLINGER. I am pretty confident that it is going to be much greater than a simple elevation would be. But I thank you, Mr. Chairman.

Mr. CONYERS. Thank you very much, Bill. In your spare time, could you read those volumes that you have presented and give us a synopsis?

Mr. CLINGER. Mr. Chairman, I want you to know I have already read them.

Mr. CONYERS. Well, then I thank you very much. Could you give us a synopsis in writing so I could distribute it to the rest of the committee? I would deeply appreciate that.

The chair is pleased to recognize the ranking majority member of Government Operations, the gentlelady from Illinois, Cardiss Collins.

Mrs. COLLINS. Good morning, Mr. Chairman. Thank you, Mr. Chairman.

Ms. Browner, I was interested in something you said in your opening comment about, "Actions taken by one country can affect the health and the citizens of another thousands of miles away and for generations to come."

There are many of us who have been working and looking at the North American Free Trade Agreement, and one of the side issues, as I understand it, that we have been working on has to do with the environment. I was wondering personally how the EPA is going to resolve some of the massive problems that we see when we talk about a North American Free Trade Agreement and the awful environment that we see, particularly in those areas where there are maquiladores and along the border States.

Ms. BROWNER. We also share your concern. The EPA is part of the team put together by the U.S. Trade Representative to negotiate a sidebar agreement on environment. I think as you well know, the President has committed to two supplemental agreements, one on the environment and one on labor, and we have been actively participating in those negotiations.

It is our sense that a number of the very complicated environmental issues are beginning to be addressed in that framework in those negotiations, and I think we are optimistic that we will be able to bring back to the Congress a sidebar agreement on the environment that will protect the people in the border regions and make sure that Mexico fully enforces its environmental laws and that we in this country do not experience any degradation in environment or health.

I have traveled to the border region and visited some of the maquiladores down there, and it is a very, very serious issue. We have people in the United States living without running, clean drinking water, without sewage, without garbage collection, and so we are also looking for an opportunity to strengthen a border plan to address those very pressing issues in the border region.

Mrs. COLLINS. I was pleased to see in your written statement you say that you recognize the ethnic, economic, cultural makeup of the people you are trying to protect, and that you believe that people of color and low income are disproportionately affected by some environmental risks, living near landfills, et cetera.

That is an issue that is extraordinarily important to many of us, because it seems that all the landfills are built around communities where there are poor people, there are dumping sites, and pesticides, and filled areas where extremely poor people live, where people of color are, and I am glad to hear you say that you recognize this. I hope that recognition leads to some very serious consideration of where to put these things and that they will be avoided in the future.

Ms. BROWNER. I think there is no doubt that the people of color and low-income communities have suffered disproportionately, if you will, from sort of the consequences of modern life—hazardous waste production. I think the long-term solution is pollution pre-

vention, to prevent these things from actually occurring in the first place.

In the short term, we at EPA and other Federal agencies have got to take this knowledge, have got to take this elevated risk that these people face, and incorporate that into every single thing that we do, from permitting, to rulemaking, to enforcement. I don't think that we have done that historically. We have begun some efforts. But it is not just the case of creating an office, it has got to be much, much more. In addition to an office, it has got to be part and parcel of how we think about the laws that we are given the responsibility to implement and what are the consequences of how we implement those laws.

Mrs. COLLINS. Thank you.

Mr. CONYERS. Mrs. Collins, you were down there recently, were you not?

Mrs. COLLINS. I was down there this past weekend, Mr. Chairman, and that was the second time I have visited the maquilladora area, and, much to my chagrin, in fact, I found that the solutions to the problems that we saw down there have not been corrected.

There have been some very minor attempts at camouflaging some of the problems. For example, one of the areas that I visited a year ago, where you could see waste materials coming from the factories, and you could look over into the factory yard, has been camouflaged by a big series of 55-gallon drums placed along the side of the fence. They couldn't grow any bushes there so they put the drums there so you couldn't tiptoe and look over in there and see what was going on.

But those are the kinds of things that were there. It is a horrendous thing, and I think it is something that we as a Nation should not be doing with our American companies. But that is a whole other story.

Mr. CONYERS. I commend you and those who joined you in that trip, because it not only ties in with the subject matter before us but the larger question of the determination of the North American Free Trade Agreement.

Mrs. COLLINS. Exactly, Mr. Chairman.

Thank you.

Mr. CONYERS. Thank you very much. The chair is pleased to recognize the ranking minority member of the subcommittee, the gentleman from California, Al McCandless.

Mr. McCANDLESS. Thank you, Mr. Chairman.

Ms. Browner, to say the least, you have your work cut out for you.

I read your statement with a great deal of interest, and you have set some goals and objectives that all of us would like to see you accomplish, along with Chairman Dingell's footnotes.

In your testimony recently before the House VA-HUD subcommittee, you stated, "As someone who once ran a State agency, I have tremendous faith in the abilities of State and local government," and having come from county government I accept that and agree with you. At that same hearing, Ms. Froto agreed also by saying, "Once we concur in a project and it moves forward, our only role after the permit has been issued is to enforce that permit,"

again strengthening your testimony about the ability of local government.

So I want to use that to focus in on an area. Permit me to do this by using a specific example, a longstanding project that is a highway in the southern California area which is in the process of being improved. It is the main corridor out of the north of Mexico for commerce, travel, and is a two-lane highway. It has been dubbed by all of those who are involved in law enforcement as a killer highway.

The project goes back to 1973 when EPA accepted whatever was necessary in the way of permits in approving the EIS. Parts of the highway have been concluded; contracts have been let. EPA now has said that that process is no longer valid and that we are going to have to have a new EIS on a certain section of the highway. This is now 20 years after it approved the previous EIS, and now EPA has rescinded that approval.

I have attempted to communicate with you, but you are very busy, and so far we haven't been successful in meeting.

The critical aspect of this, besides the number of people who have been killed and we anticipate will probably still be killed, is that partial funding of this, some \$24 million, will no longer be available on June 30 of this year. If we are not successful in moving forward in utilizing or committing that money, then we go back to a 15-year waiting list.

So using that, I would like to focus in on the issue here, hearing from you about the process EPA goes through in approving an EIS and whatever process exists which would allow the Agency to come in 20 years later and rescind its approval.

Ms. BROWNER. I apologize for not being familiar with that specific project. There are a number of statutory provisions that relate to duration of various actions taken by the Agency and sort of limit the duration. I do not know if that is the case in this particular instance but would absolutely like to get back to you and see what we can do.

I don't know what the impacts are and what the statement found that would call for review. I do know, speaking from my experience in Florida, that EIS's in some instances do not last forever and there are provisions for some sort of review after a certain period of time.

Mr. MCCANDLESS. I respect your position for not knowing the details. We wouldn't expect you to. The problem is the rights-of-way have all been acquired, new rights-of-way, it is not an existing corridor, and it boggles the minds of virtually everyone, I might add, including even Fish and Game in the State of California and Fish and Wildlife at the Federal level, why at the 11th hour and 59th minute EPA has stepped in and said we no longer approve of this EIS. Obviously, the money involved and the intensity of the subject relative to life and limb is of importance.

I would like to be able to at some time in the very near future communicate with you or have you communicate with me on this because of the seriousness of the problem.

Ms. BROWNER. Absolutely. We will get with you immediately, and I will personally attempt to understand the situation.

Mr. MCCANDLESS. One has difficulty understanding, if there are a set of rules for approval and the project moves forward and money is spent as we have outlined, and then at some point new rules become a part of the project's requirement, this is going to place a substantial burden on public works projects.

Ms. BROWNER. No. I understand the tremendous frustration, and we will see what we can do.

The problem is that in some instances the statutes dictate what we can and cannot do in terms of having to take new provisions and apply them in the course of a 10-year or 5-year review. That is what I don't know here. So if we could work together to see if there is a way to look at this situation and timely address the concern, obviously we don't want to see the highway dollars lost.

Mr. MCCANDLESS. Thank you, Mr. Chairman. I yield back.

Mr. CONYERS. Thank you very much for your questions, sir.

The chair recognizes the gentlelady from Florida, Mrs. Thurman.

Mrs. THURMAN. Thank you, Mr. Chairman.

Secretary Browner, I am glad to see you here and am looking forward to working with you.

I would like to go back a little bit to the testimony that was given by Chairman Dingell and some of the issues that relate to what I think Mr. Conyers and staff have done in raising to a level that I think has to be raised specifically with GAO and the IG reports.

There has been, from what I can gather—and I have to tell you, it is riddled through all of the agencies and Departments, it is not just EPA, on the information resource management—in your testimony there was no conversation about that and/or the chief financial officer. Could you give us some ideas of how you see this bill or your implementation of this and how it would help?

Ms. BROWNER. We do presently have both a chief financial officer designated and a designated senior official for IRM. The person who is the Assistant Administrator for OIRM has been designated as responsible. It may be something we need to look at, those two responsibilities being very, very significant.

The question that you raise about information resource management is one of great concern to the Agency. We admit that we have not done a particularly good job at integrating the various data bases. The historical problem is that we are requested to create a number of data bases in a number of different pieces of legislation, and what we now need to do is make sure that all those data bases integrate, and we have a 5-year plan, and we have requested money in our budget to allow us to undertake that process. It is extremely important to how we can function as an Agency and how we can make our information available to those that need it and to the public.

We designated the—I don't know if you are familiar with the FMFIA process whereby agencies designate weaknesses. They go through a process, an internal process, to designate management weaknesses within the Agency. We have designated the issue of information resource management as a FMFIA weakness.

Mrs. THURMAN. One of the things—and I am going to go back to the bill a little bit, because they really did what I think is a good job, and it really addresses it, and it talks about areas where they

actually put management structure forward and focused attention on the need for strategic planning, planning performance, measurement, and information. Are you going to support that? Do you support that? And maybe even a further question is: What can we do to help you in making sure that this objective is carried out?

Ms. BROWNER. Well, I am a strong proponent of strategic management and developing a process. You may remember, in Florida we had—in fact, the agency that I was the head of became the model for all the other agencies in terms of a strategic planning initiative, and so we welcome the opportunity and the guidance from the committee to actually commence such an undertaking. I think it is essential to take that sort of broad view and then use that to make strategic decisions in terms of resource allocation.

Mrs. THURMAN. I think I remember trying to carry that amendment for you in the Natural Resources Committee.

One other area that has been brought up again in all of the GAO IG reports: When you gave your testimony, there was a lot of consideration of really looking at issues. Carol, one of the things that they have criticized all of our agencies for is that we hire people or people are put in those positions that become involved in the issues versus management, and I know you are good at management, and I don't know if I need it as a comment more or as maybe to ask you a question on how you are going to be able to carry out the management part of this, because it has really been talked about an awful lot.

Ms. BROWNER. This is, I would suggest, not an issue unique to EPA and not unique to the Federal Government. The structure for advancement in government at the State and the Federal level, at least in my experience, has tended to be based on substantive skills and not always management skills, and we need to make sure that as people move into management positions they have the appropriate skills to manage. I think we need to allow people who don't necessarily want to move to the management position to get the other rewards associated with moving up the salaries, et cetera, without taking on management responsibilities that, quite frankly, they may not be well suited for. It is a difficult challenge.

We are looking at ways to make sure that all of the people who are presently in management positions have the tools, the management tools, to do the job. We have also indicated that, as it relates to financial management, we want to make sure that anyone who moves into a senior management position has had financial management experience in the Agency or within the Federal Government, that that is something we will be looking for and would hope to require as much as possible.

Mrs. THURMAN. Thank you.

Mr. CONYERS. Thank you, Mrs. Thurman.

The chair recognizes the gentleman from Florida, Mr. Mica.

Mr. MICA. Thank you, Mr. Chairman.

Welcome, Ms. Browner. I am pleased you are from Florida. I know you have an incredible task before you, just reviewing in the last 2 or 3 months, myself, what is going on with the Agency, and I hope to be constructive in working with you and look forward to that relationship.

The most disturbing testimony that I have ever heard—and I served in the Florida legislature for years—was by the inspector general and also the folks from the General Accounting Office less than 5 weeks ago. They described a house of horrors for the taxpayers, which was the operations, particularly contract management and management within the Agency. I asked them—and I have copies of their testimony; maybe you have seen it—if there were any additional laws or things we could enact to deal with this situation, and they described contract fraud, mismanagement, waste, criminal activity, on the part of employees and contractors.

I have thought about what to do about this. One thing I have done is, I wrote the Department of Justice, the Attorney General, because I think this is beyond you and this committee. I am asking the Department of Justice to investigate, to launch an investigation, into this matter because I think it is beyond our scope. I just want to make you aware of that.

Mr. Chairman, I would like to submit this, if I may, for the record, a copy of my letter to the Attorney General.

Mr. CONYERS. Without objection, we will take it into the record.

Mr. MICA. Thank you.

[The letter follows:]

JOHN L. MICA
11th DISTRICT, FLORIDA

COMMITTEE ON PUBLIC WORKS
AND TRANSPORTATION
SUBCOMMITTEE ON AVIATION
SUBCOMMITTEE ON ECONOMIC DEVELOPMENT
GOVERNMENT OPERATIONS
SUBCOMMITTEE ON ENVIRONMENT, ENERGY
AND NATURAL RESOURCES
SUBCOMMITTEE ON HUMAN RESOURCES
AND INTERGOVERNMENTAL RELATIONS

Congress of the United States
House of Representatives
Washington, DC 20515-0907

May 5, 1993

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The Honorable Janet Reno
Attorney General of the United States
Constitution and Tenth Street, N.W.
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Dear Attorney General Reno:

As a Member of Congress currently serving on the House Government Operations Committee, I was shocked to learn the extent of contract mismanagement and abuse at the Environmental Protection Agency (EPA). Despite years of General Accounting Office and EPA Inspector General review and recommendation, EPA contract programs still suffer from employee and contractor mismanagement, fraud, waste, and abuse.

In recent testimony before our committee, EPA Inspector General John Martin indicated that the U.S. Attorneys often refuse to prosecute EPA criminal fraud and mismanagement cases because of the "complicity" of the EPA managers in the process itself." I hope you would agree that this is an intolerable situation. I urge you to aggressively pursue the prosecution of these cases. If prosecution under current circumstances is not possible, please advise me as to what steps we could take, legislatively and otherwise, to better position the government to pursue such cases in the future. I also believe the Justice Department should conduct a comprehensive review of the alarming pattern of fraud and general mismanagement of federal resources at EPA. Holding government employees and contractors accountable for their actions is critical to restoring public confidence in our government.

Another challenge facing the taxpayers involves EPA's Superfund program. As you may know, the federal government may lose up to \$4.8 billion over the next several years because EPA is not filing claims to recover cleanup costs from potentially responsible parties within the statute of limitations. The documented failure of the current Superfund management structure demands that we take additional measures to insure that these cases are handled properly.

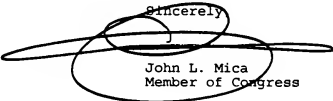
I believe the Justice Department should join EPA in creating a special task force to focus federal resources on these cases, and expedite the cost recovery process. A similar task force was

created in 1978 to successfully address imminent hazard provisions of the Resource Conservation and Recovery Act. I believe we owe the American taxpayers our commitment to use every government resource to recover these funds.

I hope you will agree that we should give our full attention to resolving these important issues. Please let me know if I can provide additional information.

With my regards and best wishes, I remain

Sincerely



John L. Mica
Member of Congress

JLM:jf

Mr. MICA. So that is one area, and we have some incredible problems dealing with management.

One question I had was, this was the last report dealing with contracts management, and there is a timetable within this. Maybe you are familiar with it. It is standing committee recommendations. Is that timetable being met?

Ms. BROWNER. To the best of my knowledge, it is.

The report that Congressman Mica refers to is an internal Agency report, if you will, a blueprint for addressing these problems. The committee came back and made a series of recommendations, and, to the best of my knowledge, we are close to meeting the deadlines put forth. We have designated the management officials and taken a number of other actions.

Mr. MICA. Also, if you have any recommendations, other than elevating this to Cabinet level, I would welcome your recommendations.

The other area of immediate concern before this issue is resolved is, there are reports now that we may lose as much as \$4.8 billion in the Superfund in recovery of some of those moneys. In fact, I have a copy of a memorandum from Hugh Kaufman, Hazardous Site Control Division, and on the second page he says,

According to both a recent EPA inspector general report and the CPI report, EPA officials currently designated with responsibility do not have the will or the resources to retrieve the billions of dollars owed the Government before the statute of limitations runs.

I call that to your attention. I have also asked the Justice Department to look at this and see if there is anything that can be done by that Agency to recover this \$4.8 billion. That is in Superfund only. There are all these other contract problems, some of which have not been pursued. But I am wondering what you are doing to address this situation.

Ms. BROWNER. The Agency has a very aggressive program—in fact, I think some may find it too aggressive—to collect money from responsible parties associated with Superfund sites. We now collect almost 70 percent of the cleanup costs associated with Superfund from responsible parties. I have not seen the memorandum Mr. Kaufman provided you.

There is a statutory deadline in terms of the timeframe, and, as I understand it, it is coming soon, and so we are doing everything we can to get back as much money as possible from responsible parties, but I think that, on balance, people would have to agree that at least in the last several years of the Superfund program our efforts in terms of collections from responsible parties have grown significantly.

We also now are doing a much better job in terms of getting out of the business of cleaning up and then collecting. Rather, we have the responsible party actually conduct the cleanup.

Mr. Mica, if I might just add one thing more generally, we believe that a number of the provisions included in the chairman and the committee's draft legislation will be very, very helpful in terms of dealing with the contract issues that Chairman Dingell raised and that I believe have been raised by the EPA inspector general and the GAO report, so we really applaud the committee for their leadership.

Mr. MICA. Mr. Chairman, I would like to submit this, if I may, and I have just one quick last question, sir, if I may.

Mr. MICA. My final question deals with, again, trying to look at how we can improve this situation. The Center for Public Integrity has a report, and I will provide a copy of it. There is an executive summary, and in the executive summary it cites that the Center found that 80—this deals with of the top EPA officials who have worked with the toxic waste cleanups and left Government since 1980. The Center found that 80 percent of them have gone to firms holding Superfund cleanup contracts or have consulted with or given legal advice to companies about dealing with the Superfund.

I would like to know finally—and if you want to address it here or later on—how we can deal with this revolving door situation.

Ms. BROWNER. I believe that the Congress has considered legislation. I apologize for not knowing the status of that legislation. It is obviously important to make sure that all the ethical rules and the public trust is protected as we as public officials seek to do our job, and I am extremely committed to that. I am just not aware, I apologize, for knowing the status of some specific legislation.

Mr. MICA. Mr. Chairman, I have a copy of that executive summary also I would like to submit for the record.

Mr. CONYERS. Without objection, it is so ordered.

Mr. MICA. Thank you, Mr. Chairman.

[The executive summary can be found in the appendix.]

Mr. CONYERS. I want to say to Mr. Mica that I want to commend him for his detailed inquiry into these matters. We have lost a lot of money in the past, and one of the things that we have to know in determining how we move forward is what really went wrong, and so to that extent I think the gentleman's inquiries and raising this with regard to other Departments is extremely important.

Mr. MICA. Thank you, sir.

Mr. CONYERS. The chair is pleased to recognize the gentleman from Louisiana, Mr. Hayes.

Mr. HAYES. Thank you, Mr. Chairman.

Ms. Browner, on page 4 of your testimony there is a word that I think is the key to success and potential success of your job. It is the end of the sentence that says, "Our successes are meaningful only in terms of reducing overall risk." I think risk assessment has got to be the key role of the Administrator and hopefully the Secretary in the not too distant future, because the conflicting mandates have got to have some kind of continuum in which we address some things first because of limited resources.

We can mandate against every city in America, none of which can pay their bills now, none of which have a tax base, we can give them a hundred different mandates; if we don't prioritize those mandates through risk assessment, then there is no way in the world for me to support Mrs. Collins in Chicago and for her to support me in rural Louisiana unless we can both go home to the people who elect us and say it makes sense in Chicago because this risk is great to this group and this activity is meaningful, just as I elicit her help on the same fair basis as national policy.

What can we do, and what suggestions might you make or have you reflected upon in combining the science, the technology, to the human risk, and, as a consequence of that, being able to take a

look at what some of our national priorities on the environment ought to be?

Ms. BROWNER. That risk assessment is an extremely valuable tool in helping both to shape the debate and then in the decision-making process. I think it is one of several tools.

If you look at risk assessment historically, we have not focused on the populations most at risk in many instances. We have tended to base our analysis on, in some instances, 35-year-old white men who may not be most at risk for a particular consequence. So it is very important as we move forward in using the tool of risk assessment that we broaden the populations that are looked at, that we look at things in terms of location.

Yesterday, you and I had the opportunity in another committee to talk about watershed protection. I think that if you can bring risk assessment into looking at specific areas and how those areas function as an environmental whole, and then making decisions based within that area on what is the most serious risk and focusing your energies there initially and then looking at other sources, that is, I think, the future of environmental protection in this country; it is to bring a variety of tools—market-based incentives, risk assessment, ecosystem protection—to bring them together and make our decisions accordingly.

Mr. HAYES. Which leads to my second and final question. The idea of bringing them together then involves the cost assessment, and in watching the debates on the elevation bill in the Senate, clearly the issue of ascertaining cost connected with regulations came up over and over again.

I do know that Executive Order 12291 exists, but what I would like to ask you is, that issue is probably going to arise both in this committee and on the floor, and I would like to ask you if you could do the following. What was omitted, in my opinion, from the Senate debate was specifics.

I would like to know if you could, at a later date, provide us with two or three examples of the methodology used when the \$100 million threshold was exceeded in order to determine cost; and, second, when you yourself review that, if you would comment on whether the system of review in place in the Agency prior to your taking over is one that you think is acceptable or unacceptable. If it is the latter, suggest to us whether it is unacceptable for lack of resources and tools or if it is unacceptable for internal changes that you might make.

That is a long question, but it boils down to this. Example would be so much better to judge on the merits than a concept of review and economic attribution, and if you could supply us with those examples from which we could learn where you need further help or where we might need legislative activity, I would very much appreciate that.

Ms. BROWNER. We will certainly look at that and provide you with the information.

Mr. HAYES. And the final one is not a question but an observation. The gentleman from Florida, Mr. Mica, talked about the collection problems in Superfund. You will never get the money, because you have been put in a box where I believe that the legislative responsibility is in some manner consistent with your views

and, from the experience of your view of EPA, provides you with a pool of money that doesn't strain the limits of imagination on who a responsible party is, because unless we do that then you are never going to have the ability to handle those military installations where no company will ever take them over with the potential financial risk of cleaning up what the Air Force or the Army may have done under a system that says they are liable because they got it even though they didn't even know about it, and I would suggest that what we really have to you is an obligation to fund past what I think is a very misguided system where "culpability" and "liability" are entirely different words on too many occasions.

Thank you, Mr. Chairman.

Mr. CONYERS. Thank you very much, Mr. Hayes.

Mr. McCandless.

Mr. MCCANDLESS. Thank you, Mr. Chairman.

I would like to just continue briefly our discussion on Federal preemption using two examples.

Eastern Municipal Water District spent some \$4 million conducting studies to prepare programs in support of live stream discharge into the Santa Margarita River. EPA rejected the permit issued by the State of California and took over the NPDES process. Similarly in San Francisco, site specific standards were set for copper in accordance with EPA guidelines and written approval of the study's methodology was given. The findings of the study were, nevertheless, subsequently rejected by region IX. In both cases—and this is the issue—EPA was consulted about and approved the methods and protocols used by the permit seekers. So my question is, obviously: What more do these communities need to do to ensure that the projects they are seeking and developing with the guidance of EPA are not subsequently rejected?

Ms. BROWNER. When EPA delegates to a State agency its authority, in many instances we are required by Congress to maintain an oversight function. The responsibility has been vested in us by the Congress, and then we are seeking—and I think appropriately so—to use our sister agencies who bring a whole other level of resources to the work that we do.

There are occasions where the Agency does not agree with the actions taken by the State agency who has assumed day-to-day management of the program, and we retain the ability to exercise our oversight authority. It is something that we do not that frequently, but I don't want to suggest that it doesn't happen. Obviously, you are aware of these two examples. I can tell you from my experience in Florida, it did happen to me.

It is, I think, important, if we are to be able to answer the questions of Congress for how we manage these programs, that we retain this sort of oversight authority. Otherwise, you may find yourself having to deal with 50 separate States.

What we have to do as an Agency is make sure that we have the best possible relationship with the State agencies, that we work together, that we let the States do the job that they are qualified to do, and that we not exercise the oversight authority capriciously.

In those particular cases, I am not aware of why the oversight authority was exercised, and we can certainly look at it and get back to you.

Mr. McCANDLESS. If I may, one element of this: The \$4 million was spent by a municipal water district supported by tax funds, not a private agency, to go into tertiary treated water to safely discharge this water. This information, which was prepared by those who had good credentials, was rejected by EPA because they did not agree with the conclusion. I find that difficult because EPA finds out, by and large, as we have talked about here, its information by going out and hiring somebody else.

We had a \$4 million expenditure to try to find the elements of truth relative to the project, again, rejected by EPA. I would hope that if we have in the future credible reports, that are put together by credible people, that EPA would look at these, with the academic background and experience that people had in delivering the final product.

Ms. BROWNER. I agree. It is very important that we respect the good science done by others and use, if appropriate, a peer review process or other mechanism but not necessarily redo all of the science.

I apologize for not being, again, familiar with these specific cases, but I would be more than happy to familiarize myself and then talk with you.

Mr. McCANDLESS. OK.

Mr. Chairman, I have other questions, but in the interests of time and the parties involved here, the committee and Ms. Browner, I would ask unanimous consent to be able to submit those questions within a reasonable period of time.

Mr. CONYERS. Without objection, so ordered, and we will extend that to other members of the committee as well.

[The information can be found in the appendix.]

Mr. CONYERS. Thank you, Mr. McCandleless.

The chair is pleased to recognize Ms. Corrine Brown.

Ms. BROWN. Thank you, and welcome, and I am still going to call you Madam Secretary.

Ms. BROWNER. It is great, all these people from Florida on the committee.

Ms. BROWN. My first question: Congressman Mica raised some serious charges. Can you tell me during what time period this occurred? Was this during the past 12 years or the past 2 months?

Ms. BROWNER. To the best of my knowledge, all of the IG reports presently available go to actions taken prior to probably 6 months ago. There is none since January. I will ask the IG who was here—I guess he left. I am pretty sure that is a correct statement.

Ms. BROWN. Thank you.

The draft bill creates an Office of Environmental Justice at EPA and establishes an advisory board. This measure is to ensure that the core of programs, staff coordinated activities across the Department—that it has sufficient citizen input. How do you feel about a strong citizen advisory component?

Ms. BROWNER. I think it is absolutely essential and that we will be able to do the quality of work we want to do because of strong citizen involvement. It is part and parcel of how we will do our job.

Ms. BROWN. The draft bill provides grants to community groups to help them get technical assistance to study the effects of pollution or to prepare comments on the environmental impacts of ac-

tions by local communities. Do you support such technical assistance for money for community groups?

Ms. BROWNER. Yes, we have a technical assistance program right now for community groups, and we find it to be very successful. Again, it gives local communities information they need to be full participants in the decisionmaking process in the discussion.

Ms. BROWN. My last question: The work you have done in Florida has been outstanding, but there is a concern that EPA only spent \$2 million to do research and environmental justice out of total research dollars of \$330 million. What would be your policy?

Ms. BROWNER. As I said in the opening statement, we would seek to make sure that we do the level of research that is necessary to deal with these issues, the environmental justice issues, and to make sure that the risk assessments that we undertake are focused on the populations most at risk.

Ms. BROWN. And I guess my last question—and I said the other one was the last—there was an article in the National Law Journal released, I think, September 12 on equal protection which charged EPA with discriminatory enforcement of environmental laws, particularly to minority communities and low-income communities.

Ms. BROWNER. When we address penalties, specific penalties, we do take into account ability to pay, since we don't want to put someone out of business who is prepared to take the corrective actions to clean up the problem and follow the law in the future. So ability to pay is taken into account.

It is important in looking at this issue of penalties and the amount of penalties collected in different neighborhoods to make sure that that was factored into the analysis. But we are concerned about the level of enforcement activities in neighborhoods of color and low income communities and are committed to working with the Justice Department to make sure that we are addressing those concerns.

Ms. BROWN. Thank you. Thank you, Mr. Chairman.

Mr. CONYERS. You are welcome.

A couple of weeks ago we had a citizen who in some ways typified the problems that a lot of people in the country have when it comes to ecological problems. Everywhere the situation is call your city, call your county, call your State, and then finally you can weigh in with EPA. I have been trying to turn over in my mind how we can make this whole process consumer friendly, that we really aren't just dealing with mega-corporations and scientists, so that for the average citizen the EPA is something way there in Washington, inside the Beltway, that only the biggies can approach.

I would like you to join with me in trying to make sure we have a realistic process. What I have found is that in places like Mississippi, where contamination in some places—I mentioned Columbia, in particular—is really deadly. With all due respect to a State from which my colleague and friend, Mr. Hayes, comes from, I think there is a part of that State called Chemical Alley. It is world infamous in terms of the kinds of toxic wastes that have been coming out of there for years, and even now as we speak.

And everybody has acknowledged what a challenge you have here because these things have not just started, they have been

doing on for quite a while. And institutional corrections don't come easily. You won't be just sending them a letter saying, "Guess who is your new Secretary, gentlemen. Shape up." Because they are going to—well, I am not going to tell you what I think they are going to say. But it is a pretty big job. It is a daunting task.

So here we have the big institutional organizations on one end saying, lighten up, Ms. Browner, and we have millions of ordinary people who are almost without a remedy. At the local level they get stifled in a very insulting way. There was one such citizen before us at the last hearing, and I am going to give you the letters that she wrote back, and maybe we can let her know that these matters do come even to the attention of the people at the top.

Ms. BROWNER. I would appreciate that. I would tell you, Mr. Chairman, that I personally believe an informed and involved public is our best ally in accomplishing the task that we face, and we look forward to doing everything we can to educate the public and then to involve the public. We make tough decisions, and it has been my experience that when the public is involved in assisting us in making those decisions it is easier to accept the consequences of the decisions and to participate in the solutions that must be put forth.

Mr. CONYERS. I think that your presence here today has made a lot of us more comfortable as we move toward this daunting task. I hope Chairman Dingell will continue to express confidence in you and increasingly realize that this is going to be a job that all of us will be working in together.

I thank you very much for joining us today.

Ms. BROWNER. Thank you, Mr. Chairman, and members.

Mr. CONYERS. We now call the general counsel of the U.S. General Accounting Office and Directors JayEtta Hecker and Bernice Steinhardt to make their testimony available from the General Accounting Office. We welcome you all.

We know that you are veteran witnesses, so that you understand how much brevity counts in persuading us to the logic of your position.

Mr. HINCHMAN. I do, indeed, Mr. Chairman.

Mr. CONYERS. Welcome again, Mr. Hinchman. You may proceed at your leisure.

**STATEMENT OF JAMES F. HINCHMAN, GENERAL COUNSEL,
U.S. GENERAL ACCOUNTING OFFICE, ACCOMPANIED BY
JAYETTA Z. HECKER, DIRECTOR, RESOURCES, COMMUNITY,
AND ECONOMIC DEVELOPMENT INFORMATION SYSTEMS,
AND BERNICE STEINHARDT, ASSISTANT DIRECTOR FOR EN-
VIRONMENTAL POLICY AND MANAGEMENT**

Mr. HINCHMAN. Thank you, Mr. Chairman, Chairman Synar, and members of the committee. We are pleased to be here to offer our comments on the proposal to create a Department of Environmental Protection and to discuss the draft legislation to create that Department.

I do have a longer written statement, and with your permission I would submit that for the record and provide the committee today only highlights of that.

Mr. CONYERS. Without objection, so ordered.

Mr. HINCHMAN. As we said in testifying on predecessors to the current legislation, we believe that conferring Cabinet status on the Environmental Protection Agency would enable the United States to respond more effectively to the complex environmental challenges it faces. We therefore continue to support the creation of that Department for the same reasons we have cited in the past, the growing importance of environmental issues and the inter-relationship of environmental protection issues and other national and international issues represented by Cabinet Departments.

But regardless of whether EPA becomes a Cabinet Department or not, it faces a number of fundamental organizational and management problems. A number of provisions of the draft bill are intended to begin to correct some of these problems, and to promote sound management of the new Department. My written statement discusses the rationale for elevating EPA to Cabinet level, and with your permission I would like to focus in these brief oral remarks on these organizational and management improvement provisions of the legislation.

Let me turn first to the Commission on Improving Organization, Management, and Efficiency. The bill would create a Commission of experts to make recommendations to enhance and strengthen the management and implementation of environmental programs in the organization of the Department. Such a Commission could be enormously valuable, we think, particularly if it can contribute to addressing one of the key management issues a new Department must face, an issue which has already been raised with you today: how to carry out an expanding number of environmental mandates with increasingly limited resources.

Despite the significant new regulatory responsibilities it has, EPA's operating budget is now no larger than it was 14 years ago, and in the budget climate of today significant increases cannot be counted upon. It is therefore urgent, in our opinion, that the Department of Environmental Protection begin to establish priorities among its programs, and to do so on the basis of risk to public health and the environment. For this reason, we support provisions in the draft legislation calling for the Commission to examine improvements that might occur from better linkage of risk priorities and resource allocations.

The Commission could also provide valuable service by considering how to bring about a more fundamentally integrated approach to environmental management through organizational change. EPA is currently organized, as this committee knows, largely around program offices that tend to focus solely on reducing pollution within a particular medium such as air or water, rather than reducing pollution overall. The Commission might therefore examine the new organizational structure for the Department, one that is organized by function, perhaps, or by pollution sector.

And in this connection I think permission of this kind which draws on people outside the Agency may be able to bring a broader perspective to these fundamental questions about how EPA or the new Department goes about its work.

Another section of the bill would provide for a chief information officer. Creation of this position within the new Department should strengthen its ability to confront significant information manage-

ment challenges. He or she can become an authoritative, indispensable partner in senior management within the Department, providing them with a thorough analysis of Agency processes and helping to determine when and how strategic information investment should be made.

As indicated in our March testimony, EPA has longstanding information resource management problems, and we have repeatedly reported on these both to EPA and to Congress. For years EPA has fostered a highly decentralized and fragmented information management environment without adequate centralized direction and control. If the Department is to be managed in a more integrated and comprehensive fashion, fundamental changes are necessary in the way the Agency collects, processes, and disseminates data.

Senior management needs to be involved in determining how information will be used to achieve goals that have been delineated in the strategic plan for the Department. It is the strategic plan that provides a framework for information management and forms the basis for outcome-oriented performance measures for programs.

The Department needs strong, competent leadership and direction to tackle these information management challenges. We believe that having a chief information officer who is part of the senior management team of the Department combined with proven discipline practices for managing information resources is a sound investment and can provide major benefits for mission performance, operational efficiency, and Agency accountability.

We believe the Department would also benefit from an objective, reliable source of environmental information, a role that could be filled by the proposed Bureau of Environmental Statistics. Throughout the Agency and within specific programs, EPA lacks not only performance measures but also the information necessary to establish those measures. Also, environmental programs are meant to clean up or prevent unacceptable levels of pollution. EPA has not had the information with which to judge the success of its programs, usually relying on activity-based indicators such as the number of permits issued or enforcement actions taken.

A central unit for collecting, analyzing, and disseminating environmental data such as the Bureau of Environmental Statistics could be very helpful, refocusing management information systems on results, developing the environmental information necessary to evaluate program performance.

The draft bill also contains several procurement reform proposals, some with governmentwide applicability and some specific to the new Department of Environmental Protection. In these times of budget austerity, reforming the way the government spends billions of procurement dollars is particularly important, and we welcome and support the efforts of this committee to seek to reform that process.

First, the bill would establish governmentwide and Department-specific standards for the performance of so-called inherently governmental functions. These are functions that because of their intimate relation to public interest to be performed only by employees of the government. We reviewed the performance of these functions in several agencies a year or so ago, and called for better guidance on this issue from the Office of Management and Budget.

In 1992, OMB issued policy guidance for use by agencies in determining whether to contract out particular activities, and we believe that that guidance addressed our concerns. The government-wide provisions of the draft bill are substantially consistent with the OMB policy guidance and we support them.

The bill would also establish requirements concerning organizational conflicts of interest. These are circumstances in which a contractor either would have an unfair competitive advantage or would be biased in performing a government contract. The draft bill, which in large part tracks existing provisions of the Federal Acquisition Regulation, would prohibit contracting with a firm that had an organizational conflict of interest unless the head of the Agency determined on the record that the award was essential to protect the interest of the government. We support this codification of these organizational conflict of interest prohibitions.

Third, the draft bill would address problems we and others have identified concerning the types of indirect costs that are allowed to be reimbursed under government contracts. The bill would provide for a single governmentwide system of penalties for contractors that claim unallowable costs. Similar provisions now apply to contracts with defense agencies and we support extending these provisions governmentwide.

The last of the procurement reform provisions in the draft bill would establish requirements for use by the Department of long-term contracts for advisory and assistant services known as umbrella contracts. These provisions are intended to address abuses in the use of these contracts related to competition and the use of subcontractors, and we support that effort.

Finally, an addendum to the draft legislation proposes requiring the Department in its civil enforcement cases to assess penalties that are at least as great as the amount by which a company would benefit by complying with the law. This provision would essentially codify basic elements of EPA's uniform civil penalty policy. We believe this is a sound policy and that it provides a basis for fair and comparable treatment of all regulated entities while still allowing for exceptions when circumstances call for them.

The draft legislation also calls for better reporting of penalty information, which should be helpful in improving EPA's oversight of its regions and States, which our previous work indicates has been a persistent problem. We also believe the Commission as part of a study of organizational structures for the Department could recommend how best to organize enforcement responsibilities to improve accountability for penalty practices.

In sum, we believe that elevating EPA to a Cabinet Department would affirm the prominence and permanence of the Federal role in environmental protection. With the creation of a Commission, a Bureau of Environmental Statistics, a chief information officer, provisions to guard against contract mismanagement, and to institute better penalty policies and practices, we believe the Department could ultimately provide the United States with a more effective organization for addressing the difficult environmental agenda which is ahead of us.

With that I want to conclude my remarks, Mr. Chairman. I and these two women who are leaders in our work at the Environmental Protection Agency in recent years would be happy to respond to your questions.

[The prepared statement of Mr. Hinchman follows:]

United States General Accounting Office

GAO

Testimony

Before the Subcommittee on Legislation and National Security
and the Subcommittee on Environment, Energy, and Natural
Resources, Committee on Government Operations,
House of Representatives

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CREATION OF A
DEPARTMENT OF
ENVIRONMENTAL
PROTECTION

Statement of James F. Hinchman,
General Counsel



Chairman Conyers, Chairman Synar, and Members of the Committee:

We appreciate the opportunity to appear before you today to offer our views on the creation of a Department of Environmental Protection and on a discussion draft of legislation to create that department.

As we said in testifying on predecessors to this legislation,¹ we believe that conferring Cabinet status on the Environmental Protection Agency (EPA) would enable the United States to respond more effectively to the complex environmental challenges it faces. We therefore continue to support the creation of a Cabinet department for the environment for the same reasons we have cited in the past: the growing importance of EPA and of environmental issues and the interrelationship of environmental protection issues and other national and international issues represented by Cabinet departments.

But as we cautioned in testimony presented to you two months ago,² regardless of whether EPA becomes a Cabinet

¹Creation of a Department of Environmental Protection (GAO/T-RCED-89-52, June 21, 1989) and Creation of a Department of Environmental Protection (GAO/T-RCED-90-25, Feb. 7, 1990).

²Management Issues Facing the Environmental Protection Agency (GAO/T-RCED-93-26, Mar. 29, 1993).

department or remains an agency, it faces a number of fundamental organizational and management problems. Systems must be developed to provide adequate and accurate information that will support its regulatory programs and measure environmental results. Accountability for correcting existing program weaknesses must be established. Limited resources must be better managed to achieve the nation's numerous environmental protections goals in the face of high public expectations.

A number of provisions of the draft legislation are intended to address some of these problems and promote sound management of the new department. In our testimony today, I would like to discuss these provisions. However, let me begin by reviewing the rationale for elevating EPA to a Cabinet-level department.

GROWING IMPORTANCE OF EPA AND OF ENVIRONMENTAL ISSUES

It is important to understand how different the EPA of 1993 is from the EPA of 1970. Today, the agency administers a dozen or so major environmental statutes, most of which had not yet been enacted when EPA was created. Even those that had been passed, such as the Clean Water Act, were completely revamped in the 1970s. From first-year expenditures of \$384 million, EPA's annual outlays have risen to almost \$6 billion. As a percentage of total

federal outlays, EPA's share has more than doubled since 1970. Today, EPA spends about as much each year as the Department of the Interior--and more than the Departments of State and Commerce.

Of even greater significance than the size of federal outlays for environmental protection, however, is the effect of EPA's programs on our national economy. Environmental control measures have cost the nation approximately \$1 trillion thus far. We now spend about \$115 billion a year, or about 2 percent of our gross domestic product (GDP), on controlling and regulating pollution.

In the future, the federal role in environmental protection is likely to grow larger, especially as environmental problems become increasingly international. Although we have reduced air and water pollution, we have not solved these problems. The cleanup of hazardous waste sites is clearly going to continue well into the next century, as are efforts to reregister pesticides. And even as we move to try to solve old problems, we discover new ones, like global warming and indoor air pollution. Moreover, resolving some of these problems--like global warming and depletion of stratospheric ozone--will require unprecedented international cooperation. Thus, the number, scope and persistence of environmental problems argue

strongly in favor of representing environmental issues in the Cabinet.

INTERRELATIONSHIP OF ENVIRONMENTAL PROTECTION
AND OTHER ISSUES REPRESENTED BY CABINET DEPARTMENTS

As our awareness of environmental problems has increased and EPA's role has expanded, environmental policy has increasingly shaped other domestic and foreign policies. The 1990 Clean Air Act Amendments, for example, which called for switching to cleaner fuels and cleaner coal-burning technologies, are directly linked to the nation's energy policies. The United States' participation in the international agreement to phase out production of chlorofluorocarbons (CFCs) illustrates the integration of our environmental policies with our trade and foreign policies. As we begin to address global climate change, we will have to examine interrelationships among policies in many areas, including energy, agriculture, overseas assistance, foreign trade, and national security, among others.

Because it is the federal organization responsible for identifying and representing environmental interests before the rest of the government, EPA interacts regularly with the Departments of Agriculture, Defense, Energy, Interior, State, Transportation, and others. Elevating EPA to Cabinet

status would ensure that the head of the agency is able to deal as an equal with his or her counterparts both within the federal government and the international community. Compared with many other federal departments' interests and responsibilities, EPA's are equally wide-ranging.

Moreover, numerous GAO reviews have demonstrated that other federal agencies do not always provide the support and cooperation necessary to further environmental policy goals. Instead, roadblocks are often created by jurisdictional conflicts, organizational structures, and cultures that are not conducive to cooperation with EPA or that place a low priority on environmental protection. In some cases, the effect of these barriers has been serious. We see, for example, that years of ignoring environmental consequences at Defense and Energy Department facilities have jeopardized the health of neighboring communities and are likely to cost the federal government close to \$200 billion to correct. It is therefore important that the United States have an organization at the Cabinet level that is designed to ensure, as far as possible, that agency managers will consider and actively support national environmental policy goals as they make decisions about programs for which they are responsible.

OTHER ASSESSMENT CRITERIA

In recent years, when other agencies have been proposed for Cabinet status, concerns have been expressed that increasing the number of Cabinet members reporting to the President would make the Cabinet more cumbersome and less useful. While these concerns are not without merit, we believe that they are overshadowed by the significant impact of environmental decisions on our economy, the importance of environmental issues, and the interrelationship of environmental issues and other national and international issues--most of which are represented by agencies with Cabinet status.

Furthermore, the proposal to elevate EPA to a Cabinet department meets many of the criteria for elevation developed by the National Academy of Public Administration during consideration of the proposal to create a Department of Veterans Affairs. These criteria include improving program visibility to achieve a broad national goal, facilitating the achievement of cross-cutting national policy goals, and improving an agency's oversight and accountability. We believe that establishing a Cabinet department for environment would support the broad national goal of protecting our environment, and its structure would allow consolidation of functions now located in other executive branch agencies.

ORGANIZATION AND MANAGEMENT ISSUES

As I noted earlier, in our March testimony to this committee, we highlighted a number of important problems that EPA must address whether or not it becomes a Cabinet department. Several provisions of this draft legislation are intended to begin to correct these problems. Let me address these in turn.

The Commission on Improving the Organization, Management and Efficiency of the Department of Environmental Protection

First, the bill would create the Commission on Improving the Organization, Management and Efficiency of the Department of Environmental Protection. This commission of experts would be charged with making recommendations to enhance and strengthen the management and implementation of environmental programs and the organization of the department. We believe such a commission could be enormously valuable. We hope, in particular, that it can contribute to addressing one of the key management issues that the new department will face: how to carry out an expanding number of environmental mandates with increasingly limited resources.

Despite significant new responsibilities for regulating hazardous waste, drinking water, and water and air pollution, among other things, EPA's operating budget is today no larger than it was 14 years ago. And given the

urgency of reducing the budget deficit, it is unlikely to increase. It is therefore urgent that the new department begin to establish priorities among its programs on the basis of risk to public health and the environment. For this reason, we support provisions in the draft legislation calling for the Commission to examine improvements that might occur from better linkage of risk priorities and resource allocations.

The Commission could also provide a valuable service by considering how to bring about a more integrated approach to environmental management through organizational change. EPA is currently organized largely around program offices that tend to focus solely on reducing pollution within the particular medium for which they have responsibility, such as air or water, rather than on reducing pollution overall. The Commission might therefore consider whether to reorganize the department entirely by function, with a single office of regulatory development, an office of enforcement, and an office of science and research. Alternatively, the department might be organized by pollution sectors--industry, transportation, and municipalities, for example--or by geographic regions.

Chief Information Officer

Another section of the bill would provide for a Chief Information Officer. Creation of this position within the new department should strengthen its ability to confront significant information management challenges. He or she can become an authoritative, indispensable partner to senior management, providing them with thorough analyses of agency processes and helping them to determine where and how strategic information investments should be made.

As indicated in our March testimony,³ EPA has longstanding information resources management problems that we have repeatedly reported to EPA and the Congress. Environmental monitoring data and scientific analyses which are critical to the agency's mission are often either incomplete, inconsistent, or poorly managed. For years, EPA has fostered a highly decentralized and fragmented information management environment without adequate centralized direction and controls.

If the Department of Environmental Protection is to be managed in a more integrated and comprehensive fashion, fundamental changes are necessary in the way the agency collects, processes, and disseminates data. Top management needs to be involved in determining how information will be

³Environmental Protection: EPA's Actions to Improve Longstanding Information Management Weaknesses (GAO/T-IMTEC-93-4, Mar. 29, 1993).

used to achieve the goals delineated in a strategic plan for the department. It is this strategic plan that provides a framework for information management and forms the basis for outcome-oriented performance measures for programs.

Information management should not be viewed as a subset of facilities management or administration; it needs to be recognized and dealt with at a strategic level. The CIO, working jointly with top management, not only can help to develop information management performance measures, but also can participate in developing the agency's measures of its performance in achieving its overall mission.

The Department of Environmental Protection clearly needs strong, competent leadership and direction to tackle its information management problems. The appointment of a Chief Information Officer who is familiar with the uses of information technology in simplifying and streamlining organizational practices and who can devote full time attention to these issues offers real advantages. We believe that having a Chief Information Officer in the new department--combined with the adoption of proven, disciplined practices for managing information resources--is a sound investment and can provide major benefits for mission performance, operational efficiencies, and agency accountability.

Bureau of Environmental Statistics

The new department would also benefit from an objective, reliable source of environmental information, a role that could be filled by a Bureau of Environmental Statistics, which is called for in another provision of the draft legislation. Throughout the agency and within specific programs, EPA lacks not only performance measures but also the information necessary to establish these measures and to assess the effectiveness of its programs in improving or protecting environmental quality. Although environmental programs are meant to clean up or prevent unacceptable levels of pollution, EPA has not had the information with which to judge the success of its programs. While the agency has developed some measures of environmental outcomes--meeting national air quality standards, for example--EPA has generally relied on activity-based indicators, such as numbers of permits issued or enforcement actions taken, to track its progress. Because EPA has traditionally considered itself primarily a regulatory agency, it has focused its attention and resources almost exclusively on setting standards and issuing permits rather than on developing the information necessary to measure results.

A central unit in the new Department for collecting, analyzing and disseminating environmental data, such as a Bureau of Environmental Statistics, could therefore be very helpful, refocusing management information systems on

results and developing the environmental information necessary to evaluate program performance.

Procurement Reform

The draft bill also includes several procurement reform provisions, some with Government-wide applicability and some specific to the new Department. We welcome and support the efforts of this committee in seeking to reform the federal procurement process, and appreciate the opportunity to work with your staff on these provisions.

Procurement reform is especially critical in this era of inescapable austerity in the Federal budget. Chairman Conyers, the hearings you chaired on procurement reform in the last Congress demonstrated the need to make changes in the way the government spends billions of procurement dollars. You have noted that Federal procurement does not always get the attention that it warrants. We agree.

Contracting at all agencies, including EPA, has been a longstanding concern of the GAO. EPA, for example, is heavily dependent on contractors, spending more than \$1 billion in fiscal year 1991 alone. Most of that money went into the Superfund program, which we identified as one of 17 Federal programs especially vulnerable to fraud, waste and abuse.

Inherently Governmental Functions

The draft bill would establish government-wide standards for the performance of "inherently governmental functions," and specific standards applicable to the new Department of Environmental Protection. These provisions reflect the consensus that there are some Government activities that, because of their intimate relation to the public interest, should be performed only by officers or employees of the Government.

In 1991, we reviewed the performance of inherently governmental functions at several executive agencies, including the EPA. We concluded that each of the agencies had contracted out work that appeared to involve inherently governmental functions, and said that the Office of Management and Budget needed to clarify existing guidance for use by agencies in determining whether to contract for particular activities.

In September 1992, the Office of Management and Budget issued a detailed policy letter on inherently governmental functions that reflected GAO's work in this area. The governmentwide provisions of the draft bill are substantially consistent with that OMB policy letter, and we therefore support those provisions.

Organizational Conflicts of Interest

The draft bill would establish requirements concerning the identification and avoidance of organizational conflicts of interest. Basically, these are circumstances in which a contractor either would have an unfair competitive advantage or be biased in performing a government contract. Avoiding such circumstances is critical to ensuring the integrity of the procurement process.

The identification and avoidance of organizational conflicts of interest are now governed by the Federal Acquisition Regulation. Under the draft bill, which is substantially consistent with the FAR, a contract could not be awarded to a firm that had an actual or potential organizational conflict of interest. We support such restrictions. Under the bill, if an organizational conflict of interest existed, an award would be permitted only if the head of the agency determined on the record that making the award was essential to protect the interests of the government. In addition, action to mitigate the effects of the conflict and public notice would be required.

Contract Cost Allowability

The draft bill would codify rules and procedures governing cost allowability under executive branch

contracts. As the Committee well knows, contract cost allowability can be a fertile area for waste, fraud, and abuse.

A number of agencies, including EPA, have experienced problems in this area in the past. As just one example, last year GAO reported in testimony that an EPA contractor had claimed "questionable" costs of over \$167,000 for employee parties and picnics. In one instance, the firm spent \$3,200 for a dance band at a Christmas party and charged the cost to the government. In addition, costs were passed along to the government even though documentation to justify reimbursement was either incomplete or missing. Our work also indicates that the regulations governing allowable costs are not well-enforced.

We support the committee's efforts to ensure that contractors doing business with federal agencies are held to a high standard of accountability. In this regard, the draft bill would provide for a system of penalties patterned substantially after an existing provision in title 10 of the United States Code, which governs defense contracts. There is now no comparable statute governing Federal civilian agencies. The bill would codify a single, government-wide set of penalties for claiming unallowable costs. In addition, the draft bill would address some of the questionable costs we identified by declaring unallowable

all entertainment, gifts or recreation for contractor employees and requiring detailed documentation of travel costs.

Umbrella Contracts

The draft bill also would establish standards for use by the Department of Environmental Protection of long-term, level-of-effort contracts for advisory and assistance services, commonly known as "umbrella contracts." Under the bill, umbrella contracts would be limited in duration. They also would be required to be awarded under "full and open competition" in most cases. The practice of "contract shopping," in which a program office avoids competition by placing orders against an existing umbrella contract of another office, would be severely curtailed. The Department also would be required to take steps to ensure that "follow-on" contracts are awarded competitively and that abuses in the selection of subcontractors are eliminated. We support efforts to address these kinds of abuses in the use of umbrella contracts.

Economic Benefit Penalty Policy

Finally, an addendum to the draft legislation includes a provision that would require the department, in its civil enforcement cases, to assess penalties that are at least as

great as the amount by which a company would benefit by not complying with the law--a principle which underlies the civil penalty policy in effect in EPA since 1984. The draft legislation would also require EPA regions and states to periodically report on their penalty calculations and assessments, including in their reports the economic benefit components of penalties. Based on our work, we believe that this provision may help to support and improve the agency's penalty policies and practices.

Two years ago, Chairman Conyers, you and the Chairman of the Senate Governmental Affairs Committee asked us to examine EPA's enforcement efforts to ensure that they are well managed and effectively carried out. Our findings were contained in a 1991 report to you,⁴ which we are including as part of our testimony.

To briefly summarize, we found, first, that EPA's civil penalty policy is a reasonable one. It is simple to understand, it treats all regulated entities fairly and comparably, it can be applied in any state or region, and it allows for exceptions when circumstances call for them. Moreover, having a standard on which to base penalties

⁴Environmental Enforcement: Penalties May Not Recover Economic Benefits Gained by Violators (GAO/RCED-91-166, June 17, 1991.)

permits management oversight of numerous decisions with important monetary consequences.

Secondly, we concluded that in order for its penalty policy to be successfully implemented over the long run, EPA needs to hold states and regions accountable for carrying out the policy by better monitoring their performance and by establishing clearer lines of responsibility for taking any corrective action indicated by the information. Historically, EPA's performance in this regard has been poor, as we found when we examined penalty cases concluded in fiscal year 1990 in EPA's four major regulatory programs. In nearly two out of three cases, we could find no evidence that the economic benefit of the violation had ever been calculated or assessed. Moreover, state and local enforcement authorities--who are responsible for more than 70 percent of all environmental enforcement actions--are not required to adhere to this policy, and they, in fact, do not regularly recover economic benefit in penalties.

As an adjunct to the reporting requirements specified in the draft, we would also suggest that the Commission on Improving the Organization, Management and Efficiency of the Department of Environmental Protection, as part of a study of organizational structures for the department, develop recommendations on how best to organize enforcement responsibilities to improve accountability.

CONCLUSION

In summary, we believe that elevating EPA to a Cabinet department would affirm the prominence and permanence of the federal role in environmental protection. With the creation of a Commission, a Bureau of Environmental Statistics, a Chief Information Officer, and provisions to guard against contract mismanagement and to institute better penalty policies and practices, we believe a Department of Environmental Protection could provide the United States with a more effective organization for addressing the difficult environmental agenda ahead.

Mr. SYNAR [presiding]. Thank you, Mr. Chairman. Ms. Hecker and Ms. Steinhardt, we are glad to have you here today.

Let me start really quickly under the 5-minute rule. You very quaintly said that we have longstanding problems with IRM down at EPA. Through your years of studies and reports, you conclude that this is consistent throughout the Agency; is that not correct?

Mr. HINCHMAN. Yes, Mr. Chairman, that is correct. Our work has shown that throughout the executive branch there is a failure to recognize the critical role that information management needs to play in strategic planning if agencies are to both understand and achieve their missions.

Mr. SYNAR. How much does EPA spend each year on information services?

Mr. HINCHMAN. JayEtta, can you answer that?

Ms. HECKER. There is a direct account that basically itemizes somewhat over \$300 million spent annually. We would caution, however, that this does not include all the costs spent on data collection, preparation, and maintenance, so that is definitely a low figure.

Mr. SYNAR. And having a chief information officer, as you recommend, would help improve that situation of getting IRM back in order, don't you agree?

Mr. HINCHMAN. I think it would be an important step in that direction.

Mr. SYNAR. Aren't people like the chief information officer, in the private sector usually in charge of those kinds of budgets?

Mr. HINCHMAN. Absolutely. And I think that that is an important part of what this bill provides. It is not merely that a CIO position will be created, but that the structure will be created in which that CIO can be a senior partner in the management of the Agency, helping to shape its agenda, helping to provide the information the Agency needs in order to measure its success in achieving that agenda.

Mr. SYNAR. Mr. Hinchman, the Commission, which you also support—would you support it looking at the underlying statutes and opportunities for efficiency in making those statutes more responsive?

Mr. HINCHMAN. Absolutely.

Mr. SYNAR. With respect to the Bureau of Environmental Statistics, could you describe for us briefly where you think potential misallocation of resources could be identified and programs better implemented through the use of the Statistics Bureau?

Mr. HINCHMAN. Would you like to address that, Bernice?

Ms. STEINHARDT. Well, I would say in response to that, as noted earlier by Ms. Browner, we have had a lot of environmental successes, but I would like Ms. Browner to show us where those successes have been. I think if we want to be able to say that we have accomplished something we need to have that information.

Mr. SYNAR. And the Bureau of Statistics would allow us not only to account for the successes, but also to allocate resources to where they can most efficiently get those successes; correct?

Ms. STEINHARDT. Absolutely.

Mr. SYNAR. Mr. Clinger.

Mr. CLINGER. Thank you, Mr. Chairman. Isn't the EPA doing a lot of this collection and evaluation on its own? Do we really need to create a separate entity to do this? Why can't we just expand the capacity or the ability of the Agency itself to do this?

Mr. HINCHMAN. I think that—as I understand the legislation, Mr. Clinger—what it contemplates is that there would be within the Agency but with a certain level of independence a Bureau which would be responsible for this information gathering, and that the hope of the legislation, as I understand it, is that by bringing all of this information gathering together we can get greater efficiency and more strategic allocation of resources in deciding what information should be gathered and in its dissemination.

Mr. CLINGER. And you think that requires a separate entity from EPA itself?

Mr. HINCHMAN. I think our experience has been that current information gathering of this kind within the Agency is too decentralized and not sufficiently coordinated.

Ms. STEINHARDT. And, if I might add to that, what we have also found is that without a central focus on collecting information routinely, monitoring the condition and status of the environment can't be done. There have been various efforts over the last 20 years to try and collect this information, and they have been very patchwork and fragmented, because it hasn't been given enough priority in large part.

Mr. HINCHMAN. But, to finish the point I was making, I think that the expectation is that the core of this Bureau is in EPA today.

Ms. STEINHARDT. Yes.

Mr. HINCHMAN. And that what we are concerned with is a different organizational structure to address the problems that have been caused by the current fragmented information gathering practices of the Agency.

Mr. CLINGER. So what you are saying is that all of the present activities being conducted by EPA itself would be transferred to—in terms of data collection and evaluation, it would be transferred to this new Bureau?

Mr. HINCHMAN. That would be my expectation. Obviously, Ms. Browner is in a better position than I to say what her intentions would be in that regard.

Mr. CLINGER. You indicated that the Agency should be focusing on the high priority areas; in other words, they really had to take a fresh look and focus the attention on those areas of greatest concern.

Have you had a chance to look at the administration's 1994 budget? It seems to me at least in looking at it that that is not going to be possible given that budget. In other words, the budget does not reflect the concern that you have expressed.

Ms. STEINHARDT. I may be a little bit more familiar with the budget.

I think the Agency in the last few years has been trying to move closer to linking budget priorities with risk priorities, but I think the Agency has been limited in its ability to do so. It simply doesn't have that much flexibility. It has many statutory mandates that it has to meet that prescribe for it what its priorities are to be, and

I think this is one of the important roles that has been described in the draft legislation for the Commission, and we think the Commission, a group of experts, could make recommendations on this.

Mr. CLINGER. It does seem to me that we have kind of jumped on our horse and are charging off in all directions at once. I mean we have got a draft legislation here which makes substantial changes in the structure of the Agency, by legislation, pretty detailed in the arrangements that they would make in restructuring the Agency. On the other hand, we have got a proposed Commission which is going to study the matter anew and, perhaps, make contradictory recommendations of how this should be done down the road. Then we have got the Vice President's exercise on looking at government as a whole.

How is this all going to be integrated? Shouldn't we—I mean it seems to me we can't do all things at once. Maybe we ought to wait for somebody to finish their work and then feed off of that. To have all three efforts going on simultaneously, I think it is liable to get very muddled.

Would you agree that there is potential to that, at least?

Mr. HINCHMAN. Obviously, there is some tension between the need to provide a structure today for the new Department, and at the same time to be open to ways of looking at solutions to the long-term problems which have plagued the predecessor Agency during its lifetime, and you point to that tension in the relationship between the Commission and the structure of the Department. It nonetheless remains true that the legislation needs to prescribe the Department structure in some level of detail. And from our perspective, where Congress believes that there are important historically unmet problems that could be addressed by a different organizational structure than has historically been the case it is appropriate for Congress to provide that.

As I think the testimony here today has indicated, these provisions of the bill are in each case addressed at problems which this committee has been concerned about over an extended period of time.

Mr. CLINGER. Well, I guess I disagree. I mean I think that either we ought to—my preference would be to pass a simple elevation of EPA, followed by a Commission to say, "OK. Now this is what we are going to do with this new Cabinet-level Department." Or pass the bill, the draft bill that is out there and forget about the Commission.

I mean it just seems to me that we have got—I know we need redundancies in space. I am not sure we need redundancies in legislation.

Thank you very much.

Ms. BROWN [presiding]. I have a couple of questions. First, the bill would enact a comprehensive penalty governing contract costs or liabilities for all government contracts. Would this provision be effective in preventing abuses in the areas that you have discussed in the GAO report?

Mr. HINCHMAN. We believe that it would make a contribution to more effective enforcement by providing incentives for contractors to avoid improper billing. Our work does show that in addition to this we probably need to provide better clarity with respect to al-

lowable and unallowable costs. The current regulations are not entirely clear in this regard, and that clarity would help.

At the same time, so would the penalties. That is why we support them. I think that our work demonstrates that and the OFPP "SWAT Team" report makes the same recommendation for essentially the same reason.

Ms. BROWN. The bill does not substantially restructure the Agency. It just fixes some management problems in the Department. Can you expound upon the difference between the present structure and how the bill would change the Department?

Mr. HINCHMAN. The provisions which I discussed in my testimony seem to me to be the ones most important to note. The creation of a Bureau of Environmental Statistics is intended to address the problem of fragmented statistical collection and dissemination efforts within the Agency, and the provisions for a chief information officer are meant to address concerns that we and the committee have expressed over the years about information management within the Agency.

Ms. BROWN. Would you expand a little bit more on the Bureau of Environmental Statistics? Do you think that should be independent within the Department?

Mr. HINCHMAN. I think everyone agrees that if we are to understand the environmental challenges that face us, if we are to properly assess the risks of those challenges and establish a sound set of priorities for the new Department to pursue, we need objective, reliable information about the status of our environment which everyone can accept as the starting point for what are difficult policy choices. And, if it is the judgment of Congress that independence within the Department for the Bureau is necessary in order to achieve that based upon its experience with EPA, then in our view it ought to provide for that.

Ms. BROWN. During your March 29 testimony before this committee you stated that little consistency exists among senior management on EPA's agencywide IRM priorities. Can you expound upon that a little bit? Do you think the role of the IRM activities should be coordinated?

Mr. HINCHMAN. Yes, ma'am. All of our work, both with government agencies and with private sector companies, tells us that there are certain common characteristics of successful organizations in today's environment. One of those is that they have a very clear understanding of their mission. The second is that they have very clear measures of whether they are achieving that mission. And the third is that they see information management as a central part both of the development of those measures and of the measurement of their success in achieving their goals.

They make information management part of strategic planning and bring all of their information management resources to bear on the critical essential tasks which the organization is pursuing. We think that the provisions of the bill are directed at assuring that the new Department of Environmental Protection does that and that is why we support them.

Ms. BROWN. OK. I guess the final question is why is it important that the chief information officer report directly to the Secretary and have no other significant duties?

Mr. HINCHMAN. What is important, as I just indicated, is that the chief information officer be part of the senior management team, that he or she be part of the senior team that shapes the strategy of the Agency and the measures that will be used to determine whether that strategy is succeeding. They need to be part of the leadership team.

Ms. HECKER. I might add that the current designated senior official has responsibility for contracting, for procurement, for financial analysis, for human resources, for facilities management and administration as well as information management. So clearly it is a minor area of responsibility, and the kind of strategic role that Mr. Hinchman is talking about really can't occur with that breadth of responsibility.

Ms. BROWN. Mr. Clinger, do you have any other questions?

Mr. CLINGER. No, thank you, Madam Chairman.

Ms. BROWN. OK. Do you have any closing statements that you would like to share with us?

Mr. HINCHMAN. No, ma'am.

Ms. BROWN. Thank you very much.

Mr. HINCHMAN. We do appreciate the chance to be here.

Ms. BROWN. Will the second panel come up? We have two witnesses on our second panel: Dr. Allan Burman, Administrator, Office of Federal Procurement Policy, in the Executive Office of the President, and John Martin, inspector general.

Mr. Martin, welcome.

Mr. MARTIN. Thank you.

Ms. BROWN. Do you have an opening statement to share with us?

STATEMENT OF JOHN C. MARTIN, INSPECTOR GENERAL, ENVIRONMENTAL PROTECTION AGENCY, ACCOMPANIED BY JAMES RAUCH, DEPUTY ASSISTANT INSPECTOR GENERAL FOR AUDIT

Mr. MARTIN. Well, Madam Chairwoman, I have given a written statement to the committee. In the interest of everyone's time I would like to summarize what I think are some of the direct remarks that relate to the legislation we are considering itself and leave out a lot of the background information that my full testimony includes.

So the areas that I want to talk about today are procurement reform and information resources management. I am highly encouraged by the governmentwide procurement reforms in the proposed legislation, and I fully support them. The sections on inherently governmental functions, organizational conflicts of interest, and indirect costs directly relate to issues that we have reported on relative to EPA and which have been reported on as problems in other Federal Departments and agencies.

We noted in reviewing this section of the proposed legislation that each of the questionable charges raised in our March 1992 testimony are addressed except for business meals, and I believe the allowability of business meals should be restricted to situations where the contractor employees are in official travel status.

I am particularly happy that these matters, especially the provisions on allowable costs, are being addressed on a governmentwide basis rather than only being applicable to the proposed Department

of the Environment. It has been our longstanding position that such prohibitions on allowable costs should not be limited to EPA contractors but should be applied governmentwide.

Our office has been a catalyst in focusing attention on the need for governmentwide reform to allowable contractor costs and other issues addressed by the proposed legislation. We continue to work to have these issues addressed by changes to the Federal Acquisition Regulations, but dealing with these matters legislatively has also great merit.

Now, let me turn my attention to the proposed Department of Environment procurement reforms. Each of the matters outlined in the legislation, especially the provisions related to subcontractor identification and competition in contracting meaningfully address problems our office has raised in reports over the last year and year and a half. We also recognize the need for the limitations on umbrella contracting at EPA.

However, based on observations we have made during our continuing audits of contracting, we are concerned about the Agency's ability to effectively execute the greater number of contracts that will necessarily result from the implementation of this provision. Both Agency program officials and our observations have shown that contract management problems are due, at least in part, to the lack of sufficient staff to properly award, manage, and oversee contracts. So I encourage you to monitor the implementation of this provision to ensure that the Agency staffing is adequate to effectively deal with the additional contract workloads.

In summary, the proposed legislation as related to procurement reform is a very positive step in addressing longstanding problems that need to be remedied.

I would now like to discuss EPA's information resources management program. Much of the background that I mentioned to you earlier was discussed in our March hearing on this same subject. However, bringing legislative attention to information resources management should help EPA better focus on the need to improve the effectiveness, productivity, and efficiency of its information systems. In that respect, I support your proposals and believe they are on target.

One concern I do have is with the various sections of the proposed legislation that discuss the establishment of a performance measurement system. My concern is not with the concept itself, but with the fact that there may be conflicting or duplicative measurement requirements in the existing Chief Financial Officers Act and in legislation pending in the Senate, and I understand here in the House also.

I believe you should carefully examine this provision in view of the other legislative initiatives in order to avoid unnecessary requirements.

That is the end of my prepared remarks. Thank you.

[The prepared statement of Mr. Martin follows:]

TESTIMONY OF JOHN C. MARTIN
INSPECTOR GENERAL
U.S. ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE
SUBCOMMITTEE ON LEGISLATION AND NATIONAL SECURITY
OF THE COMMITTEE ON GOVERNMENT OPERATIONS

MAY 6, 1993

Good morning, I appreciate the invitation to be here today. The elevation of EPA to cabinet level status is an important matter. As I have stated on a number of occasions I fully support this initiative. In fact, in the first of a series of elevation hearings conducted by subcommittees of the Committee on Government Operations in March of this year, I professed my unqualified support for the EPA being redesignated as the Department of Environmental Protection.

I am not a great believer in legislative remedies for problems that can be adequately addressed by improved management. Having said that, my overall impression of the provisions of the proposed "Department of Environmental Protection Act" that deal with procurement reform and information resources management is a positive one. I will focus my testimony today on these two areas of the proposed legislation since they directly relate to our recently completed and ongoing work. Additionally, my staff is developing specific comments dealing with technical matters in the proposed legislation. These comments will be provided separately to subcommittee staff members.

Procurement Matters

EPA relies extensively on outside entities to assist in carrying out its mission to clean up past pollution problems, develop national policy, and set the environmental agenda for the future. These outside groups may be commercial firms that EPA has contracts with to provide goods and services; they may be public organizations, such as universities or State and local organizations that EPA funds to pursue areas of mutual environmental concerns through cooperative agreements; or they may be other agencies of the Federal Government that provide assistance through interagency agreements. All of this work is paid for using extramural funding -- that is, funding appropriated for other than in-house Federal employees.

Extramural resources may frequently be used to perform work that is similar, or sometimes the same, as that performed by EPA employees, but there are important distinctions. Employees of non-Federal organizations owe their primary allegiance, not to the Government as Federal workers do, but to the contractor or organization they work for. They do not have the same obligation, therefore, as Government employees to always put the public interest first, and cannot be viewed as mere extensions of Agency staff.

As I pointed out in my March 1993, testimony we have performed a series of reviews over the past year focusing on extramural resource management and have documented numerous cases where the awards of contract and assistance agreements were questionable. We also found many instances where EPA managers and project officers improperly used extramural resources to augment their staff and to obtain goods and services for EPA.

In March 1992, I testified before the Subcommittee on Oversight and Investigations, Committee on Energy and Commerce with respect to questionable contract charges for items such as travel, entertainment, and business meals. Subsequently, our office and other offices in EPA as well as other departments and agencies worked with OMB on a project to improve the Federal Acquisition Regulations on contracting. The attention given this subject and the leadership role exercised by OMB is significant and is leading to changes in the Federal Acquisition Regulations.

Procurement Reforms

Now, I would like to discuss the procurement section of the proposed legislation. I am highly encouraged by the governmentwide procurement reforms in the proposed legislation and fully support them. The sections on inherently governmental functions, organizational conflicts of interest, and indirect costs directly address issues that we have reported on relative

to EPA and which have been reported on as problems in other Federal departments and agencies. We noted in reviewing this section of the proposed legislation that each of the questionable charges raised in our March 1992, testimony are addressed except for business meals. I believe the allowability of business meals should be restricted to situations when contractor employees are in an official travel status.

I am particularly pleased that these matters, especially the provisions on unallowable costs, are being addressed on a governmentwide basis rather than only being applicable to the proposed Department of Environmental Protection. It has been our longstanding position that such prohibitions on allowable costs should not be limited to EPA contractors but should be applied governmentwide. Otherwise, (1) contractors would need to do separate and more costly accounting for EPA contracts, (2) EPA might be at a disadvantage in obtaining competition in contracting compared to other departments and agencies, and (3) auditing by cognizant agencies such as our office and the Defense Contract Audit Agency would be much more difficult, due to the need to apply different cost principles to different Federal contracts.

Our office has been a catalyst in focusing attention on the need for governmentwide reform to allowable contractor costs and other issues addressed by the proposed legislation. We continue

to work to have these issues addressed by changes to the Federal Acquisition Regulations but dealing with these matters legislatively also has great merit.

Now let me turn my attention to the proposed Department of Environmental Protection procurement reforms. Each of the matters outlined in the legislation, especially the provisions related to subcontractor identification and competition in contracting meaningfully address problems our office has raised in reports over the last 12 to 18 months. We also recognize the need for the limitations on umbrella contracting at EPA. However, based on observations we have made during our continuing audits of contracting, we are concerned about the agency's ability to effectively execute the greater number of contracts that will necessarily result from the implementation of this provision. Both Agency program officials and our observations have shown that contract management problems are due in part to the lack of sufficient staff to properly award, manage, and oversee contracts. So, I encourage you to monitor the implementation of this provision to ensure the Agency's staffing is adequate to effectively deal with the additional contract workload.

In summary, the proposed legislation as related to procurement reform is a very positive step in addressing longstanding problems that need to be remedied.

Information Resources Management

I would now like to discuss EPA's information resources management program. Much of what I will mention here was discussed in my testimony at the March 1993 elevation hearing but needs reiteration in view of the attention this important subject receives in the proposed legislation.

EPA has over 500 computerized information systems providing data on a wide range of environmental programs. In performing 15 internal audits of these systems over the last four years, we have reported serious deficiencies -- both in the overall management of the information resources program and with individual information systems and computer centers.

In 1991, we reported that EPA's main computer center had not effectively implemented the most important part of the mainframe security software. This allowed hundreds of government and contractor employees access to EPA's computer-based payroll and personnel files. Over 18,000 files in EPA's contractor payment system, which processes an average of \$5 million per day in contractor payments, were not protected from unauthorized access.

Let me briefly summarize some of the other significant problems we have found in this area:

- o EPA does not have integrated long-range planning and budgeting process for its information systems. It did put out a five-year strategic plan, but this plan was more of a vision statement reflecting EPA's philosophy and goals at the highest levels.

- o EPA does not have a comprehensive quality assurance program to ensure the reliability of its information systems. This had lead EPA offices to question the accuracy and completeness of data generated by may of EPA's computerized systems. As a result many offices have developed their own systems which they more trustworthy -- a wasteful duplication.

- o Many of EPA's directives and standards for information resources management are incomplete and outdated and often do not distinguish between mandatory policies and optional guidance. This left EPA personnel confused and has contributed to the problems I have discussed. The costs of EPA's integrated financial management system now being developed have more than tripled from \$7.7 million to a reported \$27 million. The lack of good system development standards was a major reason for this increase.

Bringing legislative attention to information resources management should help EPA management better focus on the need to

improve the effectiveness, productivity and efficiency of its information systems. In that respect, I support your proposals and believe they are on target. One concern I do have is with the various sections of the proposed legislation that discuss the establishment of a performance measurement system. My concern is not with the concept itself but with the fact there may be conflicting or duplicative measurement requirements in the existing Chief Financial Officers Act and in pending legislation in the U.S. Senate. I believe you should carefully examine this provision in view of these other legislative initiatives in order to avoid unnecessary requirements.

Let me conclude my prepared statement. The legislation to redesignate EPA as the Department of Environmental Protection is of great importance and has my full support. The specific sections of the legislation I have discussed today relate to issues that have been of great concern to our office and have been repeatedly addressed in reports we have issued. This concludes my prepared statement. I will be pleased to answer any questions you may have.

Ms. BROWN. We will listen to Dr. Burman.

STATEMENT OF ALLAN V. BURMAN, ADMINISTRATOR, OFFICE OF FEDERAL PROCUREMENT POLICY, OFFICE OF MANAGEMENT AND BUDGET

Mr. BURMAN. Thank you very much, Madam Chairwoman, and ranking Member Clinger. I was going to say I was pleased to be here this morning, but I guess I need to say I am pleased to be here this afternoon to discuss the procurement reform aspects of your proposed legislation to elevate EPA to Cabinet status.

I do have a lengthy statement which I would like to summarize and submit for the record, if I may. And what I would like to do is talk about the procurement issues in the order that they are presented in the legislative document, and I will try to be quick as well.

First, on inherently governmental functions we certainly agree with the committee that some functions should only be performed by government officials, and we had been working with the Congress, the GAO, the agencies and the private sector for sometime to try to define what these kinds of positions should be, and as a result of that just last September we published a policy document, which I have included in my formal statement, in which attempts to provide a brighter line on what constitutes these kinds of functions, and it also identifies certain other activities which so closely resemble inherently governmental functions which we believe then that special controls and precautions ought to be in place when you are having contractors perform these activities.

Jim Hinchman had supported this effort. The GAO had a couple of very lengthy discussion sessions as well, and they were of great assistance to us in formulating our final policy document.

We do give some examples of these functions in the appendixes to the policy letter. Inherently governmental activities, for example, include determining Federal program priorities, directing Federal employees in awarding and terminating contracts. Functions that may be performed by contractors but which require closer scrutiny include services in support of acquisition and planning, conducting feasibility studies, and the development of draft regulations.

Our guidance also makes clear that as a matter of policy contractors aren't to be used for drafting testimony or drafting responses to congressional correspondence or inspector general or GAO audit reports, and the basic belief behind this policy is that government actions should reflect the independent conclusions of Agency officials. The concern, of course, is that contractors' interests may not coincide with the public interest, and contractors, moreover, may be beyond the reach of management controls that we can apply to public employees.

Your proposed legislation appears to parallel our policy letter and we support your objectives. We also appreciate your efforts to make some changes in earlier versions of this document to accommodate some of our concerns.

Our general preference would be for the government to continue to address this issue through regulation, or failing that for the subcommittee to endorse through legislation our policy document that was produced last September. However, if the subcommittee de-

cides to proceed with the legislative approach, I have included in my formal remarks two minor technical changes that I would recommend. These would ensure the definition of advisory and assistant services.

With regard to organizational conflicts of interest, we again share your concern that these conflicts be avoided, or if they can't be avoided that actions be taken to mitigate them. And I believe your approach is a reasonable one and it is in line with our own policy documents in this area as well and with previous legislation. There is only one recommendation I would make here, and that is to delete the portion of the definition of conflict of interest that relates to appearances.

While officials should always be alert to the appearance of conflicts, I do not believe that organizational conflicts of interest should be defined based on an appearance of a contractor having an unfair advantage or the appearance of an impairment of objectivity. Rather these appearances should be grounds for further investigation to determine the true facts of the case.

With regard to indirect costs under executive Agency contracts, the administration strongly supports the subcommittee's proposal to establish governmentwide provisions on disallowance of costs, contractor certification of allowable indirect costs, and penalties on contractors for including unallowable costs in their proposals. These provisions are substantially similar to draft legislation contained in our December 1992 interagency SWAT team report that Mr. Hinchman mentioned, and Mr. Panetta just yesterday sent to the Congress the administration's legislative proposal to accomplish this objective for the civilian agencies since such provisions already apply to defense contractors.

We undertook the SWAT team effort in response to evidence in inspector general reports, including a number of the reports Mr. Martin's office has produced, and from congressional hearings including the hearings before Mr. Synar and Mr. McCandless last spring that civil agency contractors were claiming reimbursement from the government for costs such as entertainment expenses that were expressly unallowable. The SWAT team report assessed the contract administration and audit practices of 12 civilian agencies including EPA, found many weaknesses, and strongly recommended that these penalty provisions be applied governmentwide.

The Defense Contract Audit Agency estimates that as a result of the imposition of penalties on defense contractors some \$18 million will be collected by the government.

I have some other provisions in my prepared remarks dealing with unallowable costs, and with Department of Environment reforms, which we also generally support. In these cases we would prefer that they be dealt with on a governmentwide basis as opposed to using specific provisions that apply to single agencies, and we would be pleased to work with the committee on these various proposals to try to effect that.

We also appreciate the fact that this language with regard to penalties is being applied governmentwide since these problems have been noted in many different agencies, and I believe that is

a major concern of this committee, to ensure that such procurement reforms are done on that basis.

I do have some other issues that are in the prepared remarks, but why don't I complete my statement with that, and I would be pleased to answer any questions you might have.

Ms. BROWN. Thank you.

[The prepared statement of Mr. Burman follows:]



OFFICE OF FEDERAL
PROCUREMENT POLICY

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

NOT FOR RELEASE UNTIL
DELIVERY MAY 6, 1993

STATEMENT
OF
ALLAN V. BURMAN
ADMINISTRATOR FOR FEDERAL PROCUREMENT POLICY
BEFORE THE
SUBCOMMITTEES ON
LEGISLATION AND NATIONAL SECURITY, AND
ENVIRONMENT, ENERGY, AND NATURAL RESOURCES
HOUSE COMMITTEE ON GOVERNMENT OPERATIONS
MAY 6, 1993

Messrs. Chairmen and Members of the Subcommittees:

I appreciate the opportunity to appear before you today and discuss the procurement reform provisions included in your legislation to elevate the Environmental Protection Agency (EPA) to cabinet status. The proposed legislation includes several Government-wide provisions to improve the Government's overall procurement practices as well as specific provisions applicable only to EPA. I will discuss each of the reforms in the order presented in the proposed legislation.

Inherently Governmental Functions

The Administration strongly supports the position included in the draft legislation that "Inherently governmental functions of an executive agency shall be performed only by officers or employees of the Government." For the Executive Branch, general guidance for carrying out this longstanding policy is found in Office of Management and Budget Circular No. A-76, "Performance of Commercial Activities." More detailed guidance is included in Office of Federal Procurement Policy (OFPP) Policy Letter 92-1 "Inherently Governmental Functions," issued by my office last September.

The purpose of OFPP Policy Letter 92-1 is to provide both Government and contractor officials with a "brighter line" test for determining which activities constitute inherently governmental functions and which activities so closely resemble such functions as to require tighter controls or special precautions. The policy was issued following an extensive (60 day) period of public comment and after consultation with the Congress, the General Accounting Office, the agencies and many private sector groups. Agencies are required to follow this guidance in determining the types of services that may be acquired by contract and those that must be performed by Federal officials.

A copy of Policy Letter 92-1 is appended to my statement. Appendix A provides an illustrative list of functions considered to be inherently governmental. These include, for example, determining Federal program priorities, directing Federal employees and awarding and terminating contracts. Appendix B of the policy letter highlights functions that may be performed by contractors but which require greater management attention. Examples of these include services in support of acquisition planning, feasibility studies and the development of draft regulations.

In addition to the above, Policy Letter 92-1 provides, as a matter of policy, that contractors are not to be used for drafting Congressional testimony, responses to Congressional correspondence or agency responses to audit reports from an Inspector General, the General Accounting Office or other Federal audit entity. This is to avoid any appearance of private influence with respect to such sensitive documents. Our main objective is to see that any final agency action complies with the laws and policies of the United States. These actions should reflect the independent conclusions of agency officials and not those of contractors who may have interests that are not in concert with the overall public interest and may be beyond the reach of management controls otherwise applicable to public employees.

Your legislation would amend the OFPP Act (41 U.S.C. 401 et seq.) by adding a new Section 29 to prohibit Federal agencies from contracting for inherently governmental functions. The approach you propose appears to parallel that of our policy letter, and we support the Subcommittees' objectives. We also very much appreciate the Subcommittees' willingness to address concerns we raised on preliminary drafts of the legislation. We would urge the Subcommittee, however, to consider dealing with this issue through regulation, or, failing that, to endorse through legislation the provisions of Policy Letter 92-1.

If the Subcommittees decide to proceed with a legislative approach to this issue, we have the following additional comments on the proposal as drafted. First, we recommend that paragraph (c)(1) Definitions in Section 29 be modified to substitute for the definition of advisory and assistance services the new statutory definition of "consulting services" that was included in Section 512 of the Labor, Health and Human Services, and Education Appropriation Act of 1993 (Public Law 102-394). This section required that the Office of Management and Budget include an object class for consulting services in the President's budget. The Section 512 definition states that consulting services include: (1) management and professional support services; (2) studies, analyses, and evaluations; (3) engineering and technical services (excluding routine engineering services such as automated data processing and architect and engineering

contracts), and (4) research and development. This change would make agencies' implementation of these provisions consistent with OMB's implementation of Section 512.

With respect to Section 29(c)(2)(B), we recommend that the words "such functions as" be added after "includes" to make it clear that the subsequent items represent examples of inherently governmental functions and are not meant to be an all-inclusive list. This change would make this provision more consistent with our policy letter.

Organizational Conflicts of Interest

The proposed legislation would add a new Section 30 to the OFPP Act. This Section establishes contracting officer responsibilities regarding organizational conflicts of interests. I share your concerns that such conflicts be avoided, or if they can not be avoided that they be treated appropriately in the terms and conditions of Federal contracts. The approach taken in the proposed legislation is a reasonable one and in line with our previous policy letter on consultants and conflicts of interest and with previous legislation on this issue.

However, while I agree that Government officials should always be alert to the appearance of conflicts, I do not believe that "organizational conflicts of interest" should be defined

based on an "appearance" of an unfair competitive advantage or impairment of objectivity. In most circumstances, any practice that appears suspect can be attacked or defended on the basis of the actual facts of the case. Given the subjectivity of the concept of an "appearance" of a conflict, I believe this concern should more appropriately be grounds for further investigation by agency officials.

Indirect Costs Under Executive Agency Contracts

We strongly support the Subcommittees' proposal to establish Government-wide provisions on disallowance of costs, contractor certification of allowable indirect costs, and penalties for including unallowable costs in covered settlement proposals. These provisions are substantially similar to draft legislation contained in our December 1992 Interagency SWAT Team Report. This report examined and assessed the contract administration and audit practices of twelve civilian agencies, including the Environmental Protection Agency. The SWAT project was undertaken as a result of evidence in Congressional hearings and Inspectors General reports indicating that civilian agency contractors were claiming unallowable costs. There was also concern that civilian agency controls over the management of cost-reimbursement contracts were inadequate, and that this was leading to the

payment of unallowable costs included in certain contractor claims for reimbursement.

The Administration has developed a legislative proposal that is based on the draft legislation contained in the SWAT report. The Director of the Office of Management and Budget submitted this proposal to Congress yesterday. While existing law in this area only applies to Defense Department contractors, the Administration's proposal would apply penalties and certification requirements to civilian agency contractors as well. The Defense Contract Audit Agency (DCAA) estimates that as a result of the imposition of penalties in Defense contracts some \$18 million will be collected by the Government. Given the problems identified in the SWAT team effort and in previous Congressional hearings, the Administration sees a clear need for these certification and penalty provisions to be implemented on a Government-wide basis.

Regarding the provisions of this section relating to specifically unallowable costs, the councils responsible for the Federal Acquisition Regulation are reviewing proposed changes to the current entertainment and employee morale expense provisions. Clearly, ambiguities in these provisions have led to abuses and they require tightening and clarification. However, for these changes, we would recommend that the notice and comment provisions of the regulatory process be followed before any final

revision is adopted. This will allow all parties' views to be fully considered.

Department of Environment Reforms

Subtitle B of the Procurement Reform Title incorporates several reform measures that would apply to procurement actions by the proposed new Department of Environment. With regard to "umbrella" or task order contracts for advisory and assistance services, we support the intent of the Subcommittees to prohibit "contract shopping" and to ensure full and open competition for any contract resulting from or supplementing the work performed under the umbrella contract. The aforementioned SWAT Team report also cited instances where these types of contracts were being misused. Specific problems cited by the Agriculture and the Commerce SWAT Teams, for example, include concerns that such contracts were being awarded with inadequate or overly broad statements of work, no firm requirements and unspecified task and contract pricing, in effect resulting in sole source procurements. We would be pleased to work with the Subcommittees to see if appropriate language could be developed to deal with this issue on a Government-wide basis, as the Subcommittees have proposed to do for the contracting provisions already discussed. We agree with the Subcommittees' assessment that reforms are needed in this area.

Finally, I would like to bring to the Subcommittees' attention the limitation in Section 12 entitled "Inherently Governmental Functions of Department" regarding departmental regulations that would define inherently governmental functions. The definition as proposed in Section 12(c)(4) would include the preparation of contractual documents, including solicitations, specifications, statements of work, and contract orders. We believe agencies should have the discretion to contract for assistance in such services so long as the approval function remains with a Federal official, the Federal official remains fully in charge of the process and the appropriate organizational conflict of interest procedures have been met. Our Policy Letter 92-1, provides for some contractor participation in these activities - subject to proper disclosure and control. We recommend that you provide similar latitude in your legislation.

Mr. Chairman, that concludes my formal testimony. I will be happy to answer any questions you or other members might have.



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D. C. 20503

September 23, 1992

OFFICE OF FEDERAL
PROCUREMENT POLICY

Policy Letter 92-1

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Inherently Governmental Functions.

1. Purpose. This policy letter establishes Executive Branch policy relating to service contracting and inherently governmental functions. Its purpose is to assist Executive Branch officers and employees in avoiding an unacceptable transfer of official responsibility to Government contractors.
2. Authority. This policy letter is issued pursuant to subsection 6(a) of the Office of Federal Procurement Policy (OFPP) Act, as amended, codified at 41 U.S.C. § 405(a).
3. Exclusions. Services obtained by personnel appointments and advisory committees are not covered by this policy letter.
4. Background. Contractors, when properly used, provide a wide variety of useful services that play an important part in helping agencies to accomplish their missions. Agencies use service contracts to acquire special knowledge and skills not available in the Government, obtain cost effective services, or obtain temporary or intermittent services, among other reasons.

Not all functions may be performed by contractors, however. Just as it is clear that certain functions, such as the command of combat troops, may not be contracted, it is also clear that other functions, such as building maintenance and food services, may be contracted. The difficulty is in determining which of these services that fall between these extremes may be acquired by contract. Agencies have occasionally relied on contractors to perform certain functions in such a way as to raise questions about whether Government policy is being created by private persons. Also, from time to time questions have arisen regarding the extent to which de facto control over contract performance has been transferred to contractors. This policy letter provides an illustrative list of functions, that are, as a matter of policy, inherently governmental (see Appendix A), and articulates the practical and policy considerations that underlie such determinations (see § 7).

As stated in § 9, however, this policy letter does not purport to specify which functions are, as a legal matter, inherently governmental, or to define the factors used in making such legal determination. Thus, the fact that a function is listed in Appendix A, or a factor is set forth in § 7(b), does not necessarily mean that the function is inherently governmental as a legal matter or that the factor would be relevant in making the legal determination.

5. Definition. As a matter of policy, an "inherently governmental function" is a function that is so intimately related to the public interest as to mandate performance by Government employees. These functions include those activities that require either the exercise of discretion in applying Government authority or the making of value judgements in making decisions for the Government. Governmental functions normally fall into two categories: (1) the act of governing, i.e., the discretionary exercise of Government authority, and (2) monetary transactions and entitlements.

An inherently governmental function involves, among other things, the interpretation and execution of the laws of the United States so as to:

- (a) bind the United States to take or not to take some action by contract, policy, regulation, authorization, order, or otherwise;
- (b) determine, protect, and advance its economic, political, territorial, property, or other interests by military or diplomatic action, civil or criminal judicial proceedings, contract management, or otherwise;
- (c) significantly affect the life, liberty, or property of private persons;
- (d) commission, appoint, direct, or control officers or employees of the United States; or
- (e) exert ultimate control over the acquisition, use, or disposition of the property, real or personal, tangible or intangible, of the United States, including the collection, control, or disbursement of appropriated and other Federal funds.

Inherently governmental functions do not normally include gathering information for or providing advice, opinions, recommendations, or ideas to Government officials. They also do not include functions that are primarily ministerial and internal in nature, such as building security; mail operations; operation of cafeterias; housekeeping; facilities operations and maintenance, warehouse operations, motor vehicle fleet management and operations, or other routine electrical or mechanical services.

The detailed list of examples of commercial activities found as an attachment to Office of Management and Budget (OMB) Cir. No. A-76 is an authoritative, nonexclusive list of functions that are not inherently governmental functions. These functions therefore may be contracted.

6. Policy.

(a) Accountability. It is the policy of the Executive Branch to ensure that Government action is taken as a result of informed, independent judgments made by Government officials who are ultimately accountable to the President. When the Government uses service contracts, such informed, independent judgment is ensured by:

(1) prohibiting the use of service contracts for the performance of inherently governmental functions (See Appendix A);

(2) providing greater scrutiny and an appropriate enhanced degree of management oversight (see subsection 7(f)) when contracting for functions that are not inherently governmental but closely support the performance of inherently governmental functions (see Appendix B);

(3) ensuring, in using the products of those contracts, that any final agency action complies with the laws and policies of the United States and reflects the independent conclusions of agency officials and not those of contractors who may have interests that are not in concert with the public interest, and who may be beyond the reach of management controls otherwise applicable to public employees; and

(4) ensuring that reasonable identification of contractors and contractor work products is made whenever there is a risk that the public, Congress, or other persons outside of the Government might confuse them with Government officials or with Government work products, respectively.

(b) OMB Circular No. A-76. This policy letter does not purport to supersede or otherwise effect any change in OMB Circular No. A-76, Performance of Commercial Activities.

(c) Drafting of Congressional testimony, responses to Congressional correspondence, and agency responses to audit reports from an Inspector General, the General Accounting Office, or other Federal audit entity. While the approval of a Government document is an inherently governmental function, its drafting is not necessarily such a function. Accordingly, in most situations the drafting of a document, or portions thereof, may be contracted, and the agency should review and revise the draft document, to the extent necessary, to ensure that the final

document expresses the agency's views and advances the public interest. However, even though the drafting function is not necessarily an inherently governmental function, it may be inappropriate, for various reasons, for a private party to draft a document in particular circumstances. Because of the appearance of private influence with respect to documents that are prepared for Congress or for law enforcement or oversight agencies and that may be particularly sensitive, contractors are not to be used for the drafting of Congressional testimony; responses to Congressional correspondence; or agency responses to audit reports from an Inspector General, the General Accounting Office, or other Federal audit entity.

7. Guidelines. If a function proposed for contract performance is not found in Appendix A, the following guidelines will assist agencies in understanding the application of this policy letter, determining whether the function is, as a matter of policy, inherently governmental and forestalling potential problems.

(a) The exercise of discretion. While inherently governmental functions necessarily involve the exercise of substantial discretion, not every exercise of discretion is evidence that such a function is involved. Rather, the use of discretion must have the effect of committing the Federal Government to a course of action when two or more alternative courses of action exist (e.g., purchasing a minicomputer rather than a mainframe computer, hiring a statistician rather than an economist, supporting proposed legislation rather than opposing it, devoting more resources to prosecuting one type of criminal case than another, awarding a contract to one firm rather than another, adopting one policy rather than another, and so forth).

A contract may thus properly be awarded where the contractor does not have the authority to decide on the course of action to be pursued but is rather tasked to develop options to inform an agency decision maker, or to develop or expand decisions already made by Federal officials. Moreover, the mere fact that decisions are made by the contractor in performing his or her duties (e.g., how to allocate the contractor's own or subcontract resources, what techniques and procedures to employ, whether and whom to consult, what research alternatives to explore given the scope of the contract, what conclusions to emphasize, how frequently to test) is not determinative of whether he or she is performing an inherently governmental function.

(b) Totality of the circumstances. Determining whether a function is an inherently governmental function often is difficult and depends upon an analysis of the facts of the case. Such analysis involves consideration of a number of factors, and the presence or absence of any one is not in itself determinative of the issue. Nor will the same emphasis necessarily be placed on any one factor at different times, due to the changing nature of the Government's requirements.

The following factors should be considered when deciding whether award of a contract might effect, or the performance of a contract has effected, a transfer of official responsibility:

- (1) Congressional legislative restrictions or authorizations.
- (2) The degree to which official discretion is or would be limited, i.e., whether the contractor's involvement in agency functions is or would be so extensive or his or her work product is so far advanced toward completion that the agency's ability to develop and consider options other than those provided by the contractor is restricted.
- (3) In claims adjudication and related services,
 - (i) the finality of any contractor's action affecting individual claimants or applicants, and whether or not review of the contractor's action is de novo (i.e., to be effected without the appellate body's being bound by prior legal rulings or factual determinations) on appeal of his or her decision to an agency official;
 - (ii) the degree to which contractor activities may involve wide-ranging interpretations of complex, ambiguous case law and other legal authorities, as opposed to being circumscribed by detailed laws, regulations, and procedures;
 - (iii) the degree to which matters for decision by the contractor involve recurring fact patterns or unique fact patterns; and
 - (iv) The contractor's discretion to determine an appropriate award or penalty.
- (4) The contractor's ability to take action that will significantly and directly affect the life, liberty, or property of individual members of the public, including the likelihood of the contractor's need to resort to force in support of a police or judicial function; whether force, especially deadly force, is more likely to be initiated by the contractor or by some other person; and the degree to which force may have to be exercised in public or relatively uncontrolled areas. (Note that contracting for guard, convoy security, and plant protection services, armed or unarmed, is not proscribed by these policies.)
- (5) The availability of special agency authorities and the appropriateness of their application to the situation at

hand, such as the power to deputize private persons.

(6) Whether the function in question is already being performed by private persons, and the circumstances under which it is being performed by them.

(c) Finality of agency determinations. Whether or not a function is an inherently governmental function, for purposes of this policy letter, is a matter for agency determination. However, agency decisions that a function is or is not an inherently governmental function may be reviewed, and, if necessary, modified by appropriate OMB officials.

(d) Preaward responsibilities. Whether a function being considered for performance by contract is an inherently governmental function is an issue to be addressed prior to issuance of the solicitation.

(e) Post-award responsibilities. After award, even when a contract does not involve performance of an inherently governmental function, agencies must take steps to protect the public interest by playing an active, informed role in contract administration. This ensures that contractors comply with the terms of the contract and that Government policies, rather than private ones, are implemented. Such participation should be appropriate to the nature of the contract, and should leave no doubt that the contract is under the control of Government officials. This does not relieve contractors of their performance responsibilities under the contract. Nor does this responsibility to administer the contract require Government officials to exercise such control over contractor activities as to convert the contract, or portion thereof, to a personal service contract.

In deciding whether Government officials have lost or might lose control of the administration of a contract, the following are relevant considerations: the degree to which agencies have effective management procedures and policies that enable meaningful oversight of contractor performance, the resources available for such oversight, the actual practice of the agency regarding oversight, the duration of the contract, and the complexity of the tasks to be performed.

(f) Management controls. When functions described in Appendix B are involved, additional management attention to the terms of the contract and the manner of performance is necessary. How close the scrutiny or how extensive or stringent the management controls need to be is for agencies to determine. Examples of additional control measures that might be employed are:

(1) developing carefully crafted statements of work and quality assurance plans, as described in OFPP Policy Letter 91-2, Service Contracting, that focus on the issue of Government oversight and measurement of contractor performance;

(2) establishing audit plans for periodic review of contracts by Government auditors;

(3) conducting preaward conflict of interest reviews to ensure contract performance in accordance with objective standards and contract specifications;

(4) physically separating contractor personnel from Government personnel at the worksite; and

(5) requiring contractors to (a) submit reports that contain recommendations and that explain and rank policy or action alternatives, if any, (b) describe what procedures they used to arrive at their recommendations, (c) summarize the substance of their deliberations, (d) report any dissenting views, (e) list sources relied upon, and/or (f) otherwise make clear the methods and considerations upon which their recommendations are based.

(g) Identification of contractor personnel and acknowledgement of contractor participation. Contractor personnel attending meetings, answering Government telephones, and working in other situations where their contractor status is not obvious to third parties must be required to identify themselves as such to avoid creating an impression in the minds of members of the public or the Congress that they are Government officials, unless, in the judgment of the agency, no harm can come from failing to identify themselves. All documents or reports produced by contractors are to be suitably marked as contractor products.

(h) Degree of reliance. The extent of reliance on service contractors is not by itself a cause for concern. Agencies must, however, have a sufficient number of trained and experienced staff to manage Government programs properly. The greater the degree of reliance on contractors the greater the need for oversight by agencies. What number of Government officials is needed to oversee a particular contract is a management decision to be made after analysis of a number of factors. These include, among others, the scope of the activity in question; the technical complexity of the project or its components; the technical capability, numbers, and workloads of Federal oversight officials; the inspection techniques available; and the importance of the activity. Current contract administration resources shall not be determinative. The most efficient and cost effective approach shall be utilized.

(i) Exercise of approving or signature authority. Official responsibility to approve the work of contractors is a power reserved to Government officials. It should be exercised with a thorough knowledge and understanding of the contents of documents submitted by contractors and a recognition of the need to apply independent judgment in the use of these work products.

8. Responsibilities.

(a) Heads of agencies. Heads of departments and agencies are responsible for implementing this policy letter. While these policies must be implemented in the Federal Acquisition Regulation (FAR), it is expected that agencies will take all appropriate actions in the interim to develop implementation strategies and initiate staff training to ensure effective implementation of these policies.

(b) Federal Acquisition Regulatory Council. Pursuant to subsections 6(a) and 25(f) of the OFPP Act, as amended, 41 U.S.C. §§ 405(a) and 421(f), the Federal Acquisition Regulatory Council shall ensure that the policies established herein are incorporated in the FAR within 210 days from the date this policy letter is published in the Federal Register. Issuance of final regulations within this 210-day period shall be considered issuance "in a timely manner" as prescribed in 41 U.S.C. § 405(b).

(c) Contracting officers. When requirements are developed, when solicitations are drafted, and when contracts are being performed, contracting officers are to ensure:

(1) that functions to be contracted are not among those listed in Appendix A of this letter and do not closely resemble any functions listed there;

(2) that functions to be contracted that are not listed in Appendix A, and that do not closely resemble them, are not inherently governmental functions according to the totality of the circumstances test in subsection 7(b), above;

(3) that the terms and the manner of performance of any contract involving functions listed in Appendix B of this letter are subject to adequate scrutiny and oversight in accordance with subsection 7(f), above; and

(4) that all other contractible functions are properly managed in accordance with subsection 7(e), above.

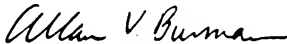
(d) All officials. When they are aware that contractor advice, opinions, recommendations, ideas, reports, analyses, and other work products are to be considered in the course of their official duties, all Federal Government officials are to ensure

that they exercise independent judgment and critically examine these products.

9. Judicial review. This policy letter is not intended to provide a constitutional or statutory interpretation of any kind and it is not intended, and should not be construed, to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person. It is intended only to provide policy guidance to agencies in the exercise of their discretion concerning Federal contracting. Thus, this policy letter is not intended, and should not be construed, to create any substantive or procedural basis on which to challenge any agency action or inaction on the ground that such action or inaction was not in accordance with this policy letter.

10. Information contact. For information regarding this policy letter contact Richard A. Ong, Deputy Associate Administrator, the Office of Federal Procurement Policy, 725 17th Street, N.W., Washington, DC 20503. Telephone (202)395-7209.

11. Effective date. This policy letter is effective 30 days after the date of publication.



ALLAN V. BURMAN
Administrator

APPENDIX A

The following is an illustrative list of functions considered to be inherently governmental functions:¹

1. The direct conduct of criminal investigations.
2. The control of prosecutions and performance of adjudicatory functions (other than those relating to arbitration or other methods of alternative dispute resolution).
3. The command of military forces, especially the leadership of military personnel who are members of the combat, combat support or combat service support role.
4. The conduct of foreign relations and the determination of foreign policy.
5. The determination of agency policy, such as determining the content and application of regulations, among other things.
6. The determination of Federal program priorities or budget requests.
7. The direction and control of Federal employees.
8. The direction and control of intelligence and counter-intelligence operations.
9. The selection or nonselection of individuals for Federal Government employment.
10. The approval of position descriptions and performance standards for Federal employees.
11. The determination of what Government property is to be disposed of and on what terms (although an agency may give contractors authority to dispose of property at prices within specified ranges and subject to other reasonable conditions deemed appropriate by the agency).

¹ With respect to the actual drafting of Congressional testimony, of responses to Congressional correspondence, and of agency responses to audit reports from an Inspector General, the General Accounting Office, or other Federal audit entity, see special provisions in subsection 6(c) of the text of the policy letter.

12. In Federal procurement activities with respect to prime contracts,

(a) determining what supplies or services are to be acquired by the Government (although an agency may give contractors authority to acquire supplies at prices within specified ranges and subject to other reasonable conditions deemed appropriate by the agency);

(b) participating as a voting member on any source selection boards;

(c) approval of any contractual documents, to include documents defining requirements, incentive plans, and evaluation criteria;

(d) awarding contracts;

(e) administering contracts (including ordering changes in contract performance or contract quantities, taking action based on evaluations of contractor performance, and accepting or rejecting contractor products or services);

(f) terminating contracts; and

(g) determining whether contract costs are reasonable, allocable, and allowable.

13. The approval of agency responses to Freedom of Information Act requests (other than routine responses that, because of statute, regulation, or agency policy, do not require the exercise of judgment in determining whether documents are to be released or withheld), and the approval of agency responses to the administrative appeals of denials of Freedom of Information Act requests.

14. The conduct of administrative hearings to determine the eligibility of any person for a security clearance, or involving actions that affect matters of personal reputation or eligibility to participate in Government programs.

15. The approval of Federal licensing actions and inspections.

16. The determination of budget policy, guidance, and strategy.

17. The collection, control, and disbursement of fees, royalties, duties, fines, taxes and other public funds, unless authorized by statute, such as title 31 U.S.C. § 952 (relating to private collection contractors) and title 31 U.S.C. § 3718 (relating to private attorney collection services), but not including:

(a) collection of fees, fines, penalties, costs or other charges from visitors to or patrons of mess halls, post or base

exchange concessions, national parks, and similar entities or activities, or from other persons, where the amount to be collected is easily calculated or predetermined and the funds collected can be easily controlled using standard cash management techniques, and

(b) routine voucher and invoice examination.

18. The control of the treasury accounts.

19. The administration of public trusts.

APPENDIX B

The following list is of services and actions that are not considered to be inherently governmental functions. However, they may approach being in that category because of the way in which the contractor performs the contract or the manner in which the Government administers contractor performance. When contracting for such services and actions, agencies should be fully aware of the terms of the contract, contractor performance, and contract administration to ensure that appropriate agency control is preserved.

This is an illustrative listing, and is not intended to promote or discourage the use of the following types of contractor services:

1. Services that involve or relate to budget preparation, including workload modeling, fact finding, efficiency studies, and should-cost analyses, etc.
2. Services that involve or relate to reorganization and planning activities.
3. Services that involve or relate to analyses, feasibility studies, and strategy options to be used by agency personnel in developing policy.
4. Services that involve or relate to the development of regulations.
5. Services that involve or relate to the evaluation of another contractor's performance.
6. Services in support of acquisition planning.
7. Contractors' providing assistance in contract management (such as where the contractor might influence official evaluations of other contractors).
8. Contractors' providing technical evaluation of contract proposals.
9. Contractors' providing assistance in the development of statements of work.
10. Contractors' providing support in preparing responses to Freedom of Information Act requests.
11. Contractors' working in any situation that permits or might permit them to gain access to confidential business information and/or any other sensitive information (other than situations covered by the Defense Industrial Security Program described in

FAR 4.402(b)).

12. Contractors' providing information regarding agency policies or regulations, such as attending conferences on behalf of an agency, conducting community relations campaigns, or conducting agency training courses.

13. Contractors' participating in any situation where it might be assumed that they are agency employees or representatives.

14. Contractors' participating as technical advisors to a source selection board or participating as voting or nonvoting members of a source evaluation board.

15. Contractors' serving as arbitrators or providing alternative methods of dispute resolution.

16. Contractors' constructing buildings or structures intended to be secure from electronic eavesdropping or other penetration by foreign governments.

17. Contractors' providing inspection services.

18. Contractors' providing legal advice and interpretations of regulations and statutes to Government officials.

19. Contractors' providing special non-law enforcement, security activities that do not directly involve criminal investigations, such as prisoner detention or transport and non-military national security details.

Ms. BROWN. Mr. Clinger.

Mr. CLINGER. Thank you, Madam Chairman. Thank you both, Mr. Martin and Dr. Burman, for your testimony.

Dr. Burman, you mentioned in your testimony that some of the proposals in the legislation with regard to procurement track pretty closely to an OMB letter that basically outlines the way to do it. It is my understanding that agencies are abiding by the terms of that directive. Why do we need legislation? I mean, if in fact this is something that can be done by the administration, aren't we sort of taking away some flexibility by entombing that in a statute?

Mr. BURMAN. One of our concerns is that if the regulations are, in fact, adequate, agencies are, in fact, following them, then we don't necessarily see the need for broader legislation with regard to the same issue. For example, on the inherently governmental functions. On the other hand, there have been criticisms in the past that agencies have not fully complied with these sorts of provisions. My main concern is to ensure that we are not creating different sets of requirements administratively and through legislation, and I feel the committee has done a good job of working with us to come up with parallel approaches here.

So, if it can be done with regulation, that is our preference. But we don't see an inconsistency in terms of what the legislative proposal has to offer.

Mr. CLINGER. Mr. Martin, I understand that Ms. Browner has undertaken steps to address the contracting issue. And, in fact, following up on the Agency's report of last June, she established a council to look at these issues. You have indicated that there are management problems, have been management problems, sort of chronic problems.

Can't the Agency fix some of these things themselves? I mean I keep hearing that we are going to have another overlay, another look at these things, whether by Commission, council, or whatever. Why can't this be done internally?

Mr. MARTIN. Well, Mr. Clinger, we have not taken any position on the question of the Commission. We worked very hard to limit our recommendations, not only to you, the Congress, but to the Agency, to our work, and our work did not encompass a discussion of a Commission and so we take no position on that.

As you know, going back to my March testimony, and I believe in a response to a question from Mr. Mica I told him that my basic belief is that there are plenty of regulations in the Federal Government. There are plenty of laws or plenty of rules in that EPA could correct most, if not all, of the management problems it has by simply implementing existing laws, rules, and regulations. So that has been our position for a long time.

Now there are certain things that have to be legislated, and the governmentwide section of this legislation is, I think, very well done, where it talks—as Mr. Burman did—about unifying across the Federal Government the requirements on contractors to certify their costs and have penalties connected with that. That is a legislative requirement.

Mr. CLINGER. Thank you, gentlemen.

Ms. BROWN. Thank you. Mr. Martin, first of all, based on your audit work over, I guess, the past 4 years, does the legislation ad-

dress the issues of concern? Does it fix the problems? You were fairly specific in your criticism. Have those matters been addressed?

Mr. MARTIN. The subcommittee staff has worked, I think, very well to address the key issues that we have raised over the years. The few differences that we have I point out in my testimony.

Ms. BROWN. Dr. Burman, what prompted the SWAT steering committee to recommend a comprehensive penalty governing contractor costs or liability for civilian agency contracts?

Mr. BURMAN. As I mentioned, we established this SWAT team in intensive review of contracting last June. We had 12 civilian agencies, the inspectors general of the agencies participated, as did the procurement people, our office, the Defense Contract Audit Agency, John Martin here was a member of the steering committee of this group. We also had Bill Reed, the head of DCAA and chief of staff of NASA involved in the process.

Very many of these SWAT teams looking at individual Agency problems found similar kinds of issues. That there were unallowable costs being submitted in proposals, and there didn't seem to be any real disincentives not to submit such costs. Our concern was that contractors would wait to see whether or not people discovered these costs, when in fact what they should be doing is to up front identify them and ensure that they are not included in proposals, and for that reason we felt the penalty would be an effective means to try to deal with that problem.

Ms. BROWN. Just one followup on that area. Inspector General Martin has suggested that business meals should be specifically unallowable. What are your feelings on this?

Mr. BURMAN. That is an item that was raised in the SWAT team report, and we suggested that that be presented to the Federal Acquisition Regulatory Councils to review to see whether or not there should be some changes there. I don't think if you are in town and—that that should be allowable, but that is something that I think we would like to have addressed through the regulatory process.

Ms. BROWN. Do you have any additional information that you would like to share with the committee?

Mr. BURMAN. No, ma'am.

Mr. MARTIN. No, ma'am.

Ms. BROWN. Mr. Clinger, any additional questions?

Mr. CLINGER. No, Madam Chairwoman.

Ms. BROWN. Well, I want to thank you very much.

Mr. MARTIN. Thank you very much.

Mr. BURMAN. Thank you.

Ms. BROWN. Panel 3. Mr. Gene Stout, chairman of the board, National Wildlife Federation. Mr. Stout, are you alone?

Mr. STOUT. Yes, I am.

STATEMENT OF GENE G. STOUT, CHAIRMAN OF THE BOARD, NATIONAL WILDLIFE FEDERATION

Mr. STOUT. Good afternoon, Madam Chairwoman. I represent the National Wildlife Federation where I serve as chair of their board of directors. I am grateful for the opportunity to testify on behalf of the Federation. I urge you to support legislation that would

place the Environmental Protection Agency in the President's Cabinet.

I would like to add that the Federation recognizes and commends Representative Conyers and Representative Synar for their leadership and commitment in this effort. They come from States where the Federation has two very strong affiliates, the Oklahoma Wildlife Federation and the Michigan United Conservation Clubs.

As you know, the legislative effort to elevate EPA has a long and disappointing history. The environmental movement has waited almost a quarter of a century for its Agency to have a place at the table. It is time to formally acknowledge that environmental protection is as vital to our Nation as commerce, energy, veterans' affairs, and education.

As a protector of America's environment, the Environmental Protection Agency touches the lives of every U.S. citizen. This Nation must have a Department of Environmental Protection which has the authority to address long festering problems of air and water pollution, wetlands loss, pesticide hazards, and toxic waste cleanups. Additionally, protecting the environment and conserving natural resources is a global issue requiring strong, aggressive, U.S. leadership, leadership we have lost.

There is no better illustration of this point than the position of U.S. officials last June at the Earth Summit in Rio. Our negotiations on global environmental issues were dominated by the State Department. We are one of the few Nations that does not have a Cabinet-level Department for the environment. Passage of legislation that would create a U.S. Department of Environmental Protection would demonstrate our commitment at the highest level of government to join with other nations in tackling global environmental issues. We must regain leadership in international environmental affairs.

This bill is critical to our economy. We don't have to choose between economic growth and environmental protection. It is clear that environmental protection is critical to economic competitiveness. A clean environment is not only necessary, it is good business. The world market for environmental technologies will grow to \$300 billion a year by the year 2000. Both Germany and Japan have recognized and are taking advantage of the economic benefit and growth of environmental industries.

The National Wildlife Federation also strongly endorses provisions which address the important issue of environmental justice. We have long neglected the disproportionate impact of pollution on the poor, on communities of color, and on Native Americans. Environmental justice must be one of the highest priorities of the Department of Environmental Protection. Now is the time to move beyond talk and ensure that the new Department of Environmental Protection has a structure and resources to set an equitable course for the future for all Americans.

In closing, our quality of life and the strength of our economy depend on a healthy environment. Creation of a Department of Environmental Protection will demonstrate our Nation's commitment to meeting environmental challenges in this country and around the world. A Department of Environmental Protection is essential to get the job done.

Those who say this bill is an inside-the-Beltway issue are uninformed. I would respond that if the citizens in Lawton, OK, my home, are concerned all of America is awaiting your actions.

Thank you for the opportunity to present the National Wildlife Federation views on this important matter. I would be glad to answer any questions.

[The prepared statement of Mr. Stout follows:]

Working for the Nature of Tomorrow.

**NATIONAL WILDLIFE FEDERATION**

1400 Sixteenth Street, N.W., Washington, D.C. 20036-2266 (202) 797-6800

TESTIMONY OF

GENE STOUT
CHAIR, BOARD OF DIRECTORS
NATIONAL WILDLIFE FEDERATION

ON

THE ELEVATION OF EPA TO CABINET STATUS

BEFORE THE SUBCOMMITTEE ON LEGISLATION AND NATIONAL SECURITY
AND THE SUBCOMMITTEE ON ENVIRONMENT, ENERGY, AND NATURAL
RESOURCES

U.S. HOUSE OF REPRESENTATIVES

May 6, 1993

Good Morning, Mr. Chairman. My name is Gene Stout and I am here to represent the National Wildlife Federation (NWF), where I serve as Chair of the Board of Directors. I am grateful for the opportunity to testify before you today. On behalf of the Federation, I urge you to support legislation that would place the Environmental Protection Agency in the President's Cabinet.

Before I begin, it might be helpful for the Committee to

have some background about NWF and its work. The Federation is the nation's largest conservation education organization.

Founded in 1936, the Federation, its approximately 5 million members and supporters, and its affiliated state organizations work to educate and empower individuals and organizations to conserve natural resources, protect the environment and build a globally sustainable future environment for our children.

We at the Federation are pleased that the Senate has just passed S. 171, the Cabinet elevation bill introduced by Senator John Glenn of Ohio. It is our hope that the House will pass elevation legislation quickly as well.

I would like to add that the Federation recognizes and commends Representative Conyers and Representative Synar for their leadership and commitment in the effort to move EPA elevation through Congress. Let's hope that these efforts will pay off soon.

EPA ELEVATION

As you know, the legislative effort to elevate EPA has a long and disappointing history. When EPA was created in 1970 by President Nixon, proponents of an independent environmental agency emphasized that it was only a first step and that the legislative process to elevate the agency to Cabinet status would soon follow. Regrettably, twenty-three years later, the EPA is still without Departmental status. Yet during those two decades,

support and concern for the environment has grown steadily in the United States and around the world. Clearly, elevation of EPA to Cabinet level is long overdue. It is time to formally acknowledge that environmental protection is as vital to our nation as defense, commerce, veterans affairs, and education.

Protection of the nation's environment is critical to the quality of life of every U.S. citizen and to the country's economic vitality. Therefore, environmental concerns must be central in the deliberations of the nation's highest policy making forum -- the Cabinet.

We understand that Administrator Browner is currently accorded the privilege of direct contact with the President, but we seek official acknowledgement of our nation's commitment to the environment and assurances that future EPA administrators will have a voice in the many policy decisions which affect the environment, regardless of the environmental views of future Presidents.

The time has come to give EPA a place at the Cabinet table, where its leader can be a part of deliberations which bear upon the spending of billions of dollars and influence the destiny of millions of citizens. As the protector of America's environment, the Environmental Protection Agency touches the lives of every U.S. citizen. The agency administers laws which require it to

gauge the risks to human health from chemicals and pollutants. It monitors the quality of air and water and makes sure both meet predetermined standards. It influences industries ranging from public utilities to cattle feedlots.

This nation must have a Department of Environmental Protection which has the authority to address long-festering problems of air and water pollution, wetlands loss, pesticide hazards, and toxic waste cleanups. Moreover, we need a Secretary of Environmental Protection who can negotiate, at equal rank, with the Secretaries of Energy and Defense over the cleanup of nuclear and other hazardous wastes that are the products of their Departments' activities.

Additionally, protecting the environment and conserving natural resources is a global issue, requiring strong, aggressive U.S. leadership.

From global warming to ozone depletion, it is apparent that the environment must be confronted as a global as well as a national issue. It is time for the nation's primary environmental institution to be accorded a priority position commensurate with the challenges that it faces.

Unprecedented cooperation among nations will be needed to tackle transboundary environmental problems. In its current

status, EPA is disadvantaged in the international arena on issues like global warming and ozone depletion. There is no better illustration of this point than the position of U.S. officials at last June's Earth Summit in Rio. Negotiations on global environmental issues on behalf of the United States were dominated by the State Department while EPA officials were relegated to a supporting role. It is astonishing that the United States remains one of the few nations that does not have a cabinet-level ministry or department for the environment.

Passage of legislation that would create a U.S. Department of Environmental Protection would demonstrate our commitment, at the highest level of our government, to join with other nations in tackling global environmental issues.

Finally, I would like to comment on the interdependence of environmental protection and economic vitality. One of the major challenges of this decade will be to incorporate environmental stewardship into our way of doing business. In contrast to the theme of the Reagan-Bush years that the nation must choose economic growth or environmental protection, it is becoming increasingly clear that environmental protection is critical to economic competitiveness. Economies resting on a dwindling, deteriorating resource base are doomed to stagnation and failure.

As we develop the technologies needed to address the world's environmental problems, we will also stimulate greater economic growth in our own country. Foreign nations will look to the United States to provide technical assistance to implement environmental policies or clean up current environmental trouble spots. When the citizens of Eastern Europe want to make their air cleaner or rivers less polluted or when people in sub-Sahara Africa want information on sustainable agriculture development, they should be able to turn to the United States for solutions to these problems. A clean environment is not only necessary, it is good business.

The United States cannot afford to lag in the development of environmental technologies. The Organization for Economic Cooperation and Development (OECD) has reported that 800,000 people in the United States are currently employed in environmental industries -- from managing waste to designing more energy efficient consumer products. OECD estimates that the world market for environmental technologies will grow from the current \$200 billion to \$300 billion a year, by the year 2000. Both Germany and Japan have recognized the potential economic benefit and growth of environmental industries. Those countries are already investing in environmental research and development - - as we must continue to do.

ENVIRONMENTAL JUSTICE

I would also like to strongly endorse the inclusion in any EPA elevation legislation of provisions addressed to the important issue of environmental justice.

As you know, the disproportionate impact of pollution on the poor, communities of color, and native Americans is an aspect of the environment that has long been neglected. The situation has improved as activists and scholars have begun to shine light on this issue. Within government, Administrator Browner has recently announced that environmental justice would be one of the highest priorities of the Department of Environmental Protection under the Clinton Administration.

Title IV of the Committee's draft EPA legislation will give teeth to that commitment. For example, the title would direct a new Office of Environmental Justice to conduct research to fill in the gaps in our knowledge of inequity. The title would also empower states, tribal organizations, and local communities to address their own problems by providing grants to enable the collection and analysis of pertinent environmental data.

Environmental justice has received much attention in recent years, all of which is welcome. But now is the time to move

beyond talk and ensure that the new Department of Environmental Protection has the structure and resources to redress the injustices of the past and set an equitable course for the future. Without a comprehensive program like the one set out out in Title IV, the new Department's commitment to environmental justice could ring hollow indeed.

CONCLUSION

In closing, the quality of life of our citizens and the strength of our economy depend on a healthy environment. Our survival, and that of our children, requires that we address global environmental concerns. Creation of a Department of Environmental Protection will demonstrate our nation's commitment to meeting environmental challenges in this country and around the world. A Department of Environmental Protection is essential if we are to get the job done.

I thank you for the opportunity to present our views on this important matter, and am pleased to answer any questions the Committee may have.

Ms. BROWN. Mr. Holmstead.

**STATEMENT OF JEFF HOLMSTEAD, COUNSEL, CITIZENS FOR
THE ENVIRONMENT**

Mr. HOLMSTEAD. Thank you. I am pleased to be able to say good afternoon instead of good evening.

My name is Jeff Holmstead. I am an attorney with the law firm of Latham & Watkins, but this morning I am not representing my law firm or any of its clients. Rather I am appearing in my capacity as an adjunct scholar with Citizens for the Environment. I very much appreciate the opportunity to appear before you this afternoon.

Citizens for the Environment, also known as CFE, is a nonprofit, nonpartisan organization that searches for market-oriented solutions to environmental problems. CFE is affiliated with Citizens for a Sound Economy Foundation, an educational foundation based in Washington that has over 250,000 members nationwide.

As an organization that is committed to the free market, CFE recognizes the important role played by the Environmental Protection Agency. While many people, including our organization, question the intervention of the Federal Government into the private market in many areas, it is clear that in cases where individuals and firms do not bear the full social cost of the pollutants that they discharge into the environment—so-called negative externalities—the private market will not effectively control such discharges. Therefore, it is important for the government to take action to ensure that individuals and firms internalize the full social costs of their actions. In recognition of the important role played by the Environmental Protection Agency in this regard, we support its elevation to Cabinet status.

There are, of course, other reasons for Congress to elevate the Agency to Cabinet status, several of which have already been discussed today. I would like to focus on another reason. We believe that elevating EPA to Cabinet status will bring more political accountability to the Agency. Currently the United States spends more of its resources on environmental protection than any other country in the world. EPA estimates that the cost of environmental regulation in the United States is currently between \$100 billion and \$150 billion a year. By the end of the decade, this number is expected to reach close to \$200 billion, about 3 percent of our gross national product.

Most Americans have come to realize in recent years that these regulatory costs are the equivalent of a hidden tax that is added to the cost of virtually every product or service they buy. While there is no doubt that most Americans are willing to have their resources spent on environmental protection, they also expect, and they have a right to expect, that these resources will be spent wisely. If they are unhappy about the actions that the Federal Government is taking to protect the environment either because of the level of protection provided or the way in which their resources are being spent they should be able to express their dissatisfaction through the political process. Yet many people still regard EPA as an independent Agency that is largely outside the President's control. We believe that in order to ensure that the President is politi-

cally accountable for the Agency's actions, it is important for the Agency to be recognized as part of his Cabinet.

We also believe that the Agency should be elevated in a straightforward manner without unnecessary legislative mandates. If history is any guide, the more the bill is loaded up with additional measures the less chance of it actually being passed by the Congress and signed by the President.

Nevertheless, because of the need to ensure political accountability, we support measures designed to enhance public scrutiny and public accountability of the Agency's actions. For instance, we would support a measure along the lines of that sponsored by Senator Johnston that would require rules promulgated by the new Department to be accompanied by an analysis comparing the costs of the rule with the risks that the rule is meant to address.

We would also support a measure similar to Senator Murkowski's proposal to require public cost/benefit assessments for certain rulemakings. And we would also support a measure to require the Agency to provide the public with greater notice and an opportunity to comment on agreements with other countries.

I have particular concerns about certain proposals that the subcommittee is considering. I do not believe that it is necessary or desirable to create a separate Bureau of Environmental Statistics. Under its current structure, the Agency already can and does collect and assess all the data that would come under the jurisdiction of the new Bureau. Adding new bureaucracy would simply require more expenditure of taxpayer dollars at a time when there is significant public sentiment for cutting government spending.

We are also concerned that such a Bureau may create the illusion that many important environmental issues are purely technical, when in fact they are much more complicated. For example, risk assessments appear to be exclusively scientific and statistical exercises, when in fact they contain a number of important policy assumptions. We are concerned that if risk assessments or similar environmental analyses are assigned to a separate independent Bureau these sorts of policy choices will not be subject to public scrutiny and accountability.

We also oppose other proposals that would be unnecessary or duplicative. For instance, many have suggested the creation of a new Commission to study the Agency's structure and operations. Numerous groups, both inside and outside the Federal Government, have already studied these issues at length. Although the issues themselves may warrant further consideration, we question whether taxpayer dollars should be used to create yet another Commission to study them further at this time.

In conclusion, we support the elevation of the Environmental Protection Agency to Cabinet status. We also urge the subcommittee to reject additional measures that would simply add unnecessary costs while adopting those specifically designed to enhance public accountability of the new Department.

Again, I appreciate the opportunity to be here this afternoon and would be pleased to answer any questions.

Ms. BROWN. Thank you.

And now Dr. Blackwelder.

**STATEMENT OF BRENT BLACKWELDER, VICE PRESIDENT,
FRIENDS OF THE EARTH, CENTER FOR MARINE CONSERVA-
TION**

Mr. BLACKWELDER. I am Brent Blackwelder, vice president of Friends of the Earth. I offer this testimony also on behalf of two other national environmental organizations, the Center for Marine Conservation and the Izaak Walton League of America.

Our organizations strongly support legislation to elevate the Environmental Protection Agency to the status of a Cabinet Department of Environmental Protection. As you know, however, this issue has been considered repeatedly by both the House and Senate for several years. This is the third consecutive Congress to consider legislation to make EPA a Cabinet Department. Yet such legislation has not been enacted even with support from the White House.

We do not have a Department of Environmental Protection not because there is any substantial objection to elevating EPA, but because the legislation has repeatedly been encumbered with additions and amendments that, however well-intentioned, have collectively failed to generate enough—have collectively generated enough opposition so that the bills would fail passage.

We commend this committee for returning again to achieve the basic objective which we and virtually every other environmental organization support of making EPA a Cabinet Department. If you are to succeed this time, as we hope you will, we urge you to pursue a strategy that results in a bill that can pass both the House and the Senate, a bill that is not weighted down with additional provisions that divert debate and votes from the basic environmental protection objective.

For example, the recently passed Senate bill contains a section that would amend the National Environmental Policy Act to abolish the Council on Environmental Quality and transfer oversight of that fundamental environmental statute to EPA or its successor. Most of the major environmental organizations have expressed their opposition to the language in this section of the Senate bill as indicated in the several letters which we have attached to the statement for your consideration.

In the simple interest of achieving your basic objective, we urge you to avoid this issue on CEQ and several others, such as the creation of offices within the Department. With the addition of each arguably noteworthy proposal, new issues emerge and a few more votes in favor of Cabinet status for EPA are lost.

With this concern in mind, however, let me comment briefly on the subject of environmental justice. We strongly support the efforts of this committee and other Members of Congress to ensure equal protection for all people regardless of race, ethnicity, or socioeconomic status. We agree that the assurances of administrative actions to provide such equal protection are not enough, and that Federal legislation is needed to achieve this objective. This committee has already heard compelling testimony in support of such legislation. Therefore, since the environmental justice issue is of great importance and urgency and appears to have broad support, for these reasons we believe that inclusion of an environmental justice title in this bill gives it added strength and specificity and would therefore be desirable.

In conclusion, we would stress that our fundamental concern relative to the elevation of EPA to Cabinet status is the limited financial and staff resources available to the Agency. If I could take a minute just to show you this graph.

[Pause.]

Mr. BLACKWELDER. What I have here is a graph which shows EPA's operating budget in 1979, in constant dollars, and you see now, in 1993, we are just barely back, slightly above the level where we were. But the problem has been that in the intervening time Congress has enacted a major series of environmental statutes on solid waste, hazardous waste, amendments to the Clean Air Act, and so forth. So, in our judgment, EPA's workload has been doubled but its resources are virtually the same. And most importantly, the staffing considerations which were raised by members of this committee in connection with contracting are what is at stake here. EPA needs greater resources to do the job, but the Congress came below President Bush's request on salaries for EPA by \$25 million in 1991 and by \$50 million in 1992. So if we are going to get on top of the contractor abuse, let us think more than just about titles on contractor problems but about the resources so that staffing can be hired to do these essential jobs and the reliance on contractors can be diminished.

And finally, we are concerned that the current budget request of the administration looks to be about a 3 percent cut from last year's congressionally appropriated level when you adjust for inflation, and we raise the basic question are we really elevating EPA when, in fact, it is undergoing a budget cut? We know that this committee is not the Appropriations Committee, but we urge you to take an active part not only in promoting EPA to Cabinet level but to ensuring that it has the adequate financial resources to do the job.

Thank you.

Ms. BROWN. Thank you.

[The prepared statement of Mr. Blackwelder follows:]

Friends of the Earth · Center for Marine Conservation

**STATEMENT OF DR. BRENT BLACKWELDER
VICE PRESIDENT FOR POLICY, FRIENDS OF THE EARTH**

**TO THE
COMMITTEE ON GOVERNMENT OPERATIONS
MAY 6, 1993**

CONCERNING THE DEPARTMENT OF ENVIRONMENTAL PROTECTION

Mr. Chairman and Members of the Committee, thank you for the opportunity to appear before you today. I am Brent Blackwelder, Vice President for Policy with Friends of the Earth, a national environmental organization with affiliate groups in 51 countries. I am also appearing today on behalf of the Center for Marine Conservation, which is a national environmental organization based in Washington, D.C., with regional offices in California, Florida, Texas, and Virginia.

Our organizations strongly support legislation to elevate the Environmental Protection Agency to the status of a cabinet Department of Environmental Protection. A clear voice for environmental protection at the cabinet level is equally important to the citizens of our nation as are voices for health, education, agriculture, commerce, and defense. Since its creation in 1970, EPA has from time to time been such a voice, but its place in the President's cabinet should be assured and made permanent by an Act of Congress.

As you well know, however, this issue has been considered repeatedly by both the House and the Senate for several years. This is the third consecutive Congress to consider legislation to make EPA a cabinet department. Yet such legislation has not been enacted, even with support from the White House. We still do not have a Department of Environmental Protection, not because there is any substantial objection to elevating EPA, but because the legislation has repeatedly been encumbered with additions or amendments that, however well-intentioned, have collectively generated enough opposition that the bills have failed passage.

We commend this committee for returning again to achieve the basic objective, which we and virtually every other environmental organization support, of making EPA a cabinet department. If you are to succeed this time, as we hope you will, we would urge you to pursue a strategy that results in a bill that can pass both the House and the Senate -- a bill that is not weighted down with additional provisions that divert debate, and votes, from the basic environmental protection objective.

For example, the current Senate bill (S.171), contains a section that would amend the National Environmental Policy Act of 1969 (NEPA) to abolish the Council on Environmental Quality and transfer oversight of that fundamental environmental statute to the EPA or its successor. Most of the major environmental organizations have expressed their opposition to the language in

this section, as indicated in the several letters which we would like to have attached to my statement for your consideration. We will have more to say on the NEPA issue at a hearing before the Committee on Merchant Marine and Fisheries next week.

In the simple interest of achieving your basic objective, we urge you to avoid that issue and several others, such as the creation of offices within the Department for small business interests, or requirements for the preparation of comparative risk analyses, or other internal restructuring. With the addition of each arguably noteworthy proposal, new issues emerge, and a few more votes in favor of cabinet status for EPA -- as well as, by association, for those proposals also -- are lost.

With this concern in mind, let me comment briefly on the subject of environmental justice. We strongly support the efforts of this Committee and other members of Congress to ensure equal environmental protection for all people regardless of race, ethnicity, or socio-economic status. We agree that assurances of administrative actions to provide such equal protection are not enough, and that federal legislation is needed to achieve this objective. This committee has already heard compelling testimony in support of such legislation.

The environmental justice issue is of great importance and urgency, and appears to have broad support. For these reasons,

we believe the inclusion of an environmental justice title in the EPA cabinet bill gives it added strength and specificity, and would therefore be desirable. However, because we have argued that a clean bill is the best strategy for making EPA a cabinet department, we would also be glad to support enactment of these environmental justice provisions as separate legislation.

In conclusion, we would stress that our fundamental concern relative to the elevation of EPA to cabinet status is the limited financial and staff resources available to the agency. EPA's operating budget has not kept pace with the explosion in its workload. EPA lacks sufficient funds to carry out existing laws and mandates, and is even less able to address neglected or emerging requirements. Between 1979 and 1993, the workload of the agency doubled with the passage of nine major environmental laws and numerous minor ones. During that same period, the EPA operating budget increased by only 4.7% after inflation. President Clinton's FY 1994 budget proposes to cut EPA's operating budget by one percent from last year's Congressionally enacted level of \$2.694 billion. After correcting for inflation, this is actually a cut of over three percent. Are we really "elevating" EPA, when it is in fact undergoing a budget cut? Thus in addition to advancing the EPA cabinet bill, we urge this Committee to take an active role in ensuring that adequate funding and staff positions are also provided to the agency to enable it to accomplish its very important missions. Thank you.

Ms. BROWN. Dr. Blackwelder, you have raised an objection to a Senate-passed amendment requiring the Department to prepare an analysis comparing the cost of the new rule against the risk of human health and the environment. Mr. Holmstead supports such a requirement. Can you both elaborate a little bit?

Mr. BLACKWELDER. We would like to supply further comments to—this is the Johnston amendment you are referring to, but this is one amendment which we think will seriously encumber the bill and will result in EPA not being elevated to Cabinet status. This is the kind of baggage that is going to definitely derail the effort.

Mr. HOLMSTEAD. We simply recognize that we are operating in an era of scarce resources, and we believe for that reason it is important to make sure that the Agency's resources and the resources of the private sector are focused on those risks that are really the most important. It doesn't make any sense for us to be spending several billion dollars to control against very trivial risks when for that same amount of money we can do a number of other things that would, in fact, have a much greater impact on protecting public health and safety, and for that reason we think it is useful.

Ms. BROWN. Couldn't such complex risk assessment take years to accomplish, cost an enormous amount of money, and delay implementation of needed regulatory actions?

Mr. HOLMSTEAD. For the most part, these sorts of risk assessments are already done by the Agency, so in terms of extending the time that regulatory actions would take, I don't think that should be an issue. The real issue is right now we are not doing anything to compare the different risks we are regulating. For instance, under Executive Order 12291, already the Agency is required to do certain cost/benefit analyses, including risk assessments, for many regulatory actions.

The problem is there is no comparative analysis between those risks and the other risks that are regulated, or perhaps not regulated in other areas.

Mr. STOUT. Madam Chairwoman, may I respond to that a little bit?

Ms. BROWN. Yes, Mr. Stout.

Mr. STOUT. I work for the Department of Defense, and as a government bureaucrat with all the variables and unknowns and guesstimates in writing these sorts of analyses, I believe I could safely probably write either side successfully on any given issue regarding many of these environments. It is a very, very difficult thing to do objectively.

Mr. BLACKWELDER. I would just add that the discussion here I think should serve as ample evidence that should such a provision be on the bill I think the bill is not going to go very far.

Ms. BROWN. We have a vote. We are going to take a 20-minute informal recess, and we will be back. Is that OK, Mr. Mica? You will be back too. Thank you.

Mr. STOUT. Madam Chairwoman, may I be excused? I need to catch a plane back to Oklahoma.

Ms. BROWN. OK. I have one question for you, then. Just one question.

Mr. Stout, your testimony does not mention either a Bureau of Environmental Statistics or a Commission to Improve EPA Man-

agement. Does the National Wildlife Federation consider these two management improvement efforts to be important additions to the EPA powers?

Mr. STOUT. Yes, ma'am. We do.

Ms. BROWN. You do think it is important. More specifically, I know you can't speak for all of the major environmental groups, but do you think it is likely that there is broad support for the inclusion of title IV in the discussion of the draft environmental justice provision in the EPA Cabinet bill?

Mr. STOUT. I believe there is very widespread support for this but, again, I can't quantify that.

Ms. BROWN. Thank you very much.

We stand in recess for 20 minutes.

[Recess taken.]

Ms. BROWN. The hearing will come back to order.

We have a question from Mr. Clinger.

Mr. CLINGER. Thank you, Madam Chairman.

Both of you gentlemen, I am delighted to see, if we are going to have an elevation, would support the approach that I have suggested in legislation, and suggested that that really makes sense from a strategic point of view. If we are engaged in just sort of making points, maybe we should have a more comprehensive bill. But if we are really interested in getting something passed, it seems to me that the simpler the language the better. Could you expatiate on that a little bit, expand on why you would both feel that this would be a better approach than something with, for example, a number of amendments that we have already discussed?

Mr. BLACKWELDER. I could start out. For example, if amendments are put on dealing with the subject of the Council on Environmental Quality and what is going to happen to it as was done in the Senate bill, then I think you will have a lot of controversy on the floor. The bill might not even reach the floor because environmental groups object to that provision in the Senate piece of legislation.

If there are other amendments such as the Senate added to, I think, the Johnston bill, we already heard from distinguished Member Waxman that that would be a serious problem for him. It just illustrates that each particular addition is going to cause more and more problems and we won't get to the end result.

We would submit that some of the provisions which seem to be meritorious and relatively controversy free, like the procurement package, could pass subsequently as freestanding bills under a suspension calendar. No one would raise much problem there, and that is the way to do it.

Mr. CLINGER. The problem, of course, with that is that if you put some of the procurement items in that have been discussed it might also cause legislation to be referred to a number of other committee jurisdictions, which, as we know, around here can be the kiss of death. If you have to deal with more than one committee in any given Congress, you might as well kind of forget it.

So, even with the less controversial items, it seems to me that you run a high—you increase the risk of nonpassage of anything by virtue of that.

What are some of the concerns in the environmental community about the transfer of the CEQ functions, assuming it is eliminated, to EPA?

Mr. BLACKWELDER. First of all, we think that CEQ right now has statutory authority. It cannot be abolished by the President. Moving that into the White House with the Office of Environmental Policy without a statutory basis could allow that office to be removed. We disagree with that.

CEQ was created in 1970 under the National Environmental Policy Act and had the mission of administering the environmental impact statement process, and so it had to arbitrate among agencies. You cannot put EPA or a Department into the position of trying to arbitrate among other agencies which are filing environmental impact statements. You would put Administrator Browner in the position of telling the Department of Agriculture their impact statement is no good, or telling the Defense Department their impact statement is deficient. That is not a tenable position for her as a Cabinet person to be in. That is a decision that has to be resolved at a White House level or at the level of the Council on Environmental Quality in the executive branch.

And so we do not like the idea of trying to transfer those functions into EPA. It is much more difficult.

So those are the two basic objections: statutory authority, and how you are going to deal with impact statements.

Mr. CLINGER. Right. Madam Chairman, I have two letters I would like to submit for the record: one letter from environmental groups to President Clinton on the role of the Office of Environmental Policy, and another letter from a number of environmental groups to me on the same subject.

Ms. BROWN. Without objection.

[The letters follow:]

American Rivers • Center for Marine Conservation
Defenders of Wildlife • Environmental Defense Fund
Friends of the Earth • Izaak Walton League of America
National Audubon Society
National Parks and Conservation Association
Natural Resources Defense Council
Sierra Club • The Wilderness Society

March 3, 1993

The Honorable William Jefferson Clinton
President of the United States
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Dear Mr. President:

The undersigned national environmental organizations respectfully submit this letter to provide our recommendations on the role of the new Office of Environmental Policy in overseeing implementation of the National Environmental Policy Act (NEPA).

We support your decision to create the new Office of Environmental Policy in the White House and to include the director of this office in the meetings of the National Security Council, the National Economic Council, and the Domestic Policy Council. This step demonstrates the importance of environmental protection to your administration and your commitment to integrate concern for the environment into all aspects of national policy making.

One question left open by your recent decision is whether the new office should assume the existing Council on Environmental Quality's function of overseeing implementation of the National Environmental Policy Act, or whether some or all of these responsibilities should be transferred out of the Executive Office of the President. In our view it is essential to the continued successful implementation of NEPA that the basic NEPA oversight function currently assigned to the Council be transferred to the new Office of Environmental Policy.

Letter to President Clinton

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The National Environmental Policy Act is the magna carta of environmental protection in America. It declares environmental quality to be the national policy of the United States. In order to carry out this policy, NEPA requires all federal agencies to ensure that environmental values receive appropriate consideration and specifically directs the preparation of detailed written assessments of proposed federal actions significantly affecting the quality of the human environment. One of the primary functions of the Council on Environmental Quality, which was established by NEPA, is to oversee federal agency implementation of NEPA, including coordination of environmental and natural resource programs across all agencies and the resolution of interagency disputes on environmental issues.

We believe the new Office of Environmental Policy should continue to carry out this mandate to coordinate environmental policy among federal agencies by assuming the Council's function as overseer of NEPA implementation. NEPA establishes the key environmental decision-making process in the federal government, and therefore it is appropriate that the White House office with overall responsibility for coordinating environmental policy oversee the NEPA process. To be effective, this coordination and oversight function should continue to be carried out by the Executive Office of the President. If these functions were transferred to a line agency, coordination and mediation of NEPA implementation would not be as effective. It also would not be appropriate to place these functions in the Office of Management and Budget or a different office within the Executive Office of the President other than the Office of Environmental Policy.

We believe that the most straightforward way to accomplish this proposal would be to submit legislation to Congress that would amend NEPA and the Environmental Quality Improvement Act by transferring the basic functions of the existing Council on Environmental Quality and the Office of Environmental Quality to the new Office of Environmental Policy. At the same time, in the interests of economy, we recommend eliminating certain responsibilities currently held by the Council on Environmental Quality, such as preparation of the annual report on the environment. We would be happy to work with you in developing this legislative proposal.

Letter to President Clinton
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Thank you very much for your consideration of our views on this important matter.

Sincerely,

Kevin J. Coyle

Kevin Coyle
President
American Rivers

Roger McManus

Rogers McManus
President
Center for Marine Conservation

Rodger Schlickeisen

Rodger Schlickeisen
President
Defenders of Wildlife

Fred Krupp

Fred Krupp
Executive Director
Environmental Defense Fund

Jane Perkins

Jane Perkins
President
Friends of the Earth

Maitland Sharpe

Maitland Sharpe
Executive Director
Izaak Walton League of America

Peter A.A. Berle

Peter A.A. Berle
President
National Audubon Society

Paul C. Pritchard

Paul C. Pritchard
President
National Parks and Conservation
Association

John Adams

John Adams
Executive Director
Natural Resources Defense
Council

Carl Pope

Carl Pope
Executive Director
Sierra Club

Karin P. Sheldon

Karin Sheldon
Acting President

Letter to President Clinton

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The Wilderness Society

cc: The Honorable Albert Gore, Jr., Vice President
John Glenn, Chair, Senate Governmental Affairs Committee
William Roth, Vice Chair, Senate Governmental Affairs
Committee
Max Baucus, Chair, Senate Environment and Public Works
Committee
John Chafee, Vice Chair, Senate Environment and Public
Works Committee
Gerry Studds, Chair, House Merchant Marine and Fisheries
Committee
Jack Fields, Ranking Minority, House Merchant Marine and
Fisheries Committee

Center for Marine Conservation · Defenders of Wildlife
Friends of the Earth · Izaak Walton League of America
National Audubon Society · National Parks and Conservation Association
Rails-to-Trails Conservancy

6 May 1993

The Honorable William F. Clinger
Committee on Government Operations
2153 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Clinger:

We are writing on behalf of the undersigned national environmental organizations to express our concern about proposed legislation that would transfer virtually all of the responsibility under the National Environmental Policy Act (NEPA) now exercised by the Council on Environmental Quality (CEQ) to the proposed new Department of Environmental Protection. Language to effect these changes is included in Section 112 of S. 171, which was recently passed by the U.S. Senate.

Our organizations are extremely supportive of President Clinton's proposal to establish a cabinet-level Department of Environmental Protection. However, we have two basic concerns about the provisions of S. 171 that affect NEPA and CEQ, and we request that you address these issues in your deliberations on the House version of the bill. First, we are very concerned that in replacing the existing Council on Environmental Quality, the new Office of Environmental Policy (OEP) should have a permanent statutory basis; second, we believe it is essential that the ultimate authority to oversee implementation of the National Environmental Policy Act remain in the OEP within the Executive Office of the President.

The new Office of Environmental Policy, like the existing Council on Environmental Quality, should continue to have a permanent statutory basis to help ensure that the environment will always have a voice within the Executive Office of the President. Congress has established by statute other units within the Executive Office of the President to address economic, national security, and trade matters; environmental matters continue to deserve this same level of recognition.


The authority to oversee implementation of NEPA, including the authority to issue binding regulations and to help mediate interagency disputes, should remain within the Executive Office of the President. NEPA is our nation's most important environmental law, and its mandate applies to every federal agency. Relocation of this authority to the Department of Environmental Protection would create severe administrative and political conflicts that would weaken implementation of NEPA.

May 6, 1993

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We emphasize that we continue to support the basic objective of elevating the Environmental Protection Agency to the level of a cabinet department. We urge you, however, to proceed toward this objective by developing new language relating to the National Environmental Policy Act and the Council on Environmental Quality that will address the two concerns outlined above. We would be happy to work with you and your staff in developing appropriate language. Thank you for your consideration.

Sincerely,



Roger McManus
President
Center for Marine Conservation



Rodger Schlickeisen
President
Defenders of Wildlife



Jane Perkins
President
Friends of the Earth



Maitland Sharpe
Executive Director
Izaak Walton League of America



Peter A.A. Berle
President
National Audubon Society



Paul C. Pritchard
President
National Parks and Conservation
Association



David Burwell
President
Rails-to-Trails Conservancy

cc: Members of the Committee

Ms. BROWN. Mr. Mica, do you have questions?

Mr. MICA. Just a quick question, if I may, gentlemen. If we delayed the process of elevating this Agency to a Cabinet-level position for a year, would you have a problem with that—till we had a chance to work out some of the management problems?

Mr. BLACKWELDER. Our position is that this should be done as soon as possible. That we have dealt with it in three Congresses. We should do the elevation, but as I made a point earlier in terms of EPA's budget, you have got to give them the resources to deal with the contracting problems you raised earlier.

I think this elevation in status, there is no excuse for putting that off. But we, as I characterized in the testimony, support a relatively clean bill so you don't get it encumbered by one thing after the other. Those matters could be addressed subsequently. But you give EPA a seat at the Cabinet table with some real force and prestige and let's see then if Administrator Browner can be moving forward to address some of these other matters.

Mr. MICA. But the problem you have is, if you don't pass a clean bill and you start tacking on additional responsibilities, your chart listed the different responsibilities that have been added over that time and showing the funding level remaining somewhat constant, and if not, decreased, and then back to constant. If we load this bill down, don't you think we will be in a worse situation as far as trying to address some of these problems?

Mr. BLACKWELDER. That is precisely our concern, is that the bill will be loaded down and that we will be right back where we were three Congresses ago.

Mr. MICA. Thank you.

Mr. HOLMSTEAD. If I could just add on that, I think it is correct, and not only for strategic reasons a clean bill might be the right way to go but a number of the additional measures that have been talked about do, in fact, begin to add to the cost of running the Agency, and that is a matter that is often overlooked, and it is frustrating on the environmentalist side and I know it is also frustrating to industry that has to deal with the Agency. Because unless there is certainty that is going to be provided by the Agency, unless the Agency has the resources to provide that sort of regulatory certainty everyone is really worse off.

Mr. MICA. So, if we load it down, we could even make a bad situation worse.

Mr. HOLMSTEAD. Oh, I think that is clear.

Mr. MICA. Thank you.

Ms. BROWN. Do you have any closing remarks?

Mr. HOLMSTEAD. No. Thank you very much for the chance to be here.

Ms. BROWN. Thank you.

Mr. BLACKWELDER. Thank you.

Ms. BROWN. Thank you very much.

Ms. BROWN. Will the last panel come forward? Thank you very much, and thank you for your patience.

Our fourth panel is Jim Hostetler, a partner in the firm of Kirkland & Ellis; John Chelan, executive director of the Unison Institute; and the last person, Stephen Kohn.

STATEMENT OF JAMES S. HOSTETLER, ATTORNEY, KIRKLAND & ELLIS, ON BEHALF OF THE PROFESSIONAL SERVICES COUNCIL

Mr. HOSTETLER. Thank you, Madam Chairman, members of the committee. On behalf of the Professional Services Council I want to express my appreciation for the opportunity to testify on those provisions of the EPA Cabinet bill that deal with procurement reform, and I ask that a copy of my prepared testimony be included in the record of the hearing.

Let me briefly summarize this testimony. Since many Professional Services Council member firms have technical skills and capabilities which advance EPA's programs we share with EPA and Congress a desire to build a strong working partnership which makes contractor services available in the most efficient, quality based, cost-effective way.

We recognize that there is a need to improve EPA's core capability to manage the work of outside contractors. The challenge is to devise specific measures which improve the existing system. Fortunately, there are some recent studies and reports which offer a context for action and sound recommendations for change and reform.

Drawing on these sources, my written testimony focuses on four provisions in the proposed bill and considers how they will impact on building an improved relationship between EPA and technically skilled contractors. The provisions dealing with inherently governmental functions, organizational conflicts of interest, umbrella contracts, and contract cost issues. My oral comments will be directed to two of these four issues: inherently governmental functions and organizational conflicts of interest.

First, inherently governmental functions. The debate and discussion of what is an inherently governmental function and what is appropriate for contracting out has a long history in the United States. In a report issued by a special panel of the National Academy of Public Administration in March 1989 NAPA described how government has used contractors in the past. What NAPA concludes in its report is that there is no bright line that can or should be drawn between what can be appropriately done by the public or by the private sector, but the process of contracting out poses special management challenges.

Briefly summarized, let me make four observations. Relying on private contractors changes the role of the public manager from that of a doer or implementer to that of a supervisor or overseer. We have heard a great deal about the new roles for public managers envisioned by the President in reinventing government. As government shapes policy and assembles core capability to oversee and manage, it must acquire new management skills.

Second, it is essential that government maintain the skills and capabilities in-house to manage effectively the increasingly complex relationships between the government and the private sector. Existing training programs, skills upgrading and proper civil service levels of competence do not fully reflect the more demanding tasks and roles, both program officers and procurement specialists must assume.

Third, effective competition must be maintained to achieve the benefits of reduced costs, increased efficiency, innovation and qual-

ity which flow from well-managed use of technical skills in the private sector.

And finally, as Federal officials, more and more are serving in the role of not controlling and doing the work, but being accountable for managing outside contractors and for the results of those contractors there is a tendency on the part of both the executive branch and the legislative branch to increase regulation of contractors. In the process much of the flexibility and productivity that is a major advantage of using contractors is lost.

Indeed, the use of the EPA Cabinet bill to achieve procurement reform is a perfect example of this process at work. The bill focuses on new statutorily mandated regulated schemes to govern the procurement process. At the same time, we need to recognize the legitimate and valuable role technically skilled private organizations perform in delivering needed services to the government, including EPA, and how to facilitate effective use of these firms.

We need to be considering the special demands being placed on public managers in overseeing contractors and how they could be helped to acquire the skills they need to do their job better. Fortunately, over the last several years, OMB has taken a series of constructive initiatives to clarify and strengthen policies governing the government's use of service contractors. As Mr. Burman testified this morning, Policy Letter 92-1, issued in September 1992, establishes specific and detailed guidance relating to service contracting and inherently governmental functions.

The Professional Services Council believes that this policy is constructive and should be implemented by appropriate Agency actions and supplemental guidance where necessary. In reviewing the provision in the House bill dealing with inherently governmental functions, we would recommend that the precise language of the OFPP policy letter be used in order to reduce confusion and enhance implementation of a uniform Federal policy.

Finally, I would like to just say a brief word on organizational conflict of interest. As you know, the committee's draft includes a specific provision on this issue. Presently, the Federal Acquisition Regulation contains detailed guidance on organizational conflict. The draft bill introduces a new concept in the law. It defines organizational conflict of interest as not only including activities or relationships which may result in an unfair competitive advantage or impairment of the objectivity of the contract awardee, but also the appearance that these circumstances exist.

We are concerned about expanding the organizational conflict concept to include a prohibition of an award to a bidder with a potential appearance of a conflict. This represents a significant expansion in the law that has evolved over the last 35 years, and we think poses a risk of disqualifying a large number of objective and capable private offerors.

Finally, I would just note that the prepared testimony that we have offered contains some specific comments about the provisions dealing with umbrella contracting and contract costs, which we ask that you consider in reviewing the bill. In conclusion, we applaud the prospect of EPA being elevated to Cabinet status. Its programs are critically important to the Nation's future. We hope that you

will not, under the guise of procurement reform, place unnecessary limitations on EPA or other agencies' ability to harness the best technical skills in the country to achieve this important mission.

Thank you very much.

[The prepared statement of Mr. Hostetler follows:]

TESTIMONY
OF
JAMES S. HOSTETLER
on the
Elevation of the Environmental Protection Agency to Cabinet Level
Before the
Subcommittee on Legislation and National Security
and the
Subcommittee on Environment, Energy and Natural Resources
of the
Committee on Government Operations
United States House of Representatives

May 6, 1993

My name is James Hostetler and I am a partner in the Washington office of the law firm of Kirkland & Ellis. Today, I appear in my capacity as counsel to the Professional Services Council (PSC). In my representation of the professional services industry, I have specialized in federal procurement laws, regulations and policies governing how the government contracts for technology-based services. On behalf of PSC, I want to express my appreciation for the opportunity to testify on those provisions of the bill to elevate EPA to Cabinet status that deals with procurement reform.

By way of background, the Professional Services Council represents approximately 140 leading professional and technical services firms and national associations. These organizations represent a dynamic and highly diverse range of technology-based skills serving both government and commercial clients. These capabilities include research and development, systems integration and support, software design and review, program analysis and evaluation, engineering services, training and human resource management, laboratory testing and analysis, among other things. These "knowledge-based services" are a growing area of the U.S. economy, the kind of high skill, high wage jobs the President seeks to create. More and more, the kind of technology-based services these firms provide are what government requires to meet national needs. As a consequence, it is logical and understandable that EPA would turn to the expertise and capabilities of these firms for assistance.

Since many PSC member firms have technical skills and capabilities which advance EPA's programs, we share with EPA and the Congress a desire to build a strong working partnership which makes contractor services available in the most efficient, quality-based, cost effective way. We recognize that there is a need to improve EPA's core capability to manage the work of outside contractors.

The challenge is to devise specific measures which improve the existing system for acquiring technology-based services. Fortunately, there are some existing studies and reports which offer a context for action and sound recommendations for change and reform. Drawing on these sources, I would like to focus on four provisions in the draft bill and consider how they will impact on building an improved relationship between EPA and technically skilled contractors: inherently governmental functions, organizational conflicts of interest, packaging contracts and contract cost issues.

1. Inherently Governmental Functions

The debate and discussion of what is an inherently governmental function and what is appropriate for contracting out has a long history in the United States. In a report issued by a special panel of the National Academy on Public Administration (NAPA) in March 1989, entitled "Privatization: The Challenge to Public Management," NAPA described how government has used contractors in the past

Contracting out for mail delivery predated the Constitution and was common throughout the nineteenth century. Activities that one would reasonably assume to be purely governmental functions, such as tax collection, were among those performed by contractors. The original secret service organization during the Civil War, an organization generally referred to as the "spy agency," was in reality a contracting operation between the Department of the Treasury and several private firms. Reporting and publishing congressional and Supreme Court journals were private operations until well into the nineteenth century. Similarly, the federal government contracted out for the incarceration of prisoners with states and local jurisdictions, which, in turn, often contracted the labor of these prisoners to private firms until Congress first appropriated funds for operating a federal prison in the 1890s.

What NAPA concludes in its report is that there is no bright line that can or should be drawn between what can be appropriately done by the public and private sectors, but the process of contracting out poses special management challenges. Briefly summarized, these are:

- Relying on private contractors changes the role of the public manager from that of a "doer" or "implementer" to that of a supervisor or overseer. We have heard a great deal about the new roles for public managers envisioned by the President in "reinventing government" -- as government shapes policy and assembles core capability to oversee and manage, it must acquire new management skills.
- It is essential that government maintain the skills and capabilities in-house to manage effectively the increasingly complex relationships between the government and the private sector. Existing training programs, skills upgrading and proper civil service levels of competence do not fully reflect the more demanding tasks and roles both program officers and procurement specialists must assume.
- Effective competition must be maintained to achieve the benefits of reduced costs, increased efficiency, innovation and quality which flow from well managed use of technical skills in the private sector.

- As federal officials relinquish direct control over "implementers" yet must be accountable for results, there is a tendency on the part of both executive and legislative branches to increase regulation of contractors. In the process much of the flexibility and productivity that is a major advantage of contracting out is lost.

Indeed, the use of the EPA Cabinet bill to achieve "procurement reform" is a perfect example of this process at work. The bill focuses on new statutorily mandated regulatory schemes to govern the procurement process. Instead, we should be recognizing how legitimate and valuable government reliance on the private sector to deliver services has been and is in meeting national environmental goals. We should be considering the special demands being placed on public managers in overseeing contractors and how they could be helped to acquire the skills to do this job better.

In its November 1991 report, "Are Service Contractors Performing Inherently Governmental Functions?", GAO noted how difficult it is to define precisely what is an inherently governmental function. Essentially, GAO stated its belief that identifying the governmental functions to be reserved for government officials depends on the agency's relationship to the contractor and the technical and management capacity of the agency. GAO suggested each situation must be examined separately

and urged OMB to issue revised guidance to the agencies in determining which activities are appropriate or inappropriate for contracting out. It further recommended developing a short list of functions that should not be contracted out, though recognizing it was largely judgmental. Finally, GAO emphasized the care which was necessary in developing such guidance because at bottom there was the need to distinguish between assistance and performance.

Over the last several years, the Office of Federal Procurement Policy (OFPP) in the Office of Management and Budget (OMB) has taken a series of constructive initiatives to clarify and strengthen policies governing the government's use of service contractors. After public notice and extensive public comment, OFPP issued Policy Letter 92-1 on September 23, 1992, establishing specific and detailed guidance relating to service contracting and inherently governmental functions. PSC believes that the policy issued by OMB is constructive and should be implemented by appropriate agency actions and supplemental guidance where necessary.

In reviewing the provision in the House bill dealing with inherently governmental functions government wide, we would recommend that the precise language of the OFPP policy letter be used in order to reduce confusion and enhance implementation of a uniform federal policy. Indeed, given the significance of enacting a statutory requirement for government-wide application, PSC recommends that any provision in the EPA Cabinet bill on inherently governmental functions be limited in

scope to EPA and further hearings be held on what, if any, legislation is needed government wide.

Finally, PSC notes that the proposed legislation contains requirements unique to EPA governing inherently governmental functions. These go beyond the government-wide requirements and specify that inherently governmental functions include "development and drafting of rules, standards, regulations, and Government policies." With EPA's programs dependent on rapidly changing technologies and mastering complex technical and scientific data in fashioning appropriate rules, it seems very shortsighted to limit EPA's access to expertise in the private sector. As GAO points out, private capabilities should be available to assist in developing rules, but not assume final responsibility for performing the decisionmaking function. If EPA supplementary guidance is required to the OFPP policy letter, PSC recommends that it not be statutorily mandated. A constructive alternative would be to direct in report language that EPA develop "bright line" supplementation on the sensitive area of contractor assistance to the policy and rulemaking process.

2. Organizational Conflicts of Interest

The Committee is considering as part of the EPA Cabinet bill a provision to amend the Office of Federal Procurement Policy Act to impose new organizational conflict of interest (OCI) requirements government wide. Presently, the Federal

Acquisition Regulation (FAR) contains guidance on OCI in subpart 9.5 and the Department of Energy is governed by a statute unique to DOE.

a. The Prohibition on Awards is Overbroad

The draft legislation introduces a new concept in the law governing OCI -- it defines organizational conflict of interest as not only including activities or relationships which may result in an "unfair competitive advantage" or "impairment of the objectivity" of the contract awardee, but also "the appearance" that these circumstances exist.

We are concerned about expanding the organizational conflict of interest concept to include the potential appearance of a conflict of interest.¹ To our knowledge, neither the FAR provision dealing with OCI, OFPP, the Comptroller General or the courts have attempted to regulate the potential "appearance" of a conflict of interest with respect to contractors. With over thirty years of experience with federal limitations on OCI, we believe that the judgment not to regulate the

¹ Plugging this definition into the general prohibition produces the result that:

No contract shall be awarded by an executive agency to any bidder or offeror if there is the potential that the nature of the work to be performed may result in the appearance of an organizational conflict of interest.

potential appearance of a conflict was the result of a careful deliberative process and analysis. This judgment is based on the difficulty of defining what is covered by the potential "appearance" of a conflict, the need for clear and enforceable standards to guide contracting officers and contractors, and the recognition that overly broad, difficult to understand OCI rules will place undue burdens on the already cumbersome federal procurement process, reduce competition and increase costs.

This significant expansion of the OCI concept poses the risk of disqualifying a large number of offerors. This problem is made more acute by the tightening of the exception provision.

b. The Provision For Exceptions To The General Rule Is Too Narrow

Notwithstanding the "general rule" above, the agency may award a contract to an offeror with an actual or potential OCI only upon a determination that:

- A) such award is essential to protect the interests of the Government;
- B) such actual or potential conflict of interest has been mitigated to the maximum extent practicable; and

C) such award is otherwise permitted by law or regulation.

(Emphasis added). The requirement that award be "essential" to protect the government's interest goes far beyond the "best interests" standard set by prior regulations. See, e.g., 48 C.F.R. § 1509.503 (providing for waiver by EPA when application of the rule would "not be in the Government's interest"); 48 C.F.R. § 909.570-9 (providing for waiver by DOE upon determination that award is in the "best interest of the United States"); 48 C.F.R. § 9.505 (allowing waiver of "any general rule or procedure of [the FAR OCI provisions] by determining that its application in a particular situation would not be in the Government's interest"); 10 C.F.R. § 1706.8 (allowing waiver of OCI provisions by Defense Nuclear Facilities Safety Board when in the best interests of the Government).

In summary, by introducing these new undefined, vague and ambiguous concepts into the law governing OCI, contracting officers and contractors are faced with ever increasing judgmental and practical burdens in assuring compliance with the rules. In addition, any statutory standard should reflect, at a minimum, the language of the FAR which requires contracting officer action only when a "significant potential" organizational conflict of interest is identified. The FAR recognizes that this determination must be made using "common sense, good judgment, and sound discretion." Further, the FAR states a firm policy that Government, to the maximum

extent possible, should not exclude potential offerors, but rather seek to award or mitigate a conflict in order to encourage the widest range of offerors to compete.

Ultimately, government officials must try to balance the sometimes contradictory goals of maintaining public confidence in the integrity of the federal procurement process, promoting competition and achieving agency goals in an efficient, cost effective way. The best results will flow from well trained civil servants who make case-by-case judgments based on a specific set of facts. The present legal framework in the FAR has been refined over many years and provides a strong basis to make balanced determinations.

We would support extending the DOE-type publication of notice provision to awards of contracts where a waiver is issued.

3. Umbrella Contracts for EPA Advisory and Assistance Services

PSC strongly objects to incorporating detailed procurement policy and operating instructions into law, especially in a bill creating a Cabinet agency. To the extent problems exist, we urge EPA management to implement appropriate changes. With regard to the specific provisions dealing with umbrella contracts, we have two major problems.

One, the limitations on "contract shopping" [section (b)(1), page 87], need to be clarified to permit task orders to be initiated outside the "office, function or program" that originated the umbrella contract when there is a coordinated or interdependent relationship with another organization which results in some form of work sharing responsibility.

The responsibility on eligibility for subcontracts limitation [section (d)(2), page 89], is unnecessarily restrictive. Limiting subcontractors to those explicitly identified in the original contract could arbitrarily inhibit the ability to respond to unforeseen problems and developmental circumstances. We believe that as long as the work to be performed is within the broad scope of the umbrella contract it is to the government's distinct advantage to have the ability to access the specialized expertise and problem-solving talent that may be needed in a given situation. The provision, as proposed, appears to assume that all problem-solving and work performance circumstances can be foreseen which is rarely the case given the scientific, technological and operational uncertainties of EPA's mission.

4. Contract Costs

The proposed legislation contains a provision dealing with contract costs which implements certain recommendations of the SWAT Team report issued by OMB on December 3, 1992. Insofar as the SWAT Team report concluded that legislation

was needed to extend penalties for unallowable costs and overhead certificates to civilian agency contracts and these provisions implement those legislative recommendations, we would have no objection.

Other specific cost issues should be implemented, where necessary, through the regulatory process. Indeed, the language in Section 31(d) of the bill addressing specific cost items goes beyond existing requirements in the FAR and would place heavy burdens on smaller contractors in terms of the kinds of detailed documentation that would be required to justify travel costs. By providing wide discretion for auditors to determine what is "sufficient" documentation, contractors, particularly small firms, are put at unnecessary risk. Subpart 4.7 of the FAR dealing with contractor records retention presently provides procedures which effectively address the government's requirements.

In these and other ways, we believe this proposed micromanagement of the process of determining allowable costs moves away from the kind of accountability and management judgment Vice President Gore is trying to instill in federal employees as part of his top-to-bottom performance review.

Conclusion

We applaud the prospect of EPA being elevated to Cabinet status. Its programs are critically important to the nation's future. We hope that you will not under the guise of "procurement reform" place any unnecessary limitations on EPA or other agency's ability to harness the best technical skills in the country to achieve their mission.

**STATEMENT OF JOHN CHELEN, EXECUTIVE DIRECTOR,
UNISON INSTITUTE**

Mr. CHELEN. Thank you very much, Madam Chairman, and other members of the subcommittee. Thank you very much for the opportunity to comment here today on this important language. We certainly commend you for your efforts here today.

I do have a longer written statement, and with your permission, I would like to submit it for the record and present here today highlights of my testimony.

I studied the draft very carefully and also referred this to other people with whom we work. I will try to represent the views today of a spectrum of organizations, including environmental and other public interest groups, industry, the media, government agencies at all levels, and academia—all of whom are concerned about improving their access to and use of government information. This sense of purpose is derived from my work with an online computer service called RTK NET—the Right to Know Network. We have been providing core environmental data to more than 500 organizations over the last several years, and have performed more than 250 studies, and we are now recognized as one of the more important sources of national environmental information.

We have seen firsthand the benefits of public access and use, and moreover, we can understand the low cost at which it can be provided. Your task today, consideration of the elevation of the Environmental Protection Agency to a Cabinet-level Department, offers the unique opportunity to reshape many management and administrative practices. Among the many changes that we need to make, perhaps one of the most important ones involves the information the Department will collect and disseminate. We need to guarantee that a Department of Environmental Protection will develop an information management backbone that will provide the strength to deal with national and international issues in the coming years.

We should remember what Vice President Gore has stated in his book *Earth in the Balance*: "Rather than create new ways to understand and assimilate the information we already have, we simply create more, and at an increasingly rapid rate . . . Vast amounts of unused information ultimately become a kind of pollution . . ."

With that in mind, I would like to state my unqualified support for section 114 of the draft elevation bill regarding public access to and use of information resources. This section is extremely important both for the public and for the Department itself. It provides a basis for improving management practices of EPA, reducing costs, and improving regulatory oversight. The most important aspect of this section is that it calls upon EPA to act, not merely to plan. The Department must take specific steps to accomplish these mandates and not relegate them to the back burner through protracted planning.

Within this section, there are several key provisions that deserve your support, and I would like to go through these provisions subsection by subsection very briefly and talk about the benefits that they will provide.

First, subsection (a), "Encouraging public access and use," calls for the Secretary to make public access a priority and specifically develop policies and means for dissemination of information. This

provision importantly defines the public to include all levels of government, and all types of persons and organizations and will significantly erase the legacy of the past.

We have found that there is a groundswell of enthusiasm for public access throughout the Agency which needs to be nurtured. After watching the success of the toxic release inventory, the TRI, program it is widely recognized that the benefits of expanded public access can be amazing, especially when there is formal Agency recognition that public access is a mandate to be fulfilled. The Department must be encouraged to understand that information is more than a resource to be hoarded, but like loaves and fishes its value can be increased by distributing it freely.

We certainly applaud the comments of Chairman Dingell, and you can increase accuracy and truth of information. It will rise or fall as it is tested by public access and the competition of ideas.

Next, subsection (b), "The inventory and locator of information services," calls for the establishment of a program and mechanism to provide a detailed list of the information resources available and a system for providing it both internally to the Department and the public. This provision will enable the Department to build upon hard won experience in the private sector where innovations have been very successful in helping spark better service, reduced overhead staff, and permit them to respond rapidly to unpredictable situations.

Within government, these types of tools can enable program managers to easily assemble and aggregate the information they need and apply it to their own policy and program issues.

Next, subsection (c), "The integration and availability of services," calls for the Secretary to develop a means to consolidate isolated program data into a meaningful whole. It would encourage the Department to take rather small, discrete steps and establish standards for coordination of data collection and access. Significant amounts of redundancy could be eliminated and new data collection could be better targeted.

As EPA information resources management staff have agreed, the resulting savings and benefits to both industry and government would be significant and vastly exceed projected costs.

Subsection (d), "The Strategic Plan and reports on public access to and use of information," calls for the Department to plan for and document how it will provide for data dissemination and public access to departmental information. This provision will help the Department in three ways.

First, we will be assured that the planning process actually occurs in the manner intended by explicitly making these plans open to the public.

Second, the public will be assured that it will be able to participate in the planning of public access services.

Finally, since the Secretary is charged to address the use of advanced technology and pilot programs the plan is more likely to be technically realistic.

Subsection (e), "Obtaining public advice and guidance," requires the Secretary to establish an ongoing mechanism for obtaining public advice and guidance. Although at first blush it might seem redundant to assure that there is public input into a public access

plan, such a safeguard is necessary. For the last 2 years, several key conferences on public access did not include participation by members or representatives of the public. Only government employees or their representatives were invited. Nonparticipation by the public is equivalent to the exclusion of shareholders from an annual meeting of a publicly held corporation, a practice that today is unthinkable.

Subsection (f), "User fees," which grants the Secretary the discretion to lower fees in order to enhance the mission of the Department directly supports the evolving policy that information dissemination is a powerful tool that should be a central part of program activities. Through this provision, which itself does not lower fees, the Secretary can determine how best to allocate resources from the perspective of the Agency mission, regardless of end-user purpose. This flexibility will permit the Secretary to better address the needs of low income users, targeted information providers who require incentives, and other novel dissemination methods.

If the Secretary takes advantage of this provision to lower average fees, the overall result should be broader distribution and use of Department data.

Subsection (f), "Trade secrets and confidential information," which directs the Secretary to establish or revise policy on nondisclosure of data would solve problems inherent to current procedures. It has been documented that significant amounts of potentially important health and safety data are never made available, even inside the Agency. This problem is well-known inside EPA and is recognized as a significant limitation on the quality of several data bases collected under the Toxic Substances Control Act, or TSCA.

The proposed subsection will establish fair and consistent rules that will protect both the submitters and the public. Submitters will be protected since they still will be able to receive trade secret status or they can make a showing that they are likely to be harmed by disclosure.

However, the public will be protected by criteria requiring the trade secret status must be justified, not merely request and then automatically granted.

Overall, I wanted to present to you an example of how section 114 would apply in the real world. I would like to refer you to my written submitted testimony about a heroic woman, Florence Robinson, in Baton Rouge, LA, who has used the toxic release inventory data that was recently made available. I think she will give you a very direct example of how she has used it to help African American communities to protect themselves from toxic pollution.

Ms. BROWN. Excuse me. Are you closing? How much time—

Mr. CHELEN. I have four more points I would like to make, if I may.

Ms. BROWN. OK.

Mr. CHELEN. And I will make it very brief.

Ms. BROWN. You have about 1 minute.

Mr. CHELEN. One minute.

Ms. BROWN. Thank you.

Mr. CHELEN. All right. There are four key principles that we should embrace. First, the Department must have an explicit infor-

mation base mission with a clearly articulated goal. Second, the Department must enthusiastically stimulate access to and use of information by many audiences. Third, the Department must not be content merely to provide uncoordinated data, but it must assure quality, adequacy, and integration. Fourth, the Department must be encouraged to take simple, relatively inexpensive steps that can evolve in parallel with the rapid development of information technology.

I certainly appreciate the opportunity to testify here today, and I would be happy to answer any questions that you might have.

Ms. BROWN. Thank you very much.

[The prepared statement of Mr. Chelen follows:]



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STATEMENT
OF
JOHN CHELEN, EXECUTIVE DIRECTOR OF THE UNISON INSTITUTE
BEFORE
THE SUBCOMMITTEE ON LEGISLATION AND NATIONAL SECURITY
AND
THE SUBCOMMITTEE ON ENVIRONMENT, ENERGY, AND NATURAL RESOURCES
REGARDING
THE ELEVATION OF THE ENVIRONMENTAL PROTECTION AGENCY
TO CABINET LEVEL STATUS
MAY 6, 1993



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Today, as the Executive Director of The Unison Institute, I will try to represent the views and needs of a broad spectrum of organizations. These organizations, which include public-interest groups, industry, the media, government agencies at all levels, and researchers, are concerned about improving their access to, and use of, government information.

This sense of purpose comes about through my work with an on-line computer service called RTK NET. Through RTK NET, we have been providing environmental data to over 500 organizations, and have performed over 250 studies for other groups over the last 3 years. We are now recognized as one of the most important national sources of environmental information.

This organizational experience is also reinforced by my personal experience. I have worked on systems development and data integration issues for various government agencies including DHHS, DOJ, DOE, DOD, and EPA, as well as various non-profit and private organizations. Professionally, I bring expertise in both the law and information technology, with degrees from Carnegie-Mellon University and the University of Pittsburgh School of Law. The Unison Institute, a non-profit organization, is funded primarily by grants from both private foundations and government.

Your goal today, consideration of the elevation of the Environmental Protection Agency into a cabinet-level department, offers a unique opportunity to reshape many management and administrative practices that still survive unchanged from the days when separate program offices operated independently in multiple agencies. Although there have been ongoing efforts since President Nixon's call for the creation of EPA to coordinate and strengthen our responses to environmental issues, we still have not achieved a unified approach to environmental protection. Although there have been many positive attempts to organize and coordinate the fiefdoms of independent media-centered program offices, many institutional and operational barriers remain.

This gap between our goals and accomplishments is even more frustrating now that we can more clearly visualize the power and opportunities available with modern information management practices. We must guarantee that a Department of Environmental Protection is provided with an information management backbone that will provide the strength to deal with national and international issues in the coming years.



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Moreover, we must do this with a heightened emphasis on achieving more with less money. We must not merely be frugal, but we must consider how we are investing our time and resources to achieve a guaranteed return on investment. We must further reinvent government to take advantage of new technologies and approaches and build capacity at local and regional levels.

With these themes in mind I'd like to tell you a true story of how improved access to government environmental data can make a real difference in the lives of people in our country, and how they can rise to the occasion. Ms. Florence Robinson has taught biology for over 20 years at Southern University in Baton Rouge. As part of an effort spearheaded by the Gulf Coast Tenants' Organization, she was helping African-American communities to protect themselves from toxic pollution.

Ms. Robinson lives in one of the two zip codes in East Baton Rouge Parish that have the most toxic releases in Louisiana. Moreover, her zip code is home to the highest concentration of African-American residents in the Parish, "more than 92 percent." A Rollins incinerator is within a quarter mile of her house and an Exxon facility is six miles away. However, she says, "They wouldn't tell us what kinds of chemicals they were burning."

Then she discovered the Toxic Release Inventory (or TRI), a compilation of reports to EPA by industrial facilities, containing their own calculations of what chemicals they release to the environment. What made the difference for Ms. Robinson is that the Emergency Planning and Community Right-to-Know Act (Title III) mandates that the TRI must be made available to the public through computer telecommunications and other means.

Although she's quite knowledgeable about environmental problems and the effects of toxic chemicals, she was completely unfamiliar with computers and telecommunications techniques. However, with training from us, she learned what was necessary to get the data.

Ms. Robinson then figured out how many pounds and what kinds of toxic chemicals the Rollins Incinerator burns. She used these data, along with information about the health effects of the chemicals, in her discussions with the company and her neighbors. Additionally, about one year ago, she testified at a hearing on Environmental Racism conducted by the US Civil Rights Commission.



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She described how she used TRI data with census data to show a clear link between the siting of toxic industries and race. She found that although both race and class are correlated with the siting of toxic industries, race has a stronger correlation. Her research also showed that the communities that house chemical companies were "primarily black before we knew what the chemical industry was."

Now she also plans to include TRI information in the Ecology unit of her first-year biology course. However, her familiarity with industry in her area has led her to conclude that more information should be added to the TRI. A coke oven near her house has a pile of benzo(a) pyrene, a carcinogen, several stories high. Industries do not have to report benzo(a) pyrene to the TRI.

Ms. Robinson has also found that searching for facilities by geographic area can be problematic. Searching by zip code produced anomalies, preventing her from easily aggregating the data. She realized, that in the absence of better geographic touchstones such as latitude and longitude, special care must be taken when using EPA data so that accurate totals can be calculated.

While Florence Robinson has been able to accomplish a great deal by using her right of access to environmental information, her ongoing problems show that more needs to be done with regard to the content and structure of the information that's being made available to the public. And she's not alone in discovering this problem, it exists for EPA staff, state and local government agencies, industry, and others. As Vice President Gore has stated in his book Earth in the Balance, on pages 200-1:

"We now face a crisis entirely of our own making: we are drowning in information. We have generated more data, statistics, words, formulas, images, documents, and declarations than we can possibly absorb. And rather than create new ways to understand and assimilate the information we already have, we simply create more, and at an increasingly rapid pace...we have now generated vast mountains of data that never enter a single human mind as thought...Vast amounts of unused information ultimately become a kind of pollution...."



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Since the Vice President has correctly called for leadership in information management, what better place to begin than with the creation of a Department of Environment Protection? When will there be a better time than now to strengthen our ability to coordinate and assimilate environmental information? We need to guarantee that we are building on initiatives and techniques that are being accepted elsewhere. We need to enable the Department of Environmental Protection to become a test-bed for new directions within a national information infrastructure. The Department of the Environment must be an innovator in program integration, dissemination of data, identification and location of data, and public use of information.

In order to accomplish these goals, there are 4 key principles that we should embrace:

1. The Department must have an explicit information-based mission with clearly articulated goals. It must be called upon to act, not just plan. You must charge the Department to take specific steps to build an information backbone for environmental management.

The information resources management teams within the Department will need suitable authority and well-defined criteria for them to address needs external to their own program missions. Whether they are located within program offices or within a broader management office, they must be surrounded by an environment that will reward them for reaching out to create an information backbone. Program offices need a mandate to help them forge links to the other program offices and the rewards of such behavior must be made clear.

This is even more critical for joint federal, state, and local information practices. The Department must try to support the information capacity of states and cities, since their resources are even more limited and since they are closer to the problem. Additionally, they often are more aware of local circumstances, and are better positioned to marshal opportunities for industrial re-direction through creative regulatory and financial mechanisms.

2. The Department must enthusiastically stimulate access to and use of information by many audiences. You should direct the Department to open its information holdings to all,



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including business, environmentalists, educators, and all levels of government. Furthermore, they should take steps to encourage the use of this information and plan how this use can further programmatic goals.

We need to have the Department recognize that public access and use of the information it collects is critical to its own mission. Better access and use by parties outside government can provide an extension of the regulatory influence of program offices. There are dramatic examples where industrial firms have worked to reduce their toxic emissions because they do not want their facilities listed prominently as major polluters on the TRI national reports. Importantly, this is accomplished without command-and-control regulation.

The Department must be encouraged to recognize that openness of information increases accuracy. The Department must be encouraged to understand that information is more than a resource to be hoarded, but like loaves and fishes, its value can be increased by distributing it freely. The Department must be encouraged to understand how diverse regional and local organizations, and people like Florence Robinson, are in fact, part of their constituency.

It is not simply enough to make data available and claim success. The new Department needs to insure that mechanisms are in place to facilitate the use of the information. The most critical factor in making public access responsive to needs is to involve the public in the design and modification of departmental strategic plans and approaches.

We must also give the Department support in dealing with thorny issues like trade secrecy, so that it can gather and disseminate information dealing with health and safety issues. The Department should be directed to obtain up-front substantiation from an authorized corporate official prior to the granting of trade secret status of submissions. The Department should be authorized to establish manageable criteria to minimize excessive trade secrecy claims so that program offices are not overburdened with spurious requests for exemptions.

3. The Department must not be content to merely provide uncoordinated data emanating from separate sources, but it must assure quality, adequacy, and integration of its data



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sources. An environmental information backbone must be strong enough to carry the weight of a Department-level mission without itself becoming a burden.

With integrated reporting the Department can provide an easier way for potential respondents to determine under what basis they may need to report and what they have to report. A respondent's burden of reporting can be minimized since redundant data collection could be eliminated.

You should enable Department enforcement, regulatory, and policy analysts to obtain relevant and complete information and improve the quality of their performance. You should enable respondents and the public to determine what information is held and to assure that it is complete and accurate.

Finally, you should very seriously encourage the Department to adopt improved reporting form and data integration techniques. The Department could learn from other agencies, such as the U.S. Internal Revenue Service. The IRS uses a master reporting form and a series of schedules applicable to special circumstances. By using this structured way of collecting, linking, storing, and retrieving information, all parties will save money and time. EPA information resource management staff have agreed that by using simple reporting mechanisms, including a comprehensive forms design policy, a mandatory respondent identification system, and accelerated use of Electronic Data Interchange (EDI) standards and related computer data services, the entire information framework can be streamlined, and burdens and costs can be lowered.

4. The Department must be encouraged to take simple, relatively inexpensive, steps that can evolve in parallel with the rapid development of information technology. We are now seeing how various low-cost mechanisms, such as the Internet, EDI, public bulletin board systems, relational database structures, and integrated indices and data location tools, could result in an integrated network of on-line computer systems that are logically linked. The Department could accomplish public access and use goals without creating a massive, top-heavy information superstructure. Moreover, since many program offices are planning on re-working their core data systems to take advantage of newer information technology, an opportunity



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exists to smoothly introduce public access principles at the beginning of the design process.

Additionally, by assuring that public access principles are not merely pasted onto a typical program-centered design, much more can be accomplished with less resources. It has been stated by EPA personnel that about 300 million dollars is spent annually on information activities, but that a very small proportion is spent on understanding or assimilating the data. Even less is spent on public access and use. What we're asking for here is that a small amount of resources be invested so that a large return can be realized. EPA personnel recognize that the benefits are possible, if the challenge is posed in a way that gives them a chance to succeed.

However, the problems clearly stated by Vice-President Gore will continue unless you champion public access principles. By investing in low-cost public access technologies that provide for immediate programmatic dividends, public access can save money for the Department, industry, and the public in the long run. Moreover, by helping these small kernels evolve, the Department should be able to save the time and money of other agencies who use or submit EPA data, including The National Oceanographic and Atmospheric Administration, and the Departments of Agriculture, Commerce, Energy, and Defense.

Our vision for the future must assure that the successes of the Florence Robinson story becomes mundane, and that her accomplishments will not be considered unique. We should hope and expect that many other thoughtful, capable members of our local communities will be using Department data as a matter of course and taking its availability for granted. Our vision must also assure that we have ended the darker side of the Florence Robinson story. We have the capability to provide tools that can help people eradicate environmental inequities. You can help assure that those of us who may be considered resource, information, and privilege "have-nots", do not continue to suffer by their exclusion from participation in fair government.

Ms. BROWN. Mr. Kohn.

STATEMENT OF STEPHEN M. KOHN, CHAIRPERSON, NATIONAL WHISTLEBLOWER CENTER

Mr. KOHN. My name is Stephen Kohn, the chairperson of the National Whistleblower Center, and I would like to thank this committee, Chairwoman Brown, and the members of the committee for an opportunity to raise some whistleblower concerns about the pending legislation.

The issue of an adequate institutional framework to protect the environment, and those are the words that the Administrator used at the hearing today. What my testimony is based upon is that without the protection of whistleblowers there will be no adequate institutional framework to protect the environment.

To create a Cabinet-level EPA without ensuring the free flow of information from employees to the Secretary and to the managers is destined to create an institution or Agency which will fail. There must be the flow of information.

And how critical is this? I am also an attorney. I have spoken with an employee who worked and witnessed dumping adjacent to the largest drinking water supply in the State of Virginia. This man has 7 children. He will not go public with this concerns. He is afraid for his job.

I must protect that confidentiality through the attorney-client privilege, but I must live with the knowledge that the laws that are out there to protect him are almost nonexistent.

I give another example. There has been much criticism of the Superfund program over the years. In 1980, a whistleblower provision was attached to that program. It is completely unworkable. It has a 30-day statute of limitations. No employees are told the bill even exists. In the 13-year history of that bill only two employees have utilized specifically those provisions. One case dismissed under the statute of limitations, 30 days. The second employee who used it, he had a successful settlement and still works, and his name is Mr. Hugh Kaufman, who still works for the EPA, and I was very interested to see that Mr. Kaufman is still blowing the whistle and providing information to Members of Congress.

Two employees, one a success, one a failure. When you look into the history of how these laws have been administered it is incredible. Toxic Substances Control Act has a 30-day statute of limitations to protect an employee. In 1979, the Department of Labor said, Well, that is kind of tight to me. Maybe we should create an exception. If an employee doesn't know about their rights, and no one would be prejudiced if you expanded the 30 days, let's give them a little more than 30 days.

Court of Appeals rejected that and said, No, it must be strictly construed, and since that day in 1979 these laws have been strictly construed. Thirty days and you are out. Who, a common, everyday employee who gets fired and has all of the problems that that brings on is going to get their act together to hire a lawyer who knows about these laws, gets the complaint together and gets it filed in 30 days.

The statistics bear out the unworkable nature of these protections. In the year 1990, which is typical, how many whistleblower

complaints docketed under the Clean Air Act? Zero. Superfund? Zero. Water Pollution Control Act? Zero. No one knows these laws exist, and when they do find out it is usually too little too late.

I have met with the head of the union of the EPA employees. They didn't even know these laws were in existence. I met with the people in the Enforcement Division 1½ years ago at EPA. Enforcement didn't know these laws existed. They ensured me they will take some steps. None were ever taken.

There was much testimony today about problems at EPA and problems with enforcement of environmental laws and how, perhaps, the creation of a Secretary of the Environment could further the goals of environmental protection. But without giving that Secretary and that new Department access to whistleblower or the concerns of any employees with problems, what is the point? Are you going to have a Secretary who is misinformed? If there is not protection for those who want to expose fraud or those who want to expose environmental problems, how will the Agency be able to serve its function?

I would like to thank you very much for an opportunity to address this committee. Thank you.

Ms. BROWN. Thank you very much.

[The prepared statement of Mr. Kohn follows:]

National Whistleblower Center

TESTIMONY OF STEPHEN M. KOHN, CHAIRPERSON OF THE
NATIONAL WHISTLEBLOWER CENTER

BEFORE THE HOUSE
SUBCOMMITTEE ON LEGISLATION AND NATIONAL
SECURITY AND THE SUBCOMMITTEE ON ENVIRONMENT,
ENERGY, AND NATURAL RESOURCES

AT A HEARING TO CONSIDER LEGISLATION TO MAKE
THE ENVIRONMENTAL PROTECTION AGENCY
THE 15TH CABINET DEPARTMENT

MAY 6, 1993

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UNITED STATES CONGRESS
HOUSE OF REPRESENTATIVES
COMMITTEE ON GOVERNMENT OPERATIONS

TESTIMONY OF STEPHEN M. KOHN, CHAIRPERSON OF
THE NATIONAL WHISTLEBLOWER CENTER, BEFORE THE HOUSE
SUBCOMMITTEE ON LEGISLATION AND NATIONAL SECURITY
AND THE SUBCOMMITTEE ON ENVIRONMENT, ENERGY,
AND NATURAL RESOURCES AT A HEARING TO
CONSIDER LEGISLATION TO MAKE THE
ENVIRONMENTAL PROTECTION AGENCY
THE 15TH CABINET DEPARTMENT.

Chairman Conyers, Chairman Synar and Honorable Members of the
Subcommittees:

My name is Stephen M. Kohn and I am Chairperson of the Board of
Directors of the National Whistleblower Center, a non-profit, tax-exempt
organization in Washington, D.C. specializing in the support of employee
whistleblowers. I am an attorney and have litigated a number of cases
on behalf of environmental whistleblowers. I have also written three
books on whistleblowing focusing on the rights and responsibilities of
employee whistleblowers.

Thank you for inviting me to testify today before your Subcommit-
tees at hearings concerning legislation to make the Environmental Protec-
tion Agency the 15th cabinet department.

Because employees play an important role in helping to protect the
public health and safety by reporting wrongdoing committed by pollut-
ers, Congress must ensure that a cabinet level EPA does not incorporate
the ineffective patch work of environmental whistleblower laws that are
currently on the books. To do less would be to ignore the significant
contribution employees can make to assist in EPA enforcement of envi-
ronmental laws and to protect the public from environmental hazards.

SUMMARY

Nowhere has consistency been more lacking in environmental policy than in the treatment of American employees who "blow the whistle" on industrial pollution and environmental hazards. Due to a lack of consistency and technical defects in existing legislation environmental whistleblowers are currently without an effective federal remedy. The ability of the Environmental Protection Agency (EPA) to enforce environmental laws has been undermined. These deficiencies should not be incorporated into a cabinet-level EPA.

Last term the U.S. Congress corrected similar deficiencies in the nuclear whistleblower protection laws. The National Whistleblower Center fully endorses amending existing environmental whistleblower protection laws consistent with the protections enacted by a bi-partisan Congress last October.

Between 1972 and 1980, Congress enacted in piece meal fashion six environmental whistleblower protection bills. These laws, amendments to the Clean Air Act (CAA), the Safe Drinking Water Act (SDW), the Solid Waste Distribution Act (SWD), the Water Pollution Control Act (WPC), the Toxic Substances Control Act (TSC), and the Comprehensive Environmental Responses, Compensation, and Liability Act (CER) (hereinafter collectively referred to as the "Six Acts"), protect American employees who report violations of environmental, health and safety regulations. In passing these laws, Congress recognized that employees are often the people in the best position to know of corporate or government violations of environmental laws. In order to encourage employees to report health and safety violations Congress mandated that such employees should be protected from retaliation, harassment and intimidation, or other forms of discrimination by their employers.

The categories of employees protected under the whistleblower protection laws were intended to cover Americans from all walks of life. For example, a painter who cooperated with an investigation into toxic

dumping,^{1/} a teacher who complained about asbestos in a school house,^{2/} an engineer who filed reports regarding a shipyard's noncompliance with hazardous waste regulations^{3/} and an employee who told a newspaper reporter about the discharge of sludge into the Cedar Rapids,^{4/} were all held to be covered under the Six Acts.

While the intent of these laws was good there are a number of technical defects which have rendered them virtually ineffective. For example, these laws have an extremely short thirty (30) day statute of limitations. Likewise, there have been long administrative delays in the resolution of complaints.

Additionally, the American workforce is universally uninformed about the Six Acts. In practice these laws are only sporadically utilized by American employees who would otherwise be protected. For example, in the year 1990 there were only eight (8) federal environmental whistleblower complaints docketed for hearing in the entire United States. Moreover, in the few cases that have ever been filed under the Six Acts many have been dismissed for failing to meet the 30 day statute of limitations because the complainant was unaware that the laws existed, let alone the strict filing requirements.

Fortunately, simple and technical modifications of the Six Acts will make these laws more effective and consistent with similar employee protection provisions contained in other federal legislation. Accordingly, the National Whistleblower Center recommends legislative changes to these Six Acts, including the following:

^{1/} *Haney v. North Am. Car Corp.*, Case No. 81-SWDA-1, slip op. of ALJ (Dec. 15, 1981), adopted by SOL (June 30, 1982).

^{2/} *School Dist. of Allentown v. Marshall*, 657 F.2d 16 (3rd Cir. 1981).

^{3/} *Pogue v. U.S. Dept. of Labor*, 940 F.2d 1287 (9th Cir. 1991).

^{4/} *Wedderspoon v. Milligan*, Case No. 80-WPCA-1, slip op. of ALJ (July 11, 1980), adopted by SOL (July 28, 1980).

- Extend the statute of limitations to 180 days.
- Require posting in the workplace of the laws and information about where to file a complaint.
- Provide a uniform definition of "Protected Activity" under the Six Acts in order to promote consistency with other laws.
- Provide coverage for all employees who work on projects regulated or concerning the responsibilities of the EPA.
- Eliminate administrative delays in the resolution of complaints.

To create a cabinet-level EPA without correcting the most serious shortfalls in the existing employee protection legislation would undermine the environmental protection mission of the new department.

Below is an outline of the major revisions to the environmental whistleblower laws which should be incorporated into the new legislation.

I. THE STATUTE OF LIMITATIONS

Under the current environmental whistleblower laws, employees are required to file their complaint within thirty (30) days of learning of a discriminatory act. This very short statute of limitations has resulted in the dismissal of numerous valid environmental whistleblower claims. The short statute of limitations has been strongly criticized by the Administrative Conference of the United States^{3/} and judges who have presided over cases arising under these laws.

^{3/} See, 52 Fed. Reg. 23,629, 23,631 (1987).

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In October of 1992, Congress amended the nuclear whistleblower law by enlarging the statute of limitations from 30 days to 180 days.^{6/} Prior to the amendment, a Department of Labor Administrative Law Judge (ALJ) correctly criticized the 30 days statute of limitations in the nuclear whistleblower provision:

The 30-day time limitation for filing claims is short and may result in significant numbers of well-founded claims not being investigated. Moreover, it may thwart the purposes of the ERA by diminishing the protection of employees who report unhealthy or unsafe practice to the NRC. However, the limitation on time for filing claims was set by Congress and neither the administering agency nor the courts have the authority to change it.

Cox v. Radiology Consulting Associates, Inc., Case No. 86-ERA-17, slip op. of ALJ at p. 11 (August 22, 1986).

The case law under the Six Acts also contains numerous examples of valid whistleblower claims being dismissed due to an employee's failure to meet the rigid statute of limitations. For example, in Florida, a Safe Drinking Water Act case was dismissed despite the fact that the judge found that the employee did have a valid whistleblower case.^{7/}

In *School District of Allentown v. Marshall*, a Toxic Substances Control Act case, the Secretary of Labor attempted to broadly construe the 30 day filing period in order to allow some employees who had good

^{6/} The nuclear whistleblower law [contained in the Energy Reorganization Act (ERA)] was also modeled after the Six Acts. See, the Legislative History of the original ERA whistleblower provision, S.Rep. No. 95-848, reprinted in, 1978 U.S. Code Cong. & Admin. News 7303, 7304. Similarly, prior to the October 1992 amendments of the ERA the Six Acts and the nuclear whistleblower law were administered by one uniform regulation. See, 29 C.F.R. Part 24.

^{7/} *Greenwald v. City of North Miami Beach*, Case No. 80-SWDA-2, slip op. of ALJ (March 11, 1980).

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cause for missing the filing period to still be protected. The Secretary argued that because the law was "remedial", an employee who was "unaware" of his rights should be able to file late, so long as "no one was prejudiced" by the late filing. However, the U.S. Court of Appeals rejected this reasoning and dismissed the case, finding that the 30 day period must be strictly construed.^{8/} Since this case all of the other federal courts which have reviewed this issue, as well as the Department of Labor, have followed *School District of Allentown* and strictly construed the statute of limitations.

II. POSTING NOTICE OF THE LAW

The available data demonstrates that there is almost universal ignorance within the work force (and among other professionals such as environmental organizations, labor unions and the legal community) regarding the statutory remedies available under the Six Acts. To remedy this problem the ERA was amended to require employers to post notice of whistleblower remedies. The same amendment is needed for the Six Acts.

For example, in the entire history of the CER there have only been two cases docketed with the Office of Administrative Law Judges (ALJ) solely under that specific law. Incredibly, one of those two cases was dismissed for failure to comply with the 30 day statute of limitations.^{9/}

The universal ignorance concerning the Six Acts has resulted in a gross lack of utilization of the whistleblower remedies by employees who should be protected. For example, in the year 1990 there were only 8 federal environmental whistleblower complaints docketed in the entire

^{8/} 657 F.2d 16 (3rd Cir. 1981).

^{9/} *Fidler v. Industrial Metal Plating, Inc.*, Case No. 83-CER-2, slip op. of ALJ (March 15, 1983).

United States. Under three of the laws (the CAA, the CER and the WPC) no complaints were filed.^{10/}

Number of Claims Docketed by the OALJ in 1990

CAA	0
CER	0
SDW	2
SWD	4
TSC	2
WPC	0

Confusion about where to file a complaint as well as ignorance of the statute of limitations has resulted in the dismissal of numerous whistleblower cases under the Six Acts. This confusion and ignorance would be remedied by a posting requirement.

III. UNIFORM DEFINITION OF PROTECTED ACTIVITY

The Six Acts have an ambiguous definition of protected activity. *See, e.g.*, the WPC whistleblower provision, 33 U.S.C. § 1367(a). The ambiguity in this definition gave rise to a split in the U.S. Courts of Appeal regarding the definition of protected activity. The U.S. Court of Appeals for the Fifth Circuit narrowly construed protected activity

^{10/} This is the data compiled by reviewing the public docket of the Department of Labor regarding whistleblower cases which were assigned to ALJs for a hearing on the merits. Statistics concerning the number of complaints filed with the DOL in which the employee did not request a hearing are not available.

whereas the U.S. Court of Appeals for the Tenth Circuit broadly construed that provision.^{11/}

This dispute over the definition of protected conduct was resolved within the ERA by the October 24th amendment. Congress corrected the ambiguity and provided for a uniform definition of protected activity consistent with the Tenth Circuit's interpretation in *Kansas Gas and Electric v. Brock*. The same amendment should be enacted for the Six Acts.

IV. LOOPHOLES IN THE PROTECTION OF ENVIRONMENTAL WHISTLEBLOWERS

There are numerous loopholes within the Six Acts. Specifically, many of the major pieces of environmental legislation do not contain any whistleblower provisions. For example, the Pesticides laws do not protect whistleblowers, whereas the Toxic Substances laws do provide for such protection. These types of loopholes in coverage serve no purpose and merely reflect the piece-meal nature of the Six Acts. The same problem existed within the ERA. In a major case, the Court of Appeals for the Fourth Circuit ruled that nuclear whistleblowers who expose problems at NRC regulated nuclear facilities were protected under the ERA, but nuclear whistleblowers at DOE regulated facilities were not protected.^{12/} In October 1992, the ERA was amended by Congress to eliminate these loopholes and provide coverage for all nuclear whistleblowers.

Similarly, the Six Acts should be amended to provide coverage for all employees who work on projects regulated or concerning the responsibilities of the EPA. Again, the Administrative Conference of the United States fully supported closing the loopholes in existing protections.

^{11/} *Compare, Brown & Root, Inc. v. Donovan*, 747 F.2d 1029 (5th Circuit 1984) with *Kansas Gas and Electric v. Brock*, 780 F.2d 1505 (10th Cir. 1985).

^{12/} *Adams v. Dole*, 927 F.2d 771 (4th Cir. 1991).

V. DELAY IN THE ISSUANCE OF DECISIONS

The Six Acts, along with the old ERA, required the Department of Labor to render final enforceable orders within 90 days from the filing of the original complaint. These time requirements were never followed. Instead, employees would obtain reinstatement and damage orders from an ALJ after a full hearing on the merits and often have to wait several years for the Secretary of Labor to approve the ALJ decision.

For example, Joseph Guttman filed a whistleblower complaint with the DOL in 1985. The Secretary of Labor did not issue a final and enforceable order requiring Mr. Guttman reinstatement until March 13, 1992.^{13/} The delays in the issuance of final orders by the SOL are infamous. A review of the final decisions issued in this area demonstrates that it takes the SOL, on the average, approximately three (3) to six (6) years to render a final order upholding a whistleblower claim.

These delays are unfair to both the employee and employer who are looking for closure on the whistleblower dispute. The whistleblower's life and economic well-being are undermined during the long wait. Other employees who may want to blow the whistle are discouraged from acting.

The ERA was amended to correct this problem. Under the amended ERA if an employee wins before the ALJ they are entitled to immediate reinstatement pending the review of the ALJ's decision by the SOL and the Court of Appeals. The Six Acts also need this procedural fix.

CONCLUSION

On October 24, 1992 a bi-partisan Congress (with the support of former President George Bush) amended the ERA whistleblower law to

^{13/} See, *Guttman v. Passaic Valley Sewerage*, slip op. of SOL (March 13, 1992).

ADDENDUM

The following is the proposed text for the amended whistleblower provisions. The existing whistleblower provision of the Toxic Substances Control Act (TSCA) is in regular typeface. The parts of the present bill which should be eliminated are marked with strike-out (—) through the words. The new text is underlined. The new text is adopted directly from the modifications made to the nuclear whistleblower bills, 42 U.S.C. 5851 in Section 2902 of the National Energy Policy Act or from existing text in 42 U.S.C. 5851.

TEXT OF PROPOSED AMENDMENT

(a) No employer may discharge any employee or otherwise discriminate against any employee with respect to the employee's compensation, terms, conditions or privileges of employment because the employee (or any person acting pursuant to a request of the employee) has—

(1) commenced, caused to be commenced, or is about to commence or cause to be commenced a proceeding under this Act, or a proceeding for the administration or enforcement of any requirement imposed under this Act or any law or regulation administered by the Secretary for the Environment;

(2) testified or is about to testify in any such proceeding;

(3) assisted or participated or is about to assist or participate in any manner in such a proceeding or in any other action to carry out the purposes of this Act or any law or regulation administered by the Secretary for the Environment.

(4) notified his employer of an alleged violation of this Act or any law or regulation administered by the Secretary for the Environment;

(5) refused to engage in any practice made unlawful by this Act or any law or regulation administered by the Secretary for the Environment, if the employee has identified the alleged illegality to the employer; or

(6) testified before Congress or at any Federal or State proceeding regarding any provision (or proposed provision) of this Act or any law or regulation administered by the Secretary for the Environment;

(b) REMEDY—(1) Any employee who believes that the employee has been discharged or otherwise discriminated against by any person in violation of subsection (a) of this section may, within ~~30~~ 180 days after such alleged violation occurs, file (or have any person file on the employees behalf) a complaint with the Secretary of Labor (hereinafter in this section referred to as the "Secretary") alleging such discharge or discrimination. Upon receipt of such a complaint, the Secretary shall notify the person named in the complaint of the filing of the complaint and the Secretary of the Environment.

(2)(A) Upon receipt of a complaint filed under paragraph (1), the Secretary shall conduct an investigation of the violation alleged in the complaint. Within thirty days of the receipt of such complaint, the Secretary shall complete such investigation and shall notify in

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writing the complainant (and any person acting on behalf of the complainant) and the person alleged to have committed such violation of the results of the investigation conducted pursuant to this subparagraph. Within ninety days of the receipt of such complaint the Secretary shall, unless the proceeding on the complaint is terminated by the Secretary on the basis of a settlement entered into by the Secretary and the person alleged to have committed such violation, issue an order either providing the relief prescribed by subparagraph (B) or denying the complaint. An order of the Secretary shall be made on the record after notice and opportunity for Agency public hearing. Upon the conclusion of such hearing and the issuance of a recommended decision that the complaint has merit, the Secretary shall issue a preliminary order providing the relief prescribed in subparagraph (B), but may not order compensatory or exemplary damages pending a final order. The Secretary may not enter into a settlement terminating a proceeding on a complaint without the participation and consent of the complainant.

(B) If, in response to a complaint filed under paragraph (1), the Secretary determines that a violation of subsection (a) of this section has occurred, the Secretary shall order (i) the person who committed such violation to take affirmative action to abate the violation, (ii) such person to reinstate the complainant to the complainant's former position together with the compensation (including back pay), terms, conditions, and privileges of the complainant's employment, (iii) compensatory damages, and (iv) where appropriate, exemplary damages. If such an order issued, the Secretary, at the request of the complainant, shall assess against the person against whom the order is issued a sum equal to the aggregate amount of all costs and expenses (including attorneys and expert witness fees) reasonably incurred, as determined by the Secretary, by the complainant for, or in connection with, the bringing of the complaint upon which the order was issued.

(C) The Secretary may determine that a violation of subsection (a) has occurred only if the complainant has demonstrated that any behavior described in subparagraphs (A) through (F) of subsection (a)(1) was a contributing factor in the unfavorable discriminatory action alleged in the complaint.

(D) Relief may not be ordered under paragraph (2) if the employer demonstrates by clear and convincing evidence that it would have taken the same unfavorable action in the absence of such behavior.

(c) REVIEW—(1) Any employee or employer adversely affected or aggrieved by an order issued under subsection (b) may obtain review of the order in the United States court of appeals for the circuit in which the violation, with respect to which the order was issued, allegedly occurred. The petition for review must be filed within sixty days from the issuance of the Secretary's order. Review shall conform to chapter 7 of title 5 of the United States Code. The commencement of proceedings under this subparagraph shall not, unless ordered by the court, operate as a stay of the Secretary's order.

(2) An order of the Secretary, with respect to which review could have been obtained under paragraph (1), shall not be subject to judicial review in any criminal or other civil proceeding.

(d) ENFORCEMENT—Whenever a person has failed to comply with an order issued under subsection (b)(2), the Secretary shall file a civil action in the United States district court for the district in which the violation was found to occur to enforce such order. In actions brought under this subsection, the district courts shall have jurisdiction to grant all appropriate relief including,

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but not limited to, injunctive relief, compensatory and exemplary damages.

(e) COMMENCEMENT OF ACTION—(1) Any person on whose behalf an order was issued under paragraph (2) of subsection (b) may commence a civil action against the person to whom such order was issued to require compliance with such order. The appropriate United States district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such order, and may award the relief in section (d).

(2) The court, in issuing any final order under this subsection, may award costs of litigation (including reasonable attorney and expert witness fees) to any party whenever the court determines such award is appropriate.

(f) ENFORCEMENT—Any nondiscretionary duty imposed by this section shall be enforceable in a mandamus proceeding brought under section 1361 of title 28 of the United State Code.

(g) EXCLUSION—Subsection (a) or this section shall not apply with respect to any employee who, acting without direction from the employee's employer (or any agent of the employer), deliberately causes a violation of any requirement of this Act.

(h) NONPREEMPTION— This section may not be construed to expand, diminish, or otherwise affect any right otherwise available to an employee under Federal or State law to redress the employee's discharge or other discriminatory action taken by the employer against the employee.

(i) POSTING REQUIREMENT—The provisions of this section shall be prominently posted in any place of employment to which this section applies.

(j) DUTY OF SECRETARY OF THE ENVIRONMENT TO INVESTIGATE SUBSTANTIVE ALLEGATIONS—(1) The Secretary of the Environment shall not delay taking appropriate action with respect to an allegation of a substantial safety or environmental hazard on the basis of—

(A) the filing of a complaint under subsection (b)(1) arising from such allegation;

or

(B) any investigation by the Secretary, or other action, under this section in response to such complaint.

(2) A determination by the Secretary under this section that a violation of subsection (a) has not occurred shall not be considered by the Secretary of the Environment in its determination of whether a substantial safety hazard exists.

(k) APPLICABILITY—The amendments made by this section apply to claims filed on or after the date of the enactment of this Act.

Ms. BROWN. Mr. Mica from Florida, do you have any questions?

Mr. MICA. Yes, Madam Chairman, unfortunately, I do.

Thank you so much for your testimony, Mr. Kohn. With the draft that was presented, have you seen a copy of the committee bill?

Mr. KOHN. No, Mr. Congressman.

Mr. MICA. OK. So you are not aware whether the committee draft has any protections that you are referring to in it. As I understand, it does not?

Mr. KOHN. Mr. Congressman, we proposed very specific language, and I am not sure if it was incorporated into the bill.

Mr. MICA. Staff seems to confirm that it does not have any.

If you have any recommendations that are not in it, anything that you have submitted, I would like to see a copy of it. It would be most informative.

I also appreciate your points on elevating this particular Agency to Cabinet level without those protections would be making a mistake. Would you agree again?

Mr. KOHN. Yes.

Mr. MICA. OK. Mr. Hostetler, if I may, were you here this morning earlier when some questions were asked by myself to the Administrator about the revolving door dealing with contracting? I had cited a study, a report, where 80 percent of the folks that are now in the contracting business with EPA had moved from EPA to the private sector.

You mentioned that there were some provisions. Is this the committee draft you have seen—

Mr. HOSTETLER. Yes.

Mr. MICA [continuing]. That deals with changing some of the relationships, and one of the relationships I think you spoke to almost said even the appearance of impropriety as far as contracting. Will that provision address some of my concerns?

Mr. HOSTETLER. There are really two different kinds of conflict of interest issues. The bill speaks to organizational conflict of issue, which is a concept really relating to contractors who do business with the government. The issue you raise, and was part of the discussion this morning, has to do with personal conflicts of interests, individuals who have worked in Federal service who then leave and work with the contracting community or with other organizations.

There are presently a variety of laws on the books that place some very strict limitations on what you can or cannot do and indeed, as we know, President Clinton has, I think, imposed already some additional restrictions on his administration. So that I think in answer to the question it is an issue of whether the present laws are adequate or whether those laws as they apply to individuals need to be further modified.

Mr. MICA. Not as the committee bill stands now, the draft. It doesn't deal with the kind of relationships I talked about.

Mr. HOSTETLER. No. That is my understanding.

Mr. MICA. A final question for any of the three of you. Well, you have not seen the bill, so the last two witnesses. Have you also seen the bill, sir?

Mr. CHELEN. I have seen major portions of it.

Mr. MICA. OK. Well, I just wondered if there were any parts that you had particular problems with or that you think are lacking and should be addressed by the committee?

Mr. CHELEN. I think there is a tradeoff here in which provisions may create conflict and inhibit the acceptance of the bill. I think at this point I would probably embrace the bill as it is, knowing the benefits of its passage.

Mr. MICA. You, sir?

Mr. HOSTETLER. I think my feeling is that the bill could be streamlined. I am troubled that issues, for instance, in the procurement area that apply governmentwide are part of the EPA Cabinet bill and indeed have not been yet the subject of hearings before other groups that would have some valuable contributions to make on those provisions.

So I guess I would be in favor of a streamlined bill that really is directed toward elevating EPA to Cabinet status.

Mr. KOHN. I would just like to state that the whistleblower provision would be the one provision that would cost the taxpayers nothing, yet set up a mechanism to save the taxpayers billions of dollars over the year and to create a private enforcement network where employees who are in the best position to identify environmental problems have legal and administrative support to make that disclosure. It costs nothing. It saves the taxpayers money.

Mr. MICA. Thank you. Reserving additional questions to the witnesses through correspondence to the committee or to committee staff, I yield.

Ms. BROWN. Thank you. Just two points of clarification. First of all, the draft bill does not include the new whistleblower protections because we are working out the details of the bill with other committees that have authority over this portion of it.

Second, our committee has jurisdiction over governmental reform and we have had numerous committee hearings on this particular issue.

Mr. Kohn, I guess I will start with you. Of the six changes in the whistleblower protection law, which three are the most important, if we had to prioritize?

Mr. KOHN. Yes. The No. 1 issue of importance is the statute of limitations. It should be from 30 to 180 days at a minimum. And that recommendation was fully supported by the Administrative Conference of the United States.

Second, there needs to be some form of posting in the workplace where EPA contractors work, on Superfund sites, where people who are working in environmentally sensitive areas are made aware the law exists. That has occurred in atomic energy. It should also happen in the environment.

The third most important issue is closing the loopholes. There is a patchwork of whistleblower protection in some of the environmental laws. All of them have a deficiency of the 30-day statute of limitations. But major pieces of environmental legislation have no whistleblower protection provisions whatsoever, such as pesticides. We have entire programs where there is nothing out there, not even a token attempt to protect these people.

The three main points—the statute of limitations, notice to employees, and close the loophole.

Ms. BROWN. My next question, it has been suggested that most of the provisions in section 114 on public access not be made mandatory, but instead that EPA develop strategic plans to implement greater accessibility in the future. What is your opinion on that?

Mr. CHELEN. My opinion is that there has been too much planning that has gone on for too long with too little development. There are cost savings. We can refer to another Federal agency. Let's take the Internal Revenue Service as a key example where they have an integrated form structure that is very efficient and very powerful. We have not seen similar kinds of techniques come out of EPA.

I think we have also seen that there are very specific results for pollution prevention because of disclosure of information through the TRI. We should not stand still and miss the opportunity for these while planning occurs.

Ms. BROWN. I guess I have two questions for you, Mr. Hostetler. First of all, it seems to me that minorities and women do not participate in the contracting process. Do you have any opinion about that? The percentage of minority contracting is very low with this particular Agency.

Mr. HOSTETLER. Well, I don't have current statistics right now about what EPA's performance is, but as I am aware there are, of course, already in the law some very strong rules and objectives for minority set-aside in government contracting, and it would seem to me as part of EPA's mission they certainly should be encouraged in every way possible to meet those legitimate goals, and if their statistics are low, they should be better.

Ms. BROWN. And I guess the second part of my question, we've learned from all of the GAO reports, the EPA, the inspector general, and the congressional oversight hearings that a lot of the abuses in the Agency are because of the outside contracting.

Mr. HOSTETLER. There is no question that there have been examples of abuses, and I think what we all are trying to address is how do we actually make progress in removing these kinds of abuses from the system. I think one of the most telling points that was made in today's testimony is the dichotomy between the management challenges that EPA faces and the kinds of skills that are needed to undertake a complex technology-based mission and the budget that is made available and the training that is made available to the top managers.

You simply cannot mismatch core capability with the kind of tasks that you have asked the Agency to undertake. So my feeling is that we have a major management challenge. It is not a matter of more laws. There are plenty of laws on the books. There are plenty of rules. These laws, rules, and policies require people with skill levels that can conduct, administer, and manage complex undertakings, and until Congress supports the Agency in building that core capability we are all going to be extremely frustrated.

And the contracting community, for one, certainly has made its share of mistakes, but we need to be in a partnership with EPA where we are working together to get goals that are very important for the country solved. And I hope that as part of this exercise the Appropriations Committees give EPA what it needs to build that core capability.

Ms. BROWN. I guess my last, closing question for each one of you would be, in just elevating EPA to Cabinet status without some of the other things that we discussed—the safeguards, the reform—do you think we could just elevate it and then over a period of time add some of the reforms that we have discussed, or do you think that it needs to be together, balanced? Am I clear in my question?

Mr. KOHN. The Whistleblower Center does not know enough about the basic nature of the legislation to have a specific comment on that. But in terms of the whistleblower provision in general, if it does not exist within the legislation it would be my opinion that the legislation is flawed. Because you have to ask yourself the question, Why wouldn't the Secretary of the Environment want a whistleblower—a workable whistleblower provision in the law? And if that issue comes up, it is a red flag. I cannot imagine a competent or a competent Secretarial position that wouldn't want truthful, accurate information from people who are not afraid of reprisals if they tell you the truth. To me, if there is resistance to it, it is a red flag.

Mr. HOSTETLER. I think, if I understand the question, that the elevation of EPA to Cabinet status can go hand in hand with management reform and building the kind of skills that are needed to meet some of these problems that have been discussed. But again, my hope would be, as it becomes a more visible and even more important Department, there will be support for what it is trying to do internally to perform its performance.

And second, there does have to be enormous discipline that we don't ask the Department, the new Department to do even more before they have had a chance to improve the programs they are now administering. So there needs to be a measured expansion of the responsibilities that we ask of our EPA.

Mr. CHELEN. I would like to echo Mr. Kohn's thoughts because I think public access is really a bellwether of the openness of the administration. But I think even more broadly we now have an opportunity to nudge an Agency closer to the vision of a national information infrastructure, which is going to be critical for international competitiveness, and an opportunity to start and begin certain key prototype activities will make a great deal of difference for competitiveness. We should not miss that opportunity.

Ms. BROWN. Thank you.

Mr. Mica, do you have any final questions or comments?

Mr. MICA. No, thank you, Madam Chairman. You have done an excellent job in chairing the conclusion of our hearing.

Ms. BROWN. What about the panel? Do you have any final comments that you want to share with us?

Mr. CHELEN. No. Thank you very much.

Mr. HOSTETLER. Thank you for the chance to be here.

Mr. KOHN. Thank you very much.

Ms. BROWN. Thank you.

I would like to insert into the hearing record testimony from the National Institute for Health and Environment.

[The information can be found in the appendix.]

Ms. BROWN. Second, I would also like to insert into the record letters from the Indian tribes suggesting that we establish an As-

sistant Secretary for Indian Affairs in the new Department, without objection.

[The letters can be found in the appendix.]

Ms. BROWN. And third, the hearing record will remain open until Friday, May 14, so that organizations that want to submit testimony on the elevation of EPA to a Cabinet Department may be included in the record.

The subcommittee now stands adjourned. Thank you.

[Whereupon, at 2:35 p.m., the subcommittees adjourned, to reconvene subject to the call of the Chair.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD



Center for Marine Conservation

Roger E. McManus
President

March 22, 1993

The Honorable William V. Roth, Jr.
United States Senate
Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Roth:

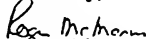
This letter concerns S 171 and the elevation of the Environmental Protection Agency to Cabinet level status.

I am very concerned about increasing evidence that legislation on this important matter is jeopardized by expected and possible amendments not germane to the central objective of the legislation. While many of the amendments may contribute significantly to national environmental policy, I hope you and your colleagues will take great care in ascertaining the possible fate of an amended bill and be prepared to support a clean bill, free of any amendments, should you consider this is the best way to ensure that this legislation succeeds.

Given the past history of efforts to pass this legislation, I believe it is critical that the bipartisan efforts to secure cabinet level status for the Environmental Protection Agency succeed in this session of Congress.

I appreciate the opportunity to share my views with you.

Sincerely,


Roger McManus

THE WHITE HOUSE

WASHINGTON

May 22, 1991

Dear Senator Roth:

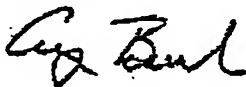
Fifteen months after you, and others, joined me in calling for elevation of the Environmental Protection Agency to a Cabinet-level Department, Congress has not yet passed this legislation. I continue to believe that the Nation's environmental policies and the work of the EPA are sufficiently important to merit making the Agency a Cabinet-level Department.

This debate involves matters of national environmental priority and enduring institutional commitment. Consideration of this issue should stand on its own, apart from the tactical maneuvering and problematic amendments that plagued efforts in the last Congress.

I continue to support establishing a Department of the Environment. I am concerned, however, that some proposals, as presently structured, raise jurisdictional problems or may invite inappropriate amendments, which will prevent enactment. I believe that a "clean" bill, limited to making EPA a Department, best frames that choice for your colleagues and offers the only realistic prospect for success.

Again, I want to emphasize my appreciation for the leadership that you have provided on this critical issue. I look forward to working with you to achieve our shared goal of establishing a Department of the Environment this year.

Sincerely,



The Honorable William V. Roth, Jr.
Ranking Republican Member
Committee on Governmental Affairs
United States Senate
Washington, D.C. 20510

J DENNIS HASTER
14TH DISTRICT ILLINOIS

2453 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON DC 20515-1314
(202) 225-2976

27 NORTH RIVER STREET
BATAVIA IL 60510
(708) 406-1114

1007 MAIN STREET
MINOTA IL 61342
(815) 538-3322



Congress of the United States
House of Representatives
Washington, DC 20515-1314

COMMITTEE ON
ENERGY AND COMMERCE
COMMITTEE ON GOVERNMENT
OPERATIONS

EXECUTIVE COMMITTEE ON
COMMITTEES

SELECT COMMITTEE ON
HUNGER

The Honorable J. Dennis Hastert

Ranking Member

Environment, Energy and Natural Resources Subcommittee

Government Operations Committee

March 29, 1993

Mr. Chairman:

As we revisit proposals considered during the last two Congress' to elevate EPA to a cabinet-level department, it is important for us to focus on two major issues: 1) whether to elevate EPA to cabinet status; and 2) whether to restructure the Agency and transfer to it functions and responsibilities currently performed by other federal departments and agencies.

As evidenced by past efforts to elevate EPA to a cabinet-level department, once Congress starts amending EPA elevation legislation to include extraneous issues, to expand its authority and to micro-manage the agency, none of which ensure program effectiveness and efficiency, elevation is defeated. We need to ask ourselves whether we want to witness yet another failed attempt at elevating EPA to a cabinet-level department. If we are serious in our desire to elevate EPA to cabinet status, then we should resolve to avoid loading up the legislation with amendments that will surely meet both Congressional and public resistance and once again doom passage of a bill.

I look forward to working with the members of the Environment, Energy and Natural Resources and Legislation and National Security subcommittees as well as those members serving on the full committee in passing EPA elevation legislation during this first session of the 103d Congress.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

DEC 29 1992

THE ADMINISTRATOR

The President
The White House
Washington, DC 20500

Dear Mr. President:

I am pleased to advise you in this, my last annual report under the Federal Managers' Financial Integrity Act (the Act), that the Environmental Protection Agency's (EPA) management control and financial systems, taken as a whole, provide reasonable assurance that the objectives of the Act have been achieved. In his annual review of our management integrity program, EPA's Inspector General has cited several positive examples of the Agency's efforts to implement the requirements of the Act in a reasonable and prudent manner. The Inspector General has also identified several areas for specific management improvements in selected EPA offices.

During my tenure as EPA Administrator, one of my highest personal priorities and most satisfying achievements has been to make the principles embodied in the Act come alive and really work for us at EPA. Agency contract management issues, the subject of much public scrutiny over the last year, reflect the cultural pulls and tugs of EPA's mission versus management paradigm, where environmental results -- instead of fundamental management responsibilities -- assumed top priority. My response to this cultural dilemma has been to direct EPA's managers to take a "no holds barred" approach in evaluating our contract problems and in balancing mission and management responsibilities by personally exercising sound integrity principles. They have done so.

I am proud to report to you that we have effected a marked shift in EPA's management culture, from one of reluctance to admit problems, to one in which identifying weaknesses is truly valued as a management strength. This very success now challenges us to fix what we have publicly declared broken, if we are to ultimately keep the public's trust. I would like to outline for you, as well as for the leaders who will follow us, what we have achieved for the Nation in environmental protection, and how we have strengthened EPA to effectively address increasingly complex and difficult management issues.

Four years ago, when you asked me to assume the management of America's environmental protection programs, you gave me the "green light" to move ahead and shape our environmental agenda into the next century. We assumed this challenge by rethinking the traditional ways of doing our job — the old ways of addressing pollution and protection of human health and the environment no longer seemed an effective approach in an era of limited public resources and increasing public expectations. We set about this task by establishing ten strategic themes as our fundamental guiding principles and, in the process of implementing them, we have totally changed the way in which we think about and conduct our mission.

We emphasized prevention of pollution over traditional end-of-pipe controls; we improved the use of science in our decision-making; and we clarified the concept of relative risk for setting environmental priorities within limited resources. Indeed, we have been integrating principles of Total Quality Management into all aspects of our operations. EPA now views the private sector as a customer for our services, a partner who has a share in the goal of a healthy economy within a healthy environment; and our record in enforcing violations of our environmental laws is the best ever at EPA. As a result of our strategy, EPA today plays a far stronger leadership role in shaping the Nation's environmental agenda and in influencing global concerns than four years ago.

As in no other time in EPA's history, developing this report focused my senior leadership team's attention to our underlying mission and management problems. This year we have identified eight new, complex, cross-cutting material weaknesses requiring bold, new, creative solutions in order to sustain the momentum that we have achieved with our environmental agenda. Briefly, they are: contracts management, enforcement data integration, accounting system-related financial management problems, accounts receivable, Superfund cost recovery, environmental data quality, and information systems planning and security. Finally, we believe that the Nation's drinking water program is at risk due to the states' continuing difficulties in implementing the increasing number of regulations to retain program primacy.

We, like other agencies, face systemic weaknesses in central information and resource accounting systems which, if not swiftly addressed, could potentially jeopardize the reliability of EPA's environmental data for regulatory decision-making. The problems that we have identified above and discuss in greater detail in the enclosures directly impact our Nation's environmental infrastructure and will require judicious investment of resources and close cooperation among all branches and levels of government for successful resolution.

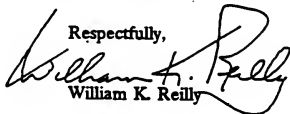
As in the environmental arena, we have implemented new and non-traditional methods to position the Agency to meet the challenges of the 21st century through a new institutional framework for management integrity. As the keystone of that framework, EPA's Senior Council on Management Controls has emerged as a dynamic model for government. The Council provides the Administrator with a broad range of ideas, analysis and options to address the Agency's most urgent and complex management problems. The Council also employs the precepts of total quality management to work collegially with our principal oversight colleagues at the Office of Management and Budget and the General Accounting Office to address mutual management concerns.

Further, we have developed, in cooperation with EPA's own Inspector General, a process to identify, early on, the top thirty most significant audits affecting the Agency, an effort so successful that the General Accounting Office has expressed a strong interest in doing the same. To extend the leadership of the Council, EPA's network of highly respected line managers, the Accountable Officials for management integrity, are accountable for designing effective corrective action to eliminate material weaknesses. We have challenged them to develop a methodology to assess the relative risk of each of our material weaknesses to provide decision-makers with a sense of priority in applying the Agency's limited resources to more effective solutions.

I believe that our accomplishments in protecting the environment and strengthening management integrity will serve the new Administration well and provide a firm base from which to carry on our environmental mission into the next century. The last four years have been among the most exciting, most productive times in environmental history. We have broken new ground, pursued new directions and established EPA as a major player on many new fronts. We have built an overall record that will long stand as a tribute to the Administration and to the Agency in serving the American public, who have invested so much faith and funding in us.

It has been an honor to serve in your Administration and to contribute to the improvement of our Nation's environment.

Respectfully,



William K. Reilly

Enclosures

Diana Shannon SHUMMERS


 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
 REGION VII

 999 18th STREET - SUITE 500
 DENVER, COLORADO 80202-2405

JUL - 5 1989

Ref: 8PM-PFB

Note
 This is the minimalist
 approach. Let's get this
 done but not spend any
 more time than absolutely
 necessary. Kerry

MEMORANDUM

TO: Division and Staff Office Directors

FROM: Kerrigan G. Clough *K.C.*
 Assistant Regional Administrator
 for Policy and Management

SUBJECT: EPA Federal Managers' Financial Integrity Act (FMFIA)
 and the Management Control Plan (MCP)

In my earlier memorandum (dated February 16, 1989), I set out the internal control process for this fiscal year. The next phase to be completed is development of the five-year agency-wide Management Control Plan (MCP). In compliance with the OMB Circular A-123, agencies must prepare a plan displaying areas of vulnerability to waste, fraud and abuse, planned corrective actions, and the internal controls put in place to provide reasonable assurance of risk abatement. Lucille Robinson will be serving as the regional Internal Control Coordinator. Please forward your Assessable Unit's (AU) MCP to Lucille no later than July 14 for consolidation into the Region VIII MCP.

Each program (AU) was requested to prepare an action plan for their media areas that were identified as vulnerable in the FY-88 Vulnerability Assessment process. Those same items were to be included in the MCP. The action plan information will be used in the development of the Region VIII MCP. Because the MCP is primarily a document to manage overall agency efforts under the OMB Circular A-123, managers should avoid entering superfluous details. The regional Action Plan will provide the details for future internal actions. A completed regional five-year MCP will be submitted to the agency Internal Control Staff by July 31, 1989.

Attachment I is a copy of the Headquarters call memo and a completed "sample" format with instructions. This year we did not get a formatted diskette, so please make a copy of the MCP form. Your Assessable Unit (AU) 1988 MCP is also attached to aid in preparation for 1989 MCP. Based on last year's vulnerability assessment, attachment II will identify your current assessment rating (high, medium, low).

In order to keep regional records current, I am also attaching the segmentation list showing the AU numbers, operations areas, and responsible managers (attachment III). It is not too late to make additions or corrections to this list; please update accordingly. Please pass the information along to Lucille as soon as possible.

In addition to the MCP update, there is another area still requiring your attention -- event cycles. "Event cycles" are used for internal control documentation. This region has been cited for having less than satisfactory documentation. During last year's process each AU identified one event cycle (re-occurring activities within each program). This year attachment IV will serve as the basis for providing required documentation by the end of calendar 1989. Please complete attachment IV and return to Lucille by COB July 7.

Thank you in advance for your continuing participation in this Agency requirement. If you have questions or need assistance, please call Debbie Janik (x1470) or Lucille Robinson (x1461).

Attachments

- I - HQ process memo & 1988 MCP
- II - 1989 Vulnerability (Risk) Assessment
- III - AU Segmentation List
- IV - HQ call memo and Event Cycles questionnaire

cc: Branch Chiefs
Assistant IC's
Administrative Officers



Congressional Research Service • The Library of Congress • Washington, D.C. 20540

March 29, 1993

TO : House Committee on Government Operations
Subcommittee on Environment, Energy, and Natural
Resources
Attr: James V. Aidala

FROM : Martin R. Lee
Specialist in Environmental Policy
Environment and Natural Resources Policy Division

SUBJECT : EPA Funding and Offsetting Receipts

In response to your request I have prepared this memorandum on funding for the Environmental Protection Agency (EPA) and associated offsetting receipts. For purposes of this memorandum, I have used final FY 1992 actual obligations and final FY 1992 offsetting receipts since I believe they give a truer picture of the EPA's needs and ability to generate monies to cover activities, than using current FY 1993 estimates. Two graphs appended to this memorandum show current FY93 estimates.

Of the total \$6.8 billion obligated by EPA in FY 1992 (depicted in Table 1), roughly \$1.8 billion, or 25 percent, of the total obligated was derived from a certain few activities. The other 75 percent of the amount obligated was from general appropriations.

CRS-2

Table 1.

U.S. Environmental Protection Agency
 FY 1992 Actuals
 Obligations by Media
 (dollars in millions of dollars)

Media	FY 1992 Actuals
Air	\$489.844
Water Quality	460.208
Drinking Water	140.384
Hazardous Waste	325.314
Pesticides	140.484
Radiation	38.250
Multi-media	222.214
Toxic Substances	160.400
Management and Support	554.974
Buildings and Facilities	32.617
Superfund	1,795.820
LUST	75.686
Wastewater/Construction Grants	2,310.757
TOTAL	\$6,746.950

The few activities which offset, or contribute to the support of EPA, include Superfund and certain pesticide-related fees.

Superfund Taxes ¹

EPA obligated \$1.8 billion for the Superfund program in FY 1992. For the 1987-1991 period, revenue derived under Superfund generated \$8.5 billion. Taxes provide \$6.7 billion of the total. General revenues, interest income, and recoveries from responsible parties are expected to supply the rest. These taxes have been extended through 1995. Table 2 summarizes Superfund's revenue sources.

¹ adapted from CRS Report 93-54 ENR, *Summaries of Environmental Laws*.

Table 2.

Superfund Income Sources, 1987-1995

Petroleum tax	\$2.759 billion
Chemical feedstock tax	1.365
Corporate environmental tax	2.522
Tax on imported chemical derivatives	0.057
General revenues	1.250
Interest income	0.300
Recoveries from responsible parties	0.300
TOTAL	\$8.553 billion

More than \$500 million for cleaning up leaking underground storage tanks (LUST) has been raised by a 0.1 cent per gallon excise tax on motor fuels. LUST funds also come from reimbursements from responsible parties). All the taxes went into effect on January 1, 1987, except the tax on imported chemical derivatives which began on January 1, 1989. Both these taxes were also extended through 1995.

The tax on petroleum (previously 0.79 cents per barrel according to the 1980 law) was increased to 8.2 cents per barrel for domestic crude oil, and to 11.7 cents per barrel on imported petroleum products by the 1986 amendments. After a challenge by several countries before an investigative panel of the General Agreement on Tariffs and Trade, this tax was changed to 9.7 cents a barrel, regardless of source.

With the exception of xylene, the taxes on the 42 organic and inorganic feedstock chemicals, which range from \$0.22 to \$4.87 per ton, were reimposed by SARA at their 1989 rates. Xylene had been the subject of a controversial Treasury Department ruling having to do with separated isomers of the chemical and the point of taxation. SARA allows all those who previously paid the tax on xylene to apply for a refund, with interest. To compensate for the lost revenues, the tax on xylene was increased from \$4.87 to \$10.13 per ton.

Certain chemicals listed in the tax table are exempt from payment of the tax when used for specified purposes, or when produced in certain ways. Thus, methane and butane are excused from the tax when used as fuel, as are substances used in the production of fertilizer. Also exempted are sulfuric acid when produced as a byproduct of air pollution control, and any chemicals derived from coal.

Two new taxes were imposed by the 1986 law. Imported chemical derivatives are taxed at a rate equal to the amount which would have been imposed on the feedstocks used in the manufacture of the derivative if the feedstocks had

CRS-4

been sold in the United States for that purpose. If the importer does not furnish sufficient information to compute the tax in that manner, the tax is 5% of the customs value of the import. Fifty chemical derivatives are listed in the law. The Secretary of the Treasury is to add to this list any derivative made from taxable feedstocks, if the feedstocks make up more than 50 percent by *weight* of the raw materials used to produce the substance. The Secretary may also add other substances to the list if taxable feedstocks comprise more than 50 percent of the *value* of the raw materials used to make them. For the same reasons, the Secretary may remove substances from the list as well. This tax went into effect on January 1, 1989, and has been extended through 1995.

The other new tax is the corporate environmental income tax, which is based on the alternative minimum income tax system of the Tax Reform Act of 1986. The tax is 0.12% (\$12 per \$10,000) of taxable income in excess of \$2 million, and is imposed on corporations.

In addition to taxes and appropriations, the fund receives reimbursements from polluters for cleanup and other response costs under this Act and under section 311 of the Clean Water Act, plus any penalties and punitive damages assessed under other provisions of CERCLA.

Pesticide Fees

Two funds related to pesticide activities fund certain EPA activities. The Tolerances Revolving Fund obligated \$1.1 million in FY 1992. Fees are paid by industry for Federal services in establishing tolerances for residues of pesticide chemicals in on food and animal feed. The Reregistration and Expedited Processing Revolving Fund obligated \$21.9 million in FY 1992. This fund is maintained by fees paid by the industry to offset costs incurred by the accelerated reregistration and expedited processing of pesticides.²

A Self-Supporting EPA?

Roughly 25 percent of EPA's activities are currently funded from sources other than the general Treasury funds or revenues. The issue is how can this percentage be enlarged to encompass most of EPA's activities, or how can EPA become more self-supporting?

Most efforts to identify alternative approaches to raise revenue from environmental activities have been directed towards State programs and activities where most activity has occurred. Our examination of three major studies shows that the focus has been to develop revenues to enable States to fund their individual programs and to supplement EPA delegated programs.

² NOTE: For FY 1993, there was a proposal to establish a special fund for the deposit of receipts from applicants for pesticide registrations, amendments to reregistrations, and experimental use permits. It was anticipated that this would generate \$15 million annually.

CRS-5

Efforts have not focused on revenue for EPA itself. These reports include EPA's *Alternative Financing Mechanisms for Environmental Programs*, *Perspectives on Financing Environmental Protection*, and *General Proceedings and Action Agendas from the U. S. Environmental Protection Agency's National Leadership Conference on Building Public-Private Partnerships*. EPA's State Capacity Task Force has identified a variety of fees, bonds, loans, grants, credit enhancement mechanisms, public-private partnerships and economic incentives which may help States augment their ability to protect the environment.

While the focus on developing alternative revenue and financing mechanisms has been on State activities and programs, there could be an effect on EPA's resource needs if, for instance, States became more self sufficient. If States were entirely successful, the most optimistic scenario, in adopting new fees and revenues to supplant current direct EPA assistance, the roughly \$3 billion in annual EPA State assistance (\$0.5 billion in numerous media grants plus \$2.5 billion for wastewater assistance) might be eliminated. This represents 43 percent of EPA's current budget.

Environmental Services Fees

Not reflected in FY 1992 figures, but currently being collected in FY 1993 are several fees for EPA environmental services.³ These include radon research and ratings, water pollution permits, motor vehicle testing, lead substitute gasoline additives, and Clean Air Act penalties. Table 3 below gives estimates for how much these activities *might* contribute to EPA.

Table 3.

Environmental Services
Estimates for FY 1993
(in millions of dollars)

Environmental Service	FY 1993 Estimate of Receipts
Radon Research and Ratings	\$3.0
Water Pollution Permits	10.0
Motor Vehicle testing	9.6
Lead substitute gasoline additive	***
Clean air penalties	0.2
TOTAL RECEIPTS	\$22.9

Another option would be to expand these environmental services receipts to raise more revenues. Penalties in particular are possible sources of revenues

³ CRS does not have information in current FY93 collections for these environmental services items.

CRS-6

for EPA. With the exceptions of some Clean Air Act penalties adopted in the Clean Air Act Amendments of 1990 most environmental fines, and civil and criminal penalties are channeled to the Department of Treasury, not directed to any particular EPA activities. Future reauthorization proposals may examine this for other EPA programs.

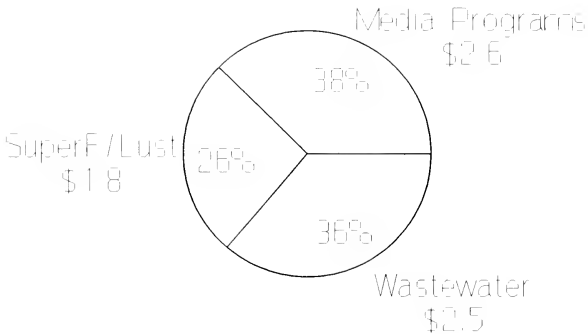
President Clinton has proposed a broad-based energy tax which may have environmental benefits, including reduced fossil fuel consumption, increased use of cleaner fuels, reductions in greenhouse gas emissions, and perhaps reductions in smog, acid rain, toxic waste, and traffic. While it is anticipated that the proposed BTU tax on coal, oil and gas might raise \$22 billion by 1997, none of the revenue would be directed toward EPA activities. Another option to enhance EPA would be to earmark part of this anticipated revenue for EPA.

I hope this proves helpful. If you need further assistance, please contact me at x7-7260.

TOTAL EPA FUNDING

FY 93

TOTAL FUNDING = \$6.9 BILLION
(in billions of nominal dollars)

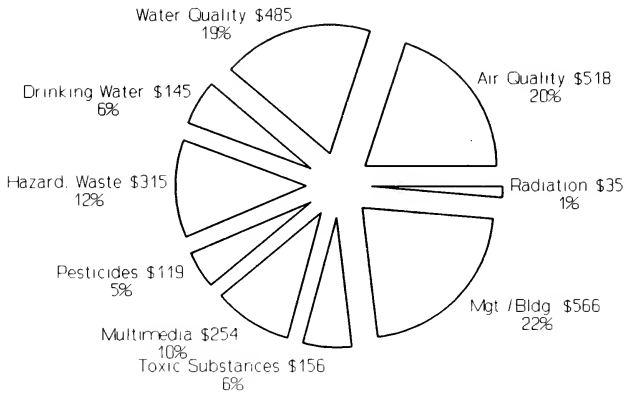


Source: Congressional Research Service

EPA'S MEDIA OR OPERATING PROGRAMS

FY93

TOTAL = \$2.6 BILLION
(in millions of nominal dollars)



Source: Congressional Research Service

LEAKING UNDERGROUND

Page 1 of 3

STORAGE TANKS

TRUST FUND

20X8153

Income Statement

For the Period 10/01/92 Through 01/31/93

	Current Month	Year- To-Date
RECEIPTS		
Tax Relating To Highway TF	\$ 11,794,000.00	\$ 45,546,000.00
Tax Relating To Inland TF	44,000.00	171,000.00
Tax Relating To Airport/Air TF	1,167,070.00	4,688,000.00
Interest on Investments	46,163.18	154,153.03
Int on Inv - Accrued	1,963,110.48	7,663,975.93
	-----	-----
TOTAL RECEIPTS	\$ 15,014,273.66	\$ 58,323,128.96
	-----	-----
LESS REIMBURSEMENTS TO GENERAL FUND		
	-----	-----
NET RECEIPTS	\$ 15,014,273.66	\$ 58,323,128.96
	-----	-----
OUTLAYS		
Inspector General	\$ 100,000.00	\$ 100,000.00
	-----	-----
NONEXPENDITURE TRANSFERS		
SF-1151 Transfers	\$ (9,300,000.00)	\$ (22,500,000.00)
	-----	-----
TOTAL OUTLAYS/TRANSFERS	\$ 9,400,000.00	\$ 22,600,000.00
	-----	-----
SURPLUS/(DEFICIT)	\$ 5,614,273.66	\$ 35,723,128.96
	=====	=====

LEAKING UNDERGROUND
STORAGE TANKS
TRUST FUND
20X8153
Balance Sheet
As of 01/31/93

Page 2 of 3

ASSETS

Undisbursed Balances:		
Fund Balance, Invested	\$	2,643.36

TOTAL UNDISBURSED BALANCE	\$	2,643.36
Investments		
MK Bills Maturing 8/26/93	\$	703,045,000.00
Unamortized Discount		(13,388,813.20)

NET INVESTMENTS	\$	689,656,186.80

TOTAL ASSETS	\$	689,658,830.16
		=====

LIABILITIES & EQUITY:

LIABILITIES

EQUITY

Beginning Balance	\$	653,935,701.20
Net Change		35,723,128.96

TOTAL EQUITY	\$	689,658,830.16

TOTAL LIABILITY & EQUITY	\$	689,658,830.16
		=====

LEAKING UNDERGROUND
STORAGE TANKS
TRUST FUND
20X8153

Program Agency
Activity Report

For the Period 10/01/92 Through 01/31/93

	Current Month	Year- To-Date
UNDISBURSED BALANCES:		
EPA LUST Fund Balance	\$ 9,300,000.00	\$ 8,933,009.83
	-----	-----
TOTAL UNDISBURSED BALANCE	\$ 9,300,000.00	\$ 8,933,009.83
	=====	=====
EXPENSES:		
EPA LUST Expenditures	\$ 0.00	\$ 20,037,679.79
	-----	-----
TOTAL EXPENSES	\$ 0.00	\$ 20,037,679.79
	=====	=====
NONEXPENDITURE TRANSFERS:		
SF-1151 Transfers	\$ (9,300,000.00)	\$ (22,500,000.00)
	-----	-----
TOTAL NONEXPEND TRANSFERS	\$ (9,300,000.00)	\$ (22,500,000.00)
	=====	=====

Financial Management Service
Finance Division
Funds Accounting Branch
Date :



Center for Risk Management

May 3, 1993

Mr. Al McCandless
Mr. J. Dennis Hastert
Committee on Government Operations
U.S. House of Representatives
2157 Rayburn House Office Building
Washington, DC 20515-6143

Dear Sirs:

Enclosed, pursuant to your April 16 request to me and Paul Portney, are responses to the questions asked in that request. Mr. Portney and I have discussed these responses, and he has advised me that he is comfortable with them.

If we can provide you with any further information please let me know.

Sincerely,


Terry Davies
Director

cc: Paul Portney

Enclosure

Questions for Environmental Panel

1. You indicate that there is a need to create a Commission to set environmental goals and priorities. Can you be more specific? Please explain what role and responsibilities you envision for this proposed Commission.

A distinction needs to be drawn between possible functions for the Commission authorized in the EPA cabinet bill and the function of establishing environmental goals and priorities.

Some of the central questions that should be addressed by the proposed Commission include: 1) Are the existing environmental statutes an adequate basis for addressing current environmental problems and identifying future problems? 2) Should the new department move toward a more cross-media approach to pollution control and, if so, how can this be done? 3) How can pollution prevention be more solidly established as an approach to environmental problems? 4) What should be the role of research in the new department and how should research be managed in the new agency? 5) How can relationships between EPA and state and local governments be improved, and what should be the role of the EPA regional offices?

Aside from these questions, the Commission could consider the question of the content of a National Environmental Strategy and how such a strategy should be developed. The Commission could include in this work an initial proposed set of goals and priorities, but any meaningful strategy would have to be promulgated by the government itself and would have to be periodically (every 2-3 years) updated. The Commission could confine itself to proposing a process for formulating and updating a National Environmental Strategy.

2. Since EPA administers the various environmental statutes, wouldn't it make more sense to have EPA set environmental goals and priorities rather than having an independent entity that is neither responsible for the implementation of such laws nor accountable to the public and Congress performing this policy function?

As indicated above, the answer is basically yes. However, a Commission might be a useful catalyst to rethinking goals and priorities because the existing statutory framework makes it almost impossible for EPA to set goals and priorities. In addition, a Commission could offer its thoughts on the ways in which priorities might (or should) be set--e.g., the appropriate role of quantitative risk assessment in prioritization.

3. Haven't there already been numerous studies conducted by several Commissions which address many of the same environmental issues that you propose that this "new" Commission review? For example, the National Commission on the Environment recently published a book of recommendations. What is the status of these recommendations? Why do we need to create yet another Commission to revisit these same issues?

The Commission proposed in the cabinet bill would have a stronger mandate, by virtue of its statutory basis, than other similar commissions. It also would have more resources with which to examine the issues before it. Also, it is really not the case that there have been "numerous studies conducted by several commissions." So far as I am aware, the National Commission on the Environment was unique in both its scope of work and its membership. It was established because there were no similar efforts being undertaken. The work of the National Commission on the Environment hopefully would be helpful to any future such efforts, but it is only a beginning.

4. You appear to be an advocate of pollution prevention and cross media initiatives. In the last few years, hasn't EPA been taking steps to implement this approach? Please discuss these steps. What is the Office of Pollution Prevention doing?

EPA in the past few years has shown much greater awareness of both pollution prevention and cross-media approaches. However, neither has become an integral part of the EPA programs. Cross-media approaches are generally not feasible under the existing statutory framework. (They are not legally barred, just infeasible in reality.)

5. What are the barriers to executing cross-media initiatives, e.g. EPA operates under more than a dozen different statutes and each one covers a different program? What realistically can be done about the number of different statutes?

The multiplicity of existing statutes is a major obstacle to cross-media initiatives. With respect to solutions, first, each individual law could be amended to encourage or require that cross-media effects be taken into account, although it is doubtful that this approach would change much. Second, it might be possible to enact a new law that bridged across the existing statutes and that authorized and encouraged cross-media initiatives. Third and ideally, however, there could be a single organic statute that replaced the existing laws.



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May 3, 1993

J. Dennis Hastert
 Ranking Member
 Environment, Energy and Natural Resources
 Committee on Government Operations
 Washington DC 20515

Dear Representative Hastert,

I am with this letter responding to your letter of April 16, 1993 requesting that I answer additional questions regarding in general elevation of the Environmental Protection Agency and in particular cross-media pollution prevention. I would be happy to provide to the committee any further assistance.

Question 1. You indicate that there is a need to create a Commission to set environmental goals and priorities. Can you be more specific? Please explain what role and responsibilities you envision for this proposed Commission.

Question 2. Since EPA administers the various environmental statutes, wouldn't it make more sense to have EPA set environmental goals and priorities rather than having a independent entity that is neither responsible for the implementation of such laws nor accountable to the public and Congress performing this policy function?

Response to Question 1. Please allow me correct an apparent misimpression that I must have created with my testimony. I am an advocate of improving our existing environmental protection policy by removing the artificial barriers that exist between our one-pipe-at-a-time environmental programs.

Recognize, however, that there are two levels at which this must occur, only one of which I would recommend be charged to the Commission. The first, the "micro" level, regards the cross-media nature of the individual company. The second, the "macro" level, regards the cross-media nature of our environment. My testimony recommended a role for the Commission in addressing the micro issues, while your question is more pertinent to the macro issues of "setting environmental goals and priorities."

At the micro level, our dealings with individual companies need to better

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recognize that each company is more than an unconnected collection of smokestacks and drainpipes. Our regulations, permits, reporting requirements, and compliance programs need to reflect the wholeness of individual companies. This issue would be well addressed by the Commission. To quote from my testimony:

First, the commission should establish a protocol for setting cross-media technology-based performance standards [as they relate to individual companies]. Currently EPA sets performance standards for individual industry categories [which are implemented by applying them to individual companies] that are based on the performance of the "best" pollution control technologies for a given environmental medium for a given industry category. Given two technologies, one which better protects the air and one which better protects water, the Agency has no protocol for explicitly deciding which is most protective of human health and environment. Instead the matter is decided implicitly and without careful deliberation, and is embodied in the collective effect of the single-medium standards faced by any one industry.

Second, the commission should identify provisions in existing environmental statutes that would be have to be modified to allow USDE to set a cross-media standard for any one industry category [based on which USDE or an authorized state agency would issue a cross-media permit to any one company], or to base a standard on a pollution prevention technology.

Third, the commission should recommend an ultimate USDE structure to support a whole facility approach [i.e. one which addresses the wholeness of each company], and a plan for the transition from the current Agency structure to the recommended one. The transition plan should build on the strengths of the current structure and fully consider the training resources that would be needed to "grow" the ultimate structure from the current one.

On the other hand, the macro level issues, those dealing with our national environmental priorities, I would not relegate to a study Commission. In fact, I agree with the sense of your second statement that it would "make more sense to have EPA set environmental goals and priorities" rather than assign this to an independent commission.

As I said during the question and answer session at the hearing, I believe the setting of our nation's environmental goals and priorities to be an innately political task, one that must be the primary responsibility of the US Department of the Environment.

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Note that when I say this task is "political", I do not refer to the caricature of politics as a cynical game as portrayed in the popular media. Instead, I refer to the complicated, flawed, but finally irreplaceable process by which a vast and diverse nation makes its decisions.

It is popular to decry to influence of politics in environmental policy making, but we deceive ourselves if we think any process isolated from politics will adequately address the complicated social issues that mix with the purely scientific in setting our nation's environmental goals and priorities.

In summary, I agree that the macro issue of establishing environmental goals and priorities should not be relegated to any but the USDE. Regarding, however, the micro issues of standard setting, etc. -- essentially the implementation of the macro decisions -- there is an important role for the Commission.

Question 3. Haven't there already been numerous studies conducted by several Commissions which address many of the same environmental issues that you propose that this "new" Commission review? ...

Response to Question 3. There have been numerous studies of the macro issues, and I agree that we do not need another one. The debate on the macro issues should now be led by USDE.

There has been some study of the micro issues -- those regarding the "whole facility" approach -- but they have taken place at too low or abstract a level. We need a high level Commission to deal with specific cases that can be brought before it by EPA as EPA implements its Source Reduction Review Project (see below).

Question 4. You appear to be an advocate of pollution prevention and cross media initiatives. In the last few years, hasn't EPA been taking steps to implement this approach? Please discuss these steps. What is the Office of Pollution Prevention doing?

Response to Question 4. In her Earth Day announcement, Administrator Browner reaffirmed the two most important things EPA is now doing to promote cross-media pollution prevention, the Source Reduction Review Project and the grant guidance flexibility. These two activities go to the heart of the issues I have been discussing like nothing else at the Federal level.

The Source Reduction Review Project Most EPA regulations require

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a specific category of industrial facility to reduce certain classes of wastes, emissions, or effluents to a single media within a set timetable.

Coordinating the development of these different regulations, as EPA is currently doing for the paper industry, helps to spotlight and avoid the transfer of waste from one media to the next. The analysis then forces early attention to process changes -- such as reducing or eliminating the use of chlorine in bleaching -- that can help the industry to achieve air, water, and sludge disposal standards. Coordination reduces the higher transaction costs that can occur when a business' environmental decisions are buffeted by disconnected regulations.

EPA is expanding the "cluster" approach through the Source Reduction Review Project (SRRP) which commits EPA's single-media programs to work jointly to investigate and promote opportunities for source reduction during the rule development process. In addition to pulp and paper, SRRP covers 16 key industries that face rulemaking over the next decade (See Table A).

The SRRP is a unique experiment in that it commits staff developing separate rules that affect the same industry to work together across program boundaries during the early stages of the rule development process. It will lead to new cooperation in developing industry-wide surveys, evaluating pollution prevention technologies, and synchronizing regulatory timetables (where permissible). EPA has published a set of principles meant to cement this cooperative relationship between the program offices.

The organizing principle behind SRRP -- clustering regulations around specific industries -- should become standard practice at EPA. That means establishing a presumption that no major rule will be initiated until the program office can demonstrate how the regulation-development process will account for requirements under other statutes that may affect the same sources. Where possible, the timetables and other attributes of the programs should be dovetailed to make multi-media permitting, inspection, and reporting easier. (Note that programs should probably be given two years notice before this presumption takes effect. The initiative will fail if it is applied to rules driven by legal deadlines that are already in the last stages of development.)

In addition, the EPA programs involved in SRRP rules should be required to develop public statements of long term goals with respect to both compliance and pollution prevention for each industry cluster. Developing such public goal statements would require staff to work across program boundaries early in the process, provide industry and the public with long term predictability by establishing clear strategic direction, and provide accountability that is often missing now.

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Promoting the Whole Facility Approach in the States: Permits, Inspections, Reporting Requirements, and Technical Assistance
Federal regulations written in Washington are usually implemented through permits, inspections, reporting requirements, and technical assistance programs administered by states. Fortunately, the states have become a hotbed of experimentation with different multimedia approaches to all three activities. As mentioned in my testimony, the state of Massachusetts has begun conducting "one-stop" inspections that investigate a facility's compliance with multiple environmental statutes. Several states are similarly developing a whole facility approach to permits and reporting requirements.

With a bankroll of half a billion a year in state grants, EPA is well positioned to encourage these experiments. Innovative, multi-media projects, however, must be reconciled with the "bean counting" systems that govern grant eligibility. For example, Massachusetts will need assurance that grant funds can be used to train multi-media inspectors, and that the "one-stop" inspections that follow satisfy requirements under different federal statutes.

Once again, EPA has taken a step in the right direction with Agency-wide guidance that encourages flexibility in the use of state grants to support pollution prevention initiatives like Blackstone. The guidance is subject to any applicable legal restrictions, and EPA programs and regions are required to report on successful projects and specifically identify barriers that prevent funding of a particular state proposal.

While EPA has a long way to go in implementing these two activities, the current direction is very promising.

Question 5. What are the barriers to executing cross-media initiatives e.g. EPA operates under more than dozen different statutes and each one covers a different program? What realistically can be done about the number of different statutes?

Response to Question 5. There are no doubt real statutory barriers to a whole facility approach, which as mentioned earlier, should be identified by the Commission on the basis of its analysis of EPA's and states' whole facility activities.

These barriers are by no means, however, absolute. As I said in my testimony:

It has been suggested that Congress should replace the many federal environmental statutes with one unified environmental statute. We,

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however, do not feel that it would be necessary to make such a sweeping change in order to move to a whole facility approach. Rather three steps -- perhaps requiring no specific legislative action -- could sufficiently harmonize the separate statutes.

First, the different media programs should be made to use a single USDE-wide approach to categorizing the regulated community. For example, if the air program designates an industry sector as "plastic furniture manufacturers", the water program should use the same designation in developing standards.

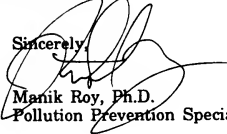
Second, the different media programs should be made to follow the same schedule in developing the standards addressing any one industry category. For example, if the air program is going to propose a rule for plastic furniture manufacturers in November 1996, with the final rule scheduled for November 1997, the water program should follow the same schedule.

Third, the USDE should be required, whenever it develops a rule that sets a standard for one industry sector, to set standards for all impacts to human health and environment from that industry sector, regardless of environmental medium.

In particular, some mention was made during the hearing of "organic environmental legislation" that would be useful in taking a whole facility approach. While in the abstract such a comprehensive environmental law would be useful, it is not essential to a whole facility approach, and scarce resources intended for pollution prevention could be spent in better ways than in the campaign to pass such a law.

This concludes my response to your questions. Again, if I can be of any further assistance, please do not hesitate to call.

Sincerely,



Manik Roy, Ph.D.
Pollution Prevention Specialist

cc: Honorable Al McCandless
Ranking Member
Legislation and National Security Subcommittee

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Walter Roy Quanstrom
Vice President

May 7, 1993

Charli Coon
Minority Counsel
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Dear Ms. Coon:

On behalf of Amoco Corporation and its operating companies, I appreciate the opportunity to respond to the questions raised by the minority members subsequent to the Subcommittee hearing of March 29, 1993.

Commission to Set Environmental Goals and Priorities

Our current regulatory system is designed to develop and administer regulations based on legislation focused primarily on single media issues under completely independent compliance time frames, and with little coordination of resources between the public and private sectors. A Commission, established outside of the EPA but with the broad participation of the Agency, is needed to focus on the current environmental needs, develop goals and timetables for improvements, and to set priorities for current and future programs so that the public's finite resources can be allocated to address the highest priority problems first.

EPA is unquestionably an important player in this goal setting, but should not lead such an effort, since many other national goals compete for the same resources. Various programs need to be dovetailed so as to take advantage of opportune timing or synergism, maximize use of resources, and to resolve conflicts. Numerous parties are responsible for the development and implementation of environmental goals and programs - Congress, EPA, state and local agencies, private industry, and the public. The EPA should not set national goals and priorities without the information and expertise available from these other groups. The make up of the Commission should reflect these groups, and should be accountable to Congress for its authority and reporting of findings.

Issue Evaluation

Numerous studies have reviewed issues such as the relative ranking of risks, the setting of priorities for existing laws, and identifying alternative options for reducing risks. These studies have typically maintained a broad focus, and we agree with many of their recommendations. However, little action is evident on implementing reforms in certain areas. Other issues remain to be reviewed.

For example, in its report Choosing a Sustainable Future, the National Commission on the Environment recommended that "Regulations affecting technology should be based on extensive and unbiased assessments of the technological possibilities and associated costs as well as their effectiveness in promoting technology development and use. Regulatory obstacles to the development and introduction of environmentally superior technology should be removed." Many regulations currently being drafted do not include provisions which encourage the development and application of new technologies. To the contrary, most existing and proposed regulations discourage innovative approaches by focusing on single media objectives, establishing rigid compliance schedules, and doing little to encourage industry to try innovative technological solutions. To its credit, the EPA has attempted to incorporate some flexible compliance options into its Clean Air Act rulemakings. However, these approaches have been very narrowly defined and consequently their use and effectiveness will be limited.

The National Commission on the Environment also noted that efforts to halt pollution should become more integrated and holistic. It recommended that Congress enact legislation requiring the EPA or the new Department of the Environment to begin issuing integrated permits covering air, water, and solid waste by 1997. We agree with this recommendation, as well as the one that government give high priority to efforts to narrow the gap between public perceptions of risk and expert evaluation of risk, while involving public participation in the process. Current regulations are being directed at applying technological solutions now, and evaluating risk later, after resources are used and projects are implemented. We may in fact be installing mandated solutions to nonexistent problems; needlessly wasting national resources.

The joint Amoco/EPA Pollution Prevention Project recently completed at Amoco's Yorktown, Virginia refinery identified several opportunities to improve the effectiveness of our environmental management system. First and foremost, partnerships between industry and government can be extremely productive in advancing pollution prevention. In addition, the current legislative and regulatory system often inhibits efforts to voluntarily implement pollution prevention initiatives. We recommend the creation of new industry, government and public partnerships in the form of demonstration projects to develop and test new approaches to environmental management.

Pollution Prevention and Cross Media Initiatives

Amoco advocates pollution prevention and multi-media approaches to most effectively and efficiently achieve environmental objectives. While the EPA is moving in the

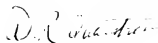
direction of preventing pollution at the source rather than after it is created, regulations currently being developed still focus on applying technological, media specific, end-of-pipe controls on emission sources. In some cases, the regulations specify the operating units within a facility to which certain conditions will apply as well as the assumed efficiency of the control equipment, regardless of its actual effectiveness.

The EPA has initiated several programs which begin to explore the advantages of a multi-media approach to environmental protection. Multi-media compliance inspections are beginning to realize the resource advantage of using multi-media teams, as industry does with self-audits, rather than limiting the focus of compliance inspections to a single medium. The EPA multi-media permit pilot program is investigating the concept of a multi-media approach to streamlining the permitting process. The Agency is also undertaking a pilot program with 40 federal facilities to develop multi-media compliance strategies - we believe that the same pilot program should be initiated with the private sector as well.

We believe the primary advantage of multi-media permitting is the performance of a comprehensive analysis of the facility, including an evaluation of its emissions, sources, processes, etc.. This analysis would then form the foundation to develop and implement the best pollution prevention plan for that site. However, our experience at Yorktown has shown that the permit is not the place to initiate reforms of the environmental management regime. Permits, by design, only allow what is statutorily acceptable. Better environmental management opportunities can result from solving site-wide issues in ways which have not been contemplated or which may not fit under current statutory and regulatory restrictions. New multi-media permits will not remove these barriers.

I hope that these comments address the issues raised by the minority members. As before, Amoco stands ready to commit its resources and to participate in demonstration projects designed to explore new environmental management structures. We believe this approach can achieve our common goals of environmental protection and a strong economy. If you have any additional questions, please do not hesitate to contact Mike Brien or Karen St. John in our Washington office.

Sincerely,



W. R. Quanstrom

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COMMITTEE ON
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HUNGER

The Honorable J. Dennis Hastert

Ranking Member

Environment, Energy and Natural Resources Subcommittee

Government Operations Committee

May 6, 1993

Mr. Chairman:

Let me reiterate my statements from our first hearing on elevating EPA to a cabinet-level department in which I expressed concerns about amending EPA elevation legislation to include extraneous matters and environment-related issues. Indeed, in the past such measures have bogged the bill down and resulted in its defeat. If we are serious this time in our desire to elevate EPA to cabinet status, then we should resolve to avoid loading up the legislation with amendments that will surely meet both Congressional and public resistance and once again doom passage of a bill.

Additionally, while I support official Cabinet-level status for EPA, I am opposed to expanding the agency's authority and creating an even larger and nonresponsive bureaucracy. A bigger department does not necessarily ensure program effectiveness and efficiency. In fact, the converse is frequently the case, lessening accountability and removing the department even further from those it is intended to serve.

Also, the Administration supports abolishing the Council of Environmental Quality and transferring most of its functions to the new Department. I am adamantly opposed to this change. Under the current system, we benefit from a diversity of opinion regarding environmental quality and related issues. Abolishing CEQ and placing its functions under one umbrella would not only stifle diversity but also adversely impact policy-making decisions. The House should act responsibly by rejecting this proposal and instead maintain CEQ as a separate entity.

Mr. Chairman, I look forward to working with the members of the Environment, Energy and Natural Resources and Legislation and National Security subcommittees as well as with those members serving on the full committee in passing responsible elevation legislation during this first session of the 103d Congress.

OPENING STATEMENT BY CONGRESSMAN CRAIG THOMAS
HEARING ON CREATION OF DEPARTMENT OF ENVIRONMENT
MAY 6, 1993

Mr. Chairman:

I want to thank you, Mr. Chairman, for holding these hearings, and for giving me the opportunity to participate today. While I'm not a member of the subcommittees involved in this hearing, I have a great interest in this issue as a member of the full Committee and I appreciate the opportunity to listen to the testimony today.

I've witnessed community after community in Wyoming become enveloped in the nightmare the EPA has become. Somewhere the regulators at EPA lost sight of their objective and have become proponents of regulation for regulation's sake. Never mind if the public health is really threatened, never mind how negligible the benefit or how great the costs, never mind if you find a cheaper, common-sense way to solve the problem, it's our way, or no way. That's the way EPA operates.

You'd be hard-pressed to find a business or local government in Wyoming that isn't scared of the EPA. Now some may argue that's good -- it keeps folks in line, they say -- but I'll tell you it's created an atmosphere of mistrust and bad feelings toward the federal government that may be beyond repair in some areas of Wyoming. Using tools like sweeping "information requests" of individuals and small businesses, grand punishment-by-press-release publicity stunts, unrealistic regulatory requirements and risk assessments and large fines the EPA brings to mind visions of "Big Brother" more than an agency created to help protect the environment.

I could spend hours of this committee's time reciting the many cases in Wyoming. I could go into great detail about the Town of Pinedale which, despite a water source cleaner than the bottled variety on store shelves, will be required by EPA to spend millions of dollars for chlorination or filtration. This is a town of 1,118 people, Mr. Chairman, and the cheapest alternative EPA will even consider is \$1.5 million to fix a problem they don't have with money they don't have.

I could talk about the town of Torrington, where EPA's poor management of a bad law turned a community upside down. Small businessmen who were rumored to have sent a single battery to a company they believed was disposing the battery legally were brought into expensive litigation. I could talk about the high school students in Casper who were forced out of their school by the EPA, forced to attend school at night in another building for a year and a half while over a million dollars was spent to sleigh the ugly monster called asbestos. All this so the EPA could come back a year later and tell us that it wasn't much of a threat in the first place. I could go on and on, Mr. Chairman,

but suffice it to say people are fed up with the heavy-handed tactics of the EPA in Wyoming. The last thing we should do is reward this behavior with the largely symbolic gesture of cabinet status.

It's obvious there's fairly wide-spread support for the concept of elevating EPA to cabinet level. I realize that in all probability it will happen some day. It seems to me before we take that step, there are some things we ought to look at. We ought to be able to tell the people of Wyoming what the mission of this new department will be. In fact, the employees of this new department ought to have an idea about the mission statement.

I know what I would have that mission statement say, Mr. Chairman. We all want to protect the environment. Beyond that, this department ought to realize the vast differences among its customers, the American taxpayers. First and foremost, the EPA needs to be reminded of this -- they work for the taxpayers and they need to be more responsive to their constituency. There needs to be flexibility and regionalization of regulations. It's crazy that a landfill in Wyoming, where we're lucky to see 12 inches of rain a year, should have the same requirements as a landfill in an area that gets 12 inches of rain a month. We ought to give the folks who are making a good-faith effort to clean up and prevent problems the ability to do so. It doesn't make sense to me why the EPA has to publicize huge threats of fines while they're working with folks who are trying to solve the problem.

Finally, Mr. Chairman, we ought to focus on outcomes. If it's known a contaminant has never existed in a certain area, why require testing for it? If there's no threat to the environment or public health, why require the expenditure of billions of dollars? It doesn't make sense. If the Administration wants to improve environmental protection in this country, as well as the relationship between the federal government and the people of this country, these are some steps they can take, no matter what you call the agency that carries them out.

There is really no justification for elevating the EPA to a cabinet level based on the agency's current record. It would reward their poor management. It won't help them deal with the nation's small businesses and communities and most importantly it won't help the environment. It will help some folks make points with some special interest groups and it will encourage the further development of bad government. This is not a referendum on whether we care about the environment. It is a decision about how you best enact policy to care for the environment and our communities. Elevation to cabinet level isn't the best way to do that and based on these concerns I oppose the creation of a Department of the Environment.

OPENING STATEMENT BY
CONGRESSWOMAN CARDISS COLLINS
AT THE LEGISLATION AND NATIONAL SECURITY SUB.
AND ENVIRONMENT, ENERGY AND NATURAL RESOURCES SUB.
HEARING ON RAISING THE EPA TO CABINET LEVEL
MAY 6, 1993

Mr. Chairman, I commend you for your personal interest and attention to legislation to elevate the Environmental Protection Agency (EPA) to a cabinet-level position and for considering all the essential issues that need to be undertaken in conjunction with this legislation.

Clearly, the duties and importance of the EPA have outgrown the size and structure of the agency. Since 1970 when EPA was created, an entire new world of environmental issues has emerged. Included among these is the need for (a) more effective information systems, (b) greater information resources, (c) increased funding to handle a surge in responsibilities, (d) better management and (e) significantly strengthened attention to environment equity.

After decades of government inattention and even disinterest in environmental equity, to my delight, it is now at the forefront of our agenda and is considered one of the Environmental Protection Agency's four most important issues that need to be addressed.

I have a particular interest in this issue because of a personal long-time concern about environmental injustice. My District in the Chicago Metropolitan Area is an example of what is a reality for communities all across the country: sites for many waste facilities are chosen for the wrong reasons. Since it is politically difficult to select any location, the choice often comes down to a question of political influence and those with the least have lost.

The result is that too many facilities have been placed in communities populated largely by minorities and the poor, irrespective of the suitability of the site and the cumulative impact on the neighboring community. It is a simple fact of life that these communities usually do not have the financial or political resources to compete with other neighborhoods. Often minority and poor communities lose out more than once, having more than one facility placed in the same general vicinity.

Numerous studies released over the last few years have clearly shown that the health of minority and low-income Americans is at risk by higher-than-average exposure to particulates, sulfates, lead and other contaminants. Yet, currently, the projected human health impacts of a new facility usually do not figure into the decision of whether or not to award a permit for a new waste facility to be built.

I have recently introduced the Environmental Equal Rights Act of 1993 to promote equity, justice and community involvement in the selection of locations for waste facilities. It gets a the heart of environmental inequity by establishing that waste facilities may not be placed in locations which increase the total impact on the health and well-being of nearby residents from all sources of contamination.

The bill would enable environmentally disadvantaged communities to protect their environment and the health of their residents by challenging the siting of a waste facility if it is within two miles of another waste facility, Superfund site or facility that releases toxic contaminants. If the feasibility study for the facility demonstrates that there is no other alternative location within the state that poses fewer health risks and if the facility will not release further contaminants into the area, the facility could be built. If not, it would have to be placed in another location.

I look forward to working with the Chairman on these issues and welcome the witnesses today and look forward to their testimony.

TOXIC TEMPTATION

**The Revolving Door,
Bureaucratic Inertia and the Disappointment
of the EPA Superfund Program**

Eric J. Greenberg

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EXECUTIVE SUMMARY

Superfund, the multi-billion dollar program to clean up the nation's worst toxic waste sites, is a promise unfulfilled. Conceived in secrecy and confusion in the waning days of President Jimmy Carter's administration, the program has been plagued with fraud, political manipulation, influence-peddling and contractor terrorism.

As of December 1992, the Environmental Protection Agency (EPA) has placed more than 1,200 of the so-called most dangerous hazardous waste sites in the country on the Superfund National Priority List (NPL). But the past decade, despite billions of dollars spent, the EPA has cleaned up fewer than nine percent of them. The remaining 91 percent continue to contaminate water supplies, destroy environmental habitats and contribute to human illness, birth defects, respiratory problems, miscarriages, cancer and even deaths, according to one federal study. Most of the hazardous waste sites already accounted for are in residential areas.

Some of the worst polluted sites in the nation have not even yet been placed on the national priority list.

Formulated behind closed doors in 1980, the Superfund program during the Eighties immediately fell into disarray, hampered by high turnover as employees at all levels left to work for environmental contractors, corporate polluters or law firms. Morale plunged for those who remained. A recent government report revealed that lawyers wind up with most of the money allocated to clean up the toxic sites. Superfund has also fallen victim to partisan politics and has been used as a tool to sway voters at election time. And it has suffered from bureaucratic inertia and at times, ideology, most recently from the now-defunct Council on Competitiveness, headed by former Vice President Dan Quayle.

Indeed, in recent years, there have been serious questions about not only the sheer competence and management of the EPA Superfund program, but the actual intent and the degree of aggressive pursuit by Superfund managers.

The Center for Public Integrity has learned that:

- The EPA has failed to collect Superfund costs of nearly \$4 billion since the program began.
- The U.S. government stands to lose as much as \$5 billion in potentially recoverable cleanup costs from corporate polluters over the next six years if immediate legal action is not taken. One EPA Superfund expert calls the situation a crisis.
- Superfund's toughest provision to penalize uncooperative corporate polluters has been implemented fewer than 25 times since 1981. To date, the agency has collected treble damages in only three cases. It remains unknown how many cases, and how much money, were simply never pursued.

Part of the problem appears to be the close relationship between the regulators and the regulated. EPA seems to have become a training academy for high-paying jobs in the private sector.

The Center has found an endless procession of hazardous waste policy decision-makers who have gone

through the "revolving door" from government to industry. Of the top EPA officials who have worked with toxic waste clean-ups and left government since 1980, the Center found that 80 percent of them have gone to firms holding Superfund clean-up contracts or have consulted with or given legal advice to companies about dealing with Superfund.

The Revolving Door

Superfund is basically a sum of money, now some \$15 billion, set aside to finance the cleanup of abandoned or inactive polluted properties. The money comes from taxes on polluting industries, from legal action against polluters at specific sites and from congressional appropriations -- that is, the taxpayer.

The EPA routinely contracts out Superfund clean-up projects to private firms. Contract costs have skyrocketed. The agency paid Superfund contractors \$200 million in 1982; by 1989 those payments had soared to somewhere between \$1.2 billion and \$1.4 billion.

Environmental consulting firms, eyeing the billions of dollars available in Superfund, regularly hire EPA and Superfund officials, who then help win contracts. In what has been dubbed "contractor terrorism," consultants often know more about Superfund than EPA staff do and exert influence accordingly. Contractors have written EPA regulations and policy and shaped key decisions as to how and when toxic sites are cleaned up. And government attorneys who helped draft and enforce Superfund regulations have gone into private practice, where they helped corporate polluters navigate around those same regulations and sue the EPA. Such tactics can stall clean-up operations for months or years.

In addition, ethical scandals during the Reagan-Bush years, the thwarting of proposed Superfund safeguards by the Bush-Quayle administration, low pay and a lack of expertise both in Washington, D.C., headquarters and at EPA regional offices have led to severe morale problems. Bad morale, in turn, has prompted employees to travel out the revolving door and into the private sector, often to Superfund contractors.

By the end of the Bush administration, the EPA had had just six administrators since its creation in 1973, and *all* have gone through the revolving door to the private sector or the industry-financed, non-profit community. William Ruckelshaus, who was the first administrator under President Nixon and returned to head the agency under Reagan, is chairman and chief executive officer of Browning-Ferris Industries, the nation's second largest waste management company. Russell Train became chairman of Clean Sites Inc., a consortium of chemical manufacturers and environmentalists that obtains large Superfund remediation contracts. Douglas Costle, administrator under Carter, founded and later sold an environmental testing firm. Anne Gorsuch worked as an environmental lawyer after being forced out of the EPA. Lee Thomas, Reagan's last EPA administrator, immediately became head of an environmental engineering and consulting company and just last month was named senior vice president of environmental and government affairs for the Georgia Pacific Corporation. Bush's EPA chief, William Reilly, came the other direction through the revolving door; he formerly headed the Conservation Federation but has longstanding ties to industry groups. In February 1993 he returned to World Wildlife Fund.

In a poignant example of the revolving door, one government attorney named Stephen Ramsey who helped develop the regulations for enforcing Superfund's liability provisions to ensure corporate polluters paid

for the cleanup turned around and took a job with a high-priced Washington law firm showing clients how to stonewall the rule. There are numerous examples of such cases on the local, regional and national levels.

The Impact

Superfund's problems mean that time and money are wasted while millions of citizens, in virtually every part of the United States, continue to live around abandoned toxic waste sites that leak hazardous chemicals and heavy metals into the air and groundwater.

The consequences for the taxpayer? Perhaps billions of dollars poured into inflated contracts and ineffective studies by companies that employ former EPA officials or relatives of current EPA staff. A 1991 congressional investigation found that EPA internal auditors failed to pursue potential waste and fraud in consulting contracts worth some \$8.6 billion. One contractor billed Superfund for \$5 million in unallowable but unquestioned costs, including a "rent-a-clown."

Most importantly, toxic sites are not being cleaned up. At the National Priority List's number one site -- the Lipari landfill in Pitman, New Jersey -- millions of gallons of toxic waste have been spreading for more than two decades. Lipari has been at the top of the NPL for 10 years. Yet the actual clean-up is only now beginning, and is expected to take another seven years to complete at a cost of \$50 million. EPA officials currently estimate that Superfund clean-ups cost an average of \$26 million per site.

Also not being addressed is the crucial question as to whether the EPA should even be attempting to clean up certain hazardous waste sites where it might be cheaper, safer, and more efficient to merely fence it off and contain the pollution. The contractors and former EPA officials making money off the program are not likely to initiate that debate.

In the meantime, the National Priority List is expected to nearly double by 1995. Some experts say as many as 1,000 new sites will be added, and predict that many will be more hazardous than the sites currently listed. And there are 34,000 other hazardous waste sites waiting to be analyzed for placement on the list. The estimated total bill for America: \$500 billion -- the size of the savings and loan bailout.

President Bill Clinton and Vice President Albert Gore, Jr., campaigned heavily in 1992 on environmental issues. And in recent weeks, the President has strongly criticized the EPA Superfund program, which expires in 1994.

"I'd like to use that Superfund to clean up pollution for a change, and not just to pay lawyers," he said in a speech to a joint session of Congress in February.

Clinton's proposed budget calls for a \$308 million reduction in Superfund spending, shifting more of the costs to the private sector, in opposition to the shift to public funding that industry advocates.

The issues for the new Administration, for the new Congress, and for the American people are quite clear: is the public policy concept of a Superfund program targeting emergency toxic sites fundamentally sound? Can public service become sufficiently elevated and respected so that the best and the brightest officials remain

in government? Can the EPA Superfund program, operating amidst Washington's corrupt, mercenary culture, function with real independence, in which the regulators and the regulated are truly institutionally separate? Can the Environmental Protection Agency become sufficiently strong so as not to depend so inordinately on outside industry consultants? Will the President's new post-employment restrictions actually slow the Superfund revolving door?

The Superfund reauthorization hearings have already begun. As this nation begins to grapple with the future of the Superfund program, these kinds of questions must be answered.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF CONGRESSIONAL
AND LEGISLATIVE AFFAIRS

July 26, 1993

Honorable John Conyers, Jr.
Chairman
Committee on Government Operations
United States House of Representatives
Washington, D.C. 20515-6143

Dear Mr. Chairman:

Enclosed you will find the U.S. Environmental Protection Agency's responses to your questions from the May 6, 1993, hearing on elevation legislation for the U.S. Environmental Protection Agency.

If we can provide further assistance, please advise.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Thomas C. Roberts".

Thomas C. Roberts
Director
Legislative Analysis Division

Enclosures

cc: Honorable Alfred A. McCandless

**U.S. ENVIRONMENTAL PROTECTION AGENCY'S RESPONSES
TO REPRESENTATIVE CONYERS' QUESTIONS**

Q. 1: In response to the EPA Environmental Justice Report, EPA formed the Environmental Equity Cluster to coordinate EPA actions on environmental justice issues. What is the current status of the cluster and what has it achieved? (Please provide documentation.)

A. 1: As a result of the change of Administrations, the Agency is assessing the best approach to cross-media decision-making. That is, for example, decisions affecting water, air, and land, and EPA is currently evaluating the effectiveness of the cluster group and considering the full range of our equity activities. The decision whether to continue the Environmental Equity Cluster or to create another mechanism for environmental equity will be determined soon. Also, EPA administrator Browner announced in April 1993, that environmental equity was among her top four priorities for the agency. Administrator Browner also formed an EPA National Performance Review Team (NPRT) on environmental justice to complement Vice President Gore's NPRT on the same issue. The focus of these teams is to encourage creative thinking and paradigm shifts in the Agency's current environmental justice policies and practices.

Q. 2: What is the FY 1993 level of funding for environmental justice programs and initiatives throughout the Agency? (Please provide a breakdown by the 12 program offices and by each regional office.)

A. 2: Specific resources for environmental equity programs and initiatives were dedicated to two offices in FY 1993--the Office of Environmental Equity (7 permanent positions and \$800,000.00 extramural dollars) and the Office of Enforcement (3 permanent positions and \$100,000.00 extramural dollars). While no comprehensive line item budget review of environmental equity projects was captured in a formal database in FY 1993, substantial amounts of work and support of equity-related activities did occur in program and regional offices. Some examples of these projects include: pesticide management training and technical assistance for Native American and Tribal Organizations; a fish consumption survey of a subsistence population (Tulalip Tribe) to determine dietary exposure to possible fish contamination; lead and soil ingestion among urban children; radon and asbestos awareness programs targeting racial minority communities for effective communication of health risks associated with radon and asbestos; federal facility multi-media enforcement/compliance initiatives; funding for the colonias for wastewater infrastructure; and demographic analyses at Superfund sites from the High Priority List, corrective action sites, and land disposal facilities. It is important to note that environmental justice concerns need to be woven into all EPA programs. The Office of Environmental Equity would oversee the work of these programs and in the EPA Regional Offices.

Q. 3a: What is the total level of funding of the Office of Environmental Justice for FY 1993?

A. 3a: The FY 1993 budget for the Office of Environmental Equity totals 7 workyears and \$1.2 million, of which \$800,000.00 is from the Abatement Control and Compliance Appropriation, and \$400,000.00 is from the Program and Research Operations Appropriation.

Q. 3b: How many staff currently are assigned to the Office on a permanent, full-time equivalent basis?

A. 3b: The Office of Environmental Equity is staffed by 6 permanent, full-time employees, and complimented with additional staff on a part-time basis and through rotational assignments.

Q. 3c: What plans are there for increasing the budget and expanding the staff of the Office?

A. 3c: In FY 1994 there is a requested increase of \$500,000.00 to fund a small environmental equity grants program which will provide minority and low-income communities with financial assistance that will address local equity problems. The agency will consider other staffing and expense needs as it prepares its FY 1995 budget request.

Q. 4: What is the FY 1993 level of funding for the Office of Research and Development? What amount and percentage of that funding is allocated for projects that focus primarily on issues related to environmental justice? (Please identify the projects, by name, that relate to the environmental justice mission, and distinguish between funding allocated for programs relating to lead and all other justice issues, and between internal and external spending.)

A. 4: There are many of these projects within the ORD budget, however, they are not aggregated under the rubric of environmental equity. Consequently, estimating the percentage of the ORD budget devoted to equity projects is impractical at this time. There is at least \$5M spent on projects that are directly relevant to environmental equity issues, although the total might be considerably larger.

The total FY93 budget for ORD is \$508M, of which \$337M is extramural and \$171M is intramural. Most of EPA's research on human health focuses on improving the scientific basis for risk assessments. Consequently, much of EPA's ongoing efforts to quantify human exposures to important pollutants and to estimate the dose-response relationship in people is relevant to the environmental equity issue. For example, our human clinical studies of acute effects from controlled exposures to ozone provide data that are pivotal in setting air pollution standards that are protective of public health for all Americans, including minority and low-income communities. As part of our clinical research program, we have recently completed the largest ever controlled air pollution study of African Americans, which showed no statistical difference in response compared to the rest of the population.

As another example, ORD is currently conducting a large environmental and exposure monitoring project in the lower Rio Grande Valley on the U.S.-Mexico border. Most of the residents in the study area are low-income Hispanics. ORD expects to spend approximately \$1.5M on this study in FY93.

ORD is also in the process of designing the National Human Exposure Assessment Survey (NHEXAS), which is designed to provide the first ever exposure measurement data on a wide variety of important environmental chemicals for a representative sample of the U.S. population. This information will be valuable in setting risk-based priorities and determining whether disadvantaged communities experience higher exposures. ORD expects to spend approximately \$2M on NHEXAS in FY93.

Q. 5: What is the total level of funding for research and development in FY 1993 under the Agency's program offices? What amount and percentage of that funding is allocated for projects that focus primarily on issues related to environmental justice? (Please identify the projects by name, that relate to the environmental justice mission, and distinguish between funding allocated for programs relating to lead and all other justice issues, and between internal and external spending).

A. 5: Not including Congressional special projects, EPA program offices do not perform research per se. However, program offices do perform other activities related to research, such as:

- Evaluation of the state of scientific knowledge on health and environmental effects of pollutants and their fate and transport in the environment.
- Evaluation of the effectiveness of techniques for the control and prevention of pollution from particular industries and economic sectors.

These activities draw on the research conducted by EPA's Office of Research and Development, the academic community, and industry and they require staff with a high level of scientific and technical skills. They are generally budgeted together with other parts of the regulation development process and would be difficult to separate. Also, several EPA program offices do provide financial assistance to various academic institutions to conduct research.

In Superfund, the national Institute of Environmental Health Sciences (NIEHS) in the Department of Health and Human Services receives resources to conduct research under the Superfund Amendments and Reauthorization Act of 1986. In 1993, \$32 million, was provided to NIEHS for basic health research. This level includes \$20 million added specifically by Congress for this activity.

Q. 6: Given EPA's analysis of the disproportionate impact of environmental pollution in minority and low-income communities and the state of research in this area, what would you estimate is the appropriate annual level of funding needed to conduct an adequate research program on environmental justice issues? (Please provide a breakdown by the following budget items: Salaries and Expenses, Operations, and Capital.)

A. 6: Research related to the issue of environmental equity consists of two major components: an exposure-based component and an effects-based component. If fully funded, these components would require approximately \$58 million and 40 workyears annually based on current estimates. At this time, we are unable to provide a breakdown of this estimate into the requested budget items.

The National Human Exposure Assessment Survey (NHEXAS) will address the exposure-based component by providing information on the magnitude, extent, and causes of human exposures. Annually, NHEXAS would require approximately \$38 million and 20-25 workyears. A variety of health research studies will be needed to address the effects-based component. These include, but are not limited to, studies that: 1) examine the susceptibility of different populations (i.e., based on race, age, sex, socioeconomic factors) to environmentally-related problems such as asthma and multiple chemical sensitivity; 2.) examine the health effects of specific chemical exposures on different populations (i.e., effects of pesticide exposure on farmworkers, effects of ozone exposure on highly exposed populations); and 3.) develop pharmacokinetic and dose-response models needed to support risk assessments for different populations. Annually, effects-related research would require approximately \$ 15-20 million and 15 workyears.

Q. 7: In March, 1992, EPA's Environmental Justice Report concluded that the Agency had insufficient information on environmental disparities in all programs. In July, 1992, after nine years of development, EPA released revised, but limited, Farmworker Protection Regulations and noted that the Agency had insufficient information on toxic contamination and poisoning of farmworkers to support a more comprehensive regulation. EPA has also noted that as many as 300,000 pesticide-related illnesses and deaths occur each year. Specifically, what is the Agency doing to address these and other information gaps it has identified, especially gaps related to "sensitive" populations? (Please provide specific budget and project information, and examples of the Agency's recommendations for Congressional support.)

A. 7: EPA currently does not have sufficient information to substantiate that 300,000 pesticide-related illnesses occur each year. However, EPA did estimate that 8,000 to 16,000 physician-diagnosed poisonings occur each year, along with an unknown but important number of non-diagnosed illnesses and injuries. Regardless of the actual number of current pesticide-related illnesses, the Worker Protection Standard (WPS) is designed to prevent poisoning and illness from exposure to pesticides and to mitigate exposure to pesticides by requiring employers to provide personal protective equipment, safety training, post treated areas, post application and safety information, and transportation to medical facilities if illness from exposure does occur.

EPA believes that the implementation of the WPS will reduce the incidence of pesticide-related illness and injury by 80 percent. In order to attain this level of illness and injury reduction, the Agency is developing intense programs of high quality outreach, training materials development, training, and training verification.

Furthermore, additional resources of \$1,000,000. for the Dietary Risk Evaluation System (DRES), in the FY 1994 President's Budget, will improve our ability to evaluate risks posed through diet, specifically in providing improved precision of food consumption data for infants and children. Additionally, DRES will provide enhancements to targeted areas, such as estimating food consumption by institutionalized populations, Native Americans, et al.; estimating long-term consumption rates from short-term data; improving estimates of long-term commercial food consumption; and examining exposures from multiple sources.

Q. 8: In 1992 Benjamin Goldman published The Truth About Where You Live (Random House-N.Y. Times), a book examining the correlation between environmental exposure, health and demographic (race, income, geography) data across the U.S.

(a) Does EPA currently have the capability to prepare such a report? If not, why not, and when would it likely have the capability?

(b) What is the status of EPA's effort to work with other Federal agencies to correlate environmental exposure, health, and demographic data?

A. 8: EPA does currently have the technical capability to prepare such a report using 1990 U.S. Census data and information from the Toxic Release Inventory, Superfund, and other EPA programs. The Geographic Information Systems (GIS) at EPA are being used presently to conduct small scale projects on this issue.

EPA has worked closely with other federal agencies on the research issues and needs associated with environmental equity. A brief summary is provided below.

- Co-sponsored the ATSDR Minority Health Conference in 1990.
- Lead a joint effort with NIEHS and ATSDR in sponsoring a workshop on research needs in environmental equity in August 1992.
- EPA will co-edit a special issue of Toxicology and Industrial Health, that will publish 10 papers resulting from 1992 workshop.
- Co-sponsor, with NIEHS and ATSDR, of the upcoming Environmental Equity Symposium on Research Needs in Environmental Health (July 1993).

The Superfund program is expanding its study of risks to populations in an effort to produce national exposure values. The program will correlate this exposure data with census and other relevant data to better characterize exposure by race and income. The RCRA program is developing an indicator to measure when human exposure has been controlled by a RCRA corrective action.

Q. 9: For the last several years the appropriations bills for EPA has required that, to the fullest extent possible, at least 8 percent of Federal funding for prime and subcontracts awarded for EPA programs go to businesses or other organizations owned or controlled by socially and economically disadvantaged individuals, including historically black colleges and universities. For the fiscal years 1990, 1991, and 1992 please indicate:

- (a) the total dollar amount of all EPA prime and subcontracts awarded;
- (b) the total dollar amount of all EPA research and development prime and subcontracts awarded;
- (c) the total dollar amount of all EPA prime and subcontracts awarded to businesses or other organizations owned or controlled by socially or economically disadvantaged individuals; and
- (d) the total dollar amount of EPA research and development prime and subcontracts awarded to historically black colleges and universities.

A. 9:

- (a) The total dollar amount of all EPA prime and subcontracts awarded:

DIRECT PRIME CONTRACTS

<u>FY90</u>	<u>FY91</u>	<u>FY92</u>
\$1.137b	\$1.189b	\$1.377b

SUBCONTRACTS

<u>FY90</u>	<u>FY91</u>	<u>FY92</u>
\$125.6m	\$151.2m	\$285.0m

- (b) The total dollar amount of all EPA research and development prime and subcontracts awarded:

<u>FY90</u>	<u>FY91</u>	<u>FY92</u>
\$122.5m	\$116.9m	\$140.1m

(c) The total dollar amount of all EPA prime and subcontracts awarded to business of other organizations owned or controlled by socially or economically disadvantaged individuals:

DIRECT CONTRACTING

<u>FY90</u>	<u>FY91</u>	<u>FY92</u>
\$122.6m	\$125.7m	\$99.0m

(d) The total dollar amount of EPA research and development prime and subcontracts awarded to historically black colleges and universities:

For FYs 90-92 there were no direct contract awards given to HBCUs.

NOTE: Prime contractors are only required to report the dollar value of subcontracts placed with small firms or HBCUs and not the type of effort requested, such as research and development.

Q. 10: In 1983 the GAO released a report (requested by Rep. Walter Fauntroy) on the relationship between race and toxic waste sites, and in 1987 the United Church of Christ Commission on Racial Justice published the report Toxic Waste and Race. (Please provide copies of any EPA responses to these studies.)

A. 10: EPA did not respond to the report of the General Accounting Office which was issued at the request of Representatives Florio and Fauntroy. EPA did not comment on the relationship between race and toxic waste sites because no recommendations were made to the Congress which required an Agency response. The GAO report is attached for your review (Enclosure 1).

The Agency made a direct response to the United Church of Christ Commission on Racial Justice report in a July 1, 1987, letter to United Church of Christ Executive Director Benjamin F. Chevis, Jr. from J. Winston Porter, EPA Assistant Administrator for Solid Waste and Emergency Response (Enclosure 2). In the letter EPA states that the siting of hazardous waste sites have traditionally been conducted at the state and local level and not at the federal level. Further, the listing of Superfund sites for cleanup is based on the Hazardous Ranking System which has a strong community involvement component, therefore the ranking is not conducted solely at the federal level. Finally, EPA sponsored the "Conference on the Environment, Minorities, and Women" among other minority outreach projects to involve minority communities in environmental issues.

Q. 11: In June, 1993, EPA issued the report Environmental Equity: Reducing Risk For All Communities in two volumes. Volume 2 included comments on the preliminary draft of the report that were submitted by several environmental justice organizations. Please provide a copy of EPA's response to these comments and explain which of these recommendations EPA has implemented, plans to implement, has rejected, or has identified as requiring regulatory or statutory authority.

A. 11: While no formal responses were prepared for the five letters from environmental justice organizations published in Volume 2 of the Equity Report, the Agency has begun implementing major recommendations from these letters. For instance, a number of offices within EPA, both at Headquarters and in the Regions, have begun to collect data on equity risks by income and race. By integrating the 1990 U.S. Census data with EPA data bases such as the Toxic Release Inventory (TRI) and using Geographic Information Systems (GIS) as the tool, we will soon be able to generate maps which show by income and/or race the locations of sites that may be of concern from an environmental health perspective. Some other examples of EPA's actions include: promulgation of the Farm Worker's Protection Rule; environmental equity is one of Administrator Browner's top four goals, an environmental equity advisory council is being established; the Offices of Environmental Equity and Civil Rights are working together to address pollution prevention and U. S. Civil Rights Act's Title VI enforcement in environmental equity initiatives; and an Interagency Task Force has been established to examine common environmental equity issues across other agencies.

Q. 12: In January 1993, the Lawyers Committee on Civil Rights, on behalf of several environmental justice organizations, submitted an Environmental Justice Transition Team Paper. What is EPA's response to that paper? (Please explain which of these recommendations EPA has implemented, plans to implement, has rejected, or has identified as requiring regulatory or statutory authority.)

A. 12: Many of the recommendations made by the Lawyers Committee on Civil Rights are currently being implemented or are under development. For example, an Indian Capacity-Building Task Force has been established to address methods to enhance tribal infrastructure to deal with environmental issues; the Office of Environmental Equity, in cooperation with the Office of International Activities, is developing strategies to address environmental concerns in developing countries, i.e., hazardous waste dumping, forest restoration, and sewage treatment and waste disposal problems; the Agency is working with the National Institutes of Environmental Health Sciences and the Agency for Toxic Substance Disease Registry to outline research strategies needed to strengthen health effects data in highly exposed communities; and targeted inspections and enforcement efforts are being developed in conjunction with the Department of Justice as mandated by the President's Earth Day directive on environmental justice.

None of the recommendations proposed by the Lawyer's Committee on Civil Rights have been rejected, however, a number of these suggestions remain under review. Specifically, regulation changes dealing with the issue of siting are being considered to address the disproportionate impact on low-income and communities of color.

Q. 13a: EPA first developed an "Indian Policy" in 1984, but has made limited progress implementing the policy. Please explain why Native American government organizations are excluded from Federal Facility enforcement settlements and how this is consistent with EPA policy and federal environmental and Indian law.

A. 13a: EPA has not formalized a Native American government organizations policy with regard to Federal Facility enforcement settlements. EPA is responding to recent expressions of interest in reviewing the cleanup process in order to provide heightened Native American involvement. The Office of Federal Facilities Enforcement (OFFE) is currently reviewing its policy and programmatic components for opportunities to integrate environmental equity concepts. In our ongoing process of establishing Site Specific Advisory Boards at clean-up sites, we are making a concerted effort to assure participation of Native Americans and other people of color within affected communities. We anticipate continuing discussions of Native American issues in general, and welcome input regarding this group's role in federal facility enforcement specifically.

Q. 13b: If Native American governments are treated as states, why does EPA have a state coordinating committee but no Native American coordinating committee?

A. 13b: EPA has made efforts to establish a Tribal/EPA Coordinating Committee but it has been unable to establish a consensus among the 500 federally recognized tribal and Alaska Native entities as to how an equitable representation of their diverse interests could be established. In the interim, EPA has broadly sought tribal comment on its activities on Native American lands through written solicitation of tribal input and a series of face-to-face public meetings among Native American tribes. These endeavors include the National Tribal Environmental Management Conference in Cherokee, N. C. in May of 1992, three meetings in November of 1992 on the Indian provisions of the new Clean Air Act regulation, three meetings in 1992 on the 40 C.F.R. Part 258 Landfill criteria, and three meetings in April of 1993 on the regulation under development to implement the Indian Environmental General Assistance Program Act. Through these written comments and meetings, it has become clear that a tribal consensus is evolving for the establishment of a Tribal/EPA Coordinating Committee and in response, there is a renewed effort by EPA to establish a Committee with broad-based tribal representation.

Q. 13c: EPA delegates authority for standard setting to states. Does EPA support the right of tribes to set standards more stringent than federal standards, as states are currently allowed to do?

A.13c: EPA has consistently supported the rights of tribes to set more stringent environmental standards than exist in jurisdictions that surround their reservations. For example, EPA firmly supported the successful efforts of the Northern Cheyenne to reclassify their reservation as a Category 1 air shed in the mid-1980s. In 1992, EPA approved the request of Isleta Pueblo to establish water quality standards on the Rio Grande that are more stringent than upstream state standards. As EPA delegates more programs to tribes, the Agency expects that a number of them will establish environmental standards that are more stringent than the federal minimum. The Agency will approve such higher standards where allowed by law in the same manner that it approves higher than minimum standards for states.

Q. 14: In October 1992 EPA transmitted to the Office of Management and Budget a draft of RCRA regulations on the siting of hazardous waste facilities (40 CFR 358). The draft included provisions for equitable procedures to ensure, for example, that the sensitivity to pollution and the overall pollution burden of the affected community would be taken into consideration. What is the current status of the proposed draft of 40 CFR 358, especially the provisions to allow more community participation in siting decisions?

A. 14: RCRA Location Standards: EPA's Office of Solid Waste & Emergency Response (OSWER) is in the process of developing regulatory options for environmental "location standards" which would apply to the environmental aspects of siting of new RCRA facilities. These "location standards" could cover a variety of physical site characteristics which affect risks, such as hydrogeologic characteristics, seismic zones, and floodplains, and EPA is considering including language to address environmental equity considerations.

Q. 15: The Clean Air Act Amendments (CAAA) of 1990 provide EPA several opportunities to incorporate environmental equity in the design and implementation of clean air programs, for example, in developing a national strategy to control toxic air pollutants in urban areas (section 112(d)), or in examining "social costs" of preconstruction permits (section 173(a)(5)). Does EPA acknowledge and plan to exploit such opportunities to ensure environmental justice for environmentally disadvantaged populations? Has EPA implemented the recommendations by the air pollution management team contained in the June 1992 EPA Environmental Justice Report?

A. 15: As part of the urban area source program under CAAA section 112 EPA is continuing a series of urban studies identifying risks to populations from aggregate exposures to many air toxics. Such studies typically evaluate cancer and non-cancer health endpoints at numerous urban locales and are a function of many parameters such as source type, proximity of persons to sources, and magnitude of exposures to multiple pollutants. Among other things, such studies allow an assessment of particular population groups that are seeing the highest levels of individual risk, such as cancer incidence. Overlaying risk distribution patterns from these studies with socioeconomic statistics available from census data gives some sense of differential risks seen by various population groups. This provides an indication of environmental equity related to urban sources of toxic emissions.

With regard to the provisions of CAAA section 173, which deals with permits for new or modified stationary sources in nonattainment areas, EPA will propose a rule for its implementation this fall. This rule will include requirements under CAAA section 173(a)(5) concerning an analysis which must demonstrate that the benefits of granting a permit "significantly outweigh the environmental and social costs." An important factor in this benefit/cost equation is environmental equity, which will be addressed in the rule.

As a result of recommendations made by the Agency's Environmental Equity Workgroup, the Office of Air and Radiation (OAR) has implemented four specific initiatives reflecting environmental equity concerns, particularly in targeted areas. These include:

- 1) **RECOMMENDATION:** Improve assessment methodology (targeted towards populations suffering disproportional impacts) regarding exposure to air pollution.

ACTIONS:

- a. The 1990 U.S. Census data is now linked to OAR's Human Exposure Model. When Toxics Release Inventory data is linked to the system, EPA will have the ability to complete equity analyses for source categories. Such analyses can be used to characterize potential exposure of specific populations.
 - b. Currently, OAR has a pilot study underway to develop Geographic Information Systems (GIS) maps of existing areas that do not meet air quality standards. These computerized maps of nonattainment areas will enable OAR to categorize the demographics of the areas not meeting standards. It will also be possible to map sources and determine which ones are within these areas. The pilot study is being done for a few selected cities to evaluate whether all nonattainment areas should be mapped in this way.
 - c. OAR has committed contract dollars for the following projects:
 - 1) development of community-based ambient air monitoring which geographically targets high risk populations;
 - 2) development of research methodologies and data collection plans for assessing risks by income and race; and
 - 3) development of methodologies for assessing and considering the distribution of projected risk reduction in major rulemakings and OAR initiatives.
 - d. Currently, OAR has placed of an ambient air monitoring station in the Anacostia section of Washington, D.C. to increase and improve data specific to this predominantly minority community.
- 2) **RECOMMENDATION: Expand OAR's outreach/communication and consensus building efforts to low-income and minority communities;**

ACTIONS:

- a. At the request of numerous citizen groups, OAR agreed to move a hearing on our first major air toxics rule under the CAAA to Baton
-

Rouge, La., an area which has been disproportionately affected by toxic emissions.

- b. The Acting Director of the Air Office chaired the 5 hour public hearing, and toured local communities directly affected by the concentration of pollution-producing facilities in the area.
 - c. "The Plain English Guide to the Clean Air Act" was produced by OAR for the general public.
 - d. OAR is working to include meaningful public participation requirements for transportation planning under Intermodal Surface Transportation Efficiency Act (ISTEA) and the Clean Air Act.
 - e. OAR is producing a bilingual radon public service announcements.
 - f. Radon testing in low-income communities in Detroit was conducted by OAR.
 - g. The training of minority contractors in radon mitigation techniques is being conducted by OAR.
 - h. Implementation of the Radon and Asbestos Awareness Program (RAAP) which targets minority communities for effective communication of health risks associated with radon and asbestos (pilot program in Philadelphia, PA) will soon be completed by OAR.
 - i. Radio forums which: 1) communicate health threats from radon and asbestos exposure and 2) obtain direct feedback from communities on their experiences and perceptions of the problem are being planned by OAR.
 - j. The Air Risk Information Support Center (AIRISC) Hotline which communicates air toxic risks to affected communities has been established by OAR.
- 3) **RECOMMENDATION:** Support and enhance existing and future regional Equity initiatives.
-

ACTION: OAR has been, and will continue to be, engaged in a number of environmental justice projects in EPA's Regional Offices. For example, OAR provides support to Regions VI and IX which have had air monitoring and planning efforts underway in the U.S-Mexico border area for several years. The following are specific examples of other environmental equity initiatives supported by OAR:

- a. Indoor Radon grants to develop projects which encourage radon risk reduction in identified high risk populations (e.g., Washington, D.C.).
- b. Grants to conduct a radon survey of buildings under the State of New York's Weatherization Assistance Program.
- c. A special OAR workgroup to implement the Clean Air Act requirement that Indian tribes be treated as States with respect to implementation of the Act. Additionally, OAR is providing grant money to conduct air quality assessments and offer Radon mitigation courses which are tailored to the needs of tribal communities.

- 4) **RECOMMENDATION:** Enhance the relationship between OAR and its four adopted institutions in the Academic Relations Program.

ACTIONS:

- a. The Acting Assistant Administrator for OAR recently signed a Memorandum of Understanding with Northern Arizona University. This agreement is designed to strengthen research, training, and public service programs focusing on Native Americans and their lands.
- b. OAR has signed a Memorandum of Understanding with North Carolina A&T University to develop a comprehensive Academic Relations Program. Key aspects of the agreement provide for: identifying student employment opportunities; developing a seminar series; and providing academic assistance to develop an environmental curriculum.

Q. 16: Under the Clean Air Act Amendments of 1990, industries are allowed to trade emissions allowances so that facilities that emit excessive pollution can choose to upgrade the facility or to purchase the right to pollute from other, cleaner facilities which emit fewer pollutants. If regulations controlling emissions trading are not adequately developed, this provision could allow emissions to continue or even increase in areas that already are polluted. What is EPA's interpretation of the emissions trading provisions of the Clean Air Act Amendments in Titles II, IV, and VI as they relate to the environmental justice issue? How does EPA plan to address trades that result in inequitable distributions of emissions?

A. 16: Clean Air Act Amendments - Titles I and II (attainment, mobile sources)

Under currently proposed regulations, trading may be permitted under the Title I Economic Incentives Rule which will facilitate the reductions required by Congress under the Act, or where it will result in lower compliance costs. Trading is not intended as a means of avoiding the required reductions. Proposed Title I provisions also provide rules for trading between stationary and mobile sources (Title II). As currently proposed, neither proposal directly reflects environmental equity concerns. The public comment period is still open for both proposals.

Regardless of trading provisions under the Act, no source of the six criteria pollutants (NO_x, SO₂, ozone, lead, CO, PM₁₀) may violate the health-based National Ambient Air Quality Standards (NAAQS). This will be so whether or not a facility has credits or allowances.

In addition, each individual facility will be required to operate under a permit which sets the emissions limit for each facility. The two processes involved are: the State Implementation Plan (SIP) process and the permit process, both of which create the opportunity for public involvement through required public hearings so that impacted communities can participate in these decisions. Part of EPA's job will be to make sure that these public opportunities are meaningful.

Clean Air Act Amendments - Title III (toxics)

Under the toxics provisions of CAAA, the first major rule which would allow for interpollutant trading among emission points within a facility is currently at the proposal stage. Implementation of the rule should result in the reduction of up to 500 million pounds of toxic air pollutants from synthetic organic chemical manufacturing facilities. Although we are sensitive to the disproportionate impacts of toxic emissions from facilities that have been sited in or near minority communities -

(that is one of the concerns which has driven these reductions) no specific methodology has yet been finalized to take these issues into account when assessing trading schemes under the proposal. EPA has specifically asked for comment on trading schemes which would provide for trades only among categories of relatively equal toxicity, or which would require offsets on an equivalency basis.

Both approaches are intended to prevent a more toxic emission from being traded for a less toxic one.

Clean Air Act Amendments - Title IV (Acid Rain)

This title is intended to reduce by 50% emissions of two key pollutants, sulfur dioxide (SO₂) and nitrogen oxides (NO_x), in order to protect lakes, streams, and other natural and man-made resources from the effects of acid rain. This national legislation was designed to handle an equity problem of a very different kind: cross-regional transport of emissions hundreds of miles from the source of their generation.

The acid rain program regulates electric utilities through a system of allocating "allowances," each of which authorizes the emission of one ton of SO₂. The emission trading that is provided for in Title IV protects the health of those living near these sources.

No source, even if it holds allowances, may violate the National Ambient Air Quality Standards (NAAQS) as provided in the State Implementation Plan (SIP) designed to protect public health.

Because the Acid Rain program requires the reporting of hourly data to EPA on SO₂ emission, the Agency and State environmental authorities will be able to determine, for the first time, whether electric utilities are in continuous compliance with their SIP limits. This information will also allow us to accurately assess, again for the first time, any equity implications of this program.

Clean Air Act Amendments - Title VI

EPA is not aware of any equity issues in the Stratospheric Ozone title.

Q. 17: The Superfund program provides EPA with authority to offer technical assistance grants (TAGS) to affected parties. In FY 1993, how many Superfund sites were on the National Priority List, how many TAG applications were received, how many were funded, and how much was allocated in approved grants?

A. 17: In FY 1993, approximately 1,270 proposed and final sites were included on the Superfund National Priority List. Several dozen TAG Grant applications have been received in FY 1993 and 15 such applications have been funded to date for a total of \$750,000. The budget allocation for the Superfund TAG grant program for FY 1993 is approximately \$3,000,000. EPA will issue 40 TAG grants in FY 1993.

Q. 18a: On September 21, 1992, the National Law Journal (NLJ) released a report, "Unequal Protection," charging EPA with discriminatory enforcement of environmental laws. What is EPA's response to the report?

A. 18a: On January 25, 1993, former Administrator William K. Reilly's response to the NLJ article appeared in the letters-to-the-editor column (Enclosure 3). As reflected by EPA's response, the Agency has serious concerns about the methodology, assumptions, and conclusions of the report. Nonetheless, we take very seriously any questions about fair enforcement of the environmental laws and are undertaking a number of steps to ensure equitable enforcement.

The Enforcement Management Council (comprised of senior enforcement officials from across the Agency) has established a workgroup composed of legal and technical staff from EPA Headquarters and regional enforcement offices, directing it to examine the issue of environmental justice in enforcement for each of the statutes under which the Agency has jurisdiction. Specifically, the workgroup has focused on determining where bias may occur in the enforcement process, what actions the Agency might undertake to eliminate bias in enforcement, and what studies might be undertaken to monitor for bias. The workgroup's report is expected to be completed by late summer 1993.

In the past, environmental justice had not been a top priority for EPA. As a result, the data previously collected by EPA on its activities does not answer questions as to whether the quality or quantity of its enforcement actions had an adverse impact on minorities, low-income communities, or communities suffering disproportionate environmental risk burdens. EPA is now taking the first steps to develop a data system which will allow us to target such communities for enforcement action and to monitor in the future whether there is bias in our efforts. There are, however, many technical and practical problems still to be solved and it is too early to predict when we will have a system in place.

Enforcement practices, in general, are largely made up of many instances of the Agency exerting its discretion at decision-making junctures. In recognition of this fact, the enforcement program as a whole is engaged in numerous efforts, both on a national and a regional basis, to increase sensitivity to environmental justice concerns.

For example, the Enforcement Management Council met on April 28, 1993, with leaders in the environmental justice movement whom they had invited for a frank and constructive discussion of the movement's issues and concerns. Follow-up

dialogue to this very successful meeting is anticipated. As the Enforcement Management Council has primary responsibility for directing our enforcement resources and priorities, it is critical for them to have a solid understanding of the issues in order to include environmental justice concerns in their planning, as well as instilling this value in their staff.

As another example, EPA's Regional Offices are continuing in-house training, meetings with local concerned groups and communities, and establishing internal environmental justice workgroups.

Finally, EPA's Office of Enforcement is developing a culturally and racially diverse workforce, recognizing this to be a key component in melding environmental justice into the entire enforcement process.

Q. 18b: Following the NLJ report, EPA hired a contractor (Sisken) to evaluate the report. How much has EPA spent on this contract? What is the current status of this contract? (Please provide a copy of the results.)

A. 18b: EPA retained Dr. Bernard R. Sisken to assist in analyzing the statistical bases underlying The National Law Journal's analyses, in order to assess the foundation of the NLJ's deeply disturbing allegations and to learn how best to do our own analyses as to whether bias is occurring in our enforcement activities. It was the Agency's goal to have an objective review performed by a statistician who is also an expert in the area of discrimination. The contract was for \$15,000.00, which has been spent on this effort. No additional funding has been contemplated for this project. Dr. Sisken is currently making some revisions to his draft report. This Committee will be provided with a copy of the draft report shortly, as soon as it is available to EPA.

Q. 19: In testimony before the Civil and Constitutional Rights Subcommittee of the House Judiciary Committee on March 2-3, 1993, EPA testified that the Agency was "reconsidering" its 1971 policy regarding the applicability of civil rights laws to federal environmental programs (including state-delegated programs). Could you describe the status of EPA's policy review referred to in the above-referenced testimony? (Please provide copies of documents (such as OGC opinions, EPA letter to the Sierra Club, pleadings in cases such as the Warren County Landfill case, permit and enforcement state delegations policies, etc.) which, in addition to the EPA Title VI Civil Rights Regulations, you believe articulate and implement EPA's policy or policies.)

A. 19: The EPA testimony on March 2-3, 1993, that the Agency was "reconsidering" its 1971 policy regarding the applicability of civil rights laws to federal environmental programs (including state-delegated programs) was incorrect. It has been and continues to be the policy of the Agency that the civil rights statutes of the United States apply to federal environmental programs and this policy is not under reconsideration.

The Agency's current Civil Rights Act Title VI regulations at 40 CFR Part 7 state, "This Part applies to all applicants for, and recipients of, EPA assistance in the operation of programs or activities receiving such assistance beginning February 13, 1984" (Enclosure 4). It further states, "Such assistance includes but is not limited to that which is listed in the Catalogue of Federal Domestic Assistance under the 66.000 series." A copy of the regulation and the listing of programs under the 66.000 series from the 1992 Catalogue of Federal Domestic Assistance are attached (Enclosure 5). Recipients of federal financial assistance from the Agency have always been required to sign an assurance of compliance with the applicable civil rights statutes as part of their grant application package and recipients in the construction grants program have been required to complete a preaward compliance report. That requirement now applies to all recipients. Copies of two of the older forms and one of the current forms, identified as EPA Form 4700-4, are attached (Enclosure 6). The current form was recently reauthorized by the Office of Management and Budget and is in the process of being reprinted to incorporate a change concerning the Americans with Disabilities Act. A copy of a brochure for public dissemination published in 1985 on "Equal Opportunity in Federally Assisted Programs" as well as a poster to be displayed at the recipient's facility are also attached (Enclosure 7). These documents clearly indicate that all recipients of federal financial assistance from the Agency are covered by the applicable civil rights statutes. The documents in no way indicate that there are any exclusions for assistance under any of the environmental programs.

Q. 20: EPA regulations require that states administer grants, contracts and program delegations consistent with civil rights laws, especially title VI of the Civil Rights Act. Over the last five years, how many state grants, delegations, or programs (including enforcement and permitting) has EPA withdrawn on the basis of a state's implementing delegated federal programs in a racially discriminatory manner inconsistent with civil rights laws and EPA policy. (Please provide several examples over the last five years of EPA State program evaluations that examined the extent to which a state implemented delegated federal programs in a racially discriminatory manner inconsistent with civil rights laws and EPA policy.)

A. 20: Our Agency-wide telephone survey conducted in response to Representative Conyers' inquiry indicates that the EPA has not withdrawn any state grants, delegations or programs on the basis of a finding of discrimination in the last five years. The only EPA assistance program in which administrative authority was authorized for States' administration was the Wastewater Treatment Construction Grants program under the Federal Water Pollution Control Act. This program has been phased out.

We have found that in several EPA Regional Offices, Agency officials charged with processing grants applications have identified jurisdictions whose applications for federal financial assistance could not be approved without clarification or modification to the funding proposals. Negotiations to cure identified problems or to clarify concerns usually resulted in Agency approval of the funding applications. The goal of Title VI of the Civil Rights Act, and the EPA External Compliance Program, is to achieve compliance with the basic prohibition against discrimination in any program or activity receiving assistance. While the ultimate remedy is fund termination through an enforcement action, this is not the objective of the civil rights statutes in view of the beneficial objective that the federal financial assistance is given in the first place. The following is a description of a situation in which the Agency sought to negotiate with an applicant jurisdiction seeking federal assistance:

In fiscal year 1989, the Cumberland Utility District, located in the City of Nashville and Davidson County area, submitted an application under the EPA's Wastewater Treatment Construction Grants program. The Equal Opportunity Specialist who processed the application checked the completed Preaward Compliance Review Report submitted by the applicant (along with the Assurance of Compliance form), and noticed the disparity between the minority population to be served by the proposed project and the nonminority population in the proposed service area. The Equal Opportunity Specialist plotted the respective populations against a map and sought characteristics of the area proposed to be excluded. The

specialist sought additional information from the applicant, including the sites of existing facilities, the proposed projects and future facilities. When the specialist was satisfied that the applicant sought to exclude a significant portion of the minority population in the service area through a discriminatory gerrymander, the specialist informed the applicant that it had to include the wastewater treatment needs of the minority population before the application could be approved. Negotiations to resolve the matter ultimately failed and the Agency refused to approve the grant application.

Q. 21: EPA has a formal policy on waiver of enforcement discretion ("Policy Against 'No Action' Assurances"), which grants a company a waiver from complying with environmental requirements. Over the last 12 years, how many times has EPA formally exercised the waiver of enforcement, and what is the racial composition of the locations where EPA has formally exercised enforcement discretion? (Please provide copies of the formal written waivers.)

A. 21: Of the 6 divisions in the Office of Enforcement, only the Toxics Litigation Division, with responsibility for TSCA, FIFRA, and EPCRA, has made use of formal enforcement discretion letters. To the best of our knowledge, such letters were used in at least 25 cases over the past 12 years. Statistics are not recorded for this type of action, but we can state with some certainty that the use of such discretion by the Toxic Litigation Division has been limited to two categories of cases: (1) PCB imports, and (2) TSCA new chemical use.

In the PCB area, EPA has used enforcement discretion to allow PCB's or PCB-containing equipment to be brought into the United States from Canada or other foreign countries for disposal/destruction via incineration. Usually, these are circumstances where U.S. companies have erroneously shipped the substances out of the country and then wish them returned for proper disposition. Generally, the company is fined for the "illegal export," but penalties are waived for the "import for disposal."

In the second category, on at least five occasions, the sale and use of illegally-manufactured chemicals has been allowed through enforcement discretion as a condition of settlement where the company has voluntarily reported the manufacture of new chemicals not on the TSCA "inventory" and subject to Section 5 of the statute.

Several representative examples of enforcement discretion letters issued by the Toxics Litigation Division of the Office of Enforcement are attached (Enclosure 8).

Q. 22: What, specifically, are EPA's plans to implement and enforce the new Farmworker Protection Regulations? What budget increases or decreases has EPA planned for FY 1993, 1994, 1995 for compliance monitoring and enforcement of these regulations?

A. 22: EPA has issued a pesticide registration notice (PRN 93-7) on the labeling revisions required by the Worker Protection Standards (WPS). This notice is directed to persons responsible for the registration of pesticide products and for their labeling. It is an announcement of policy and directions that pertain to pesticide registration actions.

The provisions of WPS become enforceable as soon as specific worker protection requirements and statements referring to the WPS appear on pesticide labels. Dates for registrant compliance are as follows:

- o After April 24, 1994, no registrant may sell or distribute a product that falls within the scope of the regulation unless its labeling is consistent with PR Notice 93-7.
- o After October 23, 1995, no one may sell or distribute a pesticide product that falls within the scope of the WPS unless its labeling is consistent with PR Notice 93-7.

When a product with revised labeling is used, the users must follow the specific product labeling requirements for personal protective equipment, application restrictions, restricted entry intervals and, if present, the requirement for both treated area posting and oral warnings.

Users are required to meet more generic WPS requirements beginning April 15, 1994. These include requirements for employee training, provision of decontamination sites (water, towels, soap, and a change of protective clothing for pesticide handlers), cleaning and maintenance of pesticide prevention equipment, emergency assistance, and displaying a pesticide safety poster and pesticide-specific information.

The WPS should increase the protection of employees on farms, forests, nurseries, and greenhouses from occupational exposures to agricultural pesticides. These regulations outline new responsibilities for employers of both agricultural workers and pesticide handlers.

EPA is developing a wide variety of communication, training, and compliance materials to inform agricultural employers, agricultural workers, and pesticide handlers of their duties and protections under the WPS. The Agency will also provide materials such as informational videos and brochures. This effort includes activities to develop multi-lingual brochures, warnings, and other items that will be tailored by the states to meet specific language requirements.

The Agency will continue to work with the U.S. Department of Agriculture/State Cooperative Extension Services (USDA/CES) to develop national training programs on the safe uses of pesticides and the protection from pesticide exposure in the workplace. The training component will provide for higher quality, well targeted and, in many cases, tailored materials to address specific language requirements and culturally sensitive outreach efforts.

The states will conduct selected monitoring of training delivery for compliance. The issuance of informational cards, teaching workers and handlers about pesticide safety, and the purchase or development of materials will enhance the program's effectiveness. States will have resources to actively participate in the training of trainers.

The pesticides enforcement program has \$2,000,000. in state grants funding allocated for FYs 1991 through 1994. The budget development cycle for FY 1995 has not yet been initiated. This state grant money has been used to develop implementation and outreach materials to assist the regulated community to comply with the WPS.

In addition, the Agency has required states to prepare plans for implementation of the WPS in their area. These plans must include detailed discussions of how the state will address the following four issues: outreach/communication to the regulated community; training activities; establishing cooperative relationships with other state/Federal agencies and other interested parties; and compliance monitoring activities. EPA has asked states to specifically describe how they intend to target inspections so that they are addressing areas that present the greatest opportunities for reduction of risks to farmworkers and the environment.

Inspection guidance and training is also being provided for EPA Regional Office and state inspectors for enforcement of the WPS regulations.

Q. 23a: The EPA Science Advisory Board concluded that farmworker (over 90% African American, Latino, Native American, and Asian American) exposure to pesticides was one of the highest environmental risks that remains to be controlled by EPA. How many enforcement cases, each year, for the last eight years have (a) EPA and (b) States concluded to enforce the original farmworker protection regulations?

A. 23a: As a result of a legislative limitation, EPA has not concluded any cases to enforce the farmworker occupational safety and health protection regulations (FPR), 40 CFR Section 170. The "illegal acts" section of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. § 136j, lists specific circumstances in which the Agency has enforcement jurisdiction. The problem with the section is that it does not make it a violation to fail to comply "with any regulation lawfully promulgated by the Administrator," as in many other statutes. Exposure to pesticides is not one of the listed circumstances. Therefore, while the regulations place direct responsibility for protecting farmworkers on the pesticide applicator, as well as on the owners or lessees of the property where pesticide applications are taking place, the Agency lacks enforcement jurisdiction.

This does not mean that there have never been any federal or state cases brought for pesticides misapplied to farmworkers. EPA has taken action against applicators for "failing to follow label directions." For example, the Agency sued a Wisconsin pesticide applicator who aerielly sprayed a migrant day care center with the pesticide parathion. EPA also brought a civil penalty action in western Illinois where a pesticide applicator had "sprayed around" farmworkers in a tomato field, contrary to label directions and Part 170 of the Code of Federal Regulations. In this case, more than 50 workers became ill and the grower refused to give Migrant Legal/Health Services the name of the pesticide used so that the farmworkers could be treated properly. EPA cited the applicator for misapplication and, as terms of the settlement, the applicator surrendered its license and went out of business.

The EPA docket system does not include information on the individuals affected by misapplication of pesticides, and as a result we are unable to identify whether or not cases brought over the last eight years have involved farmworkers. However, a polling of the EPA Regional Offices has been initiated to identify cases of misapplication of pesticides and contamination of farmworkers.

Where state agencies have the primary responsibility for enforcing pesticide misuse violations under FIFRA, the majority of cases involving pesticide exposure

would be contained in individual state enforcement dockets. We will provide this information to the Committee as it becomes available.

Q. 23b: How do mean and median penalties for violations of the farmworker protection regulations compare to other enforcement programs?

A. 23b: FIFRA has the lowest penalty range of any of the environmental statute: Most of the civil penalties for violation of federal environmental statutes are \$25,000 per day per violation, while the maximum FIFRA civil penalty is only \$5,000. As a result, both mean and median FIFRA penalties as a whole, including those for violations of farmworker safety label regulations, are significantly lower than those of other enforcement programs. As noted above, the Agency does not keep separate records of penalties for farmworker violations and cannot, therefore, specifically quantify its response in that regard.

In addition to the low level of monetary fines statutorily available to the Agency, FIFRA also requires EPA to perform an analysis of the respondent's ability to pay -- regardless of the environmental harm or endangerment to health caused by the violative act -- and to reduce the penalty sought accordingly. Such reductions are frequently made because many pesticide applicators are either individuals or very small operations without the financial resources common to those regulated under other environmental statutes.

In sum, FIFRA penalties do not necessarily reflect the seriousness of the violation at issue, including violation of the farmworker protection regulations, and are out of step with the realities of the potential for harm from pesticides. The low statutory penalties under FIFRA limit the Agency's ability to deter dangerous actions involving pesticides.

Q. 24: Many organizations have charged that EPA lacks credibility on environmental equity issues because of the segregation of the Agency workforce. In particular, there is a lack of minority professionals in decision-making positions in the substantive (as opposed to the administrative) parts of the Agency. Over the last five years, what proportion of the professional workforce has been comprised of minorities? (Please provide relevant official EEOC information as well as internal EPA personnel statistics, and explain any differences. Please distinguish managerial positions linked to the substantive goals of the Agency from positions linked to the administrative, personnel, or support functions.)

A. 24: The Agency workforce is not segregated along racial or ethnic lines. Such segregation is illegal and will not be tolerated at EPA. Charges by any organization or individual that the Agency workforce is segregated are demonstrably incorrect.

The Agency is underrepresented for certain minority groups in certain occupational categories when compared to the civilian labor force according to data provided by the Equal Employment Opportunity Commission. Over the last five years, the professional minority workforce has increased from 12.9% in 1987 to 16.1% in 1992. At the end of FY 92, the only minority group underrepresented in professional positions when compared to the civilian labor force data was American Indians. Attached is a chart broken down by specific minority groups and sex of the professional workforce for fiscal years 1987 through 1992 (Enclosure 9). Included in the chart is the civilian labor force data for the professional occupational category. No administrative, personnel, or support functions are included in any of the data provided in this response.

We have defined minority professionals in decision-making positions in the substantive parts of the Agency as professional employees in grades 13 through 15 and SES positions. The second attachment broken down by grade levels and specific minority groups shows that the Agency has 367 minorities in these grade levels or 10.8% of the professionals in decision-making positions as of May 1, 1993.

Also attached is data from the Equal Employment Opportunity Commission's "Annual Report on the Employment of Minorities, Women & People with Disabilities in the Federal Government" for the fiscal year ending 1990, the latest report issued (Enclosure 10). These data show the number, percent and rank of professional employees for females and each minority group for 58 federal agencies including EPA. The data also show the representation in SES positions for men, women, and each minority group for 30 agencies including EPA. As of September 30, 1990, 15.6% of the Agency's professionals were minorities including 4.0% of the SES

professionals. The data for all professionals broken down by specific minority group and sex and compared to the civilian labor force is included for the years 1982 through 1990. A similar chart for white collar employees further broken down by grade levels is also provided for the years 1987 through 1990. This chart shows that at the end of FY 90, 24.9% of the Agency's white collar workforce were minority. Any differences in data supplied by the Agency and the Commission are small and the result of the data the computer is keying on and the dates the reports are run.

Q. 25: How many racial discrimination complaints have been filed with headquarters and with regional offices, EPA laboratories and other Agency facilities; by year, for the past 10 years? (Please indicate the disposition of these cases.)

A. 25: Racial Discrimination Complaints Filed for the Past 10 Years:

<u>Fiscal Year</u>	<u>No. Filed</u>	<u>Disposition</u>
83	25	3 settled 5 final agency decisions (no discrimination found) 17 closed *
84	18	4 settled 2 final agency decisions (no discrimination found) 12 closed *
85	19	8 settled 9 final agency decisions (8 no discrimination; 1 discrimination found) 2 closed *
86	34	16 settled 9 final agency decisions (no discrimination found) 1 withdrawn 1 rejected 27 closed *
87	40	6 settled 6 final agency decisions (no discrimination found)

<u>Fiscal Year</u>	<u>No. Filed</u>	<u>Disposition</u>
		8 rejected 3 withdrawn 17 closed*
88	37	11 settled 5 final agency decisions (no discrimination found) 6 withdrawn 9 rejected 6 closed*
89	34	14 settled 4 final agency decisions (no discrimination found) 4 withdrawn 1 canceled 1 pending hearing 20 closed*
90	43	9 settled 4 final agency decisions (no discrimination found) 12 withdrawn 5 canceled 3 rejected 6 pending hearing 1 pending final agency decision 3 closed*
91	53	5 settled 12 final agency decisions (no discrimination found) 5 withdrawn

<u>Fiscal Year</u>	<u>No. Filed</u>	<u>Disposition</u>
		10 canceled 7 rejected 7 pending investi- gation 7 pending hearing
92	57	6 settled 2 final agency decisions (no discrimination found) 2 canceled 11 rejected 3 pending acceptance/ rejection 19 pending investi- gation 10 pending hearing 4 pending final agency decision
93	33**	1 settled 2 rejected 8 pending acceptance/ rejection 22 pending investi- gation

* Closed administratively (rejections, cancellations, withdrawals, etc.) These closures do not include any findings of discrimination.

** As of 5/20/93



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF CONGRESSIONAL
AND LEGISLATIVE AFFAIRS

August 24, 1993

Honorable Al McCandless
Committee on Government Operations
United States House of Representatives
Washington, D.C. 20515-6143

Dear Representative McCandless:

Enclosed you will find the U.S. Environmental Protection Agency's responses to your questions from the May 6, 1993, hearing on Cabinet status legislation for the U.S. Environmental Protection Agency.

If we can provide further assistance, please call me.

Sincerely yours,

A handwritten signature in cursive script that reads "Lynne M. Ross".

Lynne M. Ross
Director
Congressional Liaison Division

Enclosure

**U.S. ENVIRONMENTAL PROTECTION AGENCY'S RESPONSES
TO REPRESENTATIVE MCCANDLESS' QUESTIONS**

Q. 1a: In 1990, EPA engaged in a joint emission study with Amoco at the company's Yorktown plant. The study showed that existing anti-emission regulations failed to control the plant's major emission sources. At the same time, however, these same regulations required millions of dollars to be spent on equipment that controlled very minor forms of output.

Based, in part, on the Yorktown study, it has been suggested that we scratch the current "specific fix" approach to pollution control and instead establish maximum overall emission standards. These standards would permit source emitters to design and implement their own programs to meet overall emission levels. What are your thoughts on the cumulative emissions approach, and would you support statutory changes to permit its implementation?

A. 1a: The "cumulative emissions" approach referred to in question 1a addresses the issue of site-specific, facility-wide approaches to environmental management that was a focus of the joint EPA/Amoco Yorktown project. Suggestive as the project's findings are, caution must be exercised in interpreting their significance for federal environmental policy. Additional work is necessary to test and validate the study's conclusions at other facilities and in other industries.

Based in part on the results of that project, EPA supports taking steps to further validate the Yorktown results and to advance the techniques of site-specific risk assessment. However, EPA does not support making statutory changes that would make site-specific approaches broadly available to sources at this time. The Yorktown study results, and the current state of site-specific risk assessment methodologies, make it inappropriate to take such a big step so quickly. However, EPA does support development of a joint EPA/industry program of demonstration projects to extend what we learned from Yorktown and to improve the usefulness of site-specific environmental management approaches.

Among the conclusions of the Yorktown study was that the facility could meet environmental quality targets more cost-effectively than currently is possible under existing statutes and regulations. While EPA and Amoco may have some disagreement regarding the extent of potential cost savings, clearly such savings would be possible if sources could approach pollution prevention and control from a site-specific, facility-wide standpoint to a greater extent.

However, a site-specific, facility-wide approach often is not possible under EPA's present statutory authorities. EPA has been charged by Congress with implementing statutes that, in many cases, are relatively prescriptive and which do not allow sources to trade-off compliance among statutory mandates, even if the result of such cross-media trade-offs might be equal (or even greater) pollution reduction at a lower cost.

It took two and one-half years and \$2.3 million to complete the Yorktown project. Despite the resources devoted by both EPA and Amoco, the project did not produce a site-specific picture of health and environmental risks that could be used to establish an environmental management program for the facility. Moreover, in the end EPA and Amoco had to "agree to disagree" about the adequacy and interpretation of certain critical data. In EPA's judgment, these limitations of the Yorktown project illustrate why site-specific approaches to environmental regulation are difficult at the present time.

Despite the limitations in implementing site-specific approaches now, EPA currently is examining options for future activities that would advance many of the Yorktown project's recommendations. This effort is being coordinated by the Agency's multi-media Petroleum Refinery Cluster. These options include undertaking additional site-specific demonstration projects at other facilities.

The objectives of site-specific follow-up projects would be to: (1) test or extend the results of the Yorktown project; (2) advance EPA's and industry's capability to evaluate the health and ecological risks associated with entire facilities; (3) spur the development of broadly-applicable innovative technologies, especially those technologies that promote pollution prevention; and (4) produce insights into ways that environmental requirements can better promote economic growth and competitiveness. The larger policy goal would be to improve our capability to develop risk-based, site-specific, facility-wide environmental management approaches as an eventual alternative or supplement to generic, "one size fits all" regulations.

This is the germ of an idea being worked on by the Refinery Cluster; clearly, much work needs to be done to think through how a program of site-specific demonstration projects could be structured and funded. Such a program, for example, would require investments of funding and staff time by both EPA and industry.

Q. 1b: What are the possible downsides of this approach [treating water resources as part of an integrated whole to be managed as a unified watershed unit rather than the current "specific fix" approach], and would EPA be willing to support such a test project to demonstrate its workability?

A. 1b: EPA is actively promoting the watershed protection approach as a means of managing water resources and is undertaking an effort to test the approach in all EPA Regions. In addition, EPA is currently examining the enhanced use of watershed and site-specific considerations in setting and establishing water quality standards. We are also working to develop ecological risk assessment case studies that demonstrate the evaluation of multiple stressors (chemical, physical, and biological) impacting individual watersheds and the selection of regulatory and non-regulatory tools to improve water quality and ecological protection within the watershed.

Early watershed planning demonstration projects of this type are already underway in Santa Margarita and San Luis Rey River watersheds in coastal California. EPA, working in partnership with state, tribal and local entities, is providing financial, technical, and regulatory assistance in these projects. In San Luis Rey (a coastal river supporting valuable aquatic resources), EPA is providing funding to the state and county for a watershed/river corridor planning project and will pursue additional funding for implementation activities. EPA is also continuing to develop additional wetlands protection activities and will continue to participate in Clean Water Act Section 404 activities.

In the Santa Margarita watershed project, EPA is augmenting Riverside and San Diego Counties' efforts to develop comprehensive watershed management plans. As a part of the watershed protection approach, EPA is evaluating the functions of the aquatic resources, the relationship between surface water quality and the quality of ground water used downstream as a source of drinking water, and the potential impacts of increased stream channelization. In addition, EPA plans to provide funding to assist the development of a TMDL assimilative capacity study. EPA is currently providing wetlands grant funding to assist the State in flood control and engineering criteria design. Additional EPA funding has been provided for nonpoint source controls and EPA is participating in local watershed planning efforts to ensure that valuable water resources are protected and water quality problems are addressed.

With regard to efforts to set water quality standards to reflect local conditions, EPA is examining this as an opportunity to promote the watershed approach. The agency, however, has concerns about "backsliding" from current technology-based controls and requirements. The watershed approach is a means to get at stressors

and remaining water resource problems that have not been addressed -- it does not imply any weakening of current baseline programs or water quality standards.

Q.2: Among the challenges facing EPA is the need to balance risk hazards against solid financial management. As Congress prepares to address this issue during reauthorization of the Clean Water Act, the Endangered Species Act, Superfund and RCRA, what approach will EPA be proposing to balance risk versus cost?

A. 2: The question raises two important issues: (1) As the financial resources for environmental protection become more scarce and stretched, how would EPA manage its limited resources to assure the most significant risks receive priority attention?, and (2) How would EPA balance risk (reduction) versus cost (of compliance)?

Financial Management versus Risk Reduction: Maintaining the biological, physical and chemical integrity of the Nation's water, protecting endangered or threatened species, cleaning up hazardous waste sites and minimizing and/or treating solid waste along with meeting provisions of other environmental statutes and setting priorities in terms of risk hazard is an enormous challenge to EPA. We have to use our limited financial resources in the most efficient way. To implement this principle, we are actively seeking input from experts and customers to determine our priorities. For example, we are taking into consideration recommendations of EPA's Science Advisory Board on determining and managing risk-based priorities. Similarly, we have sought input from states and regions in determining priorities for our Water Quality Standards program as well as the effluent guidelines program. EPA relies heavily on scientific information and analysis to determine level and magnitude of risk. EPA also relies on data provided by the regulated communities to determine efficient and equitable regulatory requirements. We are working to improve the quality and usefulness of the data from both of these sources.

There are also several Agency initiatives that should help us to meet this challenge by improving operations to reduce inefficiencies and improve the timeliness and quality of our efforts. First, we are promoting pollution prevention and impact avoidance as an important approach in all our regulatory and non-regulatory activities. We feel this will be more cost-effective than installing treatment at the end-of-pipe or restoring degraded areas to mitigate environmental impacts. Second, we are looking at an integrated rulemaking approach to implement provisions of more than one statute in a single regulation. For example, we are developing an integrated rule for the pulp and paper industry that will include requirements under both the Clean Water Act and the Clean Air Act. This allows EPA to utilize its resources more efficiently and it will allow industry to make more efficient decisions on their long term capital investments. Third, we are carefully evaluating multi-media impacts of all our regulations to assure that reducing pollution in one media does not increase pollution

in other media resulting in additional regulations and cost. Fourth, we are using a cluster approach to coordinate all regulatory and/or non-regulatory activities effecting a particular industry. This will minimize overlapping and/or conflicting regulatory requirements for the same industry that is affected by regulations under several statutes.

These initiatives should help EPA to optimize its financial resources and allow it to achieve risk reduction in an efficient way. As Congress moves forward to reauthorize various environmental statutes, Congress should allow enough flexibility in the statutes to allow EPA to set national priorities by applying a risk management approach.

Risk Reduction versus Cost of Compliance: Under the provisions in the current Clean Water Act, EPA has the ability, under certain circumstances, to consider risk reduction against cost of compliance. For example, in developing the National effluent guideline standards for a particular industry, the statute requires EPA to determine that its regulatory requirements are economically achievable and allows EPA the discretion to regulate only pollutants of concern, for example, those with significant loadings. If an option is not economically achievable, then EPA would have to consider less stringent regulations regardless of risk implications. EPA also has the discretion in selecting industries to regulate and to choose those that present significant risk to human health and the environment. Similarly, there are provisions for modifying water quality uses and granting variances to meet water quality standards if a discharger is not able to meet current requirements. In most cases, these types of risk/cost considerations are appropriately weighed in the risk management aspects of CWA programs. However, the CWA does not explicitly allow EPA to balance benefits from risk reduction against the cost of compliance in setting standards. As a result, setting uniform technology-based standards that are "economically achievable" does not take into account the existing water quality and designated use of the receiving waterbody and thus may require the expenditure of pollution control resources in areas with small environmental gains.

Q. 3: In last year's Energy and Water appropriations, EPA was directed to conduct a multi-media risk assessment and report back to Congress so that we may consider appropriate measures to reduce the public's exposure to radon. The Science Advisory Board will also make its own independent recommendation to Congress. What is your view of the cost-effectiveness of imposing a stringent national standards on drinking water, as opposed to directing resources at regions with known high levels of radon?

A. 3: EPA is scheduled to promulgate new National Primary Drinking Water Regulations for radon and other radionuclides in October, 1993. The Safe Drinking Water Act requires that EPA promulgate national drinking water regulations for any contaminant that is known or anticipated to occur in drinking water. Because radon occurrence in drinking water is known to be widespread and highly variable across the U.S., EPA believes that a national regulation is justified. However, EPA is considering options to reduce monitoring frequency for systems that find low levels of radon during the first year of testing. Radon notwithstanding, EPA believes the concept of geographically based regulatory responses has merit (for other contaminants), and should be discussed as part of SDWA reauthorization.

Q. 4: In the debate over EPA's proposed national drinking water standards, experts have argued that discussion of overall reduction in "exposure" is more accurate and important than the reduction of overall "risk." A number of state and federal agencies have indicated their belief that the proposed rule is far too stringent. Are you willing to consider alternate means for achieving a reduction in overall exposure to hazardous substances such as radon?

A. 4: The question indicates some confusion about how risk is calculated. In its simplest terms: $RISK = Exposure(x)toxicity$. If exposures are zero then risk is zero. Perhaps upcoming debate on the Safe Drinking Water Act reauthorization could consider a "net risk reduction" approach to regulating contaminants where people are exposed to the same contaminant and from alternative sources such as drinking water, soil gas, air emissions generated during showering or bathing, etc. EPA would require additional legal and regulatory flexibility to adjust drinking water standards to reflect different conditions where, for instance, radon in drinking water levels are high (i.e. 100% of radon exposure comes from drinking water). In promulgating the radon standards, and without better baseline data, EPA assumes that 20% of individual exposures to radon come from drinking water. Under the Safe Drinking Water Act (SDWA), EPA is charged with issuing National Primary Drinking Water Regulations for contaminants that pose an actual or potential public health threat. As a probable carcinogen, with widespread occurrence, radon easily satisfies that criteria. The estimated average individual lifetime risk of EPA's drinking water standards for cancer-causing substances generally has fallen within a range of approximately one in ten thousand to one in one million. The proposed Maximum Contaminant Level (MCL) of 300 pCi/l corresponds to a risk level of two in ten thousand -- which is at the least stringent end of this risk range. EPA is still adjusting its risk assessment to reflect uncertainty as was recommended by the Science Advisory Board. The final drinking water standard for radon is still under consideration by EPA.

It is true, as the question implies, that reducing overall exposure to radon, no matter its source, would provide significant public health benefits. In addition to the risk of radon in drinking water, we recognize that there is additional risk from radon seeping into homes through the soil. EPA encourages all people to voluntarily test the lowest living level of their homes for radon gas and to mitigate if levels above 4 pCi/l are found. Current technology allows for the reduction of radon significantly if the concentration is 4 pCi/l or higher. We hope to continue making our radon mitigation program more effective; however, we have no authority to require either testing for radon or mitigation of private homes having high radon levels.

Q. 5: Many of the nationwide standards necessary for responsible environmental

protection in the greener parts of our nation have little applicability to the arid desert Southwest. Given this reality, a number of groups have proposed the creation of a separate EPA region to deal with the special needs of the Southwest desert region. Do you support the creation of a desert region, and if so, how do we go about creating one? Would the designation of a desert region take congressional action, or is it within the Agency's authority to direct that change on its own?

A. 5: The Executive Branch has the authority to establish regional offices without Congressional action. EPA has the authority to reorganize itself within the framework of OMB Circular No. A-105, which prescribes a Federal standard of 10 regional offices. EPA has operated with these ten standard regions since its inception and sees many benefits in Circular A-105's conformance with state, local, and federal boundaries. It is cost-effective, advantageous to EPA's interaction with other governmental entities, and provides a diversity which gives balance to the activities of individual regional offices.

Q. 6: By November of this year, California must submit to EPA an Enhanced Inspection and Maintenance (I/M) program which includes enabling legislation and meets all federal requirements. The I/M Review Committee has made recommendations to comply with these guidelines, and among their suggestions is a proposed Gold Shield repair program.

Under this repair program, the Gold Shield Service Stations would be privately owned, however, their mechanics would have to meet certain standards set by the State of California. The stations would receive more scrutiny and regulation than a regular service station, thus increasing the repair industry's accountability. Moreover, the Gold Shield Stations would have the authority to re-test and certify vehicles once they have been repaired. Proponents claim that this proposal responds to existing emissions testing program problems in addition to addressing those difficulties consumers may face in complying with the new I/M standards. Despite its benefits, it appears to many that EPA is discounting the Gold Shield program.

What is EPA's position on the Gold Shield approach, and what specific concerns, if any, does the Agency hold on its implementation?

A. 6: On January 26, 1993, EPA forwarded detailed comments on the Gold Shield proposal to R.J. Sommerville, Chairman of the California I/M Review Committee, and subsequently to Senator Quentin Kopp, Chairman of the California Senate Transportation Committee.

The proposed Gold Shield program is a test-and-repair program because it allows motorists to get an initial test and retest at a station that performs repairs (with an after retest quality control check at a test-only station but with no requirement for additional repairs if that test is failed) and it also allows motorists that fail an initial test at a test-only station to get retested in a station that performs repairs. The Clean Air Act requires that enhanced I/M programs be operated on a *centralized* basis, unless that state can demonstrate that a decentralized program would be equally effective. Under the I/M rules EPA promulgated in November of 1992, EPA established that a program that separated the testing function from the repair function in a decentralized program would be considered equivalent. It also established the default assumption that a program that does not separate the testing and repair functions gets significantly less emission reduction credit than an otherwise identical test-only program (*i.e.*, one that separates the testing and repair functions). Given this, the Gold Shield program achieves less than the minimum emission reductions that must be demonstrated for EPA to approve the State Implementation Plan for the enhanced I/M program. The Act and EPA's rules leaves open the option of a demonstration of greater effectiveness, and the rule lays out specific criteria for doing so. However, the California I/M Review Committee's work clearly shows that the Smog Check program is achieving no more than what EPA would predict.

Nevertheless, EPA's letter to the State laid out options that could be pursued to implement a pilot Gold Shield program and offered to work with the State to develop an approvable program. EPA is concerned that the proposed program does not assure that the required emission reductions needed to meet the minimum performance standard will be achieved.



ASSOCIATION OF RESEARCH LIBRARIES

Statement of the Association of Research Libraries
to the
Subcommittee on Legislation and National Security
Subcommittee on Environment, Energy and Natural Resources
for the Hearing Record of May 6, 1993
Regarding the Elevation of the Environmental Protection Agency to a
Cabinet Department

The Association of Research Libraries is a not-for-profit organization representing 119 public and private research libraries in North America. The membership of ARL is actively involved in the provision of information resources -- including those that are unique, to the research and education community. ARL programs and services promote equitable access to, and effective use of knowledge in support of teaching, research, scholarship, and community service.

Our ability to address the significant environmental problems that we face depends upon improved access to information resources. Tackling these problems will require new and innovative commitments to programs focused on public access to information. Improving the means by which users may access and manipulate environmental data and information will be key to the success of programs seeking to resolve these environmental challenges. We commend the work of these Subcommittees in recognizing and promoting public access to and improved management of federal information resources as these are integrally linked to our ability to address these pressing problems.

This statement will focus on three public access issues:

- the selected activities of research libraries that reflect the changing information needs of users, the commitment to public access programs, and the relationship to the public access provisions proposed in the draft bill to elevate the Environmental Protection Agency (EPA) to a cabinet department;
- the importance of section 114, Public Access to and Use of Information Resources, of the draft elevation bill to education and research communities and the public; and
- a review of the costs associated with enhancing effective access to government information resources.

There are a host of activities underway via libraries and other providers which are defining and redirecting how citizens obtain public information. Research libraries have taken a leadership role in stimulating and promoting these activities to advance public access to information resources with a particular focus on federal information resources. Many of these initiatives are undertaken to better understand how to maintain *while improving* existing public access programs during a time when we are witnessing fundamental changes in how users communicate, exchange, and use information.

The Changing Information Infrastructure

In the years ahead, we will communicate and provide access to information in a variety of formats -- digital, voice, graphic, and employ multi-media technologies via a ubiquitous and seamless web of interrelated networks. Public access programs and policies proposed and implemented today will be central to this emerging information infrastructure. It is estimated that there are currently over 20 million users of the Internet, a non-commercial network of networks and the number of users expands each month. Communities of users have become dependent upon network access to communicate, conduct business, and to learn of available information resources. And the use of these networks is expanding access to information by providing users with multiple access points.

Libraries, as one point of access for the public, rely upon networks and other information technologies to identify and share resources. To many ARL libraries, the future is seen as a virtual library, an extension of current services, or a library without walls where users will have access to resources without regard for physical or geographic location. Elements of this virtual library include electronic document delivery, electronic journals, full text database access, network access, and the like. These elements identify the means and format in which users increasingly access their information and the strategic directions that research libraries must go.

The speed with which research libraries are incorporating aspects of the virtual library into their operations can be attributed to numerous factors -- new opportunities and services resulting from computer and telecommunications investments and programs, changing user information needs and requirements, increasing reliance upon electronic resources, shrinking budgets, and more. Federal agencies, including EPA, face many of these same challenges and have similar opportunities in the building of this information infrastructure. The public access provisions in section 114 of the draft bill will allow EPA to move further into this emerging arena.

One relatively new technology that is illustrative of this sea change is geographic information systems or GIS. GIS provides the user the ability to layer or analyze information by theme or source, and there is a strikingly new and enhanced ability to visually understand and comprehend information -- not data. Utilization of GIS allows greater understanding of the nature of problems and is also critical to the development of options or solutions. Utilization of GIS is not limited to particular communities or disciplines. Uses include environmental management, education with a particular focus on K-12, land use and transportation planning, social services, redistricting, economic development issues, and more.

Numerous federal agencies rely upon GIS to support on-going mission activities and to better manage information resources. For example, EPA uses GIS in managing, analyzing, and visualizing monitoring data at many Superfund sites. New methods for examining and characterizing populations near these and other regulated sites are being developed. Using newly available 1990 Census data, EPA will be able to examine the age, race and ethnicity, income and poverty status of nearby residents. These tools are essential to responding to expanded environmental justice mandates.

Such capabilities, and the underlying data which support them, offer unprecedented potential for expanding public involvement in environmental issues. This technology, combined with increased public access to EPA's own data, will allow citizens, researchers and students to better understand the range of environmental issues, potential risks, and trade-offs in decisions, and empower the public in policy debates.

In a recent speech, Congressman Brown of California noted that we are just beginning to understand the promise of GIS and that we are not utilizing GIS to its fullest potential. For EPA and other agencies, harnessing the power of GIS will be an important future activity.

The public requires similar information tools and analyses; thus, ARL launched the ARL GIS Literacy Project. The project seeks to introduce, educate, and equip librarians with GIS skills and stimulate the provision of GIS services in libraries. In less than one year, 66 U.S. libraries are participating in the partnership program with a GIS vendor, numerous data providers, members of the academic community, and government agencies. The project promotes free public access to spatially referenced data such as EPA's and the sharing of information resources nationally and internationally. The project builds on the existing public access programs in the participating libraries such as the Federal Depository Library Program.

The GIS project activities at the University of Washington Library illustrate how users are gaining public access to needed resources and are also empowered in new ways by these tools. The Library regularly employs GIS in answering demographic and economic questions based on U.S. Census and related data. In addition, library staff introduced GIS to the King County Library and the Seattle Public Library. A joint project to share datafiles between these libraries, the County, and the City is under development. This would be an extremely cost-effective measure while enhancing public access to government information. One goal of this proposal is to develop a mechanism for public review of proposed community plans (zoning changes) in a GIS context versus in a paper format with static maps. Presenting the proposal in a GIS would provide citizens with a clear understanding of what could result from the proposed changes and would give the public the same tools and information as the planners. Our project has shown that citizens can use government-created data effectively with GIS tools in libraries.

Public Access Provisions

ARL fully supports Section 114 because these provisions set forth principles and goals that will guide the Agency's future program development. It is also important to note that the provisions do not impose unrealistic time or budgetary demands on the Agency regarding implementation. To its credit, EPA has already instituted many programs that reflect the intent of the public access provisions. Librarians view EPA as a leader in the federal community in promoting public access to federal information.

Over time, EPA programs based on these provisions could be instrumental in enhancing the ability of the public to make informed decisions on issues that effect their daily lives. They could also spark new research and education endeavors on an array of issues. And finally, these provisions could also provide additional connectivity between a number of ongoing EPA program areas.

Four provisions in this section merit particular attention and support. First, the development of an Inventory and Locator of Information Services, would greatly assist federal agency personnel and members of the public in identifying and accessing information resources. This would also be an important tool to assist the Agency in managing current and future information resources. EPA has already initiated programs that are central to this effort.

Second, there are several important themes related to the provisions, Integration and Availability of Services. These provisions would encourage the Agency to better coordinate its existing resources while developing standard formats relating to data collection, retrieval, storage, retention, and dissemination. This is a life cycle approach to information resources management. This concept calls for the development and use of consistent standards from the creation of a datafile to the dissemination of that datafile to ensure conformity of structure and access.

The benefits to the public of implementing this approach are enormous. The goal of developing common standards that could be employed by government agencies at all levels and by public and other private entities would mean that users could identify and utilize data in a common format regardless of discipline or interest.

The development of standards becomes particularly important to the member of the public dependent upon networks for access to information. In this case, success will be determined by the ability of the user to easily make use of a host of resources located in a variety of settings. Standard formats and protocols will also be needed for those users who may lack the needed skills to effectively utilize some of this information.

Implementation of these provisions could result in costs savings for the Agency due to additional internal and external coordination, development of better information tools and credible data, and more effective access to the information by EPA staff, other federal agencies, and the public. EPA staff recognize the value of these provisions in meeting Agency goals.

Another important provision is the request for the development of a strategic plan on the use of computer telecommunications and related means to provide public access to EPA information. This plan would provide an important focal point for EPA to evaluate its current efforts and plan for the future. However, the development of the plan should not delay EPA from moving forward on the Locator system. The development of pilots would also provide the Agency with needed feedback on how users utilize EPA information and demonstrate possible new applications or approaches to issues.

Cost Issues Relating to the Public Access Provisions

The fourth provision relates to user fees and is considered in the broader context of costs of the access to government information. This provision calls for the dissemination of information products and services to be priced no higher than the marginal cost of dissemination and permits the waiving or reducing of fees. This provision is worthy of support, is consistent with current EPA practice, and with proposed Office of Management

and Budget (OMB) guidance as defined in the draft revision to Circular A-130, Management of Federal Information Resources.

Pricing government information products and services above marginal costs clearly places barriers in the way of the public requiring government information. In the draft revision, OMB recognizes this potential impediment to access and notes that, "given that the government has already incurred the costs of creating and processing the information for governmental purposes, the economic benefit to society is maximized when government information is publicly disseminated at cost of dissemination."

Unfortunately, this is not common practice. Increasingly there is movement on the state and local levels for cost recovery well beyond the cost of dissemination. Many states such as Colorado and Minnesota have enacted laws that permits agencies to recoup fees that may include costs of database creation and maintenance. This policy effectively limits how the public can approach a problem by limiting access to only selected, affordable files.

In conclusion, by including the public access provisions in the draft bill, members of the Subcommittees wisely recognize that the costs of implementing the public access provisions are modest and that the social and economic benefits that will accrue over the long-term far outweigh such costs. Commitments by agencies to the life cycle approach to information resources management means that overall, the costs to the agency are not enormous. The provisions provide EPA with the additional tools to better manage existing resources while tackling complex and cross-cutting issues.



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TESTIMONY
OF
THE COMMITTEE FOR THE NATIONAL INSTITUTE FOR THE ENVIRONMENT
BEFORE
THE SUBCOMMITTEE ON LEGISLATION & NATIONAL SECURITY
THE SUBCOMMITTEE ON ENVIRONMENT, ENERGY & NATURAL RESOURCES
THE COMMITTEE ON GOVERNMENT OPERATIONS

THE U.S. HOUSE OF REPRESENTATIVES

MAY 6, 1993

The Committee for the National Institute for the Environment (CNIE) thanks the Chairman and the members of the committee for the opportunity to submit written testimony. The Committee for the NIE is a national, non-profit organization, consisting of some 5,000 scientists, educators and other citizens, and scores of organizations from academia, government, business, environmental groups and the general public. After three years of effort involving numerous meetings, wide and diverse consultation, and extensive reviews, we are proposing the creation of the National Institute for the Environment (NIE) to address our serious national and global environmental challenges. The central mission of the proposed NIE is *to improve the scientific basis for making decisions on environmental issues.*

Department of the Environment

It is beyond dispute that the United States needs a Cabinet-level Department of the Environment. The environment touches all aspects of our lives and is a major force in our economy. We believe that it is time that the United States join the rest of the industrialized world and create a department for the environment, administered by a Cabinet-level Secretary.

A Department of the Environment would be a leading voice for protection of the environment, both at home and abroad. It would magnify the prestige and influence of the present Environmental Protection Agency, by elevating it to be equal in status to other cabinet-level departments. Above all, we hope that it would also increase the quality and effectiveness of this agency, especially where its environmental research and

development programs are concerned.

We believe that a department whose mission is environmental protection must have a strong scientific component. As the EPA Science Advisory Board (SAB) stated in a 1988 report, "Research is the most fundamental of the tools that promote environmental quality". Yet the Federal effort in environmental research has been criticized by numerous reports in the past five years, including those of the SAB and the Carnegie Commission on Science, Technology and Government.

Among the criticisms are that the federal research enterprise is "operating within organizations and under a set of priorities that are directed more toward the problems of the past than the problems of today and tomorrow" (Carnegie Commission, 1992). It has also been noted that there is an "apparent imbalance between EPA's short-term, program-related research and its longer-term, basic research" (SAB, 1988). Further studies pointed out that EPA science is of uneven quality and the agency and its policies are perceived as lacking a strong scientific foundation (EPA expert panel on science at the EPA, 1992).

Lack of Scientific Information

There are three principal reasons for the lack of scientific information on critical problems. First, the federal government's environmental research and development effort is spread over a wide range of agencies, each with its own institutional mission and legislative mandate, with no single agency having an overview. Second, there is no coherent or integrated system for assessing, interpreting and effectively communicating knowledge about the environment to those that need it, including the public. And third,

no agency of the federal government is charged with nurturing the education and training of environmental scientists, engineers, and other professionals and ensuring the environmental literacy of our citizens.

This splintering of the national effort on environmental research and development prevents the broad analysis, understanding, and certainly the resolution of most environmental problems, which often transcend disciplines and cut across agency boundaries. Additionally, the absence of long-term commitment to environmental research, and the lack of integration and strategic planning by the agencies makes it difficult for decisionmakers to anticipate problems before they become full-blown environmental and economic crises.

Science at EPA

In the twenty years since the founding of the Environmental Protection Agency (EPA), EPA's Office of Research and Development (ORD) has played an immensely valuable role in its capacity as the in-house office responsible for programs of scientific research and technical support for the agency. During the 1970s, when the newly created EPA was expanding its role as the nation's principal regulatory agency on the environment, there was not a wealth of information available to the agency to provide it with a rigorous scientific basis for many of its promulgated regulations and standards on air and water quality, pesticides and toxic substances, solid waste disposal, and related issues.

Nevertheless, to its credit, the EPA under constant legislative directives and sometimes strict statutory deadlines, achieved many, if not most, of its regulatory

objectives. In this context, *ORD played a crucial role* in providing the program offices of EPA with the type of technical assistance and scientific advice needed to carry out the agency's overall regulatory mission. While it may be easy in retrospect to criticize the agency for basing its decisions on incomplete scientific knowledge and limited data, EPA's ORD and the program offices made a valiant effort, in spite of these shortcomings, to address the issues that the Congress and the public demanded -- the cleanup of the nation's air, water and soil and the protection of human health and the environment.

The past decade has seen a significant shift in concern about environmental issues. Today we face both national and global environmental challenges that were only dimly seen in the early 1970s -- global climate change, deforestation, desertification, and biodiversity losses, resource exhaustion and scarcity, stratospheric ozone depletion, and other environmental and geopolitical problems, many related to rapid population growth.

In view of these dramatically changing environmental priorities, it is important to examine whether the nation is adequately equipped to meet present and future needs. Is the federal government ready to take on the task? More specifically, is the ORD in a position to provide the necessary leadership to grapple with the environmental problems of today and tomorrow? More importantly, does EPA have the scientific resources, knowledge, autonomy, and budgetary authority to carry out such a mission?

During the past five years, EPA's concern with its mission and ability to be effective, was expressed in several reports. In September 1988, at the request of EPA Administrator, Lee Thomas, the EPA Science Advisory Board (SAB) released a

comprehensive report on the state of environmental research at the agency. Their overall conclusion was that while the ORD had functioned well in its capacity to meet the short-term needs of EPA's regulatory programs, it fell far short of its long-term research and development goals. To quote from that report:

As we move into the 1990s . . . our strategy for reducing environmental and health risks must evolve in response to changing circumstances. . . . Just as EPA has emphasized command-and-control approaches because of statutory requirements, its R & D program has emphasized short-term, program-related research that supports regulatory development. . . . EPA's R & D program has to be expanded and reoriented to include much more basic, long-term research not necessarily tied to the immediate regulatory needs of the EPA's program offices. (*Reducing Risks: Research Strategies for the 1990s*", USEPA, Sept. 1988; emphasis added.)

This initial report was followed two years later by another report requested by EPA Administrator William Reilly. The SAB-appointed committee, called the Relative Risk Reduction Strategies Committee agreed with most of the earlier criticism of the agency's lack of commitment to long-term strategic planning on critical environment issues and went further by pointing out specific areas of neglect:

[O]ver the past 20 years and especially over the past decade,
EPA has paid too little attention to natural ecosystems. The

Agency has considered the protection of public health to be its primary mission, and it has been less concerned about risks posed to ecosystems. . . EPA's response to human health risks as compared to ecological risks is inappropriate, because, in the real world, there is little distinction between the two. Over the long term, ecological degradation either directly or indirectly degrades human health and the economy. (*Reducing Risks: Setting Priorities and Strategies for Environmental Protection*", USEPA, Sept. 1990; emphasis added).

More recently, in March 1992, a distinguished four-member "Expert Panel on the Role of Science at EPA", presented their report to Administrator Reilly. Their overall findings does not paint a very encouraging picture of the scientific mission and direction at the EPA and included a less than a resounding endorsement of the quality of science and budgetary planning process at the agency. Among their many conclusions, a few are selected below to illustrate the thrust of their concerns:

- o "EPA does not have a coherent science agenda and operational plan to guide scientific efforts throughout the Agency and support its focus on relatively high-risk environmental problems."
- o "In many cases, appropriate science advice and information is not considered early or often enough in

the decisionmaking process."

- o "A number of outstanding externally recognized scientists work at EPA. However, the Agency lacks the critical mass of externally recognized scientists needed to make EPA science generally credible to the wider scientific community."
- o "EPA has not consistently enlisted the nation's best scientists to provide the research and technical information needed for decisionmaking."
("Safeguarding the Future: Credible Science, Credible Decisions", USEPA, March, 1992).

If these EPA-sponsored committee reports do not give us an upbeat sense of environmental research and development within the agency, a more disappointing situation awaits us when we view the federal government's environmental R & D effort as a whole. In December 1992, the Carnegie Commission on Science, Technology, and Government released an in-depth report on the state of environmental research and development in the United States among all federal agencies. They noted:

Unfortunately, the existing federal environmental R & D infrastructure was built for another time and a set of issues that no longer correspond to today's problems. . . Largely

because of its origins as a series of individual programs initiated in response to specific problems, much of our current R & D system is diffuse, reactive, and focused on short-range, end-of-pipe solutions.

... Today the federal environmental R & D system is a loose collection of laboratories and programs, most of which were established to respond to the problems and priorities of the past. While many of these problems remain today, we also face a new set of challenges, and responding to them, requires a more dynamic, interrelated organizational structure and more effective assessment and policymaking process. (*Environmental Research and Development: Strengthening the Federal Infrastructure*, Carnegie Commission, Dec. 1992; emphasis added).

Research Funding

Let us now look at EPA's R & D budget allocation and compare it to the federal government's environmental research and development funding for FY 1992. Depending upon how one defines environmental R & D and what program areas in each agency are included, between \$ 2.4 and \$ 5.0 billion were appropriated in FY 92 dispersed among all federal agencies and research institutions. The lower figures are CNIE's own estimates and include only research aimed at understanding the functioning

of the environment and human interactions. The higher figures were obtained from the Carnegie Commission's report mentioned earlier and include research on human health, clean-up technologies and Department of Defense research.

According to figures we recently received from ORD's Office of Science, Planning and Regulatory Evaluation, ORD's total budget figures, as delineated by specific research areas, were \$ 487.5 million and \$ 505.4 million for FY 92 and FY 93, respectively. However, as will be pointed out later, a significant portion of this budget is allocated to human health research and clean-up technologies. The American Association for the Advancement of Science (AAAS) estimated a budgetary allocation for FY 92 of \$ 347 million for environmental R & D (excluding human health) at the EPA ("*Federal Funding for Environmental R & D: A Special Report*", AAAS, Oct. 1992). Our analysis of EPA's FY 92 environmental R & D budget estimated that only about \$ 120 million could be classified as environmental R & D if one excluded human health and environmental clean-up research, which has traditionally been given higher priority at the agency ("*Federal Funding for Environmental Research*", *Environmental Science and Technology*, 26:1497-1502, 1992).

EPA's R & D programs are important, but are only a small part of a larger patchwork of environmental research programs carried out by other federal agencies. Regardless of which budget figures are employed to contrast EPA's environmental R & D effort with the rest of the federal agencies, it is by any measure a relatively minor allocation of resources in a nation-wide context. The EPA accounts for only 5% (\$ 120 million of a total of \$ 2.4 billion according to CNIE) to 10% of the total federal expenditures on environmental R & D (\$ 502 million of a total of \$ 5 billion according

to the Carnegie Commission). In FY 92, at least five federal agencies had yearly environmental R & D funding in excess of ORD's total budget (\$502 million). They were the National Aeronautics and Space Administration (\$ 826 million), Department of Energy (\$ 799 million), Department of Defense (\$ 577 million), Department of Interior (\$ 554 million), and the National Science Foundation (\$ 541 million). In addition, two other agency must be mentioned here that have substantial annual environmental R & D budgets: Department of Agriculture (\$ 403 million), and the National Oceanic and Atmospheric Administration (\$ 319 million) (All FY 92 budget figures mentioned above were derived from the Carnegie Commission report).

National Institute for the Environment

It is by now clear that the nation needs a fundamentally new federal infrastructure and paradigm for organizing environmental research, with timely and comprehensive assessment of environmental knowledge that is generated. There is a critical need for information transfer and exchange of environmental knowledge with all sectors in our society, and for a strong commitment to higher education and training in the environmental fields. The key to successful implementation of these four functions, is to bring them together in a single institutional framework, where they will be integrated and mutually reinforcing. This synthesis, we believe, will not happen either by simply marginally modifying research programs or by merely increasing the environmental R & D budget at the agencies.

The Committee for the NIE strongly believes that the long-range anticipatory science focus called for in many of the previously cited reports can best be accomplished

in an environmental science agency that is separated administratively from the environmental management and regulatory functions of EPA. We recommend the creation of the **National Institute for the Environment (NIE)** whose mission would be to *improve the scientific basis for making decisions on environmental issues.*

The NIE would support extramural funding of broadly focused forward-looking environmental research that would increase scientific understanding of environmental issues. It would complement the regulatory and management support research that should continue to be conducted in EPA's Office of Research and Development (ORD) and in other agencies with environmental management functions.

The NIE would embody a new approach to the science of the environment:

- o NIE research programs will be **problem-based, interdisciplinary, competitively peer-reviewed and extramural.** They will include the biological, physical and the social sciences, as well engineering and the humanities.
- o NIE research programs will be **inclusive, involving all sectors of society, anticipatory, and committed to providing long-term funding** for understanding priority issues.
- o NIE will be governed **with the advice and involvement of all sectors of society, including academia, business, government and non-government organizations.** It will **set priorities by a process of long-term strategic planning** and will ensure the full participation of all.
- o NIE will integrate its research programs with **comprehensive and regular assessments of environmental knowledge** and its implications. A direct

effort will be made to translate this information to decision makers.

- o NIE will be **insulated from regulatory and management responsibilities**, so that it can both carry out its mission free from political pressures and **be able to maintain its scientific independence and credibility**.
- o NIE will **establish a state-of-the-art system for exchange and retrieval of information**, with quality assurance of its statistical and environmental data banks. It will facilitate **wide access to information** and provide user-friendly communication.
- o NIE will actively **sponsor the education and training of a new generation of environmental scientists, engineers and other professionals**, to meet the needs of research, technology and management of environmental problems in the coming years.

The best, simplest, and most effective way to establish the National Institute of the Environment is to organize it as a **new independent agency**. A good alternative is to make it part of a **new Department of the Environment**, while keeping it separate from any regulatory functions and by providing mechanisms to ensure adequate linkages with other departments and agencies.

Our model of the NIE would include interdisciplinary, problem-focused environmental research organized around three themes - environmental resources, environmental systems and environmental sustainability.

- o A Directorate of Environmental Resources would sponsor inventory, monitoring, and characterization of our biological, physical, and cultural natural resources.

- o A Directorate of Environmental Systems would help develop an understanding of the mechanisms and processes of ecological systems, the interaction of humans with these systems, and the effects of these systems and interactions on people and their environment.
- o A Directorate of Environmental Sustainability would sponsor evaluation and development of strategies, technologies, and solutions for maintaining environmental quality and human well-being.

Research would be conducted by scientists from academia, government, business and other non-governmental groups with funding provided on a competitive basis. The NIE would not increase the federal bureaucracy by having its own laboratories, but could support and integrate research at existing government laboratories. We do not see the need for additional government research laboratories.

Research priorities would be set by a process involving key stakeholders on environmental issues, including representatives of other government agencies, academia, business and other non-governmental organizations. A Center for Environmental Assessment would involve these constituencies in summarizing the state of our knowledge of specific environmental issues, presenting the implications of this knowledge as policy options, and determining what additional knowledge is necessary for sound policy and management decisions. These gaps in knowledge, if not being adequately addressed by existing federal research programs, would be the subjects of NIE-sponsored research. The Carnegie Commission on Science, Technology and Government (1992) proposed a similar Institute for Environmental Assessment, but did

not link it with an organization that would carry out the needed research.

A Center for Integrative Studies on the Environment would serve as an in-house "think tank" to help the Director of the NIE to identify emerging issues and to ensure that all relevant scientific, technological and societal aspects of the targeted issues are studied by NIE research. The Center would include a core staff and visiting senior scholars and research fellows of exceptional quality.

An electronic National Library for the Environment (NLE) would be established to enlarge access to environmental information and to better communicate scientific and technological results. Using the most modern communications technology and information management techniques, it would provide a gateway to the entire wealth of the nation's environmental information ranging from databases to publications.

Environmental education and training would be a key function of the NIE. The EPA's Science Advisory Board (1988) concluded that the "single most important element of our national Environmental R&D effort are the environmental scientists and engineers themselves". They called upon the EPA to increase the numbers and sharpen the skills of the scientists and engineers who conduct environmental research. In addition to supporting graduate student training as part of its interdisciplinary research grants, the NIE would include a Directorate of Education and Training to support development of interdisciplinary environmental science and studies programs, teacher training, and fellowships at the nation's colleges and universities.

Because these functions of problem-focused environmental research, comprehensive assessment of environmental knowledge, dissemination of credible information and education and training of environmental science and professionals are

so closely linked, they are best accomplished within a single agency. We prefer that the NIE be created as an independent agency to ensure that its mission is not distracted by regulatory demands and that it supports the missions of environmental management agencies that are not part of the new Department of the Environment.

If the NIE were to be a part of a Department of the Environment, it is best that the NIE and EPA be separated at least at the Assistant Secretary level. This would reduce the potential for conflicts between the long-term research and education focus of the NIE and the shorter-term regulatory mission of EPA. For example, an administrative arrangement such as that between the National Institutes of Health and the Department of Health and Human Services may be appropriate for NIE and the new Department of the Environment. However, unlike health, responsibilities for the environment are spread across the federal government. Thus, it would be more difficult for the NIE to succeed within a Department of the Environment than as an independent agency.

CNIE has prepared a report on options for an organizational structure for the NIE. Copies of these reports will be provided to the committee.

In conclusion, we believe that a Department of the Environment will allow the United States to maintain its leadership in securing a high quality environment and a high quality of life for its citizens. A National Institute for the Environment, either as an independent agency, or within a Department of the Environment, would provide the scientific basis for this leadership.

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Cabinet Status For The Epa

Prepared by
Tyrone R. Aiken
President

for
Chairman John Conyers
Congressman
Government Operations Committee

May 14, 1993

CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
LEGISLATIVE & NATIONAL SECURITY SUB-COMMITTEE
ENVIRONMENT, ENERGY AND NATURAL RESOURCES COMMITTEE

FRIDAY MAY 14, 1993

Referred to: Frank Clemente
Telephone: 202-225-5051

Mr. Chairman, I am Tyrone R. Aiken, President of the National Federation of Federal Employees Local 2050, located at the Environmental Protection Agency. NFFE 2050 represents the scientists and other professions at the EPA. I am also a chemist with over 23 years of federal service. We are in favor of Cabinet status for EPA with the following stipulations:

The EPA must stop all race, sex, and age discrimination at the source. Currently age, sex and race discrimination exist at EPA. Most employees are reluctant to file complaints for fear of retaliation. Some offices openly discriminate by not promoting minorities to management positions, that is, creating a glass ceiling. Other offices openly provide alcohol and attempt to coerce female employees to participate in happy hours and office parties. Female employees have been sent sexually suggestive messages on computer networks, followed home and solicited for sex in the office. The agency must take a strong stand against sexual harassment.

The EPA's record of promoting minorities to grades GS-14, 15 and higher is discriminatory. The Office of Pesticide Programs in the EPA has not promoted an Afro-American Male to a GS-14 or GM-14 in the last ten years. Other offices in the EPA have not promoted or provided professional training for minority and non minority scientists in years. Scientists must stay abreast in their fields. 1 in 3 employees at the EPA are contractors, but the average money set aside in some programs for training employees is less than \$600.00 per year. The EPA does not provide adequate training support for its employees, especially, scientists. The EPA must support training for all employees such that they can keep abreast in their fields. If money is available to hire contractors it should be available to provide training for EPA employees. Denying employees an opportunity to keep abreast in their career fields in a form of discrimination.

The EPA discriminates against scientists by allowing lesser qualified managers to override decisions that are scientifically sound, but are not politically correct. The use of science as a means of support for policy must cease. Good policy should be supportive of science, not the reverse. EPA cannot protect the environment if EPA's scientists and other professionals are subject to retaliation for expressing professional opinions. Respect for science at EPA is lacking and other opinions, such as legal,

economic and social. Professional opinions are frowned upon if these opinions conflict with political positions.

Environmental Racism must cease at EPA; regulations and risk assessments are made without regard for ethnic and genetic differences. The policy of ignoring the genetic differences of humans, when determining the acceptable level of [risks], that is, air, water and land pollution is not scientific decision making. For example, the EPA has studies showing that lead ingestion may impact minority children more critically than non-minority children. The results of these studies are not reflected in EPA policy. Some non-minority scientists in the agency are afraid to speak of the Environmental Racism for fear of being accused of eugenic discrimination.

Age discrimination is another problem; older scientists are denied promotions in favor of younger employees. I believe some younger scientists at EPA are less likely to challenge unscientific decisions made by higher authority. They are easily manipulated by managers that force their opinions on the public without a firm scientific foundation. In addition the tremendous pressure from the chemical industry causes managers to seek out younger scientists to groom as "yes men." Specifically, younger less experienced scientists and other professionals are promoted and some highly qualified senior scientists/professionals are denied promotions and recognition. Age discrimination must cease at EPA.

In conclusion, the EPA must make significant efforts and progress in stopping discrimination, and removing the glass ceiling for minorities and scientists. EPA must break away from past practices of hiring excessive amount of contractors. EPA must start investing in EPA employees, that is providing funding for training and promoting scientists and other professionals above the GS-13 level. Administrator Carol M. Browner, inherited the aforementioned problems; she is putting forth a good effort to correct some problems at EPA. Still attention must be brought to the existing problems before the EPA is approved for cabinet status. Thank you for allowing me the opportunity to insert this statement into the record¹.

¹ Documents upon request

WRITTEN SUBMISSION OF
PATTI GOLDMAN
PUBLIC CITIZEN'S LITIGATION GROUP
ON
ADVISORY COMMITTEE PROVISIONS OF THE
EPA ELEVATION BILL
BEFORE THE
HOUSE COMMITTEE ON GOVERNMENT OPERATIONS
MAY 1993

Public Citizen welcomes this opportunity to discuss the need for more rigorous regulation of advisory committees to the Environmental Protection Agency ("EPA"). We strongly endorse the advisory committee provisions included in the bill to elevate EPA to cabinet-level status.

For more than two decades, Congress has recognized that lack of balance and hidden conflicts of interest on federal advisory committees can badly distort public policymaking, particularly when such bodies are dominated by representatives of large corporations that have a direct economic interest in the advice being sought. In 1972, Congress enacted the Federal Advisory Committee Act ("FACA"), in part, to curtail undue influence by regulated industries on federal advisory committees. The House Report to that legislation expressed such concerns:

One of the great dangers in the unregulated use of advisory committees is that special interest groups may use their membership on such bodies to promote their private concerns. Testimony received at hearings before the Legal and Monetary Affairs Subcommittee pointed out the danger of allowing special interest groups to exercise undue influence upon the Government through the dominance of advisory committees which deal with matters in which they have vested interests.

H.R. Rep. No. 1017, 92d Cong., 2d Sess. 6 (1972).

I. BALANCED REPRESENTATION.

The key FACA provision designed to curtail such undue influence is its balanced representation provision, which requires:

(2) . . . membership of the advisory committee to be fairly balanced in terms of the points of view represented and the functions to be performed by the advisory committee;

(3) . . . the advice and recommendations of the advisory committee will not be inappropriately influenced by the appointing authority or by any special interest, but will instead be the result of the advisory committee's independent judgment

5 U.S.C. App. 2, § 5(b)(2) & (3); see also id. § 5(c).

FACA does not define the term "fairly balanced." However, there is evidence in the legislative history of what Congress had in mind. Thus, the House Report gave the following example of an advisory committee that was not "fairly balanced":

When [an advisory committee] met with government officials to consider a proposed national industrial wastes inventory questionnaire, only representatives of industry were present. No representatives of conservation, environment, clean water, consumer, or other public interest groups were present. This lack of balanced representation of different points of view and the heavy representation of parties whose private interests could influence their recommendation should be prohibited by the provision contained in [FACA's balance provision].

H.R. Rep. No. 1017, supra, at 6. Courts have also concluded that FACA's balance requirement "was designed to ensure that persons or groups directly affected by the work of a particular advisory committee would have some representation on the committee." National Anti-Hunger Coalition v. Executive Committee of the President's Private Sector Survey on Cost Control, 711 F.2d 1071, 1074 n.2 (D.C. Cir. 1983), on remand, 566 F. Supp. 1515, 1517 (D.D.C. 1983) (advisory committee violated FACA when it recommended cuts in federal food programs without any representation of beneficiaries of those programs).

In practice, however, the spirit of law has often been violated. Industry interests still dominate some advisory groups, and groups directly affected by the work of advisory committees often lack representation on the committee. The following examples are illustrative:

In 1985, seven of the eight members of EPA's Scientific Advisory Panel, which is charged with reviewing the agency's pesticide determinations, were consultants for the chemical industry at the time the panel recommended that EPA delay cancelling the registration of Alar.

The Executive Committee of the President's Private Sector Survey on Cost Control or Grace Commission had no representation of food program beneficiaries when it recommended cuts in those programs.

The AIDS Commission had no representation of people with AIDS, public health officials, or minority or gay communities, which are most affected by AIDS.

The Motor Vehicle Safety Research Advisory Committee had heavy representation of people with financial ties to the automobile industry, but virtually no consumer representation.

The President's Commission on Privatization, charged with recommending turning government functions over to the private sector, had no representation of federal workers, while strong advocates of privatization, including big business, dominated the body.

The U.S. Department of Agriculture's advisory committee on national policies to prevent microbiological contaminants in foods initially consisted of employees, contractors, and consultants to the food industry and government regulators, but no representatives of consumers or public health organizations.

The FDA Advisory Committee recommended preempting state authority without any representation of states, but with extensive representation of the regulated industries that would benefit from less regulation at the state level.

These examples point to weaknesses in the existing regulation of federal advisory committees. Evidently, FACA's general balance mandate provides inadequate guidance to agencies as to how to ensure that their advisory committees meet the balance requirement. FACA's ability to compel agencies to appoint balanced advisory committees would be vastly improved if the law spelled out the types of interests that must be represented. Such a listing would provide more concrete guidance to federal agencies, and thus would enhance compliance with the law's goals.

When imbalanced advisory committees have been challenged in court, federal judges have often found that FACA's language fails to provide an enforceable standard. Rather than defend the skewed memberships of these advisory committees, the government has often argued that the public has no right to challenge their memberships or that FACA provides the courts no standard against which to judge their memberships.

Many federal judges have echoed these sentiments. In a challenge to the industry and governmental domination of the microbiological criteria advisory committee, one court of appeals judge could not "discern any meaningful standard that is susceptible of judicial application. . . . I can conceive of no principled basis for a federal court to determine which among myriad points of view deserve representation on particular advisory

committees." Public Citizen v. National Advisory Committee on Microbiological Criteria for Foods, 886 F.2d at 426 (Silberman, J., concurring in the judgment). Another court of appeals judge concluded that USDA had met whatever balance requirements are imposed by FACA, even though consumers had no representation. Id. at 420 (Friedman, J., concurring in the judgment)

Other judges have likewise criticized Congress for not spelling out the meaning of the term "fairly balanced." Thus, Judge Gerhard Gesell stated:

It is clear that Congress in passing the FACA wished to create some controls and standards governing the advisory committee process . . . However, the statute that resulted is an example of unimpressive legislative drafting. It is obscure [and] imprecise . . . If more expertise were applied to such enactments to ensure that Congress states with more precision what it intends, the rules of the game would be more sharply drawn and court involvement would be less.

National Anti-Hunger Coalition, 557 F. Supp. at 528. See also Public Citizen v. Department of Health and Human Services, 795 F. Supp. 1212 (D.D.C. 1992) (Judge Thomas Hogan held that neither the public nor a state could challenge a recommendation in favor of federal preemption of state authority, even though the advisory committee had no state representation); National Association of People with AIDS v. Reagan, Civ. No. 87-2777, slip op. at 6 (D.D.C. Dec. 16, 1987) (Judge Oliver Gasch criticized FACA as providing "dearth of guidance from Congress" and as being "an ambiguous statute motivated by commendable goals but implemented with imprecise language that requires the Court to examine obscure legislative history . . ."); National Treasury Employees Union v. Reagan, Civ. No. 88-186 (D.D.C. Feb. 25, 1988) (Judge John Pratt found FACA's balance requirement full of "inherent and conceptual difficulties" and rejected a challenge to a privatization committee that had no representation of federal workers and consisted entirely of strong advocates of privatization).

Given the reluctance of federal courts to intervene, federal agencies have essentially been free to select any membership they want, no matter how skewed it may be. FACA's balanced membership requirement obviously has not provided clear mandates to federal agencies, or at least not clear enough mandates to withstand political pressure to prefer certain viewpoints over others in appointments to federal advisory committees. Federal judges have refused to step in and provide coherent guidance as to the meaning and application of FACA's balanced membership requirement. It is, therefore, critical that Congress clarify FACA's balance requirements.

The Federal Bar Association's Select Committee on FACA, which

is composed principally of agency personnel overseeing FACA implementation, "strongly favors the application of a practical, definable standard [of balanced representation]. Without it, the balanced membership requirement will continue to plague the courts, agencies, and the public alike." Letter to Senate Committee on Governmental Affairs (April 6, 1989). Given the refusal of the courts to establish a practical, definable standard, it is up to Congress to do so.

That standard should provide objective criteria that can be applied when the committee is created. We believe that the only viable solution is to delineate basic categories of interests that should generally be represented on committees, unless the agency makes a finding to the contrary. The EPA elevation bill does this by listing the interests that must be represented, such as the affected industry, consumer, labor, environmental, and health organizations, and states. EPA may waive this requirement, but only by making a written determination that the interest is not germane to the work of the advisory body.

This provision would provide concrete rules for EPA to apply in establishing advisory bodies. The agency would have to appoint the cross-section of interests spelled out in the statute, unless it determines that one or more of the particular interests are not germane to that body's work. Courts could apply this standard without embarking on their own analysis of the particular viewpoints of committee members. Rather, the employment status and organizational affiliations of the members would dictate which interests they represent.

It is important to have clear, workable rules for ensuring that advisory committees have balanced memberships. The recommendations of advisory committees are often given great weight by Congress in its consideration of legislative options and by agencies in their policymaking and administrative activities. Given the power wielded by such bodies, it is critical that they not be dominated by certain interests. The standards in the EPA elevation bill would go a long way toward ensuring that EPA's advisory committees are fairly balanced and are thus worthy of the imprimatur placed on their work.

II. CONFLICTS OF INTEREST OF ADVISORY COMMITTEE MEMBERS.

Advisory committees are generally established to obtain neutral advice on matters of public importance. Many advisory committees address controversial policy issues, such as acid rain. It is critical that such bodies have a balanced cross-section of viewpoints, as the preceding discussion demonstrates. In other words, conflicts of interest are welcome, provided they are fully disclosed and balanced by countervailing interests.

Other advisory committees provide peer review of grant

proposals or expert analysis of scientific evidence that is the predicate for agency actions. In these situations, conflicts of interest in general, and industry domination in particular, serve to undercut the committee's neutrality and lessen the weight that should be accorded its recommendations.

Conflict of interest reporting plays an important role in ensuring both that advisory committees' have balanced memberships and that they are not unduly influenced by those with a stake in the recommendations. Hidden affiliations in the form of consultancies or advisory relationships with industry, extensive financial holdings, or grants can skew the balance and impartiality of an advisory body. In some situations, such affiliations may require an individual to recuse her- or himself from deliberations on a particular matter; in other situations, they may require that another individual be appointed to provide a countervailing viewpoint.

The perspectives of advisory committee members are shaped by affiliations that are not apparent from their employment title. For example, seven of the eight members of EPA's Scientific Advisory Panel ("SAP") were consultants for the chemical industry at the time the SAP reviewed Alar. At that time, EPA had proposed to ban Alar, but it delayed that action for several years after the SAP criticized the existing evidence and called for additional studies. The industry connections of the SAP members became public only after Senator Joseph Lieberman obtained the financial disclosure forms and disclosed the connections. Had the connections become apparent earlier, the SAP's recommendations may have been given less weight.

Similarly, in the early 1980s, the executive director of the American Council on Science and Health, which is supported financially by petrochemical and pharmaceutical companies, served as a "public" member of the EPA's Toxic Substances Advisory Committee, even though the public and Congress might assume that "public" members have no industry affiliations.

During the 1980s, a member of EPA's Science Advisory Board ("SAB") had done consulting work for industry on two substances that the SAB reviewed with his participation. EPA did not require this individual to recuse himself, nor did it reveal the conflict of interest. Instead, it came to light when the State of California released a financial disclosure form that he had filed as a condition of serving on a state advisory body that decides whether chemicals are carcinogens or reproductive toxins subject to a state labeling law.

FACA is silent with respect to conflict of interest reporting, although it forbids advisory committees from being inappropriately influenced by special interests. 5 U.S.C. App. II, § 5. Obviously, neither the agency nor the public can discern whether

undue influence is being exerted unless they have certain information about the backgrounds and financial interests of advisory committee members. Indeed, former President Bush's Commission on Federal Ethics Law Reform acknowledged in its March 1989 report that the effectiveness of FACA's balance and undue influence provisions "depends on the availability of information about the financial holdings of advisory committee members."

In the past, advisory committee members have been required to submit financial disclosure forms that have been designed by both Congress and federal agencies with federal employees, not advisory committee members, in mind. These requirements derive from criminal and civil conflict of interest laws. Agencies have often treated advisory committee members as "special government employees" -- executive branch employees retained to perform temporary duties who must complete rather extensive financial disclosure forms. Because the reported information is extensive, agencies have refused to require public disclosure of the forms, and the courts have not compelled their disclosure under the Freedom of Information Act. See Washington Post v. Department of Health & Human Services, 690 F.2d 252 (D.C. Cir. 1982); 795 F.2d 205 (D.C. Cir. 1986); 865 F.2d 320 (D.C. Cir. 1989); Meyerhoff v. EPA, 958 F.2d 1498 (9th Cir. 1991). To make matters worse, Congress inserted a confidentiality mandate into the financial disclosure system applicable to special government employees. Continuing Resolution for Fiscal Year 1986, Pub. L. No. 99-160, § 148, 99 Stat. 1324-25 (1985).

At the same time, other agencies have not treated advisory committee members as special government employees, and have often required no financial disclosures. Without such disclosures, the agency lacks the information that it needs to ensure proper balance on advisory committees. The divergent reporting practices of federal agencies are discussed in more detail in our 1989 report, "The Federal Advisory Committee Act at the Crossroads: Needed Improvements in the Regulation of Federal Advisory Committees."

The Administrative Conference of the United States, which is itself an advisory committee, has recommended that uniform, minimal disclosure requirements be established for all advisory committee members. 54 Fed. Reg. 28,964, 28,969 (July 10, 1989). The Federal Bar Association's Select Committee on FACA likewise favors subjecting advisory committee members to simple, uniform and straightforward reporting requirements. Letters from FBA to Senator Glenn (April 6 and 25, 1989).

The EPA elevation bill should be commended for establishing uniform reporting requirements that are tailored to service on federal advisory committees. The bill would require disclosure of principal employment, other professional relationships that are relevant to the advisory committee's functions, and the identity, but not the amount, of income or financial interests that are

relevant to such functions. By limiting reporting to those relationships and financial interests that are relevant to the committee's work, and by not requiring disclosure of the amounts of any financial interests, the reporting is far less intrusive than what is currently required, yet it is adequate to enable the agency to identify specific conflicts of interests that would warrant recusal and overall connections and interests that affect the committee's balance.

An important benefit of less intrusive financial disclosure requirements is that the information can be made available to the public without disclosing an individual's complete financial portfolio. The public needs access to basic information about the members' employment, consulting work, and financial interests to play a role in monitoring implementation of FACA's balance and undue influence requirements. With this information, the public can bring an advisory committee's imbalance to the agency's attention, and if the imbalance is not corrected, the agency, the public, and Congress can decide what weight should be given to the recommendations in light of the makeup of the committee. We applaud the EPA elevation bill's mandate that basic conflict of interest information be disclosed to the public.



TE-MOAK TRIBE OF WESTERN SHOSHONE

BATTLE MOUNTAIN BAND COUNCIL
 35 Mountain View Drive, #138-13
 Battle Mountain, Nevada 89820

May 4, 1993

Honorable John Conyers, Jr., Chairman
 House Government Operations Subcommittee
 on Legislation and National Security
 B-373 Rayburn House Office Building
 Washington, D.C. 20515

Honorable Mike Synar, Chairman
 House Government Operations Subcommittee
 on Environment, Energy, and Natural Resources
 B-371B Rayburn House Office Building
 Washington, D.C. 20515

Dear Chairmen,

I understand that your Subcommittees are in the process of together formulating legislation which would raise the Environmental Protection Agency (EPA) to Department/Cabinet level. On behalf of the tribal members of the Battle Mountain Band, I would like to urge your support for including a provision for an Assistant Secretary for Indian lands. As you no doubt know, Senator McCain passed an amendment to Senate EPA legislation (S.171) providing such an Assistant Secretary under the proposed Department of the Environment. A vote to table his amendment failed by 79 votes against to only 16 in favor. Senator McCain's amendment was then passed by voice vote. I believe this shows wide support for the concept of an Assistant Secretary who would be responsible for environmental issues on tribal lands. I, and many other Indian People, hope that similar support will be found in the House of Representatives, and specifically, in your Subcommittees.

It is my understanding that the Administration has opposed any legislation providing for such an Assistant Secretary. I hope that we can change the Administration's position on this issue. To that end, I have written a letter to President Clinton, which I have also forwarded to Carol Browner. A copy of this letter is enclosed for you to have on record.


Chairmen Conyers and Synar
May 4, 1993
Page Two

Tribal governments must deal with the whole spectrum of environmental issues, ranging from developing regulatory codes to addressing solid and hazardous waste issues, protecting drinking water, ecosystem protection, air quality, waste water treatment, and more. Current, federal administration of programs for issues such as these is fragmented and minimal. I should also add that a number of federal environmental statutes includes provisions for treating tribes as States (Clean Air Act, Chairman Conyer and Synar

Clean Water Act, and the Safe Drinking Water Act). Tribal governments and reservation residents would greatly benefit from having a proponent for their environmental issues at the Assistant Secretary level within a Department of the Environment.

I hope that your Subcommittees will address this very important issue in any legislation which you draft, as well as encourage support from the Administration. Thank for your time.

Sincerely,


Barbara Burmond, Vice-Chairman
Battle Mountain Band,
Te-Moak Tribe of Western Shoshone

enclosure



Confederated Tribes and Bands
of the Yakima Indian Nation

Established by the
Treaty of June 9, 1855

May 5, 1993

Congressman John Conyers, Jr. Chairman
House Government Operations Subcommittee on
Legislation and National Security
B-373 Rayburn House Office Building
Washington, D.C. 20515

Congressman Mike Synar, Chairman
House Government Operations Subcommittee on
Environment, Energy, and Natural Resources
B-371B Rayburn House Office Building
Washington, D.C. 20515

Re: Support of Legislation to Elevate EPA to Cabinet Level

Dear Chairmen:

The Yakima Nation Tribal Council supports legislation elevating the Environmental Protection Agency (EPA) to the Cabinet level. Additionally, we request that your subcommittees include provisions for an Assistant Secretary for Indian Lands and a 10 percent set aside for Indian reservations from the EPA budget.

These changes are very important to the Yakima Nation. As is typical on most Indian lands, the Yakima people have received little protection of our environment. We are plagued with illegal open dumps, leakage of petroleum products into the ground, and herbicide, pesticide and fertilizer use that contaminate our soil and water.

A 10 percent set aside is desperately needed to help Tribal governments nationwide protect the environment. For many years state governments have received funds for assessing and solving their environmental problems. During this time, Indian governments have been left out of the process and now urgently need these funds to bring our environmental protection up to national standards.

While the EPA does have an "Indian Policy" in place, the Yakima Nation does not feel that this policy has been used effectively and that the policy itself does not address the Federal government's trust responsibility to Indian people. It has been this inadequate attention to the environmental needs of Indian people that makes the creation of an Assistant Secretary of Indian Lands so important. The fact that the United States government has this unfulfilled trust responsibility to the Indian people must be realized.

Please take into consideration that the small amount of land our Indian people inhabit is vital to our ability to continue our Indian way of life. All the products of Mother Earth are precious to our spiritual existence. Without protection from pollution and poisons, this land and its gifts will be destroyed.

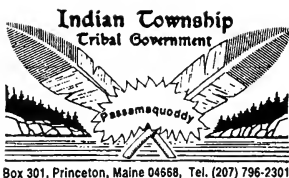
If you have any questions or comments, please feel free to contact myself or our Environmental Staff. Thank you for your serious consideration of our needs.

Sincerely,



Wilferd Yallup, Chairman
Yakima Nation Tribal Council

Governor
John Stevens
Lt. Governor
Sonja Dana
State Representative
Madonna Soctomah



Council Members
Victoria Boston
Linda Meader
Roger Ritter
Phyllis Saunders
George Sockabasin
Anthony Beat

April 30, 1993

Honorable John Conyers, Jr., Chairman
House Government Operations Subcommittee
on Legislation and National Security
B-373 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairmen,

On behalf of the Passamaquoddy Tribe of Indian Township, I would like to urge your support for the legislative provision of an Assistant Secretary for Indian Lands under the proposed Department of the Environment. I understand that your Subcommittees are in the process of drafting legislation for the elevation of the Environmental Protection Agency (EPA) to Departmental level.

As you know, Senator McCain successfully passed an amendment to the Senate EPA legislation, S. 171, which would provide that an Assistant Secretary for Indian Lands be created under the Department of the Environment. A vote to table his amendment was rejected by a margin of 79 against only 16 in favor. With this wide bipartisan support for the amendment, McCain then called for a voice vote, and his amendment was agreed to. We hope that similar support will be found in the House of Representatives, and specifically, in your Subcommittees.

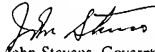
Unfortunately, I understand that the White House and the EPA have opposed legislative provision for an Assistant Secretary for Indian Lands. I have written to President Clinton on this issue, with a copy of my letter sent to EPA Administrator Carol Browner. I, as are many other tribal leaders, am hopeful that we can gain Administration support for this badly needed provision. In my letter too President Clinton, I noted how an Assistant Secretary for Indian Lands could benefit my

Honorable John Conyers, Jr., Chairman
April 30, 1993
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Tribe's reservation here in Maine. I am enclosing a copy of my letter, for your information. In addition, Senator McCain gave a number of examples, during his floor remarks prior to the amendment's passage, illustrating the need for addressing tribal environmental problems at a high level within the federal government.

I appreciate your time, and I hope that you will see the need behind this important provision. If I can supply any further information to you, please call me. Thank you.

Sincerely,



John Stevens, Governor
Passamaquoddy Tribe of
Indian Township

Enclosure



PORT GAMBLE S'KLALLAM TRIBE

Post Office Box 280 • Kingston, Washington 98346

April 30, 1993

Honorable John Conyers
House Government Operations Committee
U.S. House of Representatives
2157 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Conyers;

I am writing to strongly urge your support for or introduction of a bill in the US House of Representatives similar to S.171 elevating the US EPA to Cabinet level status. We especially request similar language to Senator John McCain's amendment (No. 327) to S.171 to establish an Assistant Secretary for Indian Lands within the US EPA.

We feel that this can only aid in environmental protection for Indian Reservations. It can also help bring Tribal concerns and issues with regard to EPA mandates on reservations to the policy formulation level. At this level, implementation problems can be anticipated and corrected in the planning stage. In many cases now, problems are being created by policy making instead of being solved by policy making.

Again, I respectfully request your support for or introduction of a similar bill, with Senator John McCain's amendment language, in the US House of Representatives.

Respectfully;

Gerald J. Jones
Tribal Chair

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**JAMESTOWN S'KLALLAM TRIBE**

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May 3, 1993

Chairman John Conyers
House Government Operations Committee
2157 Rayburn House Office Building
Washington, DC 20515

Re: Support to Establish an Assistant Secretary for Indian Lands within the EPA

Dear Chairman Conyers:

As you know, S. 327, Senator John McCain's amendment to S.171 has passed the Senate. S. 171 would make the Environmental Protection Agency a cabinet level department. Senator McCain's amendment would establish the position of Assistant Secretary for Indian Lands in the newly elevated Department, thus giving federal recognition to the significant role Indian lands play in the overall health and viability of our national environment.

Senator McCain's proposal would also give added impetus to further the development of the unique "government-to-government" relationship that Indian Tribes have with the Federal Government...an arena of special significance to Indian people. An Assistant Secretary for Indian Lands would insure that the proper attention is given to the concerns of Indian Country as federal environmental policy is developed and implemented. With this avenue of input, the views of Tribes would be given the level of consideration they are due under our federal system, equivalent to the level of consideration now given the states.

We urge you to immediately include similar language in the House legislation as was used in S. 327. Your support on this important issue for Indian Tribes would be most appreciated.

Sincerely,

W. Ron Allen
Tribal Chairman/Executive Director

JAMES S. MENA, *Chairman*
 BENNY ATENCIO, *Vice-Chairman*
 DANIEL L. SANCHEZ, *Secretary/Treasurer*



ALL INDIAN PUEBLO COUNCIL

OFFICE OF THE CHAIRMAN

3839 San Pedro, N.E., Suite E • Post Office Box 3258 • Albuquerque, New Mexico 87190 • (505) 881-1992

April 30, 1992

Rep. John Conyers
 U.S. House of Representatives
 2157 Rayburn, House Office Building
 Washington, D.C. 20515

SUBJECT: UST/LUST NATIONAL NATIVE AMERICAN LANDS POLICY STATEMENT

Dear Mr. Conyers:

It is a pleasure to write to you and provide you with comments on an issue of great importance to all of us. These comments are being provided as testimony to go on record for the hearings starting April 28 on Environmental Equity. Our goal within the All Indian Pueblo Council/Pueblo Office of Environmental Protection (AIPC/POEP) is to protect the health and environment of the Pueblos.

The All Indian Pueblo Council is a consortium of nineteen federally-recognized Indian Tribes comprised of the New Mexico Pueblos of Arcoma, Cochiti, Isleta, Jemez, Laguna, Nambe, Picuris, Pojoaque, San Ildefonso, San Felipe, San Juan, Sandia, Santa Ana, Santa Clara, Santo Domingo, Taos, Tesuque, Zia, and Zuni.

As a consortium of federally recognized Indian Tribes, the AIPC is empowered by and through the Pueblo Governors and Tribal Councils to assist the member Pueblos in a variety of legal, economic and social goals and programs available to the individual members, including the planning, study and analysis of those goals and programs.

In September 1991, with the assistance of the U.S. Environmental Protection Agency (EPA) Region VI, the nineteen Pueblos created the Pueblo Office of Environmental Protection (POEP) within the AIPC to coordinate waste management and environmental activities. The nineteen Pueblos entered into a Superfund Memorandum of Agreement to create the POEP.

The POEP is currently operating the following environmental programs: Superfund program for hazardous waste site assessment and remediation; an Air Quality Control program; a Radon Pilot Project program; a Non-Point Source Pollution Abatement and Control program; a Sludge Management and NPDES Permitting program; a Multi-media Project including an UST program; and a Pollution Prevention/Waste Minimization program.

Under the UST program, a Senior Environmental Employee of EPA Region VI has been assigned to the POEP to assist in the development of a UST program. However, there was no budget provided for implementation of the UST program. Under this program, the POEP has inventoried all USTs within

Letter to Rep. John Conyers

SUBJECT: UST/LUST NATIONAL NATIVE AMERICAN LANDS POLICY STATEMENT

April 30, 1993

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Pueblo boundaries; located abandoned and leaking tanks, registered all USTs with EPA; provided technical assistance to the 19 Pueblos on UST issues; and is developing an outreach program to inform Pueblos about regulations concerning USTs. The POEP has confirmed 162 USTs within the boundaries of the 19 Pueblos. In addition, there are 32 abandoned UST sites. There are 3 sites that have confirmed leaks that are awaiting corrective action. There are also 4 sites where leaking tanks have been removed but have residual plumes. At this time there are no funds available for removal and remediation of USTs on Pueblo lands.

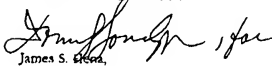
The EPA provided the State of New Mexico Environment Department with seed monies to establish a UST/LUST program. However, these same types of seed monies have not been made available for Indian Tribes to implement UST/LUST programs. The EPA's and OSWER's policy on environmental equity should be recognized and implemented when addressing the needs of creating environmental programs to protect human health and the environment. There is no EPA support for an UST program on Pueblo lands. States are not sharing monies with American Indian Nations that are derived from permits and fees assessed on activities occurring on tribal lands. The State can collect fees for environmental purposes, but are unable to spend those monies on tribal lands for lack of jurisdiction. Currently such fees are being collected at the dock on petroleum tankers. Owners and operators on Indian lands are unable to access the resources they expect from having paid their fees.

In conclusion, the sovereign status of American Indian Nations must be understood and respected by all states and federal agencies. American Indian Nations are sovereign, and deal with the Federal Government on a government-to-government basis. The EPA has issued an Indian Policy statement that reiterates this fact. Therefore, tribes should be given equal treatment and opportunity in implementing UST/LUST programs by providing direct Federal funding. Unless specific programs are made available to Indian Tribes, Indian Tribes will be at the mercy of states. We strongly recommend a specific set-aside be established for Indian Tribes.

Should you require additional information or have any questions, please feel free to contact me at (505) 881-1992.

Sincerely,

ALL INDIAN PUEBLO COUNCIL


James S. Hena,
Chairman

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