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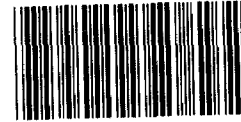
Testimony

Before the Subcommittee on Legislation and National Security
and the Subcommittee on Environment, Energy, and Natural
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House of Representatives

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CREATION OF A
DEPARTMENT OF
ENVIRONMENTAL
PROTECTION

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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 2 months ago,² regardless of whether EPA becomes a Cabinet 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 protection 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

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).

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. 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 the 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 the 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, and 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 the 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 the environment would support the broad national goal of protecting our environment, and the department's structure would allow the consolidation of functions now located in other executive branch agencies.

ORGANIZATIONAL 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 the significant new responsibilities for regulating hazardous waste, drinking water, and water and air pollution, among other things, EPA's operating budget (in constant dollars) 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 the risks 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 linking 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. The 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 managers, 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 long-standing information resources management problems that we have repeatedly reported to EPA and the Congress. Environmental monitoring data and scientific analyses that 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 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 Chief Information Officer, 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

³Environmental Protection: EPA's Actions to Improve Longstanding Information Management Weaknesses (GAO/T-IMTEC-93-4, Mar. 29, 1993).

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--national air quality standards, for example--EPA has generally relied on activity-based indicators, such as the number 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 governmentwide 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 long-standing concern of GAO's. 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 governmentwide 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 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 employees' 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, governmentwide set of penalties for claiming unallowable costs. In addition, the draft bill would address some of the questionable costs we identified by declaring unallowable those for all entertainment, gifts or recreation for contractors' 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 is handling its 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 that 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. On the basis of 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 permits management oversight of numerous decisions with important monetary consequences.

Second, 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

⁴Environmental Enforcement: Penalties May Not Recover Economic Benefits Gained by Violators (GAO/RCED-91-166, June 17, 1991.)

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 benefits 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.

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