

CRS Report for Congress

Received through the CRS Web

Elevating the Environmental Protection Agency to a Department: Analysis of Major Issues

Martin R. Lee
Specialist in Environmental Protection
Resources, Science, and Industry Division

Summary

There is a history of bipartisan support for proposals that would elevate the Environmental Protection Agency (EPA) from an independent regulatory agency to a federal department. The 101st, 102nd and 103rd Congresses took action on the issue but reached no final agreement. The 107th Congress held three hearings on two bills. In the 108th Congress, H.R. 37 and H.R. 2138 propose such an elevation. The Subcommittee on Energy Policy, Natural Resources, and Regulatory Affairs of the House Committee on Government Reform held hearings on these bills on June 6 and September 9, 2003. The Administration supports a simple elevation of EPA. Among the current issues are whether access to the President would be enhanced and whether EPA would have heightened effectiveness in dealing with other federal departments and the states. Whether such an elevation would improve EPA's status in environmental negotiations with other nations, most of which place environmental officials at the ministerial level, is another issue. Some Members argue for keeping the bills focused on provisions directly relating to elevation and oppose addressing perceived problems with EPA in this legislative vehicle. Other Members contend that this is an opportunity to consider issues such as the quality of science used in the agency's regulatory decisions, the management of information, the use of risk estimates/analysis, as well as EPA's mission.

Background

There is bipartisan support to elevate the Environmental Protection Agency (EPA), currently an independent agency in the executive branch, to a federal department. Executive Reorganization Plan Number 3 of 1970 created EPA by consolidating several programs, chiefly air, water and radiation, carried out by other departments at the time. The Agency began operating December 2, 1970, and the first Administrator was sworn in December 4, 1970. While independent of any other federal department, EPA is subject to the same general management laws as other federal agencies.

The early EPA initially had jurisdiction over a few air, water and pesticide programs. Congress expanded the Agency's authority during the 1970s with laws that continued to seek solutions to managing many traditional pollutants.¹ The statutes later broadened EPA's focus to address more complex toxic threats to the environment and human health. The Agency today conducts research on the environment, promulgates regulations, enforces environmental laws, and assists states in carrying out their environmental responsibilities. EPA currently has a budget of \$8.1 billion and 18,000 employees. It would become one of the smallest federal departments.

While there was some initial discussion in the 91st Congress about departmental status for EPA, and consideration of combining environmental, natural resource, or ocean management functions in the 93rd-95th Congresses, the idea did not resurface until the 100th Congress.² During the 101st Congress, the House passed a bill and the Senate Committee on Governmental Affairs reported another.³ The Senate passed a bill during the 102nd Congress.⁴ In the 103rd Congress, the Senate passed one and the House Committee on Government Operations reported another.⁵ During the 104th, 105th and 106th Congresses, no similar legislation was introduced. Interest reemerged in the 107th Congress. In nominating Christine Whitman as Administrator of EPA, then President-elect Bush stated in December 2000: "I told her how much I will value her advice, to the point at which I'm going to name her position as a Cabinet officer."⁶ Hearings were held on three bills during the 107th Congress.⁷

In the 108th Congress, Representative Sherwood L. Boehlert introduced H.R. 37 on January 7, 2003 and Representative Doug Ose introduced H.R. 2138 on May 15, 2003. The Subcommittee on Energy, Natural Resources and Regulatory Affairs of the House

¹ For a discussion of these laws, see CRS Report RL30798, *Environmental Laws: Summaries of Statutes Administered by the Environmental Protection Agency*. Mar. 3, 2003. Coordinated by Martin R. Lee. 115 p.

² 100th Congress bills included identical bills H.R. 4969, H.R. 5021, S. 2576, as well as title IV of S. 2663.

³ 101st Congress bills included H.R. 296, H.R. 534, S. 276, and S. 2006 reported April 2, 1990 by the Senate Committee on Governmental Affairs (S.Rept 101-262). The House passed H.R. 3847 on March 28, 1990.

⁴ 102nd Congress bills included H.R. 67, H.R. 3121, and S.533 passed by the Senate on October 1, 1991.

⁵ The Senate passed S. 171 on May 4, 1993. On May 19, 1994, the Senate passed S. 2019, Safe Drinking Water Amendments, which included a modified version of S. 171. In the House, the Committee on Government Operations reported H.R. 3425 (H.Rept. 103-355) on November 10, 1993. On February 2, 1994, the House defeated a rule on H.R. 3425, and the bill was not considered on the floor.

⁶ Remarks of President-Elect George W. Bush. Nomination of Gov. Christine Todd Whitman as Administrator of the Environmental Protection Agency. December 22, 2000. Source: the Federal Document Clearing House.

⁷ These included Senate Committee on Governmental Affairs July 24, 2001 hearing on S. 159, and House Committee on Governmental Reform Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs September 21, 2001, March 21, 2002, and July 16, 2002 hearings on H.R. 2438, favored by the Bush Administration, and H.R. 2694.

Committee on Government Reform held hearings on these bills on June 6 and September 9, 2003.

H.R. 37 and H.R. 2138 could be characterized as “simple elevation” bills as they would elevate the current EPA to a department without mandating any major change in responsibilities. They are much the same in that they redesignate the Agency as a department, establish the Secretary, transfer functions, and include savings provisions and conforming amendments. H.R. 2138 has additional provisions rewriting the Agency’s mission, establishing new undersecretaries and a Bureau of Environmental Statistics.

In opening remarks at the June 2003 hearings, the Subcommittee Chairman noted the “new generational environmental challenges” and that the “United States is one of the few industrial nations that does not place environmental protection a cabinet-level position.”⁸ He also cited EPA’s “stovepipe” organization as a reason for organizational change and the need for better science and data at the Agency as reasons for establishing the department. At the September 2003 hearings, the Chairman of the White House Council on Environmental Quality outlined the reasons why the Bush Administration supports elevating EPA. They include the fact that EPA carries the work of, and advances the mission of, a department, and that it plays a vital role in homeland security, produces nationally significant initiatives, and exerts international influence.⁹

There are a few basic issues associated with these elevation proposals. First, is whether access to the President would be enhanced. Second is the question of heightened influence with other federal departments and the states. Third is the issue of whether such an elevation might upgrade EPA’s status among the environmental departments of other nations, most of which are at the ministerial level. However, if a proposal were to go beyond a simple elevation – to address perceived problems with EPA’s administration or management, or existing environmental laws and regulation – the issues would become much more complex, the stakeholders greater in number, and elevation more problematic.

Increased Access to the President

The Administrator of EPA, as head of an independent agency, reports directly to the President. Unlike most independent agency heads, however, for which this reporting relationship is not equated with access, the Administrator of EPA has generally enjoyed genuine access. From the Agency’s beginning, Presidents have tended to pay special attention to EPA because environmental issues have high political visibility and impact.

Recent Presidents have acknowledged the importance they assign to EPA and its Administrator by awarding this officer “Cabinet rank.”¹⁰ Thus, access and status are

⁸ Remarks of the Honorable Doug Ose, June 6, 2003.

⁹ Remarks of the Honorable James L. Connaughton before the House Committee on Government Reform, September 9, 2003.

¹⁰ President Dwight D. Eisenhower initiated the practice of designating “Cabinet rank.” This special status is not recognized in law and is purely a presidential distinction. The last three Presidents have accorded Cabinet rank to the Administrator of the EPA. See: CRS Report, (continued...)

conferred by attendance at regular Cabinet meetings. This status, however, is not permanent but dependent upon the will of each President. On this, former Administrator Carol Browner in 2001 stated: “At every change of Administration, EPA risks losing a place at the table.”¹¹ “Nothing now ensures that a future President will confer de facto cabinet stature upon the EPA Administrator,” former Administrator William Reilly stated at the same time.¹² In articulating the Administration’s support for the concept, the Chairman of the White Council on Environmental Quality stressed how the Agency acts like a cabinet in terms of its work and mission.¹³

Many key federal officials are not formal Cabinet members but would seem to enjoy regular access to the President and the development of federal policy. The Director of the Office of Management and Budget, the Director of the Central Intelligence Agency and the Chairman of the Council on Economic Advisors are not formal Cabinet members, but presumably have direct access to the President.

Thus, on the one hand, creation of an environmental department would make that department’s head a formal member of the cabinet for the future with secure access to the President. But, in recent times the Administrator of EPA seems to have had this same access as do the heads of other agencies whose issues are prominent on the national agenda.

Intra- and Intergovernmental Relationships

How departmental status might enhance EPA’s interactions with other federal departments and state governments is another issue. Proponents have argued that the Administrator is at a disadvantage in dealing with many federal departments, some of which are directly regulated by EPA, because the EPA Administrator is not a Secretary. Then-Administrator Whitman remarked in 2001 that “Already I have found my participation at the cabinet level helpful in navigating the many important areas of overlap between the work of EPA and other departments.”¹⁴ Former Administrator Reilly stressed that parity was necessary, and indicated that the Administrator often has “bones to pick” with the Secretaries because EPA regulates some of their activities. “Now it falls

¹⁰ (...continued)

RL31497: *Creation of Executive Departments: Highlights from the Legislative History of Modern Precedents.*

¹¹ Remarks of the Honorable Carol Browner at the Senate Committee on Governmental Affairs hearing, July 24, 2001.

¹² Remarks of the Honorable William Reilly at the Senate Committee on Governmental Affairs hearing, July 24, 2001.

¹³ Remarks of the Honorable James L. Connaughton before the House Committee on Government Reform, September 9, 2003.

¹⁴ Remarks of the Honorable Christine Todd Whitman at the Senate Committee on Governmental Affairs hearing, July 24, 2001.

to the President,” he said, “to make clear that he supports his EPA Administrator in those interagency battles by providing parity.”¹⁵

Administrator Whitman, a former Governor of New Jersey, then spoke of what the elevation might mean in terms of the states. She noted that most states had placed their own top environmental official in the governor’s cabinet. “The time has come to establish EPA as full member of the cabinet, and doing so would be consistent with observations of state governments,” she declared.¹⁶

Enhanced International Relations

Enhancing the international presence of the United States seems to be the prime reason mentioned in arguing for a department. Reflecting the global nature of environmental issues, EPA is increasingly involved in international negotiations over environmental matters that are increasingly global in nature. Proponents argue that because the head of EPA is not at the Secretarial or ministerial level, U.S. interests are not represented as well as they could be.

Analysis in June 2001 of the placement of environmental officials within 198 governments indicates that, with only nine exceptions, all the governments place their environmental responsibilities at the ministerial level.¹⁷ Of course, the responsibilities of the various ministries vary widely, with many of these ministries having responsibilities in addition to environmental ones. Some include agriculture, natural resource management, tourism, or other responsibilities, reflecting the priorities of the individual nations.

Arguing in favor of a department, former Administrator Browner stressed the importance of U.S. leadership in the global community. “Important to that leadership position is the recognition of the international stature that comes with permanent, guaranteed cabinet membership,” she emphasized.¹⁸

A 107th Congress bill, S. 159, included a provision on EPA’s international activities. S. 159 formalizes EPA’s responsibilities in international relations and its role with the Department of State. On this matter, former Administrator Reilly noted: “I am pleased

¹⁵ Remarks of the Honorable William Reilly at the Senate Committee on Governmental Affairs hearing, July 24, 2001.

¹⁶ Remarks of the Honorable Christine Todd Whitman at the Senate Committee on Governmental Affairs hearing, July 24, 2001.

¹⁷ These exceptions are: Libya’s Environmental General Authority; Monaco’s government counsel; Myanmar’s National Commission for Environmental Affairs; Panama’s Environmental Authority; Peru’s National Council; Uzbekistan’s State Committee; Yemen’s Environmental Protection Council; Qatar’s Supreme Council; and, the United States’ Environmental Protection Agency. A further point of interest is that Iran and Qatar may place theirs at the highest levels. The Iranian Department of the Environment is headed by a Vice President of the Islamic Republic of Iran. A crown prince chairs Qatar’s Supreme Council for Environment and Natural Reserves.

¹⁸ Remarks of the Honorable Carol Browner before the Senate Committee on Governmental Affairs hearing, July 24, 2001.

to see that Senator Boxer's bill has explicit recognition of the role that the Secretary would play, and the Agency more broadly, in international affairs."¹⁹

A Simple Elevation, or an Opportunity for Change

The most contentious issue associated with elevating the EPA is whether it should be a very simple elevation, or whether this presents an opportunity to consider legislatively a number of possible issues. Although both H.R. 37 and H.R. 2138 are elevation bills, H.R. 2138 contains provisions which may widen the current debate. Former administrators have raised their concerns about jeopardizing passage by incorporating provisions to address any of the major ancillary issues. During the 107th Congress, former Administrator Reilly called for addressing such issues after the department was formed. At the September 2003 hearings, Acting EPA Administrator Marianne Horinko stated: "We support Cabinet elevation legislation that is free of provisions that would make significant changes to the Agency and its programs."²⁰

Others see elevation legislation as an opportunity to address key concerns. At the June and September 2003 hearings, the Subcommittee Chairman stressed the need to address organizational problems, data needs, and science quality issues in such an elevation. Many witnesses have backed the creation of a Bureau of Environmental Statistics with the department proposed by H.R. 2138.

Several witnesses at this year's hearing stated their support for improved science at EPA. H.R. 2138 would establish an Under Secretary for Science and Information. A prominent bill proposing a science structure at EPA is H.R. 3096 which would structurally establish a Deputy Administrator for Science and Technology as well as an Associate Administrator for Research and Development. In addition, it would also spell out new responsibilities for assuring the quality of science at the Agency.

H.R. 2138 is the first elevation bill that would statutorily declare EPA's mission.

Conclusion

Some key congressional supporters, the Administration, and others now support elevating the EPA to a federal department. Most support this concept because they advocate raising the stature, and thus possibly improving the performance, of the Agency domestically and abroad. While there is broad support for this concept, there is also some interest in including in any elevation bill provisions intended to address perceived problems relating to science, and perhaps information and risk analysis. However, some fear that disagreements about these provisions might impose obstacles to consideration of the elevation proposals.

¹⁹ Remarks of the Honorable William Reilly before the Senate Committee on Governmental Affairs hearing, July 24, 2001.

²⁰ Remarks of the Honorable Marianne Horinko before the House Committee on Government Reform, September 9, 2003.