

**TESTIMONY OF JANICE MAZUREK  
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BEFORE THE SUBCOMMITTEE ON ENERGY POLICY, NATURAL  
RESOURCES AND REGULATORY AFFAIRS OF THE COMMITTEE ON  
GOVERNMENT REFORM U.S. HOUSE OF REPRESENTATIVES**

JUNE 6, 2003

Mr. Chairman and members of the Subcommittee, thank you for the opportunity to appear before you once again to represent the Progressive Policy Institute's views on elevating the U.S. Environmental Protection Agency (EPA) to cabinet level status.

My involvement in this question and related matters dates back to the publication in 1995 of the National Academy of Public Administration report, *Setting Priorities, Getting Results: A New Direction for EPA*. I had the pleasure of serving as a staff researcher on that study, which was commissioned by the Congress to determine whether EPA was allocating resources to meet the most pressing environmental concerns. After that report was published, I joined J. Clarence (Terry) Davies at Resources for the Future, where we published a book that evaluates pollution control policy in the United States.

I currently direct PPI's Center of Innovation and the Environment. Over the past eight years, PPI has promoted performance-based, market-oriented, and community friendly strategies to help solve today's environmental programs and to sustain improvements into the future that the American people demand. We call these "second generation" environmental policies to distinguish them from the first generation of landmark environmental laws and regulations set in place by Congress in the 1960s and 1970s.

In that context, my message today is two fold: PPI strongly supports elevation of EPA to Cabinet status as provided for in H.R. 37, introduced by Congressman Sherwood Boehlert and H.R. 2138, introduced by Congressman Doug Ose. Conferring Cabinet status on EPA would put the organization on equal footing with other departments and send a strong signal internationally that the United States takes the threat of global warming as well as emerging new threats such as those related to chemical or biological attacks and protecting the Nation's water supply seriously. But our view is that elevation alone is insufficient to reorient the agency towards such important new challenges of the 21<sup>st</sup> century.

As I have stated to you before, an EPA Cabinet bill represents an important opportunity to do even more than serve as a symbolic gesture: it represents an opportunity to provide EPA with the tools to enhance environmental performance.

H.R. 2138 begins to do so in three important ways: 1) the bill promotes better functional integration of what for 30 years has been a deeply fragmented and fractured organization; 2) it promotes the development of science and research to better help identify environmental problems earlier; and 3) it puts in place a process to begin to provide to the public data and statistics to better illustrate the condition of the environment. And because PPI supports the axiom that bigger does not necessary equate with better, we support the bill's aim to make EPA more strategic without significantly increasing the organization's funding levels.

In moving forward with these modifications, I would urge the Subcommittee to also consider providing EPA with the “legal space” to develop more flexible, innovative tools to better allocate scarce resources to meet the most pressing environmental concerns. The Second Generation of Environmental Improvement Act (H.R. 3448) introduced by Reps. Greenwood, Dooley and Tauscher in the 106<sup>th</sup> Congress provides an excellent blueprint to provide EPA with the authority and resources to pursue more innovative environmental management strategies.

### **The Modernization Imperative**

H.R. 3448 reflects what Karl Hausker has described as a “remarkable convergence of ideas” about how the country could improve the existing system created by Congress 30 years ago to manage and control pollution.<sup>1</sup> Independent researchers and bi-partisan panels during the late 1980s and 1990s have published at least 18 major studies that endorse the idea of making EPA and the statutes it administers more modern (**Table 1**).

Congress, by “overwhelming majorities” in the 1960s and 1970s, passed the current first generation set of environmental protection laws in response to public outrage over highly publicized, highly visible crises such as burning rivers and “killer” smog.<sup>2</sup> In doing so, legislators replaced a patchwork of state laws and local ordinances with a more uniform system of federal standards to protect Americans across the country (**Table 2**). Although the standards are uniform, it is important to note that the laws to address pollution are nonetheless extraordinarily *piecemeal*, passed by Congress to control problems as they occur by environmental medium (air, water, and land). To administer this system, President Nixon created EPA.

During their 30-year history, these first generation environmental laws have achieved some astonishing successes. The laws sharply reduced industrial pollution and urban smog, even as population and cars grew apace.<sup>3</sup> They constructed a national grid to treat and control sewage and the industrial pollution that once set rivers such as the Cuyahoga afire. And the first generation laws—which delegate authority for their implementation to states that demonstrate institutional capacity to administer and enforce them—have helped transform many states from environmental laggards to environmental leaders.

But as a number of studies have demonstrated, the current piecemeal set of pollution control laws only crudely reflects how pollution really behaves. In some cases, the system merely serves to move pollution around. For instance, scientists now understand that up to 35 percent of nitrogen in the Chesapeake Bay originates from car and truck exhaust that blows from the Washington area.<sup>4</sup>

Compounding the problem is the fact that EPA (and most state environmental agencies) is structured according to these piecemeal laws. That is, EPA’s air office combats air pollution and its water office tackles water pollution. And although pollution in real life seldom stays confined to such narrow boundaries, when it comes to EPA’s separate offices, the twain seldom meet.

As a result of this “stovepipe” bureaucratic structure, high-risk problems sometimes slip through the administrative cracks. The most notable case is MTBE (methyl tertiary butyl ether). For more than ten years, California has mandated MTBE’s

addition to gasoline to reduce emissions of smog-causing contaminants. But while the chemical has indeed decreased polluting air emissions in California, it also has leaked from underground storage tanks—and is now a serious source of groundwater pollution that will be costly to clean up.

Unfortunately, at the time of its introduction as a fuel additive, California had no mechanism to allow state agencies responsible for air and water pollution to conduct cross-media reviews of MTBE's potential health risks. The state's experience with MTBE illustrates that pollution cannot be satisfactorily managed within the administrative boundaries of individual statutes.

To improve how their environmental protection agencies set priorities, states such as California have examined how to better integrate their environmental protection agencies but have stopped short of doing so in part out of concerns that their newly-reorganized agencies would no longer comport well with EPA's current medium-specific structure.<sup>5</sup>

### **Better Integration**

By reorganizing EPA from its current medium-specific structure into three major divisions, Representative Ose's bill will help the new Department and states that seek to undertake a similar reorganization to better identify high environmental risks to humans and to the environment and prevent them from 'slipping through the regulatory cracks.'

Although reorganizing the new Department into functional divisions is a promising start, it ultimately will be necessary for Congress to undertake a thorough review of the existing environmental statutes. I believe that for now, it is prudent for Representative Ose's bill to stop short of revising the current set of environmental statutes. However, the Subcommittee should reconsider Dr. Davies' suggestion, offered at a hearing on this subject almost two years ago, of establishing a Congressional or blue ribbon commission under Congressional auspices to undertake a review of the current statutes and recommend how they can be better aligned to promote environmental protection.<sup>6</sup>

### **Better Data**

Reorganizing the new Department into function divisions will help to make EPA more strategic. But EPA cannot manage what it does not measure. Although our monitoring networks are better than they were during the 1970s they are still inadequate to support more performance-based, market-oriented environmental management approaches. In fact, as Terry and I found in our evaluation of the pollution control system some data networks are too sparse to help support first generation approaches. The point is underscored by EPA Inspector General Report released last week. The report found that the agency's computerized database to track water pollution is plagued with problems and may become effectively useless unless the agency takes dramatic steps to fix the system.

Fortunately, Dr. Portney, President of Resources for the Future years ago developed a way to address the data deficit, a solution that is largely reflected in the Chairman's bill – the creation of a Bureau of Environmental Statistics.

The Bureau would provide timely, focused, and comprehensible performance measures – measures that in turn would help to make EPA more strategic by helping to better set the public's sights on environmental results. Better data also has the potential to open the door to more flexible, market-based means that allow the regulated entity to exceed, rather than merely meet, existing national environmental standards.

H.R. 2138, while an important step in the right direction, largely focuses on how EPA collects and reports to the public environmental information. While it may be beyond the jurisdiction of this Subcommittee, it is also imperative that we restructure and streamline how regulated entities report environmental information.

H.R. 3448 contains such provisions. H.R. 3448 is designed to improve not only the quality of data collected and reported by EPA, but also to streamline reporting and recordkeeping requirements by eliminating any redundant or unnecessary requirements and by adding any requirements needed to fill data gaps. I encourage the Subcommittee to consider H.R. 3448's provisions to overhaul how the regulated community currently reports data to EPA.

### **Strong Science**

Much of EPA's 30-year progress has been achieved through the development and application of science to inform and to coordinate regulatory decisions. Yet the agency has never had a top science official, which has left EPA vulnerable to accusations that its science is weak and lacks credibility. Such claims can undermine the agency's regulatory decisions and fuel controversy.

As the scientific complexity of EPA's decisions increases, it is now the time to fix this structural weakness in the agency's operations. Three years ago, the National Academy of Sciences (NAS) put forth a strong and unambiguous set of recommendations for improving science at EPA.<sup>7</sup> The NAS found that science must play a stronger role at EPA in order to tackle today's increasingly complex problems.

PPI for several years has supported the implementation of the NAS recommendations. In 2001, we championed a proposal advanced by Senator Tom Carper (D-DE) and Senator George Voinovich (R-OH), the "Environmental Research Enhancement Act of 2001" (S 1176) to create a new position of Deputy Administrator for Science and Technology at EPA. We also supported counterpart legislation in the House (H.R. 64) by Representative Vernon J. Ehlers (R-MI). Both bills propose to make EPA's science deputy responsible and accountable for the scientific and technical foundations of agency decisions.

Consistent with our position on this issue, we support the Chairman's efforts to strengthen science at EPA, contained in the Department of Environmental Protection Act. The bill endeavors to consolidate what currently are disparate scientific activities scattered throughout the agency into a coherent division and creates an Undersecretary for Science and Information charged with the new division's oversight. Such measures will help to ensure that the Department is better able to identify and address risks to humans and to the environment earlier and more effectively.

## **Promote Innovation**

Strengthening science at EPA will help to identify new threats earlier but EPA also requires innovative new strategies to solve such emerging problems. As mentioned, EPA has done a commendable job in making progress on the environmental problems that command and control laws were designed to fix – smog from smokestacks and sewage. But now we are faced with a new set of environmental challenges, different from those we first recognized in the 1970s. Consider that while two fifths of smog-causing nitrogen oxides come from factories and power plants, the rest comes from cars, railroads, airplanes and other miscellaneous, non-industrial sources whose actual emissions are difficult to control under the Clean Air Act.

Similarly, greenhouse gas emissions remain totally unregulated under the Clean Air Act and run-off from agricultural lands and urban development remains – not discharges from permitted sources under the Clean Water Act – are now the most pervasive form of water pollution, affecting 70 percent of rivers and streams that fail to meet water quality standards.

First generation pollution control laws have been rewritten and updated about as far as they can go; little gain is possible now by major rewrites. Now, progress can only be made in small increments until a broader public consensus is reached in new ways to tackle the big problems.

The first Bush Administration and the Clinton Administration made some notable progress in this direction through a series of voluntary initiatives designed to provide regulated entities with greater flexibility in exchange for better environmental results. Some of these voluntary ‘reinvention’ initiatives (Energy Star, Green Lights, 33/50) have helped to reduce emissions, save energy and save money. But, for the most part, EPA’s voluntary initiatives have served to underscore the need for legislative backing.<sup>8</sup>

To meet pressing new challenges in a manner that is effective and efficient, EPA must be provided with the legal space to design, implement, and evaluate more innovative environmental management practices. H.R. 3448 does just that.

The Department of Environmental Protection Act provides EPA with the management and scientific tools to better meet the environmental challenges of the 21<sup>st</sup> century. But this Subcommittee may also want to consider additional language such as that contained in H.R. 3448 that provides EPA with the authority to pursue a broad array of experiments to better manage and solve environmental problems.

## **Conclusion**

Terry Davies and I in our book published several years ago found that the fragmented [pollution control] system is in serious trouble.<sup>9</sup> Although it has achieved some important successes, the current system is inadequate to make Americans safer and more prosperous in the future. EPA has made some notable attempts to improve environmental management. But Terry and I concluded that only Congress could effectively remedy EPA’s problems. Ultimately, it will be necessary for Congress to revisit the current set of fragmented statutes that EPA administers. The Chairman’s

Cabinet elevation bill rightfully refrains from modifying these statutes now but begins to take a few important steps toward making EPA more integrated, data rich, and strategic.

Thank you for inviting me to provide PPI's perspective. I welcome any questions you may have.

**Table 1. Second Generation studies and reports**

<b>Title</b>	<b>Year</b>	<b>Organization</b>
Unfinished Business: A Comparative Assessment of Environmental Problems	1987	U.S. Environmental Protection Agency. Office of Policy Analysis
Reducing Risk: Setting Priorities and Strategies for Environmental Protection	1990	U.S. Environmental Protection Agency. Science Advisory Board
Setting Priorities, Getting Results: A New Direction for the EPA	1995	National Academy of Public Administration (NAPA)
White House Policy on Reinventing Environmental Regulation	1995	Clinton, William J. and Al Gore
Reinventing the Wheel for Environmental Management.	1995	National Environmental Policy Institute (NEPI)
Sustainable America: A New Consensus for Prosperity, Opportunity and a Healthy Environment for the Future	1996	President's Council on Sustainable Development
Building Partnerships for Accountable Devolution	1996	National Environmental Policy Institute (NEPI)
Integrating Environmental Policy	1996	National Environmental Policy Institute (NEPI)
Industry Incentives for Environmental Improvement: Evaluation of U.S. Federal Initiatives	1996	Global Environmental Management Initiative
Environmental Goals and Priorities: Four Building Blocks for Change	1997	National Environmental Policy Institute (NEPI)
Risk Management. Framework for Environmental Health Risk Management, Volume 1, 2	1997	Presidential/Congressional Commission on Risk Assessment
Resolving the Paradox of Environmental Protection	1997	National Academy of Public Administration (NAPA)
<i>Thinking Ecologically</i>	1997	Esty, Dan C. and Marian R. Chertow, eds., Yale University
The Environmental Protection System in Transition: Toward a More Desirable Future	1998	Enterprise for the Environment
<i>Pollution Control in the U.S.: Evaluating the System</i>	1998	Resources for the Future
Second Generation of Environmental Stewardship: Improve Environmental Results and Broaden Civic Engagement	1999	Progressive Policy Institute
<u>Towards a Sustainable America: Advancing Prosperity, Opportunity, and a Healthy Environment for the 21st Century</u>	1999	President's Council on Sustainable Development
Environment.gov: Transforming Environmental Protection for the 21 <sup>st</sup> Century Vol. 1-III	2000	National Academy of Public Administration (NAPA)

Source: Adapted from Hausker, Karl. "The Convergence of Ideas on Improving the Environmental Protection System." The Center for Strategic and International Studies (CSIS) web report, 1999. Available at: [http://www.csis.org/pubs/wr\\_EnvironPS.pdf](http://www.csis.org/pubs/wr_EnvironPS.pdf)

**Table 2. Federal environmental protection laws**

<b>Law</b>	<b>Year Authorized</b>
Clean Air Act	1970
Endangered Species Act	1973
National Environmental Policy Act	1970
Clean Water Act	1972
Safe Drinking Water Act	1974
Resource Conservation and Recovery Act	1976
Toxic Substances and Control Act	1976
Comprehensive Environmental Response, Compensation, and Liability Act (Superfund)	1980

Source: Adapted from Davies, J.Clarence and Jan Mazurek. *Pollution Control in the U.S.: Evaluating the System*. Washington, D.C.: Resources for the Future. 1998.

<sup>1</sup> Hausker, Karl. "The Convergence of Ideas on Improving the Environmental Protection System." The Center for Strategic and International Studies (CSIS) web report, 1999. Available at: [http://www.csis.org/pubs/wr\\_EnvironPS.pdf](http://www.csis.org/pubs/wr_EnvironPS.pdf)

<sup>2</sup> Lazarus, Richard. "A Different Kind of Republican Moment in Environmental Law." Draft. January, 8, 2003.

<sup>3</sup> Davies, J.Clarence and Jan Mazurek. *Pollution Control in the U.S.: Evaluating the System*. Washington, D.C.: Resources for the Future. 1998.

<sup>4</sup> Davies, J.Clarence and Jan Mazurek. *Pollution Control in the U.S.: Evaluating the System*. Washington, D.C.: Resources for the Future. 1998.

<sup>5</sup> California Unified Statute Commission. 1997. *Unifying Environmental Protection in California. Final Report*. Sacramento, CA.

<sup>6</sup> Testimony of J. Clarence (Terry) Davies, Senior Fellow, Resources for the Future before the U.S. House of Representatives, Committee on Government Reform, Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs.

<sup>7</sup> National Academy of Sciences. Strengthening Science at the U.S. Environmental Protection Agency: Research-Management and Peer-Review Practices. Commission on Life Sciences (CLC), Commission on Geosciences, Environment and Resources (CGER). 2000.

<sup>8</sup> Mazurek, Jan. *Back to the Future: How to Put Environmental Modernization Back on Track*. Washington, D.C. Progressive Policy Institute: April 2003.

<sup>9</sup> Davies, J.Clarence and Jan Mazurek. *Pollution Control in the U.S.: Evaluating the System*. Washington, D.C.: Resources for the Future. 1998.