

Testimony to Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs
Committee on Government Reform

Elevating the Environmental Protection Agency to Cabinet Status
(HR 37 and HR 2138)

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Introduction:

Good afternoon Chairman Ose and members of the Subcommittee. My name is Ron Hammerschmidt, Director of the Division of Environment, Kansas Department of Health and Environment. Thank you for the opportunity to speak on the two proposals currently under consideration to elevate the United States Environmental Protection Agency to cabinet status, HR 37 and HR 2138. My professional experience is that of a professional chemist and environmental professional. I have spent time in both a laboratory setting and in management of environmental programs during my 23 years of service in the department. In addition, it was my great pleasure to serve as the President of the Environmental Council of States (ECOS) from August 2001 through October 2002. I am currently the Past President of that organization. While I am not representing ECOS today, I have conferred with a number of my colleagues on this issue.

Background:

The Kansas Department of Health and Environment, like many other state agencies, has a love-hate relationship with the Environmental Protection Agency. We are faced with the implementation of both state programs and those mandated or directed by US EPA. Often the programs we conduct are supported financially through grants from US EPA. We always receive direction on these programs either in the form of regulation, "guidance," or partnership. Many of these programs are joint programs such as the protection of public water supplies under the Safe Drinking Water Act or similar state statutes regarding water quality under the Clean Water Act. There are times when a state program has progressed beyond the federal program. A case in point, is the Kansas regulatory program for animal feeding operations that has developed since the 1970's in a manner the federal program is now only beginning to approach.

There are many frustrations felt by states in dealing with US EPA. These frustrations include slow decision making, lack of understanding of state programs and their challenges, rigid approaches to problem solving, and inconsistent guidance between EPA regions. For example, one of the bigger frustrations for me personally is the length of time between the submissions of Kansas' water quality regulations and the regional office

response. While the current regional administrator has made a commitment to respond in a short time period, the prior track record on making these decisions is poor. The results of these delays have been a number of lawsuits filed by interest groups against the region. Similarly, requirements placed upon Kansas in implementing the National Pollution Discharge Elimination System (NPDES) by Region VII staff are not entirely consistent with those of Region VI to our south or Region VIII to the west. I note the regions that currently perform or recently performed the permitting activities associated with NPDES some times take a state-type approach to problem solving.

The decision-making process within EPA has also been a frustrating experience with multiple interpretations of the same rule or guidance among the various regions. An approach or regulatory language accepted in Region I, may not be acceptable in Region VII. In addition, regional managers must routinely confer with EPA headquarters from whom they may or may not receive authority to move ahead on any issue.

Finally, states have a need for scientific support for our decision-making processes. During my 15+ years of direct involvement in environmental regulatory programs, I have often been asked "What is the scientific and technical basis for this decision or approach?" In some cases, there is current information, research, and knowledge to support our decisions. Unfortunately, there are other instances in which the fundamental information is dated and in need of updating or nonexistent. Most states lack the resources to develop this science on our own. Rather we rely on federal and university sources for this science and technology.

Science and Information:

The proposed elevation of EPA to cabinet status has a number of positive outcomes, which include placing more emphasis on the importance of environmental and public health protection, giving environmental protection equal status with other federal activities, and an enhanced international prestige for EPA and the administrator. The two bills before you are designed to accomplish many of these positive goals. There are a number of provisions of HR 2318 which should be noted. The creation of an independent structure charged with Science and Information is an excellent proposal. As per my previous comments, there is a great need for quality science in all aspects of environmental protection -- from planning through implementation.

I have avoided the use of the term "good science" which takes on connotations of "manipulated interpretation of select facts" in some discussions. Of equal importance to the development of science is the communication of the science. My agency -- like many other government agencies -- has a great deal of data, but we lack information. My staff and many others struggle with transforming data into information. The creation of a Bureau of Environmental Statistics within a cabinet department is a positive step. This organization within the department should be able to begin the development of both

media specific and big picture information. For example, the recently published *Draft Report on the Environment* was a good start. However, there are numerous identified data gaps that must be addressed. The proposed Bureau of Environmental Statistics would be the logical organizational unit to plan and prepare this information. In addition, positive collaboration between this bureau and other entities such as the Centers for Disease Control, Agency for Toxic Substance and Disease Control, and the National Academy of Science can be easily envisioned .

As you move forward to increase and improve science and information in environmental protection, we must also learn from the past. Peer review boards including external members are very important. The new bureau should rely heavily upon external scientists and policy makers for input, interpretation, and guidance. The current Science Advisory Board of EPA and National Academy of Sciences have greatly aided EPA in the current science efforts. These success stories should be carried forward into a new structure.

While routine training and staff development can be handled in a standard manner, the Bureau of Science and Information should receive direction to monitor, analyze, and address any shortcomings among EPA staff in the area of science. The current workforce includes many staff with technical and scientific backgrounds. As changes occur within the agency or cabinet level department, the Bureau of Science and Information should have a leadership role in assisting new and existing staff in moving along a steep learning curve.

Policy, Planning and Innovation:

The second major component of the department described in HR 2318 is that for Policy, Planning and Innovation. This part of the department would be charged with the development of policy and regulation. As a state regulator, I have found that one area which causes all of us problems is the development of balanced regulation which provides adequate protection of the environment and public health while maintaining a connection to the practical realities of modern life. The administrators, managers and staff developing regulations and policies must have knowledge and experience in the area for which the regulations are designed. For example, the manager of the regulatory program for public water supplies should have an understanding of both conceptual and practical aspects of the operation of a public water supply system. This comment should not be construed as supporting only industry people for these EPA positions, but rather a need for knowledgeable individuals capable of understanding the regulated entity.

In addition, the staff in this organization should also be aware of the challenges of implementation. This is particularly important since the implementation is being assigned to the third organizational structure. Just as it is important staff be knowledgeable about the regulated community, it is equally important they understand the implementation ramifications of their decisions.

Implementation, Compliance and Enforcement:

The third organizational unit under HR 2318 is the Implementation, Compliance and Enforcement structure. This part of the proposed Department of Environmental Protection is of particular interest to state programs. The Undersecretary of this area would be charged with “Coordinating Department programs, with, and assisting, State and local governments in implementing environmental programs.” The duties of this undersecretary would obviously include state programs as well as the regional offices.

An important function of this part of the department is to bring a level of consistency and equivalency to decisions directly affecting the states. Decisions and processes related to the approval of state regulations for delegated programs, or the conduct of delegated programs are examples of areas which can benefit from oversight. While I am not advocating a one-size-fits-all approach in all instances, there is a benefit associated with more inter-regional consistency. States like the regulated community need predictability.

As a state program director, I am very interested in maintaining a close working relationship with the upper management of the department. It is important to maintain the ability of state programs to influence decision-making within the department including the Secretary’s office. It is important the new Department of Environment maintain an effective and comprehensive process for states and regional administrators to communicate directly with the other areas of the department including the Science and Information, and Policy, Planning and Innovation as well as the Secretary’s office. An important role of the Undersecretary for Implementation, Compliance and Enforcement should be to facilitate communications between states, regions and other parts of the Department of Environmental Protection as well as be an advocate for states’ issues and interests.

An additional positive aspect of the proposed structure should be the streamlining of the various levels of communication between the regional office staff and the current media-specific “stovepipes” staff from headquarters. A frustration on the part of states is the multiple levels of the agency involved in decision making. Let me use an example: the State of Kansas adopts a set of regulations required under a federal statute. The statute requires approval by the regional administrator before implementation. The regional office must “consult” with media-specific headquarters staff before proceeding. At worst, the approval of these state regulations can become entrapped in discussions and/or internal disagreements on multiple levels. The end result can be inordinate delays in the implementation by the state program.

Conclusion:

The proposal -- found in both HR 37 and HR 2138 -- to elevate the current Environmental Protection Agency to cabinet status is a positive step that clearly indicates the importance of protection of the public health and environment at the national level. The emphasis on science in HR 2138 is also a key component, which should lead to improvement in the communication and decision-making processes as well as consistency in the implementation of environmental protection programs across the country. In considering the design and organization of a Department of Environmental Protection, there should be an effort to streamline the decision-making process to eliminate unnecessary delays and overlapping reviews. In addition, states have enjoyed a level of access to the EPA Administrator in recent years, which has been very productive and effective for both EPA and the states. The structure of the cabinet-level department should maintain and facilitate this productive and desirable relationship

Thank you for your attention and the invitation to speak with you today. I would be happy to answer any questions you have this afternoon or in the future.

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