

Rachel's Environment & Health News

#392 - Cabinet Status Won't Help EPA

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Many environmental advocates in the past few years seem to have set their sights on the holy grail of cabinet status for EPA. But from my experience as an enforcement attorney at EPA, cabinet status would do little to reduce EPA's profound woes and might do much to exacerbate them.

The essential problem in environmental protection is to convert from a way of life that consumes ever more resources and produces ever more pollution, to a sustainable one that recognizes boundaries. Unending growth is cancer, and it means certain death. Al Gore recognized this; he devoted several chapters of his book *EARTH IN THE BALANCE* to making the case for sustainability, although he never quite revealed how to accomplish it. Any action to move us in the direction of sustainability is opposed by those who are invested in our growth-oriented, war-based economy. As a result, each and every environmental decision becomes a political struggle between well-heeled interests and those whose vision is a sustainable way of life. Science is virtually ignored in the process.

Examples abound in every one of EPA's programs. For instance, EPA has never been able to effectively regulate pesticides because whenever it has attempted to do so the House Appropriations Committee has threatened to cut EPA's budget. For the past two decades, the committee has been chaired by Congressman Whitten of Mississippi, whose campaigns were heavily financed by agricultural chemical interests. Whitten has declared at various times that regulation of pesticides is a "communist conspiracy." Two years ago Whitten was succeeded by Congressman Natcher of Kentucky who for similar reasons, seemed to share this view. Thus, despite enormous scientific evidence of health and ecological damage, and economic data that show organic farming may be more profitable and more productive, EPA has been unable to do its regulatory job. Despite EPA's regulatory inaction, many farmers are learning that organic farming is profitable and more sustainable than dependency on expensive petrochemicals. But for the most part, EPA has been an obstacle rather than a promoter of this trend.

In the RCRA [Resource Conservation and Recovery Act, the federal hazardous waste management law] program, each decision about how stringently to regulate a waste stream represents a new battle field. The Office of Solid Waste has made a practice of inviting industry to advise the agency on regulation. The result is not too surprising; if a regulation would impose too high a burden on an influential industry, it is relaxed, delayed or simply not implemented. Five years ago, after President Bush promised to implement the Basel convention, an international agreement that would restrict exports of hazardous wastes from industrial countries to non-industrial countries, we worked furiously to develop implementing legislation. The recycling and metal recovery industries protested that restrictions on waste exports would prevent recycling of U.S. waste abroad, and so the EPA workgroup carved out a recycling exemption despite concerns that sham recycling could be used as a pretext to avoid protective restrictions. Even after all the compromises, EPA's proposed legislation was buried at OMB because of industry objections that any control of hazardous waste exports would interfere with free trade. The U.S. remains one of the few industrial countries that has not ratified the Basel convention, although that may finally be changing.

In Superfund, where I have done most of my work for the past six years, the sites that get cleaned up first are those ripe for development. Although decisions are couched in terms of risk, in reality this plays a very secondary role. When prime waterfront property is involved, EPA finds a way to finance cleanup, and that's exactly what's happening to the Ports of Tacoma and Seattle. But when powerful mining interests destroy the health of working class people, EPA has looked the other way. In the 1970s high silver prices induced greedy owners of the Bunker Hill smelter to operate it beyond its capacity. They pushed the smelter so hard that they burned the baghouse that was intended to trap airborne lead emissions. The fire dispersed lead dust throughout the Coeur d'Alene valley and caused brain damage to exposed children living

there. The mine and smelter owners are very politically influential: no criminal prosecutions have ever been initiated, and the civil suit seeking payment for clean up has proceeded so slowly that the major contributors, including Gulf Resources, have been able to shuttle their assets out of the country. EPA is left in bankruptcy court competing with pensioners of the mining companies for the remaining assets.

The point of these examples is this: EPA is far too susceptible to the influence of powerful and wealthy industrial interests. As regulatory agencies often do, the agency has been captured by the industries it regulates. Cabinet level status for the agency would not correct this and might make the agency even more political. Can you imagine how much worse the purge EPA endured during the early Reagan years would have been if EPA had been a cabinet agency like Interior? They got Jim Watt. And things haven't changed much. In the Clinton Administration, reformers like Jim Baca are quickly shown the door at Interior. If that's what cabinet status means, EPA doesn't need it.

What EPA does need is real INDEPENDENCE. FDR recognized the need for regulatory agencies to be politically insulated when he persuaded Congress to create the classic regulatory bodies such as the Federal Trade Commission, Federal Communications Commission, the Interstate Commerce Commission, etc. These agencies are not part of the executive branch but are administrative agencies with both legislative and executive functions. They are directed by commissioners whose terms are staggered so that no one President can change the commission's direction too drastically. A more powerful example is the Federal Reserve Board, whose members are also appointed by Presidents for staggered terms. The Fed uses economic data and forecasts to decide whether to raise or lower interest rates or change banking regulations independent of Congress or the President. Even where the Fed's decisions may adversely affect particular interests (e.g., bondholders, when interest rates rise), it acts independently and there is general agreement that this serves the public interest. Similarly, an Environmental Commission should be empowered to use scientific data to set and enforce national environmental policy. For instance an Environmental Commission would need to set goals and policy for reducing fossil fuel use to decelerate global warming, to develop national policies on materials use and recycling, and on energy use and conservation, and to set population policy. A science-based national policy on land use planning and transportation is also desperately needed.

Obviously independent status for EPA wouldn't solve all of the agency's myriad problems. But if the protection of the environment is to be given the priority that human survival requires, environmental policy must be much more independent and grounded much more firmly in science. Cabinet status won't do the trick and is a diversion from the real issues.

--by James Handley[1]

AN ILLUSTRATION OF EPA'S LACK OF INDEPENDENCE

As an example of how EPA kowtows to industry, consider the Toxics Release Inventory (TRI). In 1986, Congress wrote into the Superfund amendments the "Community Right-to-Know" provisions which required companies to file annual reports of their releases of toxic substances into the environment. Senator Stafford, who introduced this provision, explained its purposes to the Senate including: "The inventories reveal geographic and industrial patterns of environmental release, which health officials can correlate with records of disease incidence to seek out possible relationships." [3]

Dr. John R. Stockwell, a senior physician with the U.S. Public Health Service and a specialist in preventive medicine, assigned to the Atlanta office of the U.S. Environmental Protection Agency, did just that. Dr. Stockwell, who has published many research studies in

learned journals, did a study of the possible relationship of the toxic releases in the Chattanooga area with disease incidence. [See RHWN #366.] However, because of EPA's fear of industry reaction, the report was suppressed. Only after it was requested under the Freedom of Information Act (FOIA) did the EPA office in Atlanta reluctantly release it in 1993.

We have recently obtained a copy of an internal EPA memo written by William Patton, Dr. Stockwell's supervisor, to 10 EPA staff, including Patton's boss, dated April 14, 1993. It reads (verbatim):

"I just got a phone call from Susan Hazen [head of the TRI program in Washington] in the Office of [Pollution Prevention] and Toxics. They are very concerned that the report is going out especially when the new Administrator [Carol Browner] has just given specific instructions to them concerning the upcoming TRI data release: 'stay away from linking human health effects and the TRI data'

"I explained we were using this tool as an inhouse targetting tool and were forced to release it due to FOIA appeals to Hqs.

"I am holding a short meeting in my office today at 2pm to discuss possible media questions. Ms Hazen was particularly interested in our communications strategy on this report. She sounded upset and said they will have to get to the Administrator about this ASAP.

"Pat Tobin [Acting Regional Administrator] may need a short briefing before he is called by Browner."

As pointed out in RHWN #366, EPA's reaction to Dr. Stockwell was to try to get rid of him for doing exactly what was intended under the law. Meanwhile top EPA officials conspire to subvert the law.

--by William Sanjour[2]

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[3] A LEGISLATIVE HISTORY OF THE SUPERFUND AMENDMENTS AND REAUTHORIZATION ACT OF 1986 (PUBLIC LAW 99-499), Committee on Environment and Public Works, U.S. Senate, October, 1990, Volume 2, p. 1084.

Descriptor terms: epa; corruption; malfeasance; misfeasance; sustainable development; pesticides; organic farming; rcra; hazardous waste; basel convention; george bush; carol browner; recycling; sham recycling; superfund; tacoma, wa; seattle, wa; coeur d'alene valley, id; bunker hill smelter; silver; lead; air pollution; gulf resources; jim baca;