RESOLVED, That the American Bar Association urges Congress and the Administration to elevate protection of the environment of the United States to its highest level by enacting legislation elevating the U.S. Environmental Protection Agency to Cabinet-level status.
On January 7, 2003, Rep. Sherwood Boehlert (R-NY) introduced legislation, H.R. 37, that would elevate the U.S. Environmental Protection Agency (“EPA”) to Cabinet-level status and redesignate such agency as the “Department of Environmental Protection.” This bill, which is similar to legislation introduced by Congressman Boehlert in the 107th Congress, would also make the EPA Administrator a member of the President’s Cabinet. While the legislation would allow the incumbent EPA Administrator to become Secretary of Environmental Protection automatically, it would require future nominees for the position to obtain Senate confirmation.

President Bush in a July 2001 Press Release indicated that if the legislation were to pass Congress, he would sign it and he stated that he believes that the Administrator of the Environmental Protection Agency has, and is deserving of, Cabinet status. According to President Bush, elevating the EPA to Cabinet status is “… a justifiable recognition of the importance of the role of the EPA.” Similarly, Congressman Boehlert has said, “It’s time the United States joined all the other major industrial nations in according Cabinet-level status to the primary agency entrusted with environmental protection. EPA’s mission is too critical for the agency not to be an official part of the Cabinet, particularly when so many complex, international and global environmental issues confront the U.S.”

Thirty-three years ago, another President formed EPA with ribs from the Departments of the Interior, Agriculture, Health, Education and Welfare and other governmental entities through Reorganization Plan No. 3 of 1970. In so doing, President Nixon said on July 9, 1970, “The Congress, the Administration and the public all share a profound commitment to the rescue of our natural environment, and the preservation of the Earth as a place both habitable by and hospitable to man. With its acceptance of the reorganization plans, the Congress will help us fulfill that commitment.” More than three decades later, it is time for Congress to accept the need to elevate EPA to Cabinet status to be on a par with the departments from which it sprung more than 30 years ago.

Since the creation of the EPA in 1970, the ABA Section of Environment, Energy, and Resources has worked closely with agency officials across the country to further environmental progress. Many EPA officials are now in or have held critical Section leadership positions over the years. Likewise, the agency’s representatives have always had an essential role in the planning and presentation of the Section’s CLE programs, in providing insightful guidance on emerging issues and have been an important element in the Sections’ role within the ABA. As recently as the Section’s annual Keystone Conference in March 2003, both the General Counsel and the Assistant Administrator for Enforcement and Compliance Assurance of the EPA attended and participated in the program. Although the overwhelming majority of Section members designate environmental protection as their key area of practice, all members of the Section clearly recognize the importance of EPA and its role in the environmental protection of the country.

Other Cabinet departments already have significant duties in protecting certain aspects of the nation’s environment, and the EPA, as the agency with the overall responsibility for the
environment, should join the ranks of those departments. For example, consider the role played by the U.S. Department of the Interior in protecting national parks through the National Park Service and wildlife species through the U.S. Fish and Wildlife Service, or the Department of Agriculture through its efforts to protect wetlands and critical farmland resources from being harmed by over-application of fertilizers and chemicals, or the Department of Labor through the Occupational Safety and Health Administration protecting the health and well-being of workers from chemical pollution in the workplace, or the U.S. Army Corps of Engineers, part of the U.S. Department of Defense, protecting waters of the United States under Section 10 of the Rivers and Harbors Act and wetlands under Section 404 of the Clean Water Act.

Thus, EPA, with its sole goal of protecting human health and the environment, certainly should have Cabinet status and there is no specific reason why it hasn’t received the same, other than that it was not originally so designated. At this time in our country’s history, having recently celebrated the 30th anniversary of the creation of the EPA, the 30th anniversary of the Clean Water Act, and the 30th Anniversary of the Clean Air Act of 1970, it is time to afford EPA the status that its mission of environmental protection warrants.

The General Accounting Office (“GAO”) presented its testimony regarding “Observations on Elevating the Environmental Protection Agency to Cabinet Status” on March 21, 2002 to the House Governmental Reform Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs. In its testimony, GAO stated: “Conferring Cabinet status on EPA would not in itself change the federal environmental role or policies, but it would clearly have an important symbolic effect.” GAO further noted that at an “annual budget exceeding $7 billion and a staffing level of 18,000 employees, EPA is larger than several existing Cabinet-level departments.”

EPA Administrator Christine Todd Whitman testified before the same House subcommittee on July 16, 2002 in support of Cabinet status and said: “Creating a Department of the Environment will ensure that environmental protection continues to receive high priority today and long into the future. As I have said repeatedly, my aim for this Agency is to leave America's air cleaner, water purer, and land better protected than when I arrived. I enjoy the full support of the President in pursuing this goal. Elevating the EPA to Cabinet level will assure that future Administrators are able to set – and achieve – similar goals in the years ahead. Taking this step, Congress will appropriately recognize the importance of environmental issues to the American public.”

On the same panel with Administrator Whitman that day was James L. Connaughton, Chairman White House Council on Environmental Quality. In support of Cabinet status he said, “In the Bush Administration, EPA carries out the work and advances the mission of a Cabinet department. In the Bush Administration, the EPA Administrator has the stature, standing and authority of a Cabinet secretary. The Bush Administration therefore looks forward to working with the Committee to advance EPA cabinet status legislation and make official what is already a reality.” Other panelists on July 16, 2002 who also supported EPA’s elevation to Cabinet status included J. William Futrell, President of the Environmental Law Institute and Wesley P. Warren, Senior Fellow of the Natural Resources Defense Council.
Although in many instances it appears that EPA is treated like a Cabinet department, it is not one now. The protection of our country’s environment deserves the same stature recently accorded to the Department of Homeland Security. Even if the new Department of Homeland Security is successful in protecting our citizens from terrorist attacks or other harm, that protection will ring hollow if our environment and human health are not protected and enhanced.

In swearing in Secretary Ridge on January 24, 2003, President Bush said, “The Department of Homeland Security will lead a comprehensive and unified effort to defend this nation. The Department will analyze threats; guard our borders and airports; safeguard critical infrastructure and coordinate the response of our nation to future emergencies.” EPA’s mission likewise includes analyzing threats through its research efforts; it safeguards our rivers and air, nature’s infrastructure, from pollution events; and it coordinates the work of the States and many other federal agencies in protecting the environment.

President Bush also said that, as “Homeland Security becomes the 15th executive department of my Cabinet, it begins a vital mission in the defense of our country. We’ve learned that vast oceans no longer protect us from the dangers of a new era. This government has a responsibility to confront the threat of terror wherever it is found. Under the leadership of Tom Ridge, more than 170,000 dedicated Americans, dedicated professionals, will have the overriding mission of protecting their fellow Americans.” EPA protects those oceans, confronts the threats of pollution every day and like Homeland Security also protects its fellow Americans.

The Section recognizes that environmental protection in the U.S. is of concern to all citizens and deserves and receives bi-partisan support in both the House of Representatives and the Senate. Congress should elevate EPA to Cabinet-level status.

Respectfully submitted,

Eugene E. Smay
Chair, ABA Section of Environment, Energy, and Resources
August 2003
Summary of Recommendation

We recommend that American Bar Association urge Congress and the Administration to elevate protection of the environment of the United States to its highest level by enacting legislation elevating the U.S. Environmental Protection Agency to Cabinet-level status.

Approval by Submitting Entities

The Council of the Section of Environment, Energy, and Resources approved the resolution on May 2, 2003. Approved by Standing Committee on Environmental Law in May 2003.

Has this or a similar recommendation been submitted to the House or Board previously?

No.

What existing Association policies are relevant to this recommendation and how would they be affected by its adoption?

None.

What urgency exists which requires action at this meeting of the House?

Legislation to elevate the EPA to Cabinet status, known as H.R. 37 or the “Department of Environmental Protection Act,” is currently pending before Congress.

Status of Legislation (If applicable.)

On January 7, 2003, Rep. Sherwood Boehlert, R-NY, introduced H.R. 37, and the measure was then referred to the House Government Reform Committee. Although no hearings have yet been scheduled on H.R. 37, the Administration has indicated its support for the measure. During the 107th Congress, similar legislation was introduced in the House by Rep. Boehlert (H.R. 2438) and in the Senate by Sen. Barbara Boxer, D-CA, (S. 159). Although the Senate Governmental Affairs Committee held a hearing on S. 159 in July 2001, both that measure and H.R. 2438 died at the end of the 107th Congress.
7. **Cost to the Association**  (Both direct and indirect costs.)

Adoption of the recommendation would not result in additional direct or indirect costs to the Association.

8. **Disclosure of Interest.**  (If applicable.)

There are no known conflicts of interests with regard to this recommendation.

9. **Referrals.**

This recommendation has been referred to the ABA Standing Committee on Environmental Law, State & Local Government Law, Young Lawyers Division, Business Law, Litigation, Trial Tort & Insurance Practice, Administrative Law & Regulatory Practice, and Dispute Resolution Section.

10. **Contact Person.**  (Prior to the meeting.)

Eugene E. Smary, Chair of the ABA Section of Environment, Energy, and Resources. Mr. Smary can be reached at 616-752-2129.

Lee DeHihns, Chair of the Rapid Response Committee of the Council of the ABA Section of Environment, Energy, and Resources. Mr. DeHihns can be reached at 404-881-7151.

11. **Contact Person.**  (Who will present the report to the House.)

Carol Dinkins, an ABA Section of Environment, Energy, and Resources’ Delegate, will present the Resolution to the House. Ms. Dinkins can be reached at 713-758-2528. Kinnan Golemon, also an ABA Section of Environment, Energy, and Resources’ Delegate, will be present for consideration discussion of the Resolution before the House. Mr. Golemon can be reached at 512-479-9707.

12. **Contact Person Regarding Amendments to this Recommendation**

Carol Dinkins, Kinnan Golemon, Eugene E. Smary and Lee DeHihns for the ABA Section of Environment, Energy, and Resources. See above for contact information.