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July 28, 2003

The Honorable Marianne Lamont Horinko
Acting Administrator
Environmental Protection Agency
Washington, D.C. 20460

Dear Acting Administrator Horinko:

In the Autumn of 2000, we asked GAO to monitor the initiatives launched by Administrator Browner and report back to us when EPA had new procedures and systems in place to handle EEO complaints. We have now received that long-awaited General Accounting Office report on the Environmental Protection Agency's equal employment opportunity (EEO) programs. We want to encourage you to embrace the recommendations offered by GAO in their report entitled, "Environmental Protection Agency: Continued Improvement Needed in Assessing Equal Employment Opportunity" (GAO-03-462).

Administrator Browner began the process of attempting to address the growth in EEO complaints at EPA by hiring more EEO counselors to oversee cases and launching a review of the process for handling the cases. In addition, Browner launched a series of "listening sessions" around the country to let workers express concerns about the workplace. That effort led to initiatives to enhance diversity training among SES managers and a review of the diversity training all managers received. Administrator Whitman took that effort up and announced a new training protocol for managers in May of 2001.

Despite the hard efforts of two successive administrations, GAO found that more work needs to be done to put a reliable EEO system in place. In summary, GAO recommends that you conduct a thorough evaluation of the new EEO software system deployed at EPA. Data unreliability was one of the underpinnings of building up the backlog of complaints in the past. If you can't keep track of what has happened and when, you obviously put yourself at risk of missing due dates and failing to provide timely action. Until you know the system you have in place is actually reliable, it is hard to be certain that the new policies will lead to better performance and we strongly urge you to conduct appropriate validation tests.

As to policies—we were surprised to learn that the EEO procedures released in draft form in July 2001 are still in draft. We agree with GAO that these should be made final. Additionally, we encourage you to promptly move towards a process for disciplining managers involved in cases of discrimination. It is unacceptable that the agency not have a

means to discipline, up to and including termination, managers who have been found to engage in discriminatory activities.

We note that the GAO report cites a change in contractors in June 2002 as a key to improving the agency's disposition of cases. However, the EPA could not provide data on the performance of those contractors. This seems odd to us since those contracts had been in place almost a full year by the time GAO closed out its work. Please provide information to the Committee regarding these contractors.

Please provide:

- A list of all contractors who work on EEO investigations.
- Indicate how each of these contractors were located and whether the contracts were awarded competitively or not.
- A list of performance metrics by which the contractor's are measured.
- Internal agency evaluations of the performance of each contractor.

Because the EPA, like most other agencies, contracts out investigative services on EEO cases, it is very important that we understand how EPA manages these contractors for performance—both the timeliness and the quality of their work. We appreciate your cooperation in providing this information to us.

It is particularly important that the agency get a sound program in place as you look towards implementing the President's management goal of contracting out EPA's services. We have seen reports that EPA employees believe managers have been instructed to be very tough in their evaluations of employees to set the stage for lay-offs and terminations. If such an effort were to take place, one might fairly anticipate a flood of EEO complaints in response to evaluations and job terminations that are perceived to be driven by something other than an employee's performance. I hope you are cognizant of that coming management challenge and are preparing for it.

Again, we want to congratulate the agency on its progress in this difficult area, but we want to encourage you to redouble your efforts to provide fair and timely disposition of complaints by employees. If you have questions regarding delivery of the information we requested, please contact Dan Pearson (202-225-4494) of the Committee staff.

Sincerely,

EDDIE BERNICE JOHNSON
Ranking Member of Subcommittee
on Research

SHEILA JACKSON LEE
Member of Congress