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EPA'S CLEAN AIR BUDGET AND THE CORPS OF ENGINEERS' WETLANDS BUDGET

HEARING

BEFORE THE

SUBCOMMITTEE ON
CLEAN AIR, WETLANDS, PRIVATE PROPERTY AND NUCLEAR SAFETY

OF THE

COMMITTEE ON
ENVIRONMENT AND PUBLIC WORKS
UNITED STATES SENATE

ONE HUNDRED SIXTH CONGRESS

SECOND SESSION

MARCH 28, 2000

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EPA'S CLEAN AIR BUDGET AND THE CORPS OF ENGINEERS' WETLANDS BUDGET

TUESDAY, MARCH 28, 2000

U.S. SENATE,
SUBCOMMITTEE ON CLEAN AIR, WETLANDS, PRIVATE PROPERTY
AND NUCLEAR SAFETY,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:30 a.m. in room 406, Senate Dirksen Building, Hon. James M. Inhofe (chairman of the subcommittee) presiding.

Present: Senators Inhofe, Voinovich, and Smith [ex officio].

OPENING STATEMENT OF HON. JAMES M. INHOFE, U.S. SENATOR FROM THE STATE OF OKLAHOMA

Senator INHOFE. I will call the meeting to order, right on time.

Today's subcommittee hearing will look at the Administration's budget for both EPA's Air Office and the Army Corps' Wetlands Program. I am very concerned about the budget for both offices and their priorities for next year.

In the Air Program, I notice that you have once again requested funding for the Clean Air Partnership Trust Fund. I think last year when we talked about that, we referred to it as a "slush fund." We decided that it was not a good program, so we disagreed with that at that time. I see it is coming back now.

Maybe you can address this in your opening statement, Mr. Perciasepe. Perhaps we have received information that we didn't have before, but if we did, my staff has not given it to me. I understand you are dropping it down now from $100 million to $85 million, which doesn't really have any bearing on it. If it's a program that's not justified at $100 million, it wouldn't be justified at $85 million.

I am also concerned that there are some areas that are not funded. I can't find new resources in the budget to help with the permitting necessary for the new sulfur rule, which was promised last year during the discussions on the proposals.

There are important studies on ethanol which were recommended by the Blue Ribbon Panel last year, but not funded, even though just last week Carol Browner announced support for a new ethanol mandate. I think that, once again, the Agency is moving forward with a political agenda without having first studied the science to support it.

On wetlands, this month the Corps announced a new replacement Permit for the No. 26 Nationwide Permits. We held a hearing on this subject almost 3 years ago, and I am concerned that the Corps has not adequately budgeted for the new permit process. They certainly haven't requested enough funds to cover additional individuals' permits. We'll have some questions about that during question and answer time.

Last year, the House Appropriations required the Corps to conduct a workload study in relation to Nationwide Permit changes. I am shocked that the new permit regulations were released before the workload study was completed and released. Now, maybe it's been completed; but if it's been completed, we haven't seen it yet.

So we have two witnesses today, Bob Perciasepe, the Assistant Administrator for EPA's Air Office, and Michael Davis, Deputy Assistant Secretary of the Army Corps. I intend to get to these issues and priorities during the course of the question and answer period.

You look different this time, Mr. Davis, from the last time you appeared.

Mr. DAVIS. It's probably the beard, sir.

Senator INHOFE. The beard. That's it, yes.

Why don't we start, Mr. Perciasepe, with you? I enjoyed being with you yesterday in San Antonio, and here we are back in Washington.

STATEMENT OF ROBERT PERCIASEPE, ASSISTANT ADMINISTRATOR FOR AIR AND RADIATION, U.S. ENVIRONMENTAL PROTECTION AGENCY

Mr. PERCIASEPE. It's the modern era. Two hundred years ago, it would have taken us months to do that trip.

Senator INHOFE. That's right.

Mr. PERCIASEPE. Somehow, maybe that slower lifestyle would have been a little easier on all of us, although I understand from historical records that travel was rigorous.

Let me just say thank you for the invitation today, Mr. Chairman, and let me do a couple things in my opening statement: first, give you a few highlights of some of the successes of the Clean Air Act since 1990, and then focus on the budget priorities of this year.

Since 1990, when Congress enacted the amendments to the Clean Air Act with overwhelming support, we as a country have achieved unprecedented success in the air quality area, and we've done this not only with rulemakings, but with voluntary measures, with market mechanisms, with partnerships with the States, and with stakeholder negotiation processes.

The EPA recently conducted a study that was authorized by Congress under section 812 of the Clean Air Act, to look prospectively at the costs and benefits that we might see from some of the improvements, and we projected out to 2010. In our central estimate of benefits going out to 2010, it is about $83 billion a year, and that exceeds the projected costs by about four to one.

This is on top of the fact that over the last several decades, the gross domestic product of the United States has gone up 114 percent; the U.S. population has gone up by 31 percent; vehicle miles traveled every day has gone up 127 percent; and the aggregate pollutants that we are all concerned about have gone down 31 percent.

So it is clear that we have made tremendous clean air progress, that it is cost-beneficial, and it is done while we are continuing to grow the U.S. economy.

Some specific examples of those successes are the Acid Rain Program, which has reduced emissions by 22 percent, or 3.5 million tons, and reduced acidity in the eastern part of the United States by up to 25 percent. Working on a global scale, we have reduced the emissions of stratospheric ozone-depleting substances and CFCs. We have reduced air toxics, using the maximum available control technology standards, by over 1.5 million tons. And our cities are cleaner. This is where people live, and most of the cities in the United States have cleaner air now than they did 10 years ago.

Two of the big reasons for this success are cleaner cars and cleaner fuels, both in terms of the congressionally authorized car emission standards in 1990, and the reformulated gasoline program. We have had substantial reductions in the pollution in our Nation's cities. And as you know, last December we promulgated the second phase of those air quality standards and gasoline changes, called Tier II, in low-sulfur gasoline.

EPA's voluntary climate programs have also been making significant progress and return on their investment. For every dollar that we spend on our voluntary programs, consumers have invested $15. Private sector and consumers have invested more than $15 million in new, efficient technologies, and businesses and consumers have saved over $70 in greenhouse gas—that's for each Federal dollar of investment—and half a ton of emissions.

Our study also showed tremendous health benefits from these reductions between now and 2010. I won't go through everything in great detail here because I know that we have a short period of time, but there are 23,000 fewer incidences of mortality; 20,000 fewer cases of chronic bronchitis; 47,000 fewer cases of acute bronchitis; 22,000 fewer respiratory-related hospital admissions. I have submitted the rest of this for the record.

If we funded the voluntary climate programs at the President's request, by 2010 we would have an additional $35 billion in energy savings to families and businesses in the United States.

Moving to our priorities for this year, we are going to continue working on the large trucks and buses and diesel fuel in the same manner that we tried to work with the automobile industry and the fuel industry last year on light duty vehicles. We are starting implementation of Phase II of the Acid Rain Program. We are going to continue with the Air Toxics Program under the MACT standards. We are going to work on Yucca Mountain, the nuclear waste disposal site in Nevada. A year and a half ago we did certify the Waste Isolation Pilot Plant in New Mexico, and it is now receiving high-level radioactive waste.

We are going to continue to carry out the voluntary programs under the Climate Change Technology Initiative, both in terms of industry and consumer products, but also on vehicles. We work very closely with the automobile industry on the vehicle program, and we have the EnergyStar program where we work very closely with industry and manufacturers.

In the 2001 budget, you have already mentioned in your opening comments at least a couple of the items that we'll talk about today. Our air budget does increase in the President's budget request to Congress. One of the items that you've mentioned is the $85 million for the Clean Air Partnership Fund. This is a fund that we want to help fund, and it is fully authorized under section 103 of the Clean Air Act.

The idea with the Clean Air Partnership Fund is to provide funding to State and local governments and air quality management districts so that they can work in partnership with businesses and industry in their area to look at innovative ways to solve more than one problem at once. One of the problems we have is that many of the regulations or programs that were laid out by Congress in the Clean Air Act focus on one pollutant at a time. We know that there are strategies that can be more holistic in their approach. So we would like to use those funds to demonstrate those at the local level. We want to leverage the original funds by having matching funds. In leveraging, we want to have public involvement and provide examples that we could then replicate across the country, and perhaps even provide ideas that go into the process that you have been working on in terms, Mr. Chairman, of reauthorization or amendments to the Clean Air Act.

On the climate change front, we are asking for almost a doubling in the funds to expand the partnership efforts with businesses and organizations and consumers.

I think I'll stop there; those were the larger increases. The remainder of the funding is to target some key areas, like air toxics and implementation of the existing rules and to continue to implement the 1-hour ozone National Ambient Air Quality Standard, and do some of the preparatory work that will be needed in the future for new standards, like continuing to maintain and provide funds for States to operate the PM monitors and things of that nature.

So I am going to stop there, Mr. Chairman.

Senator INHOFE. I neglected to mention when we opened up that we're going to have 5-minute opening statements. If you want to go longer, that's all right. Your entire statement will be made a part of the record.

You know, when Mr. Davis is through I would like to have you elaborate a little bit more because we had requested information on specifics on this Clean Air Partnership Trust Fund. I don't like these open-ended amounts that go in without knowing specifically what types of programs. It's all well and good to say that "we're going to get local matches," but I want to know, local matches for what? What are the programs? How much is going to be spent? What are the expectations? And I don't think we've received any of that. You might want to address that when Mr. Davis completes his opening statement.

Mr. Davis?

STATEMENT OF MICHAEL DAVIS, DEPUTY ASSISTANT SECRETARY OF THE ARMY (CIVIL WORKS), U.S. ARMY CORPS OF ENGINEERS

Mr. DAVIS. Mr. Chairman, thank you for the opportunity to provide testimony on the Army Regulatory Program budget and recent regulatory program initiatives. I am Michael Davis, Deputy Assistant Secretary of the Army.

In my complete statement, which I have submitted for the record, I provided an overview of the regulatory program; current levels of performance; recent regulatory initiatives, and the regulatory program budget. I will summarize my comments in each of these areas.

During fiscal year 1999, the Army regulatory program provided written authorization to over 90,000 activities, the most in any year. Over 90 percent of these actions were authorized in less than 60 days. This work is accomplished by approximately 1,100 highly skilled and dedicated regulatory staff members nationwide.

The Section 404 Program is a vital part of our Nation's overall effort to protect, restore, and preserve our water resources. The overarching statutory goal of the program is to protect the waters of the United States, including wetlands. Over the past 28 years the Army Corps of Engineers has prevented the destruction of hundreds of thousands of acres of wetlands and the degradation of thousands of miles of rivers and streams. This has reduced property damage and loss of life from flooding and protected fish and wildlife habitat and water quality, all vital to the Nation's economy and overall health.

From a good public policy and investment perspective, the Section 404 Program has been a success. For example, the program has played a key role in reducing the loss of wetlands from over 400,000 acres per year in the mid-1970's to approximately 100,000 acres a year in the mid-1990's.

While the program stems the loss of wetlands and other aquatic resources, it has done so in a manner that minimizes unnecessary regulatory burdens on those who must apply for permits. Administering the Army Regulatory Program in a fair, flexible, and effective manner has been a priority of the Administration since 1993.

The Corps received an average of 74,500 Section 404 permit requests each year from fiscal year 1996 to fiscal year 1999. Of those requests, 84 percent were authorized through a general permit; only 6.7 percent of all permit applications were subject to the more detailed standard individual permit evaluation that requires impact avoidance and compensation.

Because of the program's effectiveness in avoiding and compensating for impacts, only three-tenths of 1 percent of all Section 404 requests were denied.

From fiscal year 1996 to fiscal year 1999, the average time to reach a decision on individual permits was 107 days. Decisions for general permits were reached in only 14 days.

The general permit program is an important part of the overall regulatory program. By providing a screening mechanism, it allows the Corps to set priorities and focus its resources on those activities with potential for greater environmental impacts.

Before I discuss the new Nationwide Permits, I think it is important to review the legal requirements of all general permits, as found in Section 404(e) of the Clean Water Act.

First, general permits must be for a category of activities.

Second, general permits may not result in more than minimal impacts, either individually or cumulatively.

And finally, general permits may be issued only after an opportunity for public notice and comment, and are valid for no more than 5 years.

The most widely used general permits are the Nationwide Permits. Of the over 40 Nationwide Permits, Nationwide Permit No. 26 was used the most, by permitting a wide variety of activities in specific waters, such as headwaters and isolated waters. Nationwide Permit No. 26 also engendered considerable controversy and was the subject of litigation by the environmental community, who argued that it did not meet the statutory requirements of the Clean Water Act.

As our scientific understanding of the importance of headwater systems and isolated wetlands improved, we became concerned that from a national perspective, activities authorized by Nationwide Permit No. 26 might, in fact, have more than minimal adverse impacts on the aquatic environment. The concern was that Nationwide Permit No. 26 authorized too many projects in the headwaters and isolated waters, increasing the frequency of flooding, destroying viable fish and wildlife habitat, and impairing water quality.

Many continued to question the legality of Nationwide Permit No. 26, casting doubt and uncertainty on the entire nationwide permit program. In a 1995 report, the National Academy of Sciences questioned the scientific validity of Nationwide Permit No. 26. The President's 1993 Wetlands Plan called for a review of Nationwide Permit No. 26. In addition, this Administration has been unequivocal in its promotion of the wise and sustainable use of our floodplains. Every year lives are needlessly lost, and the Nation spends over $4 billion paying for flood damages. In 1996, the Army modified Nationwide Permit No. 26 and reduced the maximum allowable impacts from 10 acres to 3. The Army also committed to further improving protection by replacing Nationwide Permit No. 26 with more environmentally benign activity-based nationwide permits.

In this regard, on March 7, 2000, as you indicated, after several opportunities for public comment, the Corps issued five new nationwide permits and modified six existing nationwide permits. The new and modified nationwide permits will become effective June 7th, 2000, and these permits substantially improve environmental protection, while allowing those activities that are truly minor to go forward with little or no review.

Under the new nationwide permits, only those activities involving less than one-half acre of impacts will be allowed. In addition, to further reduce adverse impacts from flooding caused by development in the floodplain, we have also added a permit condition that prohibits the use of most of the nationwide permits in much of the hundred-year floodplain. We have also added a condition that prohibits the use of the nationwide permits in critical resource waters,

such as critical habitat for endangered species, and wild and scenic rivers.

As we developed the new nationwide permits, we not only considered the need to improve environmental protection, but we also considered the effect of such changes on Corps workload and the regulated public. Based on our review, we are confident that the final changes made on March 7th are needed and justified by the increased environmental protection.

While the Corps' workload will in fact increase some, we predict that over 80 percent of all Section 404 activities will continue to be covered by general permits.

Now I am going to turn just for a moment to the administrative appeals process.

On March 9, 1999, we published a final rule establishing an administrative appeal process for permit denials and declined permits. That rule became effective on August 6th, 1999. To date we have evaluated 12 requests for appeals of denied permits. One has been sustained, one remanded back to the District, and ten are pending. In the fiscal year 2000 appropriations for the Corps Regulatory Program, the Congress provided funds to administer an appeals process for jurisdictional terminations, and I am pleased to note that the final rule for this part of the appeals process will be published in The Federal Register today.

Regulatory appropriations have increased over the last 10 years, from $64.5 million in fiscal year 1990 to $117 million in fiscal year 2000. The President's budget request for the Army Regulatory Program for fiscal year 2001 is $125 million. Program funding increases have, for the most part, covered only the normal year-to-year labor costs, along with some programmatic initiatives and special studies. Increases in the regulatory program budget were necessary to cover the cost of additional staff, and also to respond to an increasing need to improve environmental protection and develop programmatic tools to improve overall performance.

The regulatory program 2001 funding request of $125 million is necessary to ensure that we continue to provide effective regulation of the Nation's wetlands and waterways. Approximately $5 million of this amount is needed to help address increases in workload.

In conclusion, Mr. Chairman, the Nation's aquatic resources are vital to our environmental and economic health. Our rivers, lakes, and wetlands are the lifeblood of our great landscapes. They support the fish and wildlife that we catch, hunt, and watch. They provide us with water, an essential component for all living things. The Army regulatory program plays an important role in protecting these resources for today and for future generations. Through the Army regulatory program we are committed to serving the public in a fair and reasonable manner, while ensuring the protection of the aquatic environment, as required by laws and regulations.

We will continue to pursue the important initiatives that I have discussed today. Our regional and nationwide general permits program will continue to be evaluated for opportunities to improve both environmental protection and performance. We have established a full administrative appeals process that will allow the public to challenge permit decisions and jurisdictional terminations without costly, time-consuming litigation.

The President's budget request is needed to help maintain this level of commitment and service.

Thank you, Mr. Chairman, for the opportunity to provide this statement today.

Senator INHOFE. Thank you. I hope you will convey to my good friend, Dr. Westphal, that I share his concern and his grief over OSU losing in the final 8.

Mr. DAVIS. I will pass that on. He would be with you today, except he is testifying at a hearing as we speak.

Senator INHOFE. I see.

Mr. Perciasepe, we ended up talking about the Clean Air Partnership Trust. Did you want to add anything in terms of specifics that we are going to be getting concerning that?

Mr. PERCIASEPE. On the Clean Air Partnership Fund?

Senator INHOFE. Yes.

Mr. PERCIASEPE. Well, first, just a tiny bit on the history of this. A year and a half ago, when I first started working on the Air Program, we at EPA—and I think it was widely distributed. EPA received a report from the State Air Directors, a group called STAPPA/ALAPCO, State and Local Air Directors. Their report to EPA proposed ideas for looking at pollution reduction at the State and local level, looking at more than one pollutant at a time as opposed to one pollutant at a time. It was in part from those kinds of discussions that this idea was derived.

Now, we made a commitment to the State and local governments that we would design the program with them, and we've done a little bit of those consultations, but we have a little bit of a "chicken and egg" here. We've done enough consultations where I could lay out that, "We have some general criteria that we would like to use." We haven't enacted regulations on how we would distribute the grant funds, but it would require some kind of matching or leveraging: if a locality wanted to use some of the funds to set up a local revolving loan fund to provide low-interest loans to people, for instance, in a brownfields location, that they can deal with innovative technologies and solve their air quality problems at the same time, that that would be something we would want to do.

We have done some of this work, and I think we have and can provide these outlines that we've done already, but we could certainly get together with these folks and do a little bit further refining on it. But again, I want to find the right balance between completely defining it on my own at the EPA and being accused of not consulting with the people who are going to use the funds. That's the dilemma.

Senator INHOFE. I see that.

Last year, during the gasoline sulfur debate, the Agency promised that they would provide the needed resources to get the refiners' permits approved quickly so that they could make the equipment changes to meet the deadlines that were out there. I am concerned that the budget didn't include any additional resources, either in funds or employees, to assist in this. How are you going to ensure that the permits are processed quickly without additional resources?

Mr. PERCIASEPE. We are diverting some of our existing funds toward the work that EPA needs to do to provide the information to

allow the permitting processes to go more smoothly at the State level. We have folks working on identifying in advance the array of technology options that would be available for the kinds of emission control devices that you would want to have associated with whatever—the types of equipment that we envision being utilized for desulfurization, and there is a number of technologies, as you know, being developed. In fact, a draft of that work is currently being reviewed by some people at the State level and some people in the industry.

Senator INHOFE. Well, if you are diverting, first, where are you diverting them from? And then quantify this diversion.

Mr. PERCIASEPE. Well, we can certainly provide some quantification of this for the record.

[Information follows:]

There are no changes in the fiscal year 2001 budget request to support new source permitting changes that may result from the desulfurization requirements of the Tier Two rule. When the Agency took comments on the proposed rule, states did not identify an inability to meet the permitting schedule with their current assistance levels. In fact, states with some of the largest number of sources subject to Tier Two have indicated that all their permitting could be completed rather quickly, even as quickly as 6 months.

The Agency expects that the rule will require changes to only small parts of each of the 115 refineries nation-wide. These permit changes will occur over a 3–5 year period and will be assimilated into the base permit review load of the states affected. Therefore, states did not identify a need for additional funding assistance when they provided comment on the rule.

EPA is taking a number of steps all of which should help ensure that permit review and issuance is done as quickly as possible in order for refineries to meet the Tier II requirements. For example, we have formed an EPA Tier II permits team of experts to help states facilitate Tier II permitting. This includes representatives from each of the Regions where refineries are located, as well as across EPA. Another example is the development of best available control technology (BACT) guidance that will be available for public review in the next week or two. This will assist permitting authorities by letting them know what EPA would likely accept as best available control technology for emission units that are subject to the New Source Review Program. That being said, this guidance would not preclude any specific state permitting decisions that would be made due to new information or site specific information that arises during the public comment period. A third example is that EPA will be conducting outreach efforts to states, refineries and communities where environmental justice concerns are raised.

Mr. PERCIASEPE. But we have a budget allocation for work on Title 5 permitting issues, and we have a staff in both the regions and in our office in North Carolina who do this; this is the work that they do. What we've told them is that over this coming year, they have to do some of this developmental work.

The more that we can do up front to define what needs to be done in the permitting process, the less work will need to be done on a permit-by-permit basis.

Senator INHOFE. OK.

Yesterday we briefly touched on this in your presentation and my presentation down in San Antonio, but with the Administration coming out with the program that announced the MTBE principles—which includes replacing the oxygenate mandate with renewable mandate nationwide—would it require that all gasoline have at least 1.2 renewable, which means ethanol, because it's an ethanol mandate that they came out with? This would require significant new resources at each refinery and for the distribution system across the country.

Have you conducted any studies to determine what the cost of implementing this nationwide mandate would be? Because we're going from those that were just out of attainment, to all refineries across the country. I don't know what kind of studies you've had to determine how much money that's going to be, for industry.

Mr. PERCIASEPE. OK. First of all, let me try to be clear about what we're proposing. We're not proposing that in all the reformulated gasoline areas—of which there are, I think, 10 or 11 cities in the country that are required to receive reformulated gasoline, and it's areas from New England all the way to California—that the 2 percent by weight oxygenate requirement be replaced in those areas with this 1.2 percent by volume minimum requirement for renewable fuels.

Incidentally, 2 percent by weight volume for ethanol would be about 5.5 percent by volume. That's the way that would work out. But the idea behind that proposal is that when Congress and the executive branch agreed on this reformulated gasoline program back in 1990, and put the oxygenate requirement in the statute, they had a number of objectives in mind. One was air quality, but other ones were using domestic supplies of energy to help in our transportation energy supply. And in order to maintain that, you want to maintain the amount that's currently in there, and that's about 1.2 percent, give or take a tenth of a percent, by volume of ethanol. On a national basis—we're suggesting that we hold that, so if we're already using 1.2 percent of our gasoline as blended with ethanol, then we would suggest that you start by just holding that. There would be no cost to holding that minimal existing level, because you can average it across the country and across times of year. We're not talking about having every refinery and every gallon of gasoline have 1.2 percent——

Senator INHOFE. But there are some areas where there is no ethanol.

Mr. PERCIASEPE. That is correct.

Senator INHOFE. And under this new rule, this would mandate that ethanol replace something else.

Mr. PERCIASEPE. Well, if we reduce MTBE, which was the main purpose of the——

Senator INHOFE. Reduce it, or eliminate it?

Mr. PERCIASEPE. We're asking for the authority to do one of those two things, and that will require a followup rulemaking and analysis of the final determination of that. But under any of those scenarios, we use about 4.5 billion gallons a year of MTBE, or methyl-tertiary butyl ether, in our Nation's gasoline. And if we eliminate that—let's just say eliminate that—then you're talking about filling a volume of 4.5 billion gallons of fuel, and there are a number of options to fill that volume. One of the options is ethanol, because it has good octane. One of the options might be iso-octane; another option might be alkalates; and there are other options——

Senator INHOFE. The last two that you mentioned are very heavy in toxics.

Mr. PERCIASEPE. Say that again?

Senator INHOFE. The last two that you mentioned are very heavy in terms of toxics. I thought we were not——

Mr. PERCIASEPE. Well, I'm not sure about that. It would be the aromatics that would cause more of a toxics problem, and that would be the benzenes, the toluenes, the xylenes. There are some companies that would be looking at some of those, but our view would be that you would want to maintain the existing benefits that we have achieved, including the toxics benefits. That's one of the principles that we put out. I know the committee has been looking at ways to put that in legislation, and we're obviously willing to work with you on that.

So if you sort of look at this as taking the reformulated gasoline program and making it more flexible so that as we phase down MTBE, refiners will have flexibility in how they meet those performance standards of the Air Quality Program and are not beholden to the 2 percent oxygenate requirement in every reformulated gasoline area. At the same time, we recognize the broader objectives of the oxygenate requirement and start with the existing use of renewable fuels and grow it over a decade, providing the long lead time necessary for that, and not prescribe the geographic areas or the time of year that that would have to be done, giving additional flexibility——

Senator INHOFE. Well, it sounds like there is going to have to be a lot to be done if you carry on with this announced plan that came out of the EPA last week. Now, in this budget do you have funds to have a comprehensive study for all this stuff that we're talking about on which substitutions to use, what is going to be required, what the cost is going to be? Because when I looked at this, when I first saw it—actually, you were kind enough to call me up and give me a "heads up" on it, but it's just an ethanol mandate, nationwide.

Mr. PERCIASEPE. Well, I can't say that it's not, but I can say that we're suggesting that it start where we already are. So you start where there is very little cost, and you allow it to grow gradually over 10 years. We can do the analysis, and would want to do the analysis, on how to make that happen. The idea is to not force-feed one kind of product into all the reformulated gasoline areas. The idea is that in the reformulated gasoline areas where we need to meet the air quality goals, that we provide some flexibility to the refining industry on how they make their recipes to meet those objectives, but also maintain the gains that we've made on renewable fuels in the country, to capture what we've got, and then grow it over a 10-year period, which will reduce the costs substantially, and not prescribe how it be distributed, but allow that to happen in a national averaging or annual averaging-type program.

Senator INHOFE. I guess it was last year that the EPA's Blue Ribbon Committee had a recommendation that addressed this, and I will read a quote out of it.

It says, "EPA and others should accelerate ongoing research efforts into the inhalation and ingestion health effects, air emission, transformation byproducts, and environmental behavior of all oxygenates and other components likely to increase in the absence of MTBE. This should include research on ethanol, alkalates"—which you were talking about—"and aromatics, as well as gasoline compositions containing those components."

Now, that was about a year ago, I guess, wasn't it, that they——

Mr. PERCIASEPE. Last fall, I think last September. We knew what they were going to recommend in the August timeframe, but I think the report was published in September.

Senator INHOFE. Well, did the EPA conduct all of this research before coming out with the mandate?

Mr. PERCIASEPE. First of all, we're not doing a rule or unilaterally proposing a mandate. What we're suggesting is a legislative framework to essentially replace the reformulated gasoline framework that is in the existing Clean Air Act, and still try to achieve all the objectives that were in the legislative history.

Senator INHOFE. But that legislative timeline——

Mr. PERCIASEPE. That first of all will require legislation, and then it will require analysis and rulemaking. Under Clean Air Act, Section 211, EPA has been working with industry, and we have a $15 million research program underway looking at inhalation and other paths of exposure for conventional gasoline and gasoline with MTBE, ethanol, and other oxygenates. So we have a process underway now with the refining industry, using authority that requires them to do that analysis. We don't have that in our budget.

Senator INHOFE. Well, you say you have a legislative framework. These have timelines on them. My concern is that within this framework, you're going to have the resources recommended by the Blue Ribbon Committee, and I want to make sure that the research is in and the results are in prior to the time that anything is mandated.

Senator Voinovich, what we're talking about is the recent mandate that came to take out MTBEs and replace them—I think with ethanol, although he's talking about other substances, too.

When the Blue Ribbon Committee had suggested they do extensive research on this, it seems to me—and it still seems to me—that we have the cart before the horse on this.

Senator Voinovich, did you want to make an opening statement or anything, or just join in the questions here?

Senator VOINOVICH. Well, I would like to make an opening statement.

Senator INHOFE. You are recognized.

OPENING STATEMENT OF HON. GEORGE V. VOINOVICH, U.S. SENATOR FROM THE STATE OF OHIO

Senator VOINOVICH. I would like to communicate a few things to the Department.

First of all, I want to thank you, Mr. Chairman, for conducting this hearing. As you know, the EPA is requesting an $832.8 million air program, which is a 39 percent increase over fiscal year 2000. We face limited budgets at all levels of Government and it is important that we use our limited resources wisely. As I mentioned to Administrator Browner, who was here last month, I am concerned that the Administration is proposing new initiatives while some of our environmental needs are currently going unmet. As we consider the last budget of this Administration, I am concerned that instead of building on their previous initiatives and giving priority to unmet needs, the Administration is proposing new initiatives, such as the Clean Air Partnership Fund.

This Administration, in my opinion, should not be proposing new initiatives that it is not going to be around to implement. Instead, it should be thinking about consolidation and putting money into existing programs. For example, it appears that EPA has a lot of work to do to meet its statutory requirement to complete maximum achievable control technology standards to reduce hazardous air pollutants. If these standards are not completed on time, it is up to the States to do it.

When I was Mayor and Governor, in my last year we concentrated on finishing what we started rather than beginning new initiatives to pass on to the next Administration. I strongly believe that our challenge in the new millennium is to work harder and smarter and do more with less. We need to prioritize so that we spend our resources in a way that best protects the environment and the health of our citizens.

I note that once again EPA has asked for an increase in funding for particulate matter research to advance the scientific understanding of the health effects of particulate matter. EPA is requesting $65 million, an increase of $3 million over fiscal year 2000, $9 million over fiscal year 1999, and EPA has received $118 million over the last 2 years to study particulate matter.

I am not opposed to this research. I think it's terrific. But the thing that bothers me—and maybe it gets back to the point that the Chairman was making—and that is that this research work should have been done before we went forward with the proposed regulations in terms of particulate matter. Because of the fact that the research work wasn't done, lawsuits were filed; a Federal Court of Appeals has ruled that even though the Environmental Protection Agency had the right to do this, they didn't have the scientific backup for it, and we can't continue to do things like this.

That's why Senator Breaux and I are going to be introducing a bill in the next few days that is going to require the EPA to conduct risk assessment and cost-benefit analysis when promulgating new rules under the Clean Air Act. The bill includes the same risk assessment and cost-benefits that we put into the Safe Drinking Water Act, which was passed in 1996 or 1997 and was signed by the President with a great deal of enthusiasm. Under our bill, EPA would be required to conduct an analysis of risk, cost, and benefits of alternative standards, while providing the Agency with flexibility in making the final regulatory decision. It's a common-sense approach that I think says, "If it's good enough to protect the water we drink, then it should be good enough to protect the air we breathe."

It will also help us avoid some of the legal and legislative wrangling that has occurred with respect to how we achieve clean air. There is no question that we have to do more science and research and cost-benefit and risk assessment to make sure that when we are doing things, they can be justified; and not just because some wind is blowing across the Agency.

Last but not least, Mr. Perciasepe, I worked very hard to bring my State into attainment on the current air standards. There was one area of the State, prior to my leaving, that had achieved it but hadn't been designated, and that was the Cincinnati area. Now, it's been almost 3 years or 4 years since that issue has been resolved.

I understand that now everything has been met; now they have extended the comment period again.

I just want you to know that the businesspeople in that community, who have been very responsible in bringing it into attainment, are very upset about this. It is hurting them from an economic point of view because they haven't reached the attainment of the current standards, and I'd like your Agency to get on with it, get it over with, and get them their designation of attainment.

Thank you, Mr. Chairman.

[The prepared statement of Senator Voinovich follows:]

STATEMENT OF HON. GEORGE V. VOINOVICH, U.S. SENATOR FROM THE STATE OF OHIO

Mr. Chairman, thank you for conducting this hearing today on the Administration's FY 2001 budget for EPA's air programs and the Army Corps of Engineers' wetlands programs.

Overall, EPA is requesting $832.8 million for air programs a 39 percent increase from FY 2000. We face limited budgets at all levels of government and it is important that we use our limited resources wisely.

As I mentioned when Administrator Browner was here last month, I am concerned that the Administration is proposing new initiatives when some of our current environmental needs are going unmet. As we consider the last budget of this Administration, I am concerned that instead of building on their previous initiatives and giving priority to unmet needs, the Administration is proposing new initiatives such as the Clean Air Partnership Fund.

This Administration should not be proposing new initiatives that it is not going to be around to implement. Instead it should be thinking about consolidation and putting money into existing programs. For example, it appears that EPA has a lot of work to do to meet its statutory requirement to complete Maximum Achievable Control Technology (MACT) standards to reduce hazardous air pollutants. If these standards are not complete on time, it is up to the states to do it. When I was Mayor and Governor, in my last year we concentrated on finishing what we had started rather than beginning new initiatives to pass on to the next Administration.

I strongly believe our challenge in the new millennium is to work harder and smarter and do more with less. We need to prioritize so we spend our resources in a way that best protects the environment and the health of our citizens.

I noted that once again EPA has asked for an increase in funding for particulate matter research to "advance the scientific understanding of the health effects of particulate matter." EPA is requesting $65 million an increase of $3 million over FY 2000 and $9 million over FY 1999. EPA has received $118 million over the last two years to study particulate matter.

I am not opposed to research funding. In fact, I believe it is essential in order to make judgments based on sound scientific evidence. What does concern me is moving forward with regulatory decisions before the science is available to back it up. It's no secret that I have concerns that EPA moved ahead with the $PM_{2.5}$ standards without fully knowing the health effects of $PM_{2.5}$.

Last year, a federal appeals court remanded the new ozone and particulate matter standards, saying that EPA needed to justify why those levels were set. The court did not say that EPA couldn't set the standards at those levels, but they asked for further explanation of how those standards were chosen.

I may sound like a broken record when I say this, but it warrants being stated again: environmental regulations need to be based on sound science. These decisions should clearly take risks and costs into account to ensure that we are targeting our limited resources on real risk. EPA can't keep coming back to Congress and asking for more and more money without telling us and the American taxpayers that the money being spent is going toward the real problems that exist. We need to know the science that goes into a rule BEFORE a rule is finalized.

That is why Senator Breaux and I will introduce a bill in the next few days that will require EPA to conduct risk assessment and cost-benefit analysis when promulgating new rules under the Clean Air Act.

The Voinovich-Breaux bill includes the same risk assessment and cost-benefit analysis provisions that are in the Safe Drinking Water Act, which passed with broad bipartisan support and was signed into law by this Administration. In fact, I was pleased to attend the President's bill-signing ceremony along with Administrator Browner and environmental groups when these reforms were signed into law.

This cooperative effort on drinking water is notable because it showed that a law could include commonsense reforms that make government more accountable based on public awareness of risks, costs and benefits. I believe it set a key precedent for reform of environmental regulations.

Under our bill, EPA would be required to conduct an analysis of risks, costs and benefits of alternative standards, while providing the Agency with flexibility in making final regulatory decisions. This bill is a commonsense approach that merely addresses the obvious: if it's good enough to protect the water we drink, then it should be good enough to protect the air that we breathe. It will also help us avoid some of the legal and legislative wrangling that has occurred with respect to how we achieve clean air.

And while you are here Mr. Perciasepe, I want to reiterate my hope that EPA will act quickly to redesignate Cincinnati as in attainment of the 1-hour standard. The Greater Cincinnati community has worked together, through a variety of coordinated programs, to improve the quality of Ohio's air. Cincinnati has demonstrated attainment for four consecutive years and has met all relevant criteria for redesignation.

The Greater Cincinnati Chamber of Commerce tells me that businesses have asked them whether Cincinnati is in attainment, and when they've said no, Cincinnati has been crossed off the list as a potential place to locate. This is unjustly hurting Cincinnati's opportunity for economic growth, when Cincinnati is indeed meeting the standard. Any delays in finalizing this rule will only serve to exacerbate the problem.

I realize that EPA has extended the comment period on the proposed redesignation rule, but I want you to know that I'm continuing to watch this and I hope it will be resolved expeditiously. While litigation continues on the 8-hour ozone standard, this should have no bearing on the merits of whether Cincinnati has attained the current 1-hour standard.

Thank you Mr. Chairman. I look forward to today's hearing.

Senator INHOFE. Thank you, Senator Voinovich. The things that you brought up are what I've been talking about for the last 20 minutes, prior to your getting here, and I am very much concerned.

We have been joined by Senator Smith, the Chairman of the parent committee.

Is there any opening statement you would like to make, Senator Smith?

OPENING STATEMENT OF HON. BOB SMITH, U.S. SENATOR FROM THE STATE OF NEW HAMPSHIRE

Senator SMITH. Thank you, Mr. Chairman. Thank you also for your leadership in holding the hearing this morning on the Clean Air Act budget.

The full committee began the budget process last month at a hearing with Administrator Browner on the overall budget proposal for the year 2001, and at that time I requested that each subcommittee chairman followup with some detailed oversight in each of the areas. This is helpful, and I commend you, Mr. Chairman, for doing that.

I think this will be helpful in providing information that we need to make informed decisions about the funding of the EPA. As you know, other programs—including another one that you and I serve on, Mr. Chairman, the Armed Services Committee—has to submit its budget to us for review, and I think EPA should do likewise. I think it's better than using the "rifle bore" approach on each individual piece of legislation that comes at us.

But I am especially interested in the Army Corps of Engineers budget because since the last hearing on the Corps budget, they released a major final rule which modifies the nationwide permits for wetlands. The rule replaces Nationwide Permit No. 26, which covered development in headwaters and isolated wetlands, and the

new nationwide permit rule expands the Federal permitting process for construction and development in wetlands and floodplains.

There is disagreement about whether changes to the rule were needed, but I think we all agree that the new rule will increase the number of individual permit applications, and thus increase the workload of the Corps. It is that workload increase that we're concerned about. The Corps has an obligation to process those permits, which properly protect the environment, expeditiously so as not to hold up other beneficial projects.

[The prepared statement of Senator Smith follows:]

STATEMENT OF HON. BOB SMITH, U.S. SENATOR FROM THE STATE OF NEW HAMPSHIRE

Good Morning. I would like to thank Senator Inhofe for his leadership in holding this hearing today on EPA's proposed budget for Clean Air Act programs. I am pleased to participate in the subcommittees hearings to take an even closer look at specific programs of the respective budgets.

The full committee began the budget oversight process last month at a hearing with Administrator Browner on EPA's overall budget proposal for fiscal year 2001. I asked each of the subcommittee chairmen to follow up with detailed oversight hearings on each of the Agency's specific programs. I commend Senator Inhofe for doing that today. I think that his hearing will be very helpful in providing the information that we need as the authorizing Committee to make informed decisions about funding for EPA.

I am especially interested in the Army Corps of Engineer's budget because since the last hearing on the Corps budget, they released a major final rule which modifies nationwide permits for wetlands.

My interest is driven by the great ecological benefit wetlands play in the State of New Hampshire. We have a vast amount and wide variety of wetlands. These range from tidal marshes, mud flats, freshwater swamps, bogs and wet meadows. These wetlands serve an important role in filtering pollutants, providing wildlife habitat, and helping with flood control.

The State of New Hampshire first recognized wetlands as a valuable resource in 1967 when it began to regulate coastal wetlands. The State has amended the law to allow more streamlined permitting while still protecting the environment. I am concerned about the impact that the Corps' new rule will have on New Hampshire's wetlands and its successful program.

The Army Corps of Engineers released its final rule to modify the nationwide permits on March 9, 2000. The rule replaces the Nationwide Permit 26 which covered development in headwaters and isolated wetlands. The new nationwide permit rule expands the federal permitting process for construction and development in wetlands and flood plains. There is disagreement about whether changes to the rule were needed, but I think all agree that the new rule will greatly increase the number of individual permit applications and thus increase the Corps workload.

It is that workload increase that is so important to me. The Corps has an obligation to process those permits which properly protect the environment expeditiously so not to hold up beneficial projects because of a lack of staff or resources.

I look forward to hearing the testimony and response to questions on what the estimated costs and resource demands this rule will place on the Corps districts and division commanders. Thank you.

Senator INHOFE. Thank you, Mr. Chairman.

Senator Voinovich, why don't we start with your questions? I have already had a number of questions.

I would, Mr. Perciasepe, like to know when the studies that we have been talking about will be completed, so maybe during the course of these questions you can bring that out.

Mr. PERCIASEPE. I can tell you before that, I don't have the detail on all those studies of that $15 million research program that we have underway now with industry under Clean Air Act, Section 211. I will provide it right away; I won't even wait for your letter. We will try to get the information to you.

[Information to be supplied follows:]

CAA - 211 (b) Alternative Tier II - Health Effects Testing Schedules

Animal Testing

Test Group	Fuel Mixture	Toxicology Studies	Studies Initiation	Draft Report Due to EPA	Comments Due to RG	Final Report Due to EPA
Group A	Baseline Gasoline - Gasoline MTBE	Study Set 1 -Subchronic w/ Neurotoxicity, Immunotoxicity, and In Vivo/In Vitro Genotoxicity * -Developmental Toxicity (Two Species)	0 months	26 months	28 months	30 months
		Study Set 2 -Two Generation Reproductive Toxicity	12 months	36 months	38 months	40 months
		Study Set 3 -Oncogenicity (One Species)	12 months	52 months	54 months	56 months
Group B	Gasoline Ethanol Gasoline TAME Gasoline ETBE	Study Set 4 -Subchronic w/ Neurotoxicity, Immunotoxicity, and In Vivo/In Vitro Genotoxicity * -Developmental Toxicity (One Species)	6 months	32 months	34 months	36 months
		Study Set 5 -One Generation Reproductive Toxicity	18 months	38 months	40 months	42 months
Group C	Gasoline DIPE Gasoline TBA	Study Set 6 -Subchronic w/ Neurotoxicity, Immunotoxicity, and In Vivo/In Vitro Genotoxicity * -Developmental Toxicity (One Species)	18 months	38 months	40 months	42 months
		Study Set 7 -One Generation Reproductive Toxicity	30 months	50 months	52 months	54 months
Group D	EtOH, TAME, ETBE, DIPE, TBA	Study Set 8 -Neat Oxygenate PK (where applicable)	6 months	26 months	28 months	30 months

* To include the in vivo micronucleus assay and the in vivo sister chromatid exchange assay, as well as the in vitro salmonella test specified in 40 CFR para. 79.68.

CAA - 211 (b) Alternative Tier II - Health Effects Testing Schedules

Exposure Studies

Exposure Assessment Task	Original Schedule	Revised Schedule
Incorporate results of ongoing monitoring studies	not considered	6 months
API submits draft peer-reviewed protocol including individual peer review comments and disposition of comments	3 months	12 months
EPA provides comments on draft protocol to API	5 months	14 months
API submits revised draft protocol to EPA	7 months	16 months
EPA approves/disapproves revised draft protocol	9 months	18 months
API submits draft final report for review by EPA including individual peer review comments and disposition of comments	24 months	42 months
EPA provides comments on draft final report	26 months	44 months
API submits final report to EPA on results of testing	28 months	48 months

Senator INHOFE. Senator Voinovich?

Senator VOINOVICH. I want to comment on a GAO study, Mr. Perciasepe, that was conducted that reviewed the fiscal year 2000 performance plan of the EPA, and that GAO review indicated that "little improvement in providing details on goals and strategies that cut across Agency lines"—and I think that "strategies" is the key word. Last Friday, Senator Thompson had a hearing in Governmental Affairs about rising oil prices, and your Agency is working or has finalized a number of regulations that affect our energy in this country: new source review standards, the Tier II low sulfur gasoline, diesel fuel standards, the NOx SIP call, ozone and particulate matter—I don't whether MTBE is involved in that also—but basically what the GAO report said is that the EPA has not coordinated their programs with other agencies that have a role to play in the area in which they are working.

The question I have is, how much coordination is going on between the EPA and the Department of Energy, and the Department of Defense? Defense is concerned that we are becoming too reliant on foreign oil, so we have a national concern there. Commerce, I am sure, is interested in the impact it is having on commerce.

It appears so often that the left hand doesn't know what the right hand is doing. We have another situation that the Chairman of this committee and I are familiar with; we have a proposal that will be coming up here one of these days in terms of the Florida Everglades. The EPA is very much involved in that. At the same time, there is a massive controversy brewing in Florida over the use of Homestead Air Force Base in terms of whether it's going to become a big regional facility and what impact that is going to have on Florida and on the Everglades.

You just wonder to yourself, does anybody ever sit down from these agencies in the same room and start to talk about some of these problems to determine how they can reconcile some of the

competing differences, to come up with some policies that make sense?

I would like you to comment on that. It just seems that each agency is doing their own thing.

Conformity is another one. Same problem with that.

So I would like your reaction to that. How often do you get together and talk about some of these things?

Mr. PERCIASEPE. Thank you, Senator.

The interagency process that we go through on all of these rulemakings is fairly significant. On the sulfur in gasoline rule that was on your list, we spent an extensive amount of time with the Department of Energy and the Department of Defense, particularly in part due to the Chairman's request to look at the effect on, for instance, aviation fuel that would be available for the Defense Department.

So I had a very specific process with the Defense Department on that rule in terms of the availability of those types of fuels. We had a technical expert at the Department of Energy help us design the flexible mechanisms in the Tier II low sulfur gasoline rule. In fact, during the regular comment period they made some very tough comments on our rulemaking, at which time I myself, personally, working with the Deputy Secretary and others in the Department, worked on a process to reconcile those differences that we had, and came out with a final rule that the Department of Energy was supportive of and comfortable with.

So we meet with them in advance of a rulemaking process and we let them comment, and we work out our differences, because in the final analysis we have to get all of our actions, whether they be EPA or Department of Transportation or others, through an interagency review process that ultimately takes place in the Office of Management and Budget.

But we try not to just rely on that as a failsafe. We try to spend a lot of time with other agencies because they have technical expertise that will augment the work that we're doing.

So the answer is, "Yes, we spend quite a bit of time with them." I could go on about the conformity and the time I spend with Ken Wykle of at the Federal Highway Administration, but I'll stop there.

Senator VOINOVICH. The thing I would like is this: We've got the GAO report. What is the Agency's reaction to that GAO report.

Mr. PERCIASEPE. I have to say I'm not 100 percent familiar with that, particularly with relation to these air programs, but I can tell you from my own personal experience that what I spend a significant amount of my time doing coordinating with other agencies.

Senator INHOFE. Senator Smith?

Senator SMITH. Thank you, Mr. Chairman. I missed your questions; I hope I'm not repeating something here.

Mr. Davis, on the 20 percent increase in individual permit applications, how does this translate into your workload at the Corps?

Mr. DAVIS. First, Mr. Chairman, we're not certain that it's actually going to be 20 percent. We have a pretty rough estimate at this time. We're analyzing that. We do know that the workload will increase; we'll have more individual permits as a result of the actions we took on March 7th, the new nationwide permits. So at the

end of the day we are going to have more individual permits; we know that.

But also, it is important to note that there are other workload savings pieces of the overall package. It is very important to look at this as a package. For some of the nationwide permits that we modified, we actually expanded the use of those permits. Utility crossings is one that is widely used throughout this country when people put in gas lines and power lines and other things. We broadened the applicability of some of those permits.

Also, we are replacing Nationwide Permit No. 26, which was limited in its use to headwater areas and isolated areas. The new replacement permits do not have that restriction, so the geographic coverage of the new permits is broader than what we used to have under Nationwide Permit No. 26. So there is also some workload savings, if you will. The preconstruction notification process, where we coordinate with agencies, is much more streamlined now under this proposal.

But you're right, at the end of the day there are going to be more individual permits. Exactly how many, we're not certain. It could be as many as 20 percent, and that's fairly substantial, but we think that the environmental benefits that we're getting from this, the increased protection of our floodplains that we're getting from this, justify these increases in workload.

Senator SMITH. Does your budget cover all the costs?

Mr. DAVIS. Perhaps not. We're not certain at this point. Again, it's going to take some time to implement this program, see exactly how it works out in the real world. For example, we have gradually ratcheted down Nationwide Permit No. 26 from 1977 through the mid-1980's, when we changed it. In 1977 there was no acreage limit on Nationwide Permit No. 26. You could have literally filled 40 or 50 acres of isolated water under Nationwide Permit No. 26. In 1985, we changed that to 10 acres. In 1986 we changed it to 3 acres. Each time we've done that, we've seen developers—who are very sophisticated and very good at what they do—design their projects around these acreage thresholds. We think to a large extent that that will continue to happen, but those things are hard to predict precisely, so we don't know.

We have about $5 million proposed in the President's $125 million request for the regulatory program that will go toward some of these increases in workload.

Senator SMITH. So you say perhaps, or not. And the private sector picks it up if you don't.

Mr. DAVIS. Right—well, I don't think the private sector will pick it up. I think that we'll be able to make some adjustments within our program. We have some flexibility. If things——

Senator SMITH. Well, what will be the increased cost to the private sector under the rule?

Mr. DAVIS. We have some rough and preliminary estimates from a report that was done by the Institute for Water Resources that indicates that it is about $32 million.

Senator SMITH. One other point that I want to make. The processing time on these individual permits versus the general permitting, how much is that going to be increased? Can you handle the delay? That's my point.

Mr. DAVIS. I think the current average time is about 107 days for the individual permits. It will probably go up a little bit, but our thoughts were that if it goes up to 120 days or 130 days, again, we think that's justified based on the environmental benefits that we're getting, and perhaps most importantly, the floodplain benefits that we're getting here. One of our big policy objectives here was to discourage development in the floodplains. Every year this country pays about $4 billion to $5 billion for flood damages because of development in the hundred-year floodplain. We believe that it is not appropriate to allow things to occur in the floodplain without some additional review that is afforded by the individual permit process.

Senator SMITH. Well, with all of these new individual permits, have you looked at the economic impact on State and local facilities—for example, water management districts, transportation agencies, and so forth—in terms of the economic effects on these agencies with these new rules?

Mr. DAVIS. We haven't specifically targeted any of those agencies. We have generally thought about the economic impacts, and we think nationally that they're acceptable and that we will be able to continue to make adjustments in the program. If there are unintended consequences in one particular sector, if the public is unfairly harmed by this, and we can make some adjustments without diminishing our environmental objectives, then we will do that. And we have some flexibility, I think, to do that.

Senator INHOFE. Let me followup on that.

Mr. Davis, you said on March 6th of this year that the Corps would need an additional $6 million to implement the new nationwide regulations, isn't that correct?

Mr. DAVIS. The preliminary analyses that we have from the Institute for Water Resources report suggest, based on their assumptions, that it would take about $6 million. But let me——

Senator INHOFE. Let me follow through with this, because I want to get to this chart over here.

The President's budget has $8 million. However, $5 million of the $8 million is not on that chart; that's something else—$5 million of the $8 million is for cost of living increases. This is according to our interpretation of your budget. That leaves $3 million. According to the budget information, for further development—$3 million is supposed to be for further development of watershed management plans, special area management plans such as watersheds in Orange County, South Florida, etc., and it doesn't sound like—if you take that $3 million out, what is left toward the budget you've created by the nationwide permit changes? The math ends up zero. What am I overlooking here?

Mr. DAVIS. The $5 million that we talk about—there is an $8 million increase proposed, you're absolutely right, from $117 million to $125 million. Of that, $5 million we are proposing to put toward maintaining the current level of performance and some additional increases in workload. We anticipated when we put the budget together that there would be some continued increases in workload, and part of that $5 million will go toward that. We would have some flexibility, I think, if the workload exceeded our estimates, that we could use some of that $3 million that we have

programmed for other things, as well. We do have flexibility within the regulatory account to move things around—for example, from our enforcement account to our permit evaluation account—to pick up some of this if we had to.

I am not certain that we're going to have to do this yet. I think we need to see how this plays out, and then make some adjustments once we have some information.

Senator INHOFE. How much is the cost of living increase in your budget?

Mr. DAVIS. It's probably about $2 million to $3 million, I'm guessing.

Senator INHOFE. OK. That's not the figure that I have.

Let's go to this chart up here. At our last wetlands hearing 3 years ago, we asked you to start keeping track of the length of time it takes for the Corps to review and act on an individual permit. I know you kept track on the periods between the time of application—why don't you go up there and point to this—the time of application is deemed complete, and the time it is approved. But the period of time—that's 127 days—the period of time that I'm concerned about is the period from which it is submitted to the time it is approved.

Now, we had asked for that information. Do you have that information for us?

Mr. DAVIS. Mr. Chairman, I don't believe we have that information.

Senator INHOFE. All right. That's a good, honest answer. Let's get it.

One last question, Mr. Perciasepe. I understand that you have requested 19 new employees to work on global climate issues. Does this mean that the Administration is going to be sending the Kyoto Treaty to the Senate before the next fiscal year?

Mr. PERCIASEPE. No.

Senator INHOFE. What are these guys going to be doing?

Mr. PERCIASEPE. Remember, those are for next year, not this year.

Senator INHOFE. All right, are they going to be submitting the treaty to the Senate next year?

Mr. PERCIASEPE. Maybe President Gore will, but——

[Laughter.]

Senator INHOFE. What are they needed for? What are they going to be doing?

Mr. PERCIASEPE. We have a voluntary program that we've been running at about a little over $100 million a year. We've requested every year an increase to that because of the return on investment that I mentioned earlier, and the potential for energy savings and pollution reduction.

We have asked for that increase again, which is the majority of the increase in the budget that Senator Voinovich mentioned earlier in his opening comments, and there were additional FTE related to that. We also have been doing a reorganization in the Agency to get the climate change programs together in one location so that we don't have different things going on at different times and that we can coordinate them.

Senator INHOFE. Well, it seems to me—and there are a lot of accusations around—that the Administration, through Executive Orders, through anything other than a legitimate path, is going to implement as much of the Kyoto Treaty as they can. I think this is something that we all believe they are attempting to do. As you well know, there's not a chance in the world that that treaty would be ratified. We even passed a resolution—I believe it passed without any dissenting votes; there may have been one—that said that unless you come back with something where the developing nations and the developed nations are treated equally, then we're not going to ratify it. So it's not going to be ratified, and it seems to me that you're beefing up to see what all can be done without our ratification of the treaty.

You know, we have this conference of parties that we go to; once you sign the treaty, you can still go to the conference of parties. And yet never once on the agenda, last fall or this coming fall on the proposed agenda, is the discussion of developing nations on the agenda.

So for the record I would like to have you tell me in as much detail as you can on these 19 new employees, specifically what they are going to do.

Mr. PERCIASEPE. Certainly, and we can do that for the record. I can lay out what they are going to work on.

[Information to be supplied follows:]

EPA's strategy to help achieve these additional environmental and economic benefits is to expand its existing programs where additional benefits can be achieved cost effectively to businesses and consumers and to launch new initiatives targeted at areas of opportunity that EPA has not addressed. With additional FTE, EPA will pursue new goals through 2010, beginning by expanding in key areas.

The Buildings Sector represents one of EPA's largest areas of potential, and at the same time is one of its most successful. In the buildings sector, EPA will expand upon the successful Energy Star partnerships (including ENERGY STAR Labeling and the ENERGY STAR Buildings Program). EPA will work toward the goal of offsetting about 35 percent of the growth in greenhouse gas emissions above 1990 levels that is expected to occur between 1990 and 2010 in this sector through promoting energy efficiency and enhancing the use of clean energy sources.

The Transportation Sector (cars, trucks, aircraft, marine) accounts for almost one third of the U.S. carbon dioxide emissions and represents one of the fastest growing sectors for greenhouse gas emissions. In the transportation area, EPA will accelerate its part in the Partnership for a New Generation of Vehicles and expand efforts to promote strategies to reduce vehicle miles traveled (VMT).

In the Industry Sector, EPA will expand its existing partnerships with the goals of: (1) doubling the rate of energy and resource efficiency improvements in industry between now and 2010 (working with DOE), (2) cost-effectively returning emissions of methane to 1990 levels or below by 2010, and (3) cost-effectively limiting emissions of the more potent greenhouse gases (HFCs, PFCs, SF6).

Mr. PERCIASEPE. Let me say, and I said this at my confirmation hearing before you and I'll say it now again, we are not implementing the Kyoto Treaty; we will not do that until it is submitted to the Senate and ratified by the Senate. We do take seriously the charge of that resolution you mentioned: getting meaningful participation of the developing nations. We have efforts underway to provide ideas and technical assistance and to work with developing nations in a bilateral and multilateral way through the State Department. EPA does provide technical assistance in many of those. But those are not designed to implement the treaty. They are designed to develop and cultivate the exact eventuality that the Sen-

ate is looking for, and that is developing the capacity in those parts of the world for the implementation of something like the Protocol.

We also participate in discussions of how this would be implemented, so that when we do present it to the Senate, we can give you a reasonable amount of information as to what the consequences are and how it will be implemented in terms of the mechanics and the mechanisms. We are trying to protect the country's interests in terms of how anybody would design on an international scale the implementing mechanisms that we can then bring to you and be able to explain it to you and have a good discussion about it at that time.

So we are not developing any domestic implementation mechanisms that are related to the Kyoto Treaty, and I wanted to make sure that you understand that.

Senator INHOFE. Senator Voinovich?

Senator VOINOVICH. This is for you, Mr. Davis, and I'm sorry that I wasn't here to hear your testimony.

Are you familiar with the fact that the National Association of Counties had a study done by the University of California?

Mr. DAVIS. Yes, sir.

Senator VOINOVICH. And a couple of things that I'd like you to comment about. One is that in that study it said that in a typical year, about 3,400 acres of wetlands are impacted by the nationwide permit, and that in order to mitigate the impacts on wetlands, that over 13,000 acres of mitigation occurred; that is, you are impacting on 3,400 acres, and in order to compensate for that they have required some 13,000 acres of new wetlands to compensate for that.

And you alluded to this a little bit in answering one of the questions here. The first question is, what's broken with the system now? I mean, those seem to be pretty good numbers, unless the wetlands being taken were of such significance that you really had to quadruple the number of acres to compensate for the loss of those. That's one thing.

The other is the studies indicating that—this gets back to Senator Inhofe's comments—you're talking about $6 million per year in order to implement the new system; they claim it will be $20 million to the Agency to take care of it. The Agency says that it will be approximately $20 million a year in increased costs to the regulated community; the study comes back and says that it's going to be $300 million, which is a pretty large number and very different from the one that you've talked about.

Could you shed some light on that study in regard to your opinion about its validity?

Mr. DAVIS. Yes, sir. I'm glad you asked the question. I think it's a very good question.

First of all, we do not agree with the NACO report. They picked 98 projects out of a universe of hundreds of thousands of projects, picked them out and focused on 98 projects versus—in our view, we looked at all the data in the entire data base for all the regulatory actions. So it was a complete evaluation of everything that is in the data base, hundreds of thousands of things, versus picking 98 very large developments.

Something is broken, though, and I think perhaps a way to articulate what's broken is to look at the problem that Doris Wilson

has up in Louisville, Kentucky. Doris Wilson lived in her house for 20 years, and there was a little wetland, a little less than three acres, in her neighborhood, and it was doing a pretty effective job of keeping her neighborhood and her home from being flooded.

A developer came in under a nationwide permit, filled in that three acres, and almost immediately Doris Wilson's home was flooded. I think that's a good example that we've seen around the country of what was broken.

Also, I think it is important in regard to NACO. I had the opportunity about 2 weeks ago to have about 25 or 30 NACO community representatives—not Washington types like us—come in to me. I actually thought they were coming in to me to give me a hard time about the nationwide permits. Like a lot of things on my calendar, I don't know exactly what the subject is until right before the meeting. But in this case, the came in, and what they were doing is coming in to congratulate us for having the courage in doing what we're doing. These were people who had communities that had been flooded; and frankly, they were pretty appalled at what NACO did with their report. That report was not sanctioned by much of the membership of NACO; it was done by a relatively small committee within NACO, and it certainly didn't reflect widely the feelings of NACO members. Again, I heard these 20 or 25 community representatives—county commissioners and mayors—come to me and say, "This is important. We ought to discourage development in the floodplain. We think this is good public policy."

Senator VOINOVICH. Well, that may be an anecdotal situation. The issue is, what's your response to the fact that where they have had wetlands used, that they have quadrupled the number of acres to create additional wetlands?

Mr. DAVIS. Again, that was looking at that very small subset. I don't know—I'm not in a position to question the numbers that you gave, of this essentially 3–1 or 4–1 ratio. Typically, the ratio is about 2–1. For every acre that is impacted, there is about 1.5 to 2 acres offset somewhere else. I'm not sure how they got the 4-to–1, but again, I suspect it's because of the 98 or so projects that they kind of hand-picked and looked at, and it's possible that they could have had that ratio there.

I think the bigger question is, does it really work? Is this compensation working? What you have is a pure acreage analysis here, and not a real functional assessment about whether or not you are replicating or replacing the functions that have been lost to that development—the flood attenuation functions, the water quality functions, the habitat functions. We know in many cases that you don't get these things back, particularly when you're using creation and enhancement. Sometimes it simply doesn't work.

Senator VOINOVICH. It was pointed out to me that this study that they did, which was May 1997 through 1998—I'm sorry—the Corps authorized 8,790 activities under the Nationwide Permit No. 26, about 7,500 a year, which impacted 3,000-some acres of wetlands. So this indicates that it's more than what you think it is.

You are saying to me also today that this study that was done by NACO is not supported by its membership, that it's not the official position of NACO in regard to this new permitting process?

Mr. DAVIS. I'm not certain if it's the official position of NACO. What I was suggesting, Senator, is that I know there is a substantial part of the membership of NACO who came to me and were surprised that that report was released. It was released by the relatively small committee that did it without vetting throughout the membership of NACO. And these 25 or 30 NACO representatives—again, community leaders, mayors, councilmen, others—felt that what we were doing was very important. This was a very geographically diverse group.

Senator VOINOVICH. I will look into that.

I still would like from you, No. 1, an explanation of why the current system is broken and not working and why you need the new permit system, OK? I am genuinely interested in that.

And second of all, I would like to know your evaluation of the study's impact in terms of costs. Are you representing that this would be just another additional $20 million as a result of these new permits?

Mr. DAVIS. No. I think the preliminary indications that we have are that it's actually about a $32 million cost to the public. I believe NACO was saying that it was $300 million, and we're saying about $32 million, based on the assumption——

Senator VOINOVICH. And they're also saying, in terms of your own budget, in order to give you the capacity to make sure that the numbers aren't 2 years of permitting, you need to have more people to handle it, and they claim that it would require more staffing on your part. And again, I would like your input on that.

Mr. DAVIS. I think it will require some more staffing—do you want that now, or do you want something for the record?

Senator VOINOVICH. I'd like to have it for the record, if you will.

Mr. DAVIS. Sure.

Senator VOINOVICH. If you have the answer now, fine.

Mr. DAVIS. Well, we do think it will increase our workload some, and we anticipate that it will perhaps take some additional funding, but we don't believe it's $34 million additional funding for the Corps that NACO has represented in their report.

There are really two basic reasons why we needed to make the change that we made. You weren't here when I outlined the basic legal requirements for general permits. There are three basic requirements, but two of them are very important. One is that general permits have to be for categories of activities, and the second one is, no general permit can result in more than minimal impacts, either individually or cumulatively.

We have been challenged on Nationwide Permit No. 26, and quite frankly, we are probably not going to win that challenge, because Nationwide Permit No. 26 was not a category of activities permit. It didn't really comply with the plain words of the law, quite frankly. So we had a real legal problem that we were trying to avoid here, and I think we have fixed that. But we also had an environmental problem. Nationwide Permit No. 26 was formulated in the 1970's, when we didn't understand the importance of headwater systems, the importance of isolated systems. We now know—it is verified by the National Academy of Sciences in a 1995 report—that these systems are very, very important and integral parts of the overall watershed.

So those are the two basic reasons why we made the change.

Senator INHOFE. I would say, Senator Voinovich, that we talked about some of these estimates before, back when we had the ambient air fight; it was actually before you were a Member of this body. The EPA had anticipated it would cost $6 billion a year, then the President's Board of Economic Advisors said it would cost $60 billion a year, then the Research Foundation said it would cost between $120 billion and $150 billion a year. And I would remind you folks that when we're talking about NACO, the one who did this report for NACO was from President Clinton's Board of Advisors during that time.

Senator Smith, do you have any further questions?

Senator SMITH. No further questions, Mr. Chairman??

Senator INHOFE. All right.

I am going to end on a positive note, Mr. Perciasepe. When we had the new source review hearing in Ohio, during the hearing I was pleased to hear that your stakeholder process has been very good, and you had nothing but good comments from the stakeholders at that hearing. I would like to ask you where you are in that process, and do you anticipate working just as aggressively with the stakeholders from this point forward as you have in the past?

Mr. PERCIASEPE. Yes, we do. And I agree that the stakeholder process has been very helpful in terms of identifying improvements to the new source review program. On the other hand, I sometimes think these stakeholders are addicted to having these meetings.

But at any rate, they have been helpful. We are having some more during the course of the month, and we're going to have to be able to start to narrow some of the differences down to some concrete proposals sometime between now and the summer, which I plan to do. It's probably going to require some of my own personal involvement with some of these discussions, as well.

Senator INHOFE. How do you structure those when you have those meetings? Who is invited?

Mr. PERCIASEPE. There are a lot of different groups. We have actually used the State air directors to help soundboard some of the stakeholders as well, because the State air directors are on the front line of having to implement a lot of these programs. Their interactions on a more day-to-day basis are often very helpful to looking at how the program should be continued.

So we have used both our own staff to have these discussions; we've met with individual stakeholder groups; we've had a couple general sessions with all of them together, one of which I participated in, looking at this broader idea of a sector-based approach; and we've asked the State air directors to do some meetings, as well, and provide us with input.

We are getting to the point where we have to sort of "fish or cut bait" on some of these discussions, so we will undoubtedly be having more conversations about that as the year goes on.

Senator INHOFE. Senator Voinovich, do you have any further questions?

Senator VOINOVICH. No, I haven't.

Senator INHOFE. All right.

Well, thank you both, very much, for coming, and we have asked a number of questions to answer for the record, and we will be looking forward to getting those.

I would say, Mr. Davis, that we do want to get the answer to what is asked on this chart up here. That timeframe between the submission of the application to the Corps and the application is deemed complete, we had asked for that 3 years ago, so we'll expect that in our fall hearing, to have that, if not before that, to get something for the record.

There will be other questions. The record will remain open. There are other members who have questions whose staff is here representing them today.

Senator INHOFE. We are adjourned.

[Whereupon, at 10:47 a.m., the subcommittee was adjourned, to reconvene at the call of the Chair.]

[Additional statements submitted for the record follow:]

STATEMENT OF ROBERT PERCIASEPE, ASSISTANT ADMINISTRATOR, OFFICE OF AIR AND RADIATION, U.S. ENVIRONMENTAL PROTECTION AGENCY

Senator Inhofe and members of the subcommittee, I am pleased to be here today to present the accomplishments of our air and radiation programs, describe the future outlook for those programs, and discuss the Clinton-Gore Administration's fiscal year 2001 budget request for these programs. I would also like to take this opportunity to thank you and the Committee for working with us toward our collective goal of protecting public health and the environment.

First, I will highlight the impressive health and environmental results that the Clean Air Act is achieving as well as discuss the solid progress we are making through our voluntary climate change and indoor air programs.

In 1990, Congress passed the Clean Air Act Amendments with overwhelming support, setting ambitious air pollution reduction goals. Since then, we have achieved unprecedented success in cleaning our nation's air and protecting public health. We have achieved these successes through rulemakings, voluntary measures, market mechanisms, state partnerships, and stakeholder negotiations.

In November 1999, EPA submitted a new Report to Congress which estimates the benefits and costs of the 1990 Amendments. There are significant uncertainties associated with any benefit-cost analysis of clean air programs, requiring scores of methodological decisions and assumptions. Many of the uncertainties involved in this study are the subject of continuing discussion within the economic and policy analysis communities and within the Administration. Reflecting many key uncertainties, the new study estimates that the year 2010 Title I through V benefits which can be expressed in dollar terms may range from $240 billion more than costs to $1 billion less than costs. However, the Primary Central estimate in the study shows net benefits of $83 billion, indicating that the benefits of the 1990 Amendments exceed the costs by 4 to 1. As President Clinton himself stated when it was released: "This report further demonstrates that public health and environmental benefits can be achieved along with economic benefits and this Administration will continue to work aggressively to protect the air we breathe, the water we drink, and the land on which we live."

From 1970 to 1997, U.S. Gross Domestic Product has grown by 114 percent, the U.S. population by 31 percent, and the number of miles traveled by on-road vehicles (VMT) by 127 percent. Yet, the aggregate emissions of criteria pollutants—ozone precursors, particulate matter, carbon monoxide, sulfur dioxide and lead—are down 31 percent. Emissions are down significantly for each of these pollutants except for nitrogen oxides (NOx), which are up somewhat. Lead emissions have been cut 98 percent. Most of these declines in emissions can be attributed to implementation of the Clean Air Act.

A few prominent examples of Clean Air Act successes since 1990 include the following:

- In the Acid Rain Program, electric utilities have cut sulfur dioxide (SO_2) emissions by 22 percent or 3.5 million tons and have cut rainfall acidity in the East by up to 25 percent. When Title IV is fully implemented in 2010, EPA's study projects that SO_2 and NOx reductions will provide substantial health benefits (mostly from a reduction in annual cases of premature mortality). Acid Rain control will also

produce significant benefits in terms of improved visibility, lowered surface water acidity, and less damage to high elevation forests and materials.

- The U.S. and other developed countries have phased out production of many of the chemicals most harmful to the stratospheric ozone layer, including CFCs. We have estimated that once completed, the worldwide phaseout will prevent approximately 295 million skin cancers in the U.S. through 2075.
- We have issued air toxics rules, or MACT Standards, that we believe will cut industrial air toxics by 1.5 million tons a year, 8 times the amount achieved in the previous 20 years.
- The air in our cities is cleaner than it has been in a long time. Nationally, average air quality levels have improved for all five of six common pollutants subject to air quality standards. There have been dramatic cuts in the number of areas violating these standards.
- Our cars and fuels are cleaner. The average new car is 40 percent cleaner (in terms of emissions) than in 1990; over 30 percent of the nation's gasoline is now reformulated gasoline.
- In December 1999, we set the tightest emissions standards ever for cars, gasoline and the first standards that apply equally to sport utility vehicles (SUVs) and minivans. The projected costs to meet these standards, about $100 for cars, $200 for light-duty trucks, and two cents per gallon of gas, are far outweighed by the projected public health benefits. Estimated benefits include the long term yearly avoidance of premature deaths, cases of bronchitis, and significant numbers of hospital visits, lost work days, and multiple respiratory ailments (especially affecting children).

Through EPA's voluntary climate change programs, the American people have enjoyed a significant return on their investment. For every dollar spent by EPA on its voluntary energy efficiency programs, the private sector and consumers have invested more than $15 in new more efficient technologies; businesses and consumers have saved over $70; and greenhouse gases have been reduced by more than half a ton of carbon equivalent.

As you can see, we have made impressive progress. Based on EPA's findings in the November study, we believe that the health benefits from reductions in ground-level ozone, particulate matter, and associated pollutants (especially from reductions in SO_2 emissions) achieved under the 1990 Clean Air Act Amendments will continue to grow. For example, the study's Primary Central Estimate of benefits for the year 2010 is:

- 23,000 fewer incidences of premature mortality,
- 20,000 fewer cases of chronic bronchitis and 47,000 cases of acute bronchitis,
- 22,000 fewer respiratory related hospital admissions, 42,000 fewer cardiovascular hospital admissions, and 4,800 fewer emergency room visits for asthma,
- 91,000 fewer incidence-days of shortness of breath and 1,700,000 fewer asthma attacks, and
- 4,100,000 fewer lost work days and 31,000,000 fewer days with restricted activity due to air pollution-related illness.

With respect to climate change, if the EPA programs were funded at the President's request, we can deliver sizeable additional benefits across the U.S. By 2010, we estimate that we can realize:

- an additional 335 million metric tons of carbon equivalent of cumulative reductions in greenhouse gas emissions;
- an additional $35 billion in energy savings to families and businesses, and
- an additional 850,000 tons of NOx emissions reductions.

To achieve these benefits, we must aggressively pursue our programs. Will Rogers once said, "Even if you're on the right track, you'll get run over if you just sit there." To keep pace with increasing VMTs, economic growth, etc., there's still more work that needs to be done.

But before I move on to the discussion of the fiscal year 2001 Budget Request, I'd like to give you a few highlights of our agenda for fiscal year 2000 which is already well under way.

We continue to work on attaining the existing air quality standards, especially the 1-hour ozone standard. We are also laying the groundwork for our new standards the 8-hour ozone standard, the $PM_{2.5}$ standard, and our regional haze program. We work with the Office of Research and Development and others to reduce the uncertainties associated with air pollution science.

We also intend to propose more stringent standards for large trucks and buses. As we did with the recent rule for cars, SUVs, and minivans, we will consider these vehicles in conjunction with their fuels as a system. These standards could become effective in 2007.

While the Acid Rain Program has gotten off to a great start in reducing SO_2 and NOx emissions, Phase II of the Program only began this year. It is essential that we maintain sufficient funding if we are to realize the full emission reductions of 10 million tons in SO_2 and 2 million tons in NOx by 2010.

While industries have made great strides in reducing the large quantities of toxic air pollutants, we still need to keep moving forward with issuing MACT standards for the additional major sources. We also are beginning the early stages of implementing the second phase of the air toxics program, targeting specific problems for evaluation such as elevated risks in urban areas, deposition of air toxics into the Great Lakes, mercury emissions, and residual risks from already controlled sources. We are also moving beyond stationary sources to focus on potential increased controls for air toxics from mobile sources. We expect to finalize a rule on mobile air toxics in December 2000.

In our radiation programs, we are finalizing environmental radiation protection standards for the Yucca Mountain radioactive waste disposal site in Nevada. In 1998, we certified that the Waste Isolation Pilot Plant in New Mexico complies with EPA's safety standards for radioactive waste. Radioactive waste is now being shipped to the WIPP.

In our indoor air programs, much of our effort is focused on the government-wide asthma initiative to better educate and inform parents and children about asthma. We specifically focus on indoor triggers of asthma like environmental tobacco smoke.

We are actively carrying out the voluntary programs that are part of the President's Climate Change Technology Initiative (CCTI). Along with the CCTI programs which include EPA's contribution in the Partnership for a New Generation of Vehicles (a multi-agency research effort to produce highly fuel-efficient vehicles), we continue to explore strategies that lead to both criteria pollutant reductions and greenhouse gas reductions. We have learned that our voluntary programs like Energy Star are successful in helping reduce both greenhouse gases and conventional pollutants. And this can often work both ways—smart measures to reduce SO_2 or NOx can often reduce greenhouse gases as a byproduct.

All this leads me into describing our request for fiscal year 2001. The Office of Air and Radiation is requesting a total of $831 million. Of that total, $308 million is for grants to states, tribes and localities. $523 million is for the operating programs.

A highlight of our request is the Clean Air Partnership Fund. We proposed the Fund for the first time last year and we still believe it provides an innovative, yet common sense, approach for speeding reductions in pollution. The President's Budget requests $85 million for the Partnership Fund. The Fund will support demonstration projects by cities, states and tribes that (1) control multiple air pollution problems simultaneously; (2) leverage the original Federal funds; (3) facilitate meaningful public involvement, and (4) provide examples that can be replicated across the country. By stimulating innovative technology and policies, the Clean Air Partnership Fund will help communities provide clean, healthful air to local citizens.

To address global warming we are requesting $227 million. We are proposing an increase of $124 million over the fiscal year 2000 enacted budget for the third year of the Climate Change Technology Initiative. Under this budget, EPA will expand its partnership efforts with businesses, organizations, and consumers to achieve greenhouse gas reductions by taking advantage of the many opportunities to reduce pollution and energy bills by fostering energy efficient programs, products, technologies, and cost-effective renewable energy. As a result of work already under way, EPA efforts with fiscal year 2001 funding are projected to:

- reduce greenhouse gas emissions annually by over 66 million metric tons of
- carbon equivalent, offsetting about 20 percent of the growth in greenhouse gas emissions above 1990 levels;
- reduce other forms of pollution, including reducing NOx emissions by about 170,000 tons;
- reduce U.S. energy consumption from projected levels by more than 70 billion kilowatt hours, providing $9 billion in energy bill savings to consumers and businesses that use energy-efficient products; and
- contribute to developing a new generation of efficient and low-polluting cars and trucks.

The opportunity to save on our nation's $500 billion annual energy bill over the next decade while reducing air pollution is tremendous. The opportunity to reduce greenhouse gas emissions is also large. We currently expect that more than half of the nation's greenhouse gas emissions in 2010 will come from equipment that will be purchased over the next 10 years. We shouldn't forego this opportunity by not funding expanded energy efficiency programs.

For air toxics, we are requesting $23 million, an increase of $6.6 million over fiscal year 2000 operating plan levels, to address the final round of MACT standards by the May 2002 "hammer date"—the date by which states must determine controls for such sources if EPA has not acted.

The request for the Montreal Protocol Fund totals $21 million, an increase of $9 million over the fiscal year 2000 enacted level. The funding to the Protocol is dedicated to paying our dues to the fund and to reduce accumulated arrearage.

To strengthen our relationships with our state and tribal partners, this budget provides $215 million in state and tribal grants to help implement solutions to air pollution problems locally. Of these resources, a $5 million increase will be targeted to regional planning bodies to combat the problem of regional haze one of the most obvious effects of air pollution. Additionally, $8 million is provided to our state and tribal partners to design, implement, and maintain radon programs.

In late February, Administrator Browner went before the Committee on Environment and Public Works and talked about the Agency's budget as a whole. One of the things she talked about was the magnitude of special projects that Congress "earmarked" in EPA's budget. For our office that amount totaled over $17 million. Without going into the validity of each individual project, I believe that the earmarks do direct money away from the Agency's core programs.

These are the highlights of our fiscal year 2001 request and of our accomplishments since the passage of the Clean Air Act Amendments. By providing our children, our sensitive populations, our native populations and our community as a whole with cleaner air, both indoors and outdoors and improved quality of life, this budget maintains the Administration's dedication to the protection of public health and the environment. It ensures that the Environmental Protection Agency will continue the impressive progress of the past decade in cleaning our nation's air.

I look forward to discussing with you now, or as the year progresses, our budget request specifically or any of our policy positions. Thank you.

RESPONSES BY ROBERT PERCIASEPE TO ADDITIONAL QUESTIONS FROM SENATOR INHOFE

Question 1. Last year a U.S. appeals court remanded the 8-hour ozone standards and the $PM_{2.5}$ standard saying that EPA needed to provide further justification for these standards. You are seeking an appeal to the Supreme Court. In the meantime, is your Agency putting together the analysis to justify these standards? If so, how much is being requested specifically for that purpose? Please explain in detail what steps will be taken. Will you be conducting further scientific study? Will you conduct more modeling?

Response. EPA is waiting for the decision from the U.S. Supreme Court before deciding how to address the issues remanded by the U.S. Circuit Court of Appeals for the District of Columbia that were presented on appeal to the Supreme Court. Thus, it is premature to say whether any further modeling, analysis, or scientific study will be considered by EPA in responding to any final remand that may come from either court.

Notwithstanding the ongoing litigation of the 1997 PM and ozone NAAQS, EPA is now engaged in the next periodic review of the PM criteria and standards, evaluating new scientific information available since the last review of the PM criteria, with a final decision planned for July 2002. EPA also plans to initiate the next periodic review of the ozone criteria and standards later this year, with a call for scientific papers available since the last review of the ozone criteria and the preparation of a development plan for the criteria and standards review that will be submitted to the Clean Air Scientific Advisory Committee for review.

Question 2. EPA has received $118 million over the last 2 years to study $PM_{2.5}$ and is seeking an additional $65 million. Please detail the studies that have been conducted or are ongoing and what conclusions have been made so far.

Response. The U.S. Congress, in the fiscal year 1998 appropriation, directed the EPA to arrange for an independent study by the U.S. National Academy of Sciences, National Research Council (NRC) to develop priorities for a comprehensive PM research plan, develop a near and long-term PM research program, and develop a plan to monitor research progress over the next 5 years. Based on evaluation of the state of the science, the identification of research needs, and an inventory of current research activities, the NRC developed a set of recommendations for PM research (Research Priorities for Airborne Particulate Matter, Immediate Priorities and a Long-Range Research Portfolio, issued in March 1998, and an update, Research Priorities for Airborne Particulate Matter: Evaluating Research Progress and Updating the Portfolio, issued in August 1999.). The EPA has moved aggressively to develop and

implement a PM research program that is focused on addressing the research recommendations provided by the NRC.

PM research spending in fiscal year 2001, as with spending in fiscal year 1998 through fiscal year 2000, will be well aligned with the recommendations of the NRC Committee on Research Priorities for Airborne Particulate Matter. This includes research characterizing emissions sources; air quality model development and testing; human exposure assessment; dosimetry; research aimed at understanding characteristics of PM producing toxicity; toxicity effects of PM and gaseous copollutants; research to identify susceptible subpopulations; mechanisms of toxicity; analysis of measurement uncertainties; control methods; and Air Quality Criteria Document development. The research is being conducted both at EPA research laboratories and centers, and through competitively awarded PM research centers and through the investigator-initiated Science to Achieve Results (STAR) program.

The EPA research activities are fully described in the Particulate Matter Research Activities (PMRA) web site, which is publicly available at: http://www.PMRA.org. The EPA has worked with other Federal, State, and international research agencies and the private sector to compile relevant research activities into the PMRA web site. The site is user-friendly and can be searched by NRC research topic, by organization, by investigator, and by keywords. More than 350 projects are described in this website, with more than 160 sponsored by the EPA.

Peer-reviewed research results are brought into the regulatory decisionmaking process on a 5-year review cycle through development of an Air Quality Criteria Document (AQCD). The AQCD compiles and characterizes the research findings and draws conclusions as to the interpretation of the data. An independent group of experts, the Clean Air Scientific Advisory Committee (CASAC), reviews the criteria document to ensure appropriate data interpretation. Development of the next PM AQCD is underway, with initial drafts having been reviewed in public workshops. The EPA anticipates CASAC review of the AQCD late in calendar year 2000 or early in 2001, at which time conclusions on the research results will be available.

Question 3. On March 3 a Federal appeals court upheld most aspects of your NOx SIP call rule. While further appeals of this decision may be filed, it is likely that your Agency will consider how to move forward with implementation. The North American Electric Reliability Council (NERC) and the East Central Area Reliability Council (ECAR) recently released reports concluding that the May 2003 compliance deadline poses a potential threat to reliability. Given the delay of the implementation due to litigation and the time it will take states to submit their SIPs and issue rules, is EPA willing to consider extending the schedule to take into account state rulemaking needs and to ensure electricity reliability?

Response. In response to a motion from industry, on August 30, 2000, the U.S. Court of Appeals for the D.C. Circuit extended the deadline for compliance of the NOx SIP Call until May 2004. The Agency has not yet decided whether to seek review of this decision. However, EPA still believes that its analyses support the conclusion that compliance by May 1, 2003 would not have threatened electric reliability. Both the report by the North American Reliability Council (NERC) and the East Central Area Reliability Council (ECAR) acknowledged that the greatest concern regarding reliability occurs in the summer months. Furthermore, both reports acknowledged that emission controls in response to the NOx SIP Call would not be installed during these summer months. Rather they would be installed during the spring and fall when electrical demand is the least. Therefore, we believe that the NOx SIP Call will neither cause nor exacerbate summertime electric reliability problems.

In most scenarios analyzed by NERC, no reliability problems were expected to occur. The scenarios where NERC and ECAR projected reliability problems used a number of very conservative assumptions regarding the installation of emission controls. For instance, they assumed that far more controls would need to be installed than EPA believes will be needed. They also assumed that the average time a unit needs to be taken off-line is much greater than has been seen in installations to date.

Finally, in response to concerns that have been raised regarding electric reliability, EPA established a compliance supplement pool which created an extra 200,000 allowances that could be used in the first two years of the program if any units were not able to install controls in a timely manner. EPA is confident that this would be sufficient to address any possible reliability concerns. The compliance supplement pool was not considered in either NERC's or ECAR's studies.

Question 4. The VA-HUD conference report on EPA's appropriations for fiscal year 2000 noted the long-held EPA linkage between the SIP call and the section 126 petition rule and stated:

> While the conferees' primary concern is in ensuring that these matters are soon resolved in the interest of air quality enhancements for all states, the conferees encourage EPA to retain the linkage and refrain from implementing the section 126 regulation until the NOx SIP call litigation is complete.

What action has EPA taken up to March 3 and what actions will EPA take now to carry out this linkage meaningfully and to work with the States representing both sides of the issue, including the court, if necessary, to develop a fair and equitable plan to establish a new and reasonable compliance deadline under the NOx SIP Call rule and the Section 126 rule that does not punish the States who utilized the judicial relief opportunities afforded by Congress in the Clean Air Act, while also working to resolve these air quality issues as contemplated by the Act equitably for the public good?

Response. Originally, in a final rule on the section 126 petitions that was issued on April 30, 1999, EPA had established a mechanism for granting the petitions that was linked to the NOx SIP call deadlines. The EPA determined which petitions were technically approvable, but deferred granting the petitions (which would trigger control requirements and a 3-year compliance deadline) as long as States and EPA stayed on track to meet the NOx SIP Call requirements. Although the Clean Air Act (CAA) did not explicitly contemplate such a linkage, EPA felt it was appropriate at that time because the NOx SIP Call had explicit and expeditious deadlines for SIP submissions and emissions reductions. Thus, EPA had a reasonable expectation that the emissions reductions needed to mitigate the NOx transport would be achieved through SIP revisions by the same date that the reductions would be required under section 126, if the petitions were approved. Section 126 of the CAA gives downwind petitioning States the right to relief from significant interstate transport of air pollution and requires that the relief be provided no later than 3 years from the time that EPA determines that the upwind sources are significantly contributing to nonattainment problems in the petitioning States. In this case, EPA ensured that under either the section 126 requirements or the NOx SIP call emissions controls would be in place by May 1, 2003.

On May 25, 1999, in response to petitions by several States, the U.S. Court of Appeals for the D.C. Circuit issued a stay of the NOx SIP Call submission deadline. Because there was no longer a certain and expeditious schedule for States to submit SIPs complying with the NOx SIP Call, EPA no longer had a basis for deferring granting the approvable section 126 petitions. The stay of the NOx SIP call did not provide a basis for depriving the petitioning States of the relief to which the CAA entitles them under the independent section 126 provision. In addition, last year the U.S. Court of Appeals for the D.C. Circuit, denied requests from litigants to stay the section 126 action. Thus, in a rule published on January 18, 2000, EPA granted the approvable petitions from the downwind States. Under this rule, large utilities and large industrial boilers and turbines in the States covered by the petitions must reduce their NOx emissions by May 1, 2003. The January 18, 2000 section 126 rule still gives States the option of preempting the section 126 remedy and selecting a different set of controls to address the NOx transport from the State. The section 126 rule provides that if a State submits, and EPA gives final approval to, a SIP revision meeting the full NOx SIP Call requirements, as were established in the October 27, 1998 rule and amended in the March 2, 2000 technical amendment, including the original May 1, 2003 compliance deadline, the section 126 requirements would automatically be revoked for sources in that State. The EPA has already received full NOx SIPs from several States that require the necessary reductions by May 1, 2003. The EPA is aware that a number of other States are also expecting to submit SIPs which, upon approval, would satisfy the conditions for withdrawing the section 126 requirements. EPA will work with each interested state on a case-by-case basis to determine whether the section 126 remedy can be lifted in that state.

With regard to the NOx SIP call, on March 3, 2000, the U.S. Court of Appeals for the D.C. Circuit upheld the NOx SIP call on all major issues, but vacated and remanded four narrow issues to EPA for further consideration. The EPA is conducting a rulemaking on the remanded issues. On June 22, 2000, the Court lifted the stay of the NOx SIP call submission deadline and determined that the SIPs would be due October 30, 2000. On August 30, 2000, in response to a motion from industry, the court extended the NOx SIP call compliance deadline until May 2004 so that the court's May 1999 stay of the NOx SIP Call would not decrease the time sources would have to comply.

STATEMENT OF MICHAEL DAVIS, DEPUTY ASSISTANT SECRETARY OF THE ARMY FOR CIVIL WORKS

Introduction

Mr. Chairman and members of the subcommittee, thank you for the opportunity to provide testimony on the President's fiscal year 2001 budget request for the Army Regulatory Program and recent regulatory program initiatives. I am Michael L. Davis, Deputy Assistant Secretary of the Army for Civil Works. As the Deputy Assistant Secretary responsible for Civil Works Policy and Legislation, I am directly involved in the regulatory initiatives of the Army Corps of Engineers. The Army has full responsibility for the administration of the regulatory programs implementing Sections 9 and 10 of the Rivers and Harbors Act of 1899 and primary responsibility, along with the Environmental Protection Agency, for implementing Section 404 of the Clean Water Act (CWA).

In this statement I will provide a short overview of the regulatory program and current levels of performance. I will also discuss recent high priority regulatory initiatives involving changes to the Army nationwide permit program and the establishment of an administrative appeals process. I will conclude with an overview of the regulatory budget.

Army Regulatory Program

The cost for operating the Army regulatory program over the last 10 years has risen steadily. This increase has come about as changes in law and policy have resulted in the need for new initiatives to maintain and improve levels of environmental protection and service to the regulated public. During fiscal year 1999, the Army Regulatory Program provided written authorization for over 90,000 activities, the most in any year. Over 90 percent of all those actions were authorized in less than 60 days, a remarkable accomplishment. The performance statistics cited in the remainder of this testimony reflect only a portion of this work, which is accomplished by approximately 1,100 regulatory staff members nationwide. These highly skilled and dedicated men and women are responsible for the thousands of permitting and enforcement decisions made each year.

CWA Section 404 Program Performance

The CWA Section 404 program is a vital part of the Nation's overall effort to protect, restore, and preserve our water resources. The overarching statutory goal of the Section 404 program is to protect the waters of the United States, including wetlands. Over the past 28 years the Army Corps of Engineers has prevented the destruction of hundreds of thousands of acres of wetlands and the degradation of thousands of miles of rivers and streams. This has reduced property damage and loss of lives from flooding and protected fish and wildlife habitat and water quality—all vital to the Nation's economy and overall health. From a good public policy and investment perspective, the Section 404 program has been a success. For example, the Section 404 program played a key role in reducing wetlands losses from over 400,000 acres per year in the mid-1970's to approximately 100,000 acres a year in the mid-1990's.

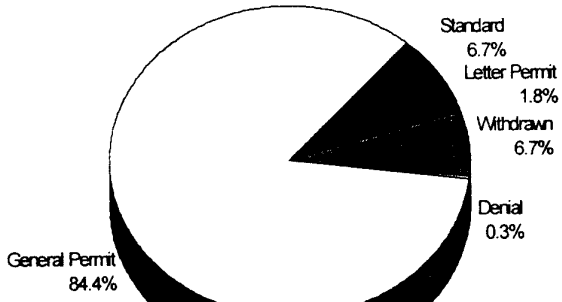
While the program helps stem the loss of wetlands and other aquatic resources, it does so in a manner that minimizes the unnecessary regulatory burdens on those that must apply for permits. Administering the Army Regulatory Program in a fair, flexible and effective manner has been a priority of the Administration since 1993. In short, permit applicants receive a timely and professional response from the Corps. As with any program of this nature there will be a few exceptions—but these are truly the exception to the tens of thousands of regulatory actions that are handled smoothly each year.

The graphics provided throughout this statement highlight the operation and performance of the CWA Section 404 program. As shown in Figure 1, the Corps received an average of 74,500 Section 404 permit requests per year from fiscal year 1996 to fiscal year 1999. Of those requests, 84.4 percent were authorized through a general permit. Only 6.7 percent of all permit applications were subject to the more detailed individual permit evaluation, through which impacts are avoided and compensated. Because of our effectiveness in avoiding and mitigating impacts, only 3 tenths of a percent of all Section 404 requests were denied. Finally, it should be noted that thousands of additional actions requiring authorization by Section 404 were allowed to proceed under the authority of general permits that do not require any notification to the Corps.

FIGURE 1

Corps of Engineers Regulatory Program

FY 1996 - FY 1999 - Section 404 permit Decisions
(average annual numbers)

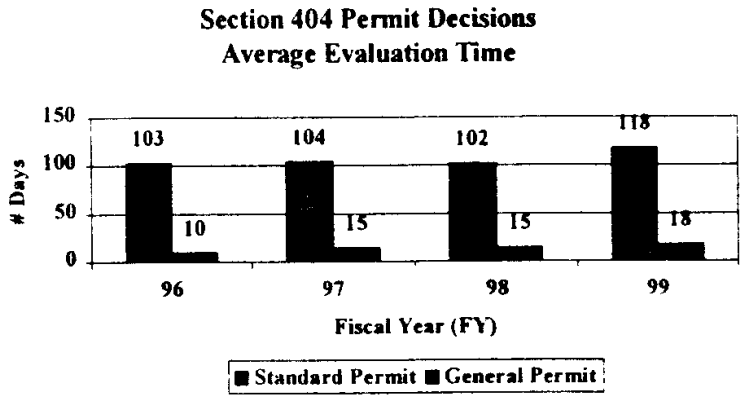


AVERAGE NUMBER EVA[illegible]rmit 62,870 , Standard Permit 4,983, Letter of Permission 1,364, Withdrawn 3,[illegible]
TOTAL ACTIONS (Not including Withdrawn): 69,543

The number of days required to evaluate requests for standard individual permits and general permits are provided in Figure 2. From fiscal year 1996 to fiscal year 1999, decisions for standard individual Section 404 permits took an average of 107 days, with decisions for general permits averaging only 14 days. As Figure 1 demonstrates, the general permit program is an important part of the overall regulatory program. By providing a screening mechanism for activities with minimal adverse effects, general permits allow the Corps to focus its priorities and resources on those activities with the potential for greater environmental impacts. Those activities that are truly minor are allowed to go forward with little or no review by the Corps while a relatively few are subject to a more thorough individual review.

FIGURE 2

Corps of Engineers Regulatory Program



General Permits

Section 404(e) of the CWA provides the Secretary of the Army the authority to issue general permits subject to the following requirements:

- General permits must be for a category of activities;
- General permits may not result in more than minimal impacts either individually or cumulatively; and
- General permits may be issued only after an opportunity for public notice and comment and are valid for no more than 5 years.

Since the addition of Section 404(e) in 1977, the Army has used the general permit program to authorize hundreds of thousands of activities nationwide. These general permits have been issued on a nationwide basis (Nationwide Permits), on a Corps district basis (regional general permits), and on a programmatic basis. As noted in Figure 1 above, the general permit program continues to be an integral part of the Army Regulatory Program—authorizing over 80 percent of all CWA Section 404 activities.

Recent Nationwide Permit Revisions

The most widely used general permits are the Nationwide Permits (NWPs) issued by the Corps headquarters in consultation with my office and other agencies. Of the nearly 40 NWPs, Nationwide Permit 26 (NWP 26) was used the most by permitting a wide variety of activities in specific waters (i.e., headwaters and isolated waters). NWP 26 also engendered considerable controversy and was the subject of litigation by the environmental community who argued that it did not meet the statutory requirements of CWA Section 404(e) discussed above.

In 1977, the Corps issued the first NWP 26 and authorized unlimited discharges of dredged or fill materials into non-tidal rivers, streams and their impoundments including isolated wetlands and adjacent wetlands that were located in the headwaters of river systems. The term "headwaters" was administratively defined, as the point on a non-tidal stream above which the average annual flow is less than 5 cubic feet per second. In 1986, the Corps issued a revised NWP 26, which authorized impacts up to 10 acres and required that the Corps be notified of proposed discharges greater than one acre.

As our scientific understanding of the importance of headwater systems and isolated wetlands improved, we became concerned that, from a national perspective, some of these activities authorized by NWP 26 probably had more than minimal adverse impacts on the aquatic environment. The concern was that NWP 26 author-

ized too many projects in the headwaters and isolated waters, increasing the frequency of flooding, destroying valuable fish and wildlife habitat and impairing water quality. Further, many continued to question the legality of NWP 26—casting doubt and uncertainty on the entire nationwide permit program.

The validity of the underlying basis for NWP 26 was questioned by the National Academy of Sciences in a study undertaken at the direction of Congress. In the part of its 1995 report that addressed NWP 26, the Academy concluded that "The scientific basis for policies that attribute less importance to headwater areas and isolated waters than to other wetlands is weak." The enormity of environmental resources at risk was highlighted by 1995 data from the Corps, which showed that over 25 percent of all permitted wetland losses were the result of NWP 26. Over 80 percent of all wetland losses associated with general permits were the result of NWP 26.

The President's 1993 Wetlands Plan called for a review of NWP 26 and the 1998 Clean Water Action Plan promoted increased wetlands protection through more effective avoidance and compensation of impacts. Further, the Administration has been unequivocal in its promotion of the wise and sustainable use of our floodplains. Every year lives are needlessly lost and the Nation spends over $4 billion paying for flood damages.

In 1996, the Army again modified NWP 26 and reduced the maximum allowable impacts from 10 acres to three. The Army also committed to further improving environmental protection by replacing NWP 26 with more environmentally appropriate activity based NWPs. In this regard, on March 7, 2000, after several opportunities for public comment, the Corps issued five new permits and modified five existing NWPs. The new and modified NWPs will become effective June 7, 2000. NWP 26 will remain in effect until then. These permits substantially improve environmental protection while allowing those activities that are truly minor to go forward with little or no review.

Under the new NWP program only those activities involving less than one-half acre of impacts will be allowed under a NWP. In addition, any activity involving more than one-tenth acre of impacts requires the notification of the Corps. To reduce adverse impacts from flooding caused by development in the floodplain, we have also added a permit condition that prohibits the use of most of the NWPs in much of the 100-year floodplain. We have also added a condition that prohibits the use of the NWPs in "critical resource waters" (e.g., critical habitat for endangered species and wild and scenic rivers). Not all changes, however, have resulted in restrictions on the use of NWPs. For example, unlike NWP 26, the use of the new NWPs is not limited to the headwaters and isolated waters. In addition, the scope of certain NWPs such as NWP 12 for utility crossings has been expanded to increase their utility and applicability.

As we developed the new NWPs we not only considered the need to improve environmental protection, we also considered the effect of such changes on the Corps workload and the regulated public. Based on our review, we are confident that the final changes made on March 7, 2000, are needed and justified by the increased environmental protection. Further, these changes substantially increase the legal sustainability of the NWP program and consequently provide the regulated public much greater certainty. There is no denying that the Corps workload will increase as a result of these changes. Our preliminary estimates indicate that the number of individual permit applications may increase, perhaps on the order of 20 percent. Notwithstanding this estimate, the Corps predicts that the vast majority, over 85 percent, of Section 404 activities will continue to be covered by general permits.

In short, while the Corps Section 404 workload will increase and without some additional funding program performance may be diminished, we believe that cleaner water, healthier habitat, and reduced damages from flooding are worth the costs.

Administrative Appeals

As stated above, we strive to administer the regulatory program in a fair and flexible manner—eliminating unnecessary regulatory delays and costs. I believe that overall we have been very successful. Most permit applicants receive a permit in a timely manner. The environment is protected through the regulatory program's avoid, minimize, and compensate sequencing policy. As with any program, improvements can be made. In the case of Section 404 we should continue to improve the protection of important aquatic resources and continue to look for ways to improve responsiveness to the public. We are committed to both of these objectives.

In the 1993 President's Wetlands Plan, the Administration made a commitment to develop an administrative appeal process for those permit applicants that believe they received unfair or adverse permitting decisions. The Wetlands Plan called for an administrative process to provide landowners an opportunity for a hearing by

higher level decision-makers, without the need for resorting to costly and time consuming lawsuits. On July 19, 1995, the Corps published a proposed administrative appeal process. After evaluating and addressing the issues raised in comments submitted in response to the proposed rule, the Corps, on March 9, 1999, published a final rule establishing an administrative appeal process for permit denials and declined individual permits. That rule became effective on August 6, 1999. In the rule the Corps noted that due to budget constraints, it was delaying publication of an administrative appeal process for jurisdictional determinations.

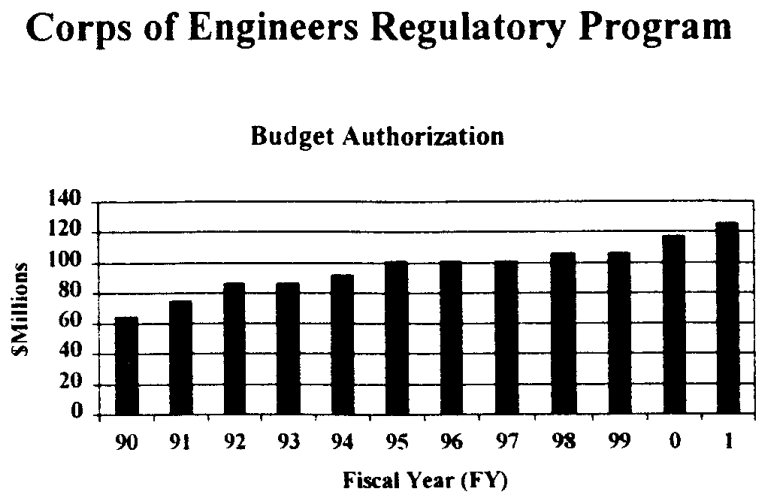
The fiscal year 2000 Energy and Water Appropriations Act provided funds to administer an appeals process for jurisdictional determinations. I am pleased to note that the final rule for this last part of the appeals process will be published today. This rule establishes a one step administrative appeal process for jurisdictional determinations.

To date we have evaluated 12 request for appeals of denied permits. One has been sustained, one remanded back to the district and ten are pending. Our workload estimates indicate that approximately 150 permit denials and 5,000 wetland delineations will be appealed annually. One full time equivalent (FTE) in each of the eight Corps division offices has been provided to serve as division level review officers for these cases. The Corps estimates that operation of the appeal program will require an expenditure of approximately $5 million per year. The appeal of jurisdictional determinations will be managed by the Corps division appeals review officers, but an additional 38 FTEs will be added to support the participation of Corps district staff.

Regulatory Budget Overview

As shown in Figure 3, regulatory appropriations have increased over the last 10 years, from $64.5 million in fiscal year 1990 to $117 million for fiscal year 2000. The President's budget request for the Army Regulatory Program for fiscal year 2001 is $125 million. Program funding increases have for the most part covered only the normal year to year labor costs, along with some programmatic initiatives and special studies. In 1990, regulatory funding supported a national staff of 945 individuals. The fiscal year 2000 regulatory appropriation will support a national field presence of approximately 1,100 regulatory personnel. This is a modest 14 per cent increase in staffing over 10 years. Increases in the regulatory budget also reflect an increasing need to improve environmental protection and to develop programmatic tools to improve overall performance.

FIGURE 3



The Army Regulatory Program fiscal year 2001 funding request of $125 million is necessary to ensure that we continue to provide effective and equitable regulation in the Nation's wetlands and waterways. Approximately $5 million of this amount

is needed to help address increases in workload and normal increases in cost due to inflation. Other program management efforts will also continue as in past years, including specialized training of Corps personnel and technical assistance to Corps districts from the Corps Waterways Experiment Station (WES). Generally, from $500,000 to $1 million is allocated to WES each year for technical assistance with complex and sensitive permit cases. In addition, similar funding amounts may be allocated to other Corps labs (Civil Engineering Research Laboratory and the Institute for Water Resources) to address special program management issues. These include; studies of mitigation banking practices; improvements to automated data systems for tracking program workload and wetland impact data, and an assessment of environmental impacts resulting from nationwide permits.

The budget request for fiscal year 2001 includes an identified increase of $3 million for further development of specialized tools and studies to protect better the aquatic environment in sensitive areas. These studies are variously called watershed studies, SAMPs (Special Area Management Plans), or other similar designations. In these cases, the Corps in cooperation with federal, tribal, state, and local agencies analyze the functions of aquatic ecosystems in a specific geographic areas. The agencies then work together toward issuing regional general permits for development in some of the moderate to lower value aquatic areas. The advantage to this approach is that the higher value aquatic ecosystems can be identified, mapped and generally avoided (or subject to a more thorough evaluation if development is proposed). In addition, lower value or moderate value aquatic ecosystems can be subject to authorization quickly by regional general permits, with mitigation specified, which will improve degraded or lost portions of the aquatic ecosystems in the watershed. The products from these studies provide better predictability for the regulated public, and better, more focussed protection of the aquatic environment.

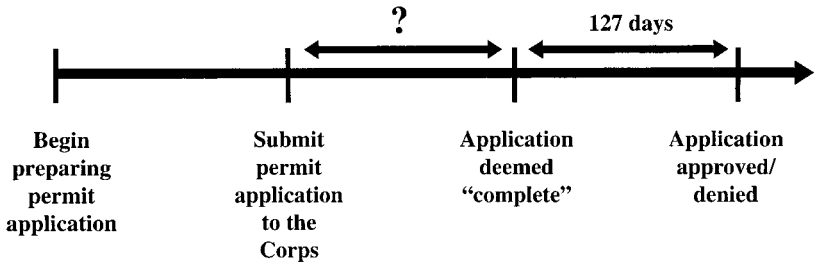
Conclusion

The Nation's aquatic resources are vital to our environmental and economic health. Our rivers, lakes, and wetlands are the lifeblood of our great landscapes. They support the fish and wildlife that we catch, hunt, and watch. They provide us with water—an essential component of all living things. The Army Regulatory Program plays an important role in protecting these resources for today and for future generations.

Through the Army Regulatory Program we are committed to serving the public in a fair and reasonable manner while ensuring the protection of the aquatic environment as required by laws and regulations. We will continue to pursue the important initiatives described above. Our regional and nationwide general permits program will continue to be evaluated for opportunities to improve both environmental protection and performance. We have established a full administrative appeals process that will allow the public to challenge permit decisions and jurisdiction determinations without costly, time-consuming litigation. The President's budget request is needed to help maintain this level of commitment and service.

Thank you for the opportunity to provide this testimony on behalf of the Army, I will be pleased to answer any questions you or other subcommittee members may have.

Wetlands Individual Permit Processing Time



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