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NOMINATIONS OF MARCUS PEACOCK, SUSAN P. BODINE, AND GRANTA Y. YAKAYAMA

HEARING

BEFORE THE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS UNITED STATES SENATE

ONE HUNDRED NINTH CONGRESS

FIRST SESSION

ON

MARCUS PEACOCK, TO BE DEPUTY ADMINISTRATOR, U.S. ENVIRONMENTAL PROTECTION AGENCY

SUSAN P. BODINE, TO BE ASSISTANT ADMINISTRATOR FOR THE OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE, U.S. ENVIRONMENTAL PROTECTION AGENCY

GRANTA Y. NAKAYAMA, TO BE ASSISTANT ADMINISTRATOR FOR ENFORCEMENT AND COMPLIANCE ASSURANCE, U.S. ENVIRONMENTAL PROTECTION AGENCY

JULY 14, 2005

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ONE HUNDRED NINTH CONGRESS
FIRST SESSION

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NOMINATIONS OF MARCUS PEACOCK, SUSAN P. BODINE, AND GRANTA Y. YAKAYAMA

THURSDAY, JULY 14, 2005

U.S. SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
Washington, DC.

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

Present: Senators Inhofe, Jeffords, Thune, Vitter, Baucus, Boxer, Lautenberg, and Obama.

Senator INHOFE. The committee will come to order.

We will recognize Jimmy Duncan for a brief introduction. Then when he is completed, we will have the panel come forward. At this time, I will recognize my good friend, Jimmy Duncan.

Congressman Duncan from Tennessee.

STATEMENT OF HON. JOHN J. DUNCAN, JR., U.S. REPRESENTATIVE FROM THE STATE OF TENNESSEE

Mr. DUNCAN. Thank you, Senator Inhofe. It was certainly a privilege to serve with you in the House and sit next to you on the Transportation and Infrastructure Committee. As you know, I chaired the Aviation Subcommittee for 6 years, and you served with me on that. You were a great Member of the House and certainly are a great Member of the Senate.

It is an honor also to be here with Senator Baucus and Senator Lautenberg. Senator Baucus' in-laws live in Knoxville, and we are always pleased to have him visit there.

It is a privilege for me to be here to introduce my good friend, Susan Bodine. I have done this four or five times on the Senate side. The last time I did this was, my good friend, Senator Baker, asked me to introduce someone to the Senate Foreign Relations Committee on his nomination to become Ambassador of Japan. As you know, that was a totally non-controversial nomination. I think the same could be said about the nomination of Susan B. Bodine to be Assistant Administrator for the Environmental Protection Agency.

I think this nomination is of the same caliber. We have 6-year limits on our chairmanships, and while I still serve on the Aviation Subcommittee, it has been my privilege to serve for the past 5 years as chairman of the Water Resources and Environment Subcommittee. Susan has been the staff director for that subcommittee during that time. I can tell you, in my career as a lawyer, a judge, and a Member of the Congress, I have worked with thousands and

thousands of people. Susan, in my opinion, is one of the absolute best that I have ever worked with in any area, in any field.

She is a person of the highest integrity. She is one of the most competent, capable people that I have ever worked with. She is a graduate of Princeton and the University of Pennsylvania Law School. She was with Covington and Burling, one of our outstanding law firms. Since then, of course, she has worked with me on the Water Resources and Environment Subcommittee.

She is an environmentalist with a heart, and she knows that there has to be balance. She knows that regulations fall the hardest or hit the hardest on the smallest of our businesses and farms. She has technical competence, and I just could not say enough good things about Susan Bodine.

I think the Environmental Protection Agency, one time when Administrator Whitman testified before us, I told her that I thought she had one of the toughest jobs in Washington. Being one of the top officials of the EPA I know will be a very difficult job. But I don't know anybody that could do a better job than Susan Bodine.

I was really honored when she asked me to come here and speak on her behalf this morning. I can recommend her in the highest possible way. We are very, very fortunate that she is willing to serve this Nation in this manner.

Senator INHOFE. That's good, Congressman Duncan. I thank you for that very excellent introduction.

So that you will be aware of it, it is my understanding you have the WRDA bill on the floor of the House right now, and you are probably in desperate need of Susan's help on that, I would guess.

Mr. DUNCAN. That's correct.

Senator INHOFE. What I think is going to happen here, since we have five stacked votes at 10 o'clock, we will take this on to 10:15, then recess and reconvene at 3 o'clock. So you will have her during that time, and you can prepare accordingly. Thank you very much, Jimmy.

Mr. DUNCAN. Thank you very much.

Senator INHOFE. I would like to ask the others to take their positions at the table.

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

The purpose of today's hearing is to consider the President's nominees for three positions at the EPA: the Deputy Administrator, Assistant Administrator for the Office of Solid Waste and Emergency Response, and Assistant Administrator for Enforcement and Compliance Assurance.

For the two assistant administrator positions, there has not been a confirmed person in place for a significant period of time. It is my hope that we can move all of these nominees quickly.

For all of our nominees, these are their first positions that require Senate confirmation. So it is a new experience for you guys. I want to extend a welcome to you and your families. In a moment, we will ask you to, before your comments, each one introduce any members of your family or those that are with you.

Marcus Peacock has been nominated to be the Deputy Administrator for the EPA, which is the second highest ranking position at

the EPA. This is a very important position for both the management as well as developing and implementing the overall policy direction of the Agency. I am pleased that we have a person of quality to fill that position.

Mr. Peacock has been serving in the Bush administration for more than 4 years as the Associate Director for Natural Resource Programs for OMB. Prior to that, Marcus worked for the House Transportation and Infrastructure Subcommittee as staff director. Interestingly enough, he did that the year that I left that committee and came over to the Senate. I guess you chased me off.

[Laughter.]

Senator INHOFE. In that position, he worked very closely with the committee on a number of issues, including being the House lead staffer in conference on the Disaster Mitigation Act, what we refer to as the Inhofe bill. That turned out very well, so I am particularly pleased to see you here today.

Susan Bodine, I think we have heard a lot about her. Maybe we don't need to elaborate too much right now. We know about your reputation, how hard you work and how fair you are. We are delighted to have you here in this very significant position.

I don't think there is any doubt about Ms. Bodine's credentials to head this office. She comes from a strong policy background dealing with the issues in this program office, including Superfund. She is currently staff director and senior counsel for the House of Representatives Water Resources and Environmental Subcommittee of the Committee on Transportation and Infrastructure.

As most of the committee knows by now, the No. 1 Superfund site in the entire country is in my State of Oklahoma. It is known as Tar Creek. We have made substantial progress at Tar Creek since I became Chairman. We actually have people to sit down in the room and talk to each other about it. I think we have made some great strides.

Granta Nakayama has been nominated to serve as the Assistant Administrator for Enforcement and Compliance Assurance. Mr. Nakayama is a partner for environmental law and product safety at the Kirkland and Ellis law firm here in Washington, DC. In addition, he is an adjunct professor at the George Mason University School of Law, where he teaches environmental law.

He was previously with the U.S. Naval Nuclear Propulsion program, where he served in positions including chief of quality control as an engineer.

Now, I would like, before turning it over to Senator Jeffords, to ask each of you the question to which you will have to verbally respond so we can record it, are you willing to appear at the request of any duly constituted committee of Congress as a witness?

Ms. BODINE. Yes.

Mr. PEACOCK. Yes.

Mr. NAKAYAMA. Yes.

Senator INHOFE. Do you know of any matters which you may or may not have thus far disclosed which might place you in any conflict of interest if you are confirmed to this position?

Mr. NAKAYAMA. No.

Mr. PEACOCK. No.

Ms. BODINE. No.

Senator INHOFE. Very good.
Senator Jeffords.

OPENING STATEMENT OF HON. JAMES M. JEFFORDS, U.S. SENATOR FROM THE STATE OF VERMONT

Senator JEFFORDS. Thank you, Mr. Chairman. I would like to thank all of the nominees here this morning, and want each of you to know that your commitment to public service, which is being demonstrated here today, is admirable.

Each of you has been nominated to assume a leadership position in the Environmental Protection Agency. The Agency's mission, protecting the environment, is becoming more and more important, and more and more challenging as this country continues to grow and competing pressures are put upon the Nation's resources.

In the positions that you now have been nominated to fill, you will need to weigh these pressures and make decisions that will impact the health and safety of our environment and our citizens. It is no secret that I have been deeply disappointed by many of the decisions and policies of the Bush administration when it comes to the environment. As I have stated on numerous occasions, I believe the White House has a shortsighted view of many of the issues affecting our air and our water and our land.

As each of you are looking toward assuming these new challenges, I want you to know that there is a major challenge that I have been faced with in dealing with your Agency, and that that challenge is access to information. It is our duty to inquire from time to time about the Agency's conduct of its mission, the Agency's expenditure of funds and the Agency's implementation of status in its purview, including the development of regulations under those statutes.

You may know that I have been requesting information from EPA dating back to 2001 on clean air regulation and many other programs within the Agency's scope. After numerous discussions about this request and others, promises were made that the information would be forthcoming. I am still waiting. I probably sound like the broken record, but every EPA nominee that has come before this committee since I rejoined the committee in 2001 has said they would work with us toward fulfilling the information requests, and I am still waiting.

It is my hope that each of you will help me and others on this committee to fulfill our obligations to the American people for complete information regarding the health and safety of our environment. I will just say I am tired of waiting, and hopefully you will relieve me of that burden.

[The referenced document follows on page 88.]

Thank you.

[The prepared statement of Senator Jeffords follows:]

STATEMENT OF SENATOR JAMES M. JEFFORDS, U.S. SENATOR FROM THE STATE OF VERMONT

Each of you has been nominated to assume a leadership position at the Environmental Protection Agency. The Agency's mission—protecting the environment—is becoming more and more important and more and more challenging as this country continues to grow and competing pressures are put on the nation's resources. In the positions that you have been nominated to fill, you will need to weigh these pres-

sures and make decisions that will impact the health and safety of our environment and our citizens.

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It is my hope that each of you will help me and others on this Committee fulfill our obligations to the American people for complete information regarding the health and safety of our environment. I am tired of waiting. Thank you, Mr. Chairman.

Senator INHOFE. Thank you, Senator Jeffords.

We will do the early bird rule, it will be Senator Vitter, Senator Baucus, Senator Thune, Senator Lautenberg and Senator Boxer.

Senator Vitter.

OPENING STATEMENT OF HON. DAVID VITTER, U.S. SENATOR FROM THE STATE OF LOUISIANA

Senator VITTER. Thank you, Mr. Chairman, thank you, Ranking Member Jeffords, for this hearing today.

I appreciate the opportunity to be with the nominees, and I certainly echo Senator Jeffords' comments thanking you for your commitment to public service.

Mr. Chairman, I am a little biased, but I have found some of the best things to come around here on the Senate side come from the House side. Two of our nominees are great examples of that today. I had the real pleasure of working with Susan in the House. She was incredibly helpful in helping us with the Lake Pontchartrain cleanup legislation when I was in the House. I know Chairman Young will face a real loss, but the EPA a huge gain as she moves over there.

I have also worked with Marcus on the House Transportation Committee and had the opportunity to work with him after he moved to OMB as well. Probably better results when he was at Transportation than OMB, but had the pleasure of working with him in all situations.

Grant I have not worked with before, but I have a great deal of respect for him. We both have higher degrees in Cambridge, MA, which I think makes us the two only Republicans in recent human history to come out of Cambridge, MA. I respect his background.

On a serious note, I have met with two of these nominees about an issue I continue to be very focused on with this committee, and that is the proper relationship and use of section 10 of the Rivers and Harbors Act of 1899 and the relationship between that and section 404 of the Clean Water Act.

Senator INHOFE. Why don't you hold up just a minute and let's find out who is hammering in the next room?

[Laughter.]

Senator INHOFE. Then we will continue.

His comment about the House is very appropriate. I think Senator Lautenberg is the only one at this table who did not serve in the House.

OK, Senator Vitter.

Senator VITTER. Thanks, Mr. Chairman.

As you know, I have a huge concern about some very recent use of section 10 of the Rivers and Harbors Act of 1899 used by the Corps to regulate activity miles and miles off any open navigable waters in Louisiana. Of course, section 10 is about navigable waters and keeping it clear for navigability.

There are some real issues off those waterways; in particular, issues in Louisiana about the proper or improper logging of trees in coastal wetlands areas, coastal forests. I believe the right area of the law to address that in is section 404 of the Clean Water Act. So I have talked to two of these nominees specifically about being engaged with EPA in terms of re-looking at the application of section 404, the proper relationship between that and section 10. I think that is a very promising and very correct way to address the real issues that we have in some of these areas well off any navigable waterway, and not abuse and expand the role of section 10 and use of that by the Corps.

So I look forward to continuing to work with these folks and EPA on that solution, work with the committee as well in the context of WRDA. Thank you, Mr. Chairman.

[The prepared statement of Senator Vitter follows:]

STATEMENT OF SENATOR DAVID VITTER, U.S. SENATOR FROM THE STATE OF LOUISIANA

Chairman Inhofe, Ranking Member Jeffords, thank you for holding this hearing today. I appreciate the opportunity to hear from our nominees. Before they get started, I want to make a few brief comments.

I have reviewed the background of our nominees and am biased toward the confirmation of at least two of them. You know, Mr. Chairman, there is one thing I have found many good things come from the U.S. House of Representatives and two of our candidates come from the other body.

I had the pleasure of working with Susan Bodine in the House. She was incredibly helpful in progressing the cleanup of Lake Pontchartrain and I was always impressed by her substance on issues. Chairman Young will have a significant loss and the EPA a huge gain in your new position. I wish you the best and look forward to working with you in your new role.

Marcus Peacock also worked for the House Transportation Committee and we had the opportunity to work together on budget issues while he served at OMB. He wasn't always as loose with the checkbook as I had hoped, but he was always fair and upfront in our dealings.

The only thing in common I could find with Grant Nakayama is that we both attended school in Cambridge so I guess that make us the only two Republicans to come out of Cambridge, MA.

On a serious note, I have met with some of you regarding an issue we are having in Louisiana with the Corps of Engineers attempting to use a provision designed to prevent "obstructions to navigation" on dry land.

Section 10 of the Rivers and Harbors Act of 1899 was intended to regulate, and I quote "wharfs, piers, dolphins, booms, weirs, breakwaters, bulkheads, jetties, or the structures". The Corps recently determined that their Section 10 jurisdiction could extend, "several miles from open navigable water" in Louisiana.

This committee passed an amendment to the Water Resources Development Act (WRDA) by a 12–6 vote to clarify the Corps jurisdiction. I am committed to working

with a number of Senators on the committee to address their concerns and believe the EPA could play an important role in this resolution.

As you know, Congress passed the Clean Water Act to protect and improve our water quality. In an attempt to solve our problem here, I believe we should explore the relationship of the Section 10 and Section 404 regulatory programs. I look forward to working with you to resolve this issue.

I thank the witnesses for being here today and look forward to your statements.

Senator INHOFE. Thank you, Senator Vitter.

Senator Baucus.

OPENING STATEMENT OF HON. MAX BAUCUS, U.S. SENATOR FROM THE STATE OF MONTANA

Senator BAUCUS. Thank you, Mr. Chairman.

Mr. Chairman, I am most interested in the nomination of Mr. Granta Nakayama to be Assistant Administrator for the Office of Enforcement and Compliance Assistance at EPA. While I value my relationship with all appointees at EPA, and for many, many years, given my State's close working relationship with the Agency, particularly through the Superfund program, and I must say, we have a lot of Superfund sites in Montana, Mr. Nakayama's background raises particular issues and concerns in relation to Libby, MT.

I understand that Mr. Nakayama is currently a partner at the firm of Kirkland and Ellis. Kirkland and Ellis represents W.R. Grace in that company's chapter 11 bankruptcy filing.

The firm also defends Grace against the criminal indictments that were brought against the company and against seven current and former Grace executives by the Justice Department. Those indictments allege that Grace and its executives engaged in a protracted conspiracy to hide the dangers of its vermiculite mining and milling operations from the people of Libby, MT.

Mr. Chairman, these issues are relevant because it has become clear that W.R. Grace deliberately shielded billions in assets prior to filing for bankruptcy, leaving victims and the Government with pennies on the dollar for health care and cleanup costs. Only a small percentage of the money that Grace spun off has been recovered by the bankrupt estate.

Grace has also consistently fought having to pay its fair share of cleanup costs in Libby, recently appealing a 2003 Federal District Court ruling that it owes over $50 million to the U.S. Government and to U.S. citizens. To date, cleanup costs in the town of Libby have topped $100 million, due to the extensive nature of the contamination there, where asbestos has been found in hundreds of homes, gardens, high school tracks and other areas, subjecting area residents to ongoing exposure to asbestos fibers.

Mr. Chairman, I wish you could meet Les Gramstead. I wish Mr. Nakayama could meet Les Gramstead. Les Gramstead was a miner. Les came down every day from the mine, his clothes caked with dust and powder. He would go home, embrace his wife, kids jump into his lap, they all have asbestos related disease. All of them. That is just one example.

At that time and prior to that time, W.R. Grace knew it was contaminating Libby. It knew it. Records show it. What did Grace do about that? Nothing. Did Grace tell its citizens? No. Did Grace enact some protective actions to shield its employees from health risks? No. Nothing. Nothing. Nothing.

Now that this has been uncovered, what has Grace done to give health benefits to people? Paltry little pittance. Plans that are full of loopholes, full of caveats, don't amount to anything. What recourse do the people of Libby have with respect to W.R. Grace? Again, nothing. There are no assets left. Grace and the firm of Kirkland and Ellis figured out a way to transfer 80 or 90 percent of Grace's assets off and have it shielded, so the people of Libby have no assets to go after.

This is a huge problem, Mr. Chairman. It's not just Les Gramstead. It's maybe 20 percent of the people of Libby, MT, who have asbestos related diseases. And this isn't just ordinary asbestos. This is tremulite asbestos. Tremulite asbestos is much more vicious. Why? Because it is a form of asbestos, tremulite asbestos, gets into your lungs, has deeper hooks that lasts longer, longer latency, harder to detect, and it kills more easily. People in Libby are dying, and some have already died.

So the question is, what do we do about this? It may be unfortunate that Mr. Nakayama has been tainted by Grace's reputation in my home State, and indeed elsewhere in the country. I understand that Kirkland and Ellis has stated that Mr. Nakayama has nothing to do with the firm's representation of W.R. Grace.

However, I would not be doing my duty to represent the best interests of the citizens of the State of Montana and Libby if I did not carefully consider Mr. Nakayama's nomination and any connection he may or may not have with W.R. Grace.

It is critical, as zealous enforcement is necessary in this instance to hold Grace accountable for the full extent of its wrongdoing in Libby. There is not a lot of gray area here. Anything that might weaken such enforcement raises a red flag with me. At the very least as a partner at Kirkland and Ellis, Mr. Nakayama has profited, he has profited by his firm's representation of Grace.

Additionally, if confirmed, Mr. Nakayama will have to recuse himself from any matters involving W.R. Grace at EPA. What kind of message does this send to EPA's rank and file and to Grace, if EPA's top enforcer cannot lead the charge against such an egregious violator of the Nation's environmental and public health and safety laws?

Given the scope of Mr. Nakayama's environmental practice at Kirkland and Ellis, in how many other instances will Mr. Nakayama have to recuse himself in pursuing an enforcement matter? These are important considerations to take into account as we review Mr. Nakayama's record and his fitness to hold the top enforcement post at EPA.

Mr. Chairman, I look forward to hearing from Mr. Nakayama directly and from other nominees. Thank you.

Senator INHOFE. Thank you, Senator Baucus.

Senator Thune.

OPENING STATEMENT OF HON. JOHN THUNE, U.S. SENATOR FROM THE STATE OF SOUTH DAKOTA

Senator THUNE. Thank you, Mr. Chairman and Senator Jeffords. I also want to welcome our nominees here this morning and will be very brief in my remarks. These are important jobs, important

positions that we are talking about and important issues with which you will deal in your capacities there.

But as Senator Vitter alluded to, I also had the experience of working with Ms. Bodine and Mr. Peacock as a member of the House Transportation Committee. Both are extremely highly qualified and capable public servants, people who operate with a high level of professionalism and I had the chance to work with them on the last highway bill, TEA–21 and subsequently with Mr. Peacock at the OMB, although I would echo what Senator Vitter said, his answers always seemed to be more favorable when he was on the Transportation Committee than they were at OMB.

But in any event, both of these people bring great experience, quality capabilities and solid character to your new positions, and I very much look forward to working with you. Also, Mr. Nakayama, I should say I don't have experience with, but I look forward to working with you as this process moves forward as well. We hope that we will have a lot of successes in the years ahead in addressing what are some of the major challenges facing us in terms of environmental policy and doing it in a way that is conscious and consistent with the very best environmental standards, but in a sensible and common-sense, science-based approach, which I think is a perspective that I hope we can all bring to this process.

Thank you again for your willingness to serve. I look forward to your testimony and to working with you as the confirmation process moves forward.

Thank you, Mr. Chairman.

Senator INHOFE. Thank you, Senator Thune.

Senator Lautenberg.

OPENING STATEMENT OF HON. FRANK R. LAUTENBERG, U.S. SENATOR FROM THE STATE OF NEW JERSEY

Senator LAUTENBERG. Thanks, Mr. Chairman, for calling this hearing and giving us an opportunity to learn more about the qualifications of these nominees. The American people are so dependent on Government to protect them against environmental problems, global warming, contaminated water, polluted air, all of those things. This is one of the principal committees in establishing standards for our future generations, our children, our grandchildren.

I am concerned also about the fact that Mr. Nakayama and Mr. Peacock both have had significant private interests on the side of industry before serving in the Government. It seems that at EPA vigilance is lacking. When I see the Justice Department cave in to the tobacco industry, when a former big oil executive revised reports on global warming, it raised doubts on the part of the American people. Our Government has to look out for the public interest, not the particular special interest.

That is true, absolutely true in case of the positions that both of you are ready to assume. We are being asked to confirm Mr. Peacock as the Deputy Administrator, Environmental Protection Agency. His job is to use the skill and knowledge that he has acquired for all of our people. The nomination comes at a time when EPA scientists have expressed concerns about a new Agency plan for risk assessments that will give more influence to special interests.

When we had an opportunity to talk a few weeks ago, Mr. Peacock, I asked that you look into that situation, and I am still waiting to hear from you.

[The response referred to follows:]

I have looked into the issues you raised, and my response indicates what I have learned about this issue.

There are two major purposes of the proposed changes: (1) to identify and resolve major scientific issues early in the assessment development process and thereby facilitate high quality and timely completion of assessments; and (2) to increase transparency in the assessment development process and thereby assure full and open consideration and scientific review of relevant information.

EPA is planning to hold a public workshop on the proposed new process to solicit comments, suggestions and concerns from the IRIS user community and stakeholders. The workshop will be announced in the Federal Register and on the IRIS web site.

Senator LAUTENBERG. We are being asked to confirm Mr. Nakayama as a top ranking compliance official. Your job would be to make sure that industry is complying with guidelines and regulations that are put in place to protect the American people.

I remind each of you that you may have to wear a different hat in this job, and I hope that you can focus on what the American people need.

When I came to the Senate, as the Chairman noted, I am the only one here who did not come from the House of Representatives. I came from the corporate world. I was asked by a reporter during the campaign what I would do if a question came up, with my company doing any business with the Government. I made a commitment that I would sell the stock that I had in the company, and it turned out to be a very large company, because my mission, as I took the oath, I knew that it was my mission to take care of the people I represented.

When I think about my legislative responsibilities, I always picture my 10 grandchildren. They are all very young, the oldest is 11. When I see that he has asthma and my daughter has to find the nearest emergency room before he can play baseball or whatever sport he is engaged in to make sure that if he has an attack that they can take him to the right place.

But each of you who have family responsibilities also have to have the same feeling about what you want. So when we have a chance to ask questions, Mr. Chairman, we will go into some detail and hope that we can establish the fact that the particular roles that you had in the past are behind you and we are going to be looking forward as representatives of the American people. Thank you.

[The prepared statement of Senator Lautenberg follows:]

STATEMENT OF HON. FRANK R. LAUTENBERG, U.S. SENATOR FROM THE STATE OF NEW JERSEY

Mr. Chairman, thank you for calling this hearing and giving us an opportunity to learn more about the qualifications of these nominees. The American people depend on our Government to be vigilant in safeguarding our environment and health. In some cases lately, it has seemed that vigilance was lacking.

When the Justice Department suddenly appeared to cave in to the tobacco industry or when a former big oil executive revised reports on global warming . . . it raised doubts in the minds of the American people. Our government must look out for the public interest—not special interests. That is certainly true in the case of the important positions we are considering today.

We are being asked to confirm Mr. Peacock as a Deputy Administrator of the Environmental Protection Agency. His job would be to protect our environment—not the industry he used to represent. His nomination comes at a time when EPA scientists have expressed concerns about a new agency plan for risk assessments that will give more influence to special interests. When I had an opportunity to speak with Mr. Peacock a few weeks ago, I asked him to look into that situation. I'm still waiting to hear back from him.

We are also being asked to confirm Mr. Nakayama as a top-ranking compliance official. His job would be to make sure that industry is complying with guidelines and regulations that are put in place to protect the American people. Before we can confirm him, he needs to assure us that his first allegiance would be to the public interest—not special interests.

I look forward to the opportunity to ask these nominees some questions about how they would approach the jobs for which they have been recommended. Once again Mr. Chairman, thank you for holding this hearing.

Senator INHOFE. Thank you, Senator Lautenberg.

Senator Boxer.

OPENING STATEMENT OF HON. BARBARA BOXER, U.S. SENATOR FROM THE STATE OF CALIFORNIA

Senator BOXER. Thanks, Mr. Chairman, very much for this opportunity.

I have little chance to talk about the problems with the Superfund program, just because we haven't had hearings in many years, frankly. So this is an opportunity for me to focus in on that program. As we all know, the heart of EPA's mission is to protect the health of our citizens, including families, and I believe particularly young children. That is a moral responsibility. Of course these nominees, whom I welcome here this morning, will be entrusted with that important responsibility.

As the ranking member for the Superfund and Waste Management Subcommittee, I want to focus my remarks this morning on the Superfund program and the kind of leadership that will be needed to effectively deal with the threats to the health and welfare of the 10 million children who live within 4 miles of a Superfund site. Let's think about that: 10 million children who live within 4 miles of a Superfund site. We know which States have the most sites, California has almost 100 sites. There are those on this committee who have even more sites.

So we need to do much more than we are doing to protect from the threat posed by these sites.

I want to illustrate the point, Mr. Chairman. This is important, your staff was there. In a recent staff briefing, my staff asked a senior representative of the Superfund program a question. In answering that question, he said, "There are over 100 sites where human exposure is not under control." There are over 100 sites where human exposure is not under control. In other words, where the children and the families are getting impacted with the poisons on those sites.

Now, if you go up on EPA's web site, you will find that that is the case. One hundred and three Superfund sites, this is directly from their website, in 33 States, where human exposure is not under control. I would like to ask that this be included in the record, and I will share it with colleagues on both sides of the aisle, so you can see where your State fits into this.

Senator INHOFE. Without objection.

Senator BOXER. I will pass it along.

What is very troubling is that EPA on this website says very little about the extent of the risks there. So I intend to ask this nominee about this disturbing fact, and for detailed information on these sites and the risks that they pose. I want to join with Senator Jeffords. For so long we have been trying to get information. We cannot get information. Whether you are a Republican or a Democrat, we should be able to get information.

Now, if one of my colleagues on the other side gets this information, he may feel that one or two sites disturb him or her, and I may feel that 80 disturb me, that's not the question. We deserve to have this information. These are our children.

I asked my staff to follow up on one particular site because it had gotten a lot of publicity. It happens to be in Nebraska. What we found, along with other information, shows that there are serious deficiencies in the Superfund program that need to be addressed by any future leader of that program.

The Omaha lead site covers thousands of acres where tens of thousands of people live. Several hundred children have tested positive for the past several years for lead poisoning, some quite severe. CDC estimates the number as much higher.

Much of the site affects residential areas, so many children are affected through their homes, schools and day care. The Washington Post ran a front page story at Thanksgiving on one of the young victims, and we will just show you a picture. Elam Jacob is 5 years old. He has suffered irreversible brain damage from extraordinarily high levels of lead exposure. This beautiful child.

This site attracted enough attention that Members of Congress got involved. The Administrator paid a visit, and more money was announced. But the Superfund program does not have the funds to ensure that the worst yards in this site are addressed in less than 5 years. In the meantime, Elam's mother explains that the EPA has said the children should not play on windy days. I want to ask all of us here who are dads, moms, grandmas and grandpas, this is what they have to tell their children, don't play on windy days, and take your shoes off when you come inside and other kinds of things. It goes back to Senator Baucus' point, a simple thing of taking a child on your lap.

This is what these families are putting up with because we haven't cleaned up the site. To me, to tell a child, don't play outside on a windy day, is simply not an option for what we should be doing.

Mrs. Jacob has pleaded with EPA to test her yard for months, and they have not done it. Now Mrs. Jacob's youngest child has also tested positive for lead poisoning. Now they have two children with lead poisoning, and EPA says, sorry, 5 years at the least until we can clean it up.

So here's what we have. We have these sites——

Senator INHOFE. Let me interrupt for just a minute. Are you about to wrap up? Because you have gone considerably over your time.

Senator BOXER. I am, you will be happy to know.

I will ask unanimous consent that the rest of my statement be placed in the record, and I will wrap up in 1 minute.

Senator INHOFE. Without objection.

Senator BOXER. I know it is hard to hear this. I don't like to talk about it, either. But that's what's happening at these sites. This isn't just on a piece of paper a list of sites. These are sites where children live very close to them. It's dangerous, and we cannot get the information.

So to get to the point, Ms. Bodine, I think you can tell I am going to want information from you. I am going to want a pledge for the information. In the question period, I will ask specifically what I want and will get your commitment, I trust, to that information.

Thank you very much, Mr. Chairman.

Senator INHOFE. Thank you, Senator Boxer.

Our votes have started, but we are going to go ahead and take 15 minutes now, and I would like to see if we couldn't possibly get through our opening statements. I would like to have all of you who have brought family here to begin by introducing your families, because they may not be able to return at 3 o'clock.

Mr. Peacock.

STATEMENT OF MARCUS PEACOCK, NOMINATED BY THE PRESIDENT TO BE DEPUTY ADMINISTRATOR AT THE U.S. ENVIRONMENTAL PROTECTION AGENCY

Mr. PEACOCK. Thank you very much, Mr. Chairman, Senator Jeffords, for scheduling this hearing today.

I will go ahead and just briefly introduce my family that is here today. First of all, my wife, Donna McLean.

Senator INHOFE. Please stand up.

Mr. PEACOCK. She has a child on her lap. She may be familiar to some members of the committee. She was the Chief Financial Officer at the Department of Transportation for a number of years. She has brought my two 8-year-old daughters, Mey McLean and Iona McLean, who inexplicably decided to wear similar dresses today. I don't know how that happened.

[Laughter.]

Mr. PEACOCK. Also, from New York City, my sister, Felicity Fridman is visiting, and her son, Vladmir Fridman. Then from Rush Tower, MO, and I think while they are here the population of Rush Tower has been reduced by about 25 percent, my mother-in-law, Carolyn McLean and father-in-law, Ray McLean.

Then finally, from Chevy Chase, DC, I have my sister-in-law, Robin Miles McLean, who is a former employee of EPA and now full-time mom. She has brought her workload with her today, Jacob Miles-McLean, Haley Miles-McLean, and finally, little Nate. I appreciate their support.

Senator INHOFE. Your time has expired.

[Laughter.]

Mr. PEACOCK. It's all yours, Susan.

Senator INHOFE. Please continue.

Mr. PEACOCK. Mr. Chairman, Senator Jeffords and distinguished members of the committee, I am honored to appear before you today as the President's nominee for the position of Deputy Administrator of the Environmental Protection Agency. I am indebted to the President for his trust and the privilege of serving in this new capacity.

There are three important things I would like you to know about me. They make up who I am and govern how I would conduct the job of Deputy Administrator, if confirmed. First, I am a first generation American. My parents emigrated from war-torn Europe with three suitcases, a couple of trunks and $200. They left their family and friends behind and took a great risk, not just for themselves, but for their children and their children's children. That is the greatest gift that I have ever received.

I love this country and cherish the rights we enjoy, rights that give us the opportunity to realize our dreams. The first function of any government, in my opinion, is to protect and honor those rights.

Second, I grew up in Minnesota, and Minnesota gave me two things. First, you can't grow up in Minnesota without developing an appreciation for the outdoors. Even when it's 20 degrees below zero. Indeed, I was at winter camp when I first developed a great interest in the environment. I was about 15 years old and laying out an orienteering course. I found myself in the middle of a frozen lake, while a fellow Boy Scout moved a marker along the shoreline.

For some reason at that moment, the peacefulness and the serenity of that setting really connected with me. From that time on, my eyes were opened to a deeper interest in the wonder of nature. That started a lifelong interest in the natural world. It first drove me to an interest in science and then ultimately engineering. It's a fascination my wife and I now share with our children by going hiking, camping, canoeing and birdwatching.

Minnesota also gave me a strong sense of community. Public service is a high calling in Minnesota. An adage etched on the old Minnesota Convention Center really struck home with me. It said, "Participation in the rights of citizenship presumes participation in the duties of citizenship." My parents had helped me appreciate the rights of citizenship in the United States, but Minnesota helped me understand that those rights came with an obligation to the community and to the Nation.

Finally, I am an engineer. I have not practiced engineering as a profession for many years. Nonetheless, I think I practice engineering every day. Because to me, the core of engineering is a disciplined process for problem solving. It requires one to be clear, open-minded and analytical. It focuses on getting results.

As a manager and a budget officer, I have seen many different types of problems. Engineering has given me the skills to break them down into manageable pieces and work with others to come up with solutions that get results. I think that's exactly the kind of skill one needs to be a Deputy Administrator.

Should I be confirmed, I would bring to EPA a strong sense of public service, a deep appreciation for the environment and an excellent set of problem-solving and management skills. Under the President's leadership, our country has made great strides in cleaning up our air, water and land in a way that allows our Nation to continue to grow and prosper. The air my children breathe today is much cleaner than when I was a kid, and our food and drinking water supplies are safer and our land is better protected.

Building on this success, EPA Administrator Steve Johnson has laid out two challenges for the Agency. First, we must make sure

we are using the best available science to make decisions. Second, we must formalize collaborative approaches to solving problems. On this second point, as has been said before, traditional methods of environmental protection do not work as well as in the past on our remaining environmental challenges. Collaborating with States and other partners to solve remaining environmental problems needs to become more routine. I look forward to helping the Administrator tackle those challenges.

Mr. Chairman, if confirmed, I will do everything I can as Deputy Administrator to continue to serve the people of this great country, protecting their health and the health of the environment. I thank you very much and would be happy to answer any questions.

Senator INHOFE. Thank you, Mr. Peacock, for that excellent opening statement.

Ms. Bodine.

STATEMENT OF SUSAN P. BODINE, NOMINATED BY THE PRESIDENT TO BE ASSISTANT ADMINISTRATOR, OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE, U.S. ENVIRONMENTAL PROTECTION AGENCY

Ms. BODINE. Thank you, Senator.

First, let me introduce my family. I have with me today my husband, David Bodine, who is a research scientist at the National Institutes of Health, and my two sons, Christopher Bodine, he is 14 years old and about to enter high school in the fall, and then my second son Steven Bodine, who is 11 years old and about to enter middle school in the fall.

Senator INHOFE. Thank you very much.

Ms. BODINE. Mr. Chairman, Senator Jeffords, distinguished members of the committee, thank you for the privilege of appearing before you today as nominee for the position of Assistant Administrator for the Office of Solid Waste and Emergency Response. I am honored that President Bush, Administrator Johnson and this committee are considering me for this position.

I have worked on environmental issues for my entire 17-year professional career, first as a practicing attorney and then as counsel to the Water Resources and Environment Subcommittee of the House Committee on Transportation and Infrastructure. In private practice, I learned the substance of our environmental laws, but I also learned from experience that the best way to approach a cleanup problem was from a technical and engineering perspective.

In fact, I found that the best way to approach these issues was to get all the scientists and engineers in a room and find the most cost-effective way of cleaning up the site. That is the outcome that everybody wants to achieve.

I also found it very rewarding to work with clients to keep them in compliance with the law. This was very challenging. Many of our environmental statutes are extremely complex and the regulations are even more so.

When I moved to Capitol Hill to work on the staff of the House Transportation and Infrastructure Committee, I kept these same objectives and approach: focusing on an outcome, a clean environment, but also trying to ensure that the laws that are established to achieve this outcome are clear, understandable and workable.

It has been my experience over 10½ years working in the House that even when an issue is contentious or complex, if you start by trying to identify your goal and agree on a common goal, then it's much more likely that you are going to find common ground on how to achieve that goal.

As this committee knows, that was the process used to develop the Small Business Liability Relief and Brownfields Revitalization Act, which was the subject of several years of work and became law in January 2002. To reach agreement on the first title of that Act, environmental and business groups had to agree that holding small business owners liable for municipal solid waste was not going to facilitate cleanups.

To reach agreement on title II of that Act, which is the Brownfields Revitalization title, municipal groups, developers and environmental groups all had to agree that stimulating brownfields development was a goal that everyone wanted to achieve. The method to achieve that goal was changing Superfund liability, to address the issue of prospective purchaser liability. But by focusing on the goal, the groups achieved consensus that changing liability was acceptable.

If confirmed by the Senate, I would like to take the same consensus-building approach to my new duties in the Office of Solid Waste and Emergency Response. I know that we all share the goal of protecting the environment. I know that we share the goal of seeing hazardous waste sites cleaned up more quickly, and I know we share the goal of making environmental regulations clear, understandable, and implementable.

If confirmed by the Senate, I would work with all of you on a bipartisan basis to find sustainable solutions to achieve these goals. American citizens expect and deserve a thriving economy and a clean, safe and secure environment.

I am going to submit the rest of my statement for the record, and let me just say in closing, I look forward to any questions you and your colleagues may have. Thank you very much.

Senator INHOFE. Thank you.

Mr. Nakayama, if you would prefer to withhold your opening statement until we have more here, it seems like some of those who are making some of the accusations are off voting now. Would you prefer to do that?

Mr. NAKAYAMA. That would be fine.

Senator INHOFE. All right, then what we will do is go ahead and recess until 3 o'clock. Do you have any family here to introduce?

Mr. NAKAYAMA. Yes, I do.

Senator INHOFE. Why don't you go ahead and do that, so they won't have to come back.

Mr. NAKAYAMA. Thank you, Senator.

Mr. Chairman, my wife Larrene is here today and my daughter Meredith, who will be entering seventh grade, is here also.

Senator INHOFE. That's great. It's nice to have both of you here.

We will go ahead and do that. You will be on first thing at 3 o'clock for your opening statement, then we will have our rounds of questioning take place.

Thank you very much. We are in recess.

[Recess.]

Senator INHOFE. The meeting will come to order.

When we left last time, Mr. Nakayama had not had a chance to make his opening statement. We will recognize you for that purpose now.

STATEMENT OF GRANTA Y. NAKAYAMA, NOMINATED BY THE PRESIDENT TO BE ASSISTANT ADMINISTRATOR, ENFORCEMENT AND COMPLIANCE ASSURANCE, U.S. ENVIRONMENTAL PROTECTION AGENCY

Mr. NAKAYAMA. Thank you, Mr. Chairman.

Mr. Chairman, Senator Jeffords, distinguished members of the committee, it is an honor and a pleasure to appear before you this afternoon as the nominee to be EPA's Assistant Administrator for the Office of Enforcement and Compliance Assurance.

I am honored that President Bush and Administrator Johnson have invited me to join the Administration to improve public health and the environment in this great Nation. EPA has an important responsibility to protect the land, air and water of our Nation. From the Agency's inception, compliance and enforcement have been an important cornerstone of EPA's programs to improve public health and the environment.

Vigorous enforcement is a crucial tool that ensures the promise of our environmental statutes becomes an environmental reality. Administrator Johnson has expressed his commitment to a strong Federal enforcement program, and it is incumbent upon any nominee for this position to share that commitment.

Just as Americans must be able to trust and rely on EPA to protect the land, air and water, the Agency is committed to obtaining the support of citizens and communities throughout our country in protecting the environment. If confirmed, it will be my goal to work collaboratively to ensure that citizens can both more easily assist EPA in identifying potential environmental enforcement issues and can more easily receive assistance in complying with environmental regulations. The goal is to make a more "user-friendly" and efficient enforcement organization.

To this end, my prior experiences have provided me with some unique preparation for this position. The Assistant Administrator for Enforcement and Compliance Assurance must have an understanding of environmental law. I am currently a partner at Kirkland and Ellis in the environmental and product safety practice area. I joined the firm in 1994 after attending law school in the evening and graduating as the valedictorian. The first case I worked on as an attorney was an environmental enforcement matter brought by EPA's enforcement staff, and I have worked on similar matters ever since.

Today, my practice includes advising clients on a daily basis regarding their responsibilities in complying with our Nation's numerous environmental statutes. Since 1998, I have also served as an Adjunct Professor of Law at the George Mason University School of Law, where I currently teach Environmental Regulation. Practicing and teaching environmental law has provided an appreciation of the challenges of understanding, complying with, and enforcing these complex statutes.

Second, the nominee must be able to manage a large organization within the unique structure of the Federal Government. I started my career in the military, in the U.S. Navy. After being selected by Admiral Rickover and serving for 5 years as an officer in the Navy Nuclear Propulsion Program, I then served for 8 years as a civilian manager reporting to Admiral Rickover's successors. In that program, I oversaw the manufacture of the prototype reactor for the Seawolf submarine, the SSN–21.

Later, I was a manager with responsibility for welding, non-destructive testing, and quality assurance. During this formative period, I observed first-hand the high standards and dedication of the individuals who served in the Naval Nuclear Propulsion Program, and the results that could be achieved by a group of highly motivated Federal employees.

Last, I have found that technical training and the ability to process technical information can provide additional insights into the practice of environmental law. My educational background, including Bachelor and Master of Science degrees from MIT in Nuclear Engineering, combined with my prior experience as a practicing nuclear engineer, has provided a strong technical background. In my experience, a first-hand understanding of the technology and science at issue in the environmental area inevitably leads to a deeper and more realistic appreciation of the problems and challenges faced by both regulators and the regulated community.

EPA is most fortunate to have a very dedicated, extremely capable staff in the enforcement and compliance assurance office. I have personally worked with many of them over the last decade and I have been uniformly impressed by their dedication and professionalism. They work extremely hard because they care about the environmental health of the Nation. As enforcers of the environmental laws, they must also adhere to the highest ethical standards. It is a group that any environmental attorney or engineer would be proud to join.

If you should honor me by confirming my nomination, I look forward to working with the members and staff of this distinguished committee, Administrator Johnson, and President Bush to make the environment better for all Americans. Thank you for the opportunity to appear before you today. I will be happy to answer any questions.

Senator INHOFE. Thank you very much, Mr. Nakayama.

First of all, in my opening statement, and I am sure you were aware of it before this hearing, we talked about Tar Creek, the most devastating Superfund site in America. For 25 years, they poured money on the problem, they tried different things, nothing seemed to work. They were trying to get people to move out, without correcting the problem. We had to remind them, it's going to have to be corrected anyway.

When I became chairman, I felt that if an effort can be done, it should be done during my chairmanship. If I didn't do it, I would be quite embarrassed.

I found that the major problem that we had at that time was the various bureaucracies not working with each other. We had the Bureau of Indian Affairs, we had the Department of Interior, we had the Corps of Engineers, we had the EPW, all of them that wouldn't

get in the same room together. Since that time, we have changed that. They have come together, we now have a plan, and it is working with all of the Federal agencies, as well as the State of Oklahoma DEQ. The University of Oklahoma is the lead Agency, the contractor. We are actually making headway in getting it done.

This is mainly because it enjoyed the top priority of the EPA and at that time the previous chairman, Mike Leavitt. So I guess I want to ask each one of you, if I have every bit the commitment from you that we had from Mike Leavitt and that we are going to be getting from Steven Johnson? I'll start with you, Mr. Nakayama.

Mr. NAKAYAMA. Thank you, Mr. Chairman. You have my commitment. I understand that the Tar Creek site is a very important priority for the Agency, appropriately so. Thanks to your efforts, we have made tremendous progress, the Agency has made tremendous progress, and I look forward to working with you and the committee to continue that progress. I understand Region VI has recently submitted a claim for over $100 million for cleanup costs and that work is proceeding, and it is proceeding at a rapid pace.

Senator INHOFE. It is.

Mr. PEACOCK. Yes, Mr. Chairman, actually it is a good example of the sorts of sites that we are left with in the Superfund program. They are particularly difficult and complex and require a lot more effort than the smaller sites that we had in the past. I would be interested in perhaps visiting Tar Creek, it seems a good idea, getting to know it much better.

Senator INHOFE. Yes, it is one of those things where you almost have to be there. I know that Administrator Leavitt was quite surprised, after reading all the staff reports and seeing the pictures, actually going there. It is different.

Ms. Bodine.

Ms. BODINE. Senator, it is my understanding that this is a very high risk site. I believe that Superfund sites should be prioritized based on risk, and that would put this site very much near the top.

Regarding your issue on the interagency relationships, I agree that is critical, especially at a site like Tar Creek. If confirmed, I will certainly make sure that EPA is working collaboratively with the other agencies.

Senator INHOFE. I really believe that at least the two of you have demonstrated clearly you can work with other agencies and break down those barriers, so I appreciate your response very much.

Mr. Nakayama, there were some charges fired at you during the first session that we had today about your association with the W.R. Grace Company. I would like to have you take all the time you need to respond to those charges. Would you like to do that?

Mr. NAKAYAMA. I certainly would, Mr. Chairman.

Senator INHOFE. I guess the first question I would ask is, did you ever have any direct involvement or relationship with W.R. Grace personally?

Mr. NAKAYAMA. Thank you for the opportunity to respond, Mr. Chairman. I have had no involvement with the Libby, MT matter involving W.R. Grace, direct or indirectly. Second, I have never worked on any legal matter involving W.R. Grace. I have never represented W.R. Grace in any of my practice.

So frankly, I am a little bit puzzled by the attention, but certainly understand people's concerns.

Let me also say that with respect to serving, if I am confirmed as the Assistant Administrator, I would recuse myself from any mater involving W.R. Grace. So I would have had no involvement in my private practice prior to joining the Agency, and anticipate no involvement if I am confirmed and serving as the Assistant Administrator.

Senator INHOFE. At Kirkland and Ellis, how many attorneys are there? You have accountants, too, I guess.

Mr. NAKAYAMA. It is a very large firm. I am not sure of the exact number, I believe it is in excess of 700 attorneys. So it is quite a number, with thousands of cases.

Senator INHOFE. In something that large, are they broken down into specialties? I would assume they would be.

Mr. NAKAYAMA. Yes. Attorneys in a large firm typically work in a practice area or group. The particular groups that were handling the W.R. Grace matter, it's my understanding, they are certainly not in the group that I work in. I work the environmental and consumer product safety practice.

But the people who are working on the W.R. Grace matter, frankly, I don't even know the attorneys. I don't know who is working on it. But I know I have never discussed the case with anybody at the firm. All I know about the case and the matter is what Senator Baucus relayed in my meetings with him what I have read and in the press.

Senator INHOFE. After having the experience dealing with and working with 100 U.S. Senators, that is difficult enough. I would imagine that it would be awfully difficult to know what the other 699 attorneys are doing in a firm.

Senator Jeffords.

Senator JEFFORDS. Mr. Peacock?

Mr. PEACOCK. Yes, Senator.

Senator JEFFORDS. The President has finally acknowledged at the G8 meeting what the world's best climate scientists have known for more than a decade: man-made greenhouse gases are contributing to and accelerating the global warming. Your opinion, as contained in the infamous memo of March 8, 2001, that you coauthored, recommended that, "It would be premature at this time for the President to propose any specific policy approach aimed at addressing global warming."

That memo rationalized and attempted to justify the President's reversal of his campaign pledge to control carbon dioxide from power plants. Just 2 days later, the President also withdrew from Kyoto, and since that has not attempted any serious domestic or international effort to achieve real reductions in total U.S. and global greenhouse gas emissions.

Given the President's most recent acknowledgement, what would be the most appropriate message on carbon constraints or a similar price signal for the Federal Government to send to the market to actually achieve real near-term reductions in greenhouse gas emissions?

Mr. PEACOCK. Thank you for the question, Senator. I just want to make it clear, both the President and myself take this as a very

serious matter, not just from a public policy perspective, but I have two 8-year-old kids, so the world we're headed into is one of interest and concern.

The President has felt for some time that there was a man-made contribution to greenhouse gases and then also to increases in temperature. That's why in February 2002, the President set out an aggressive target of reducing greenhouse gas intensity from 22 percent to 18 percent by 2012.

That is a reduction of about 500 million metric tons of greenhouses gases than would have otherwise been released by 2012. He has since laid out an aggressive program, both in the short term and in the long term and in the science, in order to get a better handle on climate change.

I would like to address the memorandum which you mentioned from 2001, which I co-authored. At that time, the President was asked by a number of Senators to clarify what they saw as possibly contradictory statements during the campaign year. There was a written statement which indicated that the President supported mandatory controls on carbon dioxide from power plants. They felt that some verbal statements had been made during the campaign that conflicted with that.

So they asked for clarification. The President, as he does in similar situations, asked for advice from his senior policy advisors. One of those advisors was the Director of the Domestic Policy Council at the time, John Bridgeland. He collected six of us together, I think they were all White House staff at the time. What he tasked us with doing was to lay out, first of all, what was the written statement from the campaign regarding carbon dioxide emissions from power plants and what would any reasonable person interpret from that written commitment.

Then—this is the important part—assuming the President did not support mandatory controls on carbon dioxide emissions, which he subsequently clarified he did not, how should the written commitment be characterized, and then how should that be translated to the public. In fact, he confirmed, as he said later on that week, I believe, that he did not support mandatory carbon dioxide controls on power plants.

He has subsequently supported, at least in the short term, strong voluntary measures. In fact, some of the programs on voluntary measures are at EPA, such as the Climate Leaders Program, which includes 62 large companies from Mack Truck to Miller Brewing Company that are making specific commitments to reducing greenhouse gases.

It also includes an important component, which the G8 noted, which is technology transfer to other countries to reduce greenhouse gas emissions. The Methane to Markets proposal that the President had in the last budget is a good example of that. There are longer term measures, such as the Hydrogen Fuel Initiative and Clean Coal Initiative.

Then there is the science program. We are now spending about $2 billion on climate science. That is far more than any other country in the world. We are focusing that on the priority questions regarding climate science, to get a better sense of how much humans

may be contributing to changes in climate, since that still is a difficult question to answer.

Senator JEFFORDS. In fact, you have been handling environmental matters and regulations in the Administration for some time now. So you obviously have a wealth of policy experience to draw from. What do you consider to be the top five involuntary risks to the environmental health faced by the American public?

Mr. PEACOCK. I'm sorry, Senator, the top five voluntary risks?

Senator JEFFORDS. Involuntary risks——

Mr. PEACOCK. Involuntary risks.

Senator JEFFORDS [continuing]. To the environmental health faced by the American public.

Mr. PEACOCK. That is a good question. I am trying to remember back. The Science Advisory Board, for instance, although it was some time ago, tried to rank the risks to the American public. I think they ranked the top 10 risks. One of them was indoor air pollution. That probably is still relatively high on the list, at least for those people who may be in a home where someone is smoking.

I personally think, although it is not a health issue, invasive species, in an ecosystem, can cause dramatic changes, which can then possibly affect human health.

What I would like to do is perhaps get back to you in writing on the other four, particularly after I refresh my memory from the Science Advisory Board studies including any that may have been done recently.

[The response referred to follows:]

The American public deserves to have a clean, safe, and healthy environment. Our nation faces numerous environmental challenges today. However, it is difficult to rank them by level of risk. Environmental challenges, such as particulate matter, ground-level ozone, and homeland security threats, among others, are all very important. I believe we must continue to use sound science to establish priorities and to improve the ability to measure our environmental progress.

Senator JEFFORDS. I would appreciate that, thank you.

Senator INHOFE. Thank you, Senator Jeffords.

Before going to Senator Lautenberg, I just want to, for clarification purposes in this record, I want to get the G8 language, which is identically the language that the President had in 2002.

Senator Lautenberg.

Senator LAUTENBERG. Thanks, Mr. Chairman.

I just wanted to clear up, without any intonation or bias, Mr. Nakayama, did I understand that you never represented Grace directly? Is that what you said?

Mr. NAKAYAMA. Yes, Senator, I have never represented W.R. Grace.

Senator LAUTENBERG. There was no implication in my question. I just wanted an understanding.

Mr. Peacock, I don't know whether you took your lead from the Chairman of this committee, the distinguished Chairman, when you talked about most of the bad air comes from indoor pollution, indoor air pollution. I didn't know whether you were talking about the U.S. Senate or in general.

[Laughter.]

Senator LAUTENBERG. It is nice to see all three of you here. I speak for myself, I am concerned about the transition from previous positions and attitudes.

I want to ask you, Ms. Bodine, I know you went to school in New Jersey, and we're very proud of that institution. It doesn't represent fully all of New Jersey, as you know, looking at it from the Princeton view. We love Princeton and we know that there are very smart people who go to school there.

The Superfund program is of special importance to my State. We have, I won't say we have a monopoly, because we hear that beautiful States like Montana have Superfund problems, so it goes across the country. But we have 113 Superfund sites in that little State. Many of them are underfunded. I would ask you, are you familiar, do you know the amount of money that is being allocated to Superfund cleanup or directed toward Superfund cleanup?

Ms. BODINE. Are you asking me what the President's request is for Superfund in 2006?

Senator LAUTENBERG. No, not the President's request, the President's availability of funds for Superfund cleanup.

Ms. BODINE. It would be the, well, I have that, it would have been the appropriations for 2005, in terms of response actions—I don't have the exact number. I apologize.

Senator LAUTENBERG. OK. Is there enough there, to your knowledge, to effect a prompt cleanup of the sites that are listed on the NPL list?

Ms. BODINE. I don't have an answer to your question, because I don't have the information. But we do know that not all the sites are cleaned up, so I guess the answer is simply, no, there isn't enough funding to clean up every single site. Although at each individual site, the funding needs depend on what stage the site is in the process. Whether or not a site can use money in a particular year depends on a number of factors, including status of enforcement against the PRPs, because, of course, EPA has an enforcement first policy. We want to spend PRP money before we spend trust fund money.

Another factor is, of course, the stage of the remedy selection, to make sure that all the paper decisions have been made and all the risks have been evaluated.

There are various studies by Resources for the Future and others about the billions of dollars it is going to take to complete action on Superfund sites nationwide. But for an individual year, I don't have that information.

Senator LAUTENBERG. Have you had a chance to look at the pace of cleanup going back a few years, and currently?

Ms. BODINE. Are you speaking about construction completions?

Senator LAUTENBERG. Yes.

Ms. BODINE. Construction completions, I have looked at that, yes. There are not as many construction completions in the last couple of years as there had been in the 1990's.

Senator LAUTENBERG. Or underway?

Ms. BODINE. Or underway, well, no, a lot of things are underway. A lot of them have reached the construction completion stage.

Senator LAUTENBERG. It just depends on how far the progress has been.

Ms. BODINE. Right. On that issue of construction completions, I have looked at the data on that. Concerns have been expressed that the Superfund program is very, responsive to what data is requested, what information is tracked. There has been a heavy emphasis on construction completions for a long time.

Earlier, there was concern that this emphasis may have been to the detriment, perhaps, of prioritizing sites based on the risk. Because, if you look at the data on construction completions in the 1990's, you will see an enormous number of construction completions, but the actual amount of Federal dollars at each site is, in the vast majority of cases, less than $5 million. I know that again in the 1990's——

Senator LAUTENBERG. I don't want to hold my place too long here. The Chairman has been about as patient as we find him.

But New Jersey has a number of, 37 orphaned sites. I ask you this question, and that is, have you looked at the Superfund tax as it used to be and see what it did to accelerate and protect the areas where these sites exist, these Superfund sites? I just wonder what you think about it, should we look to raise money for these orphaned sites? We don't have enough to take care of them, do you think?

Ms. BODINE. When Congress enacted the Superfund taxes, it enacted them to go into the Superfund Trust Fund, but it set up a mechanism where the trust fund that is part of the unified Federal budget which means that in terms of the funding, the money has to be appropriated out of the Trust Fund, it is not dedicated funding. The funding that is appropriated out of the trust fund has to compete within the overall budget and all the overall priorities.

So if you look at the level of funding that was in the Trust Fund and you look at the appropriations, there isn't actually a relationship. The Trust Fund reached a height of about $3.8 billion in 1998. Even then, the amount of appropriations out of the Trust Fund was still flat.

Senator LAUTENBERG. We'll have to discuss it at another moment. Thank you, Mr. Chairman.

Senator INHOFE. Thank you, Senator Lautenberg.

Senator Baucus, and you will have an extra minute.

Senator BAUCUS. That's fine, I appreciate that, Mr. Chairman.

Mr. Nakayama, the question about your involvement with Kirkland, with Grace, what do you know about your firm's involvement with W.R. Grace?

Mr. NAKAYAMA. I know that my firm represents W.R. Grace in the bankruptcy matter. I understand that my firm represents some Grace executives in the criminal indictment matter. That's my understanding. I don't have personal knowledge, I just know that from reading press reports.

Senator BAUCUS. That gets to my second question, and that is, your knowledge is based upon, only upon reading press reports? You have no internal knowledge, that is, no knowledge other than press reports?

Mr. NAKAYAMA. No knowledge other than press reports, that's correct.

Senator BAUCUS. What's your firm's policy with respect to clients? In most law firms, when a partner represents a client, the

entire firm represents the client, not just the lawyer, the entire firm. That's the basic rule of thumb in law firms today. Is that the Kirkland policy?

Mr. NAKAYAMA. I really don't know what the Kirkland policy is with respect to what our agreements are with respect to the client, if it is a representation on behalf of the whole firm or whether it is with respect to a portion of the firm.

Senator BAUCUS. Well, what's the understanding within the firm, generally? For example, if you represent a client, is it an understanding or common knowledge that it is expected the firm also represents the client, in addition to you?

Mr. NAKAYAMA. Maybe I'm not understanding the question, Senator. I represent clients, they are my clients and I work for them and I am a member of Kirkland and Ellis, LLP.

Senator BAUCUS. Right. But do you consult with other members of your firm, ever, about an issue when you are representing your clients?

Mr. NAKAYAMA. I will consult, typically, with people in my practice group, yes.

Senator BAUCUS. Therefore, in a sense, at least that practice group itself, in addition to you, represents that client?

Mr. NAKAYAMA. In that sense, yes.

Senator BAUCUS. Again the common rule is that the entire firm represents that client, in addition to the partner? Isn't that the understanding within your firm, too, the general rule? Different firms operate differently. Some the entire firm does, some have special practice groups that try and wall off different sections and so forth. I'm just trying to find out what the Kirkland practice is.

Mr. NAKAYAMA. I know it sounds a little bit unusual, but I just haven't looked at that, Senator. I don't know what our policy is with respect to when we represent a client. I have not looked at that policy, frankly.

Senator BAUCUS. You don't know?

Mr. NAKAYAMA. No, I don't.

Senator BAUCUS. Doesn't that sound a little unusual?

Mr. NAKAYAMA. It may. It's a fact. I just haven't looked at it. Our firm is a large firm with hundreds of attorneys. I have not looked in fact at every policy of our firm, frankly.

Senator BAUCUS. Well, wouldn't that be a big question, because you may potentially be in a conflict of interest when you talk about a prospective client, if that firm, your firm, Kirkland, may be representing the other side in some other way? Maybe in a civil matter. Isn't that possible?

Mr. NAKAYAMA. It is possible, Senator, certainly.

Senator BAUCUS. So you don't check to see?

Mr. NAKAYAMA. We do check.

Senator BAUCUS. To see whether there is someone else, some other lawyer with a client in the firm, that's representing another client that may present a potential conflict or an appearance of a conflict?

Mr. NAKAYAMA. Yes, we do check. We have a computerized system, and if you want to represent a new client to the firm, you have to submit the new client to a data base and the data base checks to make sure that client is not adverse to any other client.

Senator BAUCUS. So what happens if hypothetically a partner in your firm is thinking about representing Client X, and then submits the information in their computer system to see if there is a conflict, would you know about that submission?

Mr. NAKAYAMA. Would I know about that submission? I——

Senator BAUCUS. Customarily would other partners in that firm know about that submission, that submission of that nature or request of that nature?

Mr. NAKAYAMA. Typically there would be a list, I imagine, that comes around periodically, you would look at if—it is incumbent upon the person introducing a new matter to contact any attorney that they thought there might be a conflict that is identified out of that system.

Senator BAUCUS. So in this case, when the firm represented W.R. Grace, well, let me ask this question, do you know when Kirkland took on W.R. Grace as a client?

Mr. NAKAYAMA. No, I don't.

Senator BAUCUS. When you read about this in the press, did you go back and check?

Mr. NAKAYAMA. No, I didn't go back and check, no.

Senator BAUCUS. Wasn't it a concern to you?

Mr. NAKAYAMA. The firm represents hundreds of clients. I would be checking every day with respect to particular clients. There are news articles about our clients and our cases every day in the news.

Senator BAUCUS. I'm sorry?

Mr. NAKAYAMA. There are articles and press reports about the clients, our clients and the firm every day. But I don't typically check to see when they became clients.

Senator BAUCUS. What I'm getting at is once your name was, somebody approached you for this job, maybe did you go back and look at your client list and say, gee, maybe there's a conflict here, maybe there's a problem here, some enforcement actions before the EPA? Did you do that?

Mr. NAKAYAMA. I literally—I guess when you say did I check my client list?

Senator BAUCUS. Did you go back and say, gee, I have some clients here that present a problem here, a conflict?

Mr. NAKAYAMA. I looked at my——

Senator BAUCUS. I might have to recuse myself?

Mr. NAKAYAMA. Yes, I did look at my personal clients, the clients that I have done work for, to see if there was a problem.

Senator BAUCUS. Did you look at Kirkland's clients?

Mr. NAKAYAMA. No.

Senator BAUCUS. So in this case, if EPA begins an enforcement action, is involved in an enforcement with W.R. Grace, what's your position?

Mr. NAKAYAMA. I'm going to recuse myself from that matter.

Senator BAUCUS. What about other cases where Kirkland has represented other clients that come before the EPA?

Mr. NAKAYAMA. What I've done, Senator, is I have submitted my financial disclosure form that explains and lists my clients. I have also submitted an ethics agreement to the Office of Government Ethics that was reviewed by the top ethics officer at the Agency,

as well as the Office of Government Ethics. That has been reviewed and approved by the Office of Government Ethics.

Senator BAUCUS. As a partner in the firm, do you have any input as to which clients the firm represents? Is that totally up to each partner?

Mr. NAKAYAMA. I have input with respect to clients I bring to the firm. Unless there is a conflict or unless there is some issue that directly involves my clients, I typically, no, do not get involved with respect to other partners and their clients.

Senator BAUCUS. Do you share the income that the firm receives in charging W.R. Grace? As a partner, do you get some of that income?

Mr. NAKAYAMA. As an employee of Kirkland and Ellis——

Senator BAUCUS. Sorry?

Mr. NAKAYAMA. As an employee of Kirkland and Ellis, as a partner, we all received income from the firm as a whole.

Senator BAUCUS. Including income from W.R. Grace?

Mr. NAKAYAMA. Income from any client.

Senator BAUCUS. So that goes back to my first question, in a sense, you're really all together as a company, as a team. So that is, you represent Grace, in a sense the whole firm does, and vice versa. That makes sense, because you said that you would recuse yourself in any action before W.R. Grace.

I'm just curious, can you explain the difference between chrysotile and tremolite?

Mr. NAKAYAMA. I understand they are different types of asbestos.

Senator BAUCUS. You heard me this morning talk about tremolite, that difference.

Could you tell the committee a little bit about your views on why you praised the decision by the Fifth Circuit Court of Appeals to overturn the EPA's ban on asbestos?

Mr. NAKAYAMA. Yes, I certainly could. That was a law review article I wrote——

Senator BAUCUS. Right, right.

Mr. NAKAYAMA [continuing]. I wrote that for the George Mason Independent Law Review back in I believe 1991. It was a decision of the Fifth Circuit called *Corrosion Proof Fittings* v. *EPA*. The Court held that a straight, across-the-board ban on asbestos, across all uses, couldn't be promulgated under the Toxic Substances Control Act, TSCA.

Senator INHOFE. The Senator's time——

Senator BAUCUS. I'm sorry, I'll be finished. Thank you, Chairman. I'll be finished. I appreciate the committee's indulgence here.

I only ask the question because most industrialized nations have banned all uses of asbestos. This is a question, and I will pretty much end up here. What is your sense of your duty as a person, this is pretty abstract, bear with me for a while, on this earth? I believe that we must, all of us have a moral obligation to leave this place in at least as good a shape or perhaps better shape than we found it, from an environmental perspective. Because we are just here for a short while on this earth. We have kids, grandkids. What's your view about that?

Mr. NAKAYAMA. I agree with you, Senator. I have a daughter who was here this morning, and I think all of us want to leave the planet in better shape for our children. We are here for a short time.

Senator BAUCUS. What can you say to this committee right now to assure us that you are going to vigorously enforce the laws as the chief enforcement person at EPA?

Mr. NAKAYAMA. Let me say this. I have approached every job I have ever held very seriously. I think you can see that from my record. I have a record of achievement, and I would approach this job just as seriously.

If any company, individual, other Government Agency, believes that my nomination somehow lessens their responsibilities under the environmental laws and regulations of this country, they are sadly mistaken. They are making a serious mistake, and they make that mistake at their peril. I will vigorously enforce the environmental laws and regulations of this country. That is the job of the person who sits as the Assistant Administrator for the Office of Enforcement and Compliance Assurance.

I look forward to working with you, if confirmed, you and your staff, the committee, as we look forward and work together to achieve that goal.

Senator BAUCUS. Well, thank you, and I appreciate that. Thank you very much. Thank you, Chairman.

Senator INHOFE. Thank you, Senator Baucus.

Senator Boxer.

Senator BOXER. Thank you so much, Mr. Chairman.

I want to continue with the questions, Ms. Bodine, on the Superfund program. By the way, I share the concerns of my colleagues and everything they have discussed. I want them to know that I am with them on all of their concerns.

Right now I am the ranking member on the Superfund Subcommittee. As I said, we have not had a hearing in a very long time. So I need to, instead of having hearings, since we don't seem to be able to do that, to get information from EPA.

Now, from your web site, as I said this morning, we have a list of 103 Superfund sites in 33 States where human exposure is not under control. There are 1,200 Superfund sites, give or take. So there are 103 where people are getting exposed, right now, as we sit here.

I need to know this, I need to see this list in the order of the most dangerous going down the list. They are all dangerous, everybody is getting exposures who lives near these sites, especially the children. But I need to have that list.

So far, I do not have that comprehensive list. We do know on your web site you list the actual sites, you name them. But this is not in order of most dangerous.

So I need to know that you will cooperate with me and we can get this. Now, Senator Jeffords and I have been trying to get this list for a very long time. Everything we get is just bits and pieces. We never get answers, clear, simple, straightforward answers, you know, these are the 10 most dangerous sites. I am asking you today if you will work with me before your confirmation vote to get this list from the EPA.

Ms. BODINE. Thank you, Senator. I don't currently work at the EPA, so I don't control the documents they are producing. As you know, I currently work for the U.S. House of Representatives, for a committee that also has oversight over the Superfund program. So I must say that I have an understanding of the importance of congressional oversight and I have a bias in favor of sharing information.

If I am confirmed, I am going to have to respect the concerns and certainly the protections that are necessary for my colleagues, including colleagues at the Office of Enforcement and Compliance Assistance with respect to things that are confidential, because of enforcement-sensitive information. Then if I am confirmed, I am also going to have to respect whatever protocols, I am not familiar with them, but whatever protocols have been set up by the executive branch to protect information that is pre-decisional.

Let me say that I am told that those protocols have not changed from Administration to Administration, but again, I cannot tell you what they are, because I am not familiar with them.

But within those parameters, yes, I want to work with you, I want to work with your staff on getting answers to your questions. The list that you are talking about from EPA's web site, I have not gone and looked at that exact list.

Earlier I had seen a report that talked about sites that were not in control. I was concerned and I called the Agency myself and asked, well, what does this mean. I was told that that was, that the sites were sites where there was current or potential exposure. My concern was that there were any sites at all where there was actual ongoing exposure, which is the concern I hear you expressing. I was told that no, they are not, what we are talking about here is potential exposure.

But I agree with you completely, Senator, that if there are sites out there with current, ongoing exposures, those are the sites that need to be a top priority, the top priority. Those sites need to be the ones that are addressed first. Again, when you are talking about actual, current exposure——

Senator BOXER. I know my Chairman is not going to give me extra time——

Senator INHOFE. If you would like to take both your rounds at once, you may do that.

Senator BOXER. Thank you. Well, go ahead, then, I thought I only had 5 minutes. Go ahead.

Ms. BODINE. Let me just repeat that in reaching that goal of making sure that the priority is based on risk and that first and foremost, if there is actual exposure at the site and people are currently exposed, that has to be at the top of the list.

Senator BOXER. OK. We need to see that list. Where is there actual exposure?

I was talking to my colleague, Senator Obama. He has a lot of sites there—how many do you have?

Senator OBAMA. Eleven.

Senator BOXER. He has 11 sites that are titled Superfund Sites Where Human Exposure is Not Under Control. Now, that is the English language and I understand it. I don't think it needs any—

I don't think you and I should listen to the bureaucrats explain it away.

It's clearly a problem. Because, sure, on a day that the wind doesn't blow, it's under control. But the next day the wind blows, it's not under control. So we have, and in my State, I have, I believe it is six sites where human exposure is not under control.

So I appreciate your spirit and spunk on the point, and the fact that you're not at the EPA. But your caveat is a very big caveat. Because they are always going to give us reasons not to answer our questions.

I would like to state for the record that our questions aren't answered. We get bits and pieces of information.

Now, what I need to know from you and what I need to know from EPA, and you can't answer this question, but what I am going to try to get from EPA is what stage of cleanup are we in for each of these 103 sites. What sites, in particular, have that threat right now to the point where there is an immediate threat to children, let's say. How many children live within 4 miles of these sites, and how much will it cost to clean up these sites.

Now, you're right, the legal department always gives instruction, we can't say this, because if we say this then the people at the bottom of the list won't cleanup their site and all this stuff. The bottom line of that is, the Clinton administration gave us the list. We never made it public. We kept it here at the committee. The committee was able to see it and that's fine.

I certainly don't agree with that. Because frankly, if you're on this list of 103, you'd better shape up, because we're going to get it cleaned up one way or the other. So this 103 has to be cleaned up, out of the 1,200 sites.

Now, we know in Omaha there has been actual exposure, because I showed you that. We know in Libby there is exposure. I can't get from EPA what do they need from us by way of funding, by way of personnel or whatever they need to get moving. So I don't want to go on very long, because I feel like you are in a situation where—you're right, you don't work for the EPA. You can't get this information for me.

But I am very frustrated about this. I feel like we have gotten something from the EPA in connection with some of this information, but it's not complete. So all I get is incomplete information.

So I just want to say for the record, Mr. Chairman, that just as I used the Johnson nomination to stop a terrible program from going forward, I intend to use the leverage I have here, and it is no disrespect for anyone, it is out of love and respect for the people who live at these sites, to say that I expect to get, in short order, a list of these sites, in the order of priority, with information as to what it will cost to clean them up, what it will cost to make them at least do what we call in our office triage, to protect the little kids—let's take another look at these kids, this little boy who got exposed to lead in Omaha, and now has irreversible brain damage from lead. This poor woman cannot get EPA to go test how much lead is left in her back yard.

This isn't about charts and numbers. It's about people like this. This woman probably never asked her Federal Government to do a darned thing. I'm sure that she's a middle-class homeowner who

gets up in the morning and loves her kids. Now look what happened here, and she can't get EPA to get a measure of the lead in her back yard.

So what I will ask you to do is if you are talking to the folks over there, as you go through the nomination, to tell them that Senator Boxer is being tough on this situation. I would love a letter telling us that they went to this woman's back yard with their equipment and gave her a straight answer. Because now she has another child, right? The baby sister has lead poisoning now, too. She can't get a reading, EPA can't come out there and do that?

This is very serious. We're not doing enough. I know a lot of it is caught up in the dollars. Look, I am the first one to admit, you can't do this on the cheap. I know a lot of people didn't like Superfund because yes, it did put in a revenue raise or tax or whatever you want to call it for polluters to pay. I know some people didn't like it because it was a general revenue fund. In other words, it didn't just go to the polluter, it went to the people who are in that business, who could potentially pollute.

But it gave us the funding we needed. So anyway, that's my message to you. You are all good people, I'm proud that you are stepping up to the plate. But these are serious times. The Superfund program has been neglected. So I'm coming in with this request that we get this information, the sooner I get it, the happier we all are and we can move on. Thank you.

Senator JEFFORDS. I would like to join in that request. I am agreeing with everything you stated.

Senator BOXER. Thank you, Senator.

Senator JEFFORDS. We have to see some action.

Senator BOXER. Thank you, Senator. So now the request is coming again from the two of us. Thank you very much.

Senator INHOFE. Senator Obama, if you would like to take both of your rounds at once, you may do so.

OPENING STATEMENT OF HON. BARACK OBAMA, A U.S. SENATOR FROM THE STATE OF ILLINOIS

Senator OBAMA. Why don't I do that, Mr. Chairman, thank you very much.

First of all, I think Senator Boxer, as usual, was extraordinarily eloquent about a problem that, as she mentioned, affects my State apparently fairly significantly. I have 11 of the sites that are mentioned here as, and again, all Senator Boxer and I can do is go by the title of this list: Superfund Sites Where Human Exposure is Not Under Control. Now, that may mean something different. But that's the title.

So Ms. Bodine, I would strongly recommend that you forward this message to Mr. Johnson, make sure that he understand the urgency of the situation here.

Let me make a larger point. That is, in my brief time here, I have only been in office 6 months, my experience already has been that EPA, under this Administration, is reticent to share information with Congress. I don't know why that is.

But that appears to be the case. It just strikes me that in circumstances like this, we know that it's not going to be easy to solve the problem. I don't get a sense that this committee has gone out

of its way to try to politicize these issues. All we try to do is get the problem solved, but we can't solve the problem in the blind.

So I join Senator Boxer, I was a signatory to the letter making this request. I am expecting that we get some prompt responses.

Now, let me shift to something that actually connects with that painful photograph that Senator Boxer just showed, and that's the issue of lead paint. I'm going to direct this to you, Mr. Peacock. I want to ask you about a subject that's of great importance to me, and that's the issue of lead poisoning in children.

High blood lead levels, as you know, can have a devastating impact on children's health. They can lead to behavioral problems, learning disabilities, seizures. The EPA estimates that 890,000 children in this country suffer from elevated blood lead levels. In my home town of Chicago, there are 6,000 children with high blood lead levels. That by the way is the highest in the country, as far as we know. It is a problem that disproportionately affects poor and minority children. Fully 22 percent of African American children living in pre-1946 housing have lead poisoning, 22 percent. It's just an astonishing statistic.

Now, in 1992, Congress mandated that EPA would promulgate regulations on contractors engaged in home remodeling and renovation. So that's 13 years ago. It was supposed to have been completed, these regulations were supposed to have been promulgated by October 1996, which would be 9 years ago.

EPA's own analysis found that such a regulatory program could prevent 28,000 lead-related illnesses each year. That would, by the way, if it's not enough to see the pictures that Senator Boxer showed, and you're just thinking in terms of economic interests involved, we know that that would save us probably about $4 billion in economic benefits, both in terms of health care costs and additional costs for supporting children with lead poisoning.

Now, 13 years after Congress first issued this mandate, the EPA still hasn't proposed any rules. And for the last several months, I have been trying to understand why. When this committee considered Administrator Johnson's nomination in April, I asked him when EPA was going to issue this rule. Mr. Johnson didn't answer my question, he said that EPA was working on a voluntary program.

Of course, that's not what the law requires. The law doesn't say, the EPA may set up a voluntary program. The law says, the EPA shall promulgate regulations, mandatory regulations, around this issue. In May, Senator Boxer and myself wrote a follow-up letter to Mr. Johnson, asking him again, when will he issue the rules on lead. I've gotten no response on this letter.

Last month, I included an amendment in the EPA appropriation that would prohibit the Agency from spending any funds to delay implementation of this requirement. You may be aware, that bill passed the Senate unanimously.

So Mr. Peacock, like Ms. Bodine, this is always a difficult situation, you guys are just coming in, and I don't want to visit the sins of previous administrators on you. But my question is very simple, can you make a public commitment today that EPA is going to issue these lead rules by a date certain? Do you have any indication that that is taking place?

Mr. PEACOCK. Thank you, Senator, that's a good question. Just let me make three points. You are right to point out this is not an issue I have been involved in in the past or currently. On the other hand, as a resident of the District of Columbia, I am interested in lead poisoning and what it can do to kids.

The second point, not diminishing what work needs to be done, blood lead levels are another example of a success story so far in the United States, blood leads have dramatically decreased, particularly after lead was taken out of gasoline. It continues, according to some of the most recent information, it continues to decrease.

So now what we find are particular areas, such as, Chicago, where you can spot particular populations which continue to have this problem and it persists, which I think is a lesson for making sure the resources and efforts that are put toward it are targeted. I don't doubt that, for instance, the renovation of old housing stock is a place to target such resources.

I do not know intimately about this particular legal requirement or the requirement for issuing a regulation. What I do know is that EPA has been working with the renovation and repair industry. What I do not know is whether this would be their guidelines or whether it is, in fact, a regulation, as you desire, and the law as you say may require.

But I believe it may be a regulation, and my understanding is there is a desire to get a proposed rule out by the end of this year. Can I guarantee that in my current position? No, I can't. But I can certainly find out more about that for you.

Senator OBAMA. OK, well, I'm sympathetic to the fact that EPA regulations, that's a big manual. I assume you haven't memorized all of them.

Mr. PEACOCK. I probably know more than my fair share.

Senator OBAMA. Right. So let me just read to you Title 15, section 2682(c)(3) of the U.S. Code, just so that you're clear in terms of the statute that I'm referring to here.

"Within 4 years after October 28, 1992, the Administrator shall revise the regulations," and the title of the overall regulations is Lead-Based Paint Activity Training and Certification. "The Administrator shall revise the regulations to apply to renovation or remodeling activities in target housing, public buildings constructed before 1978, and commercial buildings that create lead-based paint hazards."

So it's not ambiguous. You're exactly right, I think the original intention was, we've taken lead paint out of, or lead out of gasoline. That has reduced lead poisoning, sort of ambient lead poisoning that's everywhere. We now have a localized problem that was specifically what this statute was designed to address, was old housing stock that is renovated, and to make sure, in the same way, that if there is asbestos in housing that we are going to make sure that we're not exposing folks or workers to this poisoning, that we're going to do the same thing with respect to lead-based paint.

So your rationales were right, that's why the statute was written. Thirteen years later, 13, I mean, I know the Federal Government moves slowly, but even with public notice provisions and all the hoops that have to be jumped through, 13 years is just an extraordinary amount of time to get a rule passed.

So I appreciate your public commitment to find out what's going on. I guess what I'm looking for is a public commitment to follow the law. Now, if the Administration decides that this is not important, then they should have the law changed. Right?

Mr. PEACOCK. Yes.

Senator OBAMA. But the law is on the books, and has been ignored for 13 years. So can you tell me, can you give me any rationale as to why we wouldn't just go ahead and pass this law? What assurance can I get from you that once you're confirmed, I'm not getting a bunch of letters that are still ignored?

Mr. PEACOCK. Let me commit to do this for you, Senator. My understanding, if I recall correctly, is that EPA is planning on having a proposed rule out by the end of this year. If that's incorrect, I will certainly let you know.

Once again, and this is more intuitive, my understanding—is that this issue, in particular, affects many small businesses, because there are a lot of people out there who are not very large who do renovation and repair. That may be a contributor, not an excuse, but a contributor for why it has taken as long as it has. Once again, that may be a guess.

Senator OBAMA. I am very sympathetic to the costs involved and that they shouldn't be borne by small businesses exclusively. I'm not interested in hoisting a localized tax, essentially, on individual contractors to solve what should be a broader obligation on the part of society.

So if the EPA believes that, they are concerned about small contractors having to bear these costs, then we should figure that out. If we need appropriations to deal with this, then that's something I'm happy to address. But that's not an excuse for ignoring it.

Mr. PEACOCK. No, and actually I wasn't alluding to costs as much as my own experience with the printing industry. You have to make sure whatever you promulgate can be enforced effectively. With a lot of small entities, that can be difficult. That's actually what I was alluding to, although I suppose costs could be——

Senator OBAMA. Well, if it's an enforcement issue, then my assumption, there are a lot of smart people over at the EPA, you soon to be one of them. My assumption is that, for example, I just bought a house in Chicago. It's a 1920 house. I assume that it would not be difficult to have local governments and municipalities say that prior to your doing any renovations on the home, you have to do a quick test for lead-based paint, and if so, you have to show some sort of certificate that in fact it was done properly.

Now, there may be some resistance on the part of local municipalities about that. I promise you I could convince the city of Chicago to go along with something like that. But there has to be that rule in place.

Mr. PEACOCK. Let me get back to you with the straight story, and of course the bottom line is to make sure we continue to reduce these children's blood leads.

Senator OBAMA. OK, thank you, Mr. Chairman. I appreciate your forbearance.

Let me just close by saying this. Again, Senator Boxer alluded to this, I am not interested in holding any of your nominations hostage. But you should let, if you get any resistance from your future

boss, the Administrator, about this, you should let him know that I am deeply concerned about this and willing to gum up the works a little bit until I get a clear response.

Senator INHOFE. Thank you very much, Senator Obama.

Let me go ahead, I guess we are each going to take another 5 minutes. Just so I can get things clear in the record, I did want to clarify the statement that was made by Senator Jeffords concerning today's, the G8 communique. The language in the G8 communique having to do with climate change is precisely, verbatim of the message or the position of the President in 2002. I will read it.

"While uncertainties remain in our understanding of climate change, we know enough to act now to put ourselves on a path to slow and, as science justifies, stop and then reverse the growth of greenhouse gases."

Now, I would say further on this, we just went through this on the floor a matter of 2 or 3 weeks ago. I headed up the opposition to an amendment, it was debated for 2 days. I pointed out very clearly that the initial creator of the climate change and his hockey stick, Michael Mann from Virginia, had been totally repudiated, he has been refuted by the scientific community, and that virtually all science since 1999 has stated that yes, there may be some climate change taking place.

However, our climate today is not as high as it was in the medieval warming period, and that if it is warmer, there is no sound science to show that it is due to anthropogenic gases, man-made gases, methane or CO_2. I think it's important to have that in the record.

Second, for the record, I would like to suggest that we have the Office of Government Ethics, Mr. Nakayama, the reason we have the Office of Government Ethics is to determine if there could be a conflict of interest, and if so, we would have to deal with that during this process. I am going to read the letter instead of just inserting it for the record. This is dated June 29.

"In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by Granta Nakayama, who has been nominated by President Bush for the position of Assistant Administrator for Enforcement and Compliance Assurance, U.S. Environmental Protection Agency. We have reviewed the report and have also obtained advice from the Environmental Protection Agency concerning any possible conflicts in light of its functions and the nominee's proposed duties. Also enclosed is a letter dated June 10, 2005 from Mr. Nakayama to the Agency ethics official, outlining the steps that he will take to avoid conflicts of interest. Unless a specific date has been agreed to, the nominee must fully comply within 3 months of his confirmation date with the actions he agreed to take in his ethic agreement. Based thereon, we believe that Mr. Nakayama is in complete compliance with applicable laws and regulations governing conflicts of interest."

This is signed by the Acting Director of the Office of Governmental Ethics.

I would ask you this question, Mr. Nakayama. You have said that you would comply within 3 months of the confirmation date with the actions agreed to. If you are confirmed, will you do that?

Mr. NAKAYAMA. Yes, Mr. Chairman, I would.

Senator INHOFE. Mr. Peacock, we became involved in something I think was very significant, you may not even be aware of it. But we discovered that there are discretionary grants that emanate from the Environmental Protection Agency that are first of all, they

are not based on sound science; second, many of these grants go to the same people; third, it took us, and me as Chairman of this committee, a month to find out who actually passed on these grants.

We have set a reform in place. It seems to be working right now. But it's important to me that you, and I say all three of you, will work with us in this effort to continue this reform so that we can stop any kind of a discretionary grant that doesn't have the official sanction of the leadership of the EPA. Do you have any comments to make about that?

Mr. PEACOCK. As you know, Senator, half of the EPA's budget grants, not all discretionary grants, but a significant portion are discretionary grants. This has been, I think for 10 years now, a material weakness noted by the Inspector General. As you mentioned, there is a 5-year plan that is being implemented to improve the transparency, accountability, and results in the grant programs. There is still a lot more work to be done there, and I want to work with you on it.

Senator INHOFE. You're right, for 10 years they've been talking about it but we're going to do it.

Mr. PEACOCK. Yes, I think we have started down that road.

Senator INHOFE. I think also, and as I talk to my cities and towns who are, I was a mayor at one time, I know what unfunded mandates are, I know that is probably the worst thing faced by our mayors as well as our Governors. I've gone through these things and recognized that it is really a serious problem.

Any time you have a grant that goes out, it's competing with a grant that might help a local community comply with water quality standards, drinking water or other things. So it goes beyond just the good government. It is something that drains those causes that we're supposed to be funding and taking care of.

Senator Jeffords.

Senator JEFFORDS. Yes, Mr. Chairman. For Ms. Bodine, the Superfund program is at a crossroads. The fund, which held $3.8 billion in 1996 is essentially bankrupt.

The 2005 budget is $574 million in constant dollars below levels from 1993. As a result of systematic funding shortfall, the rate of completed cleanups has plummeted and EPA is forced to shift money from ongoing projects to start the new cleanups.

What will you do as Assistant Administrator to assure that the abandoned site on the National Priorities List like Elizabeth Mine, Eli Mine, and the Pikes Hill Copper Mine in Vermont get promised Federal funding for investigation and cleanup?

Ms. BODINE. Thank you, Senator Jeffords. You can count on me to be a fierce advocate of the Superfund program within the Administration. As I discussed earlier with Senator Lautenberg, the Superfund program is funded through annual appropriations. That's true today, that's been true since its inception.

But first, I would certainly within the Administration be an advocate. I agree with the comments that were made earlier about the importance of risk and focusing on risk reduction. As I noted earlier, there has in the past been a focus on construction completions, and we've seen where a lot of sites where the cost to the Agency was less than $5 million were pushed through the system.

Again, I don't know the risks associated with them, but that may have been at the detriment of more risky sites.

Once the Administration receives the appropriation from Congress, at whatever level it is, I also will say that I want to make sure that those dollars are used in the most effective and efficient way. I heard concern expressed about the Superfund program. I have concerns about it as well. I do think that there are opportunities here to improve the management of the program, to improve the incentives created by how we track things, what are we requiring regions to report on. You change behavior that way.

Certainly making decisions based on risk as opposed to pure construction completions, those are all things that can be tracked. That will change behavior, both out in the regions and in terms of how sites are put forward.

So I would like to say to the entire committee that I will look forward to working with everybody on improving management of the Superfund program. I do have a goal of getting Superfund sites cleaned up more quickly.

Senator JEFFORDS. I appreciate those remarks. I can assure you you will have me right behind you to make sure that you get the proper wherewithal to make those decisions.

Ms. BODINE. Thank you.

Senator JEFFORDS. Mr. Peacock, why hasn't EPA been allowed by OMB to issue a proposed rule to implement the $PM_{2.5}$ standard and the second phase of the ozone implementation rule?

Mr. PEACOCK. Senator, I actually am not familiar with that rule. I can't even say that it's at OMB for review, although I have no reason to doubt that it is. I am involved on the budget side of OMB and tend not to get involved in the review of regulations unless they affect the budget. But I would be happy to get back to you to answer that question.

[The response referred to follows:]

I understand that EPA sent a draft of the proposed $PM_{2.5}$ Implementation Rule to OMB in October of last year. Since that time, however, senior EPA managers and OMB personnel have been focused on finalizing a number of regulatory packages that were subject to judicial deadlines or were a higher priority for the Agency. This includes significant actions such as the Clean Air Interstate Rule (CAIR) and the Best Available Technology (BART) rule (a key part of the regional haze program). These rules, especially CAIR, require important changes to the $PM_{2.5}$ implementation rule, as well as to the draft final 8-hour ozone implementation rule. EPA managers have now placed the highest priority on completing the 8-Hour Ozone Implementation rule and the $PM_{2.5}$ Implementation Rule. EPA and OIRA staff are now working through changes for both of these rules.

Senator JEFFORDS. I would appreciate it if you would get back to me. I want to assure you, I'll do anything I can do to help you get what you need.

Mr. PEACOCK. Great.

Senator JEFFORDS. Mr. Nakayama, there is currently a debate going on within the Administration and within Congress concerning the extent to which the public should be able to obtain documents from EPA and other Federal agencies and outside parties produced during enforcement settlement negotiations. Do you think that additional legislation is needed to prevent the disclosure of documents or should there be more public disclosure of documents?

Mr. NAKAYAMA. Senator, I appreciate the question. That is an issue which I am personally not familiar with, I did not realize there was legislation or pending legislation that is being considered regarding the scope of documents that would be released.

From an enforcement standpoint, and I don't want to sound too parochial, but your interests are maybe a little different if you are the enforcer, because you need to frankly be able to maintain confidentiality when you are negotiating a settlement agreement or moving forward. On the other hand, I can understand the interest in public disclosure.

So it's a question that I will be glad to look into, Senator. I just don't have any opinion on that particular matter at this point.

Senator JEFFORDS. I would appreciate it if you'd look into it and let me know what you have, and your views. I'll be there to help you if you need help.

Mr. NAKAYAMA. Thank you, Senator.

Senator INHOFE. Thank you, Senator Jeffords.

I thank all of you, and I do apologize to you and to your families who hung in there for you and I'm sorry, that seems to happen here occasionally in the U.S. Senate.

As far as the statements that were made by two or three of the Senators here concerning documents, during the consideration of the Clear Skies legislation, people were requesting documents from this panel up here. We put a count on it, and we found that during the consideration of the Clean Air legislation, which did not pass, we received over 10,000 pages of documents that would fall into the categories of modeling information and responses to requests, which is over four times as many documents as we had received during the 1990 Clean Air Act legislation. So I think maybe we're just asking for maybe too much sometimes.

So you might take that back to your new jobs. I would say to you, Ms. Bodine, we would like very much, after your successful effort on the floor today on the WRDA bill, to borrow you and use you on the floor of the Senate when we get our bill up which we have now passed out of our committee.

[Laughter.]

Senator INHOFE. We thank all of you. Is there one last thing anybody wants to say before we adjourn this meeting?

Ms. BODINE. Thank you very much for the opportunity to appear before you.

Mr. PEACOCK. Thank you, Mr. Chairman and Senators.

Mr. NAKAYAMA. Thank you, Mr. Chairman.

Senator INHOFE. We look forward to working with you, and we are adjourned.

[Whereupon, at 5:27 p.m., the committee was adjourned.]

[Additional statements submitted for the record follow:]

STATEMENT OF MARCUS PEACOCK, NOMINATED FOR DEPUTY ADMINISTRATOR FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY

Mr. Chairman, Senator Jeffords, and distinguished members of the Committee, I am honored to appear before you today as the President's nominee for the position of Deputy Administrator of the Environmental Protection Agency. I am indebted to the President for his trust and the privilege, if confirmed, of serving the public in this new capacity.

There are three important things I would like you to know about me. They make up who I am and govern how I would conduct the job of Deputy Administrator if confirmed.

First, I am a first generation American. My parents emigrated from war-torn England with three suitcases, a couple of trunks, and $200. Leaving their family and friends behind, they took a great risk because of the opportunity they saw in this country. This was an opportunity not just for themselves, but for their children and their children's children. It is the greatest gift I have ever received. I love this country and cherish the rights we enjoy—rights that give us the opportunity to realize our dreams. The first function of any government should be to protect and honor those rights.

Second, I grew up in Minnesota. Minnesota gave me two things. First, one cannot grow up in that great State without appreciating the outdoors. Even when it is 20 degrees below zero. Indeed, my deep interest in the environment started at about age 15 at winter camp. I was working on laying out an orienteering course and found myself standing alone in the middle of a frozen lake while a fellow Boy Scout moved a marker along the shoreline. For some reason, at that moment, the serenity and peacefulness of that setting connected with me. My eyes opened up to a deeper wonder of nature. That day started a lifelong interest in the natural world. It drove me first to an interest in science and, ultimately, engineering. It is a fascination my wife and I share with our kids through hiking, camping, canoeing, and birding.

Minnesota also gave me a strong sense of community. Public service is a high calling in Minnesota and pubic servants are expected to express the highest possible level of integrity. An adage etched into the old Minneapolis Convention Center struck home with me. It said, "Participation in the rights of citizenship presumes participation in the duties of citizenship." My parents helped me appreciate the rights of citizenship in the United States. Minnesota helped me understand that those rights came with an obligation to the community and the Nation.

Finally, I am an engineer. I have not practiced engineering as a profession for many years. Nonetheless, I like to think I practice engineering everyday. To me, the core of engineering is a disciplined process for problem solving. It requires one to be clear, open-minded, and analytical. And it focuses on getting results. As a manager and budget officer, I have seen many different types of problems. Engineering has given me the skills to break problems into manageable pieces and work with others to come up with solutions that get results. I think this is exactly the kind of skill one needs to be a Deputy Administrator.

Should I be confirmed, I would bring to EPA a strong sense of public service, a deep appreciation for the environment, and an excellent set of problem solving and management skills.

Under the President's leadership, our country has made great strides in cleaning up our air, water, and land in a way that allows our nation to continue to grow and prosper. The air my children breathe today is much cleaner than when I was a kid. Our food and drinking water supplies are safer. Our land is better protected.

Building on this success, EPA Administrator Steve Johnson has laid out two key challenges for the Agency. First, we must make sure we are using the best available scientific information to make decisions. Second, we must formalize collaborative approaches to solving problems. On this second point, traditional methods of environmental protection do not work as well as in the past on our remaining challenges. Collaborating with States and other partners to solve remaining environmental problems needs to become more routine. I look forward to helping the Administrator tackle these challenges and make sure the air, water, and land my grandchildren breathe, drink, and live on are even cleaner than what we have today.

Mr. Chairman, if confirmed I will do everything I can as Deputy Administrator to continue to serve the people of this great country, protecting their health and the health of our environment. Thank you very much and I would be happy to answer any questions.

UNITED STATES SENATE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

ROOM 410 DIRKSEN BUILDING WASHINGTON, DC 20510

INFORMATION

REQUESTED OF PRESIDENTIAL NOMINEES

In order to assist the Committee in its consideration of nominations, each nominee is requested to complete the attached Statement for Completion by Presidential Nominees. The Statement is intended to be publicly available. In the event that a nominee asks that a specific answer be kept confidential, he or she should notify the Chairman and Ranking Member.

The original and forty (40) copies of the requested information should be made available to the Honorable James M. Inhofe, Chairman, Committee on Environment and Public Works, U.S. Senate, Washington, DC 20510 (Attn: Marty Hall: Deputy Staff Director) as soon as possible.

Name of Nominee: Marcus Christopher Peacock

Business Address: _____

_____

_____

Business Phone: _____

Home Address: _____

_____

Home Phone: _____

UNITED STATES SENATE
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

Name: Peacock (Last) Marcus (First) Christopher (Middle)

Position to which nominated: Deputy Administrator, US Environmental Protection Agency

Date of Nomination: June 6, 2005

Date of birth: 21/3/1960 (Day) (Month) (Year) **Place of birth:** Minneapolis, MN

Marital status: married **Full name of spouse:**

Name and ages of children:

Education:

Institution	Dates attended	Degrees received	Dates of degrees
The Blake School	9/1969 to 6/1978	diploma	6/1978
Univ. of Southern California	9/1978 to 5/1982	B.S.	5/1982
Harvard University	9/1984 to 5/1986	M.P.P.	5/1986

Employment record:

List all positions held since college, including the title and description of job, name of employer, location, and dates. If you were terminated involuntarily from any position(s), please note the circumstances.

Industrial Engineer/Engineering Department: R.R. Donnelley & Sons, Los Angeles, California (June 1982 - January 1983). Designed and implemented production and material handling systems for a large magazine printing plant.

Manufacturing Supervisor/Bindery Department: R.R. Donnelley & Sons, Los Angeles, California (January 1983 - June 1984). Supervised 60 skilled and semi-skilled personnel. Scheduled crews and machines for the binding of over four million magazines a week.

Desk Officer/Commerce and Lands Branch: U.S. Office of Management and Budget, Office of Information and Regulatory Affairs, Washington DC (June 1986 - June 1987). Reviewed

Department of Agriculture and Department of the Interior information collections, regulations and policy documents for cost-effectiveness.

Senior Desk Officer/Natural Resources Branch: U.S. Office of Management and Budget, Office of Information and Regulatory Affairs, Washington DC (June 1987 - March 1989). Performed cost-benefit analyses of Environmental Protection Agency (EPA) regulations, information requirements, and policy statements.

Deputy Chief/Natural Resources Branch: U.S. Office of Management and Budget, Office of Information and Regulatory Affairs, Washington DC (March 1989 - June 1990). Supervised three analysts performing cost-benefit analysis of proposed EPA regulations and policy statements. Identified policy alternatives for senior political appointees.

Program Manager: Jellinek, Schwartz & Connolly, Washington DC (June 1990 - January 1995). Managed the environmental policy analysis and forecasting section of Jellinek, Schwartz & Connolly. Supervised five analysts performing various services including monitoring and analyzing pending environmental legislation and regulations.

Professional Staff Member: U.S. House of Representatives, Water Resources and the Environment Subcommittee of the Committee on Transportation and Infrastructure, Washington DC (January 1995 – December 1998). Supported Members of the Subcommittee and Committee by drafting legislation and providing policy analysis and briefings. Jurisdiction of the Subcommittee included the Clean Water Act, Superfund, and the Army Corps of Engineers Civil Works.

Subcommittee Staff Director: U.S. House of Representatives, Oversight and Emergency Response Subcommittee of the Committee on Transportation and Infrastructure, Washington DC (January 1999 – January 2001). Directed a subcommittee staff conducting oversight and assisting Members of Congress in drafting and considering legislation. The Subcommittee conducted over fifteen oversight hearings in the 106th Congress regarding the activities of EPA, the Department of Transportation, and the Federal Emergency Management Agency. In addition, the subcommittee originated and eventually passed out of the House legislation reauthorizing Federal Emergency Management Agency programs and establishing a White House Office to combat terrorism.

Associate Director for Natural Resources Programs: U.S. Office of Management and Budget , Washington DC (January 2001 – present). Direct an organization of 60 analysts responsible for reviewing the budget and policies of federal natural resource, energy, and science agencies so that they are consistent with the President's priorities. These agencies include the Departments of Agriculture, Energy, and the Interior as well as the Environmental Protection Agency, the Army Corps of Engineers Civil Works, the National Aeronautics and Space Administration and the National Science Foundation. From 2002 to 2003, also served as government-wide lead for the Budget and Performance Integration initiative of the President's Management Agenda including creation of the Program Assessment Rating Tool (PART).

Honors and awards:

List significant scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognitions for outstanding service or achievement.

- Williams Alumni Award in English (1978)
- Archimedes Circle Scholarship (1981)
- *Tau Beta Pi* honor society (1982)
- Outstanding Scholastic Award, USC School of Engineering (1982)
- Outstanding Service Award, USC School of Engineering (1982)
- Oak Ridge University Fellowship (1985)
- OMB Outstanding Achievement Award (1987)
- OMB Performance Awards (1988, 1989, and 1990)

Memberships:

List significant memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations.

Organization	Office held (if any)	Dates
Little Scholars Child Development Center	Treasurer	1999 - 2000
Soccer on the Hill	Assistant Coach	2002 - 2004
Institute of Industrial Engineers	Senior Member	1982 - present
American Assoc. for the Advancement of Science	Member	1995 - present
Appalachian Trail Conference	Member	2003 - present

Qualifications:

State fully your qualifications to serve in the position to which you have been named.

I have 19 years of environmental policy experience including positions in private practice and the Legislative and Executive Branches. Currently, as the Associate Director for Natural Resource Programs at the Office of Management and Budget, I have assisted the President in developing five annual budget submissions accounting for approximately $150 billion in spending each year. This portfolio includes the budget of the Environmental Protection Agency. Regarding management ability, as the President's lead for the Budget and Performance Integration Initiative, I lead the team that created the Performance Assessment Rating Tool (PART) and originated implementation of the PART through the President's Management Council. The PART is a questionnaire that evaluates a program's strengths and weaknesses with a focus on whether the program produces results for the public, such as cleaner air or cleaner water. To date the PART has been used to evaluate approximately 60 percent of all Federal programs and is among the finalists for this year's prestigious Innovations in American Government Award presented by Harvard University and the Ford Foundation. Regarding my performance, for each of the five employers I have worked for I achieved the highest possible performance ranking and was often promoted within a few years. In addition, I am technically qualified having received a Master's degree in Public Policy from Harvard University and worked as an engineer achieving certification as a Professional Engineer in 1995.

Future employment relationships:

1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

Not applicable, currently work for the Federal Government.

2. As far as can be foreseen, state whether you have any plans after completing government service to resume employment, affiliation or practice with your current or any previous employer, business firm, association or organization.

I have no such plans.

3. Has anybody made a commitment to you for a job after you leave government?

No.

4. (a) If you have been appointed for a fixed term, do you expect to serve the full term?

This is not a fixed term appointment.

(b) If you have been appointed for an indefinite term, do you have any known limitations on your willingness or ability to serve for the foreseeable future?

No.

(c) If you have previously held any Schedule C or other appointive position in the Executive branch, irrespective of whether the position required Congressional confirmation, please state the circumstances of your departure and its timing.

I served on the President's Transition Team from December 2000 to January 2001 and left when the Team was dissolved.

Financial Statement:

Note: The Office of Government Ethics will provide the Committee with a copy of your Executive Personnel Financial Disclosure Report (SF-278).

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services and firm memberships or from former employers, clients, and customers. Amounts should be indicated by the categories established for reporting income on Form SF-278, Schedule A.

None.

2. Are any assets pledged?

No.

3. Are you currently a party to any legal action?

No.

4. Have you filed a Federal income tax return for each of the last 10 years? If not, please explain the circumstances.

Yes.

5. Has the Internal Revenue Service ever audited your Federal tax return? if so, what resulted from the audit?

My return has never been audited

Potential conflicts of interest:

1. Describe any financial or deferred compensation agreements or other continuing of interest: dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

None.

2. List any investments, obligations, liabilities, or other relationships that might involve potential conflicts of interest, or the appearance of conflicts of interest, with the position to which you have been nominated.

My wife is a private consultant regarding transportation issues with Donna McLean Associates in Washington D.C. My wife does not, and will not, represent clients before EPA for as long as I may be employed at EPA. In addition, in accordance with guidance from the Office of Government Ethics, I have agreed that I will not participate personally and substantially in any particular matter that will have a direct and predictable effect on the financial interest of Donna McLean Associates. Furthermore, I will not participate in any particular matter involving specific parties in which to my knowledge any client of my spouse is or represents a party, unless I am authorized to participate.

In addition, my brother-in-law, Stuart Miles-McLean is an employee at EPA's Headquarters. I have agreed that I will not participate personally and substantially in any particular matter that will have a direct and predictable effect on Mr. Miles-McLean's compensation and/or personnel status.

3. Describe any business relationship, dealing or financial transaction (other than taxpaying) which you have had during the last 10 years with the Federal Government, whether for yourself or relatives, on behalf of a client, or acting as an agent, that might in any way constitute or result in a possible conflict of interest, or an appearance of conflict of interest, with the position to which you have been nominated.

None.

4. Explain how you will resolve any potential conflict of interest, or appearance of a conflict of interest, that may be disclosed by your responses to the above items.

See the answer to question 2 above.

5. Explain how you will comply with conflict of interest laws and regulations applicable to the position for which you have been nominated. Attach a statement from the appropriate agency official indicating what those laws and regulations are and how you will comply with them. For this purpose, you may utilize a statement by the relevant agency Ethics Officer.

See attached letter dated June 2, 2005 from myself to Kenneth Wernick, Designated Agency Ethics Official, U.S. Environmental Protection Agency.

Political affiliation and activities:

List all memberships and offices held in, or financial contributions (in excess of $1,000), and services rendered to any political party or election committee during the last 10 years.

Volunteered for the Bush/Cheney Transition Team December 2000 to January 2001 and the Dole/Kemp Presidential Campaign in 1996. No financial contributions exceeding $1000.

Published writings:

List the titles, publishers and dates of any books, articles, or reports you have written.
(Please list first any publications and/or speeches that involve environmental or related matters.)

The following list includes, in chronological order, publications and speeches. Environmental topics first then a list of items addressing other topics. I have given a large number of speeches over the last several years. I have included only those I recall or have a record of.

ENVIRONMENTAL TOPICS

I have given a presentation to the press and others on both the President's environmental budget and the President's science budget on or about the time the President's budget is released for each of the years 2001 through 2005.

"Republican Environmental Record in Congress" presentation to representatives of the National Association of Manufacturers, August 4, 1998.

"Congressional Outlook of the Clean Water Act" presentation at the Heritage Foundation, June 24, 1998.

"Clean Water Act Issues" presentation to the Council of Republicans for Environmental Advocacy, June 23, 1998.

"Water Resource Issues" presentation to the American Association of Port Authorities, February 9, 1996.

"Clean Water Act Amendments" presentation to the Federal Bar Association, September 14, 1995.

"Developing Environmental Performance Measures," Peacock, Industrial Engineering, Vol. 25, No. 9, pp. 20 – 22, Sept. 1993.

"Solving the United States National Park Overflight Controversy," Eisinger, Peacock, and Falk, Environmental Management, Vol. 13, No.2, pp. 149 – 157, Spring 1989.

OTHER TOPICS

"How Congressional Committees Work" to the Izaak Walton League on May 31, 1998.

"Problem Solving vs. Process" to the National Environmental Policy Institute, November 20, 1997.

"What You Need to Know About HR. 1856" to the National Association of Professional Insurance Agents, March 1996.

"The Effect of Ballparks on Homerun Production," Peacock, Presentation to the Society for American Baseball Research, July 9, 1988. 18th Annual Convention, Minneapolis, MN.

Additional Matters:

1. If there is any additional information that you believe may be pertinent to the Members of the Committee in reaching their decisions, you may include that here.

No.

2. Do you agree to appear before all Congressional Committees which seek your testimony?

Yes.

AFFIDAVIT

Mary Peacock ss, being duly sworn, hereby states that he/she has read and signed the foregoing Statement for Completion by Presidential Nominees including the Financial Statement and that the information provided therein is, to the best of his/her knowledge and belief, current, accurate, and complete.

Subscribed and sworn before me this 7th day of June, 2005.

Notary Public Lorraine D. Hunt

LORRAINE D. HUNT, NOTARY PUBLIC
DISTRICT OF COLUMBIA
My Commission Expires Jan. 31 2006

RESPONSES BY MARCUS PEACOCK TO ADDITIONAL QUESTIONS FROM SENATOR JEFFORDS

Question 1. With regard to the findings in EPA's final June 2004 study, Evaluation of Impacts to Underground Sources of Drinking Water by Hydraulic Fracturing of Coalbed Methane Reservoirs, that the use of diesel was a potential threat to underground sources of drinking water, do you think should EPA plan to develop national regulation standards for the underground injection control program to address this threat? If not, why not?

Response. I am not familiar with this report or the details of this issue. If confirmed, I will look into the issue.

Question 2. What action do you think EPA should take to address any endangerment to public health as a result of hydraulic fracturing practices?

Response. As noted in the answer to the previous question, I am not familiar with this report or the details of EPA's activities in this area. If confirmed, I will look into it.

Question 3. Do you know what monitoring procedures are in place to ensure that the three major companies conducting hydraulic fracturing that signed the MOA with EPA in December of 2003 are no longer using diesel as a part of their hydraulic fracturing process? Given that this MOA contains no enforcement provisions, what actions should taken against these companies should they continue to use diesel? Is the voluntary commitment to ban the use of diesel working and have these companies fully implemented the ban throughout their entire operations?

Response. I have no knowledge of this MOA, but will look into it, if confirmed.

Question 4. On March 10, 2005, Assistant Administrator Ben Grumbles testified before the House Government Reform Committee regarding lead levels in drinking water. Mr. Grumbles stated that EPA conducted a ten-state review of LCR implementation that involved review of over 450 utilities. What actions do you think should be taken regarding these reviews in terms of reports and enforcement? If confirmed, would you provide the results of this data review, including any reports, to this committee?

Response. It is my understanding that EPA is still working to analyze the data collected during its review of the ten state programs. I have been told that the Agency will release a report with a national summary of the findings and make it available to both the public and the committee.

Question 5. At the March 2005 House hearing, Mr. Grumbles testified that data provided by the states indicates that 90th percentile levels for approximately 96 percent of utilities subject to the Lead and Copper Rule (LCR) are below the 15 ppb action level. Regarding the 4 percent of utilities out of compliance with the LCR. If confirmed, would you provide to the committee a summary of the sampling results for each utility, the details of noncompliance, and specify whether an enforcement action is pending or has been taken?

Response. If confirmed, I will work with the Office of Water and the States toward a goal of providing a summary of recent information to the committee.

Question 6. While at OMB did you review the Administration's rule to exempt coal-fired power plants from the air toxic control requirements of section 112 of the Clean Air Act? If so, do you think it is in the best interest of the public's and environmental health to choose, as the Administration has, to allow hundreds of coal-fired power plants to avoid adopting maximum achievable control technology for decades?

Response. OMB's Office of Information and Regulatory Affairs (OIRA), not my office, reviewed the section 112 revision notice. However, I am generally familiar with it.

This rule accompanies the Clean Air Mercury Rule, which represents the first time the U.S., or any other country, has regulated mercury emissions from existing coal-fired power plants. Along with the Clean Air Interstate Rule, EPA's recent regulations will require one of the most significant investments in air pollution technology ever in the history of the Clean Air Act and represents an important part of this Administration's efforts to help protect public health and the environment without interfering with the steady flow of affordable energy for American consumers and business.

Question 7. The Administration has routinely requested increased funds for the EPA's national diesel initiative and clean school bus campaign. Congress has not cooperated and the request and appropriations have gone down over time. What effect,

if any, will the authorization bill included as part of the energy bill and the Clean Air Subcommittee hearing discussed on Tuesday have on the availability of funds?

Response. Diesel retrofits in general are cost-effective control strategies for important pollution reductions. Both the national diesel initiative, including finalizing new emissions standards for locomotive and marine engines, and clean school bus program are priorities. The results associated with these programs will help to reduce particulate matter being emitted into the air and provide immediate public health benefits. There is substantial interest and support from industry, state and local governments, and public health and environmental organizations nationwide for these programs.

Although the Administration supports efforts to reduce emissions from both new and existing diesel engines, we are concerned that the funding authorized for diesel retrofit programs in the energy bill goes well beyond the funding for such efforts called for in the President's 2006 budget. Like similar authorizations that go well beyond the President's budget, we cannot support the authorization levels in this bill as they could create pressure to appropriate those levels in the future. However, we look forward to working with Congress to address the public health goals of the legislation consistent with the fiscal constraints that we all must confront.

Question 8. Which rules and regulations that have you worked on over the last 10 years will have the greatest beneficial impact on public and environmental health?

Response. I have worked on a limited number of rules and regulations over the last 10 years and very few of these addressed public or environmental health. This is because my purview tended to address rules and regulations that had an effect on the Federal budget. Nonetheless, of the limited number of rules and regulations I have worked on, one stands out as being potentially beneficial to environmental health. I worked on a U.S. Department of Agriculture rule clarifying the Federal share for the cost of eradicating or controlling invasive species. The rule helps State and local officials and other partners understand, upfront, what they are responsible for and what they can expect from the Federal Government. This reduces uncertainty and should speed up activities that will eradicate or control such species instead of waiting to negotiate cost-share on a case by case basis. Unfortunately, the execution of this rule has been blocked by appropriations language.

Question 9. Have you, at any point in your work at OMB, participated in discussions or meetings regarding Clean Air Act rulemakings that were intentionally structured or designed to avoid the docketing requirements of the Clean Air Act?

Response. No, I have not participated in discussions or meetings regarding Clean Air Act rulemakings that were intentionally structured or designed to avoid docketing requirements of the Clean Air Act.

Question 10a. EPA stated in its May 12th Federal Register notice finalizing the Clean Air Interstate Rule (or CAIR) that the reductions in ground-level ozone achieved by CAIR could save 500 more people from premature death every year. Yet EPA did not include these benefits in its main analysis. Since then, three new studies were published in the July edition of the journal of Epidemiology which clearly provide strong scientific evidence that the link between ozone and premature mortality is real and significant and additive to the effects of fine particles.

Will and should EPA now immediately include premature death reduction benefits in its primary estimates for future ozone rules? If not, what process do you believe EPA should have to go through before using studies published in peer-reviewed journals for rulemaking analyses?

Response. I am not familiar with the current published literature on ozone mortality. If confirmed, I commit to taking a close look at this issue.

Question 10b. If EPA decides not to include ozone mortality as part of the next ozone rule analysis, would you be willing to provide this Committee with an explanation of any such decision, including a description of what steps you feel you need to take before you can begin applying this peer-reviewed literature?

Response. Again, I am not familiar with the details related to this issue but, if confirmed, I will look into it.

Question 11. There have been a number of instances in recent regulatory analyses where EPA has used methods which have not been subject to outside peer review. A primary example of this was OMB's insistence that the Clear Skies benefit-cost analysis should include an estimate of benefits based on a "Senior Death Discount" which reduced the value EPA normally uses for avoided early death by more than half for senior citizens (from $6.3 million per life to $2.3 million for people over 70). Now, we know that this was OMB's idea and not EPA's and this "Senior Death Dis-

count" was to be applied even though it had no scientific underpinning and peer review to support it.

It seems reasonable that such proposals by OMB or other Federal agencies to use new methods or assumptions in EPA analyses should be conveyed in writing and made available to the public. Do you agree such new proposed methods should be subject to some kind of peer review so we can avoid debacles such as OMB's Senior Death Discount approach in the future?

Response. I agree that important methods or assumptions included in its regulatory analyses should be subject to outside peer review consistent with the Office of Management and Budget's Peer Review Bulletin issued on December 16, 2004. Under this Bulletin, agencies are granted broad discretion to weigh the benefits and costs of using a particular peer review mechanism for a specific information product or components thereof.

Question 12. According to an Inside EPA article of September 17, 2004, EPA and OMB have been collaborating on an approach which polls a small number of outside experts and asks them to interpret the literature on fine particle health effects and provide an estimated dose-response function. This sounds to me like an odd kind of non-scientific process where a small number of selected people are being asked to do the work traditionally done by EPA scientists. Inside EPA article reports that the result of this OMB—EPA collaboration is a lowering of the estimated benefits of pollution control. The professional experts and scientists on the EPA staff were strongly critical of this project, which I also imagine is a very time-consuming and expensive effort. Aren't there enough health effects experts already on the government payroll in EPA who have already interpreted the particulate matter health effects literature, and haven't these EPA experts' interpretations already been subject to outside peer review by the Science Advisory Board and the National Academy of Sciences?

Response. I am not familiar with the expert elicitation approach mentioned, nor any of the details associated with the estimating the benefits of pollution control. If confirmed, I plan to take a close look at this issue and will make any changes necessary.

Question 13. If you answered yes to the previous question, why is EPA spending taxpayer dollars at OMB's direction on this additional outside work for a health endpoint that EPA can already quantify using peer-reviewed methods, while a wide range of other human health and ecological effects are left unquantified for lack of adequate research investment? These unquantified effects include those from dry and wet deposition of mercury and mercury contamination in fish, the effects of atmospheric nitrogen deposition in watersheds and estuaries like the Chesapeake Bay which EPA so far has failed to include in its analyses of the benefits of NOx control, and the lack of any method for calculating the benefits of improved visibility in cities and residential areas where most of us live.

Response. Again, I am not familiar with the expert elicitation approach mentioned or why it is being pursued, but if confirmed, I will take as close a look as necessary.

Question 14. How much is this outside expert survey project, mentioned in question No. 13, costing the taxpayers compared to how much EPA has been investing in research to address human health and ecological effects currently left out of your analyses?

Response. Although I am not familiar with this case in particular, I understand that EPA's Office of Air and Radiation and the Office of Research and Development, as well as other EPA offices have made significant investments in characterizing, quantifying, and valuing the benefits of improving our environment, including the effects of the deposition of nitrogen from the air, runoff and other sources on our estuaries. This particular project undoubtedly constitutes only a small portion of this research effort.

Question 15. Do you agree that using scientifically rigorous surveys can help establish data needed to analyze the effects of EPA programs? Are you willing to provide this Committee with information regarding any survey work EPA has initiated which is being held up by OMB under its Paperwork Reduction Act authority? And if you find there is a backlog of scientific survey work being held up by OMB, what steps will you take to ensure scientific work on data collection can proceed on a timely basis?

Response. I agree that scientifically rigorous surveys can help inform both Agency research and policymaking efforts. If confirmed, I commit to looking into the status of any Information Collection Requests, and will work to make sure such requests are reviewed as expeditiously as possible.

Question 16. I'm sure you are familiar with OMB's annual Reports to Congress on the benefits and costs of Federal regulation, originally nicknamed the Stevens Report then the Thompson Reports. To their credit, in recent years OMB has made the comments submitted on its draft reports available to the public, an admirable example of transparency and accountability. However, the OMB website where these comments are published shows that EPA last submitted comments on the 2002 report. Reading EPA's comments on the 2002 report, it is clear that the Agency had problems with many aspects of OMB's report and with OMB's preferred analytical practices pertaining to matters such as discounting future health benefits, using quality of life adjustments to reduce estimated benefits of mortality reductions, and other issues. I find it very odd that since 2002 EPA has been completely silent, submitting no comments on the record for the last 3 years of OMB reports. Will you provide this Committee with copies of any comments EPA has prepared on drafts of the Thompson Reports for the last 3 years, including this year, with an explanation for why any such comments were not made public and addressed by OMB in the final versions of their reports?

Response. OMB's Report to Congress on the costs and benefits of Federal regulation, known as the "Thompson" report, is written and produced by the Office of Information and Regulatory Affairs (OIRA) within the Office of Management and Budget. I was not directly involved in the report, except to review drafts. My office at OMB was not involved in the review process with other agencies. If confirmed, I will find out the details of the process that was used with respect to EPA, review the comments that were submitted by EPA and assess how OMB responded to EPA's comments.

Question 17. You have been called the 'father of OMB's Program Assessment Rating Tool,' designed to evaluate program performance. Please explain how this tool works with respect to preventative programs, such as most of the public health statutes that EPA administers? In other words, how do you quantify cancers avoided or hazardous waste not spilled?

Response. A number of EPA programs with activities focused on prevention have been evaluated successfully by the Program Assessment Rating Tool (PART). These include programs with prevention, deterrence, compliance assistance, and research components. OMB recognized that not all programs are alike, and thus there are seven different PART instruments: Direct Federal, Competitive Grant, Block/Formula Grant, Regulatory Based, Research and Development, Capital Assets, and Credit—the first five of which have been used for EPA programs. The basic tool is the Direct Federal version. Each of the other versions adds a number of questions tailored to the specific implementation activities of that type of program. In addition, and has been the case with EPA, OMB and the agency have the flexibility to create a program-specific hybrid tool which pulls appropriate questions from more than one version of the tool.

It is often challenging to link directly preventative activities with environmental or human health impacts—ambient conditions, exposure or body burden/uptake, or health or ecological status. In some cases, programs have employed "logic models" that link programmatic activities with the desired outcomes. Annual performance measures thus capture programmatic outputs or intermediate outcomes, such as compliance rates or the installation of pollution control equipment by the regulated community. These annual measures are then linked to long-term performance measures which measure the desired environmental or human health impacts. In some programs the preventative activities are a subset of the program's implementation activities. In these cases the program might have annual performance measures focused on programmatic activities or outputs, but all the program's activities would share the same long-term performance measures. Finally, in some cases it is possible to extrapolate from a representative sample the estimated impacts of programmatic activities on environmental or health impacts.

Question 18. The free flow of information from EPA to the outside world is of critical importance. Recently, EPA settled a lawsuit with a group that had requested copies of employee surveys conducted by the agency in 1999, 2001, and 2003. The watchdog group had requested the information under the Freedom of Information Act and was basically stonewalled by the agency until a formal suit was filed. In addition, EPA is increasingly denying public interest groups fee waivers under FOIA. Not only were EPA's actions a waste of resources, they were against the law. What will you do to make sure that the Freedom of Information Act process is not politicized and that requests are timely and efficiently processed?

Response. This Administration takes its obligations under the Freedom of Information Act seriously. I am not familiar with the case that is referenced in your

question, but I commit to doing a thorough review of this process, including fee waivers, if confirmed.

Question 19. The effects of management practices on employee morale is a critical area that will be under your purview at EPA. You have described the Deputy Administrator position as a sort of "Chief Operating Officer." Should you be confirmed, are there certain steps you would take to monitor employee morale and ensure that it is going up rather than down?

Response. In keeping with Administrator Johnson's commitment to transparency and collaboration, I view the effective stewardship of EPA's human resources as one of the most critical responsibilities of the Deputy Administrator. Working with the Administrator and with Agency leadership at all levels, I believe there are several ways to stay in touch with the EPA staff, helping ensure that staff understand how critical they are in achieving our mission and how much we value them as professionals and individuals. These steps include the following.

Keeping in Touch with Staff Opinions.—The results recently reported from the Government-wide Federal Human Capital Survey (FHCS) once again confirms what is evident in the EPA workplace everyday. That is, EPA staff are strongly committed to the Agency's mission and understand their role in achieving that mission. Continued monitoring of employee perceptions of EPA, its leadership, its management, and the support staff receive in performing their duties will be an important step in making sure we are ahead of the curve in dealing with issues of morale and employee effectiveness.

Taking an Active Role in Relationships with the Agency's Human Capital Constituencies.—EPA has a strong history of active interaction between senior leadership and human resources constituency groups across the Agency. EPA's unions are one of these key constituency groups and I intend to foster a relationship characterized by continuous dialog, union involvement, mutual respect, and honesty. I look forward to being actively involved in the work of EPA's Human Resources Council (HRC). An organization unique in Federal agencies, EPA's HRC is comprised of executive-level leaders whose role is to raise issues of significance to the effective management of the Agency's human resources and develop the analysis and advice that the Administrator needs to deal with those issues.

Leading the Human Capital Change Effort at the Agency.—It is my understanding that EPA's human capital program is making progress in aligning its performance management, workforce planning, competency management, employee development, recruitment, and planning systems with the Agency's strategic plan and then measuring results.

None of a Deputy Administrator's many areas of responsibility are more important than those in the human capital area. I look forward to working along side my new colleagues, just as has our Administrator, as part of an EPA team.

Question 20. Given the fact that EPA dropped its voluntary program for lead poison prevention a short period after Administrator Johnson wrote to Senators Clinton and Obama that lead regulation was unnecessary and extolling the virtues of the voluntary approach, do you think that the Agency has realized, that at least for lead, voluntary programs are not a panacea to regulation? Do you think it would be a good idea to conduct a rigorous analysis of all of EPA's voluntary programs to make sure that they are achieving their environmental and health protection goals?

Response. As I indicated at the hearing, it is my understanding that the Agency intends to propose a lead renovation and remodeling regulation by the end of the year.

As I understand it, EPA is undertaking a review of their voluntary programs to more rigorously evaluate them. I believe the Agency's goal is to ensure that voluntary programs complement regulatory programs and promote innovative approaches for environmental protection.

Question 21. On July 6, 2005 in Denmark, President Bush told reporters, "Listen, I recognize the surface of the Earth is warmer and that an increase in greenhouse gases caused by humans is contributing to the problem." As you may know, the Administration's current voluntary approach to this problem is projected by the Energy Information Administration and every other economic forecasting entity to continue increasing U.S. greenhouse gas emissions for the foreseeable future, thereby continually contributing to and compounding the problem. You may also know that knowledgeable climatologists have projected that the U.S. and other major emitters have approximately 10–15 years to "decarbonize" our energy supply system or the next 100 years of global warming will be unstoppable. Do you think it would be prudent

for the U.S. to adopt an approach that would result in and guarantee that total emissions in the U.S. and the world began to decline in the next 10–15 years?

Response. I agree with the President's statements on climate change and I believe that the broad portfolio of actions that this Administration is undertaking in this important area is an effective response. These activities include near-term voluntary programs to reduce current greenhouse gas emissions, many of which are implemented by EPA, coupled with substantial efforts on technology development that will make new, cleaner energy sources available, and the world's largest program in climate science to improve our understanding and enable effective responses. Through this program, we will help the world achieve the purpose of the recently concluded G8 Summit in Gleneagles, Scotland—namely, "to put ourselves on a path to slow and, as the science justifies, stop and then reverse the growth of greenhouse gases."

Question 22. In my view, the Agency's budget and resources for hazardous air pollutants research, regulation development and prevention activities have been much lower than warranted by the statutory requirements in the Clean Air Act. As a result, the Agency has often been significantly behind schedule. EPA has also recently issued unauthorized MACT standards incorporating risk factors inappropriately (for example in the plywood/boiler MACT development) and is also unwisely contemplating, perhaps due to resource constraints, further unauthorized residual risk regulatory actions. Will you commit to reviewing the air toxics program budget and resources and advising this Committee of gaps in funding or resources that are needed so that the Agency can promulgate and enforce rules that comport with the statutory requirements of the Clean Air Act?

Response. I am aware of the ongoing demands and the importance of the air toxics program. If confirmed, I will look into this issue and address any problems if warranted.

Question 23. A new report, issued this week by the Government Accountability Office, serves as a wake up call on the need to modernize our chemical management laws. According to GAO, EPA has required testing for fewer than 200 of the 62,000 chemicals used in commerce since EPA began reviewing chemicals in 1979. Additionally, GAO found that EPA's reviews of new chemicals provide limited assurance that health and environmental risks are identified before the chemicals enter commerce. Finally, even when EPA has toxicity and exposure information on chemicals showing significant health risks, GAO found that the Agency has difficulty overcoming the legal hurdles needed to take action. The public health implications of this report were highlighted by another study issued this week, finding that babies in the U.S. are exposed to hundreds of synthetic chemicals, even before birth. TSCA has not been updated since 1976. If you are confirmed as Deputy Administrator, will you work with Congress to enhance TSCA to give EPA better tools to protect children from chemical exposure?

Response. I am very committed to protecting the environment and the health of citizens—young and old—of this country by ensuring that needed information is available on the hazards of chemicals. If confirmed, I look forward to working with the Committee and others in Congress on this issue.

RESPONSES BY MARCUS PEACOCK TO ADDITIONAL QUESTIONS FROM SENATOR LAUTENBERG

Question 1. I'm sure you are familiar with the case of Phil Cooney, a non-scientist lawyer at the White House who altered science reports on climate change. Do you believe these kinds of alterations of science documents by the White House are appropriate?

Response. The documents you reference relate to management of the Federal climate science program, and were reviewed following the same interagency review process that is used on other documents of this type. Approximately 15 Federal agencies were involved on the interagency review process which includes both scientists, policy specialists and senior managers.

Phil Cooney was both a policy specialist and a senior manager involved in the development and conduct of our climate change policies and activities. As someone with expertise on issues relating to climate change and the environment, I believe his participation in the review was appropriate.

Question 2. I am very concerned about a new plan that EPA is developing on "risk assessment". When you visited my office a few weeks ago you promised to get back to us with information on that plan. Since you haven't done so, could you tell me here what you have learned about it?

Response. I have looked into the issues you raised, and my response indicates what I have learned about this issue.

There are two major purposes of the proposed changes: (1) to identify and resolve major scientific issues early in the assessment development process and thereby facilitate high quality and timely completion of assessments; and (2) to increase transparency in the assessment development process and thereby assure full and open consideration and scientific review of relevant information.

EPA is planning to hold a public workshop on the proposed new process to solicit comments, suggestions and concerns from the IRIS user community and stakeholders. The workshop will be announced in the Federal Register and on the IRIS web site.

Question 3. From my observations this administration "collaborates" only when a state agrees with it. As just one example, during the "Clear Skies" debate many states, including New Jersey, fought for the ability to regulate facility emissions to meet Clear Air Act's health standards. The administration refused to listen. Is that the kind of collaboration we could expect if you are confirmed?

Response. Collaborative problem solving is an environmental protection approach that I know current EPA Administrator Steve Johnson is committed to and is encouraging. EPA has a long history of helping multiple parties to work cooperatively with the Agency to find environmental solutions—in watersheds, in communities (e.g., Brownfields), and for some ecosystems such as the Great Lakes and Chesapeake Bay. Together with strong regulatory and enforcement programs, collaborative approaches can be an effective tool for some types of environmental problems. I believe that EPA, under the leadership of Administrator Johnson, will continue to look for areas where collaborative approaches can achieve beneficial environmental results.

RESPONSES BY MARCUS PEACOCK TO ADDITIONAL QUESTIONS FROM SENATOR BOXER

Question 1. Do you agree that the recommendations of the NAS on human pesticide testing, the Nuremberg Code and Declaration of Helsinki and the Common Rule—at a minimum—should be specifically incorporate in any EPA regulation on intentional human dosing studies with pesticides?

Response. Yes, I think it is important for EPA to require investigators who intend to submit human clinical trial research to EPA meet high ethical standards.

Question 2. EPA estimates that the funding shortfall for wastewater treatment and pollution prevention projects as of January 1, 2000 was $181 billion, and that this shortfall will grow to $388 billion over the next 20 years. Before you are confirmed, please describe for me the steps that you will take to address harms to public health and environmental quality-including fish consumption advisories, closed beaches and degraded aquatic and wildlife habitat—that will result from a lack of sufficient funding in later fiscal years?

Response. In 2002, EPA issued The Clean Water and Drinking Water Infrastructure Gap Analysis. The analysis estimated the funding gap between projected infrastructure spending needs and current spending for the water industry. EPA undertook the analysis to develop a solid basis for understanding the magnitude of the funding gaps potentially facing wastewater systems.

As a country, we have made remarkable progress over the years in protecting and restoring our waters and wetlands. We have much left to do. EPA is committed to meeting the challenge and to accelerating the pace. To support sustainable wastewater infrastructure, EPA continues to provide annual capitalization grants to the Clean Water State Revolving Funds (CWSRF). The CWSRF has been one of the most successful and cost-effective infrastructure financing programs in the Federal Government's history. The Agency has provided, through fiscal year 2004, nearly $23 billion to capitalize the CWSRF, nearly triple the authorization level of $8.4 billion. This Federal investment, when combined with State contributions and other funding sources, has allowed the CWSRF to support $48 billion in important water quality projects.

In addition, EPA is addressing the funding gap by focusing on the "four pillars" of sustainable water infrastructure. The four pillars that are essential for sustainable infrastructure are: better management, water efficiency, full-cost pricing, and watershed-based approaches. Better management means assuring that utility managers have the suite of tools they need. These tools include asset management, environmental management systems, cost-effective technologies, capacity building, and other approaches used by the most successful utilities.

Another pillar in ensuring sustainable infrastructure is to encourage efficient use of water. Although EPA's focus is water quality, not water quantity, EPA increasingly finds that water quantity and quality issues are inextricably linked. EPA will continue to promote water efficiency through such efforts as a voluntary program to identify and promote water-efficient products.

The third pillar is full-cost pricing of water supply and wastewater treatment. Pricing that seeks to recover all of the costs of building, operating, and maintaining a system is absolutely essential to achieving sustainability. Conservation rates and seasonal rates can further help reduce peak water demand, and valid concerns about equity can be addressed through "lifeline rates" for the poor.

The final pillar in assuring sustainable water infrastructure is an important water program priority in itself. EPA is committed to working co-operatively on a watershed basis with our State, Tribal, and other partners to protect human health and restore water quality nationwide. About a decade ago, EPA embraced the watershed approach, focusing on multi-stakeholder and multi-program efforts within hydrologically defined boundaries, as a better way to address water quality problems. Today, we are increasingly managing water quality on a watershed basis.

Question 3. On June 7, 2005, the NAS and the heads of ten other national scientific institutions stated that "there is strong evidence that significant global warming is occurring," that "[i]t is likely that most of the warming in recent decades can be attributed to human activities" and that "scientific understanding of climate change is now sufficiently clear to justify nations taking prompt action." Before you are confirmed, please describe whether and how you will take specific steps to ensure we will reduce greenhouse gas emissions promptly and develop a U.S. policy recommendation consistent with the NAS document.

Response. The President's approach to climate change is informed by the best available science, including the 2001 NAS report he requested on what is known and unknown about climate science. The Bush Administration recognizes that the surface of the Earth is warmer and that an increase in greenhouse gases caused by humans is contributing to the problem. However, significant uncertainties in climate science remain and the Administration is working aggressively to address them.

The Administration's program first sets the U.S. on a path to slow the growth of greenhouse gas emissions, and—as the science justifies—to stop and then reverse that growth. The President has launched a broad portfolio of domestic and international initiatives to develop and delploy cleaner, and more efficient energy technologies through a broad range of programs, including voluntary, market-based, and mandatory measures. The President's climate change policies also promote technological innovation and reduce harmful air pollution in the U.S. and throughout the world while improving our energy security.

I believe that these actions—which at EPA focus on voluntary programs like Energy STAR, Smartway Transport, Climate Leaders and the international Methane to Markets Partnership—are a strong and effective response to the challenge we face.

Question 4a. On June 8, 2005, the New York Times reported that political officials in the Bush Administration edited scientific information in government reports on climate change to downplay the connection between greenhouse gas emissions, climate change and the adverse consequences of climate change. This is not the first time that those types of problems have arisen in the Bush Administration. This type of political interference with science is a violation of the core principles of scientific integrity and violates the public trust in our government to base its policies on accurate and independent information.

Please describe for me whether you agree that politics should not be a factor in determining what scientific advice the EPA provides?

Response. I want to assure you that this Administration emphasizes the importance of using sound, credible, peer-reviewed science to inform its policies and decisions. EPA follows rigorous peer-review standards for all of its scientific products to ensure the soundness and credibility of their results.

The Bush Administration supports sound science and has made a strong commitment to climate change science. In 2002, the President established the U.S. Climate Change Science Program as part of a new cabinet-level management structure to oversee public investments in climate change science and technology. CCSP coordinates and integrates scientific research on global change and climate change sponsored by 13 participating departments and agencies of the U.S. Government.

In July 2003, CCSP published the Strategic Plan for the U.S. Climate Change Science Program. The Strategic Plan responds to the President's direction that climate change research activities be accelerated to provide the best scientific informa-

tion to support public discussion and decisionmaking on climate-related issues. The Administration's commitment to sound science is exemplified by the rigorous public peer review to which it subjected earlier drafts of the CCSP Strategic Plan. A major public workshop was held in December 2002 to review the draft, and the National Research Council was also commissioned to review the draft and final versions of the Plan. The NRC said the Plan "articulates a guiding vision, is appropriately ambitious, and is broad in scope." Also, the Plan calls for the production of 21 Synthesis and Assessment Reports, focusing on some of the highest priority scientific questions being addressed by the CCSP. The 21 Reports will be produced through a FACA process, with rigorous peer review, to ensure their balance, credibility, and scientific soundness.

Question 4b. Please describe the steps you will take to ensure that political appointees and industry representatives do not alter scientific information in government reports, memos and other documents on climate change and other matters before EPA?

Response. As I noted above, EPA emphasizes the importance of sound, credible, peer-reviewed science in all of its programs. I also am committed to an open and transparent process in the development and in the review of EPA's scientific documents that are prepared to inform decisionmakers. Consistent with the Information Quality Act guidelines, comments EPA receives from stakeholders (e.g., the regulated community, environmental organizations, private citizens) are made publicly available as the scientific documents are developed for subsequent use in setting Agency policy or in developing regulations. I want to assure you that if confirmed as the Deputy Administrator of EPA, I will insist that only credible, peer-reviewed science be used in informing policy.

Question 4c. Please describe for me the steps that you will take to protect scientists from being asked to violate their scientific integrity by altering or suppressing scientific data?

Response. I will not ask any scientist at EPA or any other agency to violate their scientific integrity by altering or suppressing scientific data. Indeed I am eager to have the best and most credible science as we deliberate on what should be the appropriate policy. I also know that the scientific staff at EPA, as well as other agencies are incredibly committed to scientific integrity. They also know that as scientists, they have an important function to inform policymakers but the call as to the appropriate policy is the responsibility of the Agency's leadership.

Question 5. Please work with EPA to ensure that the agency provides me with material including any written documents related to any assessment, before you are confirmed, which EPA has or is conducting of potential concerns by employee regarding influence from political or industrial interests?

Response. I am not familiar with the material you mention in your question. If confirmed, I will look into the existence of this material.

Question 6. Please work with EPA to provide me with EPA's new draft assessment for MTBE, before you are confirmed, which recent trade reports state concludes that MTBE is a "likely" carcinogen. Please include any comments supplied to the agency and a list of all individuals, government offices and other entities, including non-governmental entities, which have seen the document or have commented on the document.

Response. It is my understanding that the draft MTBE assessment is still early in this process and has not received internal nor external scientific peer review and thus it is not ready to be publicly released.

RESPONSES BY MARCUS PEACOCK TO ADDITIONAL QUESTIONS FROM SENATOR OBAMA

Question 1. Title 15, Section 2682(c)(3) of the U.S. Code requires EPA to promulgate regulations to reduce the risk of lead exposure during renovation and remodeling activities by October 28, 1996. By what date, will EPA issue these regulations?

Response. As I understand it, the Agency will announce by the end of this year a comprehensive program, which will include a proposed regulation, as well as an extensive education and outreach campaign aimed at the renovation, repair, and painting industry and the consumer.

Question 2. Following his nomination hearing in April, I asked Stephen Johnson when EPA would issue a proposed rule. He responded: "[T]he Agency is developing an education and outreach campaign that will convey the benefits of the use of lead-safe work practices to minimize both workers' and homeowners' exposure to lead dust during renovation and remodeling. EPA is also targeting outreach efforts to ex-

pand consumer awareness. . . . EPA plans to launch this material by this fall and will evaluate the effectiveness of this effort and will determine what additional steps may be necessary, including regulation." Does EPA believe that such a voluntary approach satisfies the requirement of 15 U.S.C. § 2682(c)(3)? If so, what is the basis for EPA's belief that a voluntary approach satisfies the requirement of 15 U.S.C. § 2682(c)(3)?

Response. The Agency is not relying solely on a voluntary program based on education and outreach, rather it will be a component of a comprehensive program to ensure the use of lead-safe work practices by the renovation, repair and painting industry. This comprehensive program will include a regulation. In addition, the Agency intends to launch an extensive education and outreach campaign designed to assist the Agency in reaching this unique industry of small businesses and individuals. EPA will also target outreach efforts to expand consumer awareness, which is critical to creating demand for the use of lead-safe work practices. The Agency will work closely with all interested stakeholders in the coming months as we move toward announcement of this comprehensive lead safe work practices program.

As the number of lead-poisoned children continues to decline, it is critical that the Agency focus its programs on the housing, the activities and the exposures to reach the children of concern. EPA is in the process of assessing the costs and benefits of approaches for controlling the risks from lead contaminated dust created by renovation, repair and painting activities in the target homes. EPA currently estimates that there are 1.3 million children living in homes where these types of renovation and repair activities take place every year.

Question 3. An EPA study has projected significant benefits from a regulation mandating lead-safe renovation and remodeling practices. Has EPA conducted a study to evaluate the effectiveness of a voluntary approach?

Response. The Agency is not relying solely on a voluntary program based on education and outreach, rather it will be a component of a comprehensive program to ensure the use of lead-safe work practices by the renovation, repair and painting industry. This comprehensive program will include a regulation. In addition, the Agency intends to launch an extensive education and outreach campaign designed to assist the Agency in reaching this unique industry of small businesses and individuals. EPA will also target outreach efforts to expand consumer awareness, which is critical to creating demand for the use of lead-safe work practices. The Agency will work closely with all interested stakeholders in the coming months as we move toward announcement of this comprehensive lead safe work practices program.

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Question 4. What, if any, scientific evidence does EPA have to indicate that a voluntary approach would protect as many children from lead poisoning as would a regulatory approach?

Response. The Agency is not relying solely on a voluntary program based on education and outreach, rather it will be a component of a comprehensive program to ensure the use of lead-safe work practices by the renovation, repair and painting industry. This comprehensive program will include a regulation. In addition, the Agency intends to launch an extensive education and outreach campaign designed to assist the Agency in reaching this unique industry of small businesses and individuals. EPA will also target outreach efforts to expand consumer awareness, which is critical to creating demand for the use of lead-safe work practices. The Agency will work closely with all interested stakeholders in the coming months as we move toward announcement of this comprehensive lead safe work practices program.

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Question 5. What is the projected cost of EPA's voluntary approach to encourage contractors to use lead-safe work practices?

Response. The Agency is not relying solely on a voluntary program based on education and outreach, rather it will be a component of a comprehensive program to ensure the use of lead-safe work practices by the renovation, repair and painting industry. This comprehensive program will include a regulation. In addition, the Agency intends to launch an extensive education and outreach campaign designed to assist the Agency in reaching this unique industry of small businesses and individuals. EPA will also target outreach efforts to expand consumer awareness, which is critical to creating demand for the use of lead-safe work practices. The Agency will work closely with all interested stakeholders in the coming months as we move toward announcement of this comprehensive lead safe work practices program.

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Question 6. At the July 14, 2005, hearing, you indicated your belief that the reason that regulations had not yet been promulgated is because of the difficulty in creating enforceable rules against small contractors. Why would a lead regulation that applies to small contractors be any different from countless other EPA regulations that apply to small businesses, such as dry cleaners?

Response. The renovation, repair, and painting industry is comprised almost entirely of small businesses and individuals—roughly a quarter of a million businesses in the U.S. provide professional renovation, repair, and painting services, employing approximately 1.7 million workers. EPA initially examined several regulatory approaches to dealing with the risks of lead-based paint in renovation, repair, and painting activities. The Agency's preliminary analysis indicated that the annual costs of these regulations could exceed $1 billion.

These significant costs would be borne by small businesses, consumers, and households. This, combined with the challenges of enforcing against small businesses and individuals, led the Agency to investigate a range of options in an effort to identify an approach under the law that would not disproportionately burden America's small businesses. However, after careful consideration of a number of approaches, including a voluntary program, the Agency determined that a combination program that includes regulation, training, educating and outreach would provide the most effective approach to ensuring the use of lead-safe work practices by this industry. When the Agency issues a regulation that impacts small businesses and individuals, the Agency significantly increases its compliance assistance efforts, which will also be the case when this rule takes effect.

RESPONSES BY MARCUS PEACOCK TO ADDITIONAL QUESTIONS FROM SENATOR LIEBERMAN

Question 1. I believe that in your years at OMB, you were a significant contributor to formulating the PART methodology for evaluating executive branch programs and offices.

EPA's Acid Rain program was rated only "moderately effective" in the last PART scoring exercise. I assume you must also know that the acid rain program has been highly effective in achieving the emissions reductions required under the Clean Air Act, while doing so at far-below-predicted costs to industry and also at low cost to the EPA itself. According to OMB's Thompson Report, the program is producing over $70 billion in health benefits every year; these benefits are at least 40 times its costs. I assume that there are not all that many Federal programs that can claim achievements that are quite so high-leverage. Given that record, it is surprising that OMB rates the program as only "moderately successful". Since the results of the program are so well-documented, the rating itself raises questions about OMB's approach to rating programs by PART scores.

Can you explain the discrepancy between the benefit and cost results for the acid rain program and the modest PART score the program received?

Response. The PART is a questionnaire of approximately 30 questions that is used to determine if a Federal program is getting results and, if not, why not. The PART produces an overall rating for each program but it is most helpful in diagnosing strengths and weaknesses in a program and helping formulate specific recommendations that are expected to improve the program. In this way, it looks at a much broader range of program characteristics than just the current costs and benefits of

the program. The expectation would be that implementation of the recommendations would result in a program that is more efficient than the status quo.

In the case of the Acid Rain program the PART resulted in an overall rating of "moderately effective." This is a relatively high rating. To date, no EPA program has achieved a higher rating. Relatively few programs governmentwide have achieved the highest rating of 'effective.'

Despite a relatively high rating, the Acid Rain PART indicates the program could be improved if two recommendations are implemented: (1) The program should develop and track efficiency measures (which it currently does not track) and such measures should include the full cost of implementing the program, not just the Federal share, and (2) statutory requirements that limit the scope of the program, such as maximum emissions reduction targets and the exemption of certain facilities, should be removed. The completed PART for this program and all of the other EPA programs that have been recently evaluated can be found at http://www.whitehouse.gov/omb/budget/fy2006/pdf/ap—cd—rom/part.pdf

I was the lead for the President's Budget and Performance Integration Initiative when the Program Assessment Rating Tool (PART) was created. I am very proud of my association with this effort. As a sign of its success, the PART is now being copied by State governments, such as Kentucky and California, and by other countries, such as Asia and Scandinavia. The PART is also a finalist for Harvard University's prestigious "Innovations in American Government Award." The winners will be announced later this month.

Question 2a. Transparency in the Regulatory Review Process.— Executive Order 12866, which this Administration has said governs its process for reviewing proposed and final regulations, requires OMB to comply with certain requirements to improve the transparency of the regulatory development process, such as disclosing relevant information regarding any communications with outside parties while a regulation is under review by OMB. These requirements are designed in part to ensure that the public knows whether people outside the government are sharing views with OMB about regulations as they are being reviewed, and to provide the public with information about the changes made to a rule as a result of the interagency review process.

Increasingly, the Agency is providing OMB with "informal" copies of rulemaking packages—which, I gather, does not trigger the requirements of EO 12866, and making a "formal" submission to OMB only very late in the review process—sometimes only days before a rule is signed. I am concerned that this practice of receiving "informal" rulemaking packages is resulting in either OMB or the Agency circumventing the transparency requirements of the Executive Order with the effect of creating a back door for certain stakeholders to influence the regulatory process without any public record of their involvement.

Could you tell me why the Agency and OMB are relying so heavily on this "informal" process whether you will support a continuation of this practice if you are confirmed?

Response. I have not participated in the "significance" determinations under EO 12866. This activity is the responsibility of Office of Information and Regulatory Affairs. If I am confirmed, I would be happy to look more closely at this process.

Question 2b. I have not reviewed the logs OMB is required to keep on review of regulatory actions. When OMB has a regulatory package that has been submitted "informally", do you know whether it logs the dates and names of individuals outside the government who are involved in any substantive communication with OMB about the regulation as it is required to do once a regulatory package is submitted formally?

Response. I am not aware of what items OMB's Office of Information and Regulatory Affairs dockets. If I am confirmed, I would be happy to look more closely at this process.

In a similar recognition of the importance of a transparent process, in Section 307(d) of the Clean Air Act, Congress required EPA to place in the docket all drafts of proposed and final rules (and accompanying documents) sent to OMB for interagency review and "all written comments" on those drafts by other agencies.

Question 2c. On a regulatory package that has been sent to OMB for review, if someone from OIRA or another agency, rather than sending comments in writing to EPA, were to dictate changes to draft preamble or regulatory text to EPA staff with the understanding that EPA staff would incorporate these changes, it seems to me that would be a circumvention of these provisions rather than compliance with them. Do you agree?

Response. I have not participated in implementing Section 307(d) of the Clean Air Act related to OMB review. As a result, I am not aware of what items are docketed.

Question 2d. If so, will you direct EPA staff that, if they receive changes to text in a Clean Air Act rulemaking package orally rather than in writing, they are to write the comments down, identify who made the comments, and then ensure that they are placed in the docket at the appropriate time?

Response. If confirmed, I will work with EPA staff and my colleagues at OMB to uphold the important transparency goals reflected in Section 307(d).

STATEMENT OF SUSAN P. BODINE, NOMINATED FOR ASSISTANT ADMINISTRATOR FOR THE OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE

Mr. Chairman, Senator Jeffords and distinguished members of the Committee, thank you for the privilege of coming before you today as the nominee for the position of Assistant Administrator for the Office of Solid Waste and Emergency Response. I'm honored that President Bush, Administrator Johnson and this Committee are considering me for this position.

I am proud to introduce my husband, David Bodine, and my 2 sons Christopher and Steven. I would also like to thank Chairman Duncan and my many colleagues for their support and friendship.

I have worked on environmental issues for my entire 17-year professional career, first as a practicing attorney and than as a counsel to the Water Resources and Environment Subcommittee of the House Committee on Transportation and Infrastructure.

In private practice, I learned the substance of our environmental laws. But, I also learned from experience that the best way to approach a cleanup problem was from a technical and engineering perspective. I found it most rewarding to work on cases where the parties were willing to get all the scientists in a room to work out the most cost-effective way of cleaning up hazardous waste or a Superfund site.

I also found it very rewarding to work with clients to keep them in compliance with the law. This was challenging. Many environmental regulations, particularly RCRA regulations, are extremely complex.

When I moved to the Hill to work on the staff of the House Transportation and Infrastructure Committee, I kept the same objectives and the same approach: focus on the outcome a clean environment. And, try to ensure that the laws that are established to achieve this outcome are clear, understandable, and workable.

It is my experience that even when an issue is contentious or complex, if you start by identifying a goal it becomes much easier to find common ground. Once a common goal is established, reaching agreement becomes much more likely.

As this Committee knows, this was the process used to develop the Small Business Liability Relief and Brownfields Revitalization Act, which became law in January 2002. To reach agreement on title I of that Act, environmental and business groups had to agree that liability against small business owners for municipal solid waste did not facilitate cleanups. To reach agreement on title II of that Act, municipal groups, developers and environmental groups all had to agree that stimulating brownfields redevelopment was an important goal, and that it was acceptable to revise Superfund liability to achieve that goal.

This process also was used to develop the Great Lakes Legacy Act of 2002. Both the Sierra Club Great Lakes Program and the Council of Great Lakes Industries had reached the conclusion that something had to be done to create incentives and leverage other programs to accelerate cleanup of the Great Lakes Areas of Concern. The result was that legislation.

Similarly, in 2000, when Congress started work on beach monitoring issues, environmental groups and States had very different views about how to create beach water quality monitoring programs. By bringing environmental groups, States, and EPA together, Congress was able to formulate legislation that greatly improved beach water quality monitoring, without placing an unfunded mandate on States.

EPA employed this approach when it developed its Superfund Administrative Reforms, beginning in 1995. These reforms were based on the goal of making Superfund cleanups more cost-effective and timely. To achieve this goal, the Agency reached a consensus with stakeholders that not every site had to be cleaned up to background levels. Taking future land use into account and focusing on principal threats has allowed EPA to help bring more sites back into productive use.

If confirmed by the Senate, I would take the same consensus-building approach to my new duties at the Office of Solid Waste and Emergency Response. I know we share the goal of protecting the environment. I know we share the goal of seeing hazardous waste sites cleaned up more quickly. I know we share the goal of making environmental regulations clear and understandable.

If confirmed by the Senate, I will work with you to on a bi-partisan basis to find sustainable solutions to achieve these goals. American citizens expect and deserve both a thriving economy and a clean, safe and secure environment.

In particular, I am very excited about the opportunity to work with Administrator Johnson as a member of his team as we accelerate the pace of environmental protection; use environmental protection as a driving force of economic growth; promote a culture of environmental responsibility; and continue to ensure compliance of our nation's environmental laws. To meet this challenge, EPA must not only implement and enforce the laws enacted by Congress, it must be innovative, form partnerships, and leverage private investment.

In closing, I look forward to any questions you or your colleagues may have. Thank you. I ask that my statement be placed in the record in its entirety.

UNITED STATES SENATE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

ROOM 410 DIRKSEN BUILDING WASHINGTON, DC 20510

INFORMATION

REQUESTED OF PRESIDENTIAL NOMINEES

In order to assist the Committee in its consideration of nominations, each nominee is requested to complete the attached Statement For Completion By Presidential Nominees. The Statement is intended to be publicly available. In the event that a nominee asks that a specific answer be kept confidential, he or she should notify the Chairman and Ranking Member.

The original and forty (40) copies of the requested information should be made available to the Honorable James M. Inhofe, Chairman, Committee on Environment and Public Works, U.S. Senate, Washington, DC 20510 (Attn: Marty Hall: Deputy Staff Director) as soon as possible.

Name of Nominee: Susan Parker Bodine

Business Address: _____

Business Phone: _____

Home Address: _____

Home Phone: _____

UNITED STATES SENATE
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

Name: Bodine (Last) Susan (First) Parker (Middle)

Position to which nominated: Assistant Administrator, Office of Solid Waste and Emergency Response

Date of Nomination: June 28, 2005

Date of birth: 29 (Day) June (Month) 1961 (Year) **Place of birth:** Princeton, New Jersey

Marital status: Married **Full name of spouse:**

Name and ages Of children:

Education:

Institution	Dates attended	Degrees received	Dates of degrees
University of Pennsylvania, School of Law	9/85-5/88	J.D.	May 1988
Princeton University	9/79-6/83	A.B.	June 1983

Employment record:

List all positions held since college, including the title and description of job, name of employer, location, and dates. If you were terminated involuntarily from any position(s), please note the circumstances.

Committee on Transportation and Infrastructure, U.S. House of Representatives, Washington, D.C.
February 2001-Present: Staff Director and Senior Counsel, Subcommittee on Water Resources and Environment
January 1995 – January 2001: Counsel, Subcommittee on Water Resources and Environment

Covington & Burling
1201 Pennsylvania Avenue, Washington, D.C.
August 1988 – January 1995: Associate Attorney

ASARCO, Inc.
180 Maiden Lane, NY, NY
August 1983-July 1985: Paralegal

Honors and awards:

List significant scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognitions for outstanding service or achievement.

None.

Memberships:

List significant memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations.

Organization	Office held (if any)	Dates
Princeton Club of Washington	n/a	1988 to present

Qualifications:

State fully your qualifications to serve in the position to which you have been named.

I am an attorney and my legal expertise is environmental law. During my tenure as a practicing attorney, my practice included representing clients involved in Superfund litigation, counseling clients on compliance with the Resource Conservation and Recovery Act, representing clients in Clean Water Act permit appeals, drafting comments on proposed agency regulations, preparing clients for multi-media inspections, conducting environmental due diligence for real estate and corporate transactions, and drafting environmental contract terms.

In my current position as Staff Director and Senior Counsel to the Subcommittee on Water Resources and Environment, I manage a six person staff to carry out all aspects of Congressional oversight and the legislative process for matters relating to Superfund, Brownfields, the U.S. Army Corps of Engineers, the Clean Water Act, and the Tennessee Valley Authority. Carrying these responsibilities has included working with members of Congress, Administration officials, State officials, and stakeholders among the regulated community, advocacy groups, and think tanks.

Future employment relationships:

1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

I will sever all connections with my present employer, the Committee on Transportation and Infrastructure of the U.S. House of Representatives.

2. As far as can be foreseen, state whether you have any plans after completing government service to resume employment, affiliation or practice with your current or any previous employer, business firm, association or organization.

I have no plans to resume employment with any current or former employer following government services.

3. Has anybody made a commitment to you for a job after you leave government?

No one has made any commitment to me for a job after I leave government.

4. (a) If you have been appointed for a fixed term, do you expect to serve the full term?

N/A

(b) If you have been appointed for an indefinite term, do you have any known limitations on your willingness or ability to serve for the foreseeable future?

I have no known limitations on my willingness or ability to serve in government in the foreseeable future.

(c) If you have previously held any Schedule C or other appointive position in the Executive branch, irrespective of whether the position required Congressional confirmation, please state the circumstances of your departure and its timing.

N/A

Financial Statement:

Note: The Office of Government Ethics will provide the Committee with a copy of your Executive Personnel Financial Disclosure Report (SF-278).

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services and firm memberships or from former employers, clients, and customers. Amounts should be indicated by the categories established for reporting income on Form SF-278, Schedule A.

N/A

2. Are any assets pledged?

No

3. Are you currently a party to any legal action?

No

4. Have you filed a Federal income tax return for each of the last 10 years? If not, please explain the circumstances.

I have filed my Federal tax return each year

5. Has the Internal Revenue Service ever audited your Federal tax return? if so, what resulted from the audit?

I was subject to a paper audit in October 1997 for my 1995 taxes. The result of the audit was that the IRS owed me for the excess FICA I paid as a result of changing jobs in January 1995 and my husband and I owed the IRS the self employment tax on honoraria received by my husband in 1995 that was already reported as income on the tax return. The net was a payment to me. The other questions asked by the IRS regarding dependent care benefits, mortgage interest deductions and treatment of interest in a whole life insurance policy were all resolved by my providing additional documentation to the IRS, demonstrating no additional tax was owed.

I was subject to a paper audit in May 1999 for my 1997 taxes. I had cashed out an IRA. The IRS thought that the entire distribution taxable. I sent the IRS paperwork demonstrating what was my basis in the IRA, which was an IRA composed of post-tax contributions. The result was no additional tax owed.

Potential conflicts of interest:

1. Describe any financial or deferred compensation agreements or other continuing of interest: dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

None

2. List any investments, obligations, liabilities, or other relationships that might involve potential conflicts of interest, or the appearance of conflicts of interest, with the position to which you have been nominated.

None

3. Describe any business relationship, dealing or financial transaction (other than taxpaying) which you have had during the last 10 years with the Federal Government, whether for yourself or relatives, on behalf of a client, or acting as an agent, that might in any way constitute or result in a possible conflict of interest, or an appearance of conflict of interest, with the position to which you have been nominated.

None

4. Explain how you will resolve any potential conflict of interest, or appearance of a conflict of interest, that may be disclosed by your responses to the above items.

Not applicable

5. Explain how you will comply with conflict of interest laws and regulations applicable to the position for which you have been nominated. Attach a statement from the appropriate agency official indicating what those laws and regulations are and how you will comply with them. For this purpose, you may utilize a statement by the relevant agency Ethics Officer.

I have executed an ethics agreement which has been sent to the Committee and I intend to comply with that agreement.

Political affiliation and activities:

List all memberships and offices held in, or financial contributions (in excess of $1,000), and services rendered to any political party or election committee during the last 10 years.

I have contributed to the Republican National Committee: $200 (9/13/02), $750 (9/4/03) and $75 (5/3/05)

Published writings:

List the titles, publishers and dates of any books, articles, or reports you have written.
(Please list first any publications and/or speeches that involve environmental or related matters.)

I have not published. I have given many talks, primarily about the Water Resources and Environment Subcommittee agenda but those talks have not been published

Additional Matters:

1. If there is any additional information that you believe may be pertinent to the Members of the Committee in reaching their decisions, you may include that here.

2. Do you agree to appear before all Congressional Committees which seek your testimony?

Yes

AFFIDAVIT

Susan Parker Bodine **ss**, being duly sworn, hereby states that he/she has read and signed the foregoing Statement for Completion by Presidential Nominees including the Financial Statement and that the information provided therein is, to the best of his/her knowledge and belief, current, accurate, and complete.

Subscribed and sworn before me this 30th day of June, 2005

Notary Public My Commission Expires 6-1-09

State of Maryland
County of Anne Arundel

RESPONSES BY SUSAN P. BODINE TO ADDITIONAL QUESTIONS FROM SENATOR JEFFORDS

Question 1. One of the roles of Congress is to perform congressional oversight. Yet it is difficult to discuss whether human health is being protected or whether the Superfund program is getting the resources it needs to clean up abandoned toxic waste sites if EPA refuses to provide the site specific documents regarding cleanup status and remediation needs. In short, Congress needs information regarding the on-going remedial, removal and pipeline projects that are not sufficiently funded to date and the dollar shortfall, based on the requests of the EPA Regions. Will you work to ensure that EPA provides, before confirmation, all of the information that I requested with Senator Boxer in our October 20, 2004, letter regarding the impact of the Superfund's cleanup slowdown?

Response. I have a great appreciation for the importance of congressional oversight work, and if confirmed will work with the Committee to facilitate access to Agency information. Agency staff has advised me that the questions in the October 2004 letter seem based on an assumption that EPA funding process involves separate Headquarters and Regional estimates of costs. All Superfund remedial action funding decisions are made in close coordination with EPA regional offices after a careful review of each project. EPA Headquarters and the regions continue to work together extensively throughout the year to balance the Superfund program's human health and environmental protection responsibilities with both individual site needs and overall national priorities. Through the collaborative process, EPA Headquarters Superfund program managers decide onsite and project funding levels that make the best use of the funds that they have. EPA staff advises me that the agency has piloted approaches for identifying "out year" costs for some large remedial projects, and that information will be provided to the Committee.

Question 2. As a mature program, Superfund works fairly well at sites with potentially responsible parties capable of performing the cleanup. The heart of the Superfund program, however, is to ensure that communities plagued with abandoned toxic waste dumps are able to get Federal resources to address the contamination immediately and remove the toxic blight. Given the decreased resources available to the program, what will you do as Assistant Administrator to accelerate the cleanup of these abandoned sites?

Response. I intend to ensure that, to the extent practicable, Federal funding is allocated based on risk. To use Federal funding more effectively, I will pursue a number of actions to improve the efficiency and effectiveness of Superfund remedies at these sites and to closely manage site specific costs. With regard to remedy effectiveness, I will ensure that the following measures are taken. I will work with the Regions to improve assessment of contamination at these sites. I will ensure third party reviews of remedies, using the Agency's Contaminated Sediments Technical Advisory Group to review contaminated sediment cleanups; the National Remedy Review Board to review all remedies expected to cost $25M or more; and Value Engineering reviews of remedy design and construction at complex sites.

In addition, I will ensure that EPA recovers unspent funds from contracts, grants, cooperative agreements, interagency agreements and state superfund contracts and agreements. Since 2002 the Agency has recovered more than $550 million that has been used to fund remedial actions, removals, enforcement, pipeline, and management and support. Finally, I intend to ensure that opportunities are not overlooked to augment Federal dollars with private funding from volunteers who may be willing to expend private funds on the cleanup of sites that have redevelopment potential.

Question 3. The hazardous waste program was designed to create a "cradle to grave" management system to prevent mismanagement of dangerous wastes. EPA has proposed a definitional change to allow these hazardous wastes to evade the Federal safeguards if they are intended to be recycled. Many states are concerned that without minimal controls, such as tracking and financial assurance requirements, these rules will create a new wave of toxic waste dumps. As Assistant Administrator, would you finalize a rule that would allow million of pounds of hazardous waste to escape regulation without adequate assurances to prevent mismanagement?

Response. The Nation's cradle-to-grave hazardous waste management system provides critical important public health and environmental protection, and indeed it has fundamentally changed the way hazardous waste is managed in this country. As Assistant Administrator, I would not support regulatory approaches that would allow unsafe management of hazardous wastes under the guise of recycling. At the same time, I believe we should be supporting legitimate and safe recycling, and we

should make sure EPA's regulatory programs don't provide unnecessary or unwarranted disincentives to the safe reuse of industrial materials.

Question 4. In your written remarks, you state that you are excited about the opportunity to join Administrator Johnson to "use environmental protection as a driving force of economic growth." Like most environmental statutes, Superfund and RCRA are public health laws, not public works laws. Will you assure us that, as OSWER Assistant Administrator, real estate value will not play a role in whether a toxic waste site gets cleanup funds?

Response. I will not allow real estate values to interfere with health or environmental decisions.

Question 5. The community of Yerington, Nevada, has been exposed to dust blowing off mine tailings from the Anaconda Mine site for many years. This dust may be contaminated with radionuclides and metals that could cause serious health problems for nearby residents. What are EPA's plans to reduce the dangers created by exposing residents to this dust? The public can still access the Anaconda Mine site, which contains numerous hazards. What are EPA's plans and specific date for securing and restricting access to the site? When does EPA plan to host a public meeting to discuss the status of the cleanup of the Anaconda mite site?

Response. I am not familiar with all of the details surrounding the Anaconda Mine site. I am however, committed, to looking into this further if confirmed.

Question 6. Despite the growth of voluntary curbside collection, the recycling rates of many consumer commodities, such as plastic, aluminum and glass, is near historic lows. Companies are finding it increasingly difficult to obtain the quantity and the quality of the recycled feedstock they need to meet production demand. EPA recently acknowledged that the Agency does not expect to meet the nationwide recycling goal of 35 percent by 2005. As the Assistant Administrator of the Office of Solid Waste and Emergency Response, what steps will you take to ensure that EPA plays a leadership role in rejuvenating recycling in America?

Response. EPA staff advises me that data show that the national recycling rate for 2003 was close to 31 percent. While it is true that the rate of recycling has slowed, it continues to increase slightly each year. Many factors influence the recycling rate, including local and state funding for recycling programs, prices of commodities recycled, availability of markets, improvements in technology, consumer behavior, etc. I am committed to working with our state and local governments to improve and reinvigorate the recycling message and ethic.

Question 7. In responding to questions from me and Senator Lautenberg on Superfund, you suggested that the significant slowdown in the number of sites annually for which construction has been completed is in part due to the Bush Administration's emphasis on other sites in the Superfund pipeline. However, the number of remedial action construction starts during the first 4 years of the Bush Administration has averaged 58 per year, down 41 percent from the prior 8 years of the Clinton Administration, which averaged 98 new construction starts annually. In short, this Administration is making substantially less progress in completing construction of Superfund remedies or in starting new remedy construction at sites waiting on the National Priorities List. If confirmed as the Assistant Administration of EPA's Office of Solid Waste and Emergency Response, what specific steps will you take to reverse this trend and ensure that sites at all stages of the Superfund process are expeditiously cleaned up?

Response. In my response to Senator Lautenberg's question, I was referring to my concern that in the past, more emphasis was placed on construction completion, so that less expensive sites were cleaned up first. EPA data on construction completions between 1993 and 2001 and their costs supports this conclusion. During this time period, construction at 659 sites was completed. Of the completed sites, 511 had EPA costs of less than $5 million, 262 sites had EPA costs of less than $1 million, and 63 sites had no remedial action. It is my understanding that the need to focus on large, complex sites is now consuming significant EPA funds. If confirmed, I intend to ensure that, to the extent practicable, EPA prioritizes available Federal funding based on risk to public health and the environment. At the sites where there are PRPs, I intend to work with EPA's enforcement program to ensure that these sites are cleanup expeditiously using PRP funds. To date, over $22.8 billion in PRP funds have been committed to clean up.

Question 8. The Leaking Underground Storage Tank (UST) program regulates the installation, maintenance and remedial activities related to underground storage tanks. EPA estimates that there are more than 660,000 active USTs, and 125,221 backlogged cleanups at leaking UST sites. Leaking USTs are a major threat to the

quality of our nation's groundwater, including a significant source of contamination from methyl tertiary butyl ether (MTBE). Will you work with EPA to provide, prior to confirmation, the latest data, including analysis of such data, on the technologies and practices that are best able to prevent releases from underground storage tanks?

Response. I understand that EPA is preparing analyses of tank system performance of various technologies and practices. Two reports are being finalized, and EPA is prepared to brief you on the findings.

RESPONSES BY SUSAN P. BODINE TO ADDITIONAL QUESTIONS FROM SENATOR BOXER

Question 1. Please work with EPA to provide me with any material that contains DoD statements informing EPA that the department does not intend to, or may not complete its cleanup obligations at the McClellan Air Force base Superfund site, including cleaning up contaminated groundwater?

Response. It is my understanding that EPA has been in communication with the Air Force and that they are actively working together to meet their cleanup obligations. EPA staff reported that they have not located any documents in which the Air Force indicates that it does not intend to or may not meet its cleanup obligations. The issues currently under discussion are summarized in the Air Force's proposed plan and EPA's letter responding to the plan, both of which will be provided to the Committee.

Question 2. Please work with EPA to provide me with material that describes the activities that EPA's will undertake to ensure that DoD completes its cleanup obligations at the McClellan Air Force base Superfund site?

Response. Given the scope of the projects involved, the EPA OSWER staff has informed me that it will require at least 2 weeks to collect all the materials to fulfill your request. They plan to collect this information and provide it to you as soon as possible.

Question 3a. EPA produced a proposed AAI rule that failed to meet the statutory criteria for determine whether an entity had in fact conducted AAI. Among other failings this proposed rule failed to ensure that: (1) a qualified environmental professional conducted the inquiry; (2) the inquiry included a visual inspection of the site; and (3) the investigations protected public health by substituting vague performance standards in lieu of the Brownfield law's established criteria and benchmarks.

Please work with EPA to provide me with information that describes the status of the agency's rulemaking process?

Response. EPA published a proposed rule that would establish Federal standards and practices for the conduct of all appropriate inquiries on August 26, 2004. A copy is attached. I have been informed that the Agency intends to publish a final rule within the next 6 months.

Question 3b. Please confirm whether you support and whether and how you will ensure that the final AAI rule is consistent with the criteria from the Brownfields law as described by the attached letter from Senators Jeffords and Boxer and Representatives Dingell, Solis and Pallone?

Response. If I am confirmed prior to the publication of the final rule, I will ensure that it is consistent with statutory criteria.

Question 4. The Nation's Brownfield law forbids EPA from providing financial assistance in the form of brownfield loans or grants to potentially responsible parties. Please work with EPA to provide me with information that describes any potentially responsible parties that received funds from the brownfield program?

Response. For several years, EPA's annual appropriations act has made parties who purchase property prior to January 11, 2002, but who otherwise meet the definition of a prospective purchaser exempt from liability, eligible for grants even though they may technically qualify as a responsible party because of the purchase date.

It is my understanding that panels review and screen applicants, based on specific information they provide in the application to ensure that no ineligible party receives funding. In the 2005 grant guidelines (and in all previous versions of these guidelines) since the passage of the Small Business Liability and Brownfields Revitalization Act of 2002, an appendix attached to the guidelines lays out specifics regarding eligibility criteria.

For community-wide or nonsite specific revolving loan fund grants, an additional screening occurs post-award, when sites are identified by the recipient, to ensure that no ineligible party receives grant funds.

RESPONSES BY SUSAN P. BODINE TO ADDITIONAL QUESTIONS FROM SENATOR LAUTENBERG

Question 1. Last September the Wall Street Journal, in an article, "Money Shortage Threatens Superfund," reported that the funding backlog for Superfund site clean-ups will be three-fourths of a billion dollars by next year. If current funding is adequate as you suggest—what was the Wall Street Journal referring to?

Response. It was not my intention to say that current funding was adequate. There are still sites remaining to be cleaned up so I believe additional funding is warranted. In order to clean up these sites, EPA must continue with the "enforcement first" has led PRPs to commit over $22.8 billion in cleanup work through fiscal year 2004. If confirmed, I also intend to prioritize the use of Federal funds by addressing the highest risk sites first. For less contaminated sites, there may be opportunities to find private sector partners who are willing to voluntarily invest private funds in cleanup because of redevelopment opportunities.

Question 2. Superfund can't be described just in terms of numbers—we are talking about people's lives, as we heard Sen. Baucus describe in referring to Libby, Montana. In 1997, you helped write H.R. 2727 which would have weakened the cleanup standards at Superfund sites. Did you agree with those provisions? With 10 million kids living within a few miles of a Superfund site, do you now believe these standards should be weakened?

Response. H.R. 2727 was introduced by the Chairman of the Water Resources and Environment Subcommittee, Rep. Sherwood Boehlert, on October 23, 1997. At that time I was a counsel to the subcommittee and I worked on Superfund issues. Title I of H.R. 2727 addressed remedy matters. This title did not weaken cleanup standards at Superfund sites. Rather, Chairman Boehlert's intent was to codify the remedy reforms that had been advanced by EPA as administrative reforms.

Before introducing this legislation, Chairman Boehlert held hearings in the Subcommittee. On April 10, 1997, the EPA Acting Assistant Administrator for Solid Waste and Emergency Response, Timothy Fields, testified that, through its administrative reforms, EPA had achieved an approximately 20 percent cost reduction, on average, in the cost of cleaning up Superfund sites, while maintaining protection of human health and the environment. According to Mr. Fields, EPA achieved these cost reductions by using reasonable assumptions about current and future land use, by applying treatment primarily to hot spots (the highly mobile, highly toxic waste), and by using a combination of pumping and treating and natural attenuation for groundwater remediation. Mr. Fields also testified about cost reductions achieved by the National Remedy Review Board. Finally, Mr. Fields testified that it would be helpful for Congress to codify EPA's administrative remedy reforms. Subcommittee marked up H.R. 2727 on March 11, 1998, but did not reach consensus. The legislation was not taken up by the full Transportation and Infrastructure Committee.

Chairman Boehlert continued to work on Superfund legislation and, in the following year, introduced another bill, H.R. 1300. With this legislation, Chairman Boehlert did achieve consensus within the Transportation and Infrastructure Committee, which ordered H.R. 1300 reported by a vote of 69 to 2 on August 5, 1999. With respect to remedy selection, H.R. 1300 clarified the intent of H.R. 2727 by incorporating certain EPA guidance by reference, instead of attempting to restate the guidance. At this point in time, EPA has been operating under its remedy reforms for a number of years and they have not been challenged. Accordingly, it no longer appears that codification of EPA's administrative remedy reforms is necessary.

Question 3. Placing technical decisions in the hands of scientists and engineers, such as how "clean" a Superfund site should be, is vital. These decisions must remain above politics. So, regarding EPA's recent internal discussions on risk assessment—would you support giving the regulated industry a bigger role in such technical decisions?

Response. I strongly believe in using sound, credible, peer reviewed science to inform policies and decisions. In addition, I believe all stakeholders should be given the same opportunities to participate.

Question 4. The Superfund program is of special importance to my State. We have 113 Superfund sites in New Jersey and many of them are underfunded. The GAO reports that program funding has fallen by 35 percent in the last decade. The number of sites cleaned up has dropped dramatically and the Superfund Projects Man-

ager in New Jersey tells me that sites take three-times longer to clean up than they used to because the funding just trickles in. As the administrator of the EPA's Superfund office, would you support the reinstatement of the Superfund tax, or some other funding source, to ensure that polluting industries help make up for these funding declines and in cleaning up the orphan sites?

Response. I strongly support the "polluter pays" principle under the Superfund law. The success of the polluter pays principle is illustrated by the fact that historically 70 percent of Superfund sites are cleaned up by the parties responsible for hazardous waste, an average of $838 million per year to clean sites as mandated by EPA. A broader perspective shows that, over the history of the program, EPA has required responsible parties to spend more than $22.8 billion on cleaning up contaminated properties.

EPA has always relied upon Congress to appropriate funds for the Agency to pay for cleanups at Superfund sites. Superfund program appropriations have remained relatively steady over the past 5 fiscal years at $1.3 billion to $1.5 billion. The fiscal year 2006 President's Budget Request continues to maintain steady funding for the program.

I believe that the Agency is making significant progress in cleaning up Superfund sites. Unlike in previous years where smaller, less costly sites were targeted for cleanups, EPA is now addressing large and complex sites that present unique cleanup challenges. Cleaning up these sites requires a disproportionate share of Superfund money. As I understand it, the new projects that are not funded have been secured, often have had prior cleanup work and pose no immediate threat. I commit that, if confirmed, EPA will not put communities at risk and will continue to protect human health and the environment.

Question 5. From my observations this administration "collaborates" only when a state agrees with it. As just one example, during the "Clear Skies" debate many states, including New Jersey, fought for the ability to regulate facility emissions to meet Clear Air Act's health standards. The administration refused to listen. Is that the kind of collaboration we could expect if you are confirmed?

Response. Collaborative problem solving is an environmental protection approach that I know current EPA Administrator Steve Johnson is committed to and encourages. EPA has a long history of helping multiple parties to work cooperatively with the Agency to find environmental solutions—in watersheds, in communities (e.g., Brownfields), in ecosystems such as the Great Lakes and Chesapeake Bay, and for some national issues. Together with strong regulatory and enforcement programs, collaborative approaches can be an effective tool for some types of environmental problems. I believe that EPA, under the leadership of Administrator Johnson, will continue to look for areas where collaborative approaches can achieve beneficial environmental results. My written testimony provides examples of some of the collaborative efforts I've been involved with during my tenure as a congressional Committee staffer. These are examples of the kinds of collaboration you can expect, if I am confirmed.

RESPONSES BY SUSAN P. BODINE TO ADDITIONAL QUESTIONS FROM SENATORS BOXER, LAUTENBERG, AND OBAMA

Question 1. Please work with EPA to provide us with a complete list of Superfund sites in order of current health hazards.

Response. I understand the Agency has a list that identifies priorities for new remedial start actions, which is considered enforcement sensitive. It is my understanding that the Committee has requested this list under separate cover, and that arrangements are being made to provide the list to the Committee. I have been informed that the Agency does not have a listing of all sites in rank order of current health hazards. I understand the Agency is working to prepare the list of 103 sites where human exposure is not confirmed as under control, categorized by sites with actual current exposure, current potential exposure, and future potential exposure. If confirmed, I will ensure that this commitment is met.

Question 2. Please indicate how many children live near these sites and how they may be at risk. Please also indicate any daycares, schools, playgrounds or other similar places that are near these sites.

Response. EPA staff advised me that they do not have the specific information requested on a site-by-site basis. EPA does have site-by-site information available at *http://www.epa.gov/superfund/sites/cursites/index.htm.* An example of such site-by-site information is attached. It is my understanding that the type of information you requested is not routinely obtained, but is the type of information sometimes collected at the local level when it would help address site specific risks.

Question 3. Please indicate what emergency or other short-term steps may of taking at each site to address the risk and the cost to take those actions.

Response. It is my understanding that EPA does not maintain a national data base that accurately and readily translates the actions described in each site profile into cost calculations.

Question 4. Please provide the cost to clean up all 103 sites where EPA has determined "human exposure is not under control."

Response. I understand that EPA has committed to compiling this information for all sites on the list for which EPA has available cost information. If confirmed, I will ensure that this commitment is met.

Question 5. Please work with EPA to ensure that EPA experts, including regional staff, are available and authorized to answer any of our questions relating to Superfund, including human health risks, cleanup costs and funding shortfalls.

Response. If confirmed, I will be pleased to ensure that appropriate EPA staff experts within OSWER are available to you. I cannot, however, provide blank, preauthorization for EPA staff to speak on behalf of EPA or to represent EPA positions.

Question 6. Please insure that the information provided includes a priority list of sites, like that provided to Senator Boxer while chair of the Superfund Subcommittee.

Response. Please see response to Question 1, above.

Question 7. Please work with EPA to ensure that we receive complete and detailed responses for each question in the Oct. 2004 letter that Senator Jeffords and Senator Boxer sent to then-Administrator Leavitt on Superfund, with updated responses to the present.

Response. I have a great appreciation for the importance of congressional oversight work, and if confirmed will work with the Committee to facilitate access to Agency information. Agency staff has advised me that the questions in the October 2004 letter seem based on an assumption that EPA funding process involves separate Headquarters and Regional estimates of costs. All Superfund remedial action funding decisions are made in close coordination with EPA regional offices after a careful review of each project. EPA Headquarters and the regions continue to work together extensively throughout the year to balance the Superfund program's human health and environmental protection responsibilities with both individual site needs and overall national priorities. Through the collaborative process, EPA Headquarters Superfund program managers decide onsite and project funding levels that make the best use of the funds that they have. EPA staff advises me that the agency has piloted approaches for identifying "out year" costs for some large remedial projects, and that information will be provided to the Committee.

Question 8. Please work with EPA to provide us with detailed information to date on clean-up work and activities that will not be performed at sites that could use additional funding to initiate new projects or to expedite work at on-going projects on those sites. Please include all regional requests for funding?

Response. EPA staff advises me that the Agency does not have separate Regional and Headquarters costs estimates for sites. Funding priorities are based on risk, but decisions at any point in time depend to a large degree on the readiness of the site for construction work. These decisions are made in close coordination with EPA regional offices after a careful review of each project. EPA Headquarters and the regions continue to work together extensively throughout the year to balance the Superfund program's human health and environmental protection responsibilities with both individual site needs and overall national priorities. Through the collaborative process, EPA Headquarters Superfund program managers decide onsite and project funding levels that make the best use of the funds that we have. Hence, the category "could use additional funding" has not been developed as a tool for program management. The agency has attempted some pilot approaches to provide longer range funding estimates, and I understand the Agency will provide this information to the Committee. If confirmed, I will ensure this commitment is met.

Question 9. Please work with EPA to provide us with complete information to date on the on-going remedial projects that could use additional funding and the dollar shortfall for each project. Please provide all regional requests for funding.

Response. Please see response to Question 8, above.

Question 10. Please work with EPA to provide us with complete information to date on the removal projects that could use additional funding and the dollar shortfall for each project. Please provide all regional requests for funding.

Response. EPA staff advises me that EPA does not allocate removal funds to the Regions site specifically so this information is not available. Each Region is given a portion of the total removal money each year based on the size of the Region and historical need. To prepare for potential shifting priorities or new/undiscovered risks, a portion of these funds is retained at Headquarters, and allocations are determined on a case-by-case basis by senior management.

Question 11. Please work with EPA to provide us with complete information to date on the pipeline projects that could use additional funding and the dollar shortfall for each project. Please provide all regional requests for funding.

Response. EPA staff advises me that EPA does not allocate pipeline funds to the Regions site specifically so this information is not available. Each Region is given a portion of the total appropriated pipeline money each year based on Regional workload and historical use, and they then determine how to allocate that money across projects.

Question 12. Section 108(b) of the Comprehensive Environmental Response, Compensation and Liability Act required EPA to promulgate regulations-"not later than 5 years after December 11, 1980", which required "classes of facilities establish and maintain evidence of financial responsibility consistent with the degree and duration of risk associated with the production, transportation, treatment, storage, or disposal of hazardous substances." Please work with EPA to provide me with information that describes all activities that EPA has undertaken to meet this requirement to promulgate these regulations.

Response. EPA staff advises me that although some work on this project occurred in the early 1980's, it was not pursued to completion, and the staff with whom I spoke are not certain of the details. Currently, the Office of Solid Waste and Emergency Response is analyzing information from CERCLIS and RCRA to identify the type and attributes of RCRA facilities that have had CERCLA funded expenditures. With this information, the Agency will review how to improve financial assurance, including the use of CERCLA 108(b) financial assurance authority. If confirmed, I plan to review the issue.

STATEMENT OF GRANTA Y. NAKAYAMA, NOMINATED FOR ASSISTANT ADMINISTRATOR FOR ENFORCEMENT AND COMPLIANCE ASSURANCE

Mr. Chairman, Senator Jeffords, and distinguished members of this committee; it is an honor and pleasure to appear before you this morning as the nominee to be EPA's Assistant Administrator for the Office of Enforcement and Compliance Assurance. I am honored that President Bush and Administrator Johnson have invited me to join the Administration to improve public health and the environment in this great Nation. I am especially pleased to be joined today by my wife, Larrene.

EPA has an important responsibility to protect the land, air, and water of our Nation. From the Agency's inception, compliance and enforcement has been an important cornerstone of EPA's programs to improve public health and the environment. Vigorous enforcement is a crucial tool that ensures the promise of our environmental statutes becomes an environmental reality. Administrator Johnson has expressed his commitment to a strong Federal enforcement program, and it is incumbent upon a nominee for this position to share that commitment.

Just as Americans must be able to trust and rely on EPA to protect the land, air, and water, the Agency is committed to obtaining the support of citizens in communities throughout our country in protecting the environment. If confirmed, it will be my goal to work collaboratively to ensure that citizens can both more easily assist EPA in identifying potential environmental enforcement issues and can more easily receive assistance in complying with environmental regulations. The goal is to make a more "user-friendly" and efficient enforcement organization.

To this end, my prior experiences have provided me with some unique preparation for this position. The Assistant Administrator for Enforcement and Compliance Assurance must have an understanding of environmental law. I am currently a partner at Kirkland and Ellis LLP in the environmental and product safety practice area. I joined the firm in 1994 after attending law school in the evening and graduating as the valedictorian. The first case I worked on as an attorney was an environmental enforcement matter brought by EPA's enforcement staff, and I have worked on similar matters ever since. Today, my practice includes advising clients on a daily basis regarding their responsibilities in complying with our nation's numerous environmental statutes. Since 1998, I have also served as an Adjunct Professor of Law at the George Mason University School of Law where I currently teach Environmental Regulation. Practicing and teaching environmental law has provided

an appreciation of the challenges of understanding, complying with, and enforcing these complex statutes.

Second, the nominee must be able to manage a large organization within the unique structure of the Federal Government. I started my career in the military, in the U.S. Navy. After being selected by ADM Rickover and serving for 5 years as an officer in the Navy Nuclear Propulsion Program, I then served for 8 years as a civilian manager reporting to ADM Rickover's successors. In that program, I oversaw the manufacture of the prototype reactor for the Seawolf submarine (SSN–21). Later, I was a manager with responsibility for welding, non-destructive testing, and quality assurance. During this formative period I observed first hand the high standards and dedication of the individuals who served in the Naval Nuclear Propulsion Program, and the results that could be achieved by a group of highly motivated Federal employees.

Lastly, I have found that technical training and the ability to process technical information can provide additional insights into the practice of environmental law. My educational background, including a Bachelor of Science and Master of Science degrees from MIT in Nuclear Engineering, combined with my prior experience as a practicing nuclear engineer has provided a strong technical background. In my experience, a first-hand understanding of the technology and science at issue in the environmental area inevitably leads to a deeper and more realistic appreciation of the problems and challenges faced by both regulators and the regulated community.

EPA is most fortunate to have a very dedicated, extremely capable staff in the enforcement and compliance assurance office. I have personally worked with many of them over the last decade and I have been uniformly impressed by their dedication and professionalism. They work extremely hard because they care about the environmental health of the Nation. As enforcers of the environmental laws, they must also adhere to the highest ethical standards. It is a group that any environmental attorney or engineer would be proud to join.

If you should honor me by confirming my nomination, I look forward to working with the members and staff of this distinguished Committee, Administrator Johnson, and President Bush to make the environment better for all Americans. Thank you for the opportunity to appear before you today. I will be happy to answer any questions.

UNITED STATES SENATE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

ROOM 410 DIRKSEN BUILDING WASHINGTON, DC 20510

INFORMATION

REQUESTED OF PRESIDENTIAL NOMINEES

In order to assist the Committee in its consideration of nominations, each nominee is requested to complete the attached Statement For Completion By Presidential Nominees. The Statement is intended to be publicly available. In the event that a nominee asks that a specific answer be kept confidential, he or she should notify the Chairman and Ranking Member.

The original and forty (40) copies of the requested information should be made available to the Honorable James M. Inhofe, Chairman, Committee on Environment and Public Works, U.S. Senate, Washington, DC 20510 (Attn: Marty Hall; Deputy Staff Director) as soon as possible.

Name of Nominee: Granta Y. Nakayama

Business Address:

Business Phone:

Home Address:

Home Phone:

UNITED STATES SENATE
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

Name: Nakayama (Last) Granta (First) Yoneo (Middle)

Position to which nominated: Assistant Administrator of the Environmental Protection Agency (Enforcement and Compliance Assurance)

Date of Nomination: 6/23/05

Date of birth: 8/21/58 (Day) (Month) (Year) **Place of birth:** Cambridge, England, UK

Marital status: Married **Full name of spouse:**

Name and ages of children:

Education:

Institution	Dates attended	Degrees received	Dates of degrees
MIT	9/76 - 4/81	S.B.	6/1/81
MIT	9/76 - 4/81	S.M.	6/1/81
George Mason University	9/90 - 5/94	J.D.	5/21/94

Employment record:

List all positions held since college, including the title and description of job, name of employer, location, and dates. If you were terminated involuntarily from any position(s), please note the circumstances.

4/1994 to Present - Attorney: Kirkland & Ellis LLP, 655 15th St., N.W., Suite 1200, Washington, D.C. 20005 (Partner, 10/2000)

See Attachment

Honors and awards:

List significant scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognitions for outstanding service or achievement.

NROTC Scholarship, MIT (1976-1980)
Valedictorian, George Mason University School of Law, Class of 1994

Memberships:

List significant memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations.

Organization	Office held (if any)	Dates
None		

Qualifications:

State fully your qualifications to serve in the position to which you have been named.

I have served as an engineer and manager in the U.S. Navy Nuclear Propulsion program. During that time, I attended law school at night at George Mason University. Upon graduating as valedictorian, I joined Kirkland & Ellis LLP and have practiced in the environmental law area for the past decade. As a practicing attorney, I have worked closely with the U.S. EPA on numerous matters. In addition, I am an Adjunct Professor of Law at the George Mason University School of Law and teach courses in environmental law.

Future employment relationships:

1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

Yes, I will sever all connections with my present employer if I am confirmed by the Senate.

2. As far as can be foreseen, state whether you have any plans after completing government service to resume employment, affiliation or practice with your current or any previous employer, business firm, association or organization.

I have no plans to resume employment with my current employer.

3. Has anybody made a commitment to you for a job after you leave government?

No

4. (a) If you have been appointed for a fixed term, do you expect to serve the full term?

N/A

(b) If you have been appointed for an indefinite term, do you have any known limitations on your willingness or ability to serve for the foreseeable future?

No known limitations on my willingness or ability to serve.

(c) If you have previously held any Schedule C or other appointive position in the Executive branch, irrespective of whether the position required Congressional confirmation, please state the circumstances of your departure and its timing.

No previous Schedule C or other appointive positions held.

Financial Statement:

Note: The Office of Government Ethics will provide the Committee with a copy of your Executive Personnel Financial Disclosure Report (SF-278).

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services and firm memberships or from former employers, clients, and customers. Amounts should be indicated by the categories established for reporting income on Form SF-278, Schedule A.

None

2. Are any assets pledged?

No

3. Are you currently a party to any legal action?

No

4. Have you filed a Federal income tax return for each of the last 10 years? If not, please explain the circumstances.

Yes

5.

5. Has the Internal Revenue Service ever audited your Federal tax return? If so, what resulted from the audit?

No

Potential conflicts of interest:

1. Describe any financial or deferred compensation agreements or other continuing of interest: dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

None. I have signed an ethics agreement, and upon confirmation I will resign my position with the law firm of Kirkland & Ellis LLP, and recuse myself from participating in any matters that may result in a possible conflict of interest unless my participation is specifically authorized.

2. List any investments, obligations, liabilities, or other relationships that might involve potential conflicts of interest, or the appearance of conflicts of interest, with the position to which you have been nominated.

None. I have signed an ethics agreement, and upon confirmation I will resign my position with the law firm of Kirkland & Ellis LLP, and recuse myself from participating in any matters that may result in a possible conflict of interest unless my participation is specifically authorized.

3. Describe any business relationship, dealing or financial transaction (other than taxpaying) which you have had during the last 10 years with the Federal Government, whether for yourself or relatives, on behalf of a client, or acting as an agent, that might in any way constitute or result in a possible conflict of interest, or an appearance of conflict of interest, with the position to which you have been nominated.

None. I have signed an ethics agreement, and upon confirmation I will resign my position with the law firm of Kirkland & Ellis LLP, and recuse myself from participating in any matters that may result in a possible conflict of interest unless my participation is specifically authorized.

4. Explain how you will resolve any potential conflict of interest, or appearance of a conflict of interest, that may be disclosed by your responses to the above items.

I have executed an ethics agreement that has been reviewed and approved by the Office of Government Ethics. If any new issues arise, I will confer with the EPA Ethics Officer.

5. Explain how you will comply with conflict of interest laws and regulations applicable to the position for which you have been nominated. Attach a statement from the appropriate agency official indicating what those laws and regulations are and how you will comply with them. For this purpose, you may utilize a statement by the relevant agency Ethics Officer.

I have executed an ethics agreement that has been reviewed and approved by the Office of Government Ethics. If any new issues arise, I will confer with the EPA Ethics Officer.

Political affiliation and activities:

List all memberships and offices held in, or financial contributions (in excess of $1,000), and services rendered to any political party or election committee during the last 10 years.

None

Published writings:

List the titles, publishers and dates of any books, articles, or reports you have written. (Please list first any publications and/or speeches that involve environmental or related matters.)

Corrosion Proof Fittings v. EPA, No Death Penalty for Asbestos, George Mason Independent Law Review, Winter 1992, 1GMILR99.

Time for a Change?, Editorial, Hawaii Reporter, October 2002 (www.hawaiireporter.com)

Additional Matters:

1. If there is any additional information that you believe may be pertinent to the Members of the Committee in reaching their decisions, you may include that here.

None

2. Do you agree to appear before all Congressional Committees which seek your testimony?

Yes

AFFIDAVIT

Grenta Y. Nakayama ss, being duly sworn, hereby states that he/she has read and signed the foregoing Statement for Completion by Presidential Nominees including the Financial Statement and that the information provided therein is, to the best of his/her knowledge and belief, current, accurate, and complete.

Subscribed and sworn before me this 1st day of July, 2005

Pamela [illegible]
Notary Public

My Commission Expires: 2/15/09

Attachment

1981 - 1986 -- Served as ENS, LTjg, and LT in the U.S. Navy Nuclear Propulsion Program

1986 - 1994 -- Served as a civilian engineer, and as Chief, Nondestructive Testing, Welding, and Quality Assurance Branch in the U.S. Navy Nuclear Propulsion Program

1998 - 2002 and
2004 - Present -- Adjunct Professor of Law, George Mason University School of Law, taught "Law, Science, and Technology" and "Environmental Regulation"

RESPONSE BY GRANTA NAKAYAMA TO ADDITIONAL QUESTION FROM SENATOR JEFFORDS

Question. The actual number of individuals working in the enforcement and compliance assurance office has essentially remained flat over the last 5 years at about 3,444 employees. Do you think that if the office were larger, there would be more enforcement actions and hence a cleaner environment?

Response. I have not yet had the opportunity to analyze the staffing needs of OECA, but intend to do so, if confirmed. I intend to examine the resources to ensure that OECA is directing them to achieve the best environmental results and, if additional resources are warranted, to advocate for those needs during the budget process.

RESPONSES BY GRANTA NAKAYAMA TO ADDITIONAL QUESTIONS FROM SENATOR BOXER

Question 1a. The Fourth Circuit Court of Appeals ruled on June 15 in *United States* v. *Duke Energy Corp.* that EPA cannot prohibit large annual increases in air emissions from power plants and other sources under New Source Review regulations, because NSR applies only to increases in hourly emission rates. The Fourth Circuit ruling was based on an interpretation of the statute that was apparently rejected by the D.C. Circuit Court of Appeals in a decision reached later that month in *State of New York, et. al.,* v. *USEPA*. The Department of Justice would normally ask the Fourth Circuit for an "en banc" to review of its decision in Duke Power in light of the D.C. Circuit's ruling in *New York* v. *EPA*.

Do you plan to recommend or do you believe that situation merits asking the Department of Justice to seek en banc review of the Duke Power decision by the Fourth Circuit?

Response. I have not been involved in the deliberations within EPA on what steps the Agency should take in response to the Fourth Circuit decision in Duke Power. Therefore, I am not in a position to set forth a personal recommendation on that issue that would reflect consideration of all of the relevant factors.

Question 1b. Please work with EPA to provide me with information, before you are confirmed, which describes who is ultimately responsible for deciding whether to seek such review?

Response. The decision whether to seek en banc review of a ruling by the U.S. Court of Appeals normally rests with the Solicitor General of the United States, after consideration of recommendations from the affected agency or department, and staff within the Department of Justice.

Question 1c. Please work with EPA to provide me with analysis, before you are confirmed, of how the D.C. Circuit's opinion affects information gathered by EPA on previous NSR violations and the status of potential NSR violations among various classes of industry?

Response. Since the D.C. Circuit issued its decision in State of New York only very recently, I believe it will take some time for EPA to determine how the opinion affects information gathered by EPA on previous NSR violations and the status of potential NSR violations among various classes of industry. Therefore, I am not certain that the Agency will be in a position to complete such analysis in the relative short term. However, I can assure you these court decisions would not alter my view that NSR enforcement is an important tool in implementing the Clean Air Act.

Question 2. EPA's enforcement policy requires the Agency to issue a notice of violation within sixty days of identifying a "high priority violator" under the Clean Air Act. The Environmental Integrity Project submitted a Freedom of Information Act request seeking notices of violation issued to 20 three power plants that EPA has identified as "high priority violators." EPA has responded that it failed to issue any "notice of violations," in clear violation of its own enforcement policies.

Before you are confirmed, please provide me with a description of the specific actions that you will take to address the lack of "notice of violations", including whether you will immediately review the cases identified by the Environmental Integrity Project as required under the Agency's own policy.

Response. Enforcement is an important tool in implementing the Clean Air Act. If confirmed, I intend to work with the Office of Civil Enforcement regarding enforcement to ensure that the best environmental results are achieved, taking into consideration available resources. Enforcement matters typically involve weighing the specific facts relevant to each individual case. As I have not been involved in the NSR enforcement efforts, I am not currently in a position to describe specific actions that I would take with respect to on-going NSR enforcement cases. Thus, while I am not familiar with the specific cases that the Environmental Integrity

Project is referencing, I commit that I will thoroughly review all of these matters, if confirmed.

Question 3. Please provide me with a list of all of the environmental enforcement cases, before you are confirmed, which you have worked on during your career, including the party that you represented and the outcome of the case. Please specify your capacity in each case (e.g. lead attorney, supporting attorney, expert . . .).

Response. Under the D.C. Rules of Professional Conduct, an attorney may not reveal confidential client information. Under Rule 1.6—Confidentiality of Information, "a lawyer shall not knowingly: (1) Reveal a confidence or secret of the lawyer's client . . ." A list of all of the environmental enforcement cases that I have worked on during my career, including the party that I represented and the outcome of the case, would reveal confidential client information. This confidential information includes the fact that I have worked on specific cases, as well as the identity of specific clients. Consistent with the D.C. Rules of Professional Conduct, I am unable to provide this list.

However, if confirmed, in the event that I am confronted with a potential conflict of interest, I intend to consult with the Agency ethics officials to ensure compliance with all government ethics requirements.

OUTSTANDING DOCUMENT AND INFORMATION REQUESTS TO THE EPA FROM SENATOR JAMES M. JEFFORDS, AS OF JULY 14, 2005

1. ORIGINAL REQUEST: MAY 2001

The EPW Committee has repeatedly requested an "apples-to-apples" comprehensive comparison of the various multi-pollutant legislation proposals and their allocation methods (including the Clean Power Act, the Clean Air Planning Act and the Clear Skies Act) using the same models and assumption and estimates of the net air quality and public health impacts of any elimination of existing Clean Air Act provision. These proposals should be compared to the final Clean Air Interstate Rule and the Clean Air Mercury Rule, as well as any other State or Federal programs and settlement agreements affecting or potentially affecting power plant pollution, as the base case.

2. ORIGINAL REQUEST: DECEMBER 2001 AND JULY 2002

An updated privilege log of the documents in EPA and DOE possession relating to the New Source Review program regulation changes including:

(a) the resulting impacts of the rules on future emissions;

(b) the impacts on EPA, State, or citizen NSR enforcement, including settled or pending cases, or cases that may have been ripe had the rules not been changed, or future enforcement authority;

(c) the impacts on attainment or maintenance of the NAAQS for SIPS, FIPS, or tribal implementation purposes;

(d) the legal consistency of inconsistency of the rules; and

(e) the extent to which fewer sources may take permit limits to "net out" of NSR, and the related future emissions impact (provided only a qualitative estimate with no mechanism to detect impact).

Additionally, EPA has not produced a quantitative analysis of the effects that the new and proposed NSR rules would have on the environment and public health, as was promised during both a July 16, 2002, joint-EPW-Judiciary Committee Hearing and a September 3, 2002, HELP Committee Hearing, and as is required by Executive Order 12866.

3. ORIGINAL REQUEST: DECEMBER 2001

EPW members originally requested a log of documents to the proposed New Source Review rules on December 14, 2001. After EPA failed to deliver the log by the promised date of October 24, 2002, EPW resubmitted the request on December 20, 2002. A log was finally received on January 22, 2003—after the first set of rules was finalized. However, the log is only a partial collection of the documents that would be responsive to the request, it does not contain information pertaining to document content, and it ends on September 30, 2002. EPW has requested a log that identifies document content pertaining to both sets of rules finalized in December 2002 and August 2003, through the date of the Agency's response to this request, which covers all documents described in the original request. To date the Agency has not provided an updated privilege log of the documents in EPA and DOE possession relating to the New Source Review program and regulations.

4. ORIGINAL REQUEST: AUGUST 2001

Senator Jeffords wrote to Administrator Whitman on August 10, 2001, with follow-up questions to a July 26, 2001, hearing, seeking a consolidated estimate of the public health and environmental benefits, including tons of pollution avoided, achieved through full implementation of all Clean Air Act Programs (including NSR, MACT, and $PM_{2.5}$/Ozone) that the Administrator mentioned during the hearing would be potentially "unnecessary" under the Administration's Clear Skies Act. A good faith effort by EPA needs to be made to estimate the net air quality and public health impacts of the elimination of the Clean Air Act Provisions mentioned above as proposed in the Administration's Clear Skies Act, and needs to be reported to Congress.

5. ORIGINAL REQUEST: FEBRUARY 2003 AND JULY 2004

In an EPW briefing in February of 2003, EPW Committee staff asked for the amount of methyl bromide currently in stockpiles in the United States. EPA replied that it would not fulfill the request because it considered this confidential business information. As stated by Committee staff in subsequent email correspondence and meetings, this assertion does not apply to congressional requests. Again, in a July 22, 2004 letter to Administrator Leavitt, Senator Jeffords made a formal request that this information be provided. EPA's response was that it was barred from providing Congress with this information pending the court's decision in a related lawsuit. The Ranking Member of the Senate Environment and Public Works Committee does not recognize this as a sufficient reason for denying Members of Congress this information.

6. ORIGINAL REQUEST: JULY 22, 2004

In a July 22, 2004 letter to Administrator Leavitt, Senator Jeffords made several inquiries that the Agency considers privileged under the Freedom of Information Act (FOIA). The Agency has not provided a legal rationale for its failure to respond to the request for information, nor has it directly addressed the question of congressional access to information.

7. ORIGINAL REQUEST: OCTOBER 20, 2004 AND FEBRUARY 9, 2005

In an October 20, 2004 letter, Senator Jeffords and Senator Boxer made an information request regarding Superfund sites receiving no funds in fiscal year 04 and sites receiving only partial funds in fiscal year 04. The Agency has not provided information about the remedial activities that were not

conducted at the 34 ranked unfunded sites due to inadequate funds. Additionally, neither Senator received a response to their request for information about sites receiving only partial funds in fiscal year 04. During the February 9, 2005, EPA Budget Hearing, Senator Jeffords reiterated these requests, but has received no new information, let alone updated information for fiscal year 05.

8. ORIGINAL REQUEST: DECEMBER 2004

In December 2004, EPW staff requested by email that the reports and the drafts of those reports for the National Acid Precipitation Assessment Program required to be submitted to Congress for the years 2000, 2002, and 2004, under section 1030) of the Clean Air Act. Senator Jeffords formally made this request to James Connaughton in followup questions to a February 2, 2005 hearing. Senator Clinton made this same request in April 2005 during the nomination hearing of Administrator Johnson. In Administrator Johnson's response, it was indicated that the requested documents would be made available in May or June. In a June 24, 2005 letter, Senator Jeffords and five other senators reiterated the same request for these reports and drafts of the reports. On July 13, 2005, the Office of Science and Technology Policy replied in a letter stating the report will be available by August 22, 2005.

9. ORIGINAL REQUEST: FEBRUARY 9, 2005

Senator Jeffords is still awaiting responses to his questions for the record relating to the EPW Committee hearing of February 2, 2005, for James Connaughton, Chairman of CEQ. The questions were submitted on February 9, 2005, but the Senator has still not received any response.

10. ORIGINAL REQUEST: APRIL 6, 2005

In follow-up questions to the nomination hearing of Administrator Johnson, Senator Jeffords requested the status and the promulgation of the proposed implementation rules for the revised $PM-_{2.5}$ and ozone (second phase) National Ambient Air Quality Standards (NAAQS). This request was initially made in 2004. The Agency has no working deadline or given any indication of when the rules will be proposed.

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

April 5, 2005

Honorable Stephen Johnson
Acting Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

Dear Administrator Johnson:

I am writing to you to formally request that EPA fulfill the 1992 Congressional mandate to establish requirements for the conduct of renovation and remodeling activities that disturb lead-based paint.

Each year Illinois reports the highest number of lead poisoned children in the nation.[1] As Attorney General, my office has enforcement authority under the Illinois Lead Poisoning Prevention Act to prosecute homeowners who fail to remedy lead hazards after a child has been poisoned. It is understood that children are routinely poisoned through lead dust that generates from both deteriorating lead paint and lead dust generated by renovation and remodeling activities. These activities kick up significant amounts of lead dust that permeates carpets, ductwork and soil, creating both short and long-term exposure to residents.

According to the Centers for Disease Control and Prevention, 434,000 preschoolers have elevated blood lead levels which pose a significant threat to their healthy development. The federal strategy to eliminate childhood lead poisoning makes clear that most children are poisoned by lead-based paint and dust hazards in their homes. Nationwide, HUD has determined that more than 25 million homes --fully one-quarter of the entire U.S. housing stock-- have "significant lead hazards." Lead-safe work practices (LSWP) for paint repair and remodeling activities must become an integral part of the national prevention equation.

In 1992, pursuant to Section 402(c) of Title X of the Housing and Community Development Act, Congress directed EPA to issue rules for lead safety in remodeling and renovation by 1996. Congress granted the Agency discretion and flexibility to tailor requirements based on risk.

[1] Centers for Disease Control and Prevention, MMWR 52 (SS10); 1-21; September 12, 2003; http://www.cdc.gov/mmwr/preview/mmwrhtml/ss5210a1.htm

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However, EPA has not yet established requirements for the conduct of renovation and remodeling activities that disturb lead-based paint. Instead, EPA planned a small-scale voluntary pilot program which was unlikely to result in LSWP as the national norm for remodeling and renovation. We understand that this voluntary pilot program was cancelled due to cuts EPA has made in funding for lead poisoning prevention.

I call upon the EPA to provide effective national leadership to help achieve the national goal of ending childhood lead poisoning by 2010. Specifically, I strongly urge EPA to take the following actions as recommended by the Alliance for Healthy Homes and children's health advocates across the nation:

* Provide meaningful leadership to make lead-safe work practices the national norm by proposing a results-oriented rule addressing lead-safety in remodeling and renovation by October 1, 2005.

* Provide leadership to update universal housing codes to recognize the dangers of lead dust and incorporate lead-safe work practices in paint repair activities in older housing.

* Request an additional $20 million in FY2006 to invest in EPA's lead poisoning prevention program's budget to expand the supply of lead-safe rental housing through targeted training, technical assistance, and enforcement, and maintain this annual funding level until the national goal of ending childhood lead poisoning is achieved.

Unless EPA's leadership is restored, the 2010 goal of protecting all children from lead poisoning will remain beyond reach. We ask for your personal commitment to ensure that EPA undertakes these actions.

Sincerely,

Lisa Madigan

Lisa Madigan
Illinois Attorney General

cc:
Senator Richard Durbin
Senator Barack Obama

Congress of the United States
Washington, DC 20515

May 9, 2005

The Honorable Stephen L. Johnson
Administrator
U.S. Environmental Protection Agency
401 M Street, SW
Washington, DC 20460-0003

Dear Mr. Johnson:

We are writing to express our concern regarding EPA's apparent abandonment of regulations required by law to protect children from exposure to lead in renovated homes.

The Toxic Substances Control Act requires EPA to set national standards for lead-safe renovation and remodeling practices. These regulations would protect children, their families, and construction workers from one of the largest sources of exposure to lead. Although EPA has avoided making a formal announcement of its decision, the agency has apparently decided to forego issuing these regulations. Instead, EPA plans to ask the construction industry involved in home renovation and remodeling to voluntarily implement protective practices. EPA's actions do not comply with the law, and they utterly fail to protect our children from a toxic substance that can cause severe developmental damage.

Lead Harms Children

The devastating health effects of lead, especially on developing fetuses and young children, are well documented. Lead is a potent neurotoxin that has especially debilitating effects on children, damaging the brain and nervous system and impairing development. As EPA's website states, the health effects can include "behavioral problems, learning disabilities, seizures and death."[1]

Over the past several decades, strong EPA programs have significantly reduced the incidence of lead poisoning in our children, but there is still a long way to go. Recognizing the severe harm that comes from exposing children to lead, the federal government has set a goal of ending childhood lead poisoning by 2010.[2] But we are falling far short of this goal. The Center for Disease Control (CDC) estimates that in 2000, there were 434,000 children in America with dangerous blood lead levels over 10 micrograms per deciliter.[3] Lead poisoning also has environmental justice implications. The harm caused by lead poisoning disproportionately affects

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[1] U.S. EPA, *Lead in Paint, Dust, and Soil* (online at http://www.epa.gov/lead).

[2] President's Task Force on Eliminating Environmental Health Risks and Safety Risks to Children, *Eliminating Childhood Lead Poisoning* (2000) (online at http://www.epa.gov/lead/fedstrategy2000.pdf).

[3] CDC, *Childhood Lead Poisoning Prevention Program: Statement on EBLLs* (online at http://www.cdc.gov/nceh/lead/research/kidsbll.htm).

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poor and minority families. Fully 22% of African-American children living in pre-1946 housing have lead poisoning.[4]

In the United States, major sources of exposure to lead are lead-based paint and lead-contaminated dust.[5] Forty percent of all American homes have lead paint somewhere in the building, and 27 percent of homes have significant lead-based paint hazards.[6] People are exposed to the lead when the paint chips or turns to dust and the chips or dust are inhaled or consumed.

Remodeling and renovation work in houses with lead paint can be hazardous because painting, removing carpets, changing windows, or other basic construction work can leave lead dust in the air, around homes, and in soil. EPA's own studies of lead exposure during and after renovation and remodeling projects indicate that "all [renovation and remodeling] activities deposited significant amounts of lead onto floors.... Occupants could be exposed to this lead if appropriate containment practices are not employed."[7] With 20 million remodelings or renovations occurring each year in housing at risk for lead contamination,[8] this is an issue that affects communities all across America.

In addition to being especially susceptible to the health effects of lead exposure, children are also more likely to be poisoned by lead dust in homes because of their daily habits, including simply playing in their homes. The CDC states: "More commonly, children ingest dust and soil contaminated with lead from paint which flaked or chalked as it aged or which has been disturbed during home maintenance or renovation. This lead-contaminated house dust, ingested via normal repetitive hand-to-mouth activity, is now recognized as a major contributor to the total body burden

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[4] James L. Pirkle, *Exposure of the U.S. Population to Lead, 1991–1994*, Environmental Health Perspectives, 745 (Nov. 1998).

[5] CDC, *About Childhood Lead Poisoning* (Oct. 2003) (online at www.cdc.gov/nceh/lead/about/about.htm).

[6] Office of Lead Hazard Control, U.S. Department of Housing and Urban Development, *National Survey of Lead and Allergens in Housing, Final Report, Volume I: Analysis of Lead Hazards,* Revision 6.0, E-1, 5-1 (Apr. 18, 2001) (online at www.hud.gov/offices/lead/techstudies/HUD_NSLAH_Vol1.pdf).

[7] U.S. EPA, *Lead Exposure Associated with Renovation and Remodeling Activities, Summary Report* (May 1997) (EPA 747-R-96-005) (online at http://www.epa.gov/lead/rrfinalsummaryreport.pdf).

[8] U.S. EPA, *U.S. Environmental Protection Agency Lead Safety Partnership (LSP) Voluntary Initiative, Briefing for the Deputy Administrator* (May 19, 2004).

of lead in children."[9] In too many places, lead poisoning from these activities has already happened. For example, in one community in Chicago over 18% of the children under six have harmful levels of lead in their blood.[10]

Action by EPA could go a long way toward solving this problem by requiring contractors to implement simple steps when doing renovation work in areas at risk for lead contamination. Unsafe work practices allow lead dust to be released throughout a home in the course of renovation and remodeling work. Yet reasonable precautions, such as sealing and carefully cleaning up work areas and wearing protective clothing and washing it after work, can prevent lead poisoning. EPA found that a remodeling and renovation regulatory program would protect 1.4 million children and prevent 28,000 lead-related illnesses every year. In economic terms, EPA estimated that the result would be a net benefit of between $2.7 and $4.2 billion annually.[11]

Requirements of the Toxic Substances Control Act

In 1992, Congress adopted the Housing and Community Development Act, which added a title to the Toxic Substances Control Act on lead exposure in homes. These provisions were intended to reduce a major source of lead poisoning by safeguarding against lead exposure from lead paint in homes. Title IV of TSCA requires EPA to issue rules to protect children, families, and construction workers from lead exposure resulting from activities such as lead paint abatement and renovation and remodeling in residences.

In August 1996, EPA promulgated the first set of regulations required under Title IV to ensure that contractors performing projects to abate lead-based paint hazards are trained and certified, and that they use lead-safe work practices. TSCA also requires EPA to extend these safeguards to cover other forms of home renovation that can be dangerous to children's health.

Specifically, section 402(c)(2) of TSCA required EPA to conduct a study of the extent to which persons are exposed to lead or disturb lead and create a lead-based paint hazard during remodeling and renovation activities. EPA complied with this requirement and found that "there is

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[9] CDC, *Preventing Lead Poisoning in Young Children* (Oct. 1991) (online at http://wonder.cdc.gov/wonder/prevguid/p0000029/p0000029.asp).

[10] City of Chicago Department of Public Health, *Blood Lead Testing Data by Chicago Community Area in 2003* (online at http://egov.cityofchicago.org/city/webportal/portalContentItemAction.do?contentOID=536920868&contenTypeName=COC_EDITORIAL&topChannelName=Dept&blockName=Health%2FLead%2BPoisoning%2BPrevention%2BProgram%2FI%2BWant%2BTo&context=dept&channelId=0&programId=0&entityName=Health&deptMainCategoryOID=-536891845).

[11] U.S. EPA, *Economic Analysis of Proposed TSCA Section 402(c)(3) Rule* (Feb. 2002).

a potential for significant amounts of lead to be disturbed by [renovation and remodeling] activities, well over the current EPA guidance."[12] Section 402(c)(3) then requires EPA to extend the regulations addressing lead-based paint abatement projects to include contractors engaged in renovation and remodeling activities that create lead-based paint hazards, relying in part on the results of the study.[13] The purpose of these regulations is to extend the requirements for training, certification, and use of lead-safe work practices to all contractors engaged in renovation and remodeling that creates lead-based paint hazards.

EPA was required to issue the rules by 1996. However, EPA has not yet issued these rules, which are now nine years overdue.

Current Status of EPA Rulemaking

Despite the unambiguous statutory requirement for EPA to issue regulations governing renovation and remodeling activities that risk dangerous lead exposure, EPA has apparently recently decided not to issue the rules. Instead it appears that EPA now intends to develop a pilot voluntary program that leaves lead-safe remodeling practices optional, even for contractors working in homes with young children. This is unacceptable.

As of 2003, EPA was working on the lead renovation and remodeling rule. EPA's semi-annual Regulatory Agendas and Regulatory Plans showed that the agency planned to issue a proposed rule in 2004 and a final rule in 2005.[14] EPA staff had completed an extensive economic analysis to support a regulatory proposal.

However, while you were Deputy Administrator of EPA, the agency apparently decided to abandon this rulemaking. EPA made no public announcement of this decision, but agency documents indicate that EPA has quietly ceased its work on the regulations required under TSCA.

A briefing paper entitled "U.S. Environmental Protection Agency Lead Safety Program Voluntary Initiative, Briefing for the Deputy Administrator, May 19, 2004," reveals that you were presented with a choice as to whether to complete the rule or to pursue an alternative approach. The alternative was a plan to merely *encourage* lead-safe remodeling and renovation practices through a voluntary, collaborative program for contractors engaged in remodeling and renovation in housing

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[12] U.S. EPA, *Lead Exposure Associated with Renovation and Remodeling Activities, Summary Report* (May 1997) (EPA 747-R-96-005) (online at http://www.epa.gov/lead/rrfinalsummaryreport.pdf).

[13] Toxic Substances Control Act, section 402(c)(3).

[14] U.S. EPA, *Fall 2003 Regulatory Agenda*, 68 Fed. Reg. 245 (Dec. 22, 2003) (online at http://www.epa.gov/fedrgstr/EPA-GENERAL/2003/December/Day-22/g28903.htm).

with lead paint. This alternative would begin with a pilot program that would involve a small number of contractors in just two cities.

After this briefing, EPA apparently stopped work on the rule in favor of the voluntary approach. EPA's next regulatory agenda, published in June 2004, dropped the renovation and remodeling rule and added a "Voluntary Program for Renovation and Remodeling." EPA's fall 2004 regulatory plan states, "As an alternative to the regulatory program, EPA is working with stakeholders to develop a voluntary program for renovations and remodeling activities."[15] The voluntary program was supposed to "partner the Agency and national organizations together to promote an initiative which could provide incentives to participating contractors and property owners who incorporate lead safe work practices into their standard operating procedures."[16]

Failure to Protect Children from Lead Poisoning

In addition to violating the requirements of the law, a voluntary approach will fail to protect children from the health effects of lead. A voluntary approach is unenforceable, is unlikely to be effective, would take years to implement, and requires substantial new funding that is simply not provided for in EPA's budget.

EPA has identified lead safe work practices that will greatly reduce exposures. Under a voluntary approach, there would be no requirement to use these practices and no ability to enforce them. Given the serious and ongoing threats to children from lead poisoning in renovated homes, taking minimal protective actions should not be optional. This is why Congress required EPA to promulgate regulations to address this problem.

It is also unclear what specific incentives a voluntary program could provide and whether such incentives would have any significant impact in changing current behavior. According to EPA, there are more than 250,000 contracting businesses that do remodeling and renovation work. EPA acknowledges that few contractors currently use lead safe work practices and there is little public demand for them.[17] One potential incentive identified by EPA is that a participating contractor would be allowed to use a program logo.[18] While this may have some appeal for some contractors, it appears highly unlikely that this would drive most or even many contractors to

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[15] U.S. EPA, *Regulatory Plan* (Fall 2004) (online at http://ciir.cs.umass.edu/ua/Fall2004/regplan/environmental_protection_agency_(EPA).html).

[16] *Id.*

[17] U.S. EPA, *U.S. Environmental Protection Agency Lead Safety Partnership (LSP) Voluntary Initiative, Briefing for the Deputy Administrator* (May 19, 2004).

[18] *Id.*

undertake training and change their work practices. Even with respect to the contractors that participate, meaningful oversight and verification would be a huge and continuing challenge.

Moreover, a voluntary program will only further delay meaningful action to eliminate lead poisoning in homes. The briefing on the Lead Safety Program Voluntary Initiative indicates that EPA expected it to take up to five years before the program "takes on its own momentum."[19] In contrast, in 2003, EPA anticipated issuing a final rule in only two years.[20] In the face of this threat to children's health, EPA has displayed remarkably little urgency or concern for those who may be hurt by this added delay.

Additionally, voluntary programs of this type are very resource intensive, and EPA is facing budget cuts that probably preclude any such new initiatives. A full-scale national voluntary program would presumably entail outreach efforts to contractors across the country, as well as a consumer education campaign to promote demand for contractors who adopt lead-safe work practices. The Administration's budget requests for EPA's lead program have decreased by almost 30% from FY04 to FY06.[21] Last year, EPA's entire lead risk reduction program received only $11 million. It appears that a lack of funding may have prevented EPA from completing even the planned first steps for developing the pilot program.[22] The reality is that EPA probably has insufficient funding to carry out even the proposed small pilot version of a voluntary lead safety program, let alone a full-scale national voluntary program.

Finally, there is widespread public opposition to EPA's new voluntary approach. On March 31, 2005, 95 public health, community, and environmental organizations, along with many concerned doctors, nurses, and other professionals, wrote to you protesting EPA's decision to abandon this rule and EPA's failure to protect America's children from lead poisoning.[23] These groups ranged from national organizations such as the Alliance for Healthy Homes and the National

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[19] *Id.*

[20] U.S. EPA, *Regulatory Plan* (Fall 2003) (online at http://ciir.cs.umass.edu/ua/Fall2003/regplan/ENVIRONMENTAL_PROTECTION_AGENCY_(EPA).html).

[21] U.S. EPA, *Summary of EPA Budget FY04* (online at http://www.epa.gov/ocfo/budget/2004/2004bib.pdf); U.S. EPA, *Summary of EPA Budget FY06* (online at http://www.epa.gov/ocfo/budget/2006/2006bib.pdf).

[22] *See* U.S. EPA, *Regulatory Plan* (Fall 2003) (online at http://ciir.cs.umass.edu/ua/Fall2003/regplan/ENVIRONMENTAL_PROTECTION_AGENCY_(EPA).html) (stating deadlines for EPA to issue *Federal Register* notices announcing pilot projects in December 2004 and May 2005).

[23] Letter from Alliance for Healthy Homes et al. to Stephen L. Johnson, Acting Administrator, EPA (Mar. 31, 2005).

Association of County and City Health Officials, to local groups such as seven local chapters of the Arc of the United States and many children's health and environmental advocates. In April, the attorneys general of New York and Illinois also wrote to urge you to issue these regulations.[24]

Flawed Process and Decision-Making at the EPA

We are also deeply troubled about how EPA arrived at this decision. It appears that the agency has striven to avoid imposing *any* costs on the businesses that engage in renovation and remodeling, while accepting continued extensive harm to public health. In the process, EPA has disregarded the law, science, and economic principles of maximizing benefits.

The law requires EPA to issue a regulation. The scientific consensus is that lead is a serious threat to children's health, and the federal government has set a goal of eliminating childhood lead poisoning by 2010. EPA's own studies show the potential for significant lead exposure from remodeling and renovation activities. EPA's own analysis found that a regulation would be effective and would provide health benefits to the American public valued at $5.8 billion annually.[25] Depending on the stringency of the rule, EPA estimated the costs would range from $1.7 to $3.1 billion annually, producing net benefits of between $2.7 and $4.2 billion annually.[26]

Nonetheless, after you were briefed on the issue, EPA halted work on the rule in favor of a voluntary program. The only publicly available explanation states that "a rule is likely to have a potentially significant economic impact. In an effort to minimize that impact, the agency has worked with stakeholders to explore the development of non-regulatory approaches."[27]

Thus, it appears that EPA made the decision to abandon a national lead safety rule in favor of a voluntary approach based solely on a desire to avoid costs to the contracting industry. While an internal agency document claims that a voluntary program would be more "cost-effective," it is unclear what the basis is for this assertion.[28] EPA conducted a sophisticated analysis of the estimated costs and benefits of several regulatory approaches. Yet EPA appears to have done no analysis to ascertain what level of benefit, if any, would be expected under a voluntary approach.

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[24] Letter from Lisa Madigan, Attorney General, Illinois, to Stephen L. Johnson, Acting Administrator, EPA (Apr. 5, 2005); Letter from Eliot Spitzer, Attorney General, New York, to Stephen Johnson, Acting Administrator, EPA (Apr. 7, 2005).

[25] U.S. EPA, *Economic Analysis of Proposed TSCA Section 402(c)(3) Rule*, 6-3 (Feb. 2002).

[26] *Id.*

[27] U.S. EPA, *Regulatory Plan* (Fall 2003) (online at http://ciir.cs.umass.edu/ua/Fall2003/regplan/ENVIRONMENTAL_PROTECTION_AGENCY_(EPA).html).

[28] U.S. EPA, *U.S. Environmental Protection Agency Lead Safety Partnership (LSP) Voluntary Initiative, Briefing for the Deputy Administrator* (May 19, 2004).

Finally, prior to making this decision, EPA met with representatives from industry and some unidentified states and localities.[29] Based on EPA's summary of its discussions with "stakeholders," EPA apparently did not consult with medical professionals, public health advocates, children's health advocates, educators, environmental organizations, or community groups.[30] Such one-sided discussions are contrary to EPA's past practice, cannot be considered fair process, and are unlikely to produce sound decisions that enjoy public support.

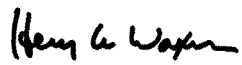
Conclusion

The successful effort to phase out many uses of lead over the past several decades is one of the triumphs of public health in this country. However, we still must finish the job. Even today, hundreds of thousands of children in this country have harmful amounts of lead in their bodies, acquired from old sources of lead in their homes, in the soil, and in their drinking water. The consequences of failing to address this problem will be dire for another generation of children.

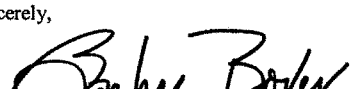
The issuance of rules to prevent the poisoning of families as their homes are remodeled is long overdue. We urge you to move forward on this rulemaking with the urgency it deserves.

Attached are some questions on this matter. We look forward to receiving your responses by June 1, 2005. Thank you for your consideration.

Sincerely,



Henry A. Waxman
Ranking Minority Member
Committee on Government Reform
U.S. House of Representatives



Barbara Boxer
Ranking Minority Member
Subcommittee on Superfund and Waste Management
Committee on Environment and Public Works
U.S. Senate

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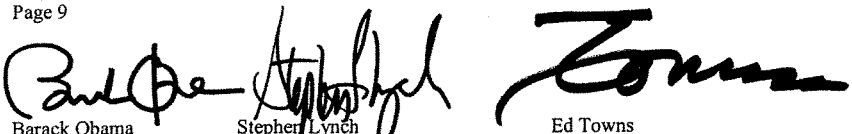
[29] *Id.*

[30] *Id.*



Barack Obama
United States Senator

Stephen Lynch
Ranking Minority Member
Subcommittee on Regulatory Affairs
Committee on Government Reform
U.S. House of Representatives

Ed Towns
Member
U.S. House of Representatives

Attachment

Attachment

1. As Deputy Administrator, you were apparently briefed on May 19, 2004, on whether EPA should comply with the statutory requirement to issue a rule mandating lead-safe work practices for remodeling and renovation, or whether EPA should stop work on the rule in favor of a voluntary approach. The stated purpose of the briefing was to "receive direction on our recommended approach." During or after this briefing did you decide (or endorse a recommendation by others) that EPA would abandon the rule and pursue the voluntary approach?

2. If you did not make this decision, who did?

3. What is EPA's claimed legal rationale for not following the specific statutory requirements to promulgate these regulations?

4. Existing regulations under the Safe Drinking Water Act are supposed to protect against lead in drinking water. As demonstrated by the recent crisis in the District of Columbia, as well as drinking water test results from other cities, these regulations are not protecting children from exposure to high levels of lead in drinking water. In responding to the crisis in the District and calls to strengthen the drinking water regulations, EPA has pointed to lead-based paint in older housing as the "most common source of lead exposure for children today." The implication is that if we really want to address the problem of lead exposure, EPA believes we should be focusing on lead-based paint in older houses, not strengthening the drinking water rules. The reality is that EPA is doing neither.

   Considering the existing, although inadequate, lead in drinking water regulations and the threat of lead-based paint in old houses, how can EPA justify devoting even less effort and choosing a less effective, non-regulatory approach to the source of lead exposure it has identified as the greatest threat?

5. An EPA study projected significant benefits from a regulation mandating lead-safe renovation and remodeling practices. Has EPA conducted a study to evaluate the effectiveness of a voluntary program?

6. What, if any, scientific evidence does EPA have to indicate that a voluntary approach would protect as many children from lead poisoning as would a regulatory approach?

7. A voluntary program to encourage contractors to use lead-safe work practices would necessitate a national outreach effort to over 250,000 businesses, with 1.7 million employees. Presumably, it would also require educating the millions of consumers who remodel homes each year to encourage them choose contractors who use lead-safe work practices, even though such practices might slightly increase their costs. What would be the annual cost of such a program?

8. Assuming EPA applied the level of funding identified above, please detail projected results. E.g., how many contractors would participate? How many renovation and remodeling jobs would be conducted using lead-safe work practices? How many children would be protected?

9. The Administration has requested almost 30% less funding for EPA's lead program in FY06 compared to FY04. Does EPA have the funding to carry out the relatively expensive national voluntary program it is contemplating?

10. Lead poisoning disproportionately affects poorer communities, and older, urban neighborhoods consistently have higher numbers of children with elevated levels of lead in their blood. Has EPA analyzed the environmental justice implications of its proposed approach? What, if any, evidence is there that a voluntary approach for remodeling and renovation would not, in practice, protect mainly wealthier consumers who would be more likely to choose more expensive contractors who use lead-safe work practices? Why wouldn't greater numbers of poorer and minority consumers, already hit hardest by lead poisoning, continue to suffer disproportionately from contractors who do not protect against lead poisoning?

11. EPA's Regulatory Plan issued in the fall of 2004 states that EPA will issue a notice in December 2004 announcing its first pilot voluntary project and will issue a notice in May 2005 announcing its second pilot voluntary project. EPA has not yet issued the first notice. What is EPA's current timeline for implementing the pilot projects described in its Regulatory Plan?

12. What is EPA's timeline to comply with the requirements of TSCA section 402(c)(3)?

13. EPA's effort to develop regulatory safeguards to protect children and workers from lead contamination from remodeling and renovation has been underway for over ten years. EPA has already completed an extensive economic analysis to support the rule, and EPA previously indicated in the 2003 regulatory agenda that it would take two years to complete a final rule. Will abandoning these efforts in favor of a new, voluntary approach lead to a longer wait before America's children are protected from lead as they play in their own homes? How long would it take to fully implement a voluntary approach?

14. EPA apparently developed this voluntary approach after consultation with "stakeholders."

    a. For meetings held since September 1, 2002, please provide the dates, and names and affiliations of the participants for each meeting between EPA employees and outside parties related to the development of a voluntary program for renovation and remodeling practices.

b. Please provide the same information as above with respect to telephone conversations.

c. Please provide copies of all materials exchanged, including e-mails, since September 1, 2002, between EPA employees and outside parties related to the development of a voluntary program for renovation and remodeling practices.

15. Has EPA consulted with interested parties other than industry representatives, such as children's health experts and environmental and community advocates?

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