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ENVIRONMENTAL PROTECTION AGENCY'S FISCAL YEAR 2006 BUDGET

HEARING

BEFORE THE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS UNITED STATES SENATE

ONE HUNDRED NINTH CONGRESS

FIRST SESSION

FEBRUARY 9, 2005

Printed for the use of the Committee on Environment and Public Works

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ONE HUNDRED NINTH CONGRESS
FIRST SESSION

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C O N T E N T S

Page

FEBRUARY 9, 2005

OPENING STATEMENTS

Boxer, Hon. Barbara, U.S. Senator from the State of California 8
Carper, Hon. Thomas R., U.S. Senator from the State of Delaware 6
Clinton, Hon. Hillary Rodham, U.S. Senator from the State of New York 13
Inhofe, Hon. James M., U.S. Senator from the State of Oklahoma 1
Jeffords, Hon. James M., U.S. Senator from the State of Vermont 4
Lautenberg, Hon. Frank R., U.S. Senator from the State of New Jersey, prepared statement 38
Obama, Hon. Barack, U.S. Senator from the State of Illinois 14
Thune, Hon. John, U.S. Senator from the State of South Dakota 15
Vitter, Hon. David, U.S. Senator from the State of Louisiana 11

WITNESSES

Johnson, Hon. Stephen L., Acting Administrator, U.S. Environmental Protection Agency; Accompanied by: Charles E. Johnson, Chief Financial Officer, U.S. Environmental Protection Agency; Benjamin Grumbles, Assistant Administrator, Office of Water, U.S. Environmental Protection Agency; Tom Dunne, Deputy Assistant Administrator, Office of Solid Waste and Emergency Response, U.S. Environmental Protection Agency; Ann Klee, General Counsel, U.S. Environmental Protection Agency; Jeff Holmstead, Assistant Administrator, Office of Air and Radiation, U.S. Environmental Protection Agency; Susan B. Hazen, Acting Assistant Administrator, Office of Prevention, Pesticides, and Toxic Substances, U.S. Environmental Protection Agency 16
Prepared statement 36
Responses to additional questions from:
Senator Boxer 52
Senator Inhofe 41
Senator Jeffords 50
Senator Lautenberg 133
Senator Vitter 70

ADDITIONAL MATERIAL

Environmental Protection Agency:
Brownfields program expectations and supporting budget documentation . 135
Funding requested for leaking underground storage tanks 136
General Information on EPA enforcement 137
Guidance and a proposed rule clarifying: Pesticides and the Clean Water Act 138
National Academy of Science study on perchlorate 139
Number of potential Brownfield sites 140
Sites ranked by the National Prioritization Panel that received funding in fiscal year (FY) 2004 141
Spill prevention control and countermeasure program 143
State Revolving Loan Fund (SRF) 144
Superfund Budget 146
Wastewater Security 147
Why clear skies is the right approach 148

Page

Letter from Kathleen C. Callahan, acting regional administrator, to Senator Lautenberg, in response to inquiry on Ringwood, NJ site 149

ENVIRONMENTAL PROTECTION AGENCY'S FISCAL YEAR 2006 BUDGET

WEDNESDAY, FEBRUARY 9, 2005

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

The committee met, pursuant to notice, at 2:30 p.m. in room 406, Senate Dirksen Building, Hon. James M. Inhofe, (chairman of the committee) presiding.

Present: Senators Inhofe, Boxer, Carper, Clinton, Isakson, Jeffords, Lautenberg, Murkowski, Obama, Thune, and Vitter.

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

Senator INHOFE. The committee will come to order. We welcome Administrator Johnson. I am pleased to have you testify before the committee on the President's fiscal year 2006 budget proposal for the Environmental Protection Agency.

I expect that each Senator on the committee will wish to make an opening statement, as well as your opening statement and then 5-minute questioning, so we are going to confine opening statements to 5 minutes, and we would like you to confine yours to 5 minutes. However, your entire statement will be made a part of the record.

Our Tar Creek Superfund site in northeastern Oklahoma has been a top priority for me for quite some time, as well as for the EPA. Administrator Leavitt visited, and I think that is the first time that someone at that level has actually visited a site, the first Cabinet-level official to tour it. Tar Creek is a 40 square-mile disaster that we now can see the light at the end of the tunnel. The cooperation of the EPA, as well as the Corps of Engineers, the State of Oklahoma, the University of Oklahoma, and our consortium, it looks like it is going to be successful.

The Administration considers the ultra-low sulfur diesel rule as one of its premier environmental successes, and they are right that once successfully implemented, the ULSD rule will have benefits. However, I remain as concerned today as I was some 5 years ago when I first questioned the EPA on the rule's potential supply and deliverability impacts.

Refiners and engine manufacturers have spent billions of dollars to develop technologies to meet the stringent 15 ppm sulfur standard, yet challenges still remain regarding the sufficiently accurate inline testing procedures and potential contamination in the pipelines and transportation infrastructure. So you have the pipelines

with some problems, and others are complying with its intent. Millions of dollars have been invested, and yet that is a problem that we will want to discuss.

I have already been working with the Agency on grants management for the past year, and it remains one of my top priorities. Each year over $4 billion, amounting to at least half the EPA's annual budget, is awarded in nondiscretionary and discretionary grants. Last year, the committee received testimony concerning a lack of competition in grant awards, a lack of demonstrable results from grants, and a general lack of oversight.

In fact, the EPA IG included in her testimony the results of an audit of a nonprofit group where the EPA was giving taxpayers' dollars directly to a lobbying organization, that is a 501(c)(4) organization, which is illegal and certainly improper. This is the type of thing that we are going after. The EPA is competing grants, rather than freely awarding funds to groups that regularly engage in politics and to undermine this President's environmental record.

The EPA has also developed new policies to measure environmental results and provide closer oversight of nonprofit groups. However, new policies are not enough. They must be followed. Real reform of grants management requires the attention of the highest levels of the Administration within the EPA and its program officers to establish a consistent and transparent system of awarding and monitoring grants. This committee will continue to take its oversight responsibility in regards to grants management very seriously. I am pleased that the EPA is working with the committee to ensure new grants management that protects human health and the environment.

The Government has a role in safeguarding the Nation's infrastructure, which includes the roads on which we drive and the pipes from which we receive our water. I, like many of my colleagues on the committee, continue to be troubled by the Administration's and its predecessor's history of cuts to the Clean Water SRF, State revolving funds, the primary Federal clean water mechanism. We conducted a field hearing in my city of Tulsa last year during which 8 communities testified to struggles with both drinking water and clean water regulations. Just as I have tackled grants management, I intend to use this committee's oversight role to continue examining the costs imposed on our local communities by Federal water regulations.

Not only do we need to ensure these costs are necessary because they are addressing legitimate public health and environmental threats, but evidently we also need to convince some that Congress and the EPA have a role in this escalating cost crisis.

I look forward to next week's committee passage of the President's Clear Skies proposal. As my colleagues know, this has been one of our priorities for a long time. It is the largest mandatory reduction in pollutants ever proposed by any President. Our goal is to expand the Acid Rain Program to achieve greater emissions reductions, without the endless lawsuits that have resulted under the Clean Air Act. I look forward to working with the Administration to get this bill signed into law.

It is going to be a difficult budget year. Budgets are tight and the Nation is at war. The Administration is proposing a 5 percent

cut to the EPA's budget. I would encourage my colleagues who are tempted to criticize this alleged cut to look very closely at what has been proposed. Aside from cuts to the programs the Agency knows that Congress will put back, a few programs are given significant decreases.

So Administrator Johnson, we are looking forward to your testimony, and we welcome you also Mr. Johnson, both Johnsons.

[The prepared statement of Senator Inhofe follows:]

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

Welcome Administrator Johnson. I am pleased to have you testify before the Committee today on President Bush's Fiscal Year 2006 budget proposal for the Environmental Protection Agency.

I expect that each Senator on the Committee will wish to make an opening statement and will have several questions for the Administrator. Therefore, I am asking that opening statements be kept short under 5 minutes.

The Tar Creek Superfund Site in northeastern Oklahoma has been a top priority for me and the EPA. When Administrator Leavitt visited the site with me, he became the first Cabinet level official to tour Tar Creek and see what we are dealing with there. Tar Creek is a 40 square-mile site that is the No. 1 listed site on the National Priorities List. While, much work has been done and much credit goes to the EPA and specifically the Region 6 Administrator, Richard Greene, there is more work left to do. I want to take this opportunity to get the EPA's continued commitment to protect human health at Tar Creek and get this site cleaned up.

The Administration considers the ultra-low sulfur diesel rule as one of its premiere environmental successes, and they are right that once successfully implemented, the ULSD rule will have benefits. However, I remain as concerned today as I was some 5 years ago when I first questioned EPA on the rule's potential supply and deliverability impacts. Refiners and engine manufacturers have spent billions of dollars to develop technologies to meet the stringent 15 ppm sulfur standard. Yet, challenges still remain regarding sufficiently accurate inline testing procedures and potential contamination in the pipeline and transportation infrastructure. EPA projected that the rule will increase diesel prices 4 or 5 cents per gallon at the pump. Given some of the concerns raised about contamination and inadequate testing, I imagine that those initial cost projections will certainly change. I look forward to working with EPA to ensure that the rule is implemented effectively while guarding against supply shortfalls and price increases.

I have already been working with the Agency on grants management for the past year and it remains one of my top priorities. Each year over $4 billion, amounting to at least half the EPA's annual budget, is awarded in non-discretionary and discretionary grants. Last year, this Committee received testimony concerning a lack of competition in grant awards, a lack of demonstrable results from grants, and a general lack of oversight. In fact, the EPA IG included in her testimony the results of an audit of a non-profit group where EPA was giving taxpayer dollars directly to a lobbying organization for over 5 years. The EPA has responded positively to oversight in this area. By the end of this month, EPA will have finalized a new Web site with the most publicly available information ever offered on awarded grants. EPA is competing grants rather than freely awarding funds to groups that regularly engage in politics to undermine this President's environmental record. EPA has also developed new policies to measure environmental results and provide closer oversight of non-profit groups. However, new policies are not enough. They must be followed. Real reform of grants management requires the attention of the highest levels of administration within the EPA and its program offices to establish a consistent and transparent system of awarding and monitoring grants. This Committee will continue to take its oversight responsibility in regards to grants management very seriously, and I am pleased that the EPA is working with this Committee to ensure new grants management that protects human health and the environment.

The government has a role in safeguarding the nation's infrastructure which includes the roads on which we drive and pipes from which we receive our water. I, like many of my colleagues on the Committee, continue to be troubled by the Administration's and its predecessor's history of cuts to the Clean Water SRF, the primary Federal clean water mechanism. We conducted a field hearing in Tulsa, OK last year during which 8 communities testified to struggles with both drinking water and clean water regulations. Just as I have tackled grants management, I in-

tend to use this committee's oversight role to continue examining the costs imposed on our local communities by Federal water regulations. Not only do we need to ensure these costs are necessary because they are addressing legitimate public health and environmental threats but evidently we also need to convince some that Congress and the EPA have a role in this escalating cost crisis.

I look forward to next week's Committee passage of the President's Clear Skies proposal. As my colleagues know, this is the largest reduction in utility emissions ever called for by an American President. The success of the Acid Rain program is the reason the President, Senator Voinovich and myself believe that Clear Skies is the best approach to reducing utility emissions. It will do so faster, cheaper and more efficiently than the Clean Air Act. Our goal is to expand the Acid Rain program to achieve greater emissions reductions without the endless lawsuits that have resulted under the Clean Air Act. I look forward to working with the Administration to get this bill signed into law.

This is going to be a difficult budget year. Budgets are tight and the Nation is at war. The Administration is proposing a 5 percent cut to the EPA's budget. I would encourage my colleagues who are tempted to criticize this alleged cut to look very closely at what has been proposed. Aside from cuts to programs the Agency knows Congress will put back, very few programs are given significant decreases.

Administrator Johnson, I look forward to your testimony. I again urge my colleagues to keep their statements brief.

Senator INHOFE. Senator Jeffords.

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

Senator JEFFORDS. Thank you, Mr. Chairman.

Acting Administrator Johnson, it is a pleasure to welcome you here today. I look forward to working with you and whoever is named your successor, in these challenging budgetary moments and times. I am very concerned about this Nation's fiscal constraints, but a budget that is about priorities and environmental protection must be a priority.

Let me say right off the bat that the Administration's proposed cuts to programs that protect our Nation's environment go too far. If enacted, the EPA's budget would decline 5.6 percent compared with last year's enacted levels, and in real terms another 2.3 percent if inflation is taken into account. In the past 4 years, these serve as a guide. It would appear that there is no end in sight for cuts in EPA's programs. Last year, the program that funds clean water infrastructure in the States was cut 19 percent. This year, the proposed cut is another 33 percent, or $361 million.

The nationwide need for infrastructure dollars continues to far outplace the amount of funding that is available from all levels of government. In 2002, an EPA study assessed the spending for wastewater infrastructure and total funding needs nationwide to be $390 billion over 20 years. EPA has also estimated that the funding needs for operation and maintenance, which are not currently eligible for Federal aid, are an additional $148 billion.

This dramatic reduction to the Clean Water Revolving Fund will unfairly shift the financial burden to the States, municipalities, and the public. For examples, States located in the northeast will see an approximate reduction of $106 million compared to last year. In Vermont alone, we will see a reduction of close to $2 million. In this and other programs, the spending austerity so evident in the President's budget is accomplished by passing down costs to other levels of government. States and localities will be faced with a stark choice of either curtailing services or increasing their own taxes to compensate for the declining Federal funds.

On the air front, I am interested in a full accounting of how the Agency's proposed mercury pollution standards become so compromised that a recent report by the Agency's own inspector general alleges that the health effects of mercury on children were overlooked.

On related fronts, I hope we will learn why the Administration is moving so slowly on new source review enforcement actions, and on implementing a new rule for fine particulates. I am extremely concerned about a drastic cut in the budget of the program that phases out ozone depleting substances, and about the levels of funding for air pollution monitoring programs. We cannot afford to compromise on air quality.

I know many members here are interested in the growing backlog of the Superfund cleanups. Last year, EPA candidly acknowledged that funding was insufficient to start work on 34 priority projects in 19 States. The needed resources to protect human health and the environment. The President requested $126 million less than last year for Superfund remediation.

For the third year in a row, inadequate funds have prevented EPA from starting to clean up the Elizabeth Mine in Strafford, VT. Similarly, the Eli Copper Mine in Vershire, VT and the Pike Hill Copper Mine in Corinth, VT are waiting for funds for a full remedial investigation and feasibility study. How much longer are these communities going to have to wait to get the acid mine drainage from these sites cleaned up?

Last but not least, I am tired of the kabuki dance the Administration and the Congress are playing with Lake Champlain.

Senator INHOFE. What kind of dance?

Senator JEFFORDS. Kabuki.

Senator INHOFE. Kabuki.

Senator JEFFORDS. Maybe kaduki. I am not sure.

Senator INHOFE. Demonstrate it.

Senator JEFFORDS. Yes, right. I will if necessary.

[Laughter.]

Senator JEFFORDS. The problems facing Lake Champlain are important and deserving of resources. Rest assured, I intend to find a way to adequately fund the EPA's Lake Champlain program.

Again, thank you for being here today, Acting Administrator Johnson. I look forward to your testimony.

Senator INHOFE. Thank you, Senator Jeffords.

[The prepared statement of Senator Jeffords follows:]

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

Acting Administrator Johnson, it is a pleasure to welcome you here today. I look forward to working with you and whoever is named your successor in these challenging budgetary times.

Let me say right off the bat, that the administration's proposed cuts to programs that protect our nation's environment go to far. If enacted, the EPA's budget would decline 5.6 percent compared with last year's enacted levels, and in real terms, another 2.3 percent if inflation is taken into account.

If the past 4 years serve as a guide, it would appear that there is no end in sight for cuts to EPA's programs. Last year the program that funds clean water infrastructure in the States was cut 19 percent. This year the proposed cut is another 33 percent or $361 million.

The nationwide need for infrastructure dollars continues to far outpace the amount of funding that is available from all levels of government. In 2002, an EPA

study assessed the spending for wastewater infrastructure and total funding needs nationwide to be $390 billion over 20 years. EPA also estimated that the funding needs for operation and maintenance, which are not currently eligible for Federal aid, are an additional $148 billion.

This dramatic reduction to the clean water revolving fund will unfairly shift the financial burden to the States, municipalities, and the public. For example, States located in the Northeast will see an approximate reduction of $106 million compared to last year, and Vermont alone will see a reduction of close to $2 million.

In this and other programs, the spending austerity so evident in the President's budget is accomplished by passing down costs to other levels of government. States and localities will now be faced with the stark choice of either curtailing services or increasing their own taxes to compensate for declining Federal funds.

On the air front, I am interested in a full accounting of how the Agency's proposed mercury pollution standards became so compromised that a recent report by the Agency's own Inspector General alleges that the health effects of mercury on children were overlooked.

On related fronts, I hope we will learn why the Administration is moving so slowly on New Source Review Enforcement Actions and on implementing a new rule for fine particulates. I am extremely concerned about a drastic cut in the budget of the program that phases out ozone-depleting substances, and about the levels of funding for air pollution monitoring programs. We cannot afford to compromise on air quality.

I know many members here are interested in the growing backlog of Superfund cleanups. Last year, EPA candidly acknowledged that funding was insufficient to start work on 34 priority projects in 19 States. Rather than request more money to provide EPA the needed resources to protect human health and the environment, the President requested $126 million less than last year for Superfund remediation.

For the third year in a row, inadequate funds have prevented EPA from starting to clean up the Elizabeth Mine in Strafford, VT. Similarly, the Ely Copper Mine in Vershire, Vermont, and the Pike Hill Copper Mine in Corinth, VT, are waiting for funds for a full remedial investigation and feasibility study. How much longer are these communities going to have to wait to get the acid mine drainage from these sites cleaned up?

Last but not least, I am tired of the kabuki dance the Administration and the Congress are playing with Lake Champlain. The problems facing Lake Champlain are important and deserving of resources. Rest assured, I intend to find a way to adequately fund the EPA's Lake Champlain program.

Again thank you for being here today Acting Administrator Johnson. I look forward to your testimony.

Senator INHOFE. Senator Carper.

OPENING STATEMENT OF HON. THOMAS R. CARPER, U.S. SENATOR FROM THE STATE OF DELAWARE

Senator CARPER. Thank you very much, Mr. Chairman. Thanks for having a hearing, and our thanks to our witnesses for being with us today.

We are working on class action reform legislation on the floor, which is something that is of strong interest to me. I am going to be in and out fairly briefly, so I apologize for that. I hope you will understand.

There are many parts of the EPA budget for 2006 that do concern me. I am glad we have the opportunity to consider some of the proposals before us and how they might affect our environment. I also look forward to hearing from our Acting Administrator. What is it like being an Acting Administrator of EPA? Is it everything it is talked up to be?

Mr. JOHNSON. It is a wonderful opportunity.

Senator CARPER. A wonderful opportunity.

[Laugher.]

Senator CARPER. For the record, that is good. I talked to Governor Leavitt from time to time, and I think he is pleased to have

his new opportunity and to give you this opportunity to fill the breach for a while.

I would like to take a moment or two to just address a couple of fronts. One of those deals with the mercury rule. There has been some discussion of the mercury rule of late, and the Clean Water State Revolving Fund. Again, we appreciate your being here to speak and to respond to some of our questions. I will probably ask to submit some questions in writing for the record.

Last week, I believe the EPA inspector general issued a report. I am sure you heard about it. It is one that I, along with a number of members of this committee, requested. It is a fairly lengthy report, and I will just quote from one passage. It says, "Evidence indicates that EPA's senior management instructed EPA staff to develop a maximum achievable control technology standard for mercury that would result in a national emission of 34 tons annually, instead of basing the standard on an unbiased determination." The report also said that the EPA's cap and trade proposal could be strengthened to better ensure that anticipated emissions reductions would be achieved. It went on to state that the proposal does not adequately address the potential for hot spots.

The EPA's response to the draft report merely raised concerns about certain aspects of this report. Considering the fact that nearly every State in our country has issued, including my own, fish consumption advisories due at least in part to mercury-poisoned waters, I just believe the EPA needs to do more than say they simply disagree with the inspector general, and maybe you will have an opportunity today to say more than that.

The inspector general recommended that EPA re-analyze much of their data and analysis, and strengthen the cap and trade proposal by more fully addressing the potential for hot spots, which, if you look at the legislation that Senator Jeffords, legislation that I have introduced for pollutant bills, we both speak to the need to do that.

Moving ahead with the current mercury rule, in my view, would be foolish politically and scientifically, because the rule, I feel, has little credibility. Switching gears, if I could, in the President's fiscal year 2006 budget proposal, the Clean Water State Revolving Fund is dramatically cut. This important program helps fund wastewater infrastructure projects such as sewer rehabilitation and treatment plant expansion. The budget proposal suggests $730 million for this program in fiscal year 2006. That is a reduction of about one-third from the current level. The current level, in my view, was inadequate.

This proposal will hurt cities, big cities. Our biggest city is Wilmington. It will hurt Wilmington. It will hurt little cities as well, little towns, as they try to meet their clean water infrastructure needs, that I believe nationwide are about $200 billion. I feel that the longer we put this off, the worse the problem gets.

Overall, the cuts in the EPA budget and the budget in its entirety represent, in my view, misplaced priorities. No one has fought harder for fiscal responsibility than some of us who serve on this committee. I, for one, would be prepared to support an austere plan if I thought it was a serious attempt to really balance the budget. This budget cuts spending for small, actually successful

programs like the Clean Water State Revolving Fund in the name of deficit reduction, while indulging in huge new expenditures to privatize Social Security and to further extend tax cuts. We just need to come up with a more realistic plan that better reflects American priorities. One of those is a cleaner environment.

Mr. Chairman, thank you.

Senator INHOFE. Thank you, Senator Carper.

Senator Boxer.

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

Senator BOXER. Thank you so much, Mr. Chairman, for this opportunity to be here with you and my colleagues, and to comment on the budget that has been submitted.

Mr. Chairman, EPA's mission is to protect human health and the environment. I have always believed, and the people of California have always believed, it is critically important, perhaps one of the most important things that we do as a government. I think that EPA's proposed budget sends a very different message. That message is not one that I think is welcomed by the people of my State.

We are looking here at a 6 percent overall cut. If we go back to 2004, it is actually a 10 percent cut from 2004. That is less funding than when President Bush came into office, less funding on the environment. Without going back and checking on this, which I will do, I really believe this would be the first time in history that would be the case.

I do not see the commitment to the resources that are necessary to assure the quality of life and clean environment that the American people deserve. It is hard for me to see how in times of rising rates of childhood cancer and asthma and neurological and developmental disorders, decreasing funding to public health and the environment is justified.

As a Ranking Member for the Superfund and Waste Management Committee, I am very concerned about the growing backlog of toxic sites. Internal EPA documents have projected that if funding for Superfund construction projects continues at the current levels, the unmet need will be between $750 million and $1 billion by next fiscal year. The resulting hardship suffered by communities waiting for cleanup dollars is real. Ten million children, Mr. Chairman, live within 4 miles of a Superfund site. Their health and welfare are at risk until they get those toxic sites in their neighborhoods cleaned up.

EPA has admitted that there are unmet needs. In a January 18 response to a letter I sent EPA, Tom Dunne, the Acting Head of the Superfund Program, confirmed that funding was insufficient to start work at 19 projects that were 100 percent ready to go. This is the first Administration that I am aware of that has opposed the polluter fee. What is happening is we see a very small increase in funding over last year, which is insufficient for the backlog, and we see that taxpayers are now picking up the whole freight here, which is wrong. I think polluter-pay is an American value. I certainly know that it is in my State.

Why should Superfund be a priority? I think we have to look at the consequences of failing to fund these sites. The Washington

Post this last Thanksgiving wrote about one example, a site in Omaha, NE, that is heavily contaminated with lead and on a very slow cleanup track. At the Omaha lead site, there are 9,400 children under age 7 living in the affected area of the site and threatened with lead poisoning. Whole neighborhoods were contaminated, so the problem is in thousands of backyards due to a smelter that deposited lead throughout the area.

One of the consequences of the slow pace of cleanup is that several thousand children have high lead levels at the site today. The Washington Post story talks about one child in particular, who lost his ability to talk after exposure to the site. Obviously, this is a tragedy, but we have the power to do something about it. We should make cleanup of these sites a priority, and fund the Superfund program, not fund it at an anemic level, but go out there for the sake of the children and get it done.

Mike Leavitt visited the Omaha site in October while he was Administrator of EPA. He said at the time, "The problem is our pocketbook. Our pocketbook does not stretch across all the places that our heart responds to." Well, if we can have an open checkbook for a foreign war, we ought to have at least a sufficient checkbook when it comes to our children. That is really why I chose to be on this committee, because it is the children who suffer, really. We adults do not have the same impacts from these toxins and these pollutants.

So I would ask unanimous consent that the remainder of my statement be placed in the record. Mr. Chairman, it deals with the cut in the Clean Water State Revolving Fund, which is 83 percent. It is a disaster for my people. The underfunding of the leaking underground storage tanks, which is directly responsible for the MTBE poisoning that is going on, and the pattern that I see here which makes me really question the commitment of this Administration to the public health and the environment.

I certainly hope that we on this committee under the leadership of our Chairman, can work in a bipartisan way to perhaps reverse some of these, let us call it, misplaced priorities.

I thank you very much, Mr. Chairman.

[The prepared statement of Senator Boxer follows:]

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

Thank you, Mr. Chairman. EPA's mission, to protect human health and the environment, is critically important. Unfortunately, EPA's proposed fiscal year 2006—budget along with the Bush administration's never-ending attempts to roll back decades of environmental and public health protections—demonstrates yet again that this administration is not committed to protecting public health and the environment.

The President's 2006 budget request would decrease EPA's funding $452 million, 6 percent, from fiscal year 2005 amounts. This is an $804 million, or 10 percent, cut from fiscal year 2004 amounts. This is less funding than when Bush came into office.

EPA's overall 2006 budget does not commit the resources necessary to assure the quality of life and clean environment that Americans expect and deserve. I do not see how, in times of rising rates of childhood cancer, asthma, and neurological and developmental disorders, decreasing funding to public health and environment programs can be justified.

As ranking member for the Superfund and Waste Management Subcommittee, I am particularly concerned about the growing backlog of toxic sites waiting for cleanup in the Superfund program. Internal EPA documents have projected that if fund-

ing for Superfund construction projects continues at current levels—the unmet need will be between $750 million and $1 billion by next fiscal year, fiscal year 2007.

The resulting hardship suffered by communities throughout the country waiting for cleanup dollars is real. Ten million children live within 4 miles of a Superfund site and their health and welfare are at risk until they get the toxic sites in their neighborhoods cleaned up.

EPA has admitted that there are unmet needs. In a January 18th response to a letter I sent to EPA last October, Tom Dunne, the Acting head of the Superfund program, confirmed that funding was insufficient to start work at 19 projects that were 100 percent ready to go.

Yet despite the growing backlog, the President has substantially scaled back the budget request for fiscal year 06—compared to his requests in fiscal year 05 and fiscal year 04. The President's request has actually dropped by over $100 million compared to last year's request. The need is growing and the request is shrinking—which tells us something about the President's priorities.

Why should Superfund be a priority? I think the answer comes from a look at the consequences of failing to fund these sites. The Washington Post this past Thanksgiving wrote about one example, a site in Omaha that is heavily contaminated with lead and on a slow cleanup track.

At the Omaha lead site there are 9,400 children under 7 living in the affected area of the site and threatened with lead poisoning. Whole neighborhoods were contaminated so the problem is in thousands of backyards due to a smelter that deposited lead throughout the area.

One of the consequences of the slow pace of cleanup is that several thousand children have high lead levels at the site today. The Washington Post story talks about one child in particular who lost his ability to talk after exposure to the site. Obviously, this is a tragedy, but we have the power to do something about it. We should make cleanup of these sites a priority and fund the Superfund program.

Mike Leavitt visited the Omaha site in October while he was Administrator of EPA and he said at the time "the problem is our pocketbook does not stretch across all the places our heart responds to."

I do not believe that we have reached the point, despite our fiscal problems, where we have to allow this kind of threat to continue for years and years. We need to adequately fund Superfund—because the consequences of failing to fund this program are simply not consistent with our values.

Superfund is not the only EPA program to be underfunded.

Overall clean water programs are slashed a drastic $693 million, or 42 percent at a time when EPA estimates that these programs will need $388 billion through 2019. This decrease includes a 33 percent cut for the Clean Water State Revolving Fund and an 83 percent cut in funding targeted to specific projects. This means that money going to local governments to clean up water is gone with no alternative source for funding in sight. This means no funding for critical projects, such as wastewater and stormwater infrastructure improvements; watershed management plans; and combined sewer systems.

Requested funding for Leaking Underground Storage Tanks, which can hold extremely toxic chemicals that can contaminate the ground, aquifers, streams and other water bodies, is at $73 million. Although this is $3 million above fiscal year 2005 funding levels, it is $3 million below 2004 levels, and it is insufficient to address the backlog of 130,000 sites awaiting cleanup. MTBE, which has wrecked havoc with water supplies across the country, has come from leaking underground storage tanks. There are approximately 675,000 tanks across the United States, and more than 445,000 confirmed releases from these tanks as of September 2004, nearly 43,000 of them in California.

I see a pattern here—of decreasing funding to critical water quality and infrastructure programs, as well as decreasing funding to programs that can help prevent the contamination in the first place. This calls into question this administration's commitment to clean and healthy water for all Americans.

A budget that decreases funding for public health and the environment, stops funding local water quality projects, drastically slows Superfund clean-ups, and transfers the burden of cleanups to taxpayers forces me to continue to question this administration's commitment to public health and the environment.

Senator INHOFE. Thank you, Senator Boxer.

Senator Vitter.

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

Senator VITTER. Thank you, Mr. Chairman, and thanks to Mr. Johnson for your visit and testimony today. Certainly, the work of the EPA is vitally important to Louisiana, as it is to all other States. It is one of the prime reasons I worked very hard to get on this committee. I am very excited to be here.

That certainly includes all of the macro issues, some of which previous speakers have focused on. I would also include some very specific Louisiana issues that I would like to follow up on after today. I will mention just a few for your information, to help you focus on it.

Actually, the first bill I passed as a member of the House, which I am very excited about continuing, is Lake Pontchartrain Basin Restoration Program. Lake Pontchartrain is the largest lake in Louisiana. It is the second-largest body of water in the United States after the Great Lakes. It was a major pollution problem in Louisiana for very many years. Through a lot of work, really at the grassroots level, we began to turn the corner on that, through real grassroots community involvement initiatives.

When I came to the House in 1999, I helped us take the next step by sponsoring this legislation, which became law. It set up a specific program within EPA to really get us to the next level through voluntary, proactive cleanup programs that bring all of the stakeholders together, again in a voluntary consensual proactive way, to rally around cleanup programs that help cleanup the lake and the entire Lake Pontchartrain Basin, which is 16 parishes in Louisiana, plus 3 counties in Mississippi.

I am excited about it, first of all, because it obviously affects a big part of Louisiana, but also it is I think a new, positive model for addressing these sorts of concerns around the country, rather than simply dropping tons and mountains of regulation on communities that are an enormous burden, not just for the private sector, but increasingly for the public sector. It brings all the stakeholders together and forms consensus around proactive, voluntary cleanup initiatives. So I commend that to your attention as we reauthorize that and follow up on that.

Another key Louisiana concern I have is Baton Rouge ozone nonattainment. This certainly goes to the Clear Skies initiative as well. Baton Rouge is a severe ozone nonattainment area even as we move from a 1-hour standard to a more stringent 8-hour standard, actually for reasons I am not sure I fully understand, that moves Baton Rouge from marginal nonattainment to severe nonattainment. So that is one of the quirks in present law and present regulations that we all want to help work through. Right now, there is a court-imposed stay in that case, and we all want to work toward a permanent solution that makes sense for citizens in Baton Rouge and for our policy nationwide.

There are other issues, too. Just recently, I read reports that the town of El Dorado, AK has asked EPA to allow a project that would actually allow the dumping of millions of gallons of wastewater into the Washtar River in Louisiana that clearly has a major Louisiana impact. So if that project is approved, it would mean that every

day, 20 million gallons would be dumped into a river that flows through central Louisiana into the Atchafalaya Basin.

So I look forward to working with the Agency on all of the macro issues, as well as specific Louisiana concerns like these three I mentioned. Mr. Chairman, I will submit the rest of my statement, along with some specific questions about those 3 areas of concern, for the record.

[The prepared statement of Senator Vitter follows:]

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

Mr. Chairman, thank you for having this hearing, and, Mr. Johnson, we appreciate your being here today. The work of the EPA is very important in Louisiana, and I look forward to continuing to build on that work.

One of the best examples of the EPA's work in Louisiana is the Lake Pontchartrain Basin Restoration Program. The Lake Pontchartrain Basin is a 5,000 square mile watershed encompassing 16 parishes in Louisiana and 4 counties in Mississippi. Lake Pontchartrain is the second largest lake in the United States after the Great Lakes and its 1.5 million residents make it the most populated area in the state of Louisiana.

In 2000, Congress passed the Lake Pontchartrain Basin Restoration Act, which was my first bill to pass Congress. This program puts Lake Pontchartrain's restoration on the same status as other the restoration of other environmentally sensitive areas in our Nation, such as the Great Lakes and Florida Everglades restoration efforts. In addition, this program also created a partnership between the Federal Government and local stakeholders to further efforts to clean up the lake. The EPA is an active member of the Lake Pontchartrain Stakeholders' Conference and is the chief Federal agency involved in the program.

A great deal has been accomplished since the program began. There has been significant improvement in the water clarity in Lake Pontchartrain. We have seen the return of manatees, pelicans, oysters, clams and blue crabs to the lake. "NO SWIMMING" signs are coming down and beaches are being reopened. There has been an improvement in water quality on the south shore, however the same cannot yet be said of the north shore and the upper basin. Growing suburbs and inconsistent urban planning has dramatically increased pollution as well as affected some sensitive habitats.

The Lake Pontchartrain Basin Restoration Program has made great progress in cleaning up Lake Pontchartrain. We have come so far, but there is still much to be done. Various water-quality studies within the Lake Pontchartrain Basin have been conducted in recent years. While these studies have helped provide solutions to clean the Lake, we must move to the next phase: construction.

I intend to introduce legislation soon that will not only reauthorize this important program but also allow funding to be used for construction much needed watershed projects. I am working with Senator Lott, because Mississippi is an important part of the Lake Pontchartrain Basin, and my colleague from Louisiana, Senator Landrieu, to draft this legislation. I look forward to working with the Chairman and the rest of the committee to reauthorize this important program.

I wanted to bring up another issue important to Louisiana: ozone non-attainment in Baton Rouge. As we move from a 1-hour ozone standard to a more stringent 8-hour standard, Baton Rouge's classification could move from severe to marginal. Yet, under current law, even as that improvement happens, Baton Rouge will still be held to the existing severe restrictions under the old 1-hour standard.

This situation seems inconsistent with the goal of cleaner air and nonsensical. Also, it creates litigation, which is ongoing and continuing to add costs and more delays in work to actually cleaning the air. I think this example proves that there is need for increased flexibility and for more efficiency and cost-effectiveness in cleaning up our air and meeting more stringent standards.

Also, I have read recent reports that the town of El Dorado, AK, has asked the Environmental Protection Agency to allow a project that will dump millions of gallons of wastewater into the Ouachita River in Louisiana.

If this proposed project is approved as proposed, it would mean that, everyday, 20 million gallons would be dumped into a river that flows through central Louisiana and into the Atchafalaya Basin. To have that much waste flowing into this river—a river that is vital to Louisiana's environment, economy, and culture—is unacceptable to us in Louisiana.

Senator INHOFE. Thank you, Senator Vitter.
Senator Clinton.

OPENING STATEMENT OF HON. HILLARY RODHAM CLINTON, U.S. SENATOR FROM THE STATE OF NEW YORK

Senator CLINTON. Thank you, Mr. Chairman.

I want to begin by saying that there are a few bright spots in this budget. I am pleased, for example, that funding for building decontamination research has been restored. That had been zeroed out last year. The request for the Clean School Bus USA Program is up from the fiscal year 2005 enacted levels. I think that is a very good sign, because this program does help school districts retrofit old buses or purchase new ones, in order to reduce children's exposure to harmful particulates.

From a macro perspective, I have to say this budget is disappointing and inadequate. Like my colleagues, I am dismayed about the very deep cuts for the Clean Water State Revolving Fund by $360 million from the fiscal year 2005 enacted levels, to $730 million. If Congress passes this amount, it would be a cut of more than $600 million from the average historical funding level of $1.37 billion per year for the program.

For New York alone, this reduction would mean a cut of $40 million. We know that the water infrastructure gap for the next 20 years is in the hundreds of billions. In New York, we have an aging infrastructure. From the 1990 to 2000 census, we had an increase in population in New York City. This is an incredibly short-sighted cut. On the other end of our State, we have problems with the decision to zero out funding for the Rural Water Programs, which are critical to hundreds and hundreds of small rural systems in New York, and certainly thousands across the country, to help these small communities comply with the law and protect their drinking water. We have to find a way to provide that assistance as well.

I join my colleagues' concerns about some of the policy decisions embedded in this budget document, because after all budgets are value statements, as well as including numbers and statistics. I join my colleague, Senator Boxer, with concerns about the Superfund. I join my colleague, Senator Carper, with concerns about mercury. It really, I have to say, is shocking that the EPA inspector general's report that was requested by Senator Jeffords, I and others, concerning the mercury proposal, found that EPA management ignored the Clean Air Act's requirements. We do not have any other law at this time. There are lots of proposals floating around, but the law is the law, and that is the Clean Air Act.

The direction by the EPA management to the staff to essentially game the mercury analysis so that the reductions would mesh with the expected co-benefits of the clean air interstate rule is absolutely outrageous. It is a slap in the face to Congress. It is a slap in the face to the American public. It is a real detriment to the 1 in 12 American women who already have dangerous levels of mercury in their bloodstream.

It is very troubling, because we need unbiased analysis. We can have arguments about what the best thing to do is. Obviously, the Chairman and I do not agree about what we should do to clean our air. We cannot permit government agencies to provide false and

misleading information. If there were any oversight in this Congress, which there is very little of, we would get answers to this. It is wrong and it is unacceptable.

Let me just mention two other issues very quickly. I worked with the White House in the fall of 2003 to secure an agreement to establish the World Trade Center Expert Technical Review Panel to address continuing concerns about contamination resulting from the collapse of the World Trade Center on September 11. I then worked very successfully with Governor Leavitt to implement that agreement. The panel got underway last March under the chairmanship of Dr. Paul Gilman of the Office of Research and Development. Dr. Gilman did an excellent job, but he has left the Agency and the panel has been without a chairman. I hope, Mr. Johnson, that you will name a new chair of this panel expeditiously, because this is a success story. This is one of those issues where everybody has worked together.

Finally, with respect to the Deutsche Bank demolition, I want to thank the EPA for stepping in and making clear that there were aspects of this demolition that were totally unacceptable. I would hope that the EPA has followed up with the Lower Manhattan Development Corporation to ensure that the suggested changes are made, and that you will continue to work to ensure that any demolition going on in Lower Manhattan is done to the highest standards.

Thank you, Mr. Chairman.

Senator INHOFE. Thank you, Senator Clinton.

Senator Obama.

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

Senator OBAMA. Thank you very much, Mr. Chairman.

First of all, I want to indicate my concurrence with the statements of Senator Clinton and some of the previous speakers. I think there are good elements of this budget, but I am disappointed that we seem to be going backwards instead of forwards in terms of at least our financial commitment to protecting the environment.

I think if there are arguments to be made that some programs are inefficient, as I have already heard from the brief time that I have been on this committee, I am happy to consider how we can make them more efficient. I am not wedded to one particular way of skinning the cat. I am not interested in wasting taxpayer money on programs that do not work.

It strikes me, though, given the magnitude of some of the things that were mentioned by Senator Boxer and Senator Clinton, the notion that we are cutting back on our resources to not only enforce, but also cleanup some of these sites, is troubling to say the least.

I do want to say that I am pleased to see an additional almost $50 million going into Brownfields programs. I think that is something that will benefit communities all across the country. I will be interested in seeing how this program is managed and how it affects areas in the Midwest in particular that I think have been neglected.

I am also happy that the Great Lakes is going to be receiving some additional money to clean up sediment there. I am going to be interested in finding out from the EPA how Illinois is participating in that, how EPA is making decisions about those sites that receive the highest priority. I will take just one example. Waukegan Harbor is an area which used to have a Johns Mansville plant there. There have been consistent reports of asbestos washing up on the beach, big chunks of it. Right now, Illinois EPA has had the beach closed down, but there does not seem to be a clear strategy in terms of how we are going to clean it up. So I am going to be interested in finding out how this Agency intends to work with the EPA, work with the State government to make sure that facility is cleaned up.

With respect to clean water wastewater treatment, I will be interested in an explanation as to why we are cutting this money back. Is this just a matter of every agency having to meet its quota of cuts relative to the overall Federal budget? Or is there some legitimate rationale for these cuts? I have not heard those rationales as well. I will be interested in seeing if there is any good reason for it.

Let me just end by saying this. I really want to emphasize the point that Senator Clinton just made about getting good information. We cannot do our job on either side unless we have good information. It seems as if there may be a trend or a tendency for us to manipulate numbers in order to make political points. It seems to me that there is no room to do that, especially when we are talking about environmental issues in which our children's lives are at stake. So I hope you have some direct response in terms of how we are approaching that, and whether there is something in this budget that reflects some institutional mechanism to prevent that kind of stuff from occurring again.

Senator INHOFE. Thank you, Senator Obama.

Senator Isakson.

Senator ISAKSON. Thank you, Mr. Chairman.

I apologize for being late. I apologize sincerely for missing the testimony. I will defer my questions until later, if that is possible, so I can get caught up.

Senator INHOFE. Senator Thune.

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

Senator THUNE. Thank you, Mr. Chairman.

I, too, would wait until the question-answer time.

Senator INHOFE. That is fine. What I think we will do, we will close our opening statements now for any other members that come, in accordance with our rules. Since we are only going to have one round, Senator Jeffords, without objection why don't we give 6-minute rounds instead of 5-minute rounds.

Senator JEFFORDS. Fine.

Senator INHOFE. That would be all right? All right. We will do that, and we will go back to the early bird rule.

Senator BOXER. Excuse me, Mr. Chairman. Could I just ask you a question?

Senator INHOFE. First of all, we have to get the testimony.

Senator BOXER. I know, but you were talking about one 6-minute round, and that is the end of the questions?

Senator INHOFE. That is what I am talking about, yes.

Senator BOXER. Could I suggest 10-minute rounds, because I think it is kind of hard, if you are going to have a give-and-take, to do it in 6 minutes.

Senator INHOFE. All right. We will have 7.5-minute rounds. We will split the difference.

[Laughter.]

Senator BOXER. Mr. Chairman, you are so generous.

Senator INHOFE. Thank you very much.

Senator BOXER. Your cup runneth over. Thank you.

[Laughter.]

Senator INHOFE. We work well together. Thank you.

Mr. Johnson, you have heard a lot of the comments. You will have a lot of questions to answer, I am sure. We will recognize you at this time to make your statement. Try to stay within your 5 minutes, say 6 minutes. OK?

STATEMENT OF STEPHEN L. JOHNSON, ACTING ADMINISTRATOR, U.S. ENVIRONMENTAL PROTECTION AGENCY; ACCOMPANIED BY: CHARLES E. JOHNSON, CHIEF FINANCIAL OFFICER, U.S. ENVIRONMENTAL PROTECTION AGENCY; BENJAMIN GRUMBLES, ASSISTANT ADMINISTRATOR, OFFICE OF WATER, U.S. ENVIRONMENTAL PROTECTION AGENCY; TOM DUNNE, DEPUTY ASSISTANT ADMINISTRATOR, OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE, U.S. ENVIRONMENTAL PROTECTION AGENCY; ANN KLEE, GENERAL COUNSEL, U.S. ENVIRONMENTAL PROTECTION AGENCY; JEFF HOLMSTEAD, ASSISTANT ADMINISTRATOR, OFFICE OF AIR AND RADIATION, U.S. ENVIRONMENTAL PROTECTION AGENCY; SUSAN B. HAZEN, ACTING ASSISTANT ADMINISTRATOR, OFFICE OF PREVENTION, PESTICIDES, AND TOXIC SUBSTANCES, U.S. ENVIRONMENTAL PROTECTION AGENCY

Mr. JOHNSON. Thank you, Mr. Chairman and members of the committee. I am pleased to be here this afternoon to discuss President Bush's fiscal year 2006 budget request for the Environmental Protection Agency. I am accompanied by Mr. Charlie Johnson, the Agency's Chief Financial Officer, and the rest of EPA's leadership team. We would be pleased to respond to your questions after my brief remarks.

Mr. Chairman, if it would please the committee, I would request that my full written statement be included for the record.

Senator INHOFE. Without objection.

Mr. JOHNSON. Mr. Chairman, as you know, the President has requested a budget of $7.6 billion for EPA and its partners for fiscal year 2006. We are all well aware of the need for discipline in our Federal budget, and this budget request reflects the need to be a good steward of the taxpayers' dollars. At the same time, I am certain that the President's budget will allow us to continue the progress we have made in protecting public health and the environment.

This budget engages the full range of partners, not just Federal, State, tribal and local partners, but also businesses, interest groups

and educational institutions, to help leverage Federal moneys. Let me give you an example. The President's budget contains a request for $15 million for the Clean Diesel Initiative. These funds will be used to expand the retrofitting of diesel engines in new sectors of the economy, such as construction, agriculture, mass transit and the Nation's ports, and in fire and emergency response. These funds are expected to leverage significant additional investments from businesses and other sources to replace older, dirtier equipment, thereby accelerating our efforts to make that black puff of diesel smoke a thing of the past.

The national Clean Diesel Initiative is expected to reduce particulate matter by 1,200 tons, achieving an estimated $360 million in health benefits by reducing premature deaths, heart attacks, chronic bronchitis, and asthma episodes. In fact, through numerous other collaborative networks and partnerships, EPA will be able to leverage millions of additional dollars to improve the Nation's environment.

Mr. Chairman, I would like to highlight just a few programs that illustrate the strong commitment the President is making to a clean and healthier America. First, President Bush is requesting $210 million for the National Brownfields Program, an increase of $46.9 million over the enacted 2005 funding. EPA is working with its State, tribal and local partners to meet its objective to clean up, restore, and revitalize contaminated properties and abandoned sites. These funds, together with the extension of the Brownfields tax incentive, will allow EPA to assess over 1,000 Brownfield properties, and cleanup 60 properties using Brownfields funding. Federal dollars will also leverage 5,000 cleanup and redevelopment jobs, as well as $1 billion in cleanup and redevelopment.

With respect to the Great Lakes, we are proud of our efforts in the Great Lakes region over the past year, including implementation of the President's Executive order calling for a regional collaboration of national significance. As you know, we helped initiate the collaboration with the conveners meeting in Chicago last December, and our work is continuing to develop a plan for protecting and preserving the Great Lakes.

The President's fiscal year 2006 budget increases funding for Great Lakes programs and the regional collaboration to $72 million. That amount includes $50 million for the Great Lakes Legacy Act Program to remediate the contaminated sediment in areas of concern, such as the Black Lagoon close to Detroit, MI.

To help support sustainable wastewater infrastructure, the President's budget provides $730 million to continue capitalization of the Clean Water State Revolving Funds. This investment will allow EPA to meet the Administration's Federal capitalization target of $6.8 billion for 2004 through 2011, and it will enable the Clean Water State Revolving Fund to revolve over time at a level of $3.4 billion per year.

To further address wastewater needs, EPA is supporting a range of voluntary efforts to achieve sustainable infrastructure, such as management improvements, full cost pricing, water conservation, and restoration through our watershed approach. To help ensure that water is safe to drink, the fiscal year 2006 President's budget

requests $850 million for the Drinking Water State Revolving Fund.

The President's budget request also reflects a strong commitment to safeguard human health and the environment, with funds to ensure that EPA's critical role in homeland security remains a top priority. EPA's request includes $79 million in new resources for homeland security efforts. Among priority activities, $44 million will provide tools and training for our largest drinking water systems, and will launch in selected cities a pilot program of monitoring and surveillance to provide early warning of contamination.

Environmental decontamination research and preparedness increases by $19.4 million, with an additional $4 million requested for the Safe Buildings Research Program. Over $11.6 million in new resources will support preparedness for our environmental laboratories.

In summary, this budget will enable us to carry out the goals and objectives as set forth in our strategic plan, to meet new challenges, to move forward EPA's core programs as reflected in the Nation's environmental statutes, to protect our homeland, and to identify new and better ways to carry out EPA's mission, while maintaining national competitiveness.

Before concluding, Mr. Chairman, I would like to just take a moment to thank you and Senator Voinovich for your work on the Clear Skies legislation, which is currently pending in the committee, and to pledge to you and other members of the committee the Administration's best efforts to help you move the legislation forward. The President continues to believe that Clear Skies legislation is vital and we know that States and localities are anxious to have Federal and regional tools to meet the standards we have established under the Clean Air Act.

Of course, EPA will continue to meet its obligations under existing authorities and agreements, but I want to be certain that we are providing the committee with all the assistance necessary to facilitate consideration of this important issue.

Mr. Chairman, thank you again for this opportunity to discuss EPA's budget proposal for fiscal year 2006. At this time, I would be pleased to answer any questions you may have.

Senator INHOFE. Thank you, Mr. Johnson. I will go ahead and start the 7.5-minute rounds.

Let me first of all thank you for responding yesterday to my call. I think Senator Jeffords and I had asked for quite some time for the enacted levels of 2005 so that we could look at that with the 2006 budget. It should not have taken as long as it did, but we do have it now, and we do appreciate finally getting it.

Let me get to just one opening question, because every year we go through this same thing. I know the intentions are good, but in terms of polluter-pays, I would suggest to you that the polluter does pay. We have a system, if we can identify who a polluter is, that polluter pays. I do not know of any exception to that, and I have asked this question before, so maybe something has happened in the last year that has changed this, but I will ask you the question. Can you identify any Superfund site in the past, in the present, or in the pipeline now, when an identifiable and viable

polluter has not been held liable, consistent with the law, for their share of the contamination? Can you just identify one?

Mr. JOHNSON. I am not aware of any one at all, Mr. Chairman. In fact, our policy and our practice is that the polluter pays. That is who we go after. If we can identify a liable party, we go after them. In fact, over 70 percent of the sites are undertaken by the polluter, not by the Federal Government, but by the polluter. That is the person we go after.

Senator INHOFE. I just wanted to get that in the record and clarify that nothing has changed, and that has always happened.

Now, you are going to be grilled by a lot of my colleagues, including myself on some shortfalls in the budget. I would like to talked about reducing the overall budget by $450 million, I would argue a different point here, because it seems like every year, and it happened in the previous administration, the Clinton administration. It has happened every time I have been up here, that there are cuts in programs that you know in your heart are going to be put back in. One is the congressional projects; the other is the State revolving fund. They cut them every year, and they put them back, so you know they are going to be put back.

I would prefer that the Agency go and start making cuts in areas where I think there could be general agreement. We have reams of studies that really have not produced anything at all. One is the Accidental Injury and Inclement Weather: Defining the Relationship and Anticipating the Effects of Climate Change, and an epidemiological study, the Effects of Temperature on Violent Crime. These are things that I think most normal people would say you do not need to be wasting your money on.

So why don't you go out, and I think maybe you need to have the cuts in overall programs, but cut in areas that are serious cuts that you know are not going to be reinstated.

Any thoughts about that?

Mr. JOHNSON. Mr. Chairman, I certainly agree. The EPA is always looking for opportunities to streamline and to take appropriate cuts. In fact, we have identified programs that are both not meeting their intent and not producing results. There is at least one example where one of the programs, the Alaska Native Villages, where there are needs, but through our own assessment, through the performance assessment rating tool that the government is using to evaluate programs, and through the State's own investigation, it was determined that it was an ineffective program, both financially and programmatic. So the budget reflects those kind of cuts.

Second is that certainly with your encouragement, Mr. Chairman, we have made great progress on our grant programs.

Senator INHOFE. Yes, you have.

Mr. JOHNSON. But we have work to do. A part of that work is to take a very close look at all grant funds, particularly the discretionary grant funds, to make sure that those moneys are used for the highest priority activities for the Agency. I think that as we look at those kind of things, we will see additional savings.

Senator INHOFE. Along that line, I would encourage you, and I would like to have your response like now, your willingness to do it, to continue, as I think you just said, that program. We had so

many discretionary grants that we discovered that actually were going straight into 501(c)(4) operations, totally outrageous, as I mentioned in my opening statement.

So there are a lot of areas where we can do it, but I do see this, and again this is not the Republicans or the Democrats. It is everybody. They will cut things that they know are going to come back in. That is not confined to this committee, I might add.

There is something that is important to my State I want to just share with you. The Agency recently proposed a second extension in the compliance deadline for the small oil and natural gas producers to comply with the stormwater rule. What does the Agency plan to do during the new extension period? Further, the Department of Energy recently released a report detailing the underlying costs to the oil and natural gas sector and the Nation as a whole if the EPA goes forward with its rule to require them to have clean water permits for all their stormwater runoff, instead of just contaminated runoff as Congress intended when it passed the 1987 amendments to the Clean Water Act. What is your intention on that?

Mr. JOHNSON. Mr. Chairman, on January 18 of this year, we proposed to postpone the requirements for NPDES permits for stormwater phase II oil and gas construction activities until June 12, 2006. This will provide us with an opportunity to better study the economic, the legal, and procedural issues associated with oil and gas construction activities and NPDES permits.

We have stated that we do intend to propose a rule by the end of September of this year that would lay out what approach we believe we should be taking for these types of activities and these types of facilities. We believe that it is appropriate for us to postpone the requirements while we sort this out.

Senator INHOFE. All right, Mr. Johnson. Thank you.

Senator Jeffords.

Senator JEFFORDS. Yes, I would like to turn your attention to an issue that has raised deep concerns over this country, but most particularly right where we are here in Washington, DC. We are well aware of the damaging impact that mercury can have on human health and environment. According to the EPA inspector general's recent report, during the writing of the mercury reduction rule, EPA senior management purposely ignored the law to benefit the industry.

Let me quote you last week's inspector general's report, "EPA senior management instructed EPA staff to develop a maximum achievable control technology, a MACT, standard for mercury that would result in national emissions of 34 tons annually instead of basing the standard on an unbiased determination of what the top-performing units were achieving in practice as required by the law in section 112."

Do you find this behavior acceptable, and what is the Agency doing to correct this problem and prevent such abuse of the law in the future?

Mr. JOHNSON. Mr. Jeffords, first of all let me state that, as you well know, having confirmed me as the Assistant Administrator for the Pesticides and Toxics Program, I was not in the position that

I am either as the permanent deputy or as the acting. So I, too, had the inspector general's report, and several comments.

One is that there is no disagreement that mercury is a toxic material that must be dealt with. Also, there appears to be no science disagreement that the exposure that we all need to be concerned about for mercury is through the diet, and specifically through fish.

So while there may be aspects of the IG report of process, where there are differences of opinion and that the Agency does disagree with the way the IG has characterized the process, the point is that we are going to be regulating mercury from coal-fired power plants for the first time in U.S. history. Currently, mercury is not regulated, so we are taking steps to make that happen.

Of course, the IG report was issued while we were in the midst of the process of final rulemaking. So for the IG report to say what we will or will not do is certainly premature because we are in the midst of regulating mercury for the first time in U.S. history. So I am sure that there are always process improvements. I have been dealing with regulations of EPA for almost 25 years now, and I always look for those opportunities to improve our process. It is clear that we need to move forward with regulating mercury from power plants, and that is what our focus is and what our final rulemaking is a part of.

Senator JEFFORDS. Do you have any time schedule for trying to get that implemented?

Mr. JOHNSON. Our plan is to by mid–March move forward with our regulation. Of course, our preferred approach, as I commented in my opening remarks, is to see the passage of Clear Skies legislation. We believe that is a much more preferable approach for a number of reasons, not the least of which is certainty and the fact that it applies nationwide. So that is why we are certainly doing anything that we can to help Chairman Inhofe and the committee see Clear Skies passed.

Senator JEFFORDS. Can you explain how a cut of $361 million in clean water infrastructure funds will lead to an improvement in water infrastructure? How will it reduce the spending gap as identified by EPA's gap analysis?

Mr. JOHNSON. Senator Jeffords, you appropriately point out, and it has been commented on by a number of Senators this afternoon that there is a significant gap dealing with clean water across America and aging infrastructure. The Administration made a commitment that we would achieve a Federal capitalization target of $6.8 billion in 2011. When you look at the funds that have already gone into the Clean Water SRF, and then you couple that with what the President's request is for 2006 of $730 million, that meets the Administration's commitment for Federal capitalization target of $6.8 billion in 2011.

You can look at it a number of ways. It also equates to that over time it will evolve at about $3.4 billion per year. In addition to those moneys, obviously Federal moneys, States, local communities, rate-payers, as well as additional voluntary programs that we at the Federal level and a number of Federal agencies and States and local communities also need to support, help to try to achieve a better sustainable infrastructure than what we have.

Senator JEFFORDS. On Monday, December 13, when the President nominated Michael Leavitt for Secretary of HHS, Mr. Leavitt recorded a voice mail that was distributed to EPA employees. That message said that he had a meeting with President Bush where he personally made the decision to move forward on clean air interstate rule, and that the President had made the decision to finalize that rule by March. Is that still the schedule?

Mr. JOHNSON. We are still moving toward that target to finalize the rule. Again, our preferred approach is to see the Clear Skies legislation passed for the reasons I have already stated, sir.

Senator JEFFORDS. The EPA budget contains documents that indicate that the agency intends to reduce its personnel level by 273 employees. Could you explain why this is necessary, whether any parts of the agency have instituted hiring freezes, and whether reductions in force or buyouts will be necessary in the upcoming fiscal year?

Mr. JOHNSON. The approximately 300 FTE reduction that you refer to is over 2 years, both this fiscal year as well as next fiscal year. When I look at what our current FTE level of employees is, we are right where we need to be. There certainly is no agency-wide freeze. I am not aware of any local freezes, if you will, but I certainly would expect that all the managers across all our programs and regions would manage their resources accordingly. So as they hire up to their ceiling, they need to manage to that ceiling.

Senator JEFFORDS. Thank you, Mr. Chairman.

Senator INHOFE. Thank you, Senator Jeffords.

Senator Isakson.

Senator ISAKSON. Thank you, Mr. Chairman.

Just for the 2 Mr. Johnsons. When I say Mr. Johnson, everybody is going to jump.

Mr. JOHNSON. We are unrelated, sir.

Senator ISAKSON. I thank you for coming. Thank you for your testimony. You made a comment with regard to mercury in answering the question from Senator Jeffords. Clear Skies is the first time that we have established targeted goals, I believe a 70 percent reduction, of mercury. That is correct. I applaud the President for his recommendation and you for the encouragement of that, because there is no question that mercury is something that we have got to regulate, and that Clear Skies is clearly an opportunity to have a significant reduction in that over a meaningful period of time.

The second thing, in your written statement, and I am not sure you said this, because you were leaving some of it out, there is a sentence that says, this funding provides additional resources to States in order for them to contribute to the development of this baseline of water conditions across our country, and what you were referring to I believe is a $24 million program in terms of monitoring of water and clean water.

My State of Georgia, and this may be unique only to my State, has more counties than any State in the country except the State of Texas. We have more incorporated municipalities than anybody I think in the world. So we have a lot of governments. Throughout your written testimony, you refer to watershed, rather than government, because water does not pay attention to political boundaries.

Are there any incentive moneys to encourage multi-jurisdictional participation in storm water management, soil sediment erosion control and other water quality issues at the department?

Mr. JOHNSON. Yes, there are. If it pleases the Senator, I would like to invite our Assistant Administrator, Ben Grumbles, who heads up our water program, to give you some specifics. Ben?

Mr. GRUMBLES. Senator, you have hit the nail right on the head in terms of one of the greatest challenges and opportunities, and that is if we truly want to manage our water resources on a watershed basis, it has to be based on both voluntary approaches and incentives, and also working together. The monitoring initiative that you pointed out, the $24 million which is additional funding being requested in the budget, is for States to develop tools to better monitor their water.

It also complements the whole targeted watershed approach that we are trying to achieve. There is a $15 million request in the President's budget, Senator, for collaborations, voluntary innovative approaches to respond to nutrients or invasive species or whatever the challenge is in a particular watershed to try to provide incentives for local groups, governments, local governments, watershed organizations to work together. That includes stormwater, as well as other types of water challenges.

Senator ISAKSON. I commend you for doing that. I was hoping that is what it meant, because in our particular State and in my personal experience, we can move light-years ahead in terms of water quality if we get multi-jurisdictional cooperation within watersheds and have a team approach, rather than some of the problems we have in other areas where one community is directly hurting another community because of an absence of attention and cooperation.

My other comment would not be a question, but it would be to thank the department. How long have you been there, Mr. Johnson?

Mr. JOHNSON. Almost 25 years, sir.

Senator ISAKSON. You were there, then. I will thank you, and I will thank you, Mr. Johnson, on general principles as well. Five years ago, we came to the department to ask for a waiver. The city of Atlanta, as you know, has been a poster child for nonattainment, and we have had significant clean air difficulties. We also had probably one of the dirtiest cleanup jobs known to man, known as the Atlantic Steel plant right downtown. We came to the department and asked for a waiver to allow us to construct a bridge across the dual Interstates 75 and 85 that go through the center of town, to open up that property to development. The department, and Secretary Browner, I think, at the time was the head of the department, granted that waiver.

I would like to tell you what the result of that is today. The bridge is built. Traffic on the Interstate is reduced significantly because it now flows with people going from one destination to another downtown who do not have to get on the Interstate to go there. The dirtiest cleanup site in the State, in fact Atlantic Steel kept a skeleton crew employed and kept the plant open so as not to ever have to clean it up. The new buyers came in, completely replaced all the soil, completely cleaned the entire area up. It has

now been redeveloped into one of the most successful residential, commercial, office, retail and entertainment mixed-use developments in the country.

Five years ago, it was a wasteland and it was regulation that prohibited the cleanup. You all were open-minded, willing to grant that waiver, and I just want to let you know next time you are in Atlanta if you will drive by that, you will be very glad you did it, and we are very appreciative that you did it.

My principle has always been in environmental management that there are best management practices and sometimes what someone might fight is sending a waiver, but it actually can take us to a period of time with far cleaner air and far cleaner water. That is a shining example of it, and we are grateful to you for your work on that.

Mr. JOHNSON. Thank you.

Senator ISAKSON. I yield back, Mr. Chairman.

Senator INHOFE. Thank you, Senator Isakson.

Senator Boxer.

Senator BOXER. Thanks, Mr. Chairman.

Speaking of cleaning up the environment as Senator Isakson did, one of the greatest programs has been the Superfund program. Signed by Jimmy Carter, and actually the fund, the fee was expanded by Ronald Reagan, supported by George Bush's dad, and very strongly supported by President Clinton. This is the first President in history since Superfund not to support the fee.

Now, the fact is for one-third of the sites, you cannot find a responsible party. That is from EPA themselves. So there are polluters who are not paying at all. That is why it is very disturbing to see that the load is falling on the taxpayers, whether they are in Georgia or California or New York or anywhere.

So it is a sad day for us. Of course, we have not seen a slowdown of the cleanups to 40. Under Bill Clinton, it was an average of 80 sites cleaned. There are many of these sites all over the country. New Jersey has most of them, but California, New York and other places all have them.

So this is a serious issue, and one that I am not going to belabor. Obviously, the President does not support the fee, and that is the way it goes. There is bipartisan support for the fee in this committee, not with everyone, but we will be pushing that issue.

My question for you is, one of the problems we have had recently with the Bush administration is that we cannot get the list of the sites. We cannot get the list of what are your priorities, what are the most dangerous sites. Would you make that information available to Senators who may want that information?

Mr. JOHNSON. I am happy to provide information on the sites as we go through our ranking and evaluation.

[The referenced information can be found on page 141.]

Senator BOXER. When will that be?

Mr. JOHNSON. I do not know how quickly we can do this, but let me ask our acting assistant administrator.

Senator BOXER. That would be wonderful.

Mr. JOHNSON. This is Tom Dunne.

Senator BOXER. Mr. Dunne, thank you, because I have had problems with getting information out of EPA on your priority list, and what the most dangerous projects are.

Mr. DUNNE. Senator, what we have is a number of career people, one from each regional office who sits on a risk panel. Every year, generally in the summer, they rank the projects based on health risk.

Senator BOXER. Right. That is what I am interested in.

Mr. DUNNE. That can change from year to year, because as new sites are added, you can fall down the list if you do not have as high a risk. We do not keep a list on a day-to-day basis, but I guarantee you all our decisions have been made.

Senator BOXER. Can you send me your most recent list, then?

Mr. DUNNE. I think we can show you what we have from the last fiscal year.

Senator BOXER. That would be very helpful. What we are interested in, of course, is that your list is going forward. When will that be done? This summer?

Mr. DUNNE. Sometime in the late spring or early summer.

Senator BOXER. Will you make a commitment to get that list to those Senators who want it?

Mr. DUNNE. Sure.

Senator BOXER. Thank you very much. That would be very helpful.

Mr. Chairman, on the Brownfields question. I think all of us really applaud that legislation. I worked on it with Senators Chafee and Smith, and Senator Jeffords and others. What we see is that 490 out of the 755 projects were not funded by EPA. Eleven of those were from my State. So we have many sites that remain idle and dirty, blighting neighborhoods and hampering local development, which is very important. I started out as a county supervisor. We want to be able to utilize these sites. Generally, they are infill. They are close to the cities and they are important economic potential.

My question to you is, how many sites will remain unfunded under your particular proposal, which is a very small increase in this program?

Mr. DUNNE. That is hard to tell. It depends on how many applications we get. Right now, there is a competitive process that is going on for local communities, and organizations have sent in applications. We expect that there will be a few hundred that will not be funded. The list has gone down in the last couple of years as community groups and developers understand the complexities of dealing with contaminated land. While it started out 2 years ago, in the first year of Brownfields, with over 1,000 applications. Last year, I believe it fell to about 700. The last figure I heard was it is falling further this year.

Senator BOXER. How many sites are not going to be cleaned up?

Mr. DUNNE. Sites, we could take a look at the number of sites.

Senator BOXER. Could you get me that information, please, as soon as possible?

Mr. DUNNE. We have issued actually a market report that came out in the last couple of months that is a very frank analysis of all

contaminated sites as best as we can estimate. That is underground source, Brownfields.

Senator BOXER. So you can get me that information?

Mr. DUNNE. It is a book that we will be happy to send your staff.

[The referenced information can be found on page 140.]

Senator BOXER. Please, if you would do that right away.

My other question on leaking underground storage tanks, one of the most serious threats to the nation's groundwater. It can hold extremely toxic chemicals that can move rapidly through soil. We know that MTBE, that presents a substantial risk to health and environment and economic growth. There are 670,000 underground storage tanks in the United States and 160,000 in California; 437,000 are leaking; 42,000 in California. Cleanups have slowed down by over 20 percent in recent years.

I am concerned. Since there is, in my understanding, a trust fund for the cleanup of these tanks, and my understanding of the information I have, looking at the unspent money, it is over $2 billion. So in face of the 130,000 needed cleanups, why did the Administration fail to request additional funding from this special reserve, which is collected specifically to clean up leaking underground storage tanks?

Mr. JOHNSON. Senator Boxer, we will have to get back to you for the record.

[The referenced information can be found on page 136.]

Senator BOXER. Mr. Chairman, thank you very much for giving me 7.5 minutes. I am glad, because the fact is I am not getting answers to these questions, and they are very important to me. So please, as soon as we can, this is key to economic development. It is key to the health of our people, the health of our kids. We will work closely with you.

Mr. Chairman, I thank you very much for this opportunity.

Senator INHOFE. Thank you, Senator Boxer.

Senator Thune.

Senator THUNE. Thank you, Mr. Chairman. I also appreciate the testimony of the Johnsons. I feel very at home, being from South Dakota, being surrounded by Johnsons.

[Laughter.]

Senator THUNE. I appreciate your testimony and your responses to these questions. I am also interested in a number of the programs that are under this committee's jurisdiction. I would point out, and correct me if I am wrong, that when the Superfund tax or fee expired in 1995, that there was not a request for it to be reinstated under the Clinton administration at a time when the Democrats controlled both the House and the Senate. Actually, that would be prior to 1995. I guess that is right. We had the Congress by then. In any event, the point being that the Clinton administration did not request an increase or the reinstatement of that fee.

The other thing I guess I would point out, and I think it is important, is that we have some issues in South Dakota with respect to Superfund sites, too, sites that have been for the most part cleaned up, almost complete, anyway. We have received a considerable amount of funding, and in most cases there are situations where you cannot identify a responsible party. That was the case

with one of the mines in South Dakota. I think it is a program that has been used effectively to do some very successful cleanup sites.

The same thing is true with respect to Brownfields. I was just noting the increase, as I understand the numbers here, in Brownfields funding, the Administration has requested $210 million for the Brownfields Program, an increase of $46.9 million over the enacted 2005 funding level, which is, if my arithmetic is correct, about a 28 percent increase in funding for that program, which I do not think is inconsequential in light of where the overall budget numbers are this year and the constraints that we have to live under.

I look forward to working on these issues. These are issues that will fall under the jurisdiction of our subcommittee, and I look forward to working with the Senator from California, who I think has since left, on these issues that are important to her State as well.

A couple of points with respect to issues that I have particular concerns with in South Dakota, one being, and I appreciate your agency's help regarding the tier II sulfur issue. I am hopeful that we can work together to find a solution to the issue in Pierre and Fort Pierre, SD. That is a community that is divided by a river, but because of complications that have come up regarding the geographic phase-in area, fall under different regulations and different standards, which does not really make any sense if you understand at all the geography of South Dakota. So I look forward to working with you, and would appreciate your assistance on that matter.

The other concern I would like to express is having to do with the clean water SRF program. Based on my calculations, South Dakota would lose roughly $3 million compared to the funding that it received last year. Clearly, Congress continues to fund this program at a higher level than the Administration supports. I think that has been demonstrated historically, largely due to the overwhelming needs not only in my home State of South Dakota, but across the country.

If you look at South Dakota, 50 percent of the assessed rivers and 84 percent of the assessed lakes are designated as having impaired water quality. The leading sources of water pollution include erosion, agricultural runoff and non-point source pollution.

Now, having said that, we did I think some significant good work in the Farm Bill in 2002 in improving. In fact, there was a piece of legislation I introduced on the House side which was incorporated in the Farm Bill called the Conservation Security Program, which is designed to provide incentives for farmers on farmable lands to practice conservation. It is an incentive-based program. I hope that we can continue to move incentive-based approaches when it comes to cleaning up our groundwater in places like South Dakota.

Of course, the CRP program has been very successful, not only with respect to erosion, but also in wildlife production, something that is also important in my State. The EQI Program, the Environmental Quality Incentive Program, is also something that has been fluffed up significantly in the 2002 Farm Bill. Those programs are all I think having a very positive impact. What we are talking about here is the Clear Skies legislation, and I am hopeful that we

can continue to make progress toward cleaning up our water and cleaning up our air.

In coming back to the whole question of the SRF, that is a program that has been used significantly by a lot of States. South Dakota, I know in my experience, has made considerable good use of that program. I guess I am just curious to get your reaction about what the rationale was for the reduction in that particular area of the budget.

Mr. JOHNSON. Yes, sir. As we looked at the Clean Water SRF and looked at the funding that was provided in 2004 and 2005, we reflected on the Administration's commitment to, one, have a revolving fund that would both have a Federal capitalization target of $6.8 billion in 2011, and achieve around a $3.4 billion per year revolving amount. As we calculated those numbers to achieve that commitment, in light of the commitments made last year and the year before—this year, the number is $730 million.

So when you take and calculate that out through now and 2011, it honors that commitment. Obviously, we are in a fiscally restrained budget, but it was important, because this is an important area for States and local communities, but it was also important to honor our commitment.

Senator THUNE. I expect I am going to be hearing from my Governor, as well as our Department of Environment and Natural Resources in South Dakota as they begin to pore over this budget. As I said earlier, Congress has demonstrated an inclination, a willingness in the past to plus-up the Administration's budget in that regard. It is a program that has been very well used by the States, and I think done some very good things with respect to cleaning up the environment.

On that note, thank you again for your testimony and I look forward to working with you and this committee as this process moves forward.

Mr. Chairman, I yield back.

Senator INHOFE. Thank you, Senator Thune.

Senator Clinton.

Senator CLINTON. Thank you, Mr. Chairman.

Mr. Chairman, just 2 points to clarify the record. Every Clinton budget post–1995 assumed the reinstatement of the polluter-pay tax, and in fact the Administration consistently supported reinstating the polluter-pay tax. Unfortunately, there was not much appetite for doing that in the Congress. Second, with respect to Senator Isakson's point, it is my understanding that EPA does control mercury coming out of incinerators. We have had recognition of the control of mercury for quite some time. We have just never taken it to the stage it needs to be moved foward, which is to control the emissions from dirty power plants.

Mr. Johnson, let me ask you specifically, when do you think a new Chair will be named for the World Trade Center panel?

Mr. JOHNSON. Senator Clinton, first of all, thank you for your kind remarks with regard to the effort by Dr. Gilman and others on the World Trade Center, an important topic for all of us, and to do what we all need to do to address that situation.

Since we are in the midst of the President looking for an Administrator for EPA, and also there are several key positions that we

are actively looking for highly qualified individuals, including the Assistant Administrator for our Office of Research and Development, while that process is going on, I have asked Tim Oppelt, who is the director of our Cincinnati lab who oversees all of our research in homeland security, if he would serve as an interim Chair for this upcoming meeting, and then report back to me directly so that the important progress that we have made thus far will continue.

Senator CLINTON. Thank you very much.

Mr. JOHNSON. I also made a conscious decision that rather than waiting for people to be in positions, that I thought it was important for us to move forward with having our next panel meeting. So we have announced that we are having our next panel meeting on February 23. Mr. Oppelt will be filling in to chair that for me, reporting directly back to me, so that we can move forward with the important progress.

Senator CLINTON. Thank you very much. I know that my constituents appreciate that as well.

Mr. Johnson, with respect to the Deutsche Bank Building, has the EPA followed up with the Lower Manhattan Development Corporation to ensure that the suggested changes that EPA made with respect to the technical considerations about the demolition, has that been followed up with the Lower Manhattan Development Corporation?

Mr. JOHNSON. Our Region II office out of New York, as you are well aware, was following this and in fact were the ones who were instrumental in achieving what you had said. I am not sure whether that follow-up has or has not occurred.

Senator CLINTON. Could you get back to me on that?

Mr. JOHNSON. I would be happy to get back to you for the record.

Senator CLINTON. I think it is important. There was a great cheer that went up from Lower Manhattan when the EPA set forth its concerns. I would like to keep getting you good press in Manhattan.

Last August, I wrote to the EPA to ask for attention to a Title VI claim that had been filed by the Syracuse University public interest law firm on behalf of a group called the Partnership for Onondaga Creek, a grassroots community group including neighborhood residents from blocks where Onondaga County plans to build an above-ground sewage plant. I was very pleased to learn, after I sent my letter, that EPA contacted the claimants to indicate that a review of the claim had begun. Can you tell me when the review of this claim will be completed? Can you get back to me with that information? I see someone nodding who looks very knowledgeable back there.

Mr. JOHNSON. We have Ann Klee, who is our General Counsel. Since she was the one who was nodding, come up to the table. Ann.

Ms. KLEE. Senator Clinton, we are reviewing the document. We just received it and we expect to have it finalized, I would say, shortly, probably within a month. I think the deadline is March 17, but I could be wrong on that.

Senator CLINTON. Great. Thank you. That will also be good news to my constituents.

Mr. Johnson, usually we have expected in the Congress every 4 years a report on the reduction and deposition rates of acid rain, the National Acid Precipitation Assessment Program report. The last report was in 1998. When can we expect this report to be delivered to the Congress?

Mr. JOHNSON. Senator, let me ask Jeff Holmstead, who is our Assistant Administrator for Air and Radiation.

Mr. HOLMSTEAD. Senator, what I can tell you is that there is a draft of that report that is undergoing review right now. I think it is actually produced by the Office of Science and Technology, and we have been one of the agencies that have been reviewing it. It is actually the subject of pretty intense scrutiny by a lot of science agencies. So what I can say is that it is undergoing review. I do not know exactly what the timeframe is, because it is not our document, but I do know that folks in my office have been looking at it, so I would assume it would be out relatively soon.

Senator CLINTON. It would be helpful to have it on a fast track since it is somewhat overdue, if we were to keep the 4-year schedule. I appreciate that.

Finally, Mr. Johnson, last week when CEQ Chairman Connaughton testified before this committee about Clear Skies, he said at that time that the Administration had not taken a position with respect to S. 131. You have made several references in your testimony today to Clear Skies. Are you indicating that the Administration has made a decision to endorse and support S. 131?

Mr. JOHNSON. No, do not misunderstand from my comments. Obviously, the President submitted Clear Skies legislation now 2 years ago, and we know through Chairman Inhofe's leadership that markup is next week.

Senator CLINTON. So you were using that as a sort of generic?

Mr. JOHNSON. I was using that as a generic, that certainly we support Clear Skies legislation. The President put a proposal on the table. I know that there will be a markup next week and we look forward to seeing the results.

Senator CLINTON. Could I ask you specifically, with respect to the fact that we are having a markup next week, section 407(J) of S. 131 includes a provision that carves out exemptions from current Clean Air Act requirements for 4 entire source categories, more than 70,000 units. This removes these units from Clean Air Act regulations for hazardous air pollutants, including carcinogens like benzine, probably carcinogens like formaldehyde and other nasty things like arsenic. I asked Mr. Connaughton whether the Administration specifically supported that provision and whether the EPA had produced estimates of how many facilities would qualify for exemptions under this provision, and whether there had been any modeling about potential health impacts of those exemptions.

Mr. Connaughton said he would get back to me with answers, which he has not yet done, but I think the committee needs answers to those questions. I do not see how we can proceed with a markup next week on a piece of legislation that creates such a big carve-out that could have deleterious health impacts. So could we expect to get answers before our markup next week?

Mr. JOHNSON. I will have an answer for you, yes.

Senator CLINTON. Thank you.

Mr. JOHNSON. I will also point out that the analysis for the air program activities, particularly as we get into modeling particulate and all the rest, are very intensive, and in fact take weeks to accomplish.

Senator CLINTON. Thank you.

Senator INHOFE. Thank you, Mr. Johnson.

Senator Murkowski.

Senator MURKOWSKI. Thank you, Mr. Chairman.

Well, it is budget time, and I have been since Monday, I think, humming that Rolling Stones tune, You Don't Always Get What You Want, but if you try real hard you just might get what you need.

I want to talk about something that we need in Alaska. The proposal before us now is a two-thirds cut in the EPA funding to bring safe water and wastewater disposal to Native villages in the State. In fiscal year 2005, we funded this program at $45 million, but for 2006 we are looking to set this funding at just $15 million. I guess if we had, with regard to this program, received a small increase or no increase at all, like so many of the other domestic discretionary programs have, I could understand, but the two-thirds cut of the money that EPA is spending to really alleviate third-world conditions that remain in so many of our Native villages I think is something that we really need to closely scrutinize.

As we look at what we have been able to accomplish up in the State through the construction of the sanitation villages, we know for a fact that it reduces infant mortality. We know for a fact that it reduces the incidence of disease. The Indian Health Service makes this point every year to the Committee on Indian Affairs on which I sit. The section of the President's budget on Indian Health Service again reiterates the importance of this.

What we have seen with this program over the years, we have in terms of the percentages of homes in rural Alaska now with running water and sewer, we have seen an increase. In 1995, we were at 51 percent of the homes in our villages that had running water and sewer, up to 77 percent in 2003. That is the latest year for which the data is available. As we look to the contributions in terms of the communities, these are not sizable communities. These are villages. We are at approximately 135 villages now with active projects. This is 135 out of the 231 federally recognized Alaska Native villages that are currently receiving the funding. So we have over 200 of our villages that have received funding under this program, the benefits extending to close to 95,000 Alaskans.

As I understand the reason for this cut was not necessarily to help with the deficit, but it was more out of a controversy between EPA and the State of Alaska in terms of a disagreement about how well the program is operating, a concern that may have been presented before this previous Administration at the State level, concerns relating to deficiencies in EPA's management. I can understand why some in OMB might think that this program is ineffective, but when it comes right down to the individuals and to the communities, the people in rural Alaska do not believe it is ineffective.

We view this as a program that will eliminate the honey bucket, and for people that do not know what honey buckets are, they are five-gallon buckets where people put their waste. The only way that you can dispose of that waste is to walk out your front door and walk down to a community central disposal, or down to the lagoon. You slop the stuff on the ground, amungst the kids and the dogs. This is happening in this century in the United States, in my State. We need to continue the progress that we have had.

If EPA and the State have differences or disagreements as to how we operate the program, let's work that out, but let's not penalize the Alaska Natives that are living in this village.

I want to know that we can work with you on this. I do not know if you have had an opportunity to come and visit the State. Secretary Thompson when he was the Secretary, really made an effort every single summer to come up to the State and visit some of the most remote places in the State to really get a sense of what is going on. I would invite you to do the same.

I want to make sure that we are able to truly eliminate the issues of disease, of infant mortality, that come about when we in this very primitive way are disposing of our waste. If we could even continue the village safe water funding that we had at the 1995 levels, we would be able to complete the agreed-upon State EPA project list in 3 years. If we do not, we are going to wait for at least an additional 8 years to get minimal water and sewer in to these villages.

So I wanted to take this time to stress to you that it is not an experimental program that does not have clear results. It is not fancy. In most of these villages, people get their water by going to a central well somewhere, and again taking their five-gallon bucket, hopefully not the same one that has been used for other things, but it is a very primitive system. It is the best we have at this point in time, and we want to be able to continue that progress.

So I am asking for a receptive ear. I am asking for you to work with us on this.

The other portion of our funding is coming from USDA and we are seeing cuts there as well, so these are very real issues for us in the State. I hope that you are going to work with us.

Mr. JOHNSON. Absolutely. Senator, I certainly look forward to working with you and certainly have our commitment. There is real need there, and so we certainly want to help you and certainly help the Alaska Native villages in whatever way we can. I think, as you have already said, as we look through a number of important budget issues, we were faced with in this case, and we have an IG report. We also have a program assessment rating tool or an evaluation of the performance. In spite of some of the good progress that has been made, it was not matching up and we were not able to fully demonstrate the results. So I certainly look forward to, and you have my commitment for the agency to work with you so that we can strengthen the program, get the kind of results and most importantly, meet the needs.

Senator INHOFE. Thank you, Mr. Johnson. I appreciate that commitment.

Let me advise my colleagues that we have 10 minutes left on the first of several roll-call votes. I will stay here until they have con-

cluded their questioning, but if you can cut it short we can all three make these votes.

Let me go ahead though and get something in the record I think is important. It is my understanding that the IG report on mercury spoken of earlier was extremely poor quality, and the IG's office criticized the FACA process for failure to even ask a cross-section of members whether they agreed with the IG's conclusion, which apparently they did not. I wanted to have that into the record.

We will recognize Senator Obama.

Senator OBAMA. Thank you, Mr. Chairman.

Mr. Johnson, I am going to have to be quick. I understand I have 4 minutes, so if we could keep the responses brief. Something very specific to Illinois, and that is Waukegan Harbor, I mentioned earlier. Can you tell me how the decision making with respect to the Great Lakes Legacy money is going to be allocated, and what do we need to do as members of the Illinois delegation to make sure that the case is made with respect to Waukegan? How can we make sure, and then how can we get an assurance from you that Waukegan is going to get its fair share of those dollars?

Mr. JOHNSON. You certainly have my commitment that everybody will have the opportunity to get its fair share. There is a priority-setting mechanism. Let me ask Ben Grumbles, who is very familiar with that system.

Mr. GRUMBLES. Senator, what we are going to do is follow the statutory criteria that are laid out in the Great Lakes Legacy Act. The focus is on, I think we have about 14 proposals so far, but the focus is on a couple things. One is areas of concern, of which there are 31 areas of concern in the Great Lakes. Another one is risk. What is the risk-benefit analysis, what can we do working with our partners to reduce the risk and to get environmental results?

Another important criterion is the statutory cost-sharing, 65 percent Federal, 35 percent non–Federal. So those are some of the factors, but it is spelled out and our Great Lakes National Program office is tracking it far more closely than I can. I can certainly commit to work with you and your interests in Waukegan Harbor.

Senator OBAMA. I would appreciate that.

Senator INHOFE. Senator Thune is presiding. Excuse me.

Senator OBAMA. OK. If you can ensure that your office contacts whoever it is that our office needs to talk to to make sure that this is moving down the pipeline, I would appreciate that very much.

The second question, which is related, has to do with homeland security and protecting our water supply. I know that it has not been discussed yet, but my understanding is there is a substantial boost in funding for protecting the water supply. Obviously, there are cities like New York and Chicago that are of particular concern as targets generally with respect to homeland security. When I met with the upcoming Secretary of Homeland Security, I talked to him about that.

How is the selection process going to work with respect to these pilot programs? Are you in the process of making guidelines for that?

Mr. GRUMBLES. Senator, we are in the process of developing guidelines. My understanding is that we will be selecting several

cities. We will not publicly disclose the identity of those cities, similar to the BioWatch Program.

Senator OBAMA. I understand.

Mr. GRUMBLES. The points you are making about population and risk in largely populated areas are very much a part of the discussions about the guidelines for this new Water Sentinel Program to monitor for contaminants in distribution systems.

Senator OBAMA. I recognize the need to not fully disclose the approach here, but is there going to be any means by which Senators, Congressmen, legislators have some sense of how this money is being spent?

Mr. GRUMBLES. Since this is a new program and funding is being requested for the first time in the fiscal year 2006 President's Budget, there will be a lot of opportunity for us to provide guidance that explains our thoughts to you and all members of this committee as well as the appropriations committees.

Senator OBAMA. I would be interested in follow-up from your office on that.

Thank you, Mr. Chairman.

Senator THUNE. Senator Lautenberg.

Senator LAUTENBERG. Thanks.

Mr. Chairman, first the unanimous consent request that my opening statement be put in the record as if read.

Senator THUNE. Without objection.

[The prepared statement of Senator Lautenberg follows:]

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

I have significant concerns about the President's budget request for the Environmental Protection Agency. I understand the difficult choices we have to make, but from my perspective, the President's EPA budget will not meet our responsibility to protect human health and the environment.

Perhaps nothing illustrates this better than the President's request for the Superfund Program, which would be cut by $100 million. Superfund is already strapped for cash. The cut in next year's budget comes on top of a 35 percent cut in funding over the last decade.

Mr. Chairman, Superfund is not just about a few select States. It affects the entire country. One out of every 4 Americans lives within 4 miles of a Superfund site and 10 million of those are children. The Washington Post ran an article a few months ago reporting on a visit by former EPA Administrator Mike Leavitt to a Superfund site in Omaha, NE. As with so many others, that clean-up is barely moving. At a news conference, Samantha Bradley, a feisty 8-year-old, confronted Administrator Leavitt. She felt the government was ignoring her and her family and the health risks they faced. Samantha said, "If the president or the mayor lived in this neighborhood, they'd probably get it cleaned up like that." The President's EPA budget leaves Samantha and many other children across the county behind.

Mr. Chairman, I have many other concerns about this budget request. For instance, there isn't sufficient funding for the nation's water infrastructure, which is overwhelmed and allows billions of gallons of untreated sewage to flow directly into our rivers. This is a serious public health issue and now is not the time to be cutting back on this program. Given the current rate of sewer overflows, within the decade our rivers will resemble the cesspools many of them were in the 1970's. We must stop this backward slide.

I could go on and on, but I'll stop here to stay within my allotted time. It looks like we have a lot of hard work to do to restore adequate funding for crucial programs that protect the health of our children and the environment. Thank you, Mr. Chairman.

Senator LAUTENBERG. Thanks, Mr. Chairman.

Since there is very little time available, I will try to get to a couple of things that are of particular interest. I would again ask that

the record be kept open, Mr. Chairman, so we can submit questions in writing and that the witnesses will be instructed to respond to those.

Senator THUNE. Without objection.

Senator LAUTENBERG. On a local problem, Mr. Johnson, and I thank both of you, the Johnsons, for being here and for testifying. Mr. Johnson, you have been a long-time EPA person, and I was a long-time EPA person, but I graduated to freshman.

[Laughter.]

Senator LAUTENBERG. Over 2 weeks ago, I wrote a letter asking that the agency help break a deadlock between Ringwood, NJ and EPA over how many properties to test for toxic contamination. This small community of a few hundred resident properties in Ringwood. Can we be assured that all of these sites will be tested so that we can get on an assessment and a decision about how we get this community cleaned up?

Mr. JOHNSON. If I could ask Tom Dunne to quickly come to the microphone and give you a status update.

Mr. DUNNE. Senator, I have not seen that particular letter on that particular community, I don't believe. We are planning on in fiscal year 2006, as we are in 2005, to continue to do the preliminary assessment site investigations on all sites that come to our attention. That has fluctuated over the years. Currently, it is 500 for this year, and I believe it is going to be 500 for 2006. So I will talk with the Region II office and reply to your letter.

[The referenced document can be found on page 149.]

Senator LAUTENBERG. This has been lingering for some time, and I would ask that you proceed with it as quickly as possible. I am anxious to get a response to that.

Mr. Johnson, I do not know whether to refer to you as Johnson I or Johnson II.

Senator LAUTENBERG. Anyway, the question was discussed here briefly about Superfund and how we would continue cleanup programs. It is pretty hard to see quite how we do it. You did respond to the Chairman, Senator Inhofe, about his interest in making certain that no polluters were let off the hook and so forth. However, isn't it true that before a decision has been made, finalized, to identify a polluter and get on with this work, that there are often lots of lawsuits that those technically responsible get into, trying to direct blame elsewhere or delay the process? Is that so?

Mr. JOHNSON. Certainly, that is my experience, but that is also the life at EPA.

Senator LAUTENBERG. We do not want life at EPA to be cut short.

Mr. JOHNSON. Yes. I think in fairness, that there are some responsible parties who acknowledge that they are, and they step up to the plate and they do the appropriate thing, obviously working through. Then there are others that want to take the litigation route.

Senator LAUTENBERG. Right. So as a consequence, we wind up with these orphan sites and they have to be treated out of the trust fund, and that is diminishing, the pace for cleanup has slowed down considerably. Would you acknowledge that?

Mr. JOHNSON. The pace has slowed down in one sense, but also the sites have significantly changed over the years, from the early days of Superfund where the sites were fairly small, were fairly circumscribed. The contaminants maybe were 1 or 2 chemicals. Now, they are multiple, multiple acres and very complex.

Senator LAUTENBERG. But there is also a question of funding, is there not?

Mr. JOHNSON. Well, for each of our issues there is always a question of funding. Again, as we look at——

Senator LAUTENBERG. Could we cleanup more sites if we had more money? Do we have the capacity to do it?

Mr. DUNNE. Yes, I think so, Senator.

Senator LAUTENBERG. I don't mean to cut you short.

Mr. DUNNE. We have been open for 2 years in terms of what has not been funded by site. Last year, I went public very early in the year, as soon as we knew what our limitations were, and there were 19 sites that were ready for construction that could not make it, and we saw another 15 coming down the pipeline that were in some kind of a design phase that we thought would be eligible. So I think that is a fair statement.

Senator LAUTENBERG. Because time has run out and red lights here mean what they do on the street, and that is you speed up when you see a red light.

[Laughter.]

Senator LAUTENBERG. In 2004, 265 Brownfield sites were granted funding. It is estimated that are somewhere over 500,000 sites. I expect to have a long life. I am just getting started with things, so if we divide 265 into 500,000, it could take a long time, and by then I should probably be back to my senior status on the committee.

[Laughter.]

Senator LAUTENBERG. Thank you very much. Thank you, Mr. Chairman.

Senator THUNE. I thank the Senator.

I thank our witnesses. I would also make one point of clarification for the record. I had said earlier that President Clinton did not seek to reinstate the Superfund fee. The Senator from New York, who would know, correctly pointed out that he did in his budgets include that proposal to reinstate the fee. She was right and I was wrong, so I thought I would point that out for the record.

Thank you all very much. This hearing is adjourned.

[Whereupon, at 4:20 p.m. the committee was adjourned, to reconvene at the call of the chair.]

STATEMENT OF HON. STEPHEN L. JOHNSON, ACTING ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY

Mr. Chairman and Members of the Committee, I am pleased to be here to discuss the Fiscal Year (FY) 2006 budget request for the Environmental Protection Agency (EPA). The President's fiscal year 2006 budget request of $7.6 billion reflects a strong commitment to protect human health and safeguard the environment. This includes moving forward EPA's core programs as reflected in the nation's environmental statutes. This request will also ensure that EPA's critical role in homeland security is made a top priority.

Mr. Chairman, the Agency has accomplished a great deal. We have cleaned the water, improved our air and protected and restored our lands. While the nation's

environmental well being has shown a steady improvement, there is more to do. Much of what remains is enormously complex and more expensive.

Bringing a healthy environment to our communities is a responsibility we all share. Engaging the full range of partners—not just Federal, State, tribal, and local but also businesses, interest groups, international and regional authorities and educational institutions—leverages our Federal moneys through collaboration. New science, innovation and technology development, regulation, and market-based solutions that support these efforts are all a part of this budget request.

This budget, Mr. Chairman, will enable us to carry out our goals and objectives as set forth in our Strategic Plan and help us to meet our challenges. It supports the Administration's commitment to environmental results by identifying new and better ways to carry out EPA's mission while protecting our national competitiveness.

HOMELAND SECURITY

Three years ago we took on significant new responsibilities in homeland security work that was necessary to protect human health and the environment from intentional harm. In fiscal year 2006 we are taking another big step toward filling the gaps we've identified. EPA's request includes $79 million in new resources for critical homeland security efforts. EPA plays a lead role for addressing the decontamination of deadly chemical, biological and radiological contaminants. The nation must have the tools and procedures in place to respond effectively and swiftly to another terrorist event.

One of our most important homeland security responsibilities is to protect our drinking water supply. Forty Four million dollars will launch pilots in cities of various sizes to explore technology and systems that detect contamination before it causes large scale harm. The program includes resources to create the Water Alliance for Threat Reduction to train and prepare our nation's drinking water systems operators throughout the country.

Response to terrorist events may call for decontamination from many new hazards. Environmental decontamination research and preparedness increases by $19.4 million, and an additional $4 million is requested for the Safe Buildings research program. Over $11 million in new resources will support preparedness in our environmental laboratories. Working with Federal partners in Homeland Security, EPA will plan for certain fundamental laboratory network needs, such as appropriate connectivity between member labs and standardized methods and measurements for environmental samples of terrorism-related agents of concern. Resources also support training and continuing education for member laboratories, as well as accreditation and accountability.

CLEAN AIR AND GLOBAL CHANGE

The fiscal year 2006 President's Budget requests $969 million to implement EPA's Clean Air and Global Climate Change goal through national programs designed to provide healthier outdoor and indoor air for all Americans, protect the stratospheric ozone layer, minimize the risks from radiation releases, reduce greenhouse gas intensity, and enhance science and research. EPA's key clean air programs particulate matter, ozone, acid rain, air toxics, indoor air, radiation and stratospheric ozone depletion address some of the highest health and environmental risks faced by the Agency. Also in this area, I look forward to working with you Mr. Chairman, in passing Clear Skies legislation.

Clean fuels and clean technologies are also an integral part of reducing emissions from mobile sources. The fiscal year 2006 President's Budget provides $15 million for the Clean Diesel Initiative. EPA and a coalition of clean diesel interests will work together to expand the retrofitting of diesel engines into new sectors by adopting a risk-based strategy, targeting key places and working with specific use sectors to identify opportunities to accelerate the adoption of cleaner technologies and fuels. The $15 million proposed for this program will be leveraged significantly by working with our partners. Reducing the level of sulfur in the fuel used by existing diesel engines will provide additional immediate public health benefits by reducing particulate matter from these engines.

EPA's Climate Protection Programs will continue to contribute to the President's 18 percent greenhouse gas intensity reduction goal by 2012. A fiscal year 2006 funding initiative for the Climate Change Program is the Methane to Markets Partnership a United States led international initiative that promotes cost-effective, near-term methane recovery and use as a clean energy source. The program provides for the development and implementation of methane projects in developing countries

and countries experiencing economic transition. This initiative also has the opportunity to significantly leverage our proposed funding.

CLEAN AND SAFE WATER

In fiscal year 2006, the budget requests $2.8 billion to implement the Clean and Safe Water goal through programs designed to provide improvements in the quality of surface waters and drinking water. In fiscal year 2006, EPA will work with States and tribes to continue to accomplish measurable improvements in the safety of the nation's drinking water, and in the conditions of rivers, lakes, and coastal waters. With the help of these partners, EPA expects to make significant progress in these areas, as well as support a few more focused water initiatives.

In fiscal year 2006, EPA will work with States to make continued progress toward the clean water goals through implementation of core clean water programs and acceleration of efforts to improve water quality on a watershed basis. Efforts include innovative programs spanning entire watersheds. To protect and improve water quality, a top priority is to continue to support water quality monitoring to strengthen water quality data and increase the number of waterbodies assessed. The Agency's request includes $24 million to build on the monitoring initiative begun in fiscal year 2005 by establishing a nationwide monitoring network and expanding the baseline water quality assessment to include lakes and streams. The initiative will allow EPA to establish scientifically defensible water quality data and information essential for cleaning up and protecting the Nation's waters. The funding provides additional resources to States in order for them to contribute to the development of this baseline of water conditions across our country.

To support sustainable wastewater infrastructure, EPA will continue to provide significant annual capitalization to the Clean Water State Revolving Funds (CWSRF). The budget provides $730 million for the CWSRF, which will allow EPA to meet the Administration's Federal capitalization target of $6.8 billion total for 2004—2011 and enable the CWSRF to eventually revolve at a level of $3.4 billion.

During fiscal year 2006, EPA, the States, and community water systems will build on past successes while working toward the fiscal year 2008 goal of assuring that 95 percent of the population served by community water systems receives drinking water that meets all applicable standards. To help ensure that water is safe to drink, the fiscal year 2006 President's Budget requests $850 million for the Drinking Water State Revolving Fund.

LAND PRESERVATION AND RESTORATION

$1.7 billion of the fiscal year 2006 President's Budget will help to implement the Land Preservation and Restoration goal through continued promotion of the Land Revitalization Initiative, first established in 2003. Revitalized land can be used in many beneficial ways, including the creation of public parks, the restoration of ecological systems, the establishment of multi-purpose developments, and the establishment of new businesses. Regardless of whether a property is an abandoned industrial facility, a waste disposal area, a former gas station, or a Superfund site, this initiative helps to ensure that reuse considerations are fully integrated into all EPA cleanup decisions and programs. Through the One Clean-up Program, the Agency will also work with its partners and stakeholders to enhance coordination, planning and communication across the full range of Federal, State, tribal and local cleanup programs to promote consistency and enhanced effectiveness at site cleanups.

The fiscal year 2006 President's Budget funds the Superfund Appropriation at $1.3 billion. Within this total, the Superfund Remedial Program provides significant resources in EPA's effort to preserve and restore land to productive use. In fiscal year 2006, the Superfund Remedial Program will continue its clean-up and response work to achieve risk reduction, construction completion and restoration of contaminated sites to productive use. In fiscal year 2006, the Remedial Program anticipates completing construction of remedies at 40 Superfund sites.

Enforcement programs are also critical to the agency's ability to clean up the vast majority of the nation's worst hazardous sites by securing funding from Potentially Responsible Parties (PRPs). The Agency will continue to encourage the establishment and use of Special Accounts within the Superfund Trust Fund to finance cleanups. These accounts segregate site-specific funds obtained from responsible parties that complete settlement agreements with EPA and total a cumulative $1.5 billion. These funds can create an incentive for other PRPs to perform work they might not be willing to perform or used by the Agency to fund cleanup. As a result, the Agency can cleanup more sites and preserve appropriated Trust Fund dollars for sites without viable PRPs.

HEALTHY COMMUNITIES AND ECOSYSTEMS

The fiscal year 2006 President's Budget requests $1.3 billion to implement national multi-media, multi-stakeholder efforts needed to sustain and restore healthy communities and ecosystems, which are impacted by the full range of air, water and land issues. Programs such as Brownfields, the Great Lakes collaboration and the targeted watersheds work must reflect local priorities and local stakeholder involvement to be effective.

Proper use and careful selection of chemicals and pesticides influence air quality, clean water and the health of the land. Carefully targeted research is necessary to keep the Agency at the forefront of the science that will point to tomorrow's concerns as well as tomorrow's solutions.

Fiscal year 2006 will be a key year for the chemicals and pesticides programs. The High Volume Production chemicals program will move from data collection to first-time screening for possible risks. Many of these chemicals entered the marketplace before the Toxics Substances Control Act was passed and EPA's screening process was put in place. Fiscal year 2006 also marks the final milestone in the 10-year pesticide tolerance reassessment program, which ensures older food-use pesticides meet the latest scientific standards for safety.

The Brownfields program is a top environmental priority for the Administration. EPA is working with its State, Tribal and local partners to meet its objective to sustain, cleanup and restore contaminated properties and abandoned sites. Together with the extension of the Brownfields tax credit, EPA expects to achieve the following in fiscal year 2006: assess 1,000 Brownfields properties; cleanup 60 properties using Brownfields funding; leverage an additional $1 billion in cleanup and redevelopment funding; create 5,000 jobs; and train 200 participants, placing 65 percent in jobs related to the Brownfields efforts.

There is great population and industrial pressure on the areas surrounding our large water bodies—the Great Lakes, the Chesapeake Bay, the Gulf of Mexico, and our wetlands in general. EPA has established special programs to protect and restore these unique resources by addressing the vulnerabilities of each.

The Great Lakes program will build on collaborative networks to remedy pollution, with a budget proposal to increase funding for the Great Lakes Legacy program to $50 million in order to remediate sediment that was contaminated by improperly managed old industrial chemicals. Chesapeake Bay resources in this budget total over $20 million. EPA's work in the Chesapeake Bay is based on a regional partnership whose members have committed to specific actions aimed at reducing both nutrient and sediment pollution. Wetlands and estuaries are increasingly stressed as coastal population density grows. The fiscal year 2006 budget provides over $40 million for our work to protect these ecosystems. Again, effective collaboration is key to protecting these primary habitats for fish, waterfowl and wildlife. Our work with the Corps of Engineers will be instrumental in protecting these valuable natural resources.

Toxic chemicals reduction is also the emphasis of Community Action for a Renewed Environment project. The requested increase of $7 million will offer many more communities the opportunity to improve their environment through voluntary action. EPA expects to establish 80 CARE programs across the Nation in fiscal year 2006, building on experience gained from 10 projects started in 2005.

In the research area, over $5 million is requested for the Advanced Monitoring Initiative. This initiative will combine information technology with remote sensing capabilities, to allow faster, more efficient response to changing environmental conditions such as forest fires or storm events, as well as current ecosystems stressors in sensitive areas such as the Great Lakes or the Everglades. EPA also continues to make progress in the area of computational toxicology. In fiscal year 2006, the program expects to deliver the first alternative assay for animal testing of environmental toxicants, a major milestone toward the long-term goal of reducing the need for animal testing. Other major research efforts include human health risk assessments, which will inform agency regulatory and policy decisions, and research for ecosystems, which will emphasize evaluating the effectiveness of restoration options.

The President's Budget also includes $23 million for a new competitive State and Tribal Performance Fund. The Performance Grant Fund will support projects that include tangible, performance-based environmental and health outcomes—and that can serve as measurement and results-oriented models for implementation across the Nation.

COMPLIANCE AND ENVIRONMENTAL STEWARDSHIP

The fiscal year 2006 President's Budget requests $761 million to implement national programs to promote and enforce compliance with our environmental laws, and to foster pollution prevention and tribal stewardship. The Agency will employ a mixture of effective inspection, enforcement and compliance assistance strategies. Also within this goal, EPA will protect human health and the environment by encouraging innovation and providing incentives for governments, businesses, and the public to promote environmental stewardship. In addition, EPA will assist federally recognized tribes in assessing environmental conditions in Indian Country, and will help build their capacity to implement environmental programs.

The Agency's enforcement program works with States, tribes, local governments and other Federal agencies to identify the most significant risks to human health and the environment, address patterns of non-compliance, and work to ensure communities or neighborhoods are not disproportionately exposed to pollutants. This flexible, strategic use of EPA's and our State and tribal partners' resources brought over 1 billion pounds of pollution reduction in fiscal year 2004, and helps to ensure consistent and fair enforcement.

EPA also strives to foster a culture of creative environmental problem-solving, not only with our State, tribal and Federal partners but also with industry, universities and others. The result is a high capacity for implementing collaborative results-driven innovations and the organizational systems to support them. One hundred forty two million dollars supports pollution prevention and other efforts to improve environmental performance, looking at the full range of possible interventions that would reduce waste created, reduce highly toxic materials in use, and reduce the energy or water resources used. These changes also make good business sense, often improving "the bottom line" for participating companies.

Agency resources for tribal programs support their environmental stewardship through a variety of means in every major program: air, water, land and others. In the Compliance and Environmental Stewardship goal, General Assistance Grants develop tribal capacity to implement environmental programs in Indian Country in line with local priorities. In fiscal year 2006, EPA will support approximately 510 federally recognized tribes through these grants.

EFFECTIVE MANAGEMENT

Throughout its operations, EPA is working to maximize effectiveness and efficiency, implementing new information technology solutions and streamlining operations. The research and development areas, for example, will see changes geared toward maximizing the effectiveness and relevance of applied research throughout the Agency. Continuing to improve internal controls and accountability is another priority. Fiscal year 2006 marks the next phase in our financial systems replacement which will enhance our internal systems. For our work with external partners, the Exchange Network and the Integrated Portal will provide the foundation for States, tribes, the public, regulated community and EPA to increase data availability, collect better data and enhance the security of sensitive data.

Finally, EPA is making our grant programs work better. We are using new tools to help us achieve our goals: increasing competition for discretionary grant awards, making grants more outcome-oriented to meet Agency performance goals, strengthening oversight and accountability and providing more transparency to promote an open process.

RESPONSES BY STEPHEN L. JOHNSON TO ADDITIONAL QUESTIONS FROM SENATOR INHOFE

COMPLIANCE

Question: While I support the Administration's call for and increase in funding for EPA Compliance Assistance Centers and Compliance Incentives, nearly half a million dollars was redirected from Compliance Assistance to Compliance Monitoring. With monitoring funding already significantly increasing, wouldn't helping entities comply with often confusing environmental statutes be a better investment of taxpayer dollars?

Answer: Compliance assistance is a valuable tool EPA uses to improve the regulated community's compliance with environmental regulations. Compliance Assistance works in conjunction with Compliance Incentives, Monitoring, and Enforcement programs. EPA's FY 2006 request includes an increase of nearly $900,000 in contracts and grants and nearly 2.0 FTE for compliance assistance activities over the FY 2005 enacted operating plan. The increase will improve and expand local state-specific information (e.g., state regulatory requirements) available in new and existing Centers.

The Agency's Office of Enforcement and Compliance Assurance reallocated workforce-related funds (payroll, travel and other expenses) across program/projects in the FY 2006 Request to ensure that these resources are distributed equitably across all program/projects. The funds moved out of the Compliance Assistance program did not negatively impact the program nor reduce the level of compliance assistance being provided to the regulated community.

GRANTS

Question: Grants oversight continues to be a major priority for this Committee, and the public should have as much information as necessary to apply for EPA grant programs and opportunities. The U.S. Government Accountable Office released a report on February 3, 2005, (GAO-05-149), that I requested pursuant to continued oversight in this area, finding that EPA continues to include incomplete information in the Catalogue of Federal Domestic Assistance on grant opportunities largely due to incorrect information in the EPA's internal data systems. How is the agency responding to this report and going to correct this problem?

Answer: In response to the GAO report, EPA has established an Agency-wide work group to revamp the Catalogue of Federal Domestic Assistance (CFDA) process. By April 30, 2005, we expect to has a revised process that

ensures CFDA program descriptions are accurate and complete and provide current information to the public on Agency funding priorities. With regard to the data quality issues raised by GAO, we have initiated an internal review of the Agency's Integrated Grants Management System (IGMS). Additionally, a contractor will perform an independent review of IGMS that should be completed by the end of the year.

WATER

Question: EPA has been working with state rural water associations to coordinate with local officials, farmers, and ranchers to develop locally supported and operated watershed protection programs. Do you agree that the program produces real results and could be utilized throughout the country?

Answer: Congress has provided funding to the National Rural Water Association (NRWA) from FY 2000 through FY 2005. The grants help fund local source water protection plans and protection actions to implement those plans. The work is already national in scope with 32 source water specialists working in 300 project areas in 32 states.

Over time, most communities should be reaching the state-defined substantial implementation level, which is the strategic target for these programs in EPA's 2003- 2008 Strategic Plan.

Question: How can the EPA and the Committee work together to promote programs like these?

Answer: EPA works to carefully and fully implement congressionally mandated projects. EPA, states, and utilities in collaboration with a broad range of Federal and non-federal stakeholders are working to develop sustainable source water protection programs at the state and local levels. States and localities have great flexibility to structure programs and coordinate resources. EPA has responsibility for collaborating with sister programs and agencies within EPA and across the federal government to demonstrate that such coordinated efforts can achieve those separate program and agency goals while at the same time achieve protection of America's drinking water sources.

Question: With the Department of Homeland Security developing the Homeland Security Information Network, what do you see as the future for the water ISAC?

Answer: Providing timely, actionable information to water utilities is extremely important to prepare for and respond to intentional attacks against our critical water infrastructure. For more than three years, EPA has been assisting drinking water and wastewater utilities, and supporting organizations, with efforts to protect critical facilities, improve techniques for detecting intrusion or contamination, and enhance response and recovery in the event of a malevolent act. As part of our efforts, the WaterISAC has served as an important communication mechanism for reaching the industry through the highly secure WaterISAC web portal, and recently through the Water Security Channel e-mail notification system that reaches almost five thousand additional water utilities.

Over the past year, the Department of Homeland Security (DHS) has begun an initiative to expand the services of the Homeland Security Information Network (HSIN) for the nation's critical infrastructures, including water. EPA is involved in and supportive of efforts to test HSIN's capabilities and adapt it to meet the needs of the water sector. In order to better coordinate activities, with support from DHS, the water sector recently formed a Government Coordinating Council and Sector Coordinating Council. Members of both the water sector Government Coordinating Council and Sector Coordinating Council are building a site on HSIN to determine how best to design the system and its features to meet the information needs of the sector.

The WaterISAC is entering a transition phase, as the HSIN is being tested and adapted for use by the water sector. While the HSIN platform (hardware and software) is being offered by DHS as a cross-sector information-sharing platform, it remains the responsibility of the sector to develop and manage content, define access requirements, and manage the user network. We envision that the WaterISAC, or a similar entity, will continue to be needed to provide these management and administration functions to make the HSIN portal effective and tailor it to meet the critical security information needs of the water sector. We are working closely with the sector to ensure there is no gap in the information sharing services that the WaterISAC provides during this time of transition.

Question: Can you please provide the Committee with an update on the SPCC program and how the Agency will address issues raised by myself and stakeholders about the ability of small facilities to comply as well as how you intend to clarify what is expected of stakeholders?

Answer: The Spill Prevention, Control and Countermeasure (SPCC) program was established by regulation in 1974, and it was amended in a July 2002 final rule. Subsequent to the 2002 revision several parties filed litigation. All issues except a challenge of the definition of "navigable waters" were resolved in a settlement completed in March 2004. However, many additional concerns were raised to EPA's attention outside the litigation, and EPA decided

that an extension of the compliance dates for the July 2002 rule was warranted to allow the Agency to address them in guidance and in further regulatory changes.

In August 2005, EPA plans to issue SPCC technical guidance to its regional inspectors to clarify expectations for their review of SPCC plans during inspections. It will be made publicly available through EPA's website also for the benefit of facility owners and their professional representatives. This guidance should help ensure consistency in National implementation and provide facility owners and operators greater understanding of the flexibility available to them for compliance with SPCC requirements.

In addition, also in August 2005, EPA plans to propose targeted changes to SPCC requirements for "certain" (i.e., smaller) facilities and oil-filled/electrical equipment, as was indicated in the September 2004 "Notices of Data Availability" (NODA) published in the Federal Register. Work is underway now to define these smaller facilities and to develop and assess options for streamlining SPCC compliance by these facilities. Parallel work is being done to develop options for modifying secondary containment requirements for oil-filled and electrical equipment. EPA expects to complete these actions by issuing a final rule in advance of the current compliance date for SPCC plan revisions, which is February 17, 2006.

Finally, EPA plans to propose a rule revision in June 2006 to address an array of other SPCC issues. This rulemaking should add some precision to particular SPCC requirements. For example, EPA expects to propose a regulatory definition of "loading rack." Also, EPA plans to propose changes to the subsection of the rule that applies to Animal Fats and Vegetable Oils, and we will likely propose additional fine-tuning changes to address other issues and concerns that have been brought to the Agency's attention.

PERCHLORATE

For nearly 10 years, EPA and other federal agencies, as well as states, tribes, water suppliers and the private sector, have been studying perchlorate and its effects on human health. EPA has done two risk assessments. The last one was reviewed by the National Academy of Science because of EPA's controversial use of science. In its review, the NAS panel unanimously and resoundingly concluded that the EPA risk assessment was seriously flawed. EPA has since revised their policy to more accurately reflect the correct scientific interpretations on perchlorate. However, rarely before has EPA science been so completely and so fundamentally discredited.

Question: How much was spent by EPA on the studies/science that lead to the discredited result on perchlorate?

Answer: EPA's direct research expenditures on perchlorate are provided in Table 1. Additional EPA funding was provided for the two independent peer review panels (1998, 2002) and the NAS committee, including associated document preparation costs. The NAS review was funded by EPA, NASA, DOD and DOE. A number of data analyses were conducted by EPA staff in the Office of the Research and Development to support the draft risk assessments and final IRIS value. In addition to EPA funding for perchlorate science, the principal funding sources for perchlorate research have been the defense industry (through a consortium under the Perchlorate Study Group; PSG) and the Department of Defense. This sponsorship includes the majority of the rodent studies upon which EPA had based its draft recommendation, and the subsequent human studies relied on by the NAS and ultimately EPA.

Question: Why was the result/science so far off of the NAS conclusions?

Answer: Compared to other well studied chemicals, there was not a lot of data on perchlorate. Health assessors had a limited available literature base on which to develop the human health risk assessment. Further, EPA's external review draft had already undergone two expert peer reviews by panels compromised of academicians, risk assessors, and toxicologists that provided independent expert critique of the Agency's science. The 2002 external peer review panel had concurred with EPA's draft conclusion on the key event, conceptual model, and approach to the RfD derivation. This external expert advice differed from the NAS conclusions, illustrating that good scientists can, and do, differ on the interpretation of the available science. The NAS panel relied on human studies in the development of the key quantitative risk values, while EPA's scientists were more comfortable in relying on many more studies in laboratory animals as the basis for the same calculations in the 2002 draft assessment. In this case, the use of the human data by the NAS panel made a considerable difference in the final recommendations. It is important to note that the 2002 peer review also suggested a synthesis of the new human data to inform the point of departure, expressed divergent opinions on the veracity of the rat brain morphometry changes, and suggested revised uncertainty factors based on these recommendations. These activities were undertaken in the lead up to the NAS review.

Question: Where in the chain of command was there a breakdown leading to such a flawed result?

Answer: There were complex and controversial science issues raised after the second 2002 expert peer review. This document development process,

consisting of external review of draft reports provided for both expert and public review, helps to ensure a quality scientific product. This is the process that good science follows and in which EPA has been a leader. Based on the science generated through this process, the peer review and stakeholder comments, and the NAS review at its conclusion, EPA issued its first "finalized" reference dose of 0.0007 mg/kg/day in 2005 and entered this on the IRIS database.

Table 1: EPA Perchlorate Research Expenditure: Study Description	**Expenditure** (in Thousands)	**Start Date**
External peer review of "Perchlorate Environmental Contamination: Toxicological Review and Risk Characterization Based on Emerging Information (External Review Draft)"	$90.0	Feb 1999
Peer Review of the U.S. Environmental Protection Agency's Draft External Review Document "Perchlorate Environmental Contamination: Toxicological Review and Risk Characterization"	$100.0	March 2002
Perchlorate interactions with soils and organic materials to determine the stability and sorption parameters of perchlorate to selected soils and organic sorbants.	$19.0	Sept 2002
Fate and transport of perchlorate in a contaminated site in the Las Vegas Valley: Investigation of the influence of biological degradation and sorption on the fate of perchlorate, and modeling of the transport of perchlorate in the Las Vegas Wash.	$317.0	Aug 1999
Distribution of potential sources of perchlorate in the high plains regions of Texas (Texas Tech. University Water Resources Center) to establish the extent of perchlorate in groundwaters in or near the high plains.	$630.0	---
Contaminant occurrence data collection and analysis under the Unregulated Contaminant Monitoring Rule (UMCR) to determine the extent and distribution of perchlorate contamination in drinking water.	$500.0	Jan 2001

Accumulation of perchlorate in tobacco plants and development of a plant kinetic model to quantify the translocation of perchlorate from roots to shoot.	$60.0	Jan 2002
Accumulation of perchlorate in young head lettuce to determine the extent of accumulation of perchlorate by lettuce grown in sand and greenhouse conditions.	$60.0	Sept-Nov 1999
Toxicological research to characterize the risk of perchlorate exposure in an animal model of marginal iodine deficiency.	$100.0	Aug 2003
NAS review of Draft External Review Document "Perchlorate Environmental Contamination: Toxicological Review and Risk Characterization"	$1,000.0	First meeting, Oct. 2003

SCIENCE

Question: Late last year, it came to my attention that EPA was moving ahead with revisions to the IRIS database with regard to formaldehyde without the benefit of the latest science which was being undertaken by the National Cancer Institute. EPA has again revised their position and indicated that they will wait on the IRIS update until the study by NCI is complete. However, I continue to be concerned with EPA's recent "Ready, Fire, Aim!" approach to science. We spend millions of dollars directly and through grants on science programs at EPA and there is a perception that policy conclusions made in advance may be driving science instead of the other way around. What do we need to do to guarantee that taxpayer money is wisely spent at EPA and what will it take for the public to do we need to do to fix what is wrong with the science at EPA?

Answer: EPA rigorously applies the Administration's R&D criteria to ensure the soundness of the agency's scientific efforts. The quality of EPA's science is ensured through peer review. The relevance of EPA's science is maintained by regular interaction with other EPA programs. Performance of EPA's research is monitored through tracking of annual performance commitments and evaluated through independent, expert review. Results of such tracking and evaluation are then used to make appropriate adjustments to future research efforts. The Environmental Protection Agency has a strong program of scientific research and development. Nevertheless, we can always improve, and EPA has incorporated advice from outside organizations such as the National

Research Council (NRC). In its 2000 report, "Strengthening Science at the U.S. Environmental Protection Agency," the NRC provided a number of useful recommendations for enhancing science at EPA. The measures that the Agency has taken in response to "Strengthening Science" go a very long way toward addressing the recommendations of the NRC report, and since 2000, EPA has made significant and substantial achievements in strengthening its science programs.

Upon arriving at EPA, former Administrator Whitman commissioned a task force to identify ways to strengthen the scientific and economic bases of our policies and decisions at EPA. The task force concurred with the need for an Agency Science Advisor. Administrator Whitman asked that the Office of Research and Development increase the role of EPA's scientists in the development of Agency policies and regulations, and it has succeeded in doing so. In addition the Agency's Information Quality Guidelines ensure that all scientific and technical information disseminated by EPA meets high standards for quality, and conforms to OMB's new bulletin on peer review.

Peer review of scientific and technical work products is an important aspect of high quality science, and we have taken several major steps to support and strengthen EPA's peer review policy. But proof of a policy's value lies in its implementation, and here also EPA has been very active to ensure that our peer review policy is not only understood across the Agency, but is applied rigorously across EPA's program and regional offices. At EPA external peer review is the method of choice. Nearly 90 percent of our scientific and technical work products receive internal or external peer review (the remaining 10 percent were products that were deemed, usually because of their repetitive or routine nature, not to be candidates for peer review), and about 80 percent of those we submit for external review.

The Science Advisor chairs EPA's Science Policy Council (SPC), a cross-agency committee of senior managers charged with developing policies that guide Agency decision makers in their use of scientific and technical information. In recognition of the rapid advances in the field of genomics since initial sequencing of the human genome, the SPC has developed an interim policy on the use of genomics data as supporting information for Agency assessment and regulatory purposes. The SPC has also reconstituted the Council on Regulatory Environmental Modeling, which among other things has developed guidance for developing and using environmental models. Because sound decisions need to be based on sound data, we also have established a Forum on Environmental Measurements to promote consistency and consensus within the Agency on measurement issues. Most recently, the SPC has begun to develop an EPA framework on the environmental applications and implications of nanotechnology.

It is important that EPA's scientific research and development be integrated with and responsive to the Agency's regulatory needs and that they be independent and of the highest quality. EPA has taken major steps to assure that it carries out its science program in a manner that assures all these requirements are met.. These steps have included open, transparent, and peer reviewed research planning; competitively awarded extramural research grants; independent peer review of science publications, assessments, and documents; and rigorous peer review of EPA's research laboratories and centers.

Science along with other relevant factors informs and supports EPA's policy and regulatory decisions. Implementation costs and technological feasibility, local autonomy versus federal control, and justice and equity – all of which impact our quality of life and standard of living – are among the considerations that need to be factored into EPA's decisions without compromising scientific integrity, the Agency's mission, or statutory mandates. The impacts or limitations of these non-science factors, as well as the current state-of-the-science, will influence how scientific considerations are brought to bear on environmental decisions facing the Agency.

RESPONSES BY STEPHEN L. JOHNSON TO ADDITIONAL QUESTIONS FROM SENATOR JEFFORDS

1. LAKE CHAMPLAIN

Question: In 2002 the President signed into law the Great Lakes and Lake Champlain Act. In this year's budget, the President has asked for a funding increase to implement the Great Lakes Act. This is the third year in a row that the President has managed to ask for funds to implement the Great Lakes section of this Act, but not managed to ask for funds to support Lake Champlain.

Does the Administration and EPA believe that protecting Lake Champlain is a priority? If not, why not?

Answer: Since the passage of the Lake Champlain Management Committee after the passage of the Lake Champlain Special Designation Act (1990), EPA has invested millions of dollars and thousands of hours working on restoration efforts on Lake Champlain. Both Regions One and Two have staff dedicated to Lake Champlain, with part-time assistance from others. In addition to the annual request in the President's Budget, EPA provides additional funding, each year to address Vermont water quality and other environmental issues, much of that benefiting the Lake Champlain Basin.

Question: And if so, can you explain why no additional funds have ever been requested since the Great Lakes and Lake Champlain Act became law?

Answer: As stated above, EPA fully supports restoration and protection efforts in Lake Champlain, as reflected by our 2006 request of almost $1 million and the dedication of significant staff time. Competing priorities across the Federal Government present a challenge but we would be happy to work with you and your staff to ensure the most effective use of available funds.

2. WATER INFRASTRUCTURE

Question: By cutting federal water infrastructure funds aren't we simply shifting the financial burden of maintaining our infrastructure to states, municipalities, and ratepayers?

Answer: Financing for wastewater infrastructure has been, and will continue to be, a partnership between EPA, other Federal agencies, state governments, and local communities. The Administration believes its requests for the CWSRF represents a substantial investment in needed infrastructure improvements.

In FY 2004, the President's Budget presented a long-term plan to address national water infrastructure needs, which included an extension of federal funding of the CWSRF until 2011. The Bush Administration's commitment to provide $6.8 billion over 2004-2011 represents a $5.1 billion increase over the commitment of the previous Administration. EPA's FY 2006 request continues to support that long-term plan.

3. WATER INFRASTRUCTURE

Question: Does the Administration believe that water infrastructure is a priority? If not, why not? Is the Clean Water SRF a "core water program?"

Answer: Yes. The Administration believes that water infrastructure is a priority. The Federal government has made a substantial investment in the nation's wastewater infrastructure systems. From 1960 through 1990, the federal government provided about $60 billion in direct project grants to municipalities for system upgrades to at least secondary treatment. Since 1987, the majority of federal support, $23 billion, has been to capitalize permanent, state-managed revolving loan funds to help support sustainable wastewater infrastructure.

Today, wastewater treatment systems financed by this considerable Federal investment provide Americans with significant benefits by reducing water pollution and protecting critical watershed areas. As a result of these investments, the number of people served by wastewater systems which provide at least secondary treatment has more than doubled since the mid-1960s.

The FY 2006 proposed budget supports the Administration's commitment to continue making progress toward clean water goals through the Agency's core clean water programs. The Agency recognizes that in addition to fiscal approaches, addressing national infrastructure needs requires complementary Federal, state, and local actions and innovations.

4. LEAD IN WATER

Question: Has the Agency reviewed lead testing results from all of the states to identify any situations similar to what occurred in Washington, D.C.? Are there any other locations where similar problems have emerged and what actions have the Agency taken?

Answer: A summary of the data posted on EPA's website in late June 2004 showed that 88 of 2,758 (3.2%) utilities serving more than 3,300 people had exceeded the action level for monitoring periods ending after January 2003. We

RESPONSES BY STEPHEN L. JOHNSON TO ADDITIONAL QUESTIONS FROM SENATOR BOXER

GENERAL BUDGET QUESTIONS

Question: Mr. Johnson, in your testimony you detail how the administration is increasing funding for air, water, global climate change, homeland security, etc. But in the President's fiscal year 2006 budget, funding for U.S. Environmental Protection Agency is decreased more than $450 million, of 6 percent, from fiscal year 2005 levels.

Please detail for me what programs this administration is cutting, the amount of each cut and the changes that this will necessitate in the program.

Answer: The major difference between the 2005 enacted level and the 2006 President's Budget is accounted for by Congressional earmarks. All other decreases are reflected in the attached list of program projects.

BUDGET FIGURES QUESTION

Question: Mr. Johnson, the budget justification that the U.S. Environmental Protection Agency provided to Congress on Monday does not contain up-to-date or adequate budget figures. In fact, the figures for 2005 are the President's requested amounts.

When we received outdated figures last year, EPA stated that it was because the appropriations bill was only passed three weeks prior and that it did not have its operating plan completed. That is not the case here – the 2005 appropriations bill was passed two months ago and EPA staff have confirmed that EPA's operating plan is complete and at OMB.

In fact, the OMB's EPA budget documents contain more recent figures, estimates for fiscal year 2005. It is our understanding that these are based on EPA's operating plan. Then, February 8, EPA provided more extensive figures to some, but not all, members of the committee. Notably, these figures do not match OMB's.

Mr. Johnson, given that the information is clearly available, why did not, or does not, EPA provide it to us in its documents so that we have the information and time that we need to fully assess the President's budget request?

Answer: At the time of the Congressional Budget submission, the Environmental Protection Agency (EPA) was still finalizing our detailed enacted

budget. In addition, EPA's practice under the VA, HUD and Independent Agencies Subcommittee has been to release the enacted budget information after the figures have been approved by the Appropriators. With the proposed adoption of a timely 2006 enacted budget, we anticipate being able to accelerate the time to release the enacted appropriations numbers.

Question: Why are you providing information to only some members of the committee?

Answer: The Agency is committed to providing timely and accurate data to the committee. We will make every effort, dependent upon the timing of the enacted budget, to avoid this situation in the future.

Question: Why don't EPA's figures agree with OMB's?

Answer: As you have correctly noted, OMB furnished account-level information and, for selected programs, estimated figures for FY 2005. EPA's enacted figures by program project for FY 2005 are now final.

Question: Have you been told not to provide that information to us or to provide it to certain members only?

Answer: The Agency has not been advised to withhold information nor to provide information to select members.

Question: Will you provide the most recent figures to us immediately?

Answer: The following table details EPA's program project data comparing FY 2005 enacted budget numbers to the Agency's FY 2006 President's Budget Request.

Program Projects by Appropriation
(Dollars in Thousands)

Program Project	FY 2005 Enacted	FY 2006 PresBud[1]	Delta
Acquisition Management	**$41,942.40**	**$43,768.50**	**$1,826.10**
EPM	$22,713.80	$23,054.60	$340.80
LUST	$340.70	$346.50	$5.80
SF	$18,887.90	$20,367.40	$1,479.50
Administrative Law	**$4,889.90**	**$5,109.10**	**$219.20**
EPM	$4,889.90	$5,109.10	$219.20

Alternative Dispute Resolution	**$1,776.60**	**$2,035.80**	**$259.20**
EPM	$931.30	$1,051.00	$119.70
SF	$845.30	$984.80	$139.50
Audits, Evaluation and Investigations	**$50,592.00**	**$50,491.00**	**($101.00)**
IG	$37,696.00	$36,955.00	($741.00)
SF	$12,896.00	$13,536.00	$640.00
Beach / Fish Programs	**$3,209.90**	**$3,263.80**	**$53.90**
EPM	$3,209.90	$3,263.80	$53.90
Brownfields	**$24,301.20**	**$29,637.50**	**$5,336.30**
EPM	$24,301.20	$29,637.50	$5,336.30
Brownfields Projects	**$89,280.10**	**$120,500.00**	**$31,219.90**
STAG	$89,280.10	$120,500.00	$31,219.90
Categorical Grant: Beaches Protection	**$9,920.00**	**$10,000.00**	**$80.00**
STAG	$9,920.00	$10,000.00	$80.00
Categorical Grant: Brownfields	**$49,600.10**	**$60,000.00**	**$10,399.90**
STAG	$49,600.10	$60,000.00	$10,399.90
Categorical Grant: Environmental Information	**$19,344.00**	**$20,000.00**	**$656.00**
STAG	$19,344.00	$20,000.00	$656.00
Categorical Grant: Hazardous Waste Financial Assistance	**$103,465.50**	**$104,400.00**	**$934.50**
STAG	$103,465.50	$104,400.00	$934.50
Categorical Grant: Homeland Security	**$4,960.00**	**$5,000.00**	**$40.00**
STAG	$4,960.00	$5,000.00	$40.00
Categorical Grant: Lead	**$13,392.00**	**$13,700.00**	**$308.00**
STAG	$13,392.00	$13,700.00	$308.00
Categorical Grant: Nonpoint Source (Sec. 319)	**$207,327.90**	**$209,100.00**	**$1,772.10**
STAG	$207,327.90	$209,100.00	$1,772.10
Categorical Grant: Pesticides Enforcement	**$19,343.80**	**$18,900.00**	**($443.80)**
STAG	$19,343.80	$18,900.00	($443.80)
Categorical Grant: Pesticides Program Implementation	**$12,896.10**	**$13,100.00**	**$203.90**
STAG	$12,896.10	$13,100.00	$203.90
	$208,319.90	**$231,900.00**	**$23,580.10**

Categorical Grant: Pollution Control (Sec. 106)			
STAG	$208,319.90	$231,900.00	$23,580.10
Categorical Grant: Pollution Prevention	**$4,960.00**	**$6,000.00**	**$1,040.00**
STAG	$4,960.00	$6,000.00	$1,040.00
Categorical Grant: Public Water System Supervision (PWSS)	**$99,745.60**	**$100,600.00**	**$854.40**
STAG	$99,745.60	$100,600.00	$854.40
Categorical Grant: Radon	**$6,944.10**	**$8,150.00**	**$1,205.90**
STAG	$6,944.10	$8,150.00	$1,205.90
Categorical Grant: Sector Program	**$2,232.00**	**$2,250.00**	**$18.00**
STAG	$2,232.00	$2,250.00	$18.00
Categorical Grant: State and Local Air Quality Management	**$223,200.10**	**$223,550.00**	**$349.90**
STAG	$223,200.10	$223,550.00	$349.90
Categorical Grant: State and Tribal Performance Fund	**$0.00**	**$23,000.00**	**$23,000.00**
STAG	$0.00	$23,000.00	$23,000.00
Categorical Grant: Targeted Watersheds	**$17,856.00**	**$15,000.00**	**($2,856.00)**
STAG	$17,856.00	$15,000.00	($2,856.00)
Categorical Grant: Toxics Substances Compliance	**$5,006.50**	**$5,150.00**	**$143.50**
STAG	$5,006.50	$5,150.00	$143.50
Categorical Grant: Tribal Air Quality Management	**$10,743.40**	**$11,050.00**	**$306.60**
STAG	$10,743.40	$11,050.00	$306.60
Categorical Grant: Tribal General Assistance Program	**$61,504.00**	**$57,500.00**	**($4,004.00)**
STAG	$61,504.00	$57,500.00	($4,004.00)
Categorical Grant: Underground Injection Control (UIC)	**$10,693.80**	**$11,000.00**	**$306.20**
STAG	$10,693.80	$11,000.00	$306.20
Categorical Grant: Underground Storage Tanks	**$11,904.20**	**$11,950.00**	**$45.80**
STAG	$11,904.20	$11,950.00	$45.80

Categorical Grant: Wastewater Operator Training	**$1,488.00**	**$0.00**	**($1,488.00)**
STAG	$1,488.00	$0.00	($1,488.00)
Categorical Grant: Water Quality Cooperative Agreements	**$16,864.00**	**$0.00**	**($16,864.00)**
STAG	$16,864.00	$0.00	($16,864.00)
Categorical Grant: Wetlands Program Development	**$14,880.00**	**$20,000.00**	**$5,120.00**
STAG	$14,880.00	$20,000.00	$5,120.00
Central Planning, Budgeting, and Finance	**$90,632.90**	**$96,171.10**	**$5,538.20**
EPM	$69,387.40	$72,790.20	$3,402.80
LUST	$866.10	$935.90	$69.80
SF	$20,379.40	$22,445.00	$2,065.60
Children and Other Sensitive Populations: Agency Coordination	**$6,213.80**	**$6,889.60**	**$675.80**
EPM	$6,213.80	$6,889.60	$675.80
Civil Enforcement	**$114,327.40**	**$120,134.90**	**$5,807.50**
EPM	$112,462.50	$117,462.20	$4,999.70
OIL	$1,742.60	$1,789.50	$46.90
SF	$122.30	$883.20	$760.90
Civil Rights / Title VI Compliance	**$12,119.50**	**$12,529.60**	**$410.10**
EPM	$12,119.50	$12,529.60	$410.10
Clean Air Allowance Trading Programs	**$25,607.60**	**$27,587.10**	**$1,979.50**
EPM	$16,873.50	$18,234.20	$1,360.70
S&T	$8,734.10	$9,352.90	$618.80
Clean School Bus Initiative	**$7,440.00**	**$10,000.00**	**$2,560.00**
STAG	$7,440.00	$10,000.00	$2,560.00
Climate Protection Program	**$109,916.10**	**$113,262.40**	**$3,346.30**
EPM	$90,910.50	$95,529.90	$4,619.40
S&T	$19,005.60	$17,732.50	($1,273.10)
Commission for Environmental Cooperation	**$3,773.50**	**$4,209.90**	**$436.40**
EPM	$3,773.50	$4,209.90	$436.40
Compliance Assistance and Centers	**$27,742.40**	**$30,179.70**	**$2,437.30**
EPM	$26,613.40	$29,097.10	$2,483.70
LUST	$855.10	$773.60	($81.50)
OIL	$273.90	$286.50	$12.60
SF	$0.00	$22.50	$22.50

Compliance Incentives	**$9,107.50**	**$9,790.30**	**$682.80**
EPM	$8,962.90	$9,622.20	$659.30
SF	$144.60	$168.10	$23.50
Compliance Monitoring	**$66,486.50**	**$94,568.80**	**$28,082.30**
EPM	$66,327.70	$93,412.10	$27,084.40
SF	$158.80	$1,156.70	$997.90
Congressional, Intergovernmental, External Relations	**$48,778.80**	**$49,914.30**	**$1,135.50**
EPM	$48,624.20	$49,753.30	$1,129.10
SF	$154.60	$161.00	$6.40
Congressionally Mandated Projects	**$467,538.50**	**$0.00**	**($467,538.50)**
EPM	$92,325.50	$0.00	($92,325.50)
S&T	$65,664.70	$0.00	($65,664.70)
STAG	$309,548.30	$0.00	($309,548.30)
Criminal Enforcement	**$46,995.40**	**$46,830.50**	**($164.90)**
EPM	$39,100.60	$37,326.30	($1,774.30)
SF	$7,894.80	$9,504.20	$1,609.40
Drinking Water Programs	**$96,192.60**	**$104,158.40**	**$7,965.80**
EPM	$93,257.90	$101,089.90	$7,832.00
S&T	$2,934.70	$3,068.50	$133.80
Endocrine Disruptors	**$8,539.90**	**$9,096.80**	**$556.90**
EPM	$8,539.90	$9,096.80	$556.90
Enforcement Training	**$4,250.40**	**$3,112.60**	**($1,137.80)**
EPM	$3,428.20	$2,498.70	($929.50)
SF	$822.20	$613.90	($208.30)
Environment and Trade	**$1,500.20**	**$1,787.00**	**$286.80**
EPM	$1,500.20	$1,787.00	$286.80
Environmental Education	**$8,956.60**	**$0.00**	**($8,956.60)**
EPM	$8,956.60	$0.00	($8,956.60)
Environmental Justice	**$6,820.10**	**$4,824.90**	**($1,995.20)**
EPM	$5,882.50	$3,979.70	($1,902.80)
SF	$937.60	$845.20	($92.40)
Exchange Network	**$18,596.50**	**$24,415.60**	**$5,819.10**
EPM	$16,361.10	$22,739.40	$6,378.30
SF	$2,235.40	$1,676.20	($559.20)

Facilities Infrastructure and Operations	**$418,775.10**	**$469,593.60**	**$50,818.50**
EPM	$314,614.00	$358,045.60	$43,431.60
S&T	$8,466.30	$8,715.80	$249.50
B&F	$27,280.00	$28,718.00	$1,438.00
LUST	$872.40	$883.90	$11.50
OIL	$462.90	$504.40	$41.50
SF	$67,079.50	$72,725.90	$5,646.40
Federal Stationary Source Regulations	**$21,768.40**	**$23,509.20**	**$1,740.80**
EPM	$21,768.40	$23,509.20	$1,740.80
Federal Support for Air Quality Management	**$98,713.50**	**$120,907.10**	**$22,193.60**
EPM	$88,192.40	$110,891.20	$22,698.80
S&T	$10,521.10	$10,015.90	($505.20)
Federal Support for Air Toxics Program	**$27,152.00**	**$27,696.00**	**$544.00**
EPM	$24,589.70	$25,431.40	$841.70
S&T	$2,562.30	$2,264.60	($297.70)
Federal Vehicle and Fuels Standards and Certification	**$57,436.30**	**$66,567.50**	**$9,131.20**
S&T	$57,436.30	$66,567.50	$9,131.20
Financial Assistance Grants / IAG Management	**$23,308.70**	**$22,494.80**	**($813.90)**
EPM	$20,366.20	$19,915.90	($450.30)
SF	$2,942.50	$2,578.90	($363.60)
Forensics Support	**$17,160.40**	**$17,577.30**	**$416.90**
S&T	$13,048.10	$13,737.00	$688.90
SF	$4,112.30	$3,840.30	($272.00)
Geographic Program: Chesapeake Bay	**$22,756.40**	**$20,746.40**	**($2,010.00)**
EPM	$22,756.40	$20,746.40	($2,010.00)
Geographic Program: Great Lakes	**$21,287.40**	**$21,519.10**	**$231.70**
EPM	$21,287.40	$21,519.10	$231.70
Geographic Program: Gulf of Mexico	**$3,894.90**	**$4,467.50**	**$572.60**
EPM	$3,894.90	$4,467.50	$572.60
Geographic Program: Lake Champlain	**$2,480.10**	**$954.80**	**($1,525.30)**
EPM	$2,480.10	$954.80	($1,525.30)
Geographic Program: Long Island Sound	**$2,331.60**	**$477.40**	**($1,854.20)**
EPM	$2,331.60	$477.40	($1,854.20)
	$6,907.10	**$13,186.10**	**$6,279.00**

Geographic Program: Other			
EPM	$6,907.10	$13,186.10	$6,279.00
Great Lakes Legacy Act	**$22,320.00**	**$50,000.00**	**$27,680.00**
EPM	$22,320.00	$50,000.00	$27,680.00
Homeland Security: Communication and Information	**$5,132.60**	**$6,980.30**	**$1,847.70**
EPM	$5,132.60	$6,680.30	$1,547.70
SF	$0.00	$300.00	$300.00
Homeland Security: Critical Infrastructure Protection	**$12,313.70**	**$55,568.20**	**$43,254.50**
EPM	$6,895.70	$6,946.90	$51.20
S&T	$3,494.60	$47,568.70	$44,074.10
SF	$1,923.40	$1,052.60	($870.80)
Homeland Security: Preparedness, Response, and Recovery	**$63,381.50**	**$96,429.30**	**$33,047.80**
EPM	$1,822.40	$3,348.20	$1,525.80
S&T	$29,350.90	$44,116.20	$14,765.30
SF	$32,208.20	$48,964.90	$16,756.70
Homeland Security: Protection of EPA Personnel and Infrastructure	**$20,397.50**	**$20,603.00**	**$205.50**
EPM	$6,293.60	$6,403.00	$109.40
S&T	$2,023.80	$2,100.00	$76.20
B&F	$11,408.00	$11,500.00	$92.00
SF	$672.10	$600.00	($72.10)
Human Health Risk Assessment	**$36,282.00**	**$40,261.60**	**$3,979.60**
S&T	$36,282.00	$36,240.10	($41.90)
SF	$0.00	$4,021.50	$4,021.50
Human Resources Management	**$43,840.30**	**$43,664.30**	**($176.00)**
EPM	$39,461.20	$38,871.60	($589.60)
LUST	$3.00	$3.00	$0.00
SF	$4,376.10	$4,789.70	$413.60
Indoor Air: Radon Program	**$5,636.40**	**$6,359.90**	**$723.50**
EPM	$5,141.90	$5,918.30	$776.40
S&T	$494.50	$441.60	($52.90)
Information Security	**$4,536.20**	**$4,297.10**	**($239.10)**
EPM	$4,130.70	$3,888.30	($242.40)
SF	$405.50	$408.80	$3.30

Infrastructure Assistance: Alaska Native Villages	**$44,640.00**	**$15,000.00**	**($29,640.00)**
STAG	$44,640.00	$15,000.00	($29,640.00)
Infrastructure Assistance: Clean Water SRF	**$1,091,200.10**	**$730,000.00**	**($361,200.10)**
STAG	$1,091,200.10	$730,000.00	($361,200.10)
Infrastructure Assistance: Drinking Water SRF	**$843,200.00**	**$850,000.00**	**$6,800.00**
STAG	$843,200.00	$850,000.00	$6,800.00
Infrastructure Assistance: Mexico Border	**$49,600.00**	**$50,000.00**	**$400.00**
STAG	$49,600.00	$50,000.00	$400.00
Infrastructure Assistance: Puerto Rico	**$3,849.00**	**$4,000.00**	**$151.00**
STAG	$3,849.00	$4,000.00	$151.00
International Capacity Building	**$5,750.80**	**$6,449.50**	**$698.70**
EPM	$5,750.80	$6,449.50	$698.70
IT / Data Management	**$128,620.60**	**$126,573.50**	**($2,047.10)**
EPM	$106,122.60	$105,999.00	($123.60)
S&T	$4,344.70	$4,250.90	($93.80)
LUST	$176.20	$177.60	$1.40
OIL	$32.50	$32.80	$0.30
SF	$17,944.60	$16,113.20	($1,831.40)
Legal Advice: Environmental Program	**$35,459.60**	**$37,150.40**	**$1,690.80**
EPM	$34,644.10	$36,314.30	$1,670.20
SF	$815.50	$836.10	$20.60
Legal Advice: Support Program	**$12,554.80**	**$13,087.70**	**$532.90**
EPM	$12,554.80	$13,087.70	$532.90
LUST / UST	**$16,403.50**	**$18,303.10**	**$1,899.60**
EPM	$7,124.90	$7,719.40	$594.50
LUST	$9,278.60	$10,583.70	$1,305.10
LUST Cooperative Agreements	**$56,424.40**	**$58,676.60**	**$2,252.20**
LUST	$56,424.40	$58,676.60	$2,252.20
Marine Pollution	**$11,358.40**	**$12,279.20**	**$920.80**
EPM	$11,358.40	$12,279.20	$920.80
National Estuary Program / Coastal Waterways	**$25,065.30**	**$19,445.50**	**($5,619.80)**
EPM	$25,065.30	$19,445.50	($5,619.80)

NEPA Implementation	**$12,038.90**	**$12,440.30**	**$401.40**
EPM	$12,038.90	$12,440.30	$401.40
Oil Spill: Prevention, Preparedness and Response	**$12,465.60**	**$12,344.10**	**($121.50)**
OIL	$12,465.60	$12,344.10	($121.50)
Pesticides: Field Programs	**$24,362.40**	**$24,682.60**	**$320.20**
EPM	$24,362.40	$24,682.60	$320.20
Pesticides: Registration of New Pesticides	**$41,624.90**	**$43,961.70**	**$2,336.80**
EPM	$39,158.80	$41,471.70	$2,312.90
S&T	$2,466.10	$2,490.00	$23.90
Pesticides: Review / Reregistration of Existing Pesticides	**$53,793.10**	**$60,497.30**	**$6,704.20**
EPM	$51,315.10	$57,991.20	$6,676.10
S&T	$2,478.00	$2,506.10	$28.10
Pollution Prevention Program	**$16,407.90**	**$19,989.80**	**$3,581.90**
EPM	$16,407.90	$19,989.80	$3,581.90
POPs Implementation	**$1,626.60**	**$2,806.40**	**$1,179.80**
EPM	$1,626.60	$2,806.40	$1,179.80
Radiation: Protection	**$16,221.20**	**$16,272.70**	**$51.50**
EPM	$11,121.50	$11,765.10	$643.60
S&T	$3,068.50	$2,120.50	($948.00)
SF	$2,031.20	$2,387.10	$355.90
Radiation: Response Preparedness	**$4,944.50**	**$6,212.30**	**$1,267.80**
EPM	$2,624.20	$2,636.00	$11.80
S&T	$2,320.30	$3,576.30	$1,256.00
RCRA: Corrective Action	**$39,666.70**	**$42,710.20**	**$3,043.50**
EPM	$39,666.70	$42,710.20	$3,043.50
RCRA: Waste Management	**$66,695.70**	**$68,727.90**	**$2,032.20**
EPM	$66,695.70	$68,727.90	$2,032.20
RCRA: Waste Minimization & Recycling	**$11,507.50**	**$14,376.10**	**$2,868.60**
EPM	$11,507.50	$14,376.10	$2,868.60
Reduce Risks from Indoor Air	**$23,037.10**	**$24,328.20**	**$1,291.10**
EPM	$22,193.80	$23,496.40	$1,302.60
S&T	$843.30	$831.80	($11.50)
	$7,686.90	**$8,862.00**	**$1,175.10**

Regional Geographic Initiatives			
EPM	$7,686.90	$8,862.00	$1,175.10
Regional Science and Technology	**$3,245.10**	**$3,642.80**	**$397.70**
EPM	$3,245.10	$3,642.80	$397.70
Regulatory Innovation	**$20,014.10**	**$25,021.20**	**$5,007.10**
EPM	$20,014.10	$25,021.20	$5,007.10
Regulatory/Economic-Management and Analysis	**$14,821.00**	**$16,713.30**	**$1,892.30**
EPM	$14,821.00	$16,713.30	$1,892.30
Research: Air Toxics	**$16,956.10**	**$16,386.70**	**($569.40)**
S&T	$16,956.10	$16,386.70	($569.40)
Research: Computational Toxicology	**$11,994.10**	**$13,832.40**	**$1,838.30**
S&T	$11,994.10	$13,832.40	$1,838.30
Research: Drinking Water	**$48,665.30**	**$45,690.00**	**($2,975.30)**
S&T	$48,665.30	$45,690.00	($2,975.30)
Research: Endocrine Disruptor	**$10,392.00**	**$8,705.00**	**($1,687.00)**
S&T	$10,392.00	$8,705.00	($1,687.00)
Research: Environmental Technology Verification (ETV)	**$3,180.70**	**$3,202.60**	**$21.90**
S&T	$3,180.70	$3,202.60	$21.90
Research: Fellowships	**$12,042.30**	**$8,326.80**	**($3,715.50)**
S&T	$12,042.30	$8,326.80	($3,715.50)
Research: Global Change	**$19,578.30**	**$20,534.40**	**$956.10**
S&T	$19,578.30	$20,534.40	$956.10
Research: Human Health and Ecosystems	**$167,356.30**	**$169,632.30**	**$2,276.00**
S&T	$167,356.30	$169,632.30	$2,276.00
Research: Land Protection and Restoration	**$33,576.70**	**$38,347.10**	**$4,770.40**
S&T	$9,065.20	$13,696.50	$4,631.30
LUST	$623.50	$646.20	$22.70
OIL	$894.50	$905.70	$11.20
SF	$22,993.50	$23,098.70	$105.20
Research: Pesticides and Toxics	**$27,792.30**	**$29,752.70**	**$1,960.40**
S&T	$27,792.30	$29,752.70	$1,960.40

Research: SITE Program	**$6,596.30**	**$1,484.70**	**($5,111.60)**
S&T	$0.00	$0.00	$0.00
SF	$6,596.30	$1,484.70	($5,111.60)
Research: Water Quality	**$44,992.80**	**$55,899.80**	**$10,907.00**
S&T	$44,992.80	$55,899.80	$10,907.00
Research: Economics and Decision Science(EDS)	**$2,421.20**	**$2,644.60**	**$223.40**
S&T	$2,421.20	$2,644.60	$223.40
Research: NAAQS	**$64,903.20**	**$71,451.50**	**$6,548.30**
S&T	$64,903.20	$71,451.50	$6,548.30
Research: Sustainability	**$35,399.20**	**$23,187.80**	**($12,211.40)**
S&T	$34,811.00	$23,187.80	($11,623.20)
SF	$588.20	$0.00	($588.20)
Science Advisory Board	**$4,360.90**	**$4,881.00**	**$520.10**
EPM	$4,360.90	$4,881.00	$520.10
Science Policy and Biotechnology	**$1,640.10**	**$1,751.10**	**$111.00**
EPM	$1,640.10	$1,751.10	$111.00
Small Business Ombudsman	**$3,712.10**	**$3,910.60**	**$198.50**
EPM	$3,712.10	$3,910.60	$198.50
Small Minority Business Assistance	**$2,263.80**	**$2,347.80**	**$84.00**
EPM	$2,263.80	$2,347.80	$84.00
State and Local Prevention and Preparedness	**$11,855.30**	**$12,327.90**	**$472.60**
EPM	$11,855.30	$12,327.90	$472.60
Stratospheric Ozone: Domestic Programs	**$5,012.80**	**$3,969.00**	**($1,043.80)**
EPM	$5,012.80	$3,969.00	($1,043.80)
Stratospheric Ozone: Multilateral Fund	**$9,920.00**	**$13,500.00**	**$3,580.00**
EPM	$9,920.00	$13,500.00	$3,580.00
Superfund: Emergency Response and Removal	**$198,494.50**	**$197,999.90**	**($494.60)**
SF	$198,494.50	$197,999.90	($494.60)
Superfund: Enforcement	**$153,265.70**	**$164,257.70**	**$10,992.00**
SF	$153,265.70	$164,257.70	$10,992.00
Superfund: EPA Emergency Preparedness	**$10,009.10**	**$10,506.80**	**$497.70**
SF	$10,009.10	$10,506.80	$497.70

Superfund: Federal Facilities	**$31,511.90**	**$31,610.90**	**$99.00**
SF	$31,511.90	$31,610.90	$99.00
Superfund: Remedial	**$597,140.00**	**$599,396.00**	**$2,256.00**
SF	$597,140.00	$599,396.00	$2,256.00
Superfund: Support to Other Federal Agencies	**$10,590.60**	**$9,754.20**	**($836.40)**
SF	$10,590.60	$9,754.20	($836.40)
Superfund: Federal Facilities Enforcement	**$10,666.90**	**$10,240.90**	**($426.00)**
SF	$10,666.90	$10,240.90	($426.00)
Surface Water Protection	**$186,204.20**	**$194,801.50**	**$8,597.30**
EPM	$186,204.20	$194,801.50	$8,597.30
Toxic Substances: Chemical Risk Management	**$8,341.00**	**$9,057.70**	**$716.70**
EPM	$8,341.00	$9,057.70	$716.70
Toxic Substances: Chemical Risk Review and Reduction	**$44,814.30**	**$44,523.10**	**($291.20)**
EPM	$44,814.30	$44,523.10	($291.20)
Toxic Substances: Lead Risk Reduction Program	**$10,970.20**	**$10,548.90**	**($421.30)**
EPM	$10,970.20	$10,548.90	($421.30)
TRI / Right to Know	**$14,310.30**	**$14,753.70**	**$443.40**
EPM	$14,310.30	$14,753.70	$443.40
Tribal - Capacity Building	**$10,639.80**	**$11,049.00**	**$409.20**
EPM	$10,639.80	$11,049.00	$409.20
US Mexico Border	**$5,611.50**	**$5,975.30**	**$363.80**
EPM	$5,611.50	$5,975.30	$363.80
Wetlands	**$20,084.50**	**$20,374.50**	**$290.00**
EPM	$20,084.50	$20,374.50	$290.00
Agency Total	**$8,023,483.40**	**$7,570,600.00**	**($452,883.40)**

[1]The FY 2006 President's Budget includes $50M to be derived from changes to Toxics and Pesticides fees proposed in subsequent legislation.

ENFORCEMENT QUESTION

Question: Mr. Johnson, I understand that because of the recent passage of the Omnibus Appropriations bill that EPA has not had a chance to detail how it will spend those funds, so it is difficult to pin down many funding issues. One that I am particularly concerned about is enforcement. EPA's budget justification indicates that the President's budget would keep full time equivalents (FTEs) at 2003 levels.

Since this means that you will have 71.5 fewer FTEs than when you took office, can you tell me which laws are no longer being enforced?

Answer: In that regard, it should be noted that the budget EPA has proposed for the enforcement office is the highest funding level in that office's history. The Request includes 3,469 FTE for the enforcement program, a level on par with recent years, and sufficient to maintain a strong and vigorous enforcement program.

EPA's Office of Enforcement and Compliance Assurance (OECA) continues to achieve outstanding enforcement results. For example, in FY 2004, EPA conducted 21,000 inspections (compared with 17,560 in FY 2001). EPA also pursued 6,442 civil enforcement actions last year (up from 5,108 in FY 2001).

In addition, last year alone, the program secured record-setting commitments of $4.8 billion by violators to implement pollution controls and environmental cleanup. As a result of cleanup commitments reached in FY 2004, over one billion pounds of pollutants will be reduced, treated, or properly managed, an increase of over 67% from FY 2003 levels. Together, these statistics reflect a strong and vigorous enforcement program, one we will be able to maintain under the President's FY 2006 Request.

The Enforcement program continues to hire in high priority areas such as criminal enforcement. In addition, the budget EPA has proposed for the enforcement office is the highest funding level in that office's history, which reflects this Administration's strong commitment to the vigorous enforcement of our nation's environmental laws.

CLEAN WATER QUESTION

Question: Mr. Johnson, 2002 marked the 30th anniversary of the passage of the Clean Water Act, one of the nation's great success stories. When the bipartisan legislation was passed, the Cuyahoga River was so polluted it burst into

flames and the Great Lakes were nearly "dead." This sad state of affairs was due to reliance on weaker laws that failed to provide a strong federal backstop providing protection for our waters. Over the past 30 years, the CWA has helped to clean up our waterways, ensure habitat for millions of bird and other wildlife, and restore some of our most cherished waterways. While much progress has been made, about 40 percent of our waters are still not fit for swimming, fishing and other basic uses. EPA itself admits that these programs will need $388 billion through 2019. There is still clearly much work to be done. And the states cannot do it alone.

Mr. Johnson, the President's budget slashes overall clean water programs $693 million. $361 million of this comes from the Clean Water State Revolving Fund, which EPA in 2002 said needed $450 billion in funding. California's funding is cut by one-third. Another $339 million is taken from direct grants to state and local governments to address water, wastewater and sewer infrastructure issues.

In light of these extreme cuts, from where do you believe localities will get money to fund these efforts?

Answer: Localities have traditionally been responsible for providing and paying for wastewater infrastructure treatment. The Federal government has been and continues to be a significant source of financial assistance; however, the primary source of financing has been the sale of tax-exempt bonds by municipalities.

The Administration has increased the Federal commitment to the CWSRF by extending Federal funding through FY 2011. In FY 2004, the President's Budget presented a long-term plan to address national water infrastructure needs, which included an extension of Federal funding of the CWSRF until 2011. The Bush Administration's commitment to provide $6.8 billion over 2004-2011 represents a $5.1 billion increase over the commitment of the previous Administration. EPA's FY 2006 request continues to support that long-term plan.

The FY 2006 budget proposal to continue funding the CWSRF program through 2011 at $730 million each year is consistent with the Administration's goal of capitalizing the CWSRFs such that they will provide an average $3.4 billion a year in financial assistance over the long term, even after Federal funding ends. The inflow into the CWSRF of the requested Federal funds, when combined with other funding sources, including state match contributions, proceeds from bonds, loan repayments, and interest earnings, is projected to support this high level of funding capacity.

Question: Please provide us a detailed list of the projects that will be cut, a description of each project, the amount of the cut, if any funding is left and, if so, what portion of the project will go forward and what portion will be halted. Please provide information on a state-by-state and please provide a nationwide summary.

Answer: EPA does not have a list of projects potentially affected by funding resources. Project funding decisions are made by individual CWSRFs using state-established priority systems based on community environmental and financial needs and the resources available to fund those needs. States supplement Federal funds with state contributions and bonds to support local funding needs. After 16 years of operation, the annual loan volume of States' Clean Water SRFs is now comprised primarily of non-Federal funds—the state match, repayments, and bond proceeds.

Question: Mr. Johnson, do you believe the Federal role should be in helping our cash-strapped municipalities meet the pivotal challenges that endanger our water quality future?

Answer: The FY 2006 President's Budget proposal for extending Federal capitalization of the CWSRF recognizes that addressing the nation's wastewater infrastructure needs requires a long term, sensible approach. By providing Federal funding through 2011 at $730 million per year, the President's proposal will increase the CWSRF program's ability to fund projects in both the near term and in the long run at a target $3.4 billion a year. The Bush Administration's commitment to provide $6.8 billion over 2004-2011 represents a $5.1 billion increase over the commitment of the previous Administration.

The Agency recognizes that, in addition to fiscal approaches, addressing the nation's water quality challenges requires complementary Federal, state, and local actions and innovations, including better management, conservation (or smart water use), full cost pricing, and intergovernmental cooperation through the watershed approach. Through a sustainable infrastructure initiative, the Agency is working in partnership with states, the water utility industry, and other stakeholders to ensure sustainability of wastewater systems. This initiative includes:

- Ensuring the technical, financial, and managerial capacity of these systems;
- Expanding watershed approaches that engage stakeholders in broad based, actions oriented partnerships to identify efficient and effective local infrastructure solutions;
- Encouraging the adoption of sustainable management systems to improve efficiency and economies of scale; and

- Reducing the average costs of service.

BROWNFIELDS QUESTION

Question: Mr. Johnson, the President's budget requests approximately $150 million to fund section 104(k) Brownfields cleanups. Slightly less than $121 million of this would go towards Brownfields site assessment, cleanup, and revolving loan fund grants, and nearly $30 million appears to be administrative costs. While this is an increase over the previous year's funding, it is still $50 million, or 25 percent, short of the authorized level of $200 million and significantly less than the program's projected needs. In the face of thousands of these sites going unaddressed, this is unacceptable.

In Fiscal Year 2004, these grants received $170 million in funding, which enabled EPA to fund only one in three Brownfields proposal. That means that 490 out of 755 projects were not funded by EPA, eleven of which were from California. The result of this under funding is sites that remain idle and dirty, blighting neighborhoods and hampering local development. These sites include gas stations, warehouses, ports and other slightly contaminated sites.

Mr. Johnson, how many sites will remain unfunded under this proposal? Please walk me through this administration's projected cleanup and funding schedule for these sites.

Answer: The FY 2006 President's budget requests a total of $210 million for Brownfields projects of which $120,500,000 is for section 104 (k) of the Comprehensive Environmental Response, Compensation, and Liability Act (the same level requested for FY 2005). This is a $31,200,000 increase over the FY 2005 enacted level of $89,300,000. Of this amount, $100,800,000 is requested to provide funding and technical support for 126 Brownfield site assessments; to capitalize the revolving loan fund and award clean up grants to 70 communities; and to assess and cleanup petroleum contaminants in Brownfields properties. The remaining $19,700,000 requested to fund CERCLA Section 104(k) will provide funding for research, training, and technical assistance, job training grants, interagency agreements, and other associated program support costs.

The Agency awards the Brownfield assessment, revolving loan fund, and cleanup grants through an annual competitive process. EPA began the grant competition process for FY 2005 by issuing the Proposal Guidelines for Brownfields Assessment, Revolving Loan Fund, and Cleanup Grants in September 2004. The Agency is currently reviewing and ranking the 673 proposals received. Given the level of funding appropriated for this program in

FY 2005, EPA will award approximately 200 grants, and plans to announce the selection of these grants in May 2005.

LEAKING UNDERGROUND STORAGE TANK QUESTION

Question: Mr. Johnson, leaking underground storage tanks are one of the most serious threats to the nation's groundwater. Underground storage tanks can hold extremely toxic chemicals that can move rapidly through soil, contaminating the ground, aquifers, streams and other water bodies, such as MTBE, presenting substantial risks to human health, environmental quality, and economic growth. There are approximately 670,000 UST in the U.S, and more than 445,000 confirmed releases from these tanks as of the end of 2004.

Unfortunately, nearly 130,000 tanks need to be cleaned up and the pace of cleanups across the nation has slowed down by over 20 percent in recent years (from 18,518 in Fiscal Year 2003 and 14,285 in Fiscal Year 2004).

Last year, EPA's Underground Storage Tank program took in $265 million in new revenue. Combined with budget figures, this means that about $192 million in new revenue will be added to the trust fund, for a total of over $2.5 billion in unused reserves, reserves meant to clean up these leaking tanks.

Mr. Johnson, in the face of 130,000 needed cleanups, why did the administration fail to request additional funding from the $2.5 billion held in reserve, which is collected specifically to cleanup leaking underground storage tanks?

Answer: As part of EPA's "polluter pays" policy, approximately 95% of cleanups are done by responsible parties. Our State partners also direct their enforcement programs' funds to ensure responsible parties clean up and also perform cleanups from their programmatic funds. Cleaning up petroleum from leaking underground storage tanks is an important priority for the Agency. To date, approximately 317,000, or over 70 percent of all confirmed releases from underground storage tanks have been cleaned up. At the end of FY 2004, approximately 130,000 releases remained to be cleaned up. The President's FY 2006 budget requests funding for the Agency, and the States through their cooperative agreements, to continue to make progress cleaning up the 130,000 known releases and other newly- discovered releases of petroleum, including methyl-tertiary-butyl-ether (MTBE) from leaking underground storage tanks.

RESPONSES BY STEPHEN L. JOHNSON TO ADDITIONAL QUESTIONS FROM SENATOR VITTER

LAKE PONTCHATRAIN

Question: Mr. Johnson, I hope that you will support increased funding for the Lake Pontchatrain programs, so we can speed up the coming construction phase. Congress enacted $2 million for this program last year, and thank you for including $1 million in your request this year. While your overall agency request is $450 million below what was enacted last year, you have requested to increase the Environmental Programs and Management by $109 million, so I am hopeful we can find more for the Lake Pontchartrain program within that account you have requested to increase. Can we count on your agency's support to allow funding for construction projects?

Answer: EPA fully supports restoration and protection efforts in Lake Pontchartrain as reflected by our 2006 request of almost $1 million. Completing priorities across the Federal government present a challenge but we would be happy to work with you and your staff to ensure the most effective use of available funds.

BATON ROUGE

Question: Will you support efforts to give local officials the flexibility they need to find cost-effective and efficient solutions to ozone nonattainment issues?

Answer: EPA is working closely with the Louisiana Department of Environmental Quality toward implementing the ozone nonattainment requirements and EPA supports, within the constraints of the Clean Air Act and all other applicable laws, cost-effective and efficient solutions. While the area is designated as "severe" ozone nonattainment under the 1-hour ozone standards, the Baton Rouge area is in the lowest classification, marginal, for the 8-hour ozone SIP will continue to provide benefit toward attainment and maintenance of the 8-hour ozone standard. Under the 8-hour marginal classification, the State will have greater flexibility in establishing its control strategies. Under the Clean Air Act, the higher the classification of an area, the more prescriptive are the requirements.

Question: If the City of Baton Rouge continues to be classified as severe under the 1-hour standard, major sources of volatile organic chemicals (VOCs) in the nonattainment area would be subject to the imposition of penalty fees if the area fails to attain the standard by the attainment date. Have the major sources in any other city in the United States ever been required to pay fees under this standard?

Answer: EPA issued its Phase 1 Ozone Implementation Rule on April 30, 2004, which addressed the Section 185 fee provisions for 1-hour nonattainment areas once the 1-hour NAAQS is revoked on June 15, 2005. In the Phase 1 Rule, EPA finalized its position that States would no longer be required to impose, under the Clean Air Act Sections 181(b)(4) and 185, fees on emissions sources in areas classified as severe or extreme for failure to meet the 1-hour attainment date once the 1-hour NAAQS is revoked. On June 29, 2004, Earthjustice submitted a Petition for Reconsideration of the Phase 1 Rule which requested that we reconsider the imposition of the Section 185 fees once the 1-hour NAAQS is revoked, among other issues; on September 23, 2004, EPA agreed to reconsider this issue. Consequently, on February 3, 2005, EPA issued a proposed rule in which we solicited comment on whether the Section 185 fees should continue to apply, once the 1-hour NAAQS is revoked, if an area fails to attain the 1-hour NAAQS by its 1-hour attainment date. EPA plans to issue a final rule addressing the Section 185 fees, among other issues, by May 20, 2005.

Question 3: Would you be able to provide us with a detailed analysis of how the proposed budget levels for clear air programs and the proposed Clear Skies Act would impact the State of Louisiana (and Baton Rouge in particular), as compared to existing law?

Answer: Our analysis focuses on the Clean Air Interstate Rule (CAIR) which was issued on March 10, 2005. Detailed analyses were performed for all states. Analyses show that existing Clean Air Act programs will bring all parishes into attainment by 2010, including the Baton Rouge area. The CAIR will reduce sulfur dioxide emissions statewide by 41% and nitrogen dioxide emissions by 57%. Additional information concerning CAIR and its impact upon Louisiana can be found at http://www.epa.gov/interstateairquality/state/la.html.

OUACHITA RIVER

Question: Will you work with me and Louisiana's officials to ensure that we find another way to deal with the wastewater from Arkansas?

Answer: EPA is committed to working with our state partners to manage towards water quality standards. A proposed project to pipe effluent from the City of El Dorado, Arkansas and three industries to the Ouachita River in Arkansas is to discharge approximately 60 miles above the Louisiana state line. The Arkansas Department of Environmental Quality (ADEQ) has been

cooperating with the Louisiana Department of Environmental Quality (LDEQ) on this proposed project since last year. EPA is reviewing the proposal to ensure that water quality in both States will be maintained and would be happy to meet with you or your staff to discuss this issue.

To date, the Section 185 fees have not been required for sources in any area of the country since they are triggered upon the failure of a severe or extreme ozone nonattainment area to attain by their attainment date. The earliest attainment date for a severe or extreme area under the 1-hour ozone NAAQS is November 2005.

Question 3: Would you be able to provide us with a detailed analysis of how the proposed budget levels for clear air programs and the proposed Clear Skies Act would impact the State of Louisiana (and Baton Rouge in particular), as compared to existing law?

Answer: Our analysis focuses on the Clean Air Interstate Rule (CAIR) which was issued on March 10, 2005. Detailed analyses were performed for all states. Analyses show that existing Clean Air Act programs will bring all parishes into attainment by 2010, including the Baton Rouge area. The CAIR will reduce sulfur dioxide emissions statewide by 41% and nitrogen dioxide emissions by 57%. Additional information concerning CAIR and its impact upon Louisiana can be found at http://www.epa.gov/interstateairquality/state/la.html.

are working to update that summary to reflect data received as of late January 2005 that includes data from additional water utilities and for additional monitoring periods. A preliminary review of that data indicates that 111 of 3,552 utilities (3.1%) exceeded the action level for monitoring periods ending after January 2003, a percentage consistent with our June 2004 value.

As part of its ongoing oversight responsibility, the Agency's Regional offices have worked with state primacy agencies to follow up on these exceedences.

Question: Please provide a summary of the data that EPA has collected from the environmental and public officials from each state, including specific findings.

Answer: Between August and December 2004, EPA carried out detailed reviews in 10 states, one in each EPA Region. We reviewed individual files for more than 450 utilities with a focus towards determining if 90th percentiles are properly calculated, reviewing responses to action level exceedances and identifying potential sampling issues related to site selection, changes in sampling sites, repeat sampling, and invalidation. Our goal is to identify common issues associated with implementation that may need to be addressed by training, guidance, or regulatory changes.

Currently we are working to complete an analysis of the information collected as part of the on-site reviews. We are still reviewing information concerning over 10,000 lead samples collected during our review to ensure that we have an accurate picture of implementation. We expect to have this report completed in late spring.

5. DC WATER

Question: EPA's compliance audit of DCWASA determined that DCWASA failed to comply with provisions of the Lead and Copper Rule. What is the status DCWASA's compliance with EPA's June 2004 Administrative Compliance Order to DCWASA issued under Sections 1414(a), 1414(g) and 1445 of the Safe Drinking Water Act?

Answer: Based on the information available to EPA as of April 11, 2005, it appears that WASA is in compliance with the Order.

Question: Please specify each requirement of the order, including lead service line replacement, and whether or not compliance has been attained.

Answer: See attached chart: "2004-2005 Calendar for Reporting Compliance with 40 CFR §§ 141.80(C), 141.84 & 141.85."

DATE	REGULATORY/AO REQUIREMENT	COMMENTS	STATUS
June 10, 2004[1]	Report all sampling results received during the prior month for sampling conducted following partial replacement of lead service lines pursuant to 40 C.F.R. § 141.84(d)(1).	141.90(e)(4) AO PP 68	Received June 10, 2004 and reviewed using SOP
July 1, 2004	*Submit to EPA a plan for conducting sampling including address, criteria if location is changed, etc.*	*AO PP 75*	plan dated June 25, 2004 EPA comments July 14, 2004 Revised plan dated 24 Nov.
July 12, 2004[2]	Report all sampling results received during the prior month for sampling conducted following partial replacement of lead service lines pursuant to 40 C.F.R. § 141.84(d)(1).	141.90(e)(4), *AO PP 68*	Received and reviewed
July 12, 2004	Report for tap water samples for lead and copper due (within first 10 days following end of each applicable monitoring period, which ended June 30, 2004). Report shall include any data collected in addition to the data required by 40 C.F.R. §§ 141.80-.91.	40 C.F.R. 141.90(a)(1); 141.90(g).	Received and reviewed
July 17, 2004	*Submit for review and approval a plan to obtain follow-up sampling of partial replacement lead service lines. Sampling w/in 72 hours. Within 90 days of EPA approval implement the plan to re-sample the service*	*40 C.F. R. 141.84 (d) and AO PP#67* & 69 (needs to be calculated once plan is approved)	Plan dated July 19, 2004 EPA comments August 10, 2004 Revised plan

[1]Normal type: regulatory requirement Italics: AO requirement Teal: Plan-developed milestone. Brown italics: supplemental order requirement.

[2]Where date in regulation falls on a weekend, this calendar is adjusted to designate the first business day thereafter.

DATE	REGULATORY/AO REQUIREMENT	COMMENTS	STATUS
	lines partially replaced since July 1, 2002 and no sample to date.		August 20, 2004 Revised plan approved ltr dated Dec 6, 2004.
July 17, 2004	*Submit to EPA for review and comment a public education plan regarding system-wide and specific issues implementing the recommendations in the EPA May 6, 2004, report on Public Education (PE) effectiveness.*	*AO PP # 70,* Attachment A	Received plan dated July 19, 2004 EPA comments August 2, 2004 **No approval process in AO**
July 17, 2004	*Submit documentation that point of use devices to lead service locations and any that exceed action level on second draw and providing replacement filters on an appropriate schedule.*	*AO PP #84*	Plan dated 7/19/ 2004 EPA comments 8/2/ 2004 WASA reply to comments 8/20/2004 **EPA plan approval 9/3/2004**
July 17, 2004	*Submit to EPA for approval a plan and schedule for continuing filter distribution program and providing replacements.*	*AO PP 84*	Received plan July 19, 2004 EPA comments 8/2/2004 WASA reply 8/20/2004 **EPA plan approval 9/3/2004**
August 2, 2004	*Submit to EPA for approval a plan and schedule for updating the materials evaluation used for sampling and its inventory of lead service lines (initial update of Lead service lines due by Sept 1, 2004*	*Requirement of AO PP #63*	Received plan August 2, 2004 EPA comments August 13, 2004 WASA reply Sept 7, 2004 **EPA plan**

DATE	REGULATORY/AO REQUIREMENT	COMMENTS	STATUS
			approval 9/29/04
August 2, 2004	*Submit a plan so that 1000 of the lines replaced between Oct 1, 2004 and September 30, 2006 will be DC Department of Health (DOH) priority locations* (no matter whether < AL).	*AO PP# 81* AO PP # 82	Received plan August 2, 2004 EPA comments August 10, 2004 WASA reply August 30, 2004 **EPA plan approval 9/29/04**
August 2, 2004	*Submit a plan for review and approval to encourage homeowners to consent to full replacement of service lines*	*AO PP# 83*	Received plan August 2, 2004 **EPA approval August 10, 2004**
August 10, 2004	Report all sampling results received during the prior month for sampling conducted following partial replacement of lead service lines pursuant to 40 C.F.R. § 141.84(d)(1).	141.90(e)(4), *AO PP #68*	Received and reviewed
August 16, 2004	*Submit to EPA for comment a plan for enhanced data base management and reporting All reporting to meet criteria in PP #77*	*AO PP# 76 & 77*	Received plan August 16, 2004 EPA comments Sept 3, 2004
September1, 2004	*Initial update of lead service line inventory due with requirement for annual update each Sept 1.*	*AO #63*	Received inventory update Sept 1, 2004
September 10, 2004	Report all sampling results received during the prior month for sampling conducted following partial replacement of lead service lines pursuant to 40 C.F.R. § 141.84(d)(1).	141.90(e)(4), *AO PP #68*	Received and reviewed
September 30,	Complete the following public	40 C.F.R. 141.85.	Received

DATE	REGULATORY/AO REQUIREMENT	COMMENTS	STATUS
2004	education activities: 1. Information inserted with bills; special alert language on the face of the water bill 2. Submit public education materials to editorial departments of the major daily and weekly newspapers circulated throughout the community. 3. Deliver public education materials to facilities and organizations. 4. Submit a public service announcement to at least 5 of the radio and television stations with the largest audiences that broadcast to the community served by the water system.	Based on extensions previously granted, the six-month period for public education requirements ends March 31; the twelve-month period ends September 30. DCWASA shall use the language required by 40 C.F.R. § 141.85. Any omissions from the mandatory language shall be approved in advance by EPA. EPA shall be given a reasonable opportunity to review and comment upon any information provided in addition to the mandatory language. *AO PP#72*	report dated October 6, 2004 **Report reviewed and found to be in compliance with regulatory requirements. Review did not include assessment of effectiveness per public education plan (paragraph #70)**
September 30, 2004	Complete replacement of at least 7% (1615) of the initial number of lead service lines in the distribution system between September 30, 2003 and September 30, 2004. ***All replacements will be physical replacements, not "test outs"***	40 C.F.R. 141.84(b). Based on extensions previously granted, the 12 month period for lead service line replacement ends September 30 of each year. *AO PP#80*	Received report dated September 30, 2004. Revised report dated 6 December 2004
September 30, 2004	Annual Report due for lead line replacements *and recalculation of the 7% based on the updated inventory of service lines.*	40 C.F.R. 141.90(e)(2) *AO PP #64 & 65*	Received report dated September 30, 2004.

DATE	REGULATORY/AO REQUIREMENT	COMMENTS	STATUS
October1, 2004-Sept 30, 2006	*Replace additional 1,615 lead service lines for the missed year 2000-2001.* ***All replacements will be physical replacements, not "test outs"*** Field determinations of 1, 200 'unknown' service lines. Updates to CIS based on no-digs, test pits, LSLRs.	*AO PP #66* *AO PP#80* Inventory Plan (PP63)	808 Additional lines scheduled for 2005 replacement year per revised language sent as an attachment to a Dec 6 ltr from J Dunn.
October 11, 2004	Report for public education requirements due (within 10 days after the end of each period in which the system is required to perform public education tasks in accordance with 40 C.F.R. 141.85(c)).	40 C.F.R. 141.90(f). Based on extensions previously granted, the six-month period for public education requirements ends March 31; the twelve-month period ends September 30. *AO PP #72*	Report dated October 6, 2004
October 11, 2004	Report all sampling results received during the prior month for sampling conducted following partial replacement of lead service lines pursuant to 40 C.F.R. § 141.84(d)(1).	141.90(e)(4),*AO PP #68*	Report dated Oct 7, 2004
November 10, 2004	Report all sampling results received during the prior month for sampling conducted following partial replacement of lead service lines pursuant to 40 C.F.R. § 141.84(d)(1).	141.90(e)(4),*AO PP #68*	Report, undated, in early Nov
(November 24, 2004)	First Quarterly Report for Inventory plan	Inventory Plan (AO PP63)	Received quarterly report on status of inventory update.
December 1, 2004	WASA completes CIS upgrade pursuant to Inventory plan	AO pp 63, Inventory Plan	Quarterly report of 24

DATE	REGULATORY/AO REQUIREMENT	COMMENTS	STATUS
			Nov indicated that modification will be completed on schedule and available for data entry by Dec 1.
December 10, 2004	Report all sampling results received during the prior month for sampling conducted following partial replacement of lead service lines pursuant to 40 C.F.R. § 141.84(d)(1).	141.90(e)(4), *AO PP #68*	Rec'd report 10 December 04.
January 3, 2005	*Submit to EPA a plan for conducting sampling including address, criteria if location is changed, etc.* Report of the current list of addresses for routine monitoring to confirm service line material from main to property line and property line to residence. (Material Evaluation)	*AO PP 75* Inventory Plan (AO PP63)	Rec'd plan on 11/24/04; rec'd update on 1/10/05
January 10, 2005	Report for tap water samples for lead and copper due (within first 10 days following end of each applicable monitoring period, which ended December 31, 2004). Report shall include any data collected in addition to the data required by 40 C.F.R. §§ 141.80-.91.	40 C.F.R. 141.90(a)(1); 141.90(g)	Rec'd 1/10/05
January 10, 2005	Report all sampling results received during the prior month for sampling conducted following partial replacement of lead service lines pursuant to 40 C.F.R. § 141.84(d)(1).	141.90(e)(4), *AO PP #68*	Rec'd 1/10/05
February 10, 2005	Report all sampling results received during the prior month for sampling conducted following partial replacement of lead service lines pursuant to 40	141.90(e)(4), *AO PP #68*	received 2/10/05 monthly and cumulative

DATE	REGULATORY/AO REQUIREMENT	COMMENTS	STATUS
	C.F.R. § 141.84(d)(1).		
February 14, 2005	*Submit a determination of the number of LSL reported as "passed" in the Sept 30, 2003 Report, and which lines were sampled using the five-minute methodology.*	*AO2 PP 13*	received
February 14, 2005	*Submit documentation demonstrating which, if any, LSL's identified pursuant to PP 13 have been physically replaced*	*AO2 pp 14*	received
Februray 14, 2005	*Submit for review and approval a draft notice to customers whose LSLs were "passed" using 5-minute methodology*	*AO2 pp 16*	received. Notice approved letter 24 Feb.
March 18, 2005 (approx 21 days after approval of notice)	*WASA shall send notice described in pp 16 to customers or provide documentation to EPA that line was retested, replaced, or copper.*	*AO2 pp 18*	Extension of deadline through a modification of Administrative Order (verbal agreement in principal with written to follow) agreed to by EPA and WASA. The new date will be May 3, 2005. The written modification is in process.
March 1, 2005	2nd quarterly report for Inventory Plan. WASA will update the June 01 Baseline Inventory with re-categorized 'unknowns'.	*AO PP 63*	First quarterly report indicated that all backlog data will be entered by March 1.
March 6, 2005	WASA will compare list of customers who received lead line replacements but did not	Plan approved Dec 6 pursuant to AO PP 67 for post	no independent report of this

DATE	REGULATORY/AO REQUIREMENT	COMMENTS	STATUS
	return the post-partial sampling kit with the list of customers who requested and conducted sampling this year.	partial LSLR sampling	item required.
March 10, 2005	Report all sampling results received during the prior month for sampling conducted following partial replacement of lead service lines pursuant to 40 C.F.R. § 141.84(d)(1).	141.90(e)(4), *AO PP #68*	report dated March 9, 2005
March 31, 2005	Submit a public service announcement to at least five of the radio and television stations with the largest audiences that broadcast to the community served by the water system.	40 C.F.R. 141.85(c)(3). Based on extensions previously granted, the six-month period for public education requirements ends March 31; the twelve-month period ends September 30. *AO PP #72* DCWASA shall use the language required by 40 C.F.R. § 141.85. Any omissions from the mandatory language shall be approved in advance by EPA. EPA shall be given a reasonable opportunity to review and comment upon any information provided in addition to the mandatory language. *AO PP #71*	PSA developed/distributed May 22, 2005 using standard regulatory language.
April 6, 2005	WASA to send letters to 'catch up' customers for post- LSLR	Plan approved Dec 6 pursuant to AO	Catch up letters have

DATE	REGULATORY/AO REQUIREMENT	COMMENTS	STATUS
	sampling with test kits	PP 67 for post partial LSLR sampling	been sent to customers.
April 7, 2005	*One year mark for filter distribution program. Must continue until 2 consecutive 6-mo monitoring periods are below AL. [Submit to EPA for approval a plan and schedule for continuing filter distribution program and providing replacements.]*	*AO PP 84*	Filter distribution plan ongoing. No report required.
April 11, 2005	Report for public education requirements due (within 10 days after the end of each period in which the system is required to perform public education tasks in accordance with 40 C.F.R. 141.85(c))	40 C.F.R. 141.90(f). Based on extensions previously granted, the six-month period for public education requirements ends March 31; the twelve-month period ends September 30. *AO PP #72*	Report dated April 8, 2005 submitted to EPA.
April 11, 2005	Report all sampling results received during the prior month for sampling conducted following partial replacement of lead service lines pursuant to 40 C.F.R. § 141.84(d)(1). Report to include results of post LSLR sampling plan/successes of catch up.	141.90(e)(4), *AO PP #68*	Report dated April 8, 2005 submitted to EPA.
May 10, 2005	Report all sampling results received during the prior month for sampling conducted following partial replacement of lead service lines pursuant to 40 C.F.R. § 141.84(d)(1). Report to include results of post LSLR sampling plan/successes of catch up.	141.90(e)(4), *AO PP #68*	
June 10, 2005	Report all sampling results received during the prior month	141.90(e)(4), *AO PP #68*	

DATE	REGULATORY/AO REQUIREMENT	COMMENTS	STATUS
	for sampling conducted following partial replacement of lead service lines pursuant to 40 C.F.R. § 141.84(d)(1). Report to include results of post LSLR sampling plan/successes of catch up.		
July 1, 2005	*Submit to EPA a plan for conducting sampling including address, criteria if location is changed, etc.*	*AO PP 75*	
July 11, 2005	Report for tap water samples for lead and copper due (within first 10 days following end of each applicable monitoring period, which ended June 30, 2004). Report shall include any data collected in addition to the data required by 40 C.F.R. §§ 141.80-.91.	40 C.F.R. 141.90(a)(1); 141.90(g)	
July 11, 2005	Report all sampling results received during the prior month for sampling conducted following partial replacement of lead service lines pursuant to 40 C.F.R. § 141.84(d)(1). Report to include results of post LSLR sampling plan/successes of catch up.	141.90(e)(4), *AO PP #68*	
August 1, 2005	WASA to complete statistical correlation of determiners of service line material	Inventory Plan (AO PP 63)	
August 10, 2005	Report all sampling results received during the prior month for sampling conducted following partial replacement of lead service lines. Report to include results of post LSLR sampling plan/successes of catch up.	141.90(e)(4), *AO PP #68*	
September 1, 2005	Submit a plan to resolve remaining unknown services. (Sept 7, 2004 ltr)	Inventory Plan (AP PP 63)	
September 12,	Report all sampling results received during the prior month	141.90(e)(4) ,*AO*	

DATE	REGULATORY/AO REQUIREMENT	COMMENTS	STATUS
2005	for sampling conducted following partial replacement of lead service lines pursuant to 40 C.F.R. § 141.84(d)(1). Report to include results of post LSLR sampling plan/successes of catch up.	*PP #68*	
September 30, 2005	Complete the following public education activities: 1. Information inserted with bills; special alert language on the face of the water bill 2. Submit public education materials to editorial departments of the major daily and weekly newspapers circulated throughout the community. 3. Deliver public education materials to facilities and organizations. 4. Submit a public service announcement to at least 5 of the radio and television stations with the largest audiences that broadcast to the community served by the water system.	40 C.F.R. 141.85. Based on extensions previously granted, the six-month period for public education requirements ends March 31; the twelve-month period ends September 30 DCWASA shall use the language required by 40 C.F.R. § 141.85. Any omissions from the mandatory language shall be approved in advance by EPA. EPA shall be given a reasonable opportunity to review and comment upon any information provided in addition to the mandatory language. *AO PP #71, 72*	
September 30, 2005	Complete replacement of at least 7% of the initial number of lead service lines in the distribution system between September 30, 2004 and September 30, 2005. ***All replacements will be physical replacements, not "test outs"***	40 C.F.R. 141.84(b). Based on extensions previously granted, the 12 month period for lead service line replacement ends	

DATE	REGULATORY/AO REQUIREMENT	COMMENTS	STATUS
		September 30 of each year. *AO PP #80*	
September 30, 2005	Annual Report due for lead line replacements. *Report should include identification subset of service lines replaced as DOH priority.* Report should include a breakdown of responses to various options to encourage full line replacement and possible analysis of success of each option (Per feedback?).	40 C.F.R. 141.90(e)(2) *AO PP 81, 82* AP PP 83, EPA Aug 10 ltr	
September 30, 2005 and every September 30 there after until Pb90< AL	*Submit for EPA review and approval a calendar for the next 12 month for reporting compliance, similar to Appendix B*	*AO PP # 73*	
October 10, 2005	Report for public education requirements due (within 10 days after the end of each period in which the system is required to perform public education tasks in accordance with 40 C.F.R. 141.85(c)).	40 C.F.R. 141.90(f). Based on extensions previously granted, the six-month period for public education requirements ends March 31; the twelve-month period ends September 30.	
October 10, 2005	Report all sampling results received during the prior month for sampling conducted following partial replacement of lead service lines pursuant to 40 C.F.R. § 141.84(d)(1). Report to include results of post LSLR sampling plan/successes of catch up.	141.90(e)(4) , *AO PP #68*	
November 10, 2005	Report all sampling results received during the prior month for sampling conducted following partial replacement of lead service Report to include results of post LSLR sampling	141.90(e)(4), *AO PP #68*	

DATE	REGULATORY/AO REQUIREMENT	COMMENTS	STATUS
	plan/successes of catch up. lines pursuant to 40 C.F.R. § 141.84(d)(1).		
December 12, 2005	Report all sampling results received during the prior month for sampling conducted following partial replacement of lead service lines pursuant to 40 C.F.R. § 141.84(d)(1). Report to include results of post LSLR sampling plan/successes of catch up.	141.90(e)(4), *AO PP #68*	

6. DC WATER

Question: EPA's January 19, 2005 press release on water monitoring data in the District of Columbia and treatment with orthophosphates indicated that lead levels continue to exceed the regulated EPA levels, and that residents should continue to follow the consumer advisory for flushing and filtering tap water before use. Most recent results reported by DCWASA show that 90 percent of samples have levels at 59 parts per billion. Before the flushing and filtering advisory can be lifted, 90 percent of samples must have lead levels of 15 ppb or lower.

(a) What steps are DCWASA and EPA taking to notify the public regarding the elevated lead levels and continued need to follow the consumer advisory?

Answer: During the first lead monitoring compliance period with the corrosion inhibitor orthophosphate present, DCWASA's results showed that the 90th percentile lead level was 54 ppb, meaning that 90% of samples were at, or below, 54 ppb. The final 90th percentile lead level was determined to be 54 ppb after further analysis by EPA of DCWASA's data. Although DCWASA exceeded the action level for that period, lead levels were generally lower in samples collected after the orthophosphate had been in the system for two months.

Based on information provided to EPA, DCWASA appears to be complying with the public education requirements of the Lead and Copper Rule. This included issuing all the public education materials required by September 30, 2004: a bill stuffer announcement, bill face notice, a public service announcement (PSA) and a newspaper add. WASA issued a public service announcement on

April 8, 2005 to local radio and television stations that notified customers of continued elevated lead levels. On March 11, 2005, WASA issued a press release on recent testing results and included a recommendation that their customers continue to follow tap flushing instructions. During a WAMU radio show in Washington, D.C. on April 1, 2005, WASA's General Manager told the listening audience to continue to flush their taps until further notice. Since January 2005, DCWASA stressed the tap flushing guidance at the following public meetings: January 11, 2005 - Community meeting hosted by Council member Jim Graham in Mt. Pleasant; February 15, 2005 - 4th District Police Station; February 23, 2005 Commission on Aging; February 24, 2005 - Neighborhood Watch Group 4-D; March 10, 2005 - DC WASA Customer and Community Service Meeting; April 7, 2005 - DC WASA Board of Directors Meeting; and the March 11, 2005 - House of Representative Committee on Government Reform Public Hearing. DCWASA also included the consumer advisory in their "What's On Tap" customer newsletters sent out in June and October 2004 and in March 2005.

EPA Region III held public meetings in August 2004, and sent a large mailing to public interest groups at the same time. The Region issued a press release in January 2005 that included tap flushing recommendations. EPA Region III is preparing another detailed mailing targeted for late April 2005 that will include a recommendation to continue following the consumer advisory. This will be sent to over 250 special interest groups and public locations such as libraries and recreation centers. EPA Region III continues to recommend to DCWASA to issue announcements on the consumer advisory at every opportunity. EPA Region III maintains the consumer tap flushing advisory on their regularly updated Internet site. The Regional Administrator of EPA Region III included in his written testimony at the March 11, 2005 hearing of House Committee on Government Reform a notice that lead levels remained high and that District residents should continue following the consumer tap flushing advisory.

(b) Can you describe the major health impacts of lead contamination in drinking water supplies that exceed 15 ppb?

Answer: The health impacts of lead exposure from any source are categorized into short-term and long-term effects. Lead can cause a variety of adverse health effects when people are exposed to it at levels above the 15 ppb action level for relatively short periods of time. These effects may include interference with red blood cell chemistry, delays in normal physical and mental development in babies and young children, slight deficits in the attention span, hearing, and learning abilities of children, and slight increases in the blood pressure of some adults. In terms of long-term effects, lead has the potential to cause stroke, kidney disease, and cancer from a continuous lifetime exposure at levels above the 15 ppb action level.

(c) What steps need to be taken to determine if orthophosphate treatment is effective? What are the data results thus far, and what additional monitoring is needed? When will EPA make a final determination?

Answer: EPA believes that the current monitoring scheme required of DCWASA and of the Washington Aqueduct is sufficient to monitor the effects of the orthophosphate treatment. This monitoring, coupled with the research being conducted by both of these organizations, will determine if the orthophosphate treatment is effective. The Washington Aqueduct monitors water quality parameters several times each day of the water leaving their treatment plants. The Aqueduct has also started research with an extensive pipe loop array to test orthophosphate effectiveness on lead pipe harvested from the District. This pipe-loop research should verify the pipe-loop studies already conducted by DCWASA in their laboratory. DCWASA's pipe-loop results have shown that orthophosphate is effective in reducing the amount of lead that leaches from lead pipe harvested from the District.

DCWASA has been required to conduct water quality parameter monitoring in the distribution system at a minimum twice per month instead of the twice per six month period as specified in the Lead and Copper Rule. In addition, DCWASA has been required to conduct lead profiling at four homes with lead service lines every quarter. This monitoring will give a detailed snapshot of the behavior of lead levels from lead service lines and plumbing since the orthophosphate treatment began. DCWASA has also stepped up distribution system sampling through a hydrant sampling program conducted twice per month, and continues to conduct the required tap sampling program for lead. The results from all these monitoring programs combined will provide appropriate data to make a determination on the corrosion control treatment effectiveness.

Results thus far are promising. Although DCWASA's last round of tap sampling resulted in an exceedance of the lead action level, results from the second half of that period (October through December 2004) were lower than from the first half (July-September 2004). Orthophosphate treatment began on August 23, 2004. Their customer service sample data also shows this same trend starting about two months after the orthophosphate addition. Lead results from DCWASA's current monitoring period continue to show a downward trend. Of the first sixty samples collected from January through April 2005, only four were above the lead action level. In contrast, 41 of the first 60 samples collected during the same period one year ago were above the action level.

EPA Region III will make a determination that the orthophosphate is effective after DCWASA has two consecutive six-month monitoring periods with samples below EPA's lead action level. EPA will continue to assess the

effectiveness of the corrosion control treatment on a monthly and semi-annual basis as monitoring results are submitted by DCWASA and the Washington Aqueduct.

7. NPDES Permits for Pesticides Applied to or on Water

Question: On, February 1, 2005, EPA issued an interpretive statement and proposed rule that will allow pesticide applications to or on water without a Clean Water Act (CWA) National Pollutant Discharge Elimination System (NPDES) permit if a pesticide is applied for its intended purpose in compliance with "relevant" Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) requirements. The proposal states that such pesticides are not considered chemical wastes or biological material within the meaning of CWA Section 502(6). The supporting OGC guidance memo from the docket discusses how this interpretation is different from governments' amicus curiae briefs filed in Altman v. Town of Amherst, 46 Fed App. 62 (2d Cir. 2002) and Headwaters, Inc. v. Talent Irrigation District, 243 F 3d. 536 (9th Cir. 2001).

(a) Please explain EPA's rationale for issuing an interpretive statement and proposed rule that differs from the United States' position filed in the amicus briefs for the Altman and Headwaters cases?

Answer: Neither the Clean Water Act itself nor EPA's implementing regulations address the specific question addressed in the Interpretive Statement and proposed rule – whether pesticides are "chemical wastes" or "biological materials" under section 502(6) of the Act, when used for their intended purpose and in conformity with the relevant requirements of FIFRA. Moreover, EPA does not have a longstanding interpretation of the Clean Water Act and regulations that resolves these issues. The briefs in Altman and Talent reflected the government's evaluation of the law in the context of the specific factual circumstances at issue in those cases, and did not result from a deliberative consideration of the Agency's administrative process, including an opportunity for the public to comment, as did the Interpretive Statement. EPA's position on this question has evolved since the briefs were filed in those cases, and the Agency's revised position best reflects Congressional intent and the language, structure, and purposes of the Clean Water Act.

(b) What does compliance with "relevant" provisions of FIFRA mean?

Answer: The Interpretive Statement stated that "relevant" requirements under FIFRA for purposes of the document refers to requirements relevant to protection of water quality. EPA broadly construes such requirements. EPA uses a variety of requirements in FIFRA labels to mitigate aquatic effects. These may

include, but are not limited to, storage and disposal requirements, mixing and loading restrictions, site restrictions such as "do not use in coastal counties," chemigation[3] restrictions, and other use restrictions meant to minimize movement of pesticides into water.

(c) Published policy statements issued by the Office of Pesticide Programs since 1977 provide a guideline requiring all pesticide labels to contain a warning prohibiting the discharge of pesticides into lakes, streams and ponds or public waters unless it is in accordance with a NPDES permit and the permitting authority has been notified prior to the discharge.

How does compliance with FIFRA exempt the discharge of an aquatic pesticide from NPDES regulation?

Answer: The question refers to documents that addressed the "discharge" of pesticides as pollutants in a waste stream. For example, FIFRA labels for copper sulfate state that NPDES permits "may be necessary" in order to "discharge effluent containing this product." See Chemical Fact Sheet for Copper Sulfate (Bluestone) Herbicide Profile, Office of Pesticide Programs, March 21, 1986.

The Interpretive Statement, on the other hand, addressed certain applications of pesticides for their labeled purpose. As is stated in footnote 5 of the Interpretive Statement, "Where, however, pesticides are a waste, for example when contained in stormwater regulated under section 402(p) of the CWA or other industrial or municipal discharges, they are pollutants and their discharge by a point source to a water of the U.S. may be controlled in an NPDES permit. Thus, this label recommendation is not directed towards the types of pesticide applications addressed in the Interpretive Statement.

(d) How will drift from pesticide applications be handled under the proposed rule?

Answer: The Interpretive Statement clarifies that applications of pesticides to or over, including near, waters of the U.S. do not require NPDES permits if the pesticides are applied consistent with all relevant requirements under FIFRA. The Interpretive Statement also stated that "[i]t has been and will continue to be the operating approach of the Agency that the application of agricultural and other pesticides in accordance with label directions is not subject to NPDES permitting requirements."

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[3] The process where fertilizers, pesticides and other agrichemicals are applied into irrigation water to fertilize crops, control pests or amend soils.

EPA committed in the Federal Register to "continue to review the variety of other circumstances beyond [those] described above in which questions have been raised about whether applications of pesticides that enter waters of the U.S. are regulated under the CWA, including other applications over land areas that may drift over and into waters of the U.S." Towards that end, EPA is considering engaging interested external stakeholders to provide feedback to the Agency on outstanding issues regarding NPDES permitting and pesticides.

(e) How will this proposal affect wildlife and endangered species? Has EPA completed a risk assessment?

Answer: The use of pesticides and any effects on wildlife or endangered species is not expected to change under the Interim Guidance. Pesticide registration is based on a nationwide risk assessment and EPA's risk management process under the FIFRA is designed to ensure that, no matter where they are used, pesticides do not pose greater ecological or environmental risks than the benefits they provide. Potential effects on wildlife and endangered species are evaluated through a risk assessment and management process based on conservative assumptions about extent, rate and frequency of pesticide use. We believe these pesticide risk assessment processes lead to sound and protective label requirements to protect wildlife and endangered species from pesticides.

(f) How will this proposal affect state and local requirements regarding pesticide applications to or on water?

Answer: The position EPA articulated in the Interpretive Guidance would not preclude states from further limiting the use of a particular pesticide in accord with their authorities under 7 USC 136v(a) and Wisconsin Public Intervenor v. Mortier, 501 U.S. 597, 613-614 (1991), to the extent otherwise authorized by federal and state law. Furthermore, under Section 510 of the CWA, States and other governmental entities are not precluded from adopting more stringent requirements to address local water quality concerns.

8. PERCHLORATE

Question: On February 18, 2005, EPA announced that it has established an official reference dose (RfD) of 0.0007 mg/kg/day for perchlorate, which equates to a drinking water equivalent level of 24.5 ppb.

In 2002, the Agency proposed a 0.00003 mg/kg/day reference dose for perchlorate, which translates into a drinking water equivalent level of 1 ppb.

(a) Please explain the justification for setting a reference dose for perchlorate that is 23 times higher than the reference dose proposed by EPA in 2002?

Answer: On February 18, 2005, EPA established a reference dose of 0.0007 mg/kg/day for perchlorate, based on the 2005 recommendation by the National Academy of Science (NAS). As stated by the NAS, this RfD is intended to serve as a public health protective value designed to assure a margin of safety across all sensitive subpopulations. The NAS and EPA based the point of departure for this RfD on a non-adverse biochemical event of preventing iodide uptake inhibition in the thyroid. If inhibition of iodide uptake in the thyroid does not occur, then all other proposed effects of perchlorate would be avoided. The NAS and EPA then applied a full, ten-fold intraspecies uncertainty factor to protect the most sensitive population – the fetuses of pregnant women who might have hypothyroidism or iodide deficiency. This uncertainty factor covers variability among other human life stages, gender and individual sensitivities, protecting not only adults but other sensitive subpopulations such as premature neonates, infants and developing children. This RfD is similar to the upper range of the 0.0001 - 0.0005 mg/kg/day provisional RfD value upon which EPA had been basing its clean-up guidance.

The draft RfD included in EPA's 2002 Perchlorate External Review Draft was 0.00003 mg/kg/day. This number is 23 times less than the NAS recommended value of 0.0007 mg/kg/day. The EPA (2002) draft and NAS (2005) recommendation took two alternative routes in deriving the RfD, and hence undertook different processes for determining uncertainty factors. NAS relied on human data for the no observed effect level (NOEL), and applied a 10x uncertainty factor to protect the most sensitive population. In contrast, EPA (2002) had used the animal data on the lowest observed adverse effect, and hence considered additional uncertainty in extrapolating from animals to humans, extrapolating from a lowest effect to a no effect level, and the residual database uncertainties, for a collective 300-fold uncertainty factor.

(b) How is this reference dose level protective of infants and children?

Answer: In developing a drinking water equivalent level (DWEL) for perchlorate, the Agency applied its standard practice of using 70 kg body weight and 2 liter consumption of drinking water. The perchlorate reference dose on which the DWEL is based is a conservative public health protective value designed to assure a margin of safety across all sensitive subpopulations. The NAS expressly chose a full ten-fold intraspecies uncertainty factor to protect the most sensitive subpopulation – the fetuses of pregnant women who might have hypothyroidism or iodide deficiency. This uncertainty factor covers variability among other human life stages, gender and individual sensitivities, protecting not

only adults but also other sensitive subpopulations such as premature neonates, infants and developing children. In addition, although no epidemiological studies address neonates or newborns with thyroid dysfunction, and it is assumed that these populations are protected by limiting the mother's intake of perchlorate, the NAS concluded that the available epidemiological evidence does not indicate a causal association with thyroid effects in normal newborns following gestational exposure to perchlorate in drinking water at levels up to 120 parts per billion. The decision not to revise EPA's standard practice for calculating a DWEL is further supported in this instance by the fact that the standard weight and consumption values also represent pregnant women and their fetuses, which the NAS has identified to be the most sensitive subpopulation.

9. CLEAN WATER ACT

Question: What is the level of funding in the 2006 budget request for the agency to coordinate with the Army Corps of Engineers to implement the January 15, 2003 guidance for Clean Water Act section 404 permits, resulting from the SWANCC decision?

Answer: The 2006 budget request for EPA does not detail the level of funding to be used to implement the January 2003 guidance. EPA does intend to use its 2006 resources to continue to ensure full and effective implementation of the Clean Water Act, and that jurisdiction under the statute is interpreted to the maximum extent allowed under the law.

Question:
(a) How many permits have been requested?
(b) How many permits have been denied?
(c) How many have been issued?

Answer: The Corps is responsible for the day-to-day implementation of the Clean Water Act Section 404 permit program. According to information obtained from the Corps, during Fiscal Year 2003 (FY03), approximately 90,670 actions were taken. This number reflects the total number of individual permits, general permits, letters of permission and applications denied and withdrawn, with the greatest percentage of actions taken under the general permit program (78,803 or approximately 90%). Of the total number of actions taken in FY03, approximately 4,793 actions were denied or withdrawn, while 4,035 individual permits were issued.

It is important to note that, while most applications are not denied, the vast majority are modified to avoid and minimize impacts on wetlands. In Fiscal Year

2003, the Corps required applicants to avoid disturbance of approximately 5,800 acres of wetlands.

(d) How are wetlands losses and gains being measured as a result of this guidance?

Answer: EPA's intent in preparing the January 2003 guidance was for the document to reflect existing regulations and case law, and as a result the document does not create an alternative basis for jurisdictional decisions. Such determinations are made by consideration of site-specific characteristics in the context of regulations and case law.

The Corps and EPA have been working together to assess the resource implications of SWANCC, and the agencies are committed to increasing the consistency, transparency, and sound science for the Clean Water Act (CWA) Section 404 program. As part of this broader effort, the Corps Districts have posted information on their websites regarding findings of no-jurisdiction. Analysis of that information is ongoing. In addition, the Corps and EPA also are coordinating to expand and improve the utility of the Corps' OMBIL Regulatory Module (ORM), the permit-tracking database currently being installed in all Corps districts. ORM will provide the Corps with more detailed information on permit impacts and mitigation and will be linked to a Geographic Information System (GIS) in the near future to provide spatial data for all permits. These data will be made available to the public through the Corps website with frequent updating. These will provide an excellent foundation for providing greater accessibility to information and help ensure consistency based on credible data.

(e) How many acres of wetlands have been lost since the issuance of the guidance?

Answer: As mentioned in the answer to question (e) above, EPA's intent in preparing the January 2003 guidance was for the document to reflect existing regulations and case law, and as a result the document does not create an alternative basis for jurisdictional decisions. Such determinations are made by consideration of site-specific characteristics in the context of regulations and case law.

The Corps and EPA have been working together to assess the resource implications of SWANCC, and the agencies are committed to increasing the consistency, transparency, and sound science for the Clean Water Act (CWA) Section 404 program. As part of this broader effort, the Corps Districts have posted information on their websites regarding finds of no-jurisdiction. Analysis of that information is on-going. One challenge we face when assessing the impact

of the SWANCC decision is that we do not have comparative data from before the decision to act as a baseline for measuring change.

10. EPA BUDGET DATA

Question: I share Senator Inhofe's concern that this committee receives timely and accurate data from EPA. It is unacceptable, and a colossal waste of time and money, that EPA's budget documents did not contain comparisons with FY 2005 enacted levels.

Do you have any suggestions on ways to ensure that this does not occur again in the future?

Answer: The Agency is committed to providing timely and accurate data to the committee. We will make every effort to avoid this situation in the future. With the proposed adoption of a timely 2006 enacted budget, we anticipate being able to accelerate the time to release the enacted appropriations numbers.

11. EPA PERSONNEL

Question: As we discussed in the hearing, EPA budget documents indicate that the Agency intends to reduce its personnel level by 273 employees. I am very concerned that there continues to be new and young talent coming into the agency as the overall Federal workforce ages. At the hearing, you remarked that you were not aware of any local hiring freezes. Could you please give me a more precise answer on whether any regions or divisions of the Agency have instituted hiring freezes? In addition, please indicate whether reductions in force or buyouts are being considered in the upcoming fiscal year?

Answer: EPA is not reducing its employees. We are reducing the number of agency-authorized positions, which has always been higher than our actual FTE levels. Over the next several months we will be working to align positions with critical needs and skill gaps to ensure we have the appropriate mix of positions to continue to meet our mission. EPA successfully met its commitments with 17,277 FTE in 2004. We plan to have approximately 17,600 FTE in 2005 and virtually the same number in 2006. Thus, the Agency is not under an Agency wide hiring freeze. Individual offices and Regions continue to carefully monitor and prioritize hiring decisions to stay within Full Time Equivalent and payroll allocations. Every year the Agency recruits young, talented individuals for its career intern program and uses special hiring authorities, such as the outstanding scholar program, to attract and hire young individuals. As older workers retire, the Agency stresses backfilling vacancies at entry-level positions.

There are no reductions in force being considered for the upcoming fiscal year. While the Agency plans not to run an agency wide buyout program, individual organizations may submit a proposal to conduct a buyout as part of their strategic workforce planning efforts. If EPA accepts the individual organization's buyout proposal, OPM must approve the buyout.

12. IMPACT OF BUDGET CUTS ON STATES

Question: Does EPA expect the states to be forced to slowdown implementation of major EPA rules as a result of proposed cuts to State and Tribal Assistance Grants in the Agency's fiscal 2006 budget?

Answer: The major differences in reductions between the FY 2005 enacted appropriations and the FY 2006 President's Budget is reduction in infrastructure funding and not a reduction in operating funds. The Environmental Protection Agency does not anticipate a slowdown in the implementation of major Agency rules.

13. INSPECTOR GENERAL

Question: Please explain and justify the proposed FY 2006 reduction in funding, compared with enacted FY 2005 levels, of the Office of EPA Inspector General?

Answer: The Office of Inspector General's decrease of approximately $700,000 (-2%) from 2005 levels will be absorbed through improved operational efficiencies and reassigning priorities on planned and ongoing assignments. This small decrease will help fund higher priority activities within the Agency.

14. CHEMICAL AND PESTICIDE USER FEES

Question: Please provide an explanation of proposed chemical and pesticide user fees, including a justification of the anticipated revenues generated as outlined by the President's FY 2006 budget that would impact EPA's programs.

Answer: The FY 2006 President's budget proposes statutory changes to eliminate the prohibition on collecting both pesticide tolerance and pesticide registration fees, and also proposes eliminating the cap on Pre-Manufacture Notice (PMN) fees. Collection of these fees is consistent with the

Administration's philosophy of requiring those who benefit from a service to pay for the costs associated with the service.

To collect tolerance fees, the proposed tolerance fee rule will be updated and will be finalized. Revisions will eliminate potential overlap with other pesticide fees proposed in the President's Budget. Tolerance fee collections are estimated at $20 million for FY 2006.

To collect the pesticide registration fee, modifications to the existing registration fee rule may be required. All registration fees collected will be used by EPA for registration-related activities. Registration fee collections are estimated at $26 million for FY 2006. Since tolerance and registration fees are currently prohibited under the Pesticide Registration Improvement Act (PRIA), the Congress would need to lift these prohibitions to collect either of these two fees.

The President's budget also seeks to amend section 26(b) of the Toxic Substances Control Act to modify the cap on the amount of Pre-Manufacturing Notice (PMN) fees that can be collected under Section 5 of the Toxics Substances Control Act and also proposes that the fees collected will be used by EPA for the activities for which the fees were collected if Congress appropriates those funds. The PMN fee ceiling has not been updated to reflect increases in program costs since its original enactment in 1976. Currently, the U.S. Treasury receives around $2 million in PMN fees annually.

15. OFFICE OF RESEARCH AND DEVELOPMENT

Question: Please provide details of the so-called "fee-for-service" proposal that would require agency program offices to fund Office of Research and Development (ORD) studies that are needed for new regulations.

Answer: Resources supporting this new approach to funding EPA research represent an additional investment in the high-quality science that underpins all Agency decisions. This investment is designed to address near-term research needs that become apparent as regulatory and policy efforts evolve. The approach builds upon the existing collaborative framework between the Office of Research and Development (ORD) and Agency Program Offices. Currently, ORD works extensively with representatives of the Program Offices to ensure that its research is responsive to multi-year, forecasted Agency priorities. ORD includes Program Office representatives in its Research Coordination Teams (RCTs), which plan and implement research activities.

Resources requested in support of this new approach are overseen by the Program Offices. As the Program Offices outline their most important, near-term research needs, ORD will work with them to determine what research projects will most effectively meet those needs, and will then undertake the agreed-upon work utilizing resources provided by the Program Offices. This is simply another way in which EPA is seeking to ensure that sufficient resources are available to support not only extensive multi-year scientific and research requirements, but also short-term science needs. A total of $20 million has been requested in the Science and Technology appropriation for these efforts, as follows:

Program Project	**Dollar Request** (Dollars in Millions)	**Program Office**
Research: Air Toxics	$0.9	Office of Air and Radiation
Research: NAAQS	$3.6	Office of Air and Radiation
Research: Drinking Water	$1.0	Office of Water
Research: Water Quality	$3.5	Office of Water
Research: Land Preservation and Restoration	$4.5	Office of Solid Waste and Emergency Response
Research: Pesticides and Toxics	$4.5	Office of Prevention, Pesticides, and Toxic Substances
Research: Economics and Decision Sciences	$2.0	Office of Policy, Economics, and Innovation

Question: How much and what percent of ORD's budget would come from such intra-agency transfers?

Answer: As described above, the $20 million for this new approach is not part of ORD's FY 2006 budget request, but rather is part of other offices' budgets. In its FY 2006 President's Budget, EPA requested approximately $536 million ($499 million non-Homeland Security) in S&T resources for ORD. Therefore, the $20 million represents an additional 3.7% in S&T resources that would ultimately fund ORD research efforts.

Question: What steps would be taken to ensure that short-term research projects are not funded at the expense of multi-year projects?

Answer: ORD is currently engaged in discussions with each Program Office to understand its needs and to outline what research activities will most effectively address these priorities. Since these resources are in addition to, not part of, ORD's FY 2006 request, ORD will not be required to fund these projects at the expense of other research efforts. The main focus for ORD is to be

responsive to the expressed needs of the Program Offices and tackle other, high-priority issues that could not be addressed without these additional resources.

16. SUPERFUND

Question: In a January 18, 2005 letter, EPA candidly acknowledged, "Funding was insufficient to start work on 34 projects ranked by EPA's National Risk Prioritization Panel in fiscal year 2004." Rather than request more funds to provide EPA the needed resources to protect human health and the environment, the President requested $126 million less than last year for Superfund remediation.

My question is simple – is the budget request adequate to fully fund Superfund - including all new remediation projects ranked by EPA's National Risk Prioritization Panel?

Answer: Of the 34 projects not funded in fiscal year (FY) 2004, 15 of those projects were in the design phase and not ready to receive construction funding. All of the remaining 19 projects have been stabilized and secured by earlier Superfund activities, and do not pose an immediate threat to human health. If site conditions change and an immediate threat develops, EPA can address those threats through its Superfund Removal Program to protect human health.

The President's Budget requested an additional $150 million for Superfund construction in FY 2004 and an additional $143.5 million in FY 2005 above the FY 2003 request level. In FY 2004, Congress appropriated approximately $132 million less than the FY 2004 request and approximately $128 million less than the FY 2005 request. The President's FY 2006 Budget takes into account Congress' prior actions, the current level of the federal deficit, and the many competing needs within the federal government. The FY 2006 Budget Request maintains Superfund program funding at the FY 2004 and FY 2005 enacted levels. At these levels, the Superfund Remedial program has met its performance targets and anticipates being able to continue to meet its targets in FY 2005 and FY 2006.

In addition to resources appropriated in the current year, we also make significant use of funds that were designated for sites in previous years and which are no longer needed (e.g., because actions cost less than were originally anticipated or site circumstances changed). Each year EPA aggressively scrutinizes its accounts for such resources and redirects (deobligates) them to other activities or sites. These deobligations comprise a large proportion of the resources we use to start new construction projects.

At this point, it is difficult to predict which projects will not be funded in FY 2005 and will be carried over into FY 2006. It is also not possible to project now with certainty what our new construction projects needs will be in FY 2006.

17. SUPERFUND

Question: In responding to my October 20, 2004 letter, EPA again provided a list of the 34 specific projects ranked by the Agency's National Prioritization Panel for which there were no funds available in fiscal year 2004. Yet EPA failed to provide the specific information I requested. Therefore, let me again ask for the following information to better understand the impact of EPA's cleanup slowdown:

(a) The amount of funding requested by the regions for each of the 34 sites,
(b) The activities that were not undertaken at each of the 34 sites due to the insufficient funding;
(c) A list of sites that received partial funding in fiscal year 2004;
(d) The amount of funding requested by the regions for each of the sites that received partial funding;
(e) The amount of funding that was obligated and that was expended at each site that received partial funding; and
(f) The shortfall for each site that received partial funding.

Answer: EPA Headquarters and the regions work together throughout the year to balance the Superfund program's human health and environmental protection responsibilities with both individual site needs and national priorities. Throughout this collaborative process, EPA regional and Headquarters program managers reach agreements on site and project funding levels that make the best use of available resources. During FY 2004, the Superfund program funded all ongoing remedial projects at a level sufficient to maintain the effective progress towards protection of long-term threats to human health and towards construction completion.

In Tom Dunne's January 18, 2005 letter to Senator Jeffords, EPA identified 34 projects for which funding was insufficient to start work in FY 2004. Of the 34 projects, 15 were in the cleanup design phase and, in fact, were not ready to receive construction funding by the end of FY 2004. The remaining 19 projects have been stabilized and secured by earlier Superfund remedial and/or removal activities.

18. ELIZABETH MINE

Question: For the third year in a row, inadequate funds has forced EPA to delay cleanup of the Elizabeth Mine in Strafford, Vermont, a site that has been continually ranked by EPA's National Risk Prioritization Panel. Similarly, the Ely Copper Mine in Vershire, Vermont, and the Pike Hill Copper Mine in Corinth, Vermont, are waiting for funds for a full remedial investigation and feasibility study.

How much longer are these communities going to have to wait to get the acid mine drainage from these sites cleaned up?

Answer: Construction work has been proceeding at the Elizabeth Mine site. EPA responded to the potential threat posed by the deterioration of the tailing dam by implementing a time-critical, multi-phase response in 2003 and 2004. EPA has replaced the failed drainage system and installed a buttress to eliminate the potential for failure of the tailing dam. The buttress was completed in December 2004, and some additional work will be completed in 2005. EPA has spent approximately $5.7 million for this response action.

In addition, an estimated $7 million has been spent to implement an investigation of the nature and extent of contamination at this large and complex site. There has been substantial community involvement and the development of interim assessments to accomplish a community based program. EPA continues to evaluate innovative technologies that may offer a more cost effective solution at the site. EPA expects to complete the investigation program in 2006 and release a proposed plan to cover all additional cleanup actions at the site in 2006. The investigation program is currently fully funded.

With respect to the Ely Copper Mine and Pike Hill Copper Mine, EPA has made some progress at these sites over the past few years. At Ely Mine, EPA has worked with the USGS, US Army Corps of Engineers, and Vermont ANR to develop a baseline understanding of the waste material and associated impacts to surface water, sediments, and biota, and some additional work is scheduled for 2005. At the Pike Hill Copper Mine, EPA has worked with the USGS to implement a baseline waste characterization, surface water, and sediment monitoring program. EPA has allocated funds to formally begin the Remedial Investigation/Feasibility Study at this site this year.

19. SUPERFUND

Question: The pace of Superfund cleanups has fallen from an average of 87 cleanups completed per year at the end of the Clinton Administration to 40 per

year during the Bush Administration. The Administration has acknowledged that there is a growing backlog of projects ready to begin construction. At the same time, the budget notes that eight large, complex sites consume about half of the money available for Superfund-led remedial actions.

In light of these financial challenges, why doesn't the Administration request more funds for the program?

Answer: The President's Budget requested an additional $150 million for Superfund construction in FY 2004 and an additional $143.5 million in FY 2005 above the FY 2003 request level. In FY 2004, Congress appropriated approximately $132 million less than the FY 2004 request and approximately $128 million less than the FY 2005 request. The President's FY 2006 Budget takes into account Congress' prior actions, the current level of the federal deficit, and the many competing needs within the federal government. The FY 2006 Budget Request maintains Superfund program funding at the FY 2004 and FY 2005 enacted levels. At these levels, the Superfund Remedial program has met its performance targets and anticipates being able to continue to meet its targets in FY 2005 and FY 2006.

20. SUPERFUND

QUESTION: The President's 2005 budget request estimated Superfund cost recoveries of $125 million for 2004 and 2005. This year's budget request lowers the Superfund cost recovery estimate to $60 million for 2005 and 2006.

Please explain why the amount of Superfund cost recoveries appears to have fallen by over 50%.

ANSWER: The cost recovery projections were adjusted to reflect an increase in the use of Special Accounts.

In a given year, past cost recovery collections are affected primarily by what we have achieved in cost recovery settlements and through litigation. There is a fair amount of annual variation, due to the types and sizes of cases in the pipeline. As we take earlier and earlier enforcement actions to assure that Potentially Responsible Parties (PRPs) do the work at sites, we need to spend less fund money at sites where there are PRPs and thus there is less fund money to be recouped in cost recovery. One mechanism that PRPs use to settle their liability up front is to deposit funds in a special dedicated account to be used to fund future work at the site in question.

There are also situations where we achieve a cost recovery settlement or win a judgment but the actual collection of those funds never occurs. Usually, this is because the PRP enters into bankruptcy or develops an ability to pay problem. This also lowers actual recoveries to the trust fund.

21. SUPERFUND

Question: For many years, potentially responsible parties under Superfund have used "Special Accounts" to set aside funds for cleanup of a particular site. Please provide the amount placed into "Special Accounts" in each fiscal years 2001-2005.

Answer: Under CERCLA, the Agency may deposit funds received from Potentially Responsible Parties (PRPs) in site-specific accounts, called Special Accounts, to finance response actions. Funds retained in special accounts are designated for specific sites established by legally binding authority described in the settlement agreements with PRPs. The funds in a Special Account may be disbursed as work is performed.

The following table provides the receipts deposited in Special Accounts. These funds include contributions for past and future costs.

Superfund Special Account Totals FY 2001 – FY 2005
(dollars in millions)

	FY 2001 Actuals	FY 2002 Actuals	FY 2003 Actuals	FY 2004 Actuals	FY 2005 Actuals (as of 4/8/05)
Total:	$340.6	$155.8	$130.4	$155.7	$137.0

22. SUPERFUND

Question: The pace of Superfund cleanups has fallen from an average of 87 cleanups completed per year at the end of the Clinton Administration to 40 per year during the Bush Administration. The Administration has acknowledged that there is a growing backlog of projects ready to begin construction. At the same time, the budget notes that eight large, complex sites consume about half of the money available for Superfund-led remedial actions.

In light of these financial challenges, why doesn't the Administration request more funds for the program?

Answer: The President's Budget requested an additional $150 million for Superfund construction in FY 2004 and an additional $143.5 million in FY 2005

above the FY 2003 request level. In FY 2004, Congress appropriated approximately $132 million less than the FY 2004 request and approximately $128 million less than the FY 2005 request. The President's FY 2006 Budget takes into account Congress' prior actions, the current level of the federal deficit, and the many competing needs within the federal government. The FY 2006 Budget Request maintains Superfund program funding at the FY 2004 and FY 2005 enacted levels. At these levels, the Superfund Remedial program has met its performance targets and anticipates being able to continue to meet its targets in FY 2005 and FY 2006.

23. SUPERFUND

Question: What steps is EPA taking to encourage voluntary cleanups of hazardous contamination in light of the Supreme Court's recent decision in *Cooper Industries v. Aviall Services*?

Answer: EPA remains committed to using its full range of authorities to encourage and support the voluntary cleanup and reuse of contaminated properties by private parties. EPA is working with States and other stakeholders to closely monitor developments related to the Aviall decision. In particular, EPA continues to demonstrate its commitment to voluntary cleanups by participating in outreach with State organizations, such as the Association of State and Territorial Solid Waste Management Officials and the National Association of Attorney Generals, and with the legal and real estate communities, including the American Law Institute-American Bar Association and other organizations. Last month EPA discussed the Aviall case and voluntary cleanups with more than 100 state cleanup officials at a nationwide Brownfields' symposium.

The Agency is actively assessing the impact of the Aviall decision on EPA and State voluntary cleanup and response programs, to determine whether and what type of additional action may be needed, to help expedite the cleanup and reuse of contaminated properties. The Agency also is considering whether it should revise any of its enforcement or settlement policies and model settlement agreements in light of the Aviall decision.

Aviall only affects the contribution rights of potentially responsible parties under Superfund who conduct voluntary cleanups at a site. It does not affect recovery of cleanup costs under State law, nor does it affect the right of non-liable parties to sue for recovery of their costs under CERCLA § 107(a) nor does it affect the contribution rights of parties who have entered into settlements with EPA or States. Notably, many private parties cleaning up properties under State response or Brownfields programs may be non-liable bona fide prospective purchasers and would not be affected by the Aviall decision.

24. INSTITUTIONAL CONTROLS

Question: What steps is EPA taking to implement the recommendations in the GAO's recent report on institutional controls?

Answer: EPA has already undertaken a number of activities to address the recommendations in the GAO report. During 2004 the regions entered data on institutional controls (ICs) for approximately 900 construction complete sites into the IC tracking system (ICTS) to allow for better tracking and monitoring of ICs at Superfund sites. Also in 2004 EPA developed a national strategy to evaluate and address potential IC issues at Superfund sites, and regions developed work plans to prioritize site-specific evaluations and to ensure all sites with potential IC issues are addressed. A national management advisory group, chaired by headquarters with regional program and counsel staff, was instituted to monitor progress, identify and address potential IC issues, and advocate the development and use of best practices. Finally, numerous guidance and training programs have been developed for IC implementation and monitoring, and EPA is actively tracking progress in addressing IC issues at Superfund sites.

25. HAZARDOUS WASTE

Question: Concerns have been raised over the last several years about the adequacy of RCRA's financial assurance program and its implementation.

What steps has EPA taken to ensure the integrity of the financial assurance program so that taxpayers are not forced to pay for the closure, post-closure care and corrective action typically required when hazardous waste facilities terminate their active operation?

Answer: EPA believes that the financial assurance program must operate effectively to minimize the risks to taxpayers from the operation of hazardous waste facilities. The Agency is focusing enforcement attention on financial assurance as well as conducting investigations of its own and responding to outside inquiries on financial assurance. This effort is aided by financial assurance training that EPA has provided to the regions and the states in 2004 and 2005. EPA is already working with states to implement its financial assurance program priorities.

Finally, EPA's Inspector General (IG) has also undertaken an investigation of the RCRA financial assurance program. They have interviewed several EPA headquarters and regional personnel, as well as states for their

investigation. EPA will carefully consider the IG's recommendations after they are completed.

26. TOXICS

Question: The President's FY2006 budget request reflects a reduction of $850,000 for the HPV Challenge Program. According to remarks by EPA staff at a recent meeting of EPA's National Pollution Prevention and Toxics Advisory Committee, EPA plans to conduct hazard assessments (including a review of the completeness and quality of HPV submission) for all of the 1,400 HPV chemicals for which submissions are being made under the U.S. HPV Challenge Program. EPA staff indicated that they expect to take two years to conduct the analyses for higher priority chemicals and an additional two years to conduct such assessments for the remaining HPV chemicals.

(a) Does the $850,000 cut reflect this schedule?

Answer: The funding level requested in the FY 2006 President's Budget adequately funds this program to maintain satisfactory progress toward program goals. EPA expects to implement the recommendations from the National Pollution Prevention and Toxics Advisory Committee to complete the hazard assessments (including a review of the completeness and quality of HPV submission) for all of the 1,400 HPV chemicals for which submissions are being made under the U.S. HPV Challenge Program over four years, with the analyses for the higher priority chemicals completed in the first two years.

(b) If Congress were to maintain funding for the HPV Challenge Program at current levels, how much faster could a hazard assessment for these high production chemicals be completed?

Answer: The funding level requested in the FY 2006 President's Budget adequately funds this program to maintain satisfactory progress toward program goals. EPA's progress in making HPV data available to the public will not be affected.

27. RECYCLING INFRASTRUCTURE

Question: Despite the growth of voluntary curbside collection, the recycling rates of many consumer commodities, such as plastic, aluminum, and glass, are at historic lows. Exports of recyclable post-consumer commodities are soaring and the expansion of "single stream" recycling has raised serious quality concerns. As a result, companies are finding it increasingly difficult to obtain the quantity and quality of recycled feedstock needed to meet demand.

(a) What resources does EPA allocate to support recycling efforts in terms of (i) annual full-time equivalent positions and (ii) extra-mural dollars? Please provide for FY 2005 and FY 2006.

Answer: EPA supports recycling efforts under the Waste Minimization and Recycling Program Project of RCRA. In FY 2005, there are a total of 76.2 annual full-time equivalents (FTE) in the waste minimization and recycling program. The program has an extra-mural budget of $11,507.5 thousand. In FY 2006, the Agency is requesting a total of 74.5 FTE and $14,376.1 thousand in extra-mural funding in the waste minimization and recycling program.

(b) In 1996, EPA set a nationwide recycling goal of 35% by 2005. Does the Agency expect this goal to be met?

Answer: EPA does not expect to meet this goal for 2005. The 2005 35% recycling goal was and is an ambitious goal; however, the Agency has maintained this goal in the 2008 strategic plan as we continue to strive to meet it. In 2001, the national recycling rate was 29.7%, and the recycling rate has been increasing less than 1% each year. There are a number of factors influencing the national recycling rate, including the economy, the increase in convenience packaging, and the increase of waste generated away from home. The 35% goal was left in place with 2008 as a new target date. Achieving 35% remains difficult.

To meet the 35% goal, EPA is developing Action Plans under our Resource Conservation Challenge (RCC) which will target selected waste streams in municipal solid waste for special emphasis based on generation and recovery rates and the potential for increased recycling. Specifically, EPA will have a national focus on increased recycling for: paper, packaging/containers, and organics (food and yard waste).

(c) EPA stated last year that the Agency's FY 2006 budget would formalize additional performance goals to supplement the existing interim target of 35% recycling. What are those goals?

Answer: This process is still ongoing and estimated to be completed by the July 2005 Resource Conservation Challenge meeting. EPA has identified the largest MSW streams – paper, packaging/containers, and organics – which will provide opportunities to increase recycling. These opportunities will be described in Action Plans that are currently being prepared by EPA. The Agency has developed draft targets demonstrating the amount of increased recycling needed to achieve the 35% goal.

(d) Has EPA established sub-goals for particular recycled commodities, such as beverage containers or commercial grade paper, and if so, what are they?

Answer: To date, EPA has not established final sub-goals for particular recycled commodities. However, we have established draft targets for the identified three largest volumes stream and are working with stakeholders to finalize these targets or to revise as needed.

(e) What steps is EPA taking to address the quality concerns raised by single stream recycling? For example, has EPA developed any "best management practices" guidelines to encourage appropriate industry collection? If not, is EPA willing to do so?

Answer: EPA is working on addressing the quality concerns raised by single stream recycling. For example, we are planning a "paper" stakeholder meeting to determine what actions are needed to increase paper recycling. Stakeholders already have identified that quality of recovered material is a key issue. In addition, the State of California and EPA's regional office in San Francisco are coordinating to present a single stream workshop in Sacramento in May. The workshop is designed to address the quality concerns among other issues.

(f) What steps is EPA taking to help municipalities launch and maintain recycling programs? For example, has EPA developed financial tools to help municipalities evaluate the true life-cycle costs of recycling programs, including the cost savings through avoided landfill disposal costs? If not, is EPA willing to do so?

Answer: EPA has helped municipalities launch and maintain recycling programs through voluntary partnership programs, technical assistance and outreach. EPA has also developed financial tools to help municipalities evaluate the true life-cycle costs of recycling programs, including the cost savings through avoided landfill disposal costs.

28. TOXIC RELEASE INVENTORY

Question: What is the status of EPA's rulemaking regarding the metal mining industry's Toxics Release Inventory reporting obligations under section 313 of the Emergency Planning and Community Right to Know Act?

Answer: The TRI Program has initiated this rulemaking effort along with several other rulemakings such as developing rules related to burden reduction specifically targeted for small businesses, and the collection of Toxic Equivalents (TEQ) information for dioxin and dioxin-like compounds, along with other efforts. Given all of these ongoing efforts, the TRI Program anticipates having a proposed rule by December 2006.

The purpose of the rulemaking is to clarify how the mining activities of extraction and beneficiation fall under the EPCRA section 313 chemical activity thresholds. As part of this rulemaking the Agency plans to evaluate its interpretation of how mining facilities apply the *de minimis* exemption to waste rock.

29. ENVIRONMENTAL DISCLOSURE

Question: What steps is EPA taking to ensure that investors can obtain accurate information about a company's environmental performance?

Answer: EPA considers the ability to evaluate a company's environmental performance to be an important tool available to the public. EPA's contribution to this effort is largely focused in two areas: 1) EPA maintains electronic data bases available for public use which can be accessed from its website at http://www.epa.gov/echo/ from which the public can ascertain the compliance history of approximately 800,000 EPA-regulated facilities; and, 2) EPA works closely with the Securities and Exchange Commission (SEC) to facilitate compliance with their disclosure requirements.

(a) What resources does EPA allocate to support recycling efforts in terms of (i) annual full-time equivalent positions and (ii) extra-mural dollars? Please provide for FY 2005 and FY 2006.

Answer: EPA supports recycling efforts under the Waste Minimization and Recycling Program Project of RCRA. In FY 2005, there are a total of 76.2 annual full-time equivalents (FTE) in the waste minimization and recycling program. The program has an extra-mural budget of $11,507.5 thousand. In FY 2006, the Agency is requesting a total of 74.5 FTE and $14,376.1 thousand in extra-mural funding in the waste minimization and recycling program.

30. ENERGY STAR

Question: Energy Star has been a very successful voluntary program covering a wide variety of products, ranging from air conditioners and dishwashers to DVD players. Yet the Department of Energy and EPA refuse to offer this designation to solar water heaters, which can reduce a home's natural gas consumption by more than half. I understand that the performance of these devices is well established and verifiable given that solar water heaters now have to go through a rigorous quality and performance test at the nonprofit Florida Solar Energy Center. Why are solar water heaters, with the potential to save millions of cubic feet of natural gas annually, denied the Energy Star designation? In addition, what steps is the EPA taking to promote the development of renewable energy technologies?

Answer: The ENERGY STAR program helps consumers identify products that will help save them money while protecting our environment. This program is administered jointly by EPA and the US. Department of Energy (DOE), and under the agreement between EPA and DOE, DOE has the lead responsibility for residential water heaters. However, it may be useful to note that in considering whether to use the ENERGY STAR label to spur market transformation in a particular product category, EPA and DOE have generally looked for a national product definition that delivers energy savings, with no product trade-offs, broadly across the country. If a product technology does not meet these conditions, EPA believes that there are other market transformation tools that can be used.

More broadly, EPA supports the use of cost-effective renewable energy technologies as an effective pollution prevention strategy that delivers climate risk mitigation and local air quality benefits. EPA's renewable energy efforts fall in two areas: working with the states to identify effective policies that help spur the renewable energy market, and the Agency's voluntary Green Power Partnership. Under EPA's State Clean Energy Partnership Program, states work in partnership with EPA to develop and implement a comprehensive strategy for using existing and new energy policies and programs to promote energy efficiency, clean distributed generation and renewable energy that provide air quality and other benefits. One example of EPA's efforts in this area is last year's guidance for including energy efficiency and renewable energy as strategies to achieve State Implementation Plan goals.

EPA's Green Power Partnership was launched in 2001 with a goal of reducing the cost of renewable energy by creating new demand for green power among large corporate, governmental, and institutional electricity purchasers. To date, the program has enlisted over 600 Green Power Partners that have made a commitment to procure a percentage of their power as green power, totaling over 2 Billion kilowatt-hours of annual green power demand. This demand has

contributed to over 1600 megawatts of new renewable energy capacity that has been built in the U.S. to meet voluntary green power markets. EPA believes that by enlisting electricity purchasers to increase their demand for green power, this can transform the market and encourage more competitive renewable energy products.

31. FINE PARTICULATE MATTER

Question: What is the status of the fine particulate matter implementation rule? Is this being delayed because the Administration has not requested enough resources for monitoring and speciation to ensure that the most cost-effective control options are being identified?

Answer: On December 17, 2004, EPA took final action to designate attainment and nonattainment areas under the more protective national air quality standards for fine particles ($PM_{2.5}$). The implementation rule for $PM_{2.5}$ will provide guidance to the States on a number of issues related to the attainment process, including precursor pollutants to be addressed by States, reasonable further progress options, and options for area classifications.

The inter-agency review will be completed shortly, after which time the proposed rule will be signed and published in the Federal Register. In the interim, we have issued informal guidance to the States to assist them as they begin to develop their implementation plans. The rule is not being delayed. The FY 2002-2006 President's Budgets requested adequate resources for monitoring and speciation activities. As the data from monitoring and speciation become available, EAP will be able to ensure the most cost-effective control options are identified.

32. OZONE

Question: The budget request makes cuts in the Clean Air Act programs intended to protect the ozone layer. These cuts would really interfere with ongoing efforts to assure that only critical uses of ozone depleting substances are permitted, to complete the phase-out of these chemicals, and to assure that there is a smooth transition to the safer substitutes for industry and the military.

Why is the Administration calling for a 20 percent cut in a program that has been so very effective? What impact will this cut have on the millions of cases of skin cancer that are otherwise expected to be avoided by full and faithful implementation of the Clean Air Act?

Answer: The reduction in this program is due to completion of Phase I of the stratospheric ozone depleting substances, which is the final Class I substance that was phased out of domestic production on January 1, 2005.

To maintain the program's effectiveness over the next few years the Agency will provide sufficient resource to achieve key ozone protection goals, including a significant reduction in the expected number of skin cancer cases in the U.S. This reduction would have no measurable negative impact on our ability to protect human health or to meet Clean Air Act requirements.

Specifically, among other things, in the next few years the program will aim to accomplish the following:

- Secure and implement limited critical exemptions for continued production of phased-out ozone depleting chemicals that are still needed for: pest control for major crops and commodities; asthma inhalers relied on by millions of American asthmatics; and military and aerospace equipment
- Provide U.S. businesses with clear and responsive procedures for reporting, labeling, recycling, equipment maintenance, and production and export allocations which will require conducting extensive data collection, including economic analyses and other assessments involving technical contracting support, to inform the development of timely and accurate regulations.
- Complete analyses and other work necessary to help the U.S. air conditioning and refrigeration industry make a seamless transition to non-ozone depleting chemicals by 2010, a substantial task given that virtually every window unit sold in the U.S. today uses an ozone depleting chemical

33. AIR EMISSIONS

Question: Please identify and describe the major regulatory determinations and rulemakings, proposed and final, that the Agency expects to promulgate or conclude in fiscal year 2005 and 2006 that will have an affect on fossil fuel combustion activities and air emissions, such as mobile source engines, including non-road and small sources, industrial boilers, electric generating units, etc.

Answer: The following regulatory determinations and rulemakings have occurred or are expected to occur in fiscal years 2005 and 2006:

Subpart KKKK-Stationary Combustion Turbine

New Source Performance Standard (NSPS): February 2005 (proposal)

Subparts Da, Db and Dc - Boiler NSPS:	February 2005 (proposal)
Clean Air Mercury Rule:	March 2005 (final)
Clean Air Interstate Rule	March 2005 (final)
5-Year Review of Large Municipal Waste Combustors (MWCs):	Spring 2005 (proposal)
Subpart xxxx - Compression Ignition Reciprocating Internal Combustion Engines (RICE) NSPS:	June 2005 (proposal)
Regional Haze Regulations and Guidelines for Best Available Retrofit Technology (BART) Determinations	June 2005 (final)
Other Solid Waste Incinerators (OSWI):	November 2005 (final)
Subpart KKKK - Stationary Combustion Turbine NSPS:	February 2006 (final)
Subparts Da, Db and Dc - Boiler NSPS:	February 2006 (final)
5-Year Review of Large MWCs:	April 2006 (final)
Subpart yyyy - Spark Ignition RICE NSPS:	May 2006 (proposal)
Subpart xxxx - Compression Ignition RICE NSPS:	June 2006 (final)
NESHAP - 112(k) Area Source RICE:	October 2006 (proposal)
NESHAP - 112(k) Area Source Boilers:	December 2006 (proposal)

The Agency expects to issue a final rule this summer, putting forward an innovative and comprehensive in-use testing program for heavy-duty engines. This rule is being developed in coordination with the Engine Manufacturers Association and the California Air Resources Board. When in place, engine manufacturers will be conducting significant amounts of in-use testing, which will be used to help ensure that emission reductions from the new standards EPA has put in place will be achieved.

In FY 2006, EPA expects to issue two significant proposals. The first will address emissions from small spark-ignition engines, used in equipment such as lawn mowers, as well as marine engines. This is being done in response to the Congressional direction in the Consolidated Appropriations Act 2004. The second rule will contain new regulations to reduce mobile source air toxics. Control strategies for fuel, motor vehicles, and other mobile sources will be discussed.

Later in the fiscal year, EPA hopes to issue proposals for new diesel engine standards for locomotives and engines used in marine applications.

34. NATIONAL ACID PRECIPITATION ASSESSMENT PROGRAM REPORT

Question: When will the Agency publish the final National Acid Precipitation Assessment Program report that has been in review since at least October 2004, but was due several years ago?

Answer: As you know, the NAPAP report that you are concerned about is required by Section 103(j) of the Clean Air Act. This section established an Acid Precipitation Task Force consisting of EPA, DOE, DOI, NOAA, NASA and additional members appointed by the President. In 1993, President Clinton promulgated Executive Order 12811 which created the National Science and Technology Council. This council, through its Committee on Environment and Natural Resources (CENR), is the body that currently coordinates Federal acid rain research and monitoring and the organization that oversees the production of the NAPAP report. Although EPA participates in the Acid Precipitation Task Force, we do not chair the group. EPA, however, is devoting all necessary resources to assist the issuance of a final report.

The NAPAP report is currently undergoing interagency review.

35. NSR ENFORCEMENT

Question: What is the status of the NSR enforcement actions referred to the Justice Department during calendar years 2003 and 2004?

Answer: It is the U.S. Environmental Protection Agency's and U.S. Department of Justice's policy and practice not to discuss the status of matters referred to the Justice Department or the identity of the referred companies. We are continuing to actively litigate the filed cases, and are in negotiations with a number of companies regarding compliance with NSR and the Clean Air Act. We will file new cases consistent with environmental policies.

Attached is a summary of 2003 and 2004 NSR enforcement activities.

SUMMARY OF 2003 AND 2004 ENFORCEMENT ACTIVITIES

Virginia Electric and Power Co. (VEPCO)

The Department of Justice and the Environmental Protection Agency announced on April 21, 2003 the largest Clean Air Act settlement of an enforcement matter against a utility. Virginia Electric and Power Co. (VEPCO) has agreed to spend $1.2 billion between now and 2013 to eliminate 237,000 tons of sulfur dioxide (SO2) and nitrogen oxides (NOx) emissions each year from eight coal-fired electricity generating plants in Virginia and West Virginia.

Santee Cooper

On March 16, 2004, the Department of Justice and the Environmental Protection Agency, along with the State of South Carolina, announced a major Clean Air Act settlement with the South Carolina Public Service Authority (Santee Cooper). The settlement resolves the federal government's claims that Santee Cooper violated the Clean Air Act New Source Review program at several of its plants by undertaking construction activities and increasing emissions of air pollution without installing required pollution controls. The settlement is expected to eliminate almost 70,000 tons of harmful air pollutants annually from four of Santee Cooper's existing coal-fired electricity generating plants in South Carolina.

Chevron

On October 16, 2003, the U.S. Justice Department, the Environmental Protection Agency (EPA) and the U.S. Attorney, San Francisco, announced a comprehensive Clean Air Act settlement with Chevron U.S.A. Inc. The settlement is expected to reduce harmful air emissions by almost 10,000 tons per year from five U.S. petroleum refineries that represent more than five percent of the total refining capacity in the United States. The consent decree requires Chevron to spend an estimated $275 million to install and implement innovative control technologies to reduce emissions at its refineries. Chevron's actions under this agreement will reduce annual emissions of nitrogen oxides (NOx) by more than 3,300 tons and sulfur dioxide (SO2) by nearly 6,300 tons. The air pollutants addressed by today's agreements can cause serious respiratory problems and exacerbate cases of childhood asthma.

East Kentucky Power

On January 28, 2004, The United States filed a civil complaint against East Kentucky Power Cooperative (EKPC) seeking injunctive relief and civil penalties

for violations of the Clean Air Act's New Source Review (NSR) provisions. Among the charges in the complaint is the claim that in the 1990's EKPC modified three of its coal-burning electric generating units without first obtaining NSR permits or installing the best available control technology (BACT), as required by law. The complaint also charges EKPC with violations of the Clean Air Act's New Source Performance Standards, operating permit requirements, and the Kentucky State Implementation Plan.

36. NEW SOURCE PERFORMANCE STANDARDS

Question: What is the status of review and revision, if appropriate, of the New Source Performance Standards? Please provide the schedule for updating each of these standards with information on the date of the last revision for each.

Answer: The following NSPS actions have occurred or are expected to occur in fiscal years 2005 and 2006:

Subpart KKKK - Stationary Combustion Turbine NSPS:	February 2006 (final)
Subparts Da, Db and Dc - Boiler NSPS:	February 2006 (final)
5-Year Review of Large MWCs:	April 2006 (final)
Subpart yyyy - Spark Ignition RICE NSPS:	May 2006 (proposal)
Subpart xxxx - Compression Ignition RICE NSPS:	June 2006 (final)
NESHAP - 112(k) Area Source RICE:	October 2006 (proposal)
NESHAP - 112(k) Area Source Boilers:	December 2006 (proposal)

The dates of the last reviews/ revisions are:

- The NSPS for subparts Da, Db, and Dc was previously reviewed and revised (for NOx only) on September 16, 1998. Subparts Da (1979), Db (1984 and 1986), and Dc (1990) are all revisions of D. Proposal issued February 2005.

- The emission limits in subpart GG were never revised since the subpart was originally promulgated in 1979. The new Subpart KKKK – created by EPA – is, in effect, our revision to the GG emission limits for turbines. Proposal issued February 2005.

37. NATIONAL AIR TOXICS ASSESSMENT

Question: When will the Agency complete and publish an updated National Air Toxics Assessment, including an update of the 1996 toxic air pollutant emissions inventory?

Answer: The agency is in the final stages of reviewing the 1999 National Air Toxics Assessment and expects to publish the assessment on the Agency website in late spring 2005.

The 1999 emissions inventory will be updated to be consistent with emission improvements developed to support the Clean Air Mercury Rule. In addition, the Agency is working on a 2002 toxic air pollutant emissions inventory, which may be completed by the end of 2005.

38. CANCER AND NON-CANCER RISK ASSESSMENT GUIDELINES

Question: Please describe the status of the Agency's cancer and non-cancer risk assessment guidelines.

Answer: On March 29, 2005, the U.S. Environmental Protection Agency (EPA) issued final Guidelines for Carcinogen Risk Assessment (Cancer Guidelines), along with an associated document entitled Supplemental Guidance for Assessing Susceptibility from Early-Life Exposure to Carcinogens (Supplemental Guidance). Both documents are available at www.epa.gov/cancerguidelines .

The Cancer Guidelines provide a framework for EPA scientists to use in assessing possible cancer risks from exposures to pollutants or other agents in the environment. They will also inform Agency decision makers and the public about these recommended procedures. The Guidelines encourage greater use of the increasing scientific understanding of the processes of cancer development.

The Cancer Guidelines explicitly call for consideration of possible sensitive subpopulations and/or lifestages (such as childhood). The consideration of childhood risks in the Cancer Guidelines has been augmented by the development of the Supplemental Guidance, which focuses on assessing the effects of early lifestage exposure and includes a review of existing scientific literature on chemical effects in animals and human exposure. It is important to note that the supplement is not about looking at childhood cancers, but focuses on how early life exposures to compounds acting through a mutagenic mode of action may lead to increases in cancer risks in later life.

EPA's guidelines for non-cancer risk assessment include guidelines published in 1986 that address mutagenicity, chemical mixtures, exposure, and developmental toxicity. EPA later issued revised and new guidelines on developmental toxicity (1991), exposure assessment (1992), and reproductive toxicity (1996). More recently EPA published the Guidelines for Neurotoxicity Risk Assessment (1998) and the Supplementary Guidance for Conducting Health Risk Assessment of Chemical Mixtures (2000).

EPA continues to gather health risk assessment information for possible guideline development or updating. Candidate topics include cumulative risk, microbial risk, and exposure assessment. Publication of the Framework for Cumulative Risk Assessment (2003) is one example of progress in these areas.

39. UNEP MEETING

Question: What did the Administration, with support from the Agency, present at the recent meeting of the UNEP Governing Council's meeting in Nairobi with respect to any position on and any US activities on reducing global mercury emissions? What resources will be used by the Agency in FY 2005 and FY 2006 to help reduce these emissions across the world?

Answer: At the recent meeting of the United Nations Environmental Program (UNEP) Governing Council, the U.S. Government sought accelerated actions by countries to address key sources of mercury emissions and uses and to put in motion a global, collaborative effort to reduce mercury emissions and uses. Our goal was to accelerate the existing UNEP Mercury Program by proposing the establishment of a mercury partnership program that would bring together developed and developing countries to work collaboratively on key sectors of concern. These partnerships would involve private sector, international funding institutions, and nongovernmental organizations to leverage technical capacity, technology transfer, and resources. The U.S. will contribute its considerable expertise to this effort in FY 2005 and FY 2006.

The U.S. proposal, improved through dialogue with developing and other countries, was adopted at the meeting and comprised the major element of the final Governing Council Decision related to mercury. The final decision requires that countries identify priority areas for an initial set of partnerships by September 2005.

40. GAO REPORT RECOMMENDATIONS

Question: Please provide the status of and describe the EPA actions taken in response to the GAO recommendations made in the following reports:

(a) Environmental Indicators: Better Coordination Is Needed to Develop Environmental Indicator Sets That Inform Decisions, GAO-05-52, November 17, 2004
(b) Environmental Protection Agency: National Emission Standards for Hazardous Air Pollutants: Plywood and Composite Wood Products; Effluent Limitations Guidelines and Standards for the Timber Products Point Source Category; List of Hazardous Air Pollutants, Lesser Quantity Designations, Source Category List, GAO-04-607R, August 11, 2004
(c) Environmental Disclosure: Briefing on GAO's Findings and Recommendations, GAO-04-1019R, August 4, 2004
(d) Environmental Protection Agency: National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines, GAO-04-572R, June 29, 2004
(e) Air Pollution: EPA Could Take Additional Steps to Help Maximize the Benefits from the 2007 Diesel Emissions Standards, GAO-04-313, March 11, 2004
(f) Homeland Security: Federal Action Needed to Address Security Challenges at Chemical Facilities, GAO-04-482T, February 23, 2004
(g) Environmental Protection Agency: Prevention of Significant Deterioration (PSD) and Non-Attainment New Source Review (NSR): Equipment Replacement Provision of the Routine Maintenance, Repair and Replacement Exclusion, GAO-04-251R, November 7, 2003
(h) Clean Air Act: New Source Review Revisions Could Affect Utility Enforcement Cases and Public Access to Emissions Data, GAO-04-58, October 21, 2003
(i) Clean Air Act: EPA Should Use Available Data to Monitor the Effects of Its Revisions to the New Source Review Program, GAO-03-947, August 22, 2003
(j) Environmental Protection: Federal Planning Requirements for Transportation and Air Quality Protection Could Potentially Be More Efficient and Better Linked, GAO-03—581, April 28
(k) Homeland Security: EPA's Management of Clean Air Act Chemical Facility Data, GAO-03-509R, March 14, 2003
(l) Aviation and the Environment: Strategic Framework Needed to Address Challenges Posed by Aircraft Emissions, GAO-03-252, February 28, 2003 That Better Target Cleanup Efforts, GAO-03-308, January 30, 2003

(m) Livestock Agriculture: Increased EPA Oversight Will Improve Environmental Program for Concentrated Animal Feeding Operations, GAO-03-285, January 16, 2003
(n) Environmental Protection Agency: Control of Emissions From Nonroad Large Spark-Ignition Engines, and Recreational Engines (Marine and Land-Based), GAO-03-302R, November 21, 2002
(o) Air Pollution: Meeting Future Electricity Demand Will Increase Emission of Some Harmful Substances, GAO-03-49, October 30, 2002
(p) Environmental Protection: The Federal Government Could Help Communities Better Plan for Transportation That Protects Air Quality, GAO-02-988T, July 30, 2002
(q) Federal Procurement: Government Agencies' Purchases of Recycled-Content Products, GAO-02-928T, July 11, 2002
(r) Environmental Protection: Wider Use of Advanced Technologies Can Improve Emissions Monitoring, GAO-01-313, June 22, 2001
(s) Federal Procurement: Better Guidance and Monitoring Needed to Assess Purchases of Environmentally Friendly Products, GAO-01-430, June 22, 2001
(t) Air Pollution: Air Quality and Respiratory Problems in and Near the Great Smoky Mountains, GAO-01-790T, May 25, 2001
(u) Air Pollution: EPA Should Improve Oversight of Emissions Reporting by Large Facilities, GAO-01-46, April 6, 2001

Answer: For the following twelve (12) GAO documents, there were no recommendations that required follow-up action. The other documents included reports with recommendations to another Agency (DOT), reviews of major rules as required by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), letter reports with recommendations, and testimonies with recommendations.

(b) Environmental Protection Agency: National Emission Standards for Hazardous Air Pollutants: Plywood and Composite Wood Products; Effluent Limitations Guidelines and Standards for the Timber Products Point Source Category; List of Hazardous Air Pollutants, Lesser Quantity Designations, Source Category List, GAO-04-607R, August 11, 2004
(c) Environmental Disclosure: Briefing on GAO's Findings and Recommendations, GAO-04-1019R, August 4, 2004
(d) Environmental Protection Agency: National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines, GAO-04-572R, June 29, 2004

(f) Homeland Security: Federal Action Needed to Address Security Challenges at Chemical Facilities, GAO-04-482T, February 23, 2004

(g) Environmental Protection Agency: Prevention of Significant Deterioration (PSD) and Non-Attainment New Source Review (NSR): Equipment Replacement Provision of the Routine Maintenance, Repair and Replacement Exclusion, GAO-04-251R, November 7, 2003

(k) Homeland Security: EPA's Management of Clean Air Act Chemical Facility Data, GAO-03-509R, March 14, 2003

(l) Aviation and the Environment: Strategic Framework Needed to Address Challenges Posed by Aircraft Emissions, GAO-03-252, February 28, 2003

(n) Environmental Protection Agency: Control of Emissions From Nonroad Large Spark-Ignition Engines, and Recreational Engines (Marine and Land-Based), GAO-03-302R, November 21, 2002

(o) Air Pollution: Meeting Future Electricity Demand Will Increase Emission of Some Harmful Substances, GAO-03-49, October 30, 2002

(p) Environmental Protection: The Federal Government Could Help Communities Better Plan for Transportation That Protects Air Quality, GAO-02-988T, July 30, 2002

(q) Federal Procurement: Government Agencies' Purchases of Recycled-Content Products, GAO-02-928T, July 11, 2002

(t) Air Pollution: Air Quality and Respiratory Problems in and Near the Great Smoky Mountains, GAO-01-790T, May 25, 2001

Answer: Responses have been provided for the following GAO questions.

(a) Environmental Indicators: Better Coordination Is Needed to Develop Environmental Indicator Sets That Inform Decisions, GAO-05-52, November 17, 2004

Answer: EPA is working to respond to GAO's recommendation to identify milestones, resources and other requirements for developing and using environmental indicators to inform the Agency's strategic systems for planning, budgeting, and reporting on progress. We continue to clarify respective roles and purposes of environmental indicator development and its relation to ongoing

strategic planning and performance measurement under the Government Performance and Results Act (GPRA).

EPA continues to seek a complementary relationship between indicator development and strategic planning/accountability and offers the following details about the character and scope of our ongoing indicator development work:

1) We are on a timetable to review and revise a suite of scientifically-sound environmental indicators that will provide a reliable record of trends in environmental condition and human health.

2) We intend to develop indicators using the full range of data and information from EPA, other government agencies, and stakeholders to maximize our ability to manage to environmental outcomes. We continue to work with more than a dozen stakeholders and other agencies as we coordinate and refine our list of indicators.

3) EPA and its partners are assessing and prioritizing environmental data gaps from the 2003 Draft Report on the Environment, taking in into account our need for managing to environmental results.

4) We intend to provide the user community with environmental and human health indicator information in a continuously maintained, dynamic, and interactive electronic format.

Finally, the next Report on the Environment will be developed in consideration of the need to provide the greatest opportunity for EPA and our partners to take advantage of the indicator work in the Strategic Plan revision.

(e) Air Pollution: EPA Could Take Additional Steps to Help Maximize the Benefits from the 2007 Diesel Emissions Standards, GAO-04-313, March 11, 2004

Answer: The following were the major recommendations contained in the GAO's report: "To maximize public health and air quality benefits, and minimize adverse impacts on affected industries, we recommend that the Administrator, EPA, consider additional opportunities to allay engine, fuel, and trucking industry concerns about the costs and likelihood of meeting the 2007 standards with reliable engine and fuel technology. Opportunities could include better communicating with all stakeholders on the remaining technological uncertainties. EPA could also convene another independent review panel to (a) address stakeholders' remaining concerns; (b) assess and communicate the progress of technology development; and (c) determine what, if any, additional actions are needed to meet the 2007 standards such as considering the costs and

benefits of incentives for developing and purchasing the technology on time, and other alternatives."

In response to GAO's report, EPA sent a letter to GAO expressing misgivings about a number of the conclusions in a draft version of the GAO report entitled "*EPA Could Maximize the Benefits from the 2007 Diesel Emissions Standards By Better Addressing Industry Concerns*," while reiterating the Agency's strong commitment to addressing stakeholder concerns regarding the Heavy-Duty 2007 emission standards. A copy of the letter was included by GAO in the final version of their report entitled *"Air Pollution: EPA Could Take Additional Steps to Help Maximize the Benefits from the 2007 Diesel Emissions Standards."*

In December of 2000, EPA finalized the Heavy-Duty 2007 emission standard program, which will result in benefits in improved health for the public. Due to the importance of this program for the countries future air quality, beginning in 2001 EPA has closely followed the progress of the regulated industry as they go about the work necessary to implement this program. Through out this same time frame, we have also worked closely with other stakeholders to communicate the status of the Heavy-duty 2007 program's implementation.

The Heavy-Duty 2007 emission program is a crucial part of the overall air quality control plans for many parts of the country and is a top priority of the Environmental Protection Agency. We intend to continue our efforts to ensure a smooth implementation of this important program. Detailed below are a number of the actions EPA has undertaken since March 2004 (when the GAO report was published). These actions are a continuation of the efforts EPA has undertaken beginning in 2001, and which will continue for the next several years as the program is implemented.

Since March 2004, the Agency has taken a number of actions to provide additional information and guidance to both the regulated community (the refineries and engine builders) as well as the broader stakeholder community including fuel distributors and the trucking industry.

In September 2004, the Agency released its second report summarizing the pre-compliance data provided to the Agency by the refining industry. That report summarizes the industry's own data submissions to the EPA regarding its efforts to implement the 15 ppm diesel fuel sulfur standard. In summary, the data showed: 1) the industry is on target for producing diesel fuel subject to the 15 ppm sulfur standard on time; 2) highway diesel fuel production will be sufficient to meet demand; and 3) 15 ppm sulfur diesel fuel will be widely available

nationwide. The full report is available to the public on EPA's webpage at http://www.epa.gov/otaq/regs/hd2007/420r04014.pdf

The Agency organized its second diesel fuel implementation workshop in November of 2004 to address concerns regarding the implementation of the diesel fuel standards and to ensure the regulated community had a common understanding of the implementation steps remaining to be completed. The workshop was co-sponsored by the following organizations:

American Petroleum Institute (API)
Association of American Railroads (AAR)
American Trucking Association (ATA)
Association of Oil Pipelines (AOPL)
Independent Fuel Terminal Operators Association (IFTOA)
Independent Liquid Terminals Association (ILTA)
National Association of Convenience Stores (NACS)
National Association of Truck Stop Operators (NATSO)
National Petrochemical and Refiners Association (NPRA)
National Tank Truck Carriers (NTTC)
Petroleum Marketers Association of America (PMAA)
Society of Independent Gasoline Marketers of America (SIGMA).

All of the participant presentations from the workshop are available on EPA's webpage at http://www.epa.gov/cleandiesel/dieselworkshop.htm. The Agency is continuing its work with this diverse group of stakeholders. As a follow-up to the November 2004 workshop, the Agency had a series of senior level meetings with fuel refiners and distributors which began in February of this year.

The Agency has also issued two Highway Diesel Progress Review Reports documenting the engine industry's efforts to develop and implement new technologies to comply with the HD 2007 emission standards. The Agency periodically publishes reports summarizing meetings held with engine companies to discuss their technology development progress so that the broader stakeholder community, including the trucking industry, can remain well informed regarding new technology implementation. The reports are available on EPA's webpage at http://www.epa.gov/otaq/diesel.htm#hd2007.

As the letter to GAO said, we do not believe that yet another review panel would be helpful and, hence, we have not taken actions to put one in place. As noted above, however, we have organized workshops and are reaching out broadly to the stakeholder community to ensure that this important program is implemented smoothly.

(h) Clean Air Act: New Source Review Revisions Could Affect Utility Enforcement Cases and Public Access to Emissions Data, GAO-04-58, October 21, 2003

Answer: In response to this report, EPA agreed, within 1 year after full implementation of the rule, to consult with State and local agencies to determine whether additional steps are needed to ensure public access to company information on facility changes and emissions. We also noted that we will monitor the effectiveness of the reporting and recordkeeping provisions of the final rule as they are carried out, and adjust them as necessary. We do not expect full implementation of the rule until sometime after 2006 when we expect that States will have adopted, and EPA will have approved, programs that incorporate the new rules. As agreed, we will do the consultation at that

(i) Clean Air Act: EPA Should Use Available Data to Monitor the Effects of Its Revisions to the New Source Review Program, GAO-03-947, August 22, 2003.

Answer: The EPA agrees with GAO, as we indicated in our response to Senator Collins discussing this report and recommendations, that we should continue to assess the results of our changes to the NSR rules as they are implemented. However, as we noted in that letter, until there are sufficient data about the operation of the new rules, our ability to assess them remains severely limited. The December 2002 final rules are presently in effect in a small number of areas (areas where EPA is the permitting authority and has delegated that authority to States), and permitting activity in these areas has not been sufficient to generate information that could be used to evaluate the new rules. We expect more data to be available after States have received EPA approval of their own NSR programs (which must be submitted by States by December 31, 2005 and approved by EPA within 1 year) and have run these programs long enough to generate sufficient data on the new rules' effects. As we told Senator Collins, we will work closely with State and local permitting agencies to obtain information necessary to determine when sufficient data are available to do a fuller assessment of the rules' effects.

We also noted that we would continue to follow the progress of the National Academy of Sciences (NAS) study of the rules' impact. The Academy released an interim report on January 14, 2005, which reviewed background

material and discussed possible analytical approaches, but did not draw any conclusions about the impacts of the rules. The Academy expects to release a final report in early 2006.

(j) Environmental Protection: Federal Planning Requirements for Transportation and Air Quality Protection Could Potentially Be More Efficient and Better Linked, GAO-03—581, April 28

Answer: The GAO recommended the following: "EPA, in coordination with DOT, comprehensively assesses the advantages and disadvantages of establishing a Clean Air Act requirement to periodically update state air quality plans so that they incorporate the same, most current planning data and emissions models used in updates to the TIP and long-term transportation plans."

In response to this recommendation, EPA and DOT are working together to assist state and local governments in the development of new State air quality implementation plans (or SIPs) for the 8-hour ozone and PM2.5 national ambient air quality standards. The most current planning data and emissions models are required to be used when these SIPs are developed. The federal agencies will continue to provide training, guidance, and technical assistance to help states with the emissions and travel modeling requirements associated with these SIPs.

As stated in EPA's August 14, 2003 response to follow-up questions from the Senate's March 13, 2003 hearing, EPA believes the Clean Air Act adequately addresses this issue. The current flexibility provided by the Clean Air Act allows states to decide for themselves whether a SIP revision to incorporate new data or additional control measures justifies the costs of updating the SIP. States are in a better position to decide whether a revision to their existing SIP is necessary. SIPs lay out a detailed demonstration of what will be required to achieve attainment with air quality standards. The motor vehicle emissions budgets within SIPs must consequently also represent a level of transportation emissions that will protect public health. Although transportation mobility goals and the models and assumptions on which a SIP is based may change over time, the overall public health goal may remain appropriate even without regular SIP updates. Furthermore, most SIP revisions require a very significant resource investment by state and local agencies as well as EPA. Therefore, EPA would only want to require regular SIP updates in areas where air quality improvements are occurring as anticipated by the SIP, and conformity determinations are being made without difficulty.

Many existing nonattainment and maintenance areas have been able to meet transportation conformity requirements using the latest information without updating their SIPs. Other areas have chosen to update their SIPs with new planning data, emissions models, and/or additional control measures, and, as a result, have developed more recent motor vehicle emissions budgets available for conformity purposes. Some of these areas include Baltimore MD, New Jersey, Salt Lake City UT, Albuquerque NM, Atlanta GA, Houston TX, and Washington DC. EPA and DOT will continue to provide technical assistance to areas that decide to update their SIPs to incorporate the latest available information and models.

(l) That Better Target Cleanup Efforts, GAO-03-308, January 30, 2003

Answer: The President's Budget includes funds to continue work to implement all of GAO's 2003 recommendations for the water quality standards program. We are on schedule, working with states and other partners, to implement all of the commitments we made in response to the GAO report. In addition, we have allocated resources internally to provide increased direct scientific and technical support to states and tribes in implementing the water quality standards program.

(m) Livestock Agriculture: Increased EPA Oversight Will Improve Environmental Program for Concentrated Animal Feeding Operations, GAO-03-285, January 16, 2003

Answer: The following is a summary of the major activities conducted by EPA to improve oversight of implementation of the new CAFO rule.

Implementation Activities for the New CAFO Rule to Increase Oversight

GAO Recommendation	**Activity**	**EPA Lead Office**	**Date**
Develop and implement a comprehensive tactical plan that identifies how the agency will carry out its increased oversight responsibilities under the revised program. Specifically, this plan should address what steps the agency will take to ensure that authorized states are	Development of National CAFO Implementation Plan (specifying national milestones, incl. Development of Regional/State Plans)	Office of Water (OW)	May 30, 2003
	Completion and Signing of MOU between EPA and USDA on collaboration of CAFO rule implementation	OW/USDA(NRCS) Jointly signed by Assistant Administrator (AA) for Water and Deputy Under Secretary, National Resource Conservation Service (NRCS)	May 16, 2003

properly permitting and inspecting CAFOs and taking appropriate enforcement actions against those in noncompliance. In addition, the plan should identify what, if any, additional resources will be needed to carry out the plan and how these resources will be obtained.	Bi-Monthly Meetings with EPA/USDA Management	OW/Office of Enforcement and Compliance Assurance (OECA) USDA/NRCS	Ongoing
	USDA/EPA National Supplemental Implementation Plan for NMP Development	USDA/OW	March 2005
	3-yr Performance-based Compliance and Enforcement Strategy	OECA	April 2005
	Request for Regions to Submit Regional/State Compliance and Enforcement Regional Implementation Plans	OECA/Regions	May 1, 2005
	Establish Communication Vehicles	OW/EPA National Agricultural Compliance Center in Kansas	Virtual AFO Website Completed January 2005
Work with authorized States to develop and implement their own plans that identify how they intend to carry out their increased permitting, inspection, and enforcement responsibilities within specified time frames. These	Request to Regions to Submit Regional/State Implementation Plans	OW, from AA Water	May 30, 2003
	Quarterly Progress Reports on Regional/state NPDES permitting and regulation development progress	Regions/OW	Ongoing on a quarterly basis
	Submittal of all 10 Regional/State Implementation Plans (RIPs)	Regions	June 2003 - March 2004

plans should also address what, if any, additional resources will be needed to properly implement the program and how these resources will be obtained.	EPA Headquarters Conference Calls to 10 Regions to Discuss RIPs – status of implementation; implementation challenges	OW	Jan 2004 - June 2004
	Headquarters Resources Support to Regions to Develop/Review State or Regional Regulations and General Permits	OW	Ongoing
	Training to all 10 Regions and Respective States on CAFO Rule Requirements and Inspection	OW/OECA-Development and delivery of a 4-day intensive training course in all 10 regions	October 2004 - August 2005

(r) Environmental Protection: Wider Use of Advanced Technologies Can Improve Emissions Monitoring, GAO-01-313, June 22, 2001

Answer: The GAO Report recommended that EPA's Office of Air and Radiation develop a strategy that would address the barriers that impede wider use of advanced monitoring technologies. Specifically, in the strategy EPA should:

- identify ways to alleviate the widespread view among emitters that it will use the Credible Evidence rule in enforcement cases where voluntary use of such technologies may reveal minor violations, and
- undertake an analysis of the costs and benefits associated with different compliance monitoring options in a manner that would help to identify additional opportunities for the expanded use of advanced monitoring technologies.

Acting in part upon recommendations from the GAO report, as well as the Clean Air Act Advisory Committee's Air Quality Management Workgroup, and the National Academy of Sciences' Air Quality Management in the United States report, OAR formed a team in November 2004 to: (1) determine what barriers exist to upgrading existing emissions monitoring, and (2) recommend options for

overcoming those barriers. Team members identified four potential barriers, including the effect of the credible evidence rule, and plan to share those and learn of others in discussions with State, Local, and Tribal representatives. A teleconference is scheduled with the Permitting and Compliance Committees of STAPPA/LADCO for late April.

In addition, EPA is revising the way in which emissions monitoring requirements for rules are to be developed and prepared. Experts from the Emissions, Monitoring, and Analysis Division are now establishing criteria, including means to assess costs of and benefits accruing from incorporation of various monitoring techniques that will be used to prioritize efforts.

EPA believes the results from both groups will provide a basis for additional policy, guidance, or rulemakings that will improve air emissions monitoring as well as address GAO report recommendations.

(s) Federal Procurement: Better Guidance and Monitoring Needed to Assess Purchases of Environmentally Friendly Products, GAO-01-430, and June 22, 2001.

GAO Recommendation: "To help agencies purchase recycled content products, we recommend that the Federal Environmental Executive and the Administrator of EPA work with officials at the major procuring agencies to develop a process to provide the procuring agencies with current information on the availability of the designated recycled-content products. In addition, these officials should determine how these products can be more effectively promoted."

Answer: EPA has completed action on this recommendation. The Agency has created the online Comprehensive Procurement Guidelines (CPG) Supplier Database. The Database is a searchable database of vendors who sell or distribute CPG-designated products with recycled content. The Database allows users to search for vendors of a specific CPG product, product category, or type of material. In addition, users search directly for a specific vendor by typing all or part of the vendor's name in a search field. The Database is updated regularly as EPA obtains new information on vendors of CPG products. EPA also regularly participates in the monthly meetings of the Office of Federal Environmental Executive's (OFEE) "Executive Order 13101 Interagency Advisory Group (EOIAG)" as a way of maintaining contact with Federal procuring agencies.

(u) Air Pollution: EPA Should Improve Oversight of Emissions Reporting by Large Facilities" (GAO-01-46, April 6, 2001)

Answer: GAO's main recommendation is for EPA to evaluate "state's programs to determine whether they have adequate mechanisms in place for verifying accuracy of emissions reports."

The EPA has been performing program reviews consistent with GAO's recommendations since 2002. A preliminary evaluation of the ongoing program reviews indicates that EPA is verifying that: 1) sources are not exceeding the emission limits they have taken to avoid requirements under the Prevention of Significant Deterioration program or the Section 112 air toxics technology-based standards; 2) that these limits have safeguards to ensure compliance; and, 3) that States require the appropriate emission testing.

RESPONSES BY STEPHEN L. JOHNSON TO ADDITIONAL QUESTIONS FROM SENATOR LAUTENBERG

SUPERFUND SITES

Questions: According to the February 28, 2005 Star Ledger, Superfund cleanups have dropped by half in the last four years. With listed sites going unfunded, and hazardous waste sites not being listed on the National Priorities List (NPL) due to limited resources, isn't the Superfund program failing to live up to its original goal of protecting public health and the environment by reducing the risks of living near any of our county's thousands of contaminated sites?

Answer: I can assure you that the Superfund program continues to protect human health and the environment. EPA obligated $256 million of FY 2004 appropriations for Superfund cleanup construction. Nearly $195 million of these resources were used to fund ongoing projects. In FY 2004, EPA conducted a total of 678 on-going cleanup projects at 428 sites (this includes EPA lead, PRP lead, and federal facility sites).

EPA will also continue to have the Superfund program supplement its appropriated funding by regularly reviewing Superfund contracts and other funding mechanisms to determine whether unspent resources are available for use in the current fiscal year. Over the past four fiscal years, EPA has deobligated more than $500 million in this manner to fund new construction projects.

Historically, the Superfund program's key measure of accomplishment has been construction completions. During FY 2004, Superfund completed work at 40 sites across the country. As of March 29, 2005, a total of 931 or 61 % of the sites on the National Priorities List are construction complete. The number of Superfund construction projects funded by EPA and private parties has remained relatively steady over the past four years. In past years, EPA was able to complete smaller, less costly sites. However, due to the size, complexity and cost of sites not yet completed, maintaining current levels of construction has not resulted in as many completed sites over the past four years.

EPA continues to list sited on the NPL using the Hazard Ranking System, which assesses the relative potential of sites to pose a threat to human health and the environment. The number of sites listed on the NPL has varied greatly over the years. For example, between 1991 and 2004, as few as 9 sites and as many as 52 sites were proposed in a year. During the same period, the range of sites and finalized ranged from 3 to 43. In FY 2004, EPA proposed 26 sites and finalized 11 sites to the NPL. These listings are within the ranges of the historical listings.

The FY 2006 Budget Request maintains Superfund program funding at the FY 2004 and the FY 2005 enacted levels. At these levels, the Superfund Remedial program has met its performance targets and anticipates being able to continue to meet its targets in FY 2005 and FY 2006.

SUPERFUND CLEANUPS

Question: To explain its slowdown in cleanups, EPA has repeatedly stated that Superfund sites today are more compacted and require additional resource to complete, than in prior years, Please provide me with a table that contains comparative data for the 1,500+ sites which have been on the NPL since 1980, with columns that show the total funds (in real dollars) spent so far on each site, the future funds anticipated in order to complete the site, the amount of time each site has been on the NPL, and any similar data that will allow an objective comparison of these sites.

Answer: EPA analysis indicates that the remaining universe of NPL sites that are not construction complete are more complex than sites that have already achieved construction completion. Many factors are included in complexity, which affects the duration and cost of cleanups. Examples of some such factors include: contamination, multi-media contamination, ecological issues, groundwater issues, remedial technology(ies) necessary, site location, proximity to populations, PRP cooperation, presence of multiple PRPs, and other stakeholder interests (i.e., States, Tribes, communities, and natural resource trustees).

Because of the level of detail required to provide comparative data for all sites that have been on the National Priorities List (NPL) since 1980, it is not possible to provide our response in a user-friendly format within the current timeframe. However, EPA will be pleased to work with you to provide the information needed as soon as possible.

BROWNFIELDS

- Administration requested $210 million for the national Brownfields Program - an increase of $46.9 million over enacted 2005 Funding. Under this program, EPA is working with its state, tribal and local partners to meet its objective to sustain, clean up and restore contaminated properties and abandoned sites.

- Together with the extension of the Brownfields tax credit, EPA expects to achieve the following in FY 2006:

  - Acquire access to 1,000 Brownfields properties;
  - Clean up 60 properties using Brownfields funding;
  - Leverage an additional $1 billion in cleanup and redevelopment funding; and
  - Create 5,000 jobs related to the Brownfields efforts.

Funding Requested for Leaking Underground Storage Tanks

Cleaning up petroleum from leaking underground storage tanks is an important priority for the Agency. Over the history of the LUST program, there have been approximately 447,000 confirmed releases of contamination from closed and active tanks. Contamination from over 317,000 leaking underground storage tanks has been cleaned up. At the end of FY 2004, approximately 130,000 sites need to be cleaned up. Of the national total, California has approximately 160,000 closed and active tanks, and over 42,000 tanks with confirmed releases. The President's budget request for funding from the Leaking Underground Storage Tanks (LUST) Trust fund attempts to balance leaking underground storage tank cleanup needs with other Administration priorities.

Under the President's FY 2006 budget, the Agency will continue to make progress cleaning up contamination from leaking underground storage tanks. Approximately 83 percent (or $57.4 million) of the President's FY 2005 budget for the LUST program is provided to the states and tribal governments for MTBE and petroleum cleanups.

As is the case with every budget, we must weigh the needs of all programs. Given all of our priorities, we believe that the amount we are requesting is appropriate to continue to make progress. We will, however, continue to re-evaluate the adequacy of resources to address this important need.

GENERAL INFORMATION ON EPA ENFORCEMENT

The success of the Bush environmental enforcement record is most best measured in smart enforcement achieving actual environmental results through focusing on the entities in the most significant non-compliance.

HIGHLIGHTS

- One billion pound of pollutants reduced as a result of enforcement activity up 67% from previous year including:
  - 3.4 million cubic yards of contaminated soil to be treated
  - 9.5 million cubic yards of contaminated water to be cleaned up
- EPA Compliance Assistance Centers provided environmental technical assistance to 731,000 total entities to help them comply with environmental laws, an increase each year under the Bush Administration.
- Most number of cases (213) resolved with supplemental environmental programs (SEP's) within last seven years valued at $48 million. (SEP's are environmentally beneficial projects voluntarily accepted by the violator to perform as part of an environmental settlement.)
- The FY 2006 budget request includes an increase of $4 million each for the civil and criminal enforcement programs.
- The FY 2006 budget request includes over $700,000 increase in compliance assistance and incentives.

INFORMATION ON FINES AND PENALTIES

Civil

- In 2004, injunctive relief from environmental compliance actions taken in 2004 was valued at $4.8 billion, the largest amount one year amount recorded and a 66% increase from 2003.
- In 2004, EPA collected $217 in administrative, judicial, and stipulated penalties (only slightly lower than 2003).

Criminal

- In 2004, EPA initiated 432 criminal investigations including environmental homeland security cases (down from 508 in 2003).
- In 2004, 293 defendants charged in environmental enforcement (up from 247 in 2003).
- In 2004, criminal enforcement resulted in a total of 77 years incarceration and $47 million in criminal penalties (which are the lowest numbers in recent years) .

PESTICIDES and THE CLEAN WATER ACT

Until several recent court decisions, if a pesticide complied with all of its label requirements (as determined by the Federal Insecticide, Fungicide, Rodenticide Act – FIFRA), it could be sprayed over, in and near a waterway without a clean water permit. However, the courts have essentially ruled two things: 1. the pesticide is a "pollutant" and 2. the plane from which it is being sprayed is a "point source" and therefore, requires a permit (nonpoint sources, like farms, do not require permits). Last month, EPA issued guidance and a proposed rule clarifying that if a pesticide meets the requirements on its label, it is not a pollutant. The guidance and rule do not address the definition of a "point source" or the issue of drift, whereby a pesticide is sprayed on a crop and drifts over a waterway – a major concern of the Farm Bureau.

Talking Points

- I commend EPA for issuing guidance and for proposing a rule to finally clarify what we have all understood to be true that a pesticide properly used and in accordance with its label does not constitute a pollutant under the Clean Water Act.

- This issue is critical to those communities battling mosquitoes that transmit west nile virus as well as the nation's farmers who must battle insects every day

- These groups are using products that have been heavily researched and regulated by the EPA under FIFRA

- There are very serious public health threats to this campaign by the environmental community to permit farmers and those trying to prevent the spread of west nile.

- It will cause delays that could affect the ability of the forest service to put out fires and of pest control agencies to stop the spread of this deadly virus.

- While the guidance is a great first step, much more remains to be done to provide the regulated community with regulatory certainty

- I hope to work with my colleagues and the Agency to address these very complicated but important issues.

PERCHLORATE

National Academy of Science study on the "Health Implications of Perchlorate Ingestion"

In 2002, EPA published a controversial draft health risk assessment for perchlorate. The risk assessment is based on a handful of rat studies, which has raised a number of scientific uncertainties. Because of these scientific uncertainties, EPA, DOD and other agencies have review by the National Academy of Sciences (NAS).

- *A unanimous NAS committee made up of independent, non-partisan experts found that EPA's perchlorate risk assessment was seriously flawed.*

- *The NAS committee unanimously found that on nearly every issue they reviewed, EPA used the wrong science, interpreted the science incorrectly or drew an erroneous conclusion.*

- *EPA, and the federal government at large, has spent millions of dollars to find out that EPA's office of Office of Research and Development did a very poor job with the science.*

- *The risk assessment reputation of Agency has been severely tarnished.*

- *Policy decisions based on science this bad put the public health at risk, harm the environment and jeopardize the economy. And because this issue is important to the Department of Defense, it also affects our military effectiveness.*

- *Action: EPA and others should not move forward with regulatory or interpretative action on perchlorate until there is a more thorough understanding of the lapses in science and until we can be more confident in the judgment of EPA.*

More Detail:

- Just some of the flaws found by NAS:
  - EPA's model is not an accurate representation of possible outcomes
  - EPA's incorrectly defined what is an adverse health effect and thus the basis for the risk assessment is incorrect
  - EPA incorrectly relied on rat data when high-quality, more accurate human data was readily available
  - The evidence does not support the belief that higher levels of perchlorate exposure cause thyroid disorders in adults.
  - The evidence does not support the belief that higher levels of perchlorate in the drinking water cause thyroid changes in normal-birth weight, full-term newborn infants.

Number of Potential Brownfield Sites

In September 2004, EPA published a report titled *Cleaning Up the Nation's Waste Sites: Markets and Technology Trends, 2004 Edition.* The information referenced is discussed in Chapter 9: *Demand for Remediation of State and Private Party Sites.* This report is available on the internet at http://www.clu-in.org/download/market/2004market.pdf. A copy of the report is also provided with other materials in response to this hearing.

Sites Ranked by the National Prioritization Panel that Received Funding in FY 2004

New construction projects at Superfund sites are evaluated with respect to the relative risk they pose to human health and the environment. While all projects on the NPL merit cleanup under the program, it is possible to segregate the projects qualitatively into three groups corresponding to the relative magnitude of risk they pose, with Level A being the higher priority. Considerations in project evaluation include nature and extent of contamination as well as human exposure and ecological impacts.

While relative risk is the foremost consideration in funding decisions, other factors include the need to make progress at sites in a timely manner and the potential for leveraging other sources of funding for application to site cleanup.

Region	State	Site	Funding
1	MA	Atlas Tack Phase 1 (Buildings & Local Soils)	$1.80
1	NH	New Hampshire Plating	$4.10
1	RI	Troy Mills Landfill	$8.00
1	RI	Rose Hill Regional Landfill	$2.00
1	VT	Elizabeth Mine Phase I (funded with emergency response advice of allowance)	$4.30
2	NJ	Cosden Chemical Coatings Corporation	$3.00
2	NJ	Federal Creosote (Mall Hot Spots)	$9.00
2	NY	Genzale Plating Company	$4.00
2	NY	Mackenzie Chemical Works	$1.20
3	VA	Kim-Stan Landfill	$2.30
3	WV	Vienna Tetrachloroethene	$2.90
4	GA	Woolfolk Chemical OU3	$1.26
4	GA	Woolfolk Chemical OU4	$2.35
5	IL	Jennison Wright	$3.60
5	IL	SE Rockford GWT	$2.50
5	MI	Tar Lake	$1.40
6	NM	North Railroad Avenue Plume	$3.50
7	IA	Railroad Ave Ground Water Contamination Site	$0.30
7	MO	Riverfront Site (Front Street)	$0.73

7	NE	Hastings Ground Water Contamination	$0.20
7	NE	Omaha Lead Site	$7.70
8	MT	Upper Ten Mile Creek (Tier 1)	$4.85
8	UT	Davenport and Flagstaff Smelters	$3.10
8	UT	Eureka Mills	$5.00
10	ID	Bunker Hill (OU3 Non-Residential)	$2.00
10	OR	McCormick & Baxter Creosoting Company	$12.00
10	WA	Pacific Sound Resources	$6.70

SPILL PREVENTION CONTROL AND COUNTERMEASURE PROGRAM

Program: Facilities that hold all types of oil – petroleum to vegetable oils – must have an SPCC plan to outline how to prevent a spill and control one if it should happen. Bush administration finalized a rule to update the requirements but what exactly is required of affected industries is unclear. EPA then announced an 18-month implementation delay. In August of last year, at your urging EPA announced a second implementation delay while it continues to work through issues.

Affected Constituents include small airports, farmers, trucking industry and the oil industry

TALKING POINTS

- As a pilot, and strong advocate for the nation's farmers and small oil producers, I am pleased that earlier this year EPA took my advice and again extended the compliance deadline for the SPCC rule.

- I know the Agency is using this time to look at what steps it may be able to take to provide relief to facilities that house small amounts of oil

- From the start of this long process, it has been unclear exactly what problem the Agency is trying to address that wasn't addressed by the program in existence before this rule was published.

- Unfortunately, the agency added to the confusion by publishing a rule with terms that affected industries didn't understand leaving many still confused as to what is expected of them

- I look forward to continuing to work with EPA and various stakeholders to finally clarify the compliance terms of this rule in a workable, logical fashion

STATE REVOLVING LOAN FUND(SRF): Administration's cut

Last year, Senator Crapo and you introduced legislation which passed the committee by voice vote to increase funding to the Clean Water and Drinking Water SRFs. The Administration has continued to cut the Clean Water SRF. Last year, the fund was cut to $1.1 billion. The Administration has proposed to cut it again to $730 million.

Talking Points

- Until last year, the Clean Water SRF, the primary federal mechanism for funding wastewater treatment facilities, traditionally received $1.35 billion.
- In the FY05 omnibus bill, despite support from myself and several of my colleagues on the Committee, the SRF was cut to $1.1 billion.
- It is difficult for me to understand how we can justify continually cutting this program when we continue to hear from municipalities across the country which are struggling to upgrade their plants while complying with federal regulatory requirements.
- Let me be clear, this program has struggled to survive under both the current and previous Administrations
- Last year, I introduced, with Senator Crapo, legislation to significantly increase the authorization levels for both the clean water and drinking water SRFs.
- I hope to work with the administration –which I know had to make many difficult decisions when putting together their proposal – to address what concerns you may have about the programs and gain your support for them.

Phase II storm water requirements: Exemption of oil and gas from

Background

The Clean Water Act specifically exempts oil and natural gas sites from the storm water rules. However, the exact language doesn't include the word "construction" so when EPA proposed to regulate construction sites, they included oil and natural gas facilities. EPA also didn't believe any of them met the size threshold for regulation and didn't include nearly 30,000 oil and gas sites in its cost analysis. They recently – at your urging – proposed the second compliance deadline extension.

Talking Points

- Last month, EPA proposed a second extension of the compliance deadline for small oil and natural gas sites from its storm water Phase II rule.
- EPA is absolutely correct to reexamine its economic analysis which failed to consider the cost to the nearly 30,000 oil and natural gas sites affected by the rule.
- I would also like to call my colleagues' attention to a recent DOE study that concluded the new EPA rule could result in the loss – between now and 2025 –of between 1.3 and 3.9 cubic feet of oil and between 15 and 45 trillion cubic feet of natural gas.
- It could also result in consumers paying up to $6 billion more for natural gas per year.
- The Clean Water Act clearly exempts uncontaminated storm water runoff from these sites from the Storm Water program
- I hope to work with the EPA to ensure that Congress' intent is fulfilled

SUPERFUND BUDGET

- The FY 2006 request for Superfund is $1.28 billion - an increase of $32 million over the FY 2005 enacted levels.

- In FY04, EPA started 27 new construction projects. In total, EPA had 678 ongoing cleanup projects at 428 sites across the nation.

- 94 percent of all sites on the National Priority List are under construction.

Democrats will argue to reinstate the Superfund tax so that the "polluter pays" for the cost of clean-up.

FACT: The "polluter" already pays.

- When there is an identifiable and viable "polluter", consistent with the law, they are held liable. (Congress has exempted - unanimously- some from Superfund liability such as certain small businesses).
- Historically, PRPs have paid for more than 70% of clean-ups.

Because of no tax, some sites are unfunded and therefore those communities are at risk

- FACT: Local communities are not at risk – sites are funded based on the risks that they pose. Sites that were not funded were stabilized.

- In FY04, EPA could not fund 34 new construction projects but of those only 19 were ready to begin the construction phase (15 were not ready for construction money because they were still in design phase).

FACT: The Superfund tax was unfair.

- This tax goes where the money is, not where the responsibility lies. This is not a tax on polluters; it is an indiscriminate tax on business. The Superfund tax was levied against a broad range of business (not polluters).

FACT: There is no correlation between the dollars in the Super Fund (from the collected tax which expired in 1995) and the level of funding that goes to Superfund clean ups. There is no delay in clean ups due to lack of a Superfund tax.

WASTEWATER SECURITY

Last Congress, both you and Senator Jeffords introduced wastewater security bills. Your bill passed the Committee with a bipartisan vote of 13 to 6. You would have provided utilities with an incentive to do vulnerability assessments by providing them with funds to do them or meet a need identified in one. You did not require any information be sent to the federal government. Senator Jeffords bill required towns to do assessments and emergency response plans and send both of them to the EPA.

Talking Points

- Wastewater treatment works are responsible for treating the municipal and industrial waste to a level clean enough to be released into the nation's waterways
- They consist of not only a treatment plant but thousands of miles of sewers that run underground of almost every city and town in the country
- These sewer systems may provide access to the business and population centers of our nation's largest cities
- My legislation would have had the federal government working in partnership with our local communities to secure their wastewater treatment works.
- Unfortunately, my colleague Senator Jeffords and I reached an impasse over the bill and while it passed the House 413 to 2, it never came before the full Senate for consideration.
- I have asked the GAO to provide us a report on what authority EPA or DHS may need that it doesn't currently have with regard to wastewater security.
- Once I receive their report, I hope to work with Senator Jeffords to overcome our differences on this important issue.

Why Clear Skies is the Right Approach

- Clear Skies will achieve emission reductions further, faster and more efficiently than the current Act – cutting power plant emissions by 70 percent. It is not a "roll-back." Critics who say otherwise are dealing in hypothetical guesses of what the Act could potentially do, not what is actually does.

- Clear Skies will help states to come into compliance with their clean air requirements.

- Clear Skies is designed to get emission reductions at the biggest, oldest and most inefficient plants. By contrast, critics want to rely on New Source Review to do this, but it does not apply to all plants and is a highly litigated piecemeal approach.

- Litigation has stalled progress in continuing to clean our air. Clear Skies is based on the most effective provision of the act, which has never attracted litigation – the Acid Rain program.

- Technology does not exist to reduce mercury by 90 percent by 2008. A mandate to do so would increase natural gas by 26 percent and electricity prices by 22 percent, according to an Energy Information Administration – such enormous increases would seriously damage our manufacturing sector and burden the elderly and poor.

Response to Inquiry on Ringwood, New Jersey, Site

Below is the letter which was mailed on March 2, 2005:

The Honorable Frank R. Lautenberg
United States Senate
Washington, DC 20510

Dear Senator Lautenberg:

Thank you for your letter of January 25, 2005 to former Administrator Leavitt, written on behalf of your constituents, the residents of Ringwood, New Jersey concerning the Ringwood Mines/Landfill Superfund site. The Acting Administrator has asked me to reply on his behalf. We understand and share your commitment of ensuring cleanup of the site.

In October 2004, the U.S. Environmental Protection Agency (EPA) released to the public a draft plan (Residential Work Plan) for performance of an initial exploratory investigation on 15 residential properties located in the vicinity of the site. This initial investigation for industrial waste would involve the installation of exploratory trenches on residential properties which were developed during or subsequent to the Ford Motor Company's ownership of property that comprises the site. Information obtained during this initial exploratory investigation would be used in the development of additional response actions, where warranted. Further, on November 4, 2004, EPA held a public meeting to present the draft Residential Work Plan to the community. During this meeting, EPA committed to surveying residential properties not included in the initial exploratory investigation for evidence of industrial waste disposal, if requested to do so by the respective property owners.

I would like to address expanding the initial exploratory investigation to provide for investigation of all residential properties in the vicinity of Peters Mine and Cannon Mine Roads, where requested to do so by a resident. EPA agrees that this very conservative approach to investigation of the residential properties may be warranted to assure these residents that industrial waste is not buried on their properties. Therefore, EPA will offer to expand its initial exploratory investigation. Such an investigation would entail installation of trenches and/or soil borings on approximately 48 residential properties in the vicinity of the site to determine whether paint sludge or other industrial waste is present on these properties. Furthermore, where appropriate, samples would be collected of identified industrial waste and soils beneath such waste to determine whether significant soil impacts are associated with the waste. Field screening tools, such as a Photoionization Detector and an X-ray Fluorescence system may be used to aid in sample selection. We believe that this is the appropriate action to take at this juncture of the residential property investigation. Please be aware that initial exploratory investigations will be conducted solely on residential properties to which EPA has been granted access in writing.

Once again, thank you for your letter. Please be assured that EPA will continue to work with you and the community to ensure that site-related industrial waste is appropriately addressed.

If you have further questions, please contact me or your staff may contact Peter B. Brandt, Chief for Intergovernmental and Community Affairs, at (212) 637-3657.

Sincerely,
Kathleen C. Callahan /s/
Acting Regional Administrator

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