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# THE ENVIRONMENTAL PROTECTION AGENCY FISCAL YEAR 2008 BUDGET REQUEST

## HEARINGS

BEFORE THE

SUBCOMMITTEE ON ENVIRONMENT AND HAZARDOUS MATERIALS

AND THE

SUBCOMMITTEE ON ENERGY AND AIR QUALITY

OF THE

COMMITTEE ON ENERGY AND COMMERCE

HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

MARCH 1 AND 8, 2007

**Serial No. 110–11**

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# THE ENVIRONMENTAL PROTECTION AGENCY FISCAL YEAR 2008 BUDGET REQUEST

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# THE ENVIRONMENTAL PROTECTION AGENCY FISCAL YEAR 2008 BUDGET REQUEST

**THURSDAY, MARCH 1, 2007**

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ENVIRONMENT
AND HAZARDOUS MATERIALS,
COMMITTEE ON ENERGY AND COMMERCE,
*Washington, DC.*

The subcommittee met, pursuant to call, at 10:45 a.m., in room 2322 of the Rayburn House Office Building, Hon. Albert R. Wynn (chairman of the subcommittee) presiding.

Members present: Representatives Pallone, Stupak, Solis, Baldwin, Butterfield, Barrow, Hill, DeGette, Green, Shimkus, Stearns, Terry, Rogers, Sullivan and Murphy.

## OPENING STATEMENT OF HON. ALBERT R. WYNN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MARYLAND

Mr. WYNN. This is the first of two hearings on the fiscal year 2008 budget for the Environmental Protection Agency. Today we will hear from a distinguished panel of stakeholders who are directly affected by EPA's funding levels, and later on March 8 we will have the honor and pleasure of hearing from the EPA administrator, Mr. Stephen Johnson.

For purposes of making opening statements, the chairs and ranking members of the subcommittee and the full committee will each be recognized for 5 minutes. All other members of the subcommittee will be recognized for 3 minutes. Those members may waive their right to make an opening statement when first recognized to raise questions. They may add those 3 minutes to their time for questions. Without objections, all Members will have 5 legislative days to submit opening statements for the record.

Before I begin my opening statement, I would like to recognize the premier of Bermuda who is with us, the Honorable Ewart Brown. We are delighted to have you, Mr. Premier.

Mr. BROWN. Thank you.

Mr. WYNN. It was just suggested we have an oversight hearing in Bermuda. Thank you very much for stopping by.

Since at least 2003, there has been growing concern about the ability of the Environmental Protection Agency to fulfill its programmatic mission in several critical areas including Superfund, Brownfields, Leaking Underground Storage Tanks, the Safe Drinking Water Act Revolving Loan Fund and environmental justice, among other issues. However, this is the first hearing this sub-

committee has held on the EPA budget in 6 years and it is the first under the current administration. I believe that it is part of Congress's institutional and constitutional responsibility to hold oversight hearings on the EPA, and unlike the last Congress, this subcommittee will enthusiastically pursue these responsibilities.

As we move forward, there are several realities we must consider. First, the President's EPA budget request for fiscal year 2008, when adjusted for inflation and constant dollars, shows a dramatic decline over the last 10 years. Second, the Superfund program has seen a precipitous drop in the number of sites being completed. And third, the President has expressed his opposition to reinstatement of dedicated taxes, resulting in all EPA-funded cleanups having to come out of general revenues.

It appears the administration has a less-than-serious commitment to environmental protection since the EPA is one of only two agencies to see a decline in the President's budget. First, in terms of the Superfund, the fiscal year 2008 budget request for Superfund is $35 million less than the President's fiscal year 2006 budget request. These reductions come at a time when progress in completing construction activities of Superfund national priority list sites has slowed dramatically. EPA has projected completion of 40 sites in fiscal year 2007 but recently announced that it will achieve only 24 construction completions this year, a reduction of 40 percent. In many instances, EPA has been unable to begin construction cleanup on new Superfund sites or more commonly, EPA has been unable to move to completion on sites already in the pipeline. What this means is that EPA is unable to adequately meet its mission of protecting human health and the environment and our constituents continue to remain at risk.

Turning to the Leaking Underground Storage Tanks program, leaking underground storage tanks are the leading source of groundwater contamination in the United States, posing a risk to the Nation's drinking water supply. Congress enacted the LUST Trust Fund in order to deal with this growing threat to the Nation's health. Interest on the LUST Trust Fund is estimated to add an additional $109 million in fiscal year 2008, bringing the total LUST Fund surplus to $3 billion. The President's budget, however, requests just $72.5 million from this trust fund for cleanup, slightly less than last year's appropriations. Gasoline taxes paid by consumers are not going for their specified purpose: the cleanup of spills and releases and contaminated water supplies. Using this important trust fund to offset other administration spending is quite frankly a farce on the American public. But in the meantime, there is a backlog of 113,000 cleanups. The longer this contamination is left unaddressed, the greater the adverse effect on human health, increasing the ultimate cost of the cleanups.

In terms of Brownfields, the President's fiscal year 2008 budget request of $89 million for cleanup and assessment grants is 26 percent less than his request for 2006. Current law provides an authorization of $200 million per year but the President's request for 2008 seeks only 56 percent of the amount authorized for cleanups and assessment grants. This is troublesome when you consider that in 2006 there were 694 Brownfield project grant proposals but only slightly more than a third actually received funding. This is also

of concern because demand for cleanups has intensified, particularly with the increased focus on environmental justice for low-income and minority communities.

In terms of the drinking water revolving loan fund designed to support States in helping public water systems finance the cost of infrastructure improvements, again we see inadequate funding. When adjusted for inflation in 2006 dollars, the President's budget request for 2008 is the lowest in the history of the revolving loan fund program. These reductions lead to shortfalls in State resources and consumers are hurt. They either foot the bill or they suffer outbreaks of waterborne diseases due to failing infrastructure.

Overall, there are concerns that EPA's funding is insufficient to meet its mission to protect the environment and the public health. There are unfunded mandates for States, a backlog of polluted sites and spreading contamination. In the face of chronic underfunding of EPA's core health programs, I am also concerned that EPA is expending significant resources on voluntary programs with questionable oversight and evaluation.

I look forward to hearing from today's witnesses, the stakeholders who represent the interests of the States, the environmental community and the small-business community and learning more about their views of our efforts to protect the health of our constituents and the environment.

At this time I would like to recognize my distinguished colleague, Mr. Shimkus, the ranking member.

**OPENING STATEMENT OF HON. JOHN SHIMKUS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS**

Mr. SHIMKUS. Thank you, Mr. Chairman, and I want to congratulate you on your chairmanship and tell you how much I look forward to working together. We have already had a couple meetings and I think that is very important. I know there will be times when we will agree to disagree, and if we do that amicably, I think that is going to help us also in the movement of public policy. But I am sure we both can agree that protecting human health, one of the duties of our jurisdiction on this committee, is something members on both sides of the aisle want.

One thing we know is that no real progress occurs on environmental issues unless both Democrats and Republicans stand behind the same policy. In fact, Chairman Dingell and I talked about this prior to the markup that we just left. I also want to be very clear that I and the Republican members of this committee welcome congressional oversight by this panel and want to extend our hand in cooperation to these efforts. We want the facts, both the budgetary and the scientific, and we support thoughtful, reasoned, deliberate and meaningful questioning that advances the needs of our constituents, not Republicans or Democrats. It goes without saying that efforts outside of these parameters are viewed by myself and my colleagues as partisan commercials that should not have a place in this committee.

For this reason, I wanted to share with you my surprise at not being asked to join you and other members of this committee on a couple letters that were sent to the EPA and the Government Ac-

countability Office on waste generated at CAFOS. At least give me the chance to say no, I won't sign it. I am especially concerned about CAFOS, the Combined Animal Feeding Operation Districts, because the three signers of the letter, I have as many head of animals, poultry, beef, pork, as you all do people, plus 70 percent more in my congressional district, so there is a different view of CAFOS in rural America, and I think that is why we want to encourage you to come out to southern Illinois, but I have already made that invitation to you and we can see a part of the country in which some of the issues may be a little bit different.

Certainly long before any pollution from a farm reaches an urban setting, it passes through a rural one and we have the mayors here or the representatives of mayors and they are mayors of small towns that have to deal with these issues. That is why I would like to follow up and encourage a visit by you and other members if we can arrange it, both to the St. Louis metropolitan area and southern Illinois.

I only think it makes sense to focus our time and understanding on the budget of the main Federal agency that our committee oversees. I applaud your decision to hold 2 days' worth of hearings and I would like to personally thank you for allowing the minority two requested witnesses to appear on this panel. I made that personal request and you agreed, and I do appreciate that. This is a great start to our working together as chairman and ranking member.

I think the budget of the U.S. Environmental Protection Agency is not an easy document to understand. I prefer things to be simple, and this budget, just like the budget of other Federal agencies, is not. What strikes me is that nothing the EPA does happens in a vacuum. It has ramifications for Federal, State and local regulators. It impacts large, medium and small business and it translates into how public health protections can and will be carried out. Simply looking at the numbers does a disservice to the work of the agency and its partners. Rather, we need to step back and ask ourselves if progress is happening, are people being protected and how do we know: a result-oriented approach. We also need to decide of the money we are spending is being spent wisely. Is it sapping resources from other potentially more crucial public health needs or it is being used as a crutch for programs or stakeholders that no longer need it or could do without it? We must admit that it is misguided to beat up the Bush administration when all appropriations are required by the Constitution to begin in the House. So you all are going to have a chance to submit a budget and address some of these wrongs and we are going to see how well you guys do.

Mr. Chairman, the Republican members of this committee and I pledge to be an honest broker on the issues that lie ahead. I welcome the witnesses and yield back the balance of my time.

Mr. WYNN. I want to thank the gentleman for his opening statement. I look forward to working with the gentleman. We have had a good and cordial working relationship and had several conversations prior to this hearing. I also want to indicate that I am sorry if you feel excluded from our correspondence. I am sure we will have an opportunity to talk about that in the future.

Mr. SHIMKUS. If the gentleman would yield, you can always say, well, you never signed that letter.

Mr. WYNN. That was my intent, but I certainly don't want you to feel excluded.

Mr. SHIMKUS. Mr. Simms wants to make sure that I don't sign my letters. He will let me know.

Mr. WYNN. With respect to the appropriations, I do want to note that it was the Congress under the Republican majority that was responsible for some of the shortages that we have experienced.

But not to belabor that point, I want to move into the opening statements by members of the committee, and at this point the Chair would recognize Ms. Baldwin.

**OPENING STATEMENT OF HON. TAMMY BALDWIN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WISCONSIN**

Ms. BALDWIN. Thank you, Mr. Chairman.

It is exciting to be here today to finally discuss the operation of our Nation's Environment Protection Agency. Too many years, in fact, 6 years have passed since our last public conversations about EPA's programs and priorities, and this body has been lax, perhaps even negligent in its use of oversight power and it is certainly time for us to exert our constitutional responsibilities and ask difficult but important questions about the actions the EPA is taking, and I commend the committee and you, Mr. Chairman, for beginning our discussions today with testimony from people who see firsthand the impact of the EPA's actions and funding decisions. Quite frankly, over the last 6 years it has been difficult for the EPA to fully meet its mission of protecting human health and the environment, given that the administration does not seem to place a priority on its proper funding. In fact, the EPA's budget has been stuck in a downward spiral for years. The result has been that Superfund sites remain dangerous, drinking water is threatened and air quality is jeopardized.

In my home State of Wisconsin, our environment is considered precious. Our tradition is of stewardship, conservation, preservation and environmental protection, and that tradition is long. We rely heavily on groundwater and freshwater from lakes. We believe in protecting our wetlands and ensuring that our air is fresh to breathe. However, lately our efforts to preserve and protect our environment have been jeopardized. Our State and local authorities have expressed concern about the effects of cuts to programs like the State and tribal grants program, the State Drinking Water Revolving Fund and the Clean Water State Revolving Fund. They are worried that as funding levels for programs decrease or remain stagnant, States are expected to provide a greater share of the funding, and at the same time pick up responsibility for implementing new requirements promulgated by the EPA. It is simply not fair to place unfunded mandates on our neighbors and communities back home.

Let me also add that in Wisconsin, we are deeply concerned about the lack of attention that EPA is placing on efforts to reduce mercury pollution. Exposure to and consumption of mercury-laden fish can result in severe health effects. The EPA recognized this in its 2006 roadmap for mercury and outlined a number of promising programs to retire mercury-containing devices, address mercury re-

leases to the environment and conduct mercury research and monitoring. Unfortunately, the administration's budget does not appear to provide the appropriate financial support or staffing levels needed to implement many of these initiatives. Meanwhile, we continue to hear about the dangers of exposure to mercury in our school classrooms, our water and our food supply. Mr. Chairman, I am hopeful that by holding these EPA budget hearings we will be able to able to refocus our attention back to environmental protection and show that protecting our environment should not solely be a State or interest group responsibility. Rather, the Federal Government has a role to play in ensuring that our air is clean to breathe, our water is safe to drink and our communities are preserved and protected for future generations to enjoy.

I look forward to hearing the testimony of our witnesses. Thank you, Mr. Chairman.

Mr. WYNN. I thank the gentlelady.

At this point the Chair would recognize Mr. Terry.

Mr. TERRY. I waive.

Mr. SHIMKUS. Mr. Murphy for an opening statement.

**OPENING STATEMENT OF HON. TIM MURPHY, A REPRESENTATIVE IN CONGRESS FROM THE COMMONWEALTH OF PENNSYLVANIA**

Mr. MURPHY. Thank you, Mr. Chairman. I appreciate the opportunity to speak at this hearing.

Back in the 1800's, I believe it was Charles Darwin that referred to the city of Pittsburgh as "Hell with the lid off." Up until the 1940's and 1950's, it was the city that when men came to work, they brought with them an extra shirt and they would change it at noontime because by then it was gray from the soot that was in the air. Pittsburgh, which obviously has a legacy of steel, and the region, which has a legacy of coal, of which we will have 190 years worth of coal long after Saudi Arabia is out of oil, still finds itself in making the transition from a century-plus of bad environmental policies. We probably have one of the highest numbers of environmental engineering companies in the Nation in Pittsburgh and they have made some significant progress as we have looked at how environment and health has worked to make positive changes. This includes such things as coal mine sites and continuing coal mines being turned into botanical gardens, which will be an economic engine for the region, large steel mill Brownfields which have been turned into vital shopping centers and housing areas of which the housing demand is so high in these areas people can't get them as far as they build them.

Pittsburgh was home to a national bass fishing tournament in rivers that used to be ones that people would not even want to stand by, let alone see any fish in there. We have gone from the smoky city, Hell with the lid off, to an area that really as an example of one of the great, beautiful views of America. In fact, they say that standing from Mount Washington is probably second only to standing out and looking at the rocks in Arizona as a view.

That being said, it has been done by large investments and upgrading, incentives for positive change, building partnerships for change with business and industries and public health, embracing

positive solutions and engine for economic growth and doing those together, and not just with a heavy hand of ones that works to threaten or destroy our local economy as moving toward these. We all want, and our primary purpose should be looking at public health but that also has to partner with making sure we do not destroy our industries and our jobs in the meantime. I think all the public can agree on that, and sometimes I have questioned if EPA has all those things in mind too. I hope it does but I think we do best when we work together and we do worse when we work apart.

So given that case, as we work to recognize that we are going to still need coal energy, we are going to still need to manufacture in the United States, we should be looking at ways to help transition from the legacy as opposed to just shutting it down. I suppose we could clean all the air and streams in America if we shut down our industry but then we would find everyone else struggling to even survive from there. So let us hope that all the aspects of this budget and all the working towards will be money well spend and money that is multiplied by working together with business and industry, communities and public health to clean our air, clean our water, cleanup our Brownfields by making these positive economic engines in place that we can be proud of.

Thank you, Mr. Chairman.

Mr. WYNN. Thank you. As a graduate of the University of Pittsburgh, I actually recognize the progress that you cite.

At this time the Chair would recognize my good friend from North Carolina, who represents the district where I grew up, Congressman Butterfield.

Mr. BUTTERFIELD. Thank you very much, Mr. Chairman. I don't have any prepared remarks. I simply want to thank you for your leadership and look forward to working with you on the subcommittee. I thank the witnesses for coming forward today. This is a very important subject, not only to America but to the world. And so thank you for your testimony. I look forward to hearing from you and look forward to working with all of you including my friends on the other side of the aisle.

I yield back.

Mr. WYNN. Thank you.

At this time the Chair would recognize Mr. Rogers from Michigan.

Mr. ROGERS. I waive.

Mr. WYNN. The Chair recognizes Mr. Barrow of Georgia.

Mr. BARROW. I waive.

Mr. WYNN. The Chair would recognize Ms. DeGette.

**OPENING STATEMENT OF HON. DIANA DEGETTE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF COLORADO**

Ms. DEGETTE. Thank you, Mr. Chairman.

I want to echo Ms. Baldwin's dismay at the fact that this is the first hearing this committee has had on the EPA's budget since the Clinton administration and I think that is really shocking, but what is more shocking is what the administration has done to some of our most vital environmental and public health programs in that short amount of time. I do appreciate the willingness of our panel

to come and testify today and tell us their views. I am pleased, Mr. Chairman, to see that real oversight has returned to Capitol Hill.

I am also pleased to see Mr. Stupak here because I think between the two committees, the Environment and the Oversight and the Investigation Subcommittee, both of which I serve on, we know that your testimony will be very helpful to us as we begin to look and see not only what this budget means but also what the administration's environmental programs mean.

Last fall, I was privileged to attend a ceremony at a site in Denver, the Shaddock site, which had been contaminated by hazardous waste and which had a Record of Decision where everything would be scraped in a big football field-sized area and left in the middle of a low-income residential neighborhood. I worked with Senator Allard on a bipartisan basis to get that Record of Decision reversed and now we are developing houses in that area, but while I was at that happy event, I got to spend some time talking to my local EPA staff in Denver and also to some of the activists and they confirmed what I have believed for several years now: we are not undertaking environmental enforcement at nearly the pace we should be in this country to protect the health and welfare of our citizens. There are a number of areas, and I hope to still be here to question the panel about these areas of concern that I have.

I am concerned about the lack of reauthorization for the Polluter Pays tax into the Superfund. We may have many Superfund sites around this country that are not being cleaned up because there is not enough money in the Superfund and so I think that I am interested in learning either today or later what the impact of shifting the burden onto the taxpayer from the polluter has been in cleaning up these heavily contaminated sites.

A second issue that I have been working on many years ever since I was in the Colorado State Legislature is the issue of Brownfields, and I am very concerned in this budget about the severe lack of funding for the Brownfields program. In 2005, for example, the EPA received 673 requests for funding but it only funded a third of the projects.

And last, Mr. Bilirakis, the senior Mr. Bilirakis and I worked hard on the integrity and independence of the EPA ombudsman program and I am looking forward to knowing next week at the hearing that we have what is going on with the ombudsman program and under the current structure at the Inspector General's Office is the ombudsman really independent.

And with that, Mr. Chairman, I thank you for having this hearing and yield back.

Mr. WYNN. I thank the gentlelady, who has been a champion on environmental issues.

At this time the Chair would recognize Mr. Pallone for an opening statement.

**OPENING STATEMENT OF HON. FRANK PALLONE, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY**

Mr. PALLONE. Thank you, Mr. Chairman. Let me first congratulate you on becoming the Chair of the subcommittee. Having previously been the ranking member, I know the complex but critical

issues under our jurisdiction here and I look forward to working with you. I know that several of us have mentioned how little the subcommittee has done over the past several years, and just the fact that you are having the EPA Administrator in front of us for the first time in his career next week I think says a lot about where we are going. In fact, I think it was already mentioned, for the first 6 years of the Bush administration we didn't even have a hearing on the EPA's budget requests, so obviously there are going to be some big changes here.

President Bush's budget request is no different than what we have been getting in the past and I frankly think it is shameful because it is not going to allow the EPA to do its job in protecting human health and the environment, and I am particularly upset at the fact that there are cuts in programs that are critical to cleaning up the toxic legacy that plagues my district and my home State of New Jersey. For example, the request for the Superfund program is $7 million less than the enacted level, even though the administration lowered its target number of site cleanups mid-year and is clearly lagging behind in eliminating this most serious of environmental health threats. The Inspector General has previously noted the serious backlog in funding plaguing the program and I am eagerly looking forward to updated figures from Mr. Rogers' office.

I would also like to note that the more and more we learn about funding problems with Superfund, the more urgent it becomes that we reinstate the Superfund taxes as Mr. Simms indicates in his written testimony, and I intend to reintroduce a bill that I have introduced in the past to bring back the taxes and put the burden for cleanups on the backs of polluters, not taxpayers.

I am glad to welcome Mayor Bollwage from Elizabeth, New Jersey, here representing the U.S. Conference of Mayors. In your written testimony, Mayor, you make important points about the role of local governments in environmental protection and I agree with you about the need to fully fund the Brownfields program. I know that has always been a major issue for you. You talked about it with me many times. A few years ago when I was the ranking member, I helped author the Federal Brownfields program so I want you to know that I intend to introduce a reauthorization of that program so that we can continue to strengthen it.

And finally, I want to recognize Mr. Langer here from the National Federation of Independent Business. In your testimony, you discuss your support of the EPA's recent changes that undermine the Toxics Release Inventory program. You may know that I have introduced a bill with Senator Lautenberg to restore this important program and protect communities' right to know about what toxic materials are dumped in their backyards, and I think TRI is a successful program that has gotten companies to voluntarily slash pollution without imposing burdensome regulations, and I believe it should be kept as it had been before the EPA's changes.

So again, Mr. Chairman, thank you for holding this hearing. Congratulations. This subcommittee has a long history and under the Democrats previously was a very significant subcommittee. I remember our former Governor, Jim Florio, was once the chairman of it and so many things were done and I know that will happen again under your tutelage. Thank you.

Mr. WYNN. Well, thank you, and I look forward to leading the committee to its former grandeur.

At this time I would like to recognize Mr. Stupak, who is also the subcommittee chairman for Oversight and Investigations. Mr. Stupak.

**OPENING STATEMENT OF HON. BART STUPAK, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN**

Mr. STUPAK. Thank you, Mr. Chairman.

After more than 6 years of little or no oversight of the Environmental Protection Agency from this committee, I am pleased we are finally holding hearings on EPA's budget proposals. As the chairman of Oversight and Investigations, I look forward to working to improved congressional oversight with this subcommittee on this very critical agency.

State and local governments face a daunting task in protecting public health and providing a clean environment. They depend on the assistance on the Federal Government to cleanup environmental problems, update their water and wastewater infrastructure and protect residents from environmental hazards. Unfortunately, rather than helping States reach these goals, the President's fiscal year 2008 budget faces significant burdens on State and local governments. By cutting funding for EPA and important programs such as the State Drinking Water Act Revolving Loan Fund, the Brownfield Revitalization Program, Superfund, Leaking Underground Storage Tanks, Beach Protection and others, the administration has made it harder for State and local governments to protect the public.

Across the country, communities are struggling to keep up with the needs of their residents. Rather than cutting these programs, the Federal Government should be increasing the assistance so State and local governments can provide the basic health and environmental needs. Despite what the administration may think, slashing Federal environmental assistance does not save us money. Instead, we are merely passing the bucks onto States who are already struggling to make ends meet. More often than not, the States don't have the resources to fix environmental and public health hazards. The end result is the American people suffer the side effects, which usually include diminished health and poorer quality of life.

In my district, preventing drinking water contamination is a major problem. Communities are having a hard time keeping up with the problems, whether they are aging infrastructure or polluted areas that are not being cleaned up. The Great Lakes is a source of drinking water for more than 30 million people. Programs that cleanup the Great Lakes developed by the Great Lakes Collaboration have been flat-funded in this budget as well as past budgets. This flat funding completely ignores the needs outlined by the Great Lakes Collaboration, which has recommended that water quality funding should be increased exponentially. As a result, we have community health departments and municipal water systems in Michigan that are attempting to cope with higher bacteria counts, closed beaches and sometimes even significant health concerns.

The American people deserve better. Rather than passing hazardous public health and environmental problems onto local governments, this administration should take some leadership and accept the responsibility it has for protecting public health rather than ignoring it.

I look forward to the testimony of our witnesses. I will be in and out but I hope to be back to ask questions at the appropriate time.

Thank you again, Mr. Chairman. I look forward to working with you. I must say, I have been on this subcommittee for some time, and when Ms. Solis was the ranking chairperson we tried many, many times to have hearings on very important matters. We never really got too far so I look forward to working with you, and in my oversight role I am sure together we can move some good environmental legislation to help protect the American people and do the job we should be doing for them.

Mr. WYNN. I want to thank the gentleman, and I concur. I look forward to working with him as well. I think we can get some real good things done.

I also want to echo his sentiment in recognizing Ms. Solis, the former ranking member, current vice chair, who has been a tremendous leader on these issues, and it is with great pleasure that I recognize Ms. Solis for an opening statement.

**OPENING STATEMENT OF HON. HILDA L. SOLIS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA**

Ms. SOLIS. Thank you, Mr. Chairman, and congratulations. Boy, how times have changed. I want to thank also Ranking Member Shimkus and I also just want to thank you again, Mr. Chairman, for having this hearing. I can tell you that this indeed has been a long-awaited time, 6 years in waiting to have the EPA come forward so we could have an oversight hearing regarding their budget.

As policymakers and responsible parties, we know the importance of how we utilize our taxpayer dollars and it is our responsibility to understand what EPA has done in the last 6 years or has not done, and over the 6 years I am seeing that many of the core programs that EPA is supposed to be in charge of and implementing have not been diligent in implementing many of the laws that they are supposed to be implementing and monitoring. In fiscal year 2008 in their budget, which if accepted, States will have lost over $1 billion in Federal support if you look back over to the year 2004. Under the Leaking Underground Storage Tank Program, we see more than $325 million below authorized levels. The administration has cut its request for the Brownfield program from $120 million to $89 million for a second year in a row, and the proposed budget that funds the Safe Drinking Water Act is at its lowest level.

Despite the 2003 needs survey which was released in 2005 identifying $263.3 billion in needs, these budget cuts and funding decisions have had real impacts on our communities across the country. State and local agencies may be forced to lay off staff, leave vacancies unfilled, shut down existing air monitors and otherwise curtail very important monitoring programs. EPA can't be sure that the cleanup at Libby, the Superfund site in Montana, suffi-

ciently reduces the risk to public health. Regional and contract personnel are making judgments at this time about water systems despite not being the most qualified, and according to an article dated October 31, 2006, in the Seattle Times, EPA region 10, which includes Hanford Nuclear Reservation and 40 percent of all tribes in the Nation, was forced to close its Environmental Justice Office because of budget cuts. Two-third of already burdened cities who are working to create economic opportunities by revitalizing formerly blighted areas are not getting Brownfields grants and more than 113,000 leaking underground storage tanks will continue to contaminate drinking water supplies and become even more costly when we do consider cleaning them up.

I am concerned about the impact that our dereliction of oversight duty has had on the culture of the Agency, and specifically, I am concerned about the movement from funding core programs to funding unauthorized voluntary contractor-based programs such as Performance Track, a program which currently uses 32 full-time employees and appears to reward noncompliant facilities.

Mr. Chairman, I am eager to address these issues and join in that discussion with my colleagues on this committee such as the Toxic-Right-to-Know program, the library closures and human pesticide testing in our hearings this week and next and I look forward to working with all of my colleagues to get our Nation back on track.

I yield back the balance of my time.

Mr. WYNN. I thank the gentlelady, and we look forward to having the benefit of her expertise as we move forward.

At this time the Chair would recognize Mr. Sullivan of Oklahoma.

Mr. SULLIVAN. I have no opening statement. Thank you.

Mr. WYNN. Thank you, sir.

At this time I would recognize Mr. Green of Texas.

## OPENING STATEMENT OF HON. GENE GREEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. GREEN. Thank you, Mr. Chairman, for the hearing today and I welcome our panelists.

This hearing is the first oversight hearing on the Environment Protection Agency's budget in over 6 years and I am pleased that we are having this discussion on the issues we are facing today. The administration's fiscal year 2008 EPA budget request is significantly lower than the previous fiscal year budget request. Most people in this room are not surprised. I am particularly dismayed by the fact that 13 percent of the EPA's fiscal year 2008 budget request has been allocated to Clean Air. Of the $7.2 billion, the EPA is requesting only $912 million be available for one of the most important issues facing our communities, air quality.

In my statement I would like to highlight two important issues that did not get enough attention at the EPA or the public discussion the EPA's duty, air toxics control and EPA's role in accident prevention at chemical plants. In Houston we have significant high levels of air toxics and some of the highest in the Nation, although all major cities have levels that are too high. Many in my district feel that the Texas Commission on Environmental Quality, which

regulates air toxics in my State, has failed to focus on the air toxics in Houston. The burden of reducing air toxics falls on the local communities, which is not the most effective way to solve the larger clean air issue. Cities provide water, streets, police, firefighters, so they do not have the resources to craft the best environmental regulations and to conduct enforcement.

I believe the EPA needs to show more leadership on the air toxics issue, especially after a 2005 Inspector General report critical and a 2006 GAO report both found that not enough is being done at the Federal level. Some State agencies like our Texas Environment Quality with huge responsibilities and limited resources are not meeting communities' needs for all air toxic improvement so they need more Federal help. The EPA has set a bad example by repeatedly missing deadlines for setting the maximal achievement control technology standards and subsequent residual risk assessments. The EPA has recently tried to help out State and local governments on air toxic monitoring, which is the least they can do. However, we still have urgent needs for more monitoring information in my own area in Houston, which like large cities has a high concentration of air toxics, and I hope to hear more from the Inspector General on the issue.

In addition, I would like to note that the EPA has a role in improving chemical facility risk management plans that address accident risk outside the fence line. However, reducing risk outside the fence line also reduces risk inside the fence line for workers at chemical facilities, many of whom are my constituents. Our office has heard that EPA has not fully implemented several of the recommendations over the years from the Chemical Safety Board. We also understand the EPA is not providing the Chemical Safety Board with the documents and information they are requesting for their investigation of dangerous incidents in refineries and chemical facilities. Most people think of OSHA when they think of workplace safety but in the area of chemical facilities, the EPA has a significant role. Perhaps the Inspector General should look into also whether EPA is taking these responsibilities seriously.

Mr. Chairman, I am glad to be on the subcommittee and I look forward to our hearings. Thank you.

Mr. WYNN. Thank you.

Does any other Member wish to make an opening statement?

If not, any other statements will be included in the record at this time.

[The prepared statement of Mr. Barton follows:]

PREPARED STATEMENT OF HON. JOE BARTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. Chairman, I commend you for having two hearings to examine EPA's proposed budget for this upcoming fiscal year. However, their appropriate sequence is upside down. I think for a couple reasons the administration, regardless of party, should testify first. It is our responsibility to have a dialog with the administration directly, not through the filter of special interest groups . It is the custom of this committee to afford the administration the courtesy of testifying first, regardless of party. Once that testimony is heard and our questions have been answered by the administration, then we turn to outside witnesses. In the spirit of inter-branch comity, I hope we can return to that practice in future hearings.

Although some will want to use these hearings to make definitive statements about EPA's programs or spending priorities, I find that understanding EPA's efforts and priorities is akin to the job of herding cats.

EPA is not a perfect agency, and our efforts should be to achieve an EPA that is competent, effective, and efficient. EPA is entering the middle of its fourth decade of existence. Its infrastructure and organization is predicated on a collection of well-meaning, but disparate laws. We need to ensure that EPA's efforts are focused, competent, reasoned, cost-effective, and successfully achieving those program goals that further public health protections.

For this reason, I think the most important issue for our hearing today is whether, as EPA's mission statement proclaims: "public health" is being protected and "a cleaner, healthier environment" is being produced for the American people. Next week, I plan to be more specific in my questioning about individual programs when the Administrator appears before our committee. Mr. Chairman, I hope you will lead us in pledging allegiance not to the programs of this Agency for their own sake, but rather to its mission and the people it serves.

I welcome all of our witnesses and thank them for their participation. Despite the irregular order of the two hearings, I think it is essential that we hear from each of these witnesses as they represent an important segment of our public, private, and academic sectors. I am pleased to see the State and local governments here. They are an important part of our Nation's overall environmental strategy and we should welcome and encourage that partnership. However, while States and localities have special understanding and expertise, in this time of tight budgets, we should not hold the Federal Treasury out as a fund for pet projects that these levels of Government can and should fund themselves. This principle also applies to well funded private groups who receive EPA monies. We must maximize what we have rather than rely on increased taxes for these programs.

I also appreciate the fact that small, medium, and large businesses are being represented on our panel today. EPA's budget, whether discussing new regulatory programs or the maintenance of existing ones, is a crucial factor for many of these groups and their employees. We cannot afford real environmental protection without a thriving economy and business should not always be seen as the environmental enemy. I believe there are productive voluntary programs that show American business can create, innovate, and grow as well as be good environmental stewards without the hammer of mandatory programs hanging over their heads. We should always encourage economic freedom when public health is not directly threatened.

Mr. Chairman, I hope we can bring an engineer's penchant for thoughtful analysis and problem solving to these budget hearings. Let's focus on making EPA's efforts help people as opposed to bean counting, statistical manipulation, and political posturing.

Again, I look forward to the testimony of our witnesses and thank the Chair for his kindness.

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Mr. WYNN. We will turn to our distinguished witnesses. I want to welcome each of you and thank you for coming. On our panel today, we have with us Mr. Bill Roderick, who is the acting Inspector General for EPA. We have Mr. J. Christian Bollwage, mayor of Elizabeth, New Jersey, and speaking on behalf of the United States Conference of Mayors. We also have Mr. Robert King, president of the Environmental Council of the States and deputy commissioner of South Carolina's Department of Health and Environmental Control. We have Mr. Andrew Langer, who is the manager of regulatory affairs for the National Federation of Independent Business; Mr. Maurice McTigue, director of the Government Accountability Project and vice president of the Mercatus Center at George Mason University, and we also have Mr. Patrice Simms, senior attorney at the Natural Resources Defense Council. I would like to welcome all of you.

We will now have 5-minute opening statements from the witnesses. The prepared statements of the witnesses have been submitted and will be made a part of the hearing record.

At this point I would like to recognize Mr. Roderick for an opening statement and wish to express a special appreciation to him for accommodating us by appearing on the same panel as witnesses

who are not representing governmental interests, so Mr. Roderick, we thank you for coming.

**STATEMENT OF BILL RODERICK, ACTING INSPECTOR GENERAL, U.S. ENVIRONMENTAL PROTECTION AGENCY**

Mr. RODERICK. Thank you, Mr. Chairman. Good morning, Mr. Chairman and members of the subcommittee. I am Bill Roderick, Deputy Inspector General of the EPA. I have been serving as acting Inspector General since March 2006. I am pleased to testify during this oversight hearing on the EPA's budget. The views I express here today are those of the Office of Inspector General and do not represent the Environment Protection Agency's final position.

An issue of primary and current concern in the Superfund program is whether there is sufficient funding for cleanups. Work that we did in 2003 at the request of Chairman Dingell and Congresswoman Solis showed a funding shortfall for non-Federal Superfund sites. We found that limited funding prevented EPA from beginning construction at all sites and providing additional funds needed to address sites. We estimated that the fiscal year 2003 site-specific funding shortfall was nearly $175 million. One of these sites was Libby, Montana. The remedial project manager at the time indicated to us that an additional $740,000 was needed for sampling and to conduct a study to determine the cost-effective method for quantifying the amount of asbestos in the soil.

More recently, funding was again raised as a concern in a report we issued in December 2006 that looked at EPA's cleanup efforts in Libby. In our limited review, we identified significant issues that we believed were critical to the successful cleanup. EPA has not completed a toxicity assessment necessary to determine the safe level for human exposure to asbestos. Therefore, EPA cannot be sure that the Libby cleanup sufficiently reduces the risk that humans may become ill. One of the reasons provided by OSWER officials for not performing a toxicity assessment was that while it was proposed, EPA did not approve the budget request. We recommended that EPA fund and execute a comprehensive asbestos toxicity assessment to determine the effectiveness of the Libby removal actions and to determine whether more actions are necessary. EPA responded that they are committed to beginning a toxicity assessment early this year.

Superfund mega-sites are taking a financial toll on the program because their cleanup is costly, complex and lengthy. In 2004 we identified 156 hardrock mining sites nationwide that have the potential to cost between $7 and $24 billion to cleanup. These costs were over 12 times EPA's total annual Superfund budget. Most of these hardrock mining sites are located in the western and southeastern United States. These sites will impact those States because EPA eventually turns over responsibility for long-term response actions to the States.

We noted several organizational and accounting obstacles that impact EPA's ability to efficiently and effectively manage the Superfund resources. EPA has disbursed responsibilities for Superfund management and resources so that no single EPA office including OSWER, which is the office accountable for Superfund

cleanup goals, has full responsibility or control over EPA Superfund appropriation.

Another obstacle we identified is EPA continuing to maintain unliquidated Superfund obligations and money in special accounts as a hedge against tough financial times. We made several recommendations to help address those issues.

I understand that the subcommittee is concerned about the resources being expended on EPA's partnership programs. Some of these programs report very small budgets and only a fraction of the staff members' time devoted to operating them. Other programs report more. We are currently evaluating one of these programs, Performance Track. We initiated this review to evaluate how the program contributes to EPA's goal of improving environmental performance through pollution prevention and innovation and how well it accomplishes its program goal of recognizing and encouraging top environmental performers. To do this, our approach was to analyze a randomly selected sample of 40 member facilities to determine if they met their Performance Track commitments and assess how much progress they have made. In order to demonstrate these facilities represent top performers, we also sought to compare sample facilities' compliance records and toxic release with others in their sectors. We are compiling compliance information from EPA databases and verifying individual facility data for sample members with reasonable enforcement and compliance data stewards. Since this work is incomplete, I am unable to report on our findings and recommendations at this time. We expect to issue a final report in April. I will gladly brief everyone that wants to have the details of that audit.

The OIG's fiscal year 2008 budget request will enable us to meet our statutory obligations and other higher priority work. However, at these levels we will be challenged to meet every demand placed upon us. We will need to make some difficult choices in order to ensure the OIG remains a catalyst for improving the quality of the environment.

Thank you for the opportunity to testify today. We view all of you on the committee as our customers and we would be pleased to answer any questions you have at this time.

[The prepared statement of Mr. Roderick follows:]

**Statement of Bill A. Roderick**
**Acting Inspector General**
**U.S. Environmental Protection Agency**
**Before the**
**Subcommittee on Environment and Hazardous Materials**
**Committee on Energy and Commerce**
**U.S. House of Representatives**
**March 1, 2007**

Mr. Chairman and Members of the Subcommittee, I am Bill Roderick, Deputy Inspector General of the U.S. Environmental Protection Agency (EPA), serving as Acting Inspector General since March 2006. I am pleased to testify before you today during this oversight hearing on the EPA's budget. The views I express here today are those of the Office of Inspector General (OIG) only and do not represent the EPA's official position.

Given the tightening budget environment facing most Federal Government agencies, EPA must look for ways to leverage its limited resources through improved operating efficiencies and management to ensure that it can continue to adequately meet its mission of protecting human health and the environment. The OIG has issued numerous reports over the years that have identified areas where such improvements can be made and corrective actions taken. My testimony today will focus on key OIG work in areas under this Subcommittee's jurisdiction: Superfund, Brownfields, and the Office of Underground Storage Tanks. In addition, given the particular interests of this Subcommittee, I will also briefly discuss environmental justice and EPA's Partnership Programs.

**Superfund Program**

The Comprehensive Environmental Response, Compensation, and Liability Act established the Superfund program in 1980. Superfund is the Federal Government's program to clean up the nation's abandoned and uncontrolled hazardous waste sites.

An issue of primary and current concern in the Superfund program is the sufficiency of funding for cleanups. According to the Government Accountability Office, until 1995, dedicated taxes provided the majority of the Superfund program's income through the Hazardous Substance Superfund Trust Fund, the account designated to provide funding to these sites. However, the Trust Fund has decreased over the years, to the extent that in FYs 2004 and 2005, all Superfund appropriations came from general tax revenue rather than the Trust Fund. The Superfund program must compete for revenue along with other discretionary programs, which have received decreasing portions of Federal dollars over time.

Work that we did in 2003 at the request of Chairman Dingell, Congresswoman Solis, and Senators Boxer and Jeffords showed a funding shortfall for non-Federal Superfund sites. We found that during FY 2003, limited funding prevented EPA from beginning construction at all sites or providing additional funds needed to address sites in a manner believed necessary by regional officials, and caused projects to be segmented into phases and/or scaled back to accommodate available funding. Within this context, regional officials told us at the time they considered funding sufficient to address most sites. However, we estimated that the FY 2003

site-specific funding shortfall was $174.9 million. One of the sites for which funding was insufficient was Libby, Montana. The Remedial Project Manager indicated to us that an additional $740,000 was needed to take additional samples, analyze the samples taken, and conduct a study to determine a cost-effective method for quantifying the amount of asbestos in the soil.

More recently, funding was again raised as a concern in a report we issued this past December based on a congressional request that looked at EPA's cleanup efforts in Libby. In our limited review, we identified significant issues that we believed were critical to a successful cleanup in Libby. EPA has not completed a toxicity assessment necessary to determine the safe level for human exposure to asbestos. Therefore, EPA cannot be sure that the Libby cleanup sufficiently reduces the risk that humans may become ill or, if ill already, get worse. During extensive conversations and correspondence with Office of Solid Waste and Emergency Response (OSWER) officials about EPA's not performing a toxicity assessment of the Libby asbestos, one of the reasons provided was that a toxicity assessment was proposed but denied because EPA did not approve the budget request. We also found that EPA's public information documents on vermiculite and asbestos distributed to Libby residents were inconsistent about safety concerns. We recommended that EPA fund and execute a comprehensive amphibole asbestos toxicity assessment to determine the effectiveness of the Libby removal actions, and to determine whether more actions are necessary. We also recommended that EPA correct any statements that cannot be supported in documentation distributed to Libby residents regarding the safety or handling of asbestos.

While EPA disagreed with our characterization of its work in Libby, they said in their response to our report that they were committed to conducting a comprehensive amphibole asbestos toxicity assessment and to reviewing and revising statements made about living with or handling asbestos.

Superfund mega-sites, which are sites that cost $50 million or more to clean up, are taking a financial toll on the program. In 2004, we looked at the financial impact of hardrock mining sites on the Trust Fund and the States. Hardrock mining, which is not coal mining, involves the extraction of certain metals and minerals found in hard formations of the earth. This mining can significantly impact the environment. Clean up of such sites is costly, complex, and lengthy. At the time of our review, we identified 156 hardrock mining sites nationwide that have the potential to cost between $7 billion and $24 billion to clean up. These costs were over 12 times EPA's total annual Superfund budget. While most of the sites had identified potentially responsible parties (PRPs), it is questionable whether the PRPs can financially sustain clean up efforts "in perpetuity" as projected for most of these sites. Also, these sites will impact the States because EPA eventually turns over responsibility for long-term response actions to the States. It should be noted that most of these hardrock mining sites are located in the western and southeastern United States.

We reported last year on Superfund expenditures at headquarters and the regions based on a congressional request. We found that for the five-year period between FYs 1999-2003, the Superfund program experienced an overall decline in appropriations of about 7.5 percent, yet

expenditures were greater than their corresponding appropriation. A key reason for this is that EPA expends prior year funding to pay for current needs. We also found that administrative costs increased as a percentage of total expenditures while programmatic costs decreased. This increase in administrative costs was due to increases in personnel-related costs, which accounted for the vast majority of total known administrative expenditures. The majority of Superfund expenditures occurred in the EPA regions, which averaged about 75 percent of total expenditures during FYs 1999-2003.

We noted several organizational and accounting obstacles that impact EPA's ability to efficiently and effectively manage its Superfund resources. EPA has dispersed responsibilities for Superfund management and resources so no single EPA office, including OSWER, which is the office accountable for Superfund cleanup goals, has full responsibility or control over EPA's Superfund appropriation. Dispersing the Superfund appropriation across offices limits any single EPA office's control of Superfund resources and has impacted EPA's ability to optimize resource utilization and cleanup activities. Other obstacles we identified include disagreements about how to classify Superfund administrative expenses, decentralized Superfund management, incomplete information on program costs, an outdated process for allocating resources, and continuing to maintain unliquidated Superfund obligations and money in special accounts, as a "hedge against tough financial times."

**Brownfields Program**

The Brownfields program is also an area where we found opportunities for EPA to better manage its resources. The Small Business Liability Relief and Brownfields Revitalization Act created a new environmental program that fosters Brownfields redevelopment, and authorized Congress to appropriate up to $250 million per year through FY 2006 to implement the new program. Brownfields are defined as real property, the expansion, redevelopment, or reuse of which may be complicated by a hazardous substance, pollutant, or contaminant. This can apply to a wide variety of sites, including industrial properties, former gas stations, warehouses, and residential buildings. While there has not been a precise count of the number of Brownfields sites in the United States, estimates range from 450,000 to as many as a million.

In 2005, in response to a congressional request, we evaluated the administrative and program costs being incurred to carry out the Brownfields program and identified options to reduce administrative costs. We determined that EPA's ability to effectively manage Brownfields resources is challenged by policy and organizational impediments. Because the authority for Brownfields resources is dispersed, offices with responsibility for program resources are not in alignment in their efforts to define and track Brownfields costs, and staff resources cannot be accounted for and efficiently utilized. We also found that EPA expends significant financial and personnel resources on Brownfields outreach at conferences and meetings. Among our recommendations was that OSWER, with assistance from other Assistant Administrators, as appropriate: more closely align themselves in support of an accountable entity

to effectively distribute, manage, account for, and optimize Brownfields resources, consistent with program needs and goals; define Brownfields administrative and programmatic payroll costs and establish a system to identify and track them; revise the regional staffing model to support current workload, develop a workload model for allocation of Brownfields headquarters staff, and develop a schedule for regularly updating the workload model; and hold the EPA-sponsored Brownfields conference once every two years rather than annually. EPA did not address all our findings and recommendations and disagreed with our analysis in several cases.

**Office of Underground Storage Tanks**

The Office of Underground Storage Tanks (OUST) was created in 1985 to carry out a congressional mandate to develop and implement a regulatory program for underground storage tank systems that store petroleum and certain hazardous substances.

In 2004, we raised concerns with how OUST administers its contracts for cleanup. We found at the time that OUST had inappropriately used and inefficiently managed its contract funds. For the two primary contracts it uses, OUST did not always identify the correct appropriation to be charged when ordering and paying for work, a violation of appropriation law. OUST also obligated money to contracts but did not order a commensurate amount of work. In one case OUST allowed approximately $330,000 of Environmental Program Management funds to expire because it did not order work from contractors during the life of the appropriation, making most of these funds unavailable for future work. OUST also risked losing nearly

$500,000 in unliquidated obligations related to the practice of "parking" funds (i.e., obligating funds to contract without ordering work) on level-of-effort contracts. OUST proposed a number of corrective actions to address these issues.

In a followup report we issued last year, we found that OUST implemented most of the corrective actions it proposed. In particular, OUST stopped obligating funds to contracts without identifying corresponding work. However, we still noted problems with properly charging to appropriations. We recommended that OUST regularly query EPA's financial systems to monitor the status of funds obligated and to enable deobligations when appropriate. OUST concurred with our recommendations.

**Partnership Programs**

I am aware of the Subcommittee's concerns about the resources being expended on EPA's Partnership Programs based on conversations with Subcommittee staff. Over the last few years, EPA has worked to develop new types of environmental solutions. Recently, EPA has begun using on voluntary partnership programs to complement traditional regulatory approaches to protect the environment. These programs address a variety of environmental and human health problems, including loss of wetlands and pesticide exposure. They also address water and energy use, recycling, or the environmental actions of individuals. Some partnership programs report very small budgets and only a fraction of a staff member's time devoted to operating them. Other programs report they have dozens of staff with budgets in the millions of dollars.

We reported last year that partnership programs may expand EPA's environmental influence by broadening its potential participant base and addressing environmental problems not governed by regulations based on self-reported surveys. The majority of the programs we surveyed reported having annual goals and program outputs or outcomes. Managers claimed their programs helped to achieve EPA's strategic goals, but we have not yet verified these claims. Many managers also said they collect complete and reliable data that they can then use to make changes to their programs. However, barriers to data collection, including data collection costs, exist. In addition, while the number of partnership programs has grown in the last few years, EPA has had difficulty in defining, identifying, and characterizing its partnership program population. These programs have been grouped into numerous overlapping categories, including "Voluntary Programs," "Partnership Programs," and "Stewardship Programs."

We are building on this work. Currently, we are evaluating the Performance Track program, which EPA initiated in 2000 as part of a "reinvention" effort designed to develop new methods for achieving environmental and public health protection goals. EPA highlights Performance Track as a model, referring to it as the "gold standard" among its partnership programs. Performance Track is supposed to recognize top environmental performance among participating U.S. facilities, both public and private.

We initiated this review to evaluate how the program contributes to EPA's goal of improving environmental performance through pollution prevention and innovation; and how

well it accomplishes its program goal of recognizing and encouraging top environmental performers and tracking program performance. To do this, our approach was to analyze a randomly selected sample of 40 member facilities to determine if they met their Performance Track commitments, and assess how much progress they have made. In order to demonstrate if these facilities represent "top performers," we also sought to compare the sample facilities' compliance records and toxic releases with others in their sectors. We are compiling compliance information from EPA databases as well as verifying individual facility data for sample members with regional EPA enforcement and compliance data stewards. This work is incomplete, so I am unable to report on our findings and recommendations at this time. We expect to issue a final report by April, and will gladly brief Members of the Subcommittee once our report is completed.

**Environmental Justice**

Environmental justice reviews seek to identify and address disproportionately high and adverse human health or environmental effects on minority and low-income populations. Executive Order 12898, signed in 1994, directs agencies to make environmental justice part of their mission by reviewing the effects of their programs on minority and low-income populations.

In a 2004 review, we examined how EPA was integrating environmental justice into its operations. We found that EPA was not fully implementing the Executive Order because it had not identified minority and low-income communities, or defined the term "disproportionately

impacted." Moreover, in 2001, EPA restated its commitment to environmental justice in a manner that does not emphasize minority and low-income populations, the intent of the Executive Order. In the absence of environmental justice definitions, criteria, or standards from EPA, many regional and program offices took steps individually to implement environmental justice policies. The result was inconsistency in applying environmental justice actions across EPA regions and programs, and the spending of limited regional resources on a wide array of approaches when identifying environmental justice communities. Thus, the implementation of environmental justice actions was dependent, in part, on the EPA region in which the person resided. We made several recommendations to EPA, including that it reaffirm the Executive Order as a priority; establish specific timeframes for developing definitions, goals, and measurements; develop a comprehensive strategic plan; and determine if adequate resources are being applied to implement environmental justice. While EPA agreed to conduct a comprehensive study of regional and program office funding for environmental justice activities, it disagreed with most of our other recommendations.

In 2006, we reported on whether EPA program and regional offices have performed environmental justice reviews of their programs, policies, and activities as required by the Executive Order. We found that EPA program and regional offices have not routinely performed environmental justice reviews. In addition, program and regional offices lacked clear guidance to follow when conducting environmental justice reviews. We recommended that EPA require program and regional offices to determine where environmental justice reviews are needed and establish a plan to complete them; develop specific environmental justice review guidance that

includes protocols, a framework, or directions; and designate a responsible office to compile the results of environmental justice reviews and make recommendations to EPA senior leadership. EPA agreed with our recommendations but has not yet established a plan of actions and milestones for implementation.

**OIG Annual Performance**

I am proud to report that for FY 2006, the OIG questioned $87 million in costs; identified nearly $692 million in cost efficiencies; and recorded almost $31 million from fines, restitutions, and settlements. This represents a potential return-on-investment of over $16 for every dollar invested into the OIG. While we have exceeded all of our annual performance goal targets, we are continuing to make significant improvements in the application of performance measures to demonstrate our value added. In FY 2006, the OIG began developing measures of internal management activity and cost accounting to our products to improve on our own accountability and transparency. We are implementing a systematic post close-out followup process to account for and report on the completion of agreed-upon EPA actions from OIG recommendations. Finally, we conducted comprehensive outreach planning meetings with each EPA Assistant and Regional Administrator to identify their most significant management and environmental priorities, risks, and challenges, to inform our customer-focused planning process.

**Conclusion**

If EPA's overall budget continues to shrink in the future, it will be even more critical that it find ways to better manage and utilize its resources and improve its operational efficiencies. I believe the OIG has been a positive agent of change by making significant contributions toward helping EPA in those areas. We have made numerous recommendations to EPA in just the Superfund and Brownfields programs alone, many of which it agreed to implement. We will continue to work with EPA to further identify areas needing attention.

Thank you again for the opportunity to testify before you today. I would be pleased to answer any questions you have.

Mr. WYNN. Thank you very much, Mr. Roderick. As you know, we have a vote coming up but I think we have time to have testimony from Mr. Bollwage, so we will proceed with that. Then we will recess until after the vote. Mr. Bollwage.

**STATEMENT OF J. CHRISTIAN BOLLWAGE, MAYOR, CITY OF ELIZABETH, ELIZABETH, NJ**

Mr. BOLLWAGE. Thank you very much, Mr. Chairman. First I would like to request a technical correction in my prepared testimony on paragraph 4, page 3, changing it from $150 to $200 million. Thank you, Mr. Chairman.

Mr. WYNN. Certainly.

Mr. BOLLWAGE. Mr. Chairman, ranking member and my friend, Congressman Pallone, members of the committee, I am Chris Bollwage, the mayor of the city of Elizabeth for the past 15 years. I also serve as a trustee for the U.S. Conference of Mayors and co-chairman of the Mayors Brownfields Task Force.

Mayors have an interest in broader environmental issues including increasing our energy independence in an environmentally sound way and protecting our climate, and as chief executives of our cities, we are in a unique position. We are on the front lines protecting the health of our citizens. Unfortunately, however, we are at the end of the line when it comes to unfunded mandates. Mayors do not have a problem with passing good environmental public policy. We have a problem with passing the public policy without providing the necessary resources to pay for it. There is no one left at the local level that we can pass on these costs except to our constituents, which we often have to do.

So I wanted to take this opportunity as you deliberate the various environmental rules and regulations that come before you to keep in mind that some costs will be incurred by local government and our citizens and I hope that Congress is going to take a hard look at where we are spending our money to determine what the priorities should be for our Nation if we are to remain economically competitive with the rest of the world. We need to balance our budget every year and sometimes that means deciding the best paths for the future with the limitations we have, and on this EPA oversight hearing, I want to outline some of the priorities for the Nation's mayors and the most useful programs and ask that all of you do your part in fully funding these programs.

Brownfields, which many of you mentioned in your opening statements—I have been the co-chair of the U.S. Conference of Mayors for 12 years, have had extensive conversations with Congressman Pallone about this issue and I want to commend EPA for listening to the mayors at that time and establishing the EPA Brownfields program. It has been extremely successful in cleaning up thousands of acres of sites and turning formerly blighted areas into productive pieces of property. There is still a lot of unrealized potential. Currently the Brownfields law has authorized $250 million. It never received more than $162 million. It is estimated there are 400,000 to 600,000 Brownfield properties in the United States, and as you said, Mr. Chairman, currently only one out of three qualifying Brownfield applications are funded. The Conference of Mayors and members of a Brownfields coalition are pleased to hear

that Congressman Pallone is going to introduce the reauthorization of the Brownfields Law.

On a related topic, the Superfund program, many properties are still in the process of being assessed and cleaned up. Mayors who have Superfund sites in their communities are anxious to have these sites cleaned up and we urge Congress to reinstate the Superfund taxes and assist EPA with its efforts to expedite the cleanup of these severely contaminated sites, and we thank you, Congressman Pallone, for those comments.

As this committee debates the issue of climate change, mayors would like for you to consider a multilevel approach to help deal with this problem. A cap and trade program as well as encouragement for alternative energy sources and fuel efficiency will be needed to reduce greenhouse gas emissions at the national level. However, there are many solutions that are coming from the local level. The conference has held two national summits that brought together public and private sector to highlight what is currently being done and what can be done to increase our Nation's independence. Through the conference's work we have determined that much more could be done. That is why the mayors of this Nation are proposing the formation of an Energy and Environmental Block Grant, EEBG. Our proposal would require local governments to determine their carbon footprint and create a plan for reducing their greenhouse gas emissions. Monies could be used to implement this plan.

The Mayors' Water Council conducted a survey that asked cities to identify the most important resources and issues they face. The top three: rehabilitating aging water and wastewater infrastructure, security protection of water resources and the water supply availability. The MWC prepared a report on city attitudes about the Clean Water State Revolving Loan Fund program and the Safe Drinking Water State Revolving Loan program. The findings indicate that cities generally prefer to use municipal bonds and pay as you go rather than the SRF loans. The primary reason for this is because it is more cost efficient due to better finance terms and greater time certainty in the finance process. As often cited figures, local governments are responsible for 90 percent of the public-purpose water investments and the U.S. Bureau of the Census reports that combined municipal expenditures for water and wastewater infrastructure are second only to educational expenses.

While most mayors are not directly responsible for most clean air programs, we have local and State agencies that are, and at the city level we are responsible for implementing many of the programs that can have tremendous clean air benefits.

In conclusion, Mr. Chairman, I know I could have come here today and identified programs at EPA that could be cut in order to meet our environmental priorities. However, I hope you recognize that the needs of this Nation are great, as all of you do, to remain a competitive nation. I know that budgets are strained but I hope you will take up the Nation's mayors' offer on our offer to work with you in solving a lot of these problems.

[The prepared statement of Mr. Bollwage follows:]

**Testimony**
**Of**

**The Honorable J. Christian Bollwage**
**Mayor of Elizabeth, New Jersey**

**On behalf of**
**The United States Conference of Mayors**

**Before the House Subcommittee on Environment and Hazardous Materials**
**Committee on Energy and Commerce**

**March 1, 2007**

Mr. Chairman and Members of the Committee, my name is Chris Bollwage. I am the Mayor of Elizabeth, New Jersey for the past 15 years. I also serve as a Trustee for The U.S. Conference of Mayors, and as a Co-Chairman of the Mayors Brownfields Task Force. I would like to thank the members of the Committee for inviting me to testify here today.

The Conference of Mayors is a national bipartisan organization that represents the nation's 1,200 major cities with populations of 30,000 or more through their chief elected official, the Mayor.

As a Mayor, I am responsible for the vitality of my city and its citizens. That includes keeping my city economically viable by maintaining and increasing businesses and jobs as well as ensuring the well-being of my citizens.

This includes making sure the land they live and work does not contain environmental health hazards, that the air they breathe is clean, and the water they drink is safe.

Mayors have also an interest in broader environmental issues including increasing our energy independence in an environmentally sound way and protecting our climate.

Mayors, as the chief executives of their cities, are in a unique position. We are on the front lines of protecting the health of our citizens through supplying safe drinking water, cleaning wastewater, collecting garbage, encouraging the use of alternative fuels, and making land use decisions that can promote walkable communities that promote clean air.

We are also, unfortunately, at the end of the line when it comes to unfunded mandates. Mayors do not have a problem with passing good environmental public policy but we do have a problem with passing public policy without providing the resources to pay for it. The Mayors and city governments are at the end of the line. There is no one we can pass on the costs except to our constituents which we often have to do. However, we also recognize the political and financial realities of passing on this extra burden to our hard-working citizens.

In the Conference's 1993 unfunded mandates survey, the Clean Water Act accounted for 56 percent of the total mandate costs while in 2005, the Clean

Water Act, including the Combined Sewer Overflow, Sanitary Sewer Overflow, and other mandates under the Act, account for about two-thirds (66 percent) of the total reported. The next largest comparable mandate is the Safe Drinking Water Act: In 1993 it accounted for 8.7 percent – the third largest cost in the survey – to 2005 where it represented 27 percent – again the third largest cost.

Some examples of the cost for the area of Combined Sewer Overflow – 13 cities reported recurring annual costs of over $19 million with 7 cities reporting one-time costs totaling over $148 million. For Sanitary Sewer Overflow, 24 cities reported annual recurring costs of over $42 million while 11 cities reported one-time cost of over $101 million.

These are just a couple of examples of the mandates that have been imposed with few Federal resources.

I wanted to take this opportunity -- as you deliberate the various environmental rules and regulations that come before you -- to keep in mind the costs that will be incurred by local governments and our citizens.

We know these are difficult fiscal times and everyone is looking for ways in which to make the tax dollars that are collected to be used in the most efficient matter. I urge you not to pass these costs onto us through unfunded mandates.

I also would hope that Congress would take a hard look at where we are spending our money and to determine what the priorities should be for this nation if we are to remain economically competitive with the rest of the world. It is too short-sighted to simply look at one section of the budget and try to figure out how to make those resources stretch further.

As a mayor, I need to balance my budget every year and sometimes that means deciding the best path for the future with the budget limitations that I have. That sometimes means making tough decisions and reprioritizing the needs for my city for both the short and long term to keep my city and its citizens economically competitive.

Since this is an EPA Oversight Hearing, I wanted to outline some of the priorities for the nation's mayors and the most useful programs. I urge you to do your part in fully funding these programs.

**Brownfields**

I have been active with the issue of Brownfields for over 12 years. I want to commend EPA for listening to the mayors of that time and establishing the EPA Brownfields Program. It has been extremely successful in cleaning up thousands of acres of sites and turning formerly blighted areas back into productive pieces of property.

According to the Conference of Mayors' "Recycling America's Land" Report – 1,400 sites representing close to 11,000 acres of land have already been redeveloped with another 10,000 acres under development now. These sites have been redeveloped into commercial, residential, and green spaces. Approximately 70 cities estimated that over 83,000 jobs have been created along with over $233 million in local tax revenues.

According to EPA, for every dollar that is spent by the public sector for Brownfields redevelopment, more than $6 is leveraged from the private sector.

However there is a lot of unrealized potential. Currently, the Brownfields law is authorized at $250 million. It has never gotten more than $162 million from Congress. Although the portion of the law that is used for assessments, cleanup, job training, and education is authorized at $200 million, Congress has consistently appropriated around $90 million. This is despite the President's request a couple of years ago for $120 million.

It is estimated by the Government Accountability Office that there are between 400-600,000 Brownfield properties in the United States. Currently only 1 out of 3 qualifying Brownfield applications are funded. The nation's mayors believe this program that has had tremendous health and economic benefits.

The Conference of Mayors and members of a Brownfields coalition urge Congress to increase the appropriations for this program and to reauthorize the Brownfields law with some changes that would make the program even more useful.

**Superfund**

On a related topic is the Superfund program. There are many properties that are still in the process of being assessed and cleaned up. Some Mayors who

unfortunately have Superfund sites in their communities are anxious to have these sites cleaned up under a quicker timeframe and to an appropriate level so that these sites might potentially be reused. We urge Congress to reinstate the Superfund taxes and assist EPA with its efforts to expedite the cleanup of these severely contaminated sites.

**Climate Change**

The U.S. Conference of Mayors has a strong record on pursuing policies that protect our climate from the impact of greenhouse gas emissions. We have policy encouraging alternative energy sources and fuels, transit-oriented development, energy-efficient buildings, and the concept of an Energy and Environment Block Grant.

As this committee debates the issue of climate change, the Mayors would like for you to consider a multi-level approach to help deal with this problem. We believe that if we are even potentially going to be successful with solving this crisis, the nation will need both a top-down and a bottoms-up approach.

A cap and trade program as well as encouragement for alternative energy sources and fuel-efficiency will be needed to reduce greenhouse gas emissions at the national level. However, there are many solutions that are coming from the local level.

We have held two national summits that brought together the public and private sector to highlight what is being done and what can be done to increase our nation's energy independence as well as decrease our impact on climate change. The summits covered energy efficiency, alternative fuels, alternative energy sources, transportation options and green buildings.

We have held discussions with real estate groups, homebuilders, developers, building managers, and architects to explore ways to work together to increase energy efficiency in commercial, residential, and municipal buildings. We also are working with EPA's Energy Star program for buildings. This is valuable work that can potentially make a real difference in the way we all do business.

The Conference of Mayors has released a publication of best practices highlighting what local governments are doing that lessens our impact on climate change as well as improving the environment.

Through the Conference's work, we have determined that much more could be done with some additional resources. That is why the Mayors of this nation are proposing the formation of an Energy and Environmental Block Grant (EEBG), modeled after the Community Development Block Grant program and potentially paid for by the oil and gas tax breaks that Congress is considering to repeal.

Our proposal would require local governments to determine their carbon footprint and create a plan for reducing their greenhouse gas emission levels by a certain percentage. Monies from the EEBG would be used to create and implement this plan.

We believe that many programs that are already being implemented in some communities can be replicated in others if given the proper resources to get these programs off the ground. We think this will have a tremendous impact on reducing greenhouse gas emissions in every major city and county and therefore reducing our overall emissions in the United States.

The Conference of Mayors urges you to consider this proposal and we would like to work with this committee to try to implement this solution.

**Water and Wastewater Infrastructure**

Water and wastewater infrastructure is critical to the cities of our nation. As a mayor, I know it's essential to provide my citizens with a clean, healthy and cost efficient water and wastewater system. My colleague, Mayor Chavez, testified in January in front of the Transportation and Infrastructure on this very same issue.

**National City Water Survey**

The Mayors' Water Council conducted a survey of the nation's large population cities in 2005 that, for the first time ever, asked cities to identify the most important water resources issues they face. The three most important water resources priorities facing the nation's cities are:

(1) Rehabilitating aging water and wastewater infrastructure (60.6%)
(2) Security/Protection of Water Resources Infrastructure (54.6%)
(3) Water Supply Availability (46.5%)

The study also found that local investment in wastewater infrastructure is robust:

- 55.5% of 414 responding cities stated that they made major capital investments (over $1 million) in wastewater treatment facilities between 2000 and 2004
- 52.8% of responding cities planned major capital investments in wastewater treatment facilities between 2005 and 2009
- 72.2% of responding cities stated that they made major capital investments (over $1 million) in wastewater Collection systems between 2000 and 2004
- 69.8% of responding cities planned major capital investments in wastewater collection systems between 2005 and 2009

In addition, local investment in wastewater infrastructure is sustained:

- 45.5% of responding cities made multiple major capital investments in wastewater treatment facilities between 2000 and 2009
- 62.3% of responding cities made multiple major capital investments in wastewater collection systems between 2000 and 2009

Local financing of water and wastewater infrastructure varies, but is limited to a few general approaches, (see Table 1). The columns in this Table do not add to 100% because cities typically use more than one financing source for major capital investments. The "Other" category, however, stands out because it is comprised of "pay-as-you-go" finance approaches. It is commonplace for cities identifying this approach to raise user fees and rates to finance new construction, replacement construction and rehabilitation of existing water infrastructure.

We also found that slightly more than a third of cities use the Clean Water State Revolving Fund as a financing tool.

**Table 1**
**Frequency of Multiple-Source Financing**
**Of Major Capital Investments in Water Infrastructure**

| Type of Financing | 2000 – 2004 (% of Cities) | 2005 – 2009 (% of Cities)* |
|---|---|---|
| General Obligation Bonds | 28.8 | 28.0 |
| Revenue Bonds | 46.1 | 50.8 |
| Private Activity Bonds | 0.8 | 1.4 |
| State Revolving Fund | 38.3 | 38.6 |
| Other | 51.7 | 53.5 |

* Planned major capital investments in water infrastructure.

The 38% of cities that use the SRF do so because they have no other means of financing needed water infrastructure improvements, or would have to delay investments until financing capabilities match demand for investment.

**City Practices and Attitudes Concerning the State Revolving Fund Loan Program**

The MWC prepared a report in July 2006 on city attitudes about the Clean Water State Revolving Fund loan Program (CWSRF) and the Safe Drinking Water State Revolving Fund loan Program (DWSRF). This Report sheds light on why cities do or do not prefer to use the SRF financing approach. The summary findings indicate:

- Cities generally prefer to use municipal bonds - revenue and general obligation bonds (35.2 percent of cities); and, Pay-As-You-Go - cash (26.0 percent of cities) rather than SRF loans. The primary reason for this is because it is more cost-efficient due to better finance terms and the greater time-certainty in the finance process. This preference also reveals that cities with

healthy bond ratings and user fees and charges that anticipate the need for reinvestment in water infrastructure play a strong role in finance decisions.

- Red Tape, burdensome paperwork and SRF loan conditions and strings were identified by 15.1 percent of the survey cities as the critical reason why they did not turn to the SRF program for water projects.
- Another 11 percent of survey cities indicated that they applied for an SRF loan but were either rejected or did not receive a response to their application; or, they did not apply because they had knowledge that they would not qualify either because of the type of water project involved or because the state priorities would not favor their applications.

**Federal Financial Assistance and Municipal Water Infrastructure Investments**

If two-thirds of the nation's principal cities are not attempting to use the SRF loan program because they have other viable financial resources for water projects, why is the water infrastructure "Needs Gap" growing instead of closing?

The transfer of financial responsibility for water infrastructure investments from federal and state governments to local government is firmly entrenched. Simultaneously, major capital investments have shifted from federal and state grants to local lending by way of municipal bonds, user charges and low interest SRF loans. An often cited figure is that local governments are responsible for 90 percent of public-purpose water investments. The U.S. Bureau of the Census reports that combined municipal expenditures for water and wastewater infrastructure are second only to educational expenditures. We are experiencing enormous investment, but a growing or, at best, stable water infrastructure investment "Needs Gap".

As municipal spending on water infrastructure has increased over the last two decades so has the number of unfunded federal mandates. The "Needs Gap" itself is measured in terms of what it will take to comply over a 20 year term with existing law. As new environmental requirements are set for

water quality the cost to reach or maintain the compliance point is adjusted upward.

Local governments cannot completely satisfy spending requirements in this area because the costs are too great and there are competing needs for public capital. Mayors face the daily challenge of balancing competing needs in the community for worthy public-purpose spending with limited financial resources. The Mayors need more tools and more resources to try to meet these costs.

**The U.S. Conference of Mayors Water Infrastructure Policy Priorities**
The Mayors Water Council has identified three basic approaches to help cities finance the water and wastewater infrastructure development necessary to comply with clean and safe drinking water laws. These include: grants; 30-year no-interest loans; and, greater use of Private Activity Bonds (PABs).

- Providing grants to municipalities, either directly or through states, for water and wastewater infrastructure where there is an affordability issue or when a community faces severe environmental problems;

- Expanding some portion of the current 20-year loan category to include a 30-year no-interest loan category, or a 30-year low-interest loan payback period, under the State Revolving Fund loan program for water and wastewater infrastructure investment; and

- Modifying current tax law by removing Private Activity Bonds (PABs) used for water and wastewater infrastructure from state volume caps. The increased use of private activity bonds for public water infrastructure can boost aggregate spending on water infrastructure and help cities make progress in closing the "Needs Gap".

In our opinion, these approaches are the best means to meet our water infrastructure needs.

***Increased Funding of the SRF:***
The Conference of Mayors resolution adopted in June 2006 calls for Congress to annually approve recapitalization authorization to the CWSRF at $1.355 billion or more, and the DWSRF at $850 million or more.

***Eligible Activities:***
In light of the 2005 National City Water Survey results it is clear that extending eligible SRF activities to include replacement or major rehabilitation would be a step in the right direction. Similarly, the Conference of Mayors adopted policy in June of 2005 calling on Congress *"...to approve legislation that would complement the Drinking Water State Revolving Fund and the Clean Water State Revolving Fund by providing more targeted and direct federal resources to help the nation's communities deal with other water infrastructure-related issues, including $50.6 billion for combined sewer overflows, and $88.5 billion for sanitary sewer overflows and stormwater management;".*

Other eligible activities that could be funded under the SRF include: development of a conservation and management plan, implementation of lake protection programs, programs to reduce municipal stormwater runoff, and watershed protection. We would like to see even greater encouragement of the states to fund such comprehensive efforts to improve water quality.

The Conference of Mayors supports legislation that includes a demonstration program for water quality enhancement and management. One of the most difficult problems cities face involves achieving state water quality objectives and total maximum daily loads (TMDLs) in the face of the virtually unregulated nonpoint pollution sources that are usually outside our jurisdictions.

The U.S. Environmental Protection Agency (EPA) has recognized that agricultural and livestock land uses contribute a major portion of nonpoint source pollution in many areas. Many of our cities are engaged in watershed management efforts to deal with nonpoint sources (including urban runoff). Yet there is a critical lack of regulatory drivers forcing the agricultural and livestock land users to contribute to the solution. In some cases, the timing of pending TMDL requirements will force cities to pay for water treatment caused in large part by the upstream, non-urban land users. EPA's Water Quality Trading Policy requires the non-urban polluter to voluntarily participate in a trading scheme.

The Conference of Mayors adopted an action plan for sustainable watershed management in 1998. One of the five principles of that plan is to focus on non-urban, nonpoint source water pollution, and pursue public policy that

would assign responsibility to pay for the treatment of polluted water commensurate with the contribution of the pollutant loadings. The action plan also clearly calls for allowing the agricultural and livestock land users to employ best practices and least cost approaches that are effective in lieu of stringent and costly regulations. Mayors fully recognize that these land users, although they may or may not be part of our cities, are important contributors to our regional economies. While we prefer to use the powers of persuasion to convince them to participate in the water pollution solutions, such as the Water Quality Trading Policy approach, we have begun to experience failure in cooperative efforts, and cities have in some instances resorted to legal actions.

**Clean Air Programs**

While most mayors are not directly responsible for most clean air programs, we have local and state agencies that are. At the city level, we are responsible for implementing many of the programs that can have tremendous clean air benefits such as using alternative energy sources, using alternative fuels, creating walkable communities, and exploring alternative transportation options that help improve the air. But once again, much of this costs money and planning.

For example, many cities are retrofitting and operating their city fleets to use alternative fuels. However, it costs money to build the alternative fuel fueling stations. Chicago Mayor Richard M. Daley and the 270 municipalities that make up the greater Chicago land area had to petition the state for Congestion Mitigation Air Quality or CMAQ funds to build fueling stations throughout the Chicago land area. It took a coordinated effort by all of them to make this a reality.

We can not expect cities or citizens to decrease our dependence on foreign oil if we don't have the infrastructure in place to give them any alternatives. We also need to be smart about what fuel choices we use and what direction we take our country and with that comes coordination and planning.

**Conclusion**

I know I could have made your jobs easier if I came here today and identified the programs at EPA that could be cut in order to meet our environmental priorities. However, I hope you recognize that the needs for this nation are great and if we are to remain a competitive nation, we need to invest in our communities and make them better. I know that budgets are

strained but I think it is a mistake to simply look at just one agency to look at where money can be shifted.

Congress needs to examine where the nation's priorities should be and to find ways to creatively invest in those priorities to get the biggest return on their investment. I've outlined the priorities for the nations' mayors and the programs we rely on to get our jobs done. Most, if not all, of these programs, we believe are good investments for the long-term health of this country.

Solving our environmental problems does not usually fall on just one level of government and we do not expect the federal government to solve all of our environmental problems. However, we are all in this together and we need to be creative at all levels of government to handle these issues and create innovative solutions without costly unfunded mandates. Together, I believe we can make a real difference for not only the environmental health of our citizens but to protect the world as well.

I hope you will take the nation's mayors up on their offer to work with you and I look forward to working with this committee. Thank you again for this opportunity.

Mr. WYNN. Thank you for your very constructive testimony. At this time the committee is going to stand in recess until immediately following the last vote of this series of votes. Thank you.

[Recess]

Mr. WYNN. Mr. King, I believe you have the microphone.

**STATEMENT OF ROBERT W. KING, JR., PRESIDENT, ENVIRONMENTAL COUNCIL OF THE STATES; DEPUTY COMMISSIONER, SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL**

Mr. KING. Thank you, Mr. Chairman, and members of the committee for providing the Environmental Council of States, ECOS, the opportunity to present testimony on the U.S. Environmental Protection Agency's 2008 budget.

My name is Robert W. King, Jr., and I am the deputy commissioner for Environmental Quality Control at the South Carolina Department of Health and Environmental Control. Today I am here representing not only my State but all the environmental agencies in the States belonging to our organization. Our comments are primarily directed to the STAG portion of EPA's budget.

States are co-regulators with the U.S. EPA and have the challenging job of frontline implementation of our Nation's environment pollution laws. EPA has delegated most of the work on the core environmental responsibilities to us. Today States are responsible for managing most of the delegable environmental programs and rules, issuing environmental and public health standards under Federal laws and for State-specific laws, issuing most environmental permits, collecting nearly 94 percent of the environmental monitoring data and conducting over 90 percent of all enforcement actions.

Funds have been provided to the States to assist them in the implementation of Federal programs. States also provide funds for these programs, anywhere from half to 90 percent of the costs. Federal funds are important to States because they are targeted to specific programs and help States meet Federal requirements such as permitting, enforcement, monitoring, standards development, rule issuance and reporting, in short, all the significant components of our co-regulator agreements with the Federal Government.

In the 2008 budget development cycle, EPA for the first time involved the States in the early stages of the budget's development and we were very appreciative of this opportunity. The ECOS officers presented information to the Agency and proposed a tier of priorities shown in figure 2 of our package. Our highest priorities included programs mandated by Congress in the major environmental statutes. The EPA accepted some of these recommendations but the 2008 budget continues a downward funding trend as shown in figure 1.

If Congress accepts the 2008 proposal for STAG, it will mean that States will have lost over $1 billion in Federal support since 2004. This has come at the same time U.S. EPA has promulgated a significant number of new rules for the States to implement. From 2000 to 2006, EPA issued and proposed 390 new rules with a significant impact on the States. Figure 3 demonstrates the dilemma States are in with the rising number of rules for States to implement while funds decrease.

While States are reluctant to return Federal programs to EPA for many reasons, we have begun to see this happen as well as delays in implementation of new rules. This is highlighted in additional information I have provided you regarding the problems State drinking water and air programs are facing. Time does not permit a thorough review of these details but let me say this. The proposal in the EPA's budget to cut the air programs by $35 million will be particularly difficult for States. Many will have to cease operating existing monitors or curtail their monitoring programs. It will also affect development of State implementations for ozone and particulate matter standards, which reduce air pollution and protect public health. Declining Federal support and dramatically increased workloads in the drinking water program have resulted in about half of the States simply unable to take on implementation of some portion of these new rules.

ECOS has again proposed an alternative budget for the STAG portion of the EPA 2008 budget that addresses our concern with continuing reductions of congressionally-mandated environmental statutes. This proposal is based on principles agreed upon by the ECOS members which include in times of fiscal crisis when the resources are in short supply the core mandated environmental programs funded through STAG and infrastructure capitalization must be funded first and reductions in EPA budget, if they must occur, should be shared proportionately by EPA and the States after STAG levels are returned to their 2004 levels.

The States are thankful for the opportunity to present our views to the committee and hope that Congress can assist us as we implement the Nation's environmental statutes as a co-regulator with the U.S. EPA.

Thank you, Mr. Chairman, for this opportunity to testify and I will be happy to answer any questions later. Thank you.

[The prepared statement of Mr. King follows:]

# The Environmental Council of the States (ECOS) Testimony before the House Energy and Commerce Committee

## *On the 2008 U.S. Environmental Protection Agency Budget*

***Presented by Robert W. King, Jr., President Environmental Council of the States and Deputy Commissioner, South Carolina Department of Health and Environmental Control***

## *Subcommittee on Environment and Hazardous Materials*
## *March 1, 2007*

Thank you, Mr. Chairman and members of the Committee, for providing the Environmental Council of the States (ECOS) the opportunity to present testimony on the U.S. Environmental Protection Agency's 2008 Budget. My name is Robert W. King, Jr., and I am the Deputy Commissioner for Environmental Quality Control at the South Carolina Department of Health and Environmental Control, and the President of ECOS.

Today I am here representing not only my own state, but also as a voice for all the environmental agencies in the states belonging to our organization.

ECOS members have been following the EPA budget for many years, and very closely since FY2005, the year that reductions in the State and Tribal Assistance Grants (STAG) first began to occur. Our comments are primarily directed to the STAG portion of EPA's budget.

***Background***

The Environmental Council of States is the national non-partisan, non-profit association of the leaders of state environmental agencies. Our members are the officials who manage and direct the environmental agencies in the States and territories. They are the state leaders responsible for making certain our nation's air, water and natural resources are clean, safe and protected.

States are co-regulators with US EPA and have the challenging job of front-line implementation of our nation's environmental pollution laws. States have increased their capacity and as environmental protection has become increasingly important to the general public, more and more responsibilities have been moved to the level of government best able to carry them out efficiently – State and local governments – which are most efficient because they are closest to the problems, closest to the people who must solve the problems, and closest to the communities which must live with the solutions.

Today states are responsible for:

- Managing most of the delegable environmental and public health programs and rules;
- Issuing environmental and public health standards under the federal laws and for state-specific laws;
- Issuing most environmental permits;
- Collecting nearly 94% of environmental monitoring data; and
- Conducting over 90% of all enforcement actions.

From the earliest days of EPA, funds have been provided to the States to assist them in the implementation of federal programs. States also provide funds for these programs, typically many times over the federal amount. The federal funds are important to states because they are targeted to specific programs and help states meet federal requirements such as permitting, enforcement, monitoring, standards development, rule issuance, and reporting – in short, all the significant components of our co-regulator agreements with the federal government.

***States Must Implement New Rules***

During the past few years, US EPA has promulgated a significant number of new rules for the states to implement. These are documented regularly in EPA's Regulatory Agenda, which designates the rules that are likely to have an impact on state and local

governments (and others). ECOS has compiled a list of these rules from the period 2000 through 2006. During this time the agency issued 390 new rules with a significant impact on the states. Many of these rules are well-known and involve significant effort. For example, the Clean Air Mercury Rule (CAMR) and the Arsenic in Drinking Water Rule are two of them. States must invest considerable effort to adopt and implement these rules on behalf of the agency, and real costs are involved in doing so. More rules are expected, of course, in 2007 and 2008, and so this trend continues. To be clear, the states believe many of these rules are needed. We acknowledge that they are often crucial in meeting Congress' expectations for environmental protection. Our concern is over our ability to implement them.

***Reductions to STAG***

If Congress accepts the 2008 proposal for STAG, it will mean that states will have lost over $1 billion in federal support since 2004. The loss of these funds will certainly result in the deterioration of environmental quality and public health in the United States. The states strongly urge Congress not to accept these proposals. [See Figure 1.]
States are particularly concerned about the potential loss of funds for the air programs and the non-point source water programs, because these are areas we believe should be a high priority for the agency.

In the 2008 budget development cycle, EPA for the first time involved the states in the early stages of the budget's development, and we were very appreciative of this opportunity. The ECOS officers presented information to the agency, and proposed a tier of priorities. Our highest priorities included the programs mandated by Congress in the major environmental statutes. We also had medium priorities and even low priorities. We asked that the high priority areas receive modest increases, and the moderate priorities be held at previous levels, while the low priority areas could be reduced. Our belief was that this would be the best approach to assure the most environmental protection for the areas Congress had entrusted to EPA and the states in a fiscally prudent manner. Our list of priorities is shown in Figure 2. This is a list of the Categorical Grants and Infrastructure

that Congress includes in the STAG portion of EPA's appropriation. The ECOS membership endorsed this approach.

EPA accepted a few of the states' recommendations, but for the most part continued the pattern of the budget from the 2007 cycle. The states nevertheless remain hopeful that continued consultation will result in a budget that supports the states' role as co-regulator and implementer of most federal environmental programs.

ECOS has again proposed an alternative budget for the STAG portion of the EPA 2008 budget that addresses our concern with continuing reductions of Congressionally-mandate environmental statutes. This is attached as Appendix I.

Our alternative STAG budget is based on the following principles, agreed upon by the ECOS members:

1. In times of fiscal crisis, when resources are in short supply, the core mandated environmental programs funded through STAG, including infrastructure capitalization, must be funded first;
2. Reductions in EPA's budget, if they must occur, should be shared proportionately by EPA and the States after STAG levels are returned to their 2004 levels; and
3. States should be afforded the flexibility to run their core programs in a manner that will obtain the highest level of attainment with the standards set by Congress and EPA without undue hindrance from EPA, but within its oversight responsibilities.

The combination of reduction in funds and increased numbers of new rules [see Figure 3] is causing great pressure on the state environmental agencies. While states are reluctant to return federal programs to EPA for many reasons, we have begun to see programs returned, as well as delays in implementation of new rules. This combination potentially means increased costs to the federal government as well as delays, as the agency must take over implementation for items that states cannot address. To illustrate our point, we will focus on two of the states' priority areas: drinking water and air quality [continued on page 7].

**Figure 1. Losses in Federal Support to States, 2004-2008.**
*Dollars in thousands. Sources: US EPA, House Appropriations Cmte.*

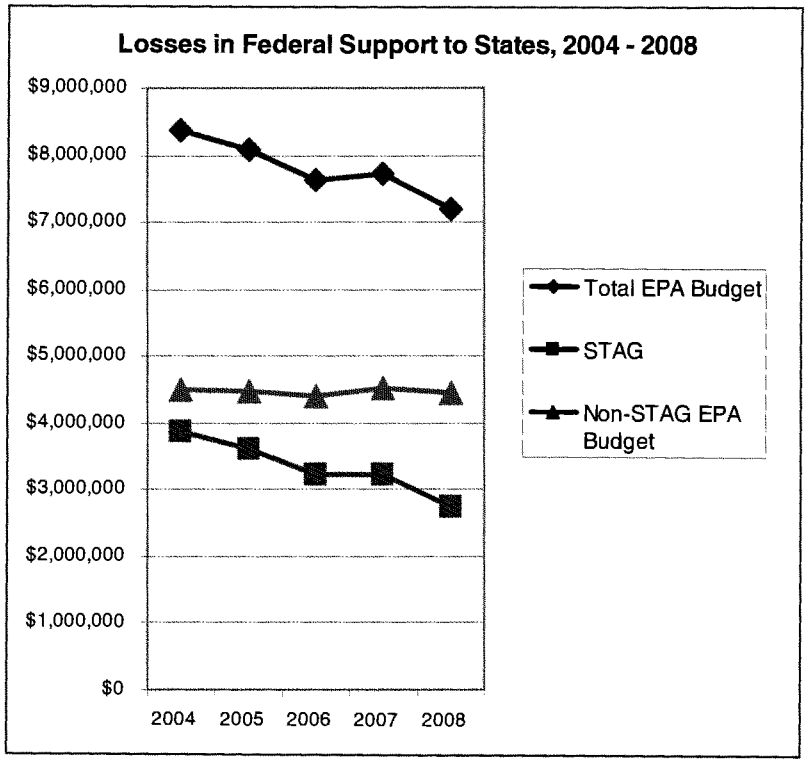
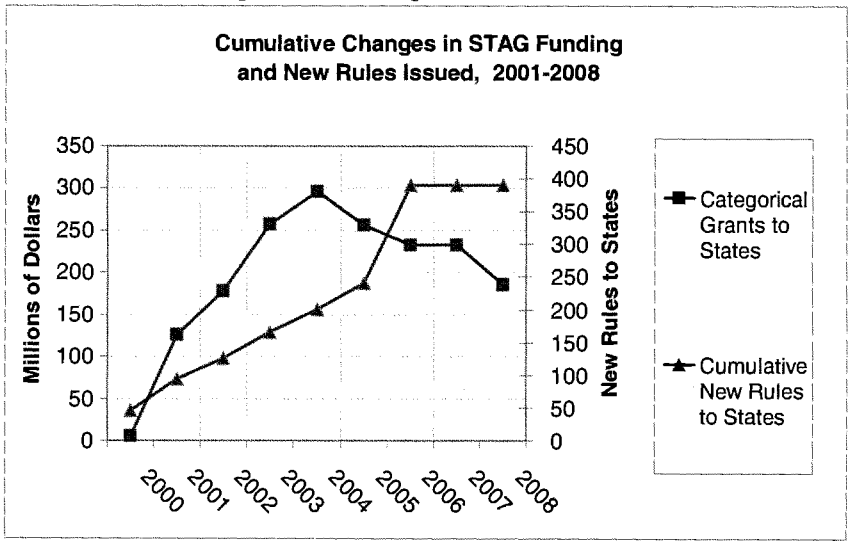


**Figure 2. The States' Priorities for STAG, 2008**
*Items are not rank ordered within categories.*

| CATEGORICAL GRANTS ITEMS |
|---|
| **Highest Priority** |
| State and Local Air Quality Management |
| Public Water System Supervision (PWSS) |
| Brownfields Categorical Grant |
| Hazardous Waste Financial Assistance |
| Underground Storage Tanks |
| Nonpoint Source (Sec. 319) |
| Pollution Control (Sec. 106) |
| **Moderate Priority** |
| Environmental Information |
| Beaches Protection |
| Homeland Security |
| Lead |
| Pesticides Enforcement |
| Toxics Substances Compliance |
| Pesticides Program Implementation |
| Pollution Prevention |
| Radon |
| Tribal Air Quality Management |
| Tribal General Assistance Program |
| Underground Injection Control (UIC) |
| Wastewater Operator Training |
| Water Quality Cooperative Agreements |
| Wetlands Program Development |
| **Low Priority** |
| Sector Program |
| Targeted Watersheds |
| INFRASTRUCTURE ITEMS |
| **Highest Priority** |
| Clean Water SRF |
| Drinking Water SRF |
| **Moderate Priority** |
| Brownfields Projects |
| Clean Diesel (moved to EPM accounts) |
| Infrastructure Assistance: Alaska Native Villages |
| Infrastructure Assistance: Mexico Border |
| Infrastructure Assistance: Puerto Rico |

**Figure 3. Cumulative Changes in STAG Funding and New Rules Issued 2001 - 2008**




***Budget Effects on State Drinking Water Programs***

States implement Federal requirements: 49 of the 50 states (all but Wyoming) have "primacy" (i.e., delegation) for implementing all Federal drinking water requirements within their states. In short, this means that state personnel are the front line personnel communicating with some 160,000 public water systems across the country. There are approximately 90 National Primary Drinking Water Regulations as well as a number of ancillary Federal program requirements (e.g., Consumer Confidence Reports).

This task has become extremely complex and resource-demanding in recent years as states have been challenged by many new Federal requirements as well as working to ensure that water treatment facilities are as safe and secure as they can be from terrorist threat or natural disasters. (States receive approximately $100,000 per state per year for this task.)

The most recent rules promulgated by U.S. EPA are extremely resource-intensive for a state agency to implement. The new rules reflect a risk-based approach wherein the specific regulatory requirements that apply are commensurate with the magnitude of the risk. These rules are the next suite of Disinfection By-Product/Microbial Contaminant rules (referred to as LT 2/Stage 2; promulgated in December 2005) and the Ground Water Rule (promulgated in October 2006). These new resource-demanding rules layer on top of a suite of rules issues in the 2000/2001 time frames (arsenic, uranium, Disinfection By-Products Stage 1) that are just now hitting with full force.

For the first time in recent memory, about the half the states said that they were not able to implement all or some of the early stages of implementation of the LT 2/Stage 2 rule and, in those states, EPA Regions, with contract assistance, are implementing those portions of the rule states are unable to implement. This is an unsatisfactory situation in which well meaning Regional or contract personnel are making judgments about water systems about which they are less familiar than state personnel. There is also some question about why EPA has funds for contractors to implement these rules, but not for states.

States are also carefully setting priorities in an effort to address the most pressing public health priorities. But, this comes at a cost, as states must disinvest in many areas. This disinvestment has the net effect of tearing away at the fabric of strong public health protection. For instance, one of the most important activities that states undertake is something called a "sanitary survey" in which state personnel inspect and provide technical assistance related to all aspects of a water utility. The frequency and rigor of these inspections has been reduced in many states in order to meet demands of implementing new rules that have not been adequately funded.

The consequence of declining Federal support and dramatically increased workloads has meant that states are forced to try to make up the difference between what it takes to run these programs and resources available within their states. Many states have instituted or increased fees for various drinking water services they provide or sought increases from

State general funds. However, fee systems or fee increases are simply a "non-starter" in many states. Many states have also been forced to take greater levels of Drinking Water State Revolving Loan Funds (DWSRF) set-aside funds than they typically take. This occurs when funds are transferred from the SRF to the agency in order to help pay for program costs, leaving less funding available for infrastructure improvements.

The DWSRF has not been cut at the levels that the CWSRF has seen. Rather, the appropriated level of the past few years (roughly $840 million) has never reached the authorized level ($1 billion). States have seen some modest cuts in both real dollar terms as well as in the eroding effects of inflation on the DWSRF appropriation.

States are only able to partially address the infrastructure needs expressed by water utilities. Aging infrastructure in the U.S. will only make this problem worse in the years to come. The problem is most acute in small and medium water systems. This is because large systems are often able to secure their own funding on the bond market. According to US EPA, the drinking water infrastructure gap in 2002 was between $154 billion and $446 billion, with a point estimate of $274 billion.

***Budget Effects on State and Local Air Quality Programs***

The 2008 proposed EPA budget will cut $35.1 million from state and local air programs. This cut comes at a critical time for states and localities. States are juggling the many responsibilities associated with putting together three – and in some cases four – sets of state implementation plans (SIPs). They are also beginning to prepare to implement the new National Ambient Air Quality Standard (NAAQS) that EPA issued last year for fine particulate matter (PM2.5).

States are required under the Clean Air Act to develop SIPs to show how they will attain or maintain NAAQS for so-called criteria pollutants, like ozone (smog) and particle pollution (soot). If the proposed $35.1-million budget cut is enacted, on average, each state will lose $700,000 (i.e., an average reduction of approximately $340,000 in fine particulate monitoring and $360,000 from the other elements of the air quality program).

The severity of the proposed cuts for FY 2008 is so great that, in many cases, state and local air agencies would have to lay off existing personnel and/or not fill empty positions.

Many agencies would have to cease operating existing monitors or otherwise curtail their monitoring programs. The reductions would impair their ability to inspect sources and carry out enforcement activities, making clean air requirements less effective. Additionally, permits for minor sources will take longer to process and customer service will diminish.

The funding cuts could seriously impair the ability of state and local agencies to prepare new plans for implementing ozone and particulate matter standards. The development of effective State Implementation Plans (SIPs) is essential to ensure that measures will be adopted that reduce air pollution and protect public health.
The budget cuts would be further exacerbated by the proposal to shift the fine particulate monitoring program from Section 103 to Section 105 authority, requiring a 40-percent match. Some agencies do not currently have additional funds for the match. Because of two-year legislative cycles or the timing of budget development, some agencies can not supply additional matching funds without a reasonable transition period in which to make adjustments. They could be forced to turn away grant funds.

Perhaps most troubling of all, if the proposed reductions occur, several local air quality agencies face the very real possibility of having to close their operations entirely. This would be a terrible loss for those local areas.

Specific activity work in FY 2008 that would be affected by the proposed FY 2008 budget cuts includes:

- *Preparation of $PM_{2.5}$ SIPs.* SIPs to meet the 1997 $PM_{2.5}$ NAAQS are due in April 2008. The effort of states and localities to put together these SIPs in a timely manner has already been hampered by EPA's failure to issue its rule implementing the $PM_{2.5}$ standards. The proposed budget cuts will only harm this effort further.

- *Preparation of regional haze SIPs*. Regional haze SIPs are due in December 2007. While states receive assistance from Regional Planning Organizations (RPOs) for the analysis underpinning their SIPs, funding for RPOs is also proposed to be cut.
- *Finalizing ozone SIPs*. SIPs to meet the 1997 ozone NAAQS are due in June 2007. Though this deadline falls in FY 2007, states may be late in submitting their SIPs because of a D.C. Circuit Court decision vacating the "Phase 1 Rule" EPA issued to implement the 8-hour ozone standard. (*South Coast Air Quality Management District v. EPA* [No. 04-1201, et al.]). Given the *South Coast AQMD* decision, states and EPA may request clarification and additional analyses regarding ozone SIPs during FY 2008.
- *Finalizing Clean Air Interstate Rule (CAIR) SIPs*. EPA promulgated CAIR to address interstate transport of sulfur dioxide and nitrogen oxide in the East; CAIR covers 28 states and the District of Columbia. CAIR SIPs were due in FY 2007, but EPA's target date for approving CAIR SIPs is not until December 2007, so during FY 2008 EPA may request additional analyses or information from states covered by CAIR.

Some other efforts performed by the state and local air agencies may have to be reduced if this budget cut is enacted, including:

- *Implementation of the Maximum Achievable Control Technology (MACT) standards*
- *Implementation of new standards for area sources of HAPs*, currently being developed by EPA under court-order
- *Implementation of Residual Risk standards*, also currently under development by EPA
- *Finalization of the Clean Air Mercury Rule* including implementation expected to begin in 2008
- *New, Modifying, And Minor Sources*. The proposed elimination of $15.6 million from the Section 105 grant program will impair the ability of state and local air agencies to issue permits to new, modifying, and minor sources.
- *Enforcement*. Some states may have to curtail enforcement actions, response to citizen's complaints, and compliance assistance efforts

Finally, EPA's budget proposes to cut air monitoring support for states. EPA monitoring regulations impose new requirements that state and local air agencies are already struggling to meet. The most challenging of these is the requirement for daily sampling at numerous PM2.5 monitors nationwide that were formerly sampled on a less frequent basis. While such enhanced monitoring is needed to gauge compliance with the new, lower daily standard, many air agencies simply cannot afford to deploy the personnel required to perform such daily sampling in addition to their other required activities. Many agencies anticipate eliminating PM2.5 monitors, which could result in the

remaining monitoring network being inadequate to provide even minimally acceptable PM2.5 data for planning and other purposes.

***An Alternative: The States' STAG Budget Proposal***

The states propose an alternative budget for Congress' consideration [see Appendix I]. This budget prioritizes our needs, with proposed increases for the environmental programs that states agree are the most important, with flat funding for more narrow programs (either because not every state is affected, or because a single pollutant is addressed), and even reductions for low priority programs.

We understand that budget increases can more easily occur in some areas, if decreases occur in other. Our budget suggests where reductions might occur both in STAG and elsewhere in EPA's budget without hampering the implementation of the nation's environmental statutes or reducing staff at US EPA.

We have begun dialogue with many of you on this matter and hope to have continuing discussions in a few weeks when ECOS meets in the capital area.

Although the primary interest of ECOS is the STAG programs, we are also concerned about reductions in the Inspector General's budget and in proposals that will result in the cleanup on fewer superfund sites being completed.

***Conclusion***

The states are thankful for the opportunity to present our views to the Committee and we welcome the opportunity to discuss these matters in a public forum. It is our hope that Congress can assist us as we implement the nation's environmental statutes as a co-regulator with the US EPA.

Thank you, Mr. Chairman, for this opportunity to testify.

Mr. WYNN. Thank you very much for your testimony, Mr. King. Mr. Langer.

**STATEMENT OF ANDREW M. LANGER, MANAGER, REGULATORY AFFAIRS, NATIONAL FEDERATION OF INDEPENDENT BUSINESS**

Mr. LANGER. Chairman Wynn and members of the subcommittee, thank you for the opportunity to testify this morning on the issue of the EPA's budget.

I would like to say at the outset that while my prepared written and oral remarks represent the collaborative views of NFIB, the U.S. Chamber of Commerce and the National Association of Manufacturers, any questions I might answer following my testimony will represent the views of NFIB and not the other two organizations. I hope that is alright.

I am here today to talk about the EPA's relationship to America's smallest businesses. Businesses with fewer than 20 employees comprise roughly 90 percent of the universe of businesses in America. These businesses want to comply with the Nation's environmental laws but invariably they find compliance to be a difficult and cumbersome proposition. The EPA's proposal is to spend just over a half-billion dollars on environmental enforcement this year. Their term is "compliance improvement." This number is dwarfed, however, by the mandates by EPA. If environmental regulations account for roughly 40 percent of regulatory costs and regulatory costs last year were $1.13 trillion, then Americans spent more than $400 billion in complying with Federal environmental regulations alone.

In the private sector, we have learned that more money does not equal more results, and our members constantly strive to achieve more and better results with less money and fewer resources. EPA's budget does not exist in a vacuum. It represents choices, choices between larger priorities in the Federal budget including homeland security, worker safety and trade promotion. Through that lens we view the EPA budget as one that makes tough choices in an environment of limited resources, and there are a number of ways one can look at regulatory costs both through efforts to reform regulation and in looking at ways to streamline the regulatory compliance process itself.

For the purposes of today's testimony, I want to focus on that end of the pipeline, compliance assistance efforts. It is well established that regulatory agencies get a greater "bang for the buck" when they promote compliance assistance over enforcement. It is more cost-effective than dedicating enormous resources towards investigations and prosecutions and gets us closer to the goals of more comprehensive environmental compliance. In terms of giving people foreknowledge of their responsibilities and walking them through how they can fulfill their obligations, it is compliance assistance and not enforcement that will get us closer to our ultimate goal of 100 percent compliance with 100 percent of regulations 100 percent of the time. The movement away from enforcement as a primary tool of compliance improvement is one that will have to be driven by Congress, however. Continued oversight, encouragement and budgetary prodding are going to be necessary. The Agency

ought to be rewarded when they decide to shift money away from sticks and directed towards blackboards.

Unfortunately, the regulatory state is so complex, I want you to consider for a moment that the Code of Federal Regulations itself is thousands upon thousands of pages, roughly 19 feet of shelf space that is out there, and what a small-business owner needs to do to figure out his responsibilities is next to impossible. It is next to impossible for them to be in compliance with all the regulatory requirements he faces. But imagine a system in which a small-business owner can enter simple information about his business, then that system takes this information and spits out each and every regulation that applies to this business along with simple compliance information. Yes, this is an ambitious idea but in an era in which huge databases can be accessed from thousands of miles away, it is not an impossible task. The current iteration of this, the Business Gateway, *Business.gov*, is a solid step in the right direction, but it must do more, far more in terms of offering a simple way for businesses to determine what their regulatory responsibilities are and to make living up to those responsibilities as easy as possible. What it will take is leadership from Congress, funding, oversight and a political will to see it happen.

If Congress is serious about environmental compliance, then it must do something about making a fully functional, fully realized Business Gateway a reality. Once that is established, businesses know their responsibilities and compliance is made as simple as possible and then businesses will not only have the time and resources to devote to helping the Government craft smarter regulations, they will have an incentive to be invested in the process. And while we believe that Business Gateway will be a tremendous tool for truly improving compliance, we recognize that there are a number of interim steps that must be taken, steps that will also require tremendous leadership on the part of Congress. Success of the Business Gateway will hinge on the quality of the information it provides, simple explanations and easy-to-understand-and-follow step-by-step instructions on how to comply. That means a wholesale restructuring of the information that is conveyed to the public, a comprehensive review of all regulations mandated by the Agency, the review of all guidance documents, manuals and other publications the citizen uses to determine what their obligations are and how to go about complying with them. Then the Agency will have to start building from the ground up, creating plain-language guides to each of their regulatory regimes, guides that are as short as possible, guides that are easy to find, guides that take a commonsense approach to compliance, walks small-business owners through their compliance process and offer them clear suggestions of what they ought to be doing to be in compliance with a particular regulation.

There are no two ways about it: this will be a Herculean task. Nevertheless, it must be undertaken. Heretofore the Agency has balked at such reviews and it is not difficult to understand why. They get no credit for it, simply put. Why put resources into developing easy-to-understand compliance guides when Congress and active stakeholders are going to ask them why they didn't spend more resources on investigations and prosecutions.

Thank you very much for allowing me to testify, and I look forward to answering any questions you might have.

[The prepared statement of Mr. Langer follows:]

**Testimony before the United States Congress on behalf of the**

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*Testimony of*

***Andrew M. Langer***
***Manager, Regulatory Policy***

Before the

***The House Energy and Commerce Committee***
***Subcommittee on Environment and Hazardous Materials***

# The EPA's Budget: Trading Enforcement for Compliance Assistance

*on the date of*

***March 1, 2007***

Chairman Wynn and Members of the House Energy and Commerce Committee, Subcommittee on Environment and Hazardous Materials:

On behalf of the half-million small-business owners represented by the National Federation of Independent Business, thank you for the opportunity to come before you to discuss the budgetary priorities of the Environmental Protection Agency. It is a distinct honor to have been invited to represent the views of American businesses before the subcommittee. My testimony this morning is the result of collaboration between NFIB, the National Association of Manufacturers (NAM) and the United States Chamber of Commerce. While there are issues on which our three trade associations may not agree, we all agree that the protection of the environment is a priority for all Americans, and a responsibility each of our members takes very seriously.

**Introduction**

NFIB's national membership spans the spectrum of business operations, ranging from one-person cottage enterprises to firms with hundreds of employees. Ninety percent of NFIB members have fewer than 20 employees. While there is no standard definition of small business, the typical NFIB member employs five people and reports gross sales of between $350,000 and $500,000 per year. However, all NFIB members have one thing in common: their businesses are independently owned.

The NAM is the nation's largest industrial trade association, representing small and large manufacturers in every industrial sector and in all 50 states. Headquartered in Washington, D.C., the NAM has 10 additional offices across the country. Visit the NAM's award-winning Web site at www.nam.org for more information about manufacturing and the economy.

The U.S. Chamber of Commerce is the world's largest business federation, representing more than three million businesses and organizations of every size, sector, and region. More than 96% of the U.S. Chamber's members qualify as small businesses.

The members of each organization want to comply with the nation's environmental laws, but invariably they find compliance to be a difficult and burdensome proposition. How burdensome? The Office of Management and Budget's (OMB) annual report on paperwork, the Information Collection Budget (ICB), [1] denotes an increase of the paperwork burden faced by all Americans of 441 ***million*** hours—which, sadly enough, represents an increase overall of only 5.5 percent.[2]

Government regulation, especially the paperwork generated by regulation, continues to be a top concern for small businesses[3]. Regulatory costs per employee are highest for small firms, and our members consistently rank those costs as one of the most important issues that NFIB should work to change. The Small Business Administration's Office of Advocacy has regularly examined this issue, issuing reports estimating the regulatory compliance costs for firms with fewer than 20 employees.

Five years ago, that cost averaged $6,975 per employee, per year, but now that figure has been updated. Not only updated, but updated now with a peer review process that lends even greater credence to the research. Unfortunately, for small-business owners, the new data isn't good—the cost of regulation for small businesses has risen by nearly 10 percent, to $7,647 per employee, per year.[4] This is due in no small measure to the continued growth of the regulatory state: according to the Competitive Enterprise Institute's Wayne Crews, the last two years have brought an average of approximately 4,000 new rules each year[5]

This means that for one of NFIB's average members, with five employees, those costs now approach a total of $40,000 annually. For a business operating on a shoestring, such costs can be devastating.

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[1] http://www.whitehouse.gov/omb/inforeg/infocoll.html

[2] ICB at i.

[3] In NFIB's publication, *Problems and Priorities*, paperwork ranked 8th out of 75 major problems faced by small business.

[4] Crain, W. Mark, *The Impact of Regulatory Costs on Small Firms, 2005, http://www.sba.gov/advo/research/rs264.pdf*

[5] 4,101 final rules in 2004, 3,943 final rules in 2005. Crews, Clyde Wayne, *Ten Thousand Commandments, 2006 edition.*

The EPA has proposed to spend just over a half-billion dollars on environmental enforcement this year (their term is "compliance improvement")[6]. This number is dwarfed, however, by the mandates created by EPA. If environmental regulations account for 40% of regulatory costs[7], and regulatory costs were $1.13 trillion[8], then Americans spent more than $400 billion in complying with federal environmental regulations alone.

Being a small-business owner means, more times than not, you are responsible for all aspects of running that business: ordering inventory, hiring employees, and dealing with the mandates imposed upon your business by the federal, state and local governments. That is why government regulations, and the paperwork they generate, should be as simple as possible. The less time our members spend with "government overhead," the more they can spend building and expanding their business, employing more people and giving to America's economy. Simplification and simple compliance assistance tools ought to be a budgetary priority for the EPA.

It is certainly true that EPA is doing a better job at linking agency expenditures to specific environmental improvements, but the agency has a long way to go to achieve the standards set by Congress in the Government Performance and Results Act of 1993. While increased expenditures in an area of EPA's budget may reflect an enhanced priority, they may not reflect a reduction in results or program operations in those without increases.

In the private sector, we have learned that more money does not equal more results, and our members constantly strive to achieve more and better results with less money and fewer resources. EPA's budget does not exist in a vacuum. It represents choices between larger priorities in the federal budget including homeland security, worker safety, and trade promotion. Through that lens we view the EPA budget as one that makes tough choices in an environment of limited resources.

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[6] http://www.epa.gov/ocfo/budget/2008/2008bib.pdf
[7] Crain
[8] *10,000 Commandments*

There are a number of ways one can look at regulatory costs, both through efforts to reform regulation and in looking at ways to streamline the regulatory compliance process itself. Essentially, it's like looking at dealing with the pressure of water flowing through a pipe: one can look at regulating that pressure before the water enters the pipe, or one can find ways to regulate it once it exits the pipe. Ideally, one regulates that flow at both ends. The same holds true with regulatory mandates: one ought to look at improving the regulatory state both before the regulations go through the pipeline and once they exit the pipeline at the end.

For the purposes of today's testimony, however, I want to focus on the end of that pipeline: compliance assistance efforts.

**The Effect of Paperwork**

In terms of the paperwork burden imposed by regulations themselves, NFIB's own Research Foundation has conducted in-depth studies of the problem being faced by small businesses. The NFIB Research Foundation is a non-profit 501(c)(3) organization, and its research into small business economic trends and issues is highly regarded in the academic community. Their conclusion was that the best thing for small businesses is simplicity—simplicity in instructions, simplicity in requirements, and an overall reduction in the size of the paperwork and the time necessary to complete forms.

The focus of our efforts has been on simplification—small businesses have a hard time dealing with complex paperwork requirements. They need to know precisely what is required of them and would like as short and as clear a form as possible. This sentiment was recently confirmed by the NFIB Research Foundation's recent poll of small businesses on paperwork (discussed in detail below).

The NFIB Research Foundation concluded overall that the cost of paperwork averages roughly $50 per hour. In addition, the following conclusions were reached[9]:

1. The individual(s) completing and maintaining paperwork and records in a small business is dependent on the subject matter of the paperwork and the size of the firm. Owners

[9] NFIB Research Foundation National Small Business Poll, Vol. 3, Issue 5, *Paperwork and Recordkeeping*, 12-03, http://www.nfib.com/PDFs/sbpoll/sbpoll12_2003.pdf

most frequently handle paperwork and record-keeping related to licenses and permits (55 percent of firms), purchases (46 percent), and clients/customers (46 percent). They least frequently deal with financial (27 percent) and tax (12 percent) records. Three of four pay to have someone outside (another firm) handle their tax paperwork. Paid employees customarily do most of the paperwork and record-keeping in about 25 – 30 percent of firms. Employees are much more likely to do so in larger small businesses than in the smallest ones regardless of subject matter (except tax). Unpaid family members do the paperwork in less than 10 percent of cases.

2. The cost of paperwork also varies by subject matter and firm size. The more paperwork and record-keeping that must be sent outside, the more expensive the paperwork and record-keeping. Owners of larger small firms pay higher average prices per hour because they are more likely to send their paperwork to outside professionals and because the value of their time, on average, is higher.

3. The estimated average per hour cost of paperwork and record-keeping for small businesses is $48.72. By subject matter the average per hour cost is: $74.24 for tax-related, $62.16 for financial, $47.96 for licenses and permits, $43.50 for government information requests, $42.95 for customers/clients, $40.75 for personnel, $39.27 for purchases, and $36.20 for maintenance (buildings, machines, or vehicles).

4. The typical small business employs a blend of electronic and paper record-keeping. Less than 10 percent use paper exclusively and a handful use only electronic means. The type of record most frequently completed and maintained on paper is licenses and permits.

5. No single difficulty creates the government paperwork problem. The most frequently cited problem is unclear and/or confusing instructions (29 percent). The second most frequently cited difficulty is the volume of paperwork (24 percent). Duplicate information requests (11 percent) place third, followed by maintenance of records that ordinarily would not be kept (10 percent) and requests for inaccessible or non-existent information (9 percent). Twenty (20) percent could not decide.

While the use of computers by small businesses and small-business owners has certainly helped reduce the burden of regulations, technological throughput solutions (ie, filling out forms online) are only one aspect of the problem. More than filing forms and storing copies, paperwork requirements involve understanding what the government wants and how they want it, gathering the necessary information and organizing it properly, determining what to keep and for how long, etc.

This makes compliance assistance tools such as better how-to-guides, more simple explanations, and step-by-step instructions, all the more important.

According to research by the NFIB Research Foundation, 92 percent of small businesses use computers in some aspect of their business. Eighty-two percent of small businesses have internet access, and of those, 57 percent have high-speed internet access. Half of the businesses that use the internet use it to find out regulatory information, and the smaller of small businesses are more likely to use the internet to educate themselves. They use it for specific searches, and to sift through information.[10]

But taken in the context of the ICB, the costs continue to be startling. If you only look at the average costs our polling found, then at the most macro of economic levels, the cost of the ***increase*** in paperwork alone amounts to nearly $21.5 ***billion*** annually![11] The total cost of paperwork therefore is more than a third of a ***trillion*** dollars (roughly $400 billion).[12]

Some people might argue that the increase in paperwork from the ICB is only 5.5 percent overall. But that only serves to mask the real issue: 441 million hours is an enormous amount of time—time that drags on everyday Americans and $21.5 billion is real money for real small businesses.

While some might quibble that this is only a marginal increase—one cannot deny that the baseline number is a huge one.

**The EPA's Compliance Assistance Priorities**

The problem is one of perception and prioritization. It is well-established that regulatory agencies get a greater "bang for the buck" when they promote compliance assistance over enforcement. It is more cost-effective than dedicating enormous resources towards investigations and prosecutions, and gets us closer to the goals of more comprehensive environmental compliance. In terms of giving people foreknowledge of their responsibilities, and walking them through how they can fulfill their obligations, it is compliance assistance, and

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[10] NFIB National Small Business Poll Volume 4, Issue 8, "*Telecommunications*," http://www.nfib.com/object/telecomm.html. 2005
[11] $48.72 X 441 million hours equals $21,485,520,000
[12] $48.72 X 8.4 billion hours equals $399,504,000,000

not enforcement, that will get us closer to the ultimate goal of 100 percent compliance with 100 percent of regulations, 100 percent of the time.

Unfortunately, certain activist groups and others who drive public policy are less-interested in promoting compliance assistance than in seeing enforcement budgetary numbers remain high. This has been a perennial problem, not just with EPA, but with other safety and health agencies (such as OSHA) as well. They measure agency success as number of enforcement actions filed, citizens prosecuted, and penalties assessed.

We see it very differently. Success in environmental regulation should be measured not just in the number of enforcement actions initiated or the amount of penalties assessed, but by the overall health of the environment. Results matter, and choosing to direct resources to help more small businesses comply with more environmental laws leads to a healthier environment. It is better for the environment to spend that money on compliance assistance, rather than spending the same amount to bring an enforcement action against one small business. Enforcement is a necessary tool, but it is not the only tool for environmental improvement.

OSHA has taken a very hands-on approach to this, in fact. That agency's relatively-new administrator, Ed Foulke, spends a tremendous amount of his time actively "proselytizing" to small businesses on the gospel of compliance, bringing them into the fold and on board with OSHA's programs. They have built on the foundation of the long-used and very successful "OSHA Consultation" program (OSHCon), which does free evaluations of a business' occupational safety and health programs, and certifies them when they meet OSHA's compliance criteria.

The program has gone a step further, in fact, and a number of insurance carriers now offer reduced workman's compensation insurance rates to businesses that have gone through OSHCon.

This is not meant to denigrate EPA's record of small business assistance. In fact, EPA's small business office has done tremendous work in helping our members and others, providing resources and being an advocate for small business within the agency.

But as we talk about budgetary priorities, EPA could take a greater cue from their colleagues in occupational safety, which are two sides of the same coin.

The movement away from enforcement as a primary tool of compliance improvement is one that will have to be driven by Congress. Continued oversight, encouragement, and budgetary prodding are going to be necessary. The agency ought to be rewarded when they decide to shift money away from "sticks" and direct it towards "blackboards."

**Technological Responses: E-Docketing and the Business Gateway**

To its credit, the federal government has recognized that technology can provide a number of solutions to the federal regulatory and paperwork burdens. Two separate tracks, very different, and important in their own way, are being pursued: one dealing with increasing participation and making the formulation of rules more streamlined (e-docketing); the other meshing technological tools with the problem of regulatory understanding, compliance, and paperwork burdens (the Business Gateway).

It is unfortunate that the federal government initially got their priorities backwards, focusing first on e-docketing and e-democracy rather than putting more resources towards the Business Gateway. NFIB supports the federal government in attempting to open up the regulatory process to more perspectives—the promise of e-docketing is that it will make it easier for small businesses and individuals to offer their thoughts on proposed rules. By offering a "real world" perspective, career civil servants can make regulations that are smarter and more meaningful. What's more, electronic docketing is an excellent tool for those doing the regulatory decision-making, in that it makes it easier for regulators to break down and analyze comments.

But as discussed earlier, the problem is that too many small businesses are spending too much time doing federal paperwork already, and it is simply too much to ask of them right now to take additional time and resources to comment on a complex regulatory proposal. Sure enough, there are some businesses and individuals that will comment, and the regulatory state can only benefit from their expertise, but the executive branch must reduce burdens elsewhere if they hope to invest a more substantial set of the population in the rulemaking process.

This is why we believe that more resources should have been directed earlier on to the Business Gateway project (once called the "Business Compliance One-Stop" or BCOS). The Business Gateway is a good step in this direction, and a greater emphasis must be placed on the continued development and implementation of this system, and NFIB is heartened that the second generation of this project came on line in October of 2007 (NFIB has been and will continue to be an active participant in the development and implementation of this program).

Everyone involved in regulation: the regulated community, activist stakeholders, members of Congress and their staffs, the federal agencies and their personnel, all must ask the same question—what is it that we want from the regulated community, in the end?

The answer, at least in our estimation, is simple: we want the regulated community (again, our members and the small-business community as a whole) to understand its responsibilities when it comes to regulatory compliance and comply with those regulations that apply to them. What's more, our members want to be in compliance with the law. They want to keep their workers and their communities safe and secure, and the last thing they want is for a government inspector to show up at their offices and fine them for some transgression.

Unfortunately, the regulatory state is so complex (consider in your minds, for a moment, the wide expanse that is the Code of Federal Regulations, and just what a small-business owner would need to do to figure out his responsibilities) that it is next-to-impossible for any small business to be in compliance with all of the regulatory requirements he faces .

But imagine a system in which a small-business owner could enter some simple information about his business: his industrial classification code, a zip-code, number of employees, etc. As discussed above, 92 percent of small businesses have computers, most with internet access (the majority of it high-speed), so the vast majority of businesses could do this if they so chose.

Then the system takes that information and spits out each and every regulation that applies to this business, along with simple compliance information. It would be even better if this system could provide an on-line access for small businesses to submit forms, should they choose to submit them that way (the operative word being "choose" – not mandate).

Yes, this is an ambitious idea. But in an era in which huge databases can be accessed from thousands of miles away in a safe, secure and fast manner, it is not an impossible task. The current iteration of the Business Gateway, Business.gov, is a solid step in the right direction. But it must do more, far more, in terms of offering a simple way for businesses to determine what their regulatory responsibilities are and to make living up to those responsibilities as easy as possible. NFIB looks forward to seeing the next iteration of Business.gov in October, as well as each and every iteration of it, as it moves towards the full-measure of what it ought to be.

What it will take is leadership from Congress: funding, oversight, and the political will to see it happen.

If Congress is serious about reducing paperwork, then it must do something about making the fully-functional, fully-realized Business Gateway a reality. Once that is established, businesses know their responsibilities, and compliance is made as simple as possible, then businesses will not only have the time and resources to devote to helping the government craft smarter regulations, they will have an incentive to be invested in the process.

Not all businesses would do it (not all businesses have computers), so the option to find out about regulations in the traditional manner would still have to be in place. In fact, there are a

number of small businesses that will never be on computers[13] (which is why NFIB continues to advocate for the position that when agencies desire to work with the public via computers, it is a voluntary and not mandatory program). But such a system would be far superior than that which is available to small-business owners today, and a tremendous leap in seeking greater regulatory compliance.

Until then, however, the benefits of technology, whose primary purpose is e-docketing, accrue mostly to those who work in government.

**The Intermediate Step**

While we believe that the Business Gateway will be a tremendous tool for truly improving compliance and reducing burdens on small businesses, we recognize that there are a number of interim steps that will need to be taken, steps that will also require tremendous leadership on the part of the Congress.

Success of the Business Gateway will hinge on the quality of the information it provides: simple explanations and easy-to-understand-and-follow step-by-step instruction on how to comply. This means a wholesale restructuring of the information that is conveyed to the public: a comprehensive review of all regulations mandated by the agency, the review of all guidance documents, manuals, and other publications the citizenry uses to determine what their obligations are and how to go about them.

Then the agency will have to start building from the ground up: creating plain-language guides to each of their regulatory regimes. Guides that are as short as possible. Guides that are easy to find, take a common-sense approach to compliance, walk small business owners or their employees through the compliance process, and offer them clear suggestions in what they ought to be doing to be in compliance with that particular regulation.

[13] In fact, in recent conversations with NFIB field personnel, I learned that our organization has a number of members who are Amish small-business owners. Clearly, these are small businesses that will never be using computers in their daily work, and any move to make computer communications mandatory (or any other sort of mandatory electronic interaction) would be grossly unfair to them.

There are no two ways about it: this will be a Herculean task. Nevertheless, it must be undertaken. Heretofore, the agency has balked at such reviews, and it's not difficult to understand why. They get no credit for it, simply put. Why put resources into developing easy-to-understand compliance guides when Congress and activist stakeholders are going to ask them why they didn't spend more resources on investigations and prosecutions.

So it is thus incumbent upon Congress to give the EPA the support it will need to do this. What is important is that in the near term, before the Business Gateway is in its final form, the Agency will be developing useful tools that can be utilized by small businesses as soon as they are made available.

**Toxics Release Inventory**

In addition to budgetary consideration for improved compliance assistance, NFIB would like to offer comments in support of the EPA's recent reforms to the Toxics Release Inventory (TRI) program. NFIB has been actively involved in the efforts to make changes to TRI, had numerous conversations with EPA personnel over the years, submitted comments, participated in stakeholder discussions, and had testified on the issue before Congress numerous times.

We believe that the reforms finalized by the EPA in December of 2006 ought to be allowed to proceed. They represent a compromise position – providing meaningful relief to America's small businesses while maintaining the information presented to the public without compromising that information's integrity.

In fact, contrary to reports in the media and as expressed by some on Capitol Hill, the EPA's regulatory systems worked in the case of TRI reform. The EPA held a number of stakeholder discussions and offered up a number of different proposals for TRI reform. Their proposed rule offered one possibility of how the agency might approach burden reduction. Their final rule took into account the concerns of all stakeholders – they changed their threshold reporting

requirements, coming to a position somewhere between where business stakeholders and environmental activist stakeholders thought that level ought to be.

Perhaps most important, the vast majority of comments submitted regarding the reform proposals centered on what is known as "biennial" or "alternate year" reporting. To be clear, alternate year reporting wasn't actually "on the table"—the EPA had merely floated a "trial balloon" to Congress. But the bulk of commenters offered their negative sentiments towards this aspect of the EPA's proposal.

In the end, the EPA dropped "alternate year" reporting, thus acceding to the wishes of many of their critics on TRI reform.

According to the SBA, 99.1% of all information reported previously via TRI will still be reported. This represents the preponderance of meaningful and useful public information. This information will be provided while at the same time meaningful relief is being given to some of America's smallest businesses.

**Conclusion**

NFIB appreciates the opportunity to testify on the issue of the EPA's budgetary priorities, and do so on behalf of NAM, and the US Chamber of Commerce, and to represent the greatest cross-section of America's businesses. We believe that the EPA's budget is a good first step, that it offers great improvements in environmental protection while still allowing for the engines of America's economy to keep running smoothly.

We believe that great improvements can be had by shifting the EPA's focus more towards assisting in compliance, however. Enforcement is important, to be certain, and bad actors must be punished. But for the majority of businesses, the 90% of businesses that have fewer than 20 employees, they need to be shown what they need to do to comply.

It is, in the end, patently unfair to create a system in which so many are set up for potentially running afoul of the law, and then reinforce the organs of enforcement without increasing the educational resources which are essential to ensuring compliance. We also recommend that in addition to Congress taking a leadership role in this matter, that they also consider directing that an independent study of EPA's compliance assistance efforts be done. We believe that the Government Accountability Office would be the best entity to conduct such a study.

Furthermore, we believe that EPA must seriously undertake a review of the consistency and quality of data used in making regulatory priority determinations, and in the information the agency disseminates to the public. Faulty data, or data improperly applied, seriously hampers the ability of the agency to properly assess the risks associated with various policy courses of action, and as a result, the agency can mis-prioritize its obligations. Without proper prioritization, public monies can be spent on fruitless endeavors while real threats to public health, safety, and the environment go untreated. The public cannot afford such waste.

Thank you once again for the opportunity to testify on this important issue.

Mr. WYNN. Thank you very much.

Mr. McTigue.

**STATEMENT OF MAURICE MCTIGUE, DIRECTOR, GOVERNMENT ACCOUNTABILITY PROJECT, GEORGE MASON UNIVERSITY, FAIRFAX, VA**

Mr. MCTIGUE. Thank you, Mr. Chairman, and thank you to the members of the committee for the invitation to be present here today.

I have now been in the United States for 9 years and I have spent those 9 years on the faculty of George Mason University and my interest there has been to do research work on accountability in government. It is from that perspective that I am going to speak to you this morning. Preceding that 9 years that I have spent in the United States, I was nearly 4 years in Canada as New Zealand's ambassador to Canada and the Caribbean and that was preceded by 10 years as an elected member of Parliament in the New Zealand Parliament, and some of that period of time I spent also as a member of Cabinet where Cabinet members under parliamentary system were also members of the legislature. But one of my portfolios was associate minister of finance and in that portfolio I was responsible for controlling the Government's spending and it is from that background that I want to make comments to you this morning about the process of budgeting.

Since I have been in America, there have been some innovations which I think are important, particularly in terms of the quality of the information that they put before committees when they make decisions about budgets. One of them is GPRA, the fact that it requires results information to be produced. The move towards performance budgets as part of the President's Management Agenda and the Program Assessment Reading Tool are subsequent processes that produce us with better information.

The process of making budget decisions really revolves around some very simple tasks and some relatively simple questions, the answers to which are often very difficult. A department makes a budget request. Congress must then decide whether or not to grant the request. What should the committee know before it grants the department's request is the piece of knowledge that I want to address, and that encompasses four major questions. First, how big is the problem; second, what progress has been made; third, how much is left to be done; fourth, will the current tools and strategies provide the remedy; fifth, how quickly can the current tools achieve the result; and sixth, is this an acceptable level of progress.

The answers to these questions are a mix of facts and values. The departments should be providing you with the necessary facts. The value judgments should be made by the political process. In the case of this budget request, the two value judgments to be exercised by the political process are: should we spend money on this activity, and the second one, is this enough money to make acceptable progress.

Comments on the EPA's information in their budget justification are as follows. First, I would like to congratulate OMB on the decision to make budget justification information readily available to researchers and the public and it is from information that I make

my comments. When I look at EPA's budget request, what I find are two problems, in my view, with the EPA's budget information. The first is the lack of information to demonstrate the scale of the problem, how big is this issue. The second is the lack of information that would indicate acceptable progress on resolution of this problem.

I am now going to quote you something from the EPA's budget justification and it is under the strategic objectives for clean air and global climate change and it reads as follows. "By 2030, through worldwide action, ozone concentrations in the stratosphere will have stopped declining and slowly begun the process of recovery and overexposure to ultraviolet radiation, particularly among susceptible populations such as children, will be reduced." That sounds good until you ask the following question: So how many people will contract skin cancer from this cause over the next 23 years and who will they be and from what populations. Without that knowledge, we don't know how serious that problem is or whether or not progress is rapid enough.

Now I going to quote from some information that I picked up from the science and technology part of EPA's budget, and this is about the air toxics program and here is what it actually says when it looks at the measures. "The measure is the cumulative percentage reduction in tons of toxicity weighted for non-cancer risk emissions of air toxics before using the 1993 baseline." First problem: the data for 2006 will not be available until 2009. That is not acceptable. The target for 2006 was a 58 percent reduction. The target for 2007 was a 58 percent reduction. The target for 2009 was a 59 percent reduction. If zero is the goal, the problem will be eliminated by the year 2048. Is that satisfactory progress? And I don't think it tells us that because it doesn't tell us whether zero is the right target if that is where we need to get to.

Here is a more serious one, in my view. Same issue, the cumulative percentage reduction in tons of toxicity-weighed for cancer risk emissions of air toxics from the 1993 baseline. Once again, the data for 2006 not available. But the targets are 34 percent for 2006, 35 percent for 2007 and 35 percent for 2008.

Mr. Chairman, if that is factual information, it means their problem never gets fixed. This is the kind of information I think should be in front of the committee if it is able to do its job well.

Thank you for the opportunity of being able to present in front of you.

[The prepared statement of Mr. McTigue follows:]

MERCATUS CENTER
GEORGE MASON UNIVERSITY

# TESTIMONY

**From**

**The Hon. Maurice P. McTigue, Q.S.O.**
**Distinguished Visiting Scholar**
**Mercatus Center at George Mason University**

**Before the**

**Subcommittee on Environment and Hazardous Materials**

**Of the**

**Committee on Energy and Commerce**
**United States House of Representatives**

**March 1st 2007**

**On**

**"The Environmental Protection Agency Fiscal Year 2008 Budget Request"**

Mr. Chairman, I welcome the invitation to give testimony in front of your Committee.

Congress and the federal government of the United States embarked on an historic course in 1993 when Congress passed the Government Performance and Results Act (GPRA). This farsighted piece of legislation dramatically changed the basis of accountability for

the federal government by shifting it to a focus on results, in other words, what public benefit arose from government expenditure on each of its activities.

This legislation was the first step in an evolutionary process. As the process matures, we have seen subsequent initiatives that are enhancing the impact of GPRA's results philosophy. I like to describe this evolution as several waves of change.

The first wave was the Government Performance and Results Act itself, which required government agencies to identify results in the form of specific outcomes. Each year, agencies' abilities to identify outcomes and express them as results are improving. I here refer the committee to *Performance Report Scorecard*[1], an annual research study conducted by the Mercatus Center. Since the implementation of the Government Performance and Results Act, our study has evaluated and ranked the Annual Performance and Accountability Reports of the major federal agencies according to their disclosure against three principle criteria: (1) how transparently an agency discloses its successes and failures; (2) how well an agency documents the tangible public benefits it claims to have produced; and, (3) whether an agency demonstrates leadership that uses annual performance information to devise strategies for improvement. The purpose of this study is not to assess and compare the performance of agencies, but to determine their level of disclosure and focus on results, in compliance with the Government Performance and Results Act.

[1] http://www.mercatus.org/programs/pageID.350,programID.4/default.asp

The second wave of change was the Administration's creation of the President's Management Agenda (PMA) in 2001. One of the components of the President's Management Agenda is "Budget and Performance Integration," an initiative developed in order to make results a central principle in the formulation of the budget. A further step in this performance budgeting initiative was the Office of Management and Budget's introduction of the "Program Assessment Rating Tool" (PART). PART is the Administration's tool for determining whether the activities it requests Congress to fund are indeed achieving their stated objectives. The PART process attempts to quantify the effectiveness of individual programs and gathers information intended to help inform the Administration's budget allocation decisions.

I believe there will be a third wave of change sometime between now and 2010. The information being created as a result of the Government Performance and Results Act and the President's Management Agenda will cause future Congresses and Administrations to comprehensively review the current means (programs) of achieving the government's goals and choose to either improve their efficacy or replace obsolete activities with more effective ones. When budgeting, all governments face the risk that programs will assume the mantle of permanency, causing more creative or innovative solutions to be ignored. But it is important to note that every time an inferior program is funded, a public benefit that could have been achieved by using a superior activity is forgone. Over the next few years, results management practices will make this public benefit forgone much more transparent. Such transparency will produce public demand

for their governments to use better performing activities so that society is not denied benefits that could be delivered.

Mr. Chairman, this background information leads me to the comments I wish to make in my testimony to you today. When I arrived in the United States in 1997, GPRA was in the very early stages of implementation and agencies were in the process of developing the first draft of their very first strategic plans. I was invited by the then majority leader of the House of Representatives, Dick Armey, to join a group of experts who evaluated these early drafts. As I had been involved in a GPRA-like process while serving as an elected Member of the New Zealand Parliament, I found this to be a fascinating initiative by the American Congress. My research work at the Mercatus Center at George Mason University has concentrated on the implications of this statutorily mandated, results oriented accountability system for the American federal government.

Agencies' early attempts at writing strategic plans were universally bad, including the first attempt of the Environmental Protection Agency. Like many other federal agencies, EPA found that it required a number of iterations before they had truly clarified their mission and the strategic goals that would best achieve that mission.

The following is EPA's mission statement and ten original strategic goals from 1997, compared to the agency's more concise and comprehensive mission statement and five goals of 2007.

1997 Mission Statement:

*"The mission of the Environmental Protection Agency is to protect human health and to safeguard the natural environment—air, water, and land – upon which life depends."*

1997 Strategic Goals:

1. Clean Air.
2. Clean and Safe Water.
3. Safe Food.
4. Preventing Pollution and Reducing Risk in Communities, Homes, Workplaces and Ecosystems.
5. Better Waste Management, Restoration of Contaminated Waste Sites and Emergency Response.
6. Reduction of Global and Cross-Border Environmental Risks.
7. Expansion of Americans' Right to Know about Their Environment.
8. Sound Science, Improved Understanding of Environmental Risk and Greater Innovation to Address Environmental Risks.
9. A Credible Deterrent to Pollution and Greater Compliance with the Law.
10. Effective Management.

Current Mission Statement:

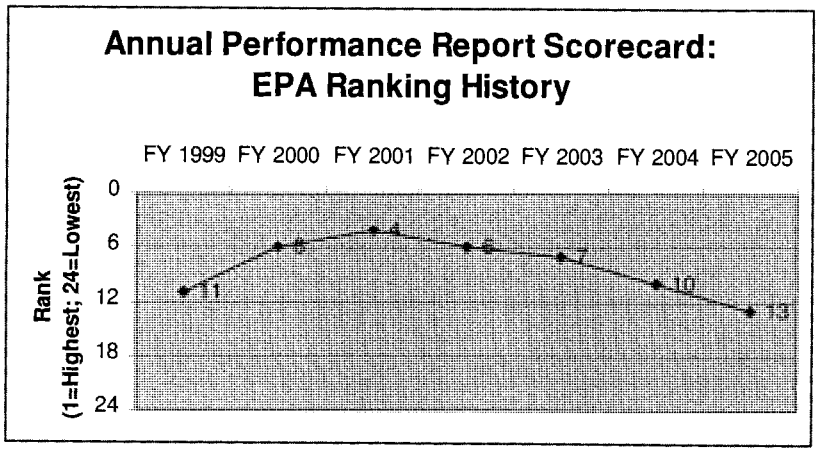
*"To Protect Human Health and the Environment."*

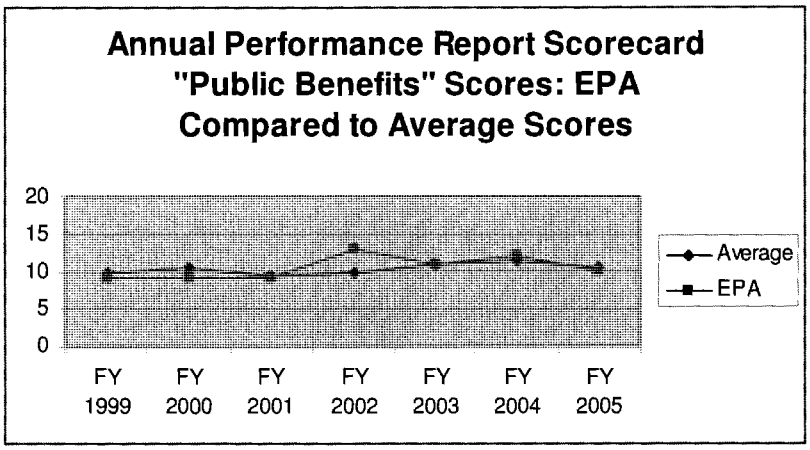
Current Strategic Goals:

1. Clean Air and Global Climate Change.

2. Clean and Safe Water.
3. Land Preservation and Restoration.
4. Healthy Communities and Ecosystems.
5. Compliance and Environmental Stewardship.

The Environmental Protection Agency now has a much more focused and concise view of its mission and its major areas of activity. From my interactions with the agency at a head office level, this new culture is well embedded at that level of the organization. I can not say to what extent this new culture has been assimilated throughout the organization. However, from our annual examination of the EPA's annual performance and accountability reports, the agency's progress in focusing on and disclosing performance, compared to other agencies, has been adequate, but not exceptional.






Our research has shown that EPA is currently weak in identifying and measuring the public benefits attributable to the actions of the agency. While the agency's process of measurement continually improves, there are flaws that need to be addressed. Many of the outcomes EPA is addressing are areas where change is slow and cumulative over time. However, the EPA's results disclosure would be dramatically improved if the agency were to identify specific milestones along the way to these outcomes and measure progress towards those milestones and the longer term outcomes.

Additionally, a number of EPA's strategic goals are stated in a vacuum, which makes it difficult to determine if the nation is making satisfactory progress on the outcomes or if that progress is entirely too slow. For example, EPA should be able to determine or define clean air and clean water and then tell us what progress we have made as a nation towards those outcomes since EPA was formed 37 years ago. With this information, an intelligent assessment could be made of whether progress has been satisfactory. It is

important for decision makers and the public to know when a problem has been solved and government resources can be redeployed to more urgent goals.

Finally, EPA should improve its ability to provide good information on the consequences of any change in circumstances to their strategic areas of concern, whether the change is due to things EPA is doing or a caused by forces outside its control.

As the Committee evaluates this budget request, I would recommend that you require EPA to provide you with the measures it intends to use to demonstrate satisfactorily the public benefits that flowed from the money allocated to each program or activity. Once this standard is set, the process of budget approval will be dramatically eased, as you will only need to look at the measures information to determine if adequate progress was made.

EPA's "modus operandi" should be very much science based. Consequently, decision making should be grounded in evidence, where the search for truth and knowledge is paramount and fact always outweighs emotion. To create the right public environment for this debate to occur, EPA should place significant priority on continually educating the public about fact and truth regarding environmental matters. I make those preceding comments in the strong personal belief that the big advances of the future will come from improved stewardship based on sound science and widely dispersed knowledge. The advantage of widespread improved stewardship is that it prevents damage from occurring rather than repairing damage after an event. This improvement in stewardship is an

outcome that can only be achieved by the wider public adopting improved stewardship as a goal. The Environmental Protection Agency can be the catalyst that inspires this societal change.

Conclusion:

I do not intend through these comments to tell the Committee which funding proposals you should support or which to oppose. Rather, I have provided the Committee with my assessment of the strengths and weaknesses of EPA so that budget decisions can enhance the agency's successes and strengthen its weaknesses. However, it would be beneficial if, at the conclusion of your examination of the EPA's budget proposal, you were able to predict to the American people what environmental gains would be achieved in the coming year.

Mr. WYNN. Thank you, Mr. McTigue.

Mr. Simms.

**STATEMENT OF PATRICE SIMMS, SENIOR ATTORNEY, NATURAL RESOURCES DEFENSE COUNCIL**

Mr. SIMMS. Good morning, Chairman Wynn, Ranking Member Shimkus, members of the committee. Thank you for inviting me to speak with you today. My name is Patrice Simms. I am a senior attorney with the Natural Resources Defense Council.

I would like to address a few specific concerns that NRDC has and I want to start with a couple of concerns that have a common theme, and that theme is transparency, accountability and oversight. The two issues relate to, one, the outsourcing of important functions within the Agency's authority and, two, the increasing use of voluntary programs instead of regulatory programs within the Agency over the last several years.

Some clear examples of troubling relationships that demonstrably compromise quality of EPA's scientific inquiry, and one of those is the Agency's relationship with the International Life Sciences Institute. This is an example of the situation where the Agency has farmed out some of its responsibilities in a particularly troubling way. In 2003, the EPA issued some proposed guidelines that were based almost entirely on a policy proposal that was drafted by an ILC subgroup using EPA funding. Those guidelines addressed how to assess the toxicity of certain chemicals, chemicals that are used in, for example, Dupont's Teflon. That report was later rejected by an independent scientific panel and subsequently in 2005 Dupont paid more than $16 million to settle charges that it had hidden information for two decades about the toxicity of Teflon chemicals. And I just cite that as an example of a situation that presents serious problems for the Agency in terms of its public accountability, the public perception of the Agency and the Agency's scientific credibility.

Congress should ensure that money going to EPA is used in a manner that preserves the Agency's scientific integrity and that important science activities that the Agency funds are conducted with adequate transparency and direct lines of accountability.

Another recent trend, as I mentioned, is voluntary programs. While some voluntary programs produce important and substantial benefits, NRDC is concerned with others that provide few real benefits and give the erroneous impression that important environmental issues are being adequately addressed.

The Performance Track program is a fine example of a voluntary program that has gone awry. It has as a central feature some deregulatory off-ramps that potentially compromise the effectiveness and integrity of existing regulatory programs. In addition, there is little evidence to suggest that this program actually accomplishes better environmental results.

In sum, NRDC is very concerned about EPA's expenditures on voluntary programs that are not subject to rigorous oversight, allow for so-called regulatory streamlining and cannot demonstrate meaningful environmental payoffs, especially where those programs appear to take the place of prudent regulatory alternatives. I look forward, as I am sure you do, to seeing the Inspector Gen-

eral's report on Performance Track and I hope it is a rigorous and thorough report.

I would like to turn to a quick discussion of a few EPA programs that are chronically underfunded. Chairman Wynn mentioned a few of these at the beginning in his opening testimony and I would like to echo some of them. Superfund, the Nation's premiere program for cleaning up hazardous waste, has paid huge dividends over the years, facilitating the cleanup of hundreds of the most contaminated sites in the country yet it is currently underfunded and bankrupt. The current budget proposal is for $1.24 billion for Superfund, $14 million less than requested in 2006. At the same time the fund is dried up, cleanups have also slowed. During the 1990's, the number of cleanups ranged from 88 cleanups in 1992 to only 61 in 1994. However, in 2001 there was a dramatic drop-off from the 2000 number, being 87 cleanups in 2000 and only 47 in 2001. In 2006, only 40 site cleanups were completed and EPA has a target of only 24 site cleanups for 2007. Despite the meager request for Superfund, there are still hundreds of sites on the national priorities list and more being discovered each year. Underfunding this program does a material disservice to the American public and Congress should fund this program at least to the $1.7 billion that is recommended by Resources for the Future.

Another funding concern is the Safe Drinking Water Act, State Revolving Fund. There is a tremendous burden on the States to improve the infrastructure over the next 20 years, $276 billion estimated by the EPA.

And finally, I would like to touch really quickly on the underground storage tank program, 117,000 known leaking underground storage tanks now, some 54,000 of which will require public funds for cleaning up. A total of $14.5 billion will be needed over the next 5 years. Clearly, the funds are there to do that, and that should be part of what this Congress funds the Agency to do.

I see my time is up. I have just a couple other things I wanted to point to in my written testimony. I wanted to mention that reduction in funding for environmental justice is very serious and upcoming needs for carbon sequestration framework and examination of nanotechnologies.

Thank you very much.

[The prepared statement of Mr. Simms follows:]

**Before The**
**U.S. House of Representatives**
**Committee On Energy And Commerce**
**Subcommittee on Environment And Hazardous Materials**

**Hearing on "The Environmental Protection Agency Fiscal Year 2008 Budget Request"**

**Testimony by**
**Patrice L. Simms, Senior Attorney**
**Natural Resources Defense Council**

**March 1, 2007**

## INTRODUCTION

The Administration's fiscal year (FY) 2008 budget proposal cuts programs in the Environmental Protection Agency by $400 million from the Continuing Resolution for FY 2007 to $7.2 billion. This proposal represents the lowest funding request in this century in real dollars, FY 2004 being the high at $8.4 billion. In fact, this request cuts almost $2.5 billion from the agency high when one considers inflation. As funding continues to be slashed, the agency is suffering.

- The FY2008 request will eliminate the equivalent of nearly 250 full-time-positions (FTEs) - 91.5 FTE from the Superfund Program alone.
- Funding for drinking water infrastructure only receives a slight increase to $842.2 million in the face of overwhelming identified needs. According to EPA's most recent estimates of national drinking water infrastructure needs (from 2003), the nation's water systems will need to invest $276.8 billion in drinking water infrastructure over the next 20 years to protect public health.
- Funding for the cleanup of leaking underground storage tanks remains stagnant at $72 million, even though there is an almost $3 billion trust fund that is specifically dedicated to making sure that these costly leaks are addressed.
- Funding for State and Tribal Assistance Grants (STAG) are cut to $2.7 billion from $3.2 billion in FY2007 – a true concern considering that states are delegated almost 75% of agency programs.

The mission of the agency is to protect and safeguard human health and environment; yet, this budget continues down the path of deep cuts and outsourcing in the face of overwhelming evidence of need.

Unfortunately, not only does the Administration fail to adequately fund the EPA, it is failing to properly fund all environmental programs. The FY2008 budget request for Function 300 - the environmental spending account - cuts discretionary levels by 4.8% below FY2006. This amount is actually lower than the level at the start of this century

when adjusted for inflation. As a result of this low number, the agencies within Function 300 are not even keeping up with fixed costs. If the Function 300 number is not higher in the Congressional budget resolution, we believe that all environmental programs - including EPA – will sufferer, and it will be impossible to adequately fund all critical programs without shifting funds away from other important areas of need. NRDC encourages the authorizing committee to work with the budget committee to ensure that Function 300 is sufficiently funded to ensure the vitality of all important environmental programs.

## SPECIFIC CONCERNS

### *1. Outsourcing of EPA Functions*

One of the most significant changes at EPA in recent years has been the degree to which the Agency has outsourced responsibility for some of its important functions in a manner that undermines scientific credibility and public accountability.

EPA is accountable to the people of the United States, the U.S. Congress, and the Executive Branch to fulfill its mission in a manner that meets both the letter and intent of the law and that appropriately identifies protecting human health and the environment as the primary objective of the agency's activities. To the extent that EPA farms out critical task, such as risk analysis, in many cases to the very industries that EPA is charged with regulating, without any transparency, oversight, or accountability, it seriously compromises both the public trust and the Agency's ability to truly ensure that it is meeting its obligation to the American public.

In fact, EPA is spending millions of dollars to fund entities that are specifically beholden to the industries that EPA regulates. Moreover, in many cases, this funding is

directed toward activities that are central to the Agency's regulatory decision-making process. EPA does this without ensuring transparency, without adequate oversight, and without demanding public accountability. In particular, these arrangements are not subject to important laws intended to provide the public with access to the regulatory process, to level the playing field for the public, and prevent undue industry influence over Agency decisions. These "sunshine" laws include the Federal Advisory Committee Act (FACA) and the Freedom of Information Act (FOIA), and play a critical role in ensuring government accountability.

While the practice of encouraging these cooperative partnerships was originally intended to bring all stakeholders together for constructive dialogue regarding regulatory policy, in recent years it has transformed into something quite different, and many stakeholders (such as NRDC and other environmental and public health groups) have been shut out of the process. In many cases these partnerships have developed into little more than opportunities for regulated industry to take over direct responsibility for key activities that provide the foundation for EPA's regulatory functions – in particular scientific analysis and risk assessment. This trend has had significant implications for the quality of the science upon which EPA relies for its regulatory activities.[1]

One example of just such a relationship that has demonstrably compromised the quality of EPA's scientific inquiry is the Agency's relationship with the International Life Sciences Institute (ILSI). ILSI represents several hundred corporations in the chemical,

[1] A very similar issue was recently raised with regard to the National Institute of Health (NIH). In January of this year, Members of Congress, 44 prominent physicians, and 16 health organizations agreed that, in order to preserve scientific integrity, when appointing committees for drafting guidelines the NIH "must strive to ensure that all members are free from conflicts of interest." This letter was prompted in part by specific concerns regarding the fact that many recent committees have been dominated by members with conflicts of interest. These same problems exist, perhaps to an even greater degree, at EPA.

processed food, agro-chemical and pharmaceutical industries and received at least $2.1 million in EPA grants last year.[2] Members include companies such as DuPont, 3M, Syngenta, Eli Lilly, ExxonMobil Biomedical Sciences, and Dow Chemical.[3] ILSI routinely hosts workshops (often co-funded by EPA) where industry specialists, academics and agency officials come together to discuss science and policy. There often is little or no effort made to inform the public or the public interest community about these meetings, and as a result the public health and environmental voice is frequently either entirely absent, marginalized, or ignored when final decisions are made. As a result, there are several examples of EPA making flawed policy decisions that emerged from this kind of process, and those decisions being overturned.

In 2003, EPA issued a proposed a guidance (based on a proposed policy that was drafted by a sub-group of ILSI) on how to assess a class of chemicals that includes perfluorochemicals used by DuPont to make Teflon.[4] The ILSI-EPA proposed policy claimed that while these chemicals caused cancer in laboratory animals, they were not carcinogenic to humans. An independent scientific panel rejected the ILSI-EPA draft policy because it was not supported by data.[5] In fact, laboratory studies have reported that these chemicals are associated with liver and testicular cancer, developmental

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[2] The ILSI IRS Form 990 for 2005 lists $2.5 million in government contributions. The EPA Grants Awards Database reports over $2 million in awards to the ILSI Risk Science Institute. In a January, 2007 response to a FOIA request from NRDC, the EPA provided a list of the ILSI projects on which the Health Effects Division (HED) of the Office of Pesticide Program (OPP) has participated since 2001. HED has participated in both ILSI-Risk Sciences Institute (RSI) and ILSI-Health and Environmental Sciences Institute (HESI) projects. FOIA Request HQ-RIN-0029-07.

[3] See the ILSI website for a full list of its membership: http://www.ilsi.org/AboutILSI/.

[4] The ILSI Health and Environmental Sciences Institute (HESI) reports to the ILSI Assembly of Members. Although it is structured and claims to operate as a, "public, non-profit scientific foundation" (www.hesiglobal.org/AboutUs/), they state in their recent job advertisement for an executive director of ILSI-HESI that this person should "ensure that the scientific issues important to [ILSI] member companies are raised and appropriately addressed by the organization." (Email to To: <hesi@hesiglobal.org. Subject: Executive Director of HESI Job Description. Tue, 10 Oct 2006).

[5] See EPA Advisors Split Over Use of Animal Studies In Human Risk Reviews, Inside EPA (Dec. 10, 2003).

impairment, and immune system suppression. Later, in December of 2005, DuPont paid more than $16 million to settle charges that it hid information for more than two decades showing that its Teflon chemicals are a significant threat to human health.[6]

The consulting group Toxicological Excellence in Risk Assessment (TERA), which EPA funds to manage and review data that industry submits on toxic chemicals under the Voluntary Children's Chemical Evaluation Program (VCCEP),[7] has also been the subject of criticism. In particular, the EPA stakeholder advisory committee, the Children's Health Protection Advisory Committee (CHPAC), which includes representatives of industry, state regulatory agencies, and public interest groups, has strongly criticized VCCEP as having a lack of transparency, accountability and efficiency resulting from, "severe structural flaws" in the program.[8] In particular, they criticize a lack of public involvement or education and even imply that there has been a significant lack of fiscal clarity. Specifically, the CHPAC letter warns that, "the mechanism of engaging the third party organization [TERA] to run the peer consultation process prohibits EPA control over that process, thus compromising governmental accountability." This concern is heightened by the fact that, "no estimate of costs" to EPA for this program is publicly available, but, "the costs appear to be considerable."

EPA's continued use of Agency funds to support closed-door, industry-driven science that feeds directly or indirectly into the regulatory process is of tremendous concern from a public health and sound science perspective. Congress adopted strong sunshine laws in

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[6] See DuPont fined more than $10M over Teflon, Randall Chase, Associated Press (December 14th, 2005); Consent Agreement, December 14, 2005. (available at: www.epa.gov/compliance/resources/cases/civil/tsca/eabmemodupontpfoasettlement121405.pdf).

[7] VCCEP was called for by the 1998 Chemical Right to Know Initiative, the goal of which is to give citizens information on the effects of chemicals to enable them to make wise choices in the home and marketplace.

[8] A copy of CHPAC's June 30, 2006 letter is included as an attachment to this testimony.

part to prevent clandestine manipulation of the regulatory process, and that objective is in serious jeopardy to the extent EPA is permitted to outsource critical responsibilities. Congress should ensure that the money going to EPA is used in a manner that preserves the scientific integrity of the regulatory process and that any important science activities that the Agency funds are conducted with adequate transparency and direct lines of accountability.

***2. Voluntary Program Oversight***

In a similar vein, EPA has in recent years become increasingly reliant on voluntary programs instead of regulatory programs to reduce harmful pollutants and protect public health. While some of these voluntary programs may provide important and substantial benefits, in some cases these programs provide little or no real benefits and give the erroneous impression that important environmental and public health issues are being adequately addressed.

According to EPA, voluntary programs achieve environmental results by motivating companies, communities, organization and individuals to take actions that are beneficial to them and the environment. Such programs typically focus on "pollution prevention" as opposed to end-of-process emission reductions, thereby complementing environmental regulatory programs. In theory, these programs use incentives, such as information, public recognition, and technical assistance, to spur actions that are environmentally-sound, but not required by law.

Current estimates of the number of EPA-sponsored "partnership programs" range from approximately 66 programs to 133 programs, depending on the source. More than half of these programs were started in the last 24 months. The agency spends about $125

million, or 1.6% of the EPA's total budget for 73 of these programs. Individual voluntary programs may receive anything from minimal funding up to more than $19 million depending on program reach, objectives and results, and Agency priorities. The average budget size is $1.8 million. As of 2005, 547 FTEs (or 3% of the total staff) at EPA worked on partnership programs (446 in DC and 101 in regional offices). The average partnership program has 8.68 FTEs.[9]

When these programs are well designed and well implemented, they can provide very significant benefits by encouraging and rewarding important improvements in environmental performance.[10] On the other hand, these programs also suffer from very serious limitations and pitfalls. One of the most significant issues with such partnership programs is the difficultly associated with accurately assessing their effectiveness. Indeed, the EPA Inspector General has identified the need for increased accountability of voluntary programs, in particular, the development of better measures, improving brand management and program design, and developing more consistent program guidelines.[11]

Among the current challenges with respect to ensuring effectiveness and accountability for voluntary programs is the fact that very few of these programs are subject to transparent ongoing evaluation – in fact, few if any of these programs are evaluated using even the government's internal review mechanism, the Program

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[9] See attached draft document "EPA Partnership Programs, Frequently Asked Questions," dated September 7, 2006.

[10] For example, certain programs, including Indoor Air Quality Tools for Schools, Indoor Environments, and Energy Star Residential have been remarkably successful, and while they should be subject to ongoing oversight and periodic reevaluation to ensure ongoing effectiveness, it appears that they will continue to play an important role in EPA's overall strategy for achieving its mission of ensuring a safer, cleaner environment.

[11] See Ongoing Management Improvements and Further Evaluation Vital to EPA Stewardship and Voluntary Programs, February 17, 2005 (Report Number: 2005-P-00007). Available at: http://www.epa.gov/oig/reports/2005/20050217-2005-P-00007.pdf.

ssessment Rating Tool (or PART).[12] Rather, EPA examines most voluntary programs in groups, making it extremely difficult to individually evaluate program effectiveness.

In some circumstances, voluntary programs have as one component the loosening of otherwise applicable regulatory requirements, such as inspections, monitoring, and reporting. Where such programs include a deregulatory component, ensuring the effectiveness of the measures and holding program participants and EPA accountable to demonstrate the benefits of the program takes on heightened significance.

Meaningful Congressional oversight is one important mechanism for ensuring that these programs perform at a satisfactory level and that EPA is demanding results that justify the existence of each such program it administers. Historically, however, Congress has not aggressively examined these programs since they are not mandated or authorized by Congress. Because EPA has relied increasingly on these programs, and has allocated non-trivial amounts of Agency funds to support them, Congress should understand what these programs are, how much they cost, what they are intended to achieve, how they are being assessed for success, how effective they are in practice, and how they compliment or compromise the Agency's regulatory programs.

*Performance Track as a Case Study:*

While NRDC supports many partnership/voluntary programs, there are examples of programs that we believe have few tangible benefits and could actually harm the environment and human health. EPA's Performance Track is one of the best examples of a voluntary program gone awry.

[12] The Program Assessment Rating Tool (PART) is a questionnaire utilized by the OMB and federal agencies to determine the quality of a program's performance and management. See http://www.whitehouse.gov/omb/expectmore/about.html.

According to a recent survey of state support for performance based environmental programs, Performance Track's fundamental goal is to achieve better environmental results by focusing on environmental outcomes rather than operationally-based output measures. These programs advertises that they provide regulatory flexibility, give industry the opportunity to achieve higher environmental standards than are mandatory, and target financial and human resources more effectively.

However, our own research has found that these regulatory flexibilities come in the form of reduced or no inspections, regulatory "streamlining," and shutting the public and other stakeholders out of the process. In addition, there is little evidence to suggest that this program actually accomplishes better environmental results. Consequently, the program offers at least the impression of a willingness on the part of EPA to trade away existing public health protections (that EPA adopted in accordance with Congressional directives) for highly uncertain industry incentives and flexibilities, without an adequate mechanism for ensuring a return on the investment.

EPA's Office of Inspector General ("OIG") made several important observations in its February 17, 2005 report "Ongoing Management Improvements and Further Evaluation Vital to EPA Stewardship and Voluntary Programs." For example, the OIG has stated:

- EPA should determine how to measure the outcomes of stewardship activities so it is able to verify that it is achieving its goals.
- EPA needs to show that the programs it selects to meet its goals are more effective in achieving environmental results than other programs it runs.
- EPA needs to correctly measure the environmental benefits of these activities.

- The Agency should begin to address these needs by working to quantify how voluntary behavior change programs can assist EPA improving environmental and human health protection.
- Currently, only some voluntary programs require participants to commit to reporting outcomes from their activities.
- If EPA is unable to overcome these measurement challenges, it will not be able to determine program outcomes.
- Further evaluations of EPA's stewardship and voluntary programs are necessary to assist the Agency in tracking and measuring these efforts.

OIG Report at 21-22. Our review of EPA's publicly available Performance Track materials lead us to similar conclusions, and we are not aware the EPA has cured these program deficiencies.

In sum, NRDC is very concerned about EPA's expenditures on voluntary programs that are not subject to rigorous oversight, allow so-called regulatory streamlining or regulatory flexibility, and cannot demonstrate meaningful environmental pay-offs – especially where these programs appear to take the place of proven regulatory alternatives.[13]

### *3. Under-Funding of Critical Public Health Programs*

NRDC is also concerned about the chronic under-funding of specific programs that EPA administers. In particular, NRDC views the adequate funding of the CERCLA Superfund program, the Safe Drinking Water Act Sate Revolving Fund and the Leaking Underground Storage Tank trust fund as vital to ensuring adequate protection of human health and the environment.

[13] NRDC has commented extensively on the Performance Track program in the past, and some of these comments, along with other information about Performance Track, are included as attachments to this testimony.

*a. Superfund*

The Superfund was established in 1980 with the enactment of Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). Superfund is the nation's premier program for cleaning up hazardous waste. The fund was originally sustained by a tax on specific petroleum products and chemicals and at its height brought in about $1.5 billion per year for cleanup of toxic contamination at abandoned sites. In FY1996, the fund topped out at $3.8 billion. The tax expired in 1995 and the entire "Superfund" went bankrupt in 2004. In the 5 years prior to the expiration of the Superfund tax, revenues from the treasury contributed about 17% to the fund. Since the bankruptcy, virtually the all of the money for the fund comes out of the general treasury. There are Potentially Responsible Parties (PRPs) for about 70% of sites. Unfortunately, the other 30% are orphan sites that depend on money from the fund for cleanup and are therefore paid for on the backs of taxpayers.

In recent years, the President has failed to request and Congress has failed to allocate sufficient funds to cover the need. This trend continues today: the FY2008 budget asks for $1.24 billion for Superfund cleanup. This is $14.25 million less than the FY2006 request and $10 million less than what was recently appropriated under the House passed continuing resolution (H.J.Res. 20). Most troubling is that the amount of the 2008 request is almost a half billion less than the approximately $1.7 billion annually that Resources for the Future (RFF) has noted that the fund will need to adequately cleanup orphan sites.[14]

[14] RFF's analysis was based on: (1) costs of completion of all sites currently listed on the NPL; (2) costs associated with additions to the NPL anticipated for fiscal year 2000 through fiscal year 2009; (3) costs associated with federal expenditures for the operations and maintenance at both existing and new NPL sites; (4) costs for emergency removals; (5) non-site specific costs assigned to other activities such as

At the same time that the fund has dried up, cleanups have also slowed. Throughout the 1990s there was an average of 80 cleanups per year (ranging from a high of 88 in 1992 to a low of 61 in 1994). In contrast, in 2006 only 24 sites were cleaned up. In fact, in 2001 the number of site clean-ups dropped precipitously from 87 in 2000 to 47 in 2001.[15]

EPA has explained this slow-down by saying that many of the most expensive, and technically challenging sites are now in the construction phase of cleanup. If true, however, it is unclear why EPA is actually reducing their funding request and reducing the staff allocated to Superfund-related activities. The FY2008 budget actually calls for elimination of 91.5 Superfund FTEs.

Superfund continues to be one of the most important programs that EPA administers. It addresses contamination that would otherwise remain in place (often contaminating soil, surface water, and/or drinking water near populated areas) creating

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research, administration, and interagency transfers; and (6) costs associated with five-year reviews at existing and new NPL sites and associated activities. RFF's report on the future of Superfund is available at: http://www.rff.org/rff/RFF_Press/CustomBookPages/loader.cfm?url=/commonspot/security/getfile.cfm&PageID=15073

[15] The history of site remediation is reflected in the following table:

| Year | Constructions Completed |
|---|---|
| 1992 | 88 |
| 1993 | 68 |
| 1994 | 61 |
| 1995 | 68 |
| 1996 | 64 |
| 1997 | 88 |
| 1998 | 87 |
| 1999 | 85 |
| 2000 | 87 |
| 2001 | 47 |
| 2002 | 42 |
| 2003 | 40 |
| 2004 | 40 |
| 2005 | 40 |
| 2006 | 24 |
| 2007 | 4 |

(Source: http://www.epa.gov/superfund/sites/query/queryhtm/nplfy.htm)

direct and substantial hazards to human health. Despite the modest Administration requests, there are still many sites currently in need of clean up, and more being discovered every year. The need for a robust Superfund is great, and under-funding this program will do a material disservice to the American public.[16]

*b. Drinking Water State Revolving Fund*

In 1996, Congress amended the Safe Drinking Water Act to create the Drinking Water State Revolving Fund (DWSRF). The program provides funding to capitalize state loan programs paying for the installation, replacement, and repair of drinking water infrastructure. Each year, Congress appropriates funding for grants to the states which the states then use to provide financing for community drinking water projects. Congress has provided roughly $8.65 billion for the fund through FY 2006 (with another $838 million awaiting enactment for FY 2007). While the program has provided significant funding, and has generally received better support from this Administration than the Clean Water SRF, the investment is still not adequate to address the needs identified by EPA itself. The Drinking Water SRF is one of a number of federal and state programs designed to help communities fund drinking water projects but it is an *essential* tool that must be maintained at an adequate level of funding.

The President's FY2008 Budget requests $842.1 million for the DWSRF. This is an increase of about $4.5 million over the 2006 and 2007 appropriated level but it is not enough to address the national need. For perspective, according to EPA's most recent estimates of national drinking water infrastructure needs (from 2003), the nation's water systems will need to invest $276.8 billion in drinking water infrastructure over the next

[16] The 2006 CRS Report "Superfund Overview and Select Issues" contains additional information on the current state of the Superfund: http://ncseonline.org/NLE/CRSreports/06Jun/RL33426.pdf

20 years to protect public health (an average of nearly 14 billion per year). This is a 60 percent increase over EPA's 2001 assessment. Thus, while the assessment of the need has increased dramatically, funding for the DWSRF has actually *declined* since the high point of $850 million in 2002, even without adjusting for inflation (see funding history below).

**Drinking Water SRF Funding History**
(dollars in millions)

| 1997 Enacted | 2001 Enacted | 2002 Enacted | 2003 Enacted | 2004 Enacted | 2005 Enacted | 2006 Enacted | 2007 Enacted | 2008 Request |
|---|---|---|---|---|---|---|---|---|
| 1,275 | 825 | 850 | 844.5 | 844.9 | 843.2 | 837.5 | 837.5 | 842.1 |

*(Data for 1997 through 2006 from CRS. 2007 is set equal to 2006 Enacted.)*

The EPA assessments of the need for drinking water infrastructure provides an important index of what the U.S. will need to invest over the next 20 years to continue to protect public health and provide safe and reliable drinking water to American families. The agency classifies $165 billion (60 percent) of this identified deficit as "current needs," or projects that are high priorities for near term implementation. For example, current needs would include repairs that would prevent major main breaks in lines that are already known to be vulnerable (such as those that have already experienced multiple small leaks). The remaining $111.8 billion are classified as future need – projects that were not necessary at the time of the assessment but will be needed within the next 20 years.

Proper maintenance of the tens of thousands of public drinking water systems around the country is critical to protect the health and wellbeing of families and communities nationwide. The potential health effects of consuming contaminated drinking water range from minor to fatal, including nervous system or organ damage,

developmental or reproductive effects, and cancer.[17] Numerous studies have looked at the effects of water borne disease outbreaks.[18] These studies show that low-level waterborne infectious diseases continue in the US and discovered, among other things, that:

- Low-level water borne disease outbreaks are happening even at current disinfection levels
- Health effects included: gastroenteritis, acute respiratory illness, and dermatitis
- Between 2003 and 2004, 30 waterborne disease outbreaks associated with drinking water were reported by 18 states.
- Such outbreaks caused illness in approximately 2760 persons and 4 deaths.[19]

In order to keep pace with inflation, Congress must increase the funding for FY 2008 to at least $866 million. However, given the upcoming challenges associated with

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[17] According to EPA:

> Drinking inadequately treated water could result in nervous system or organ damage, developmental or reproductive effects, or cancer. Consuming water with nitrates at sufficiently high levels can result in potentially fatal alterations in the hemoglobin (the iron-containing pigment in red blood cells) of infants and very young children, called "blue baby syndrome." National standards for public water systems are designed to provide levels of treatment that are protective against adverse health effects.
>
> The consequences of consuming water contaminated with pathogens can include gastrointestinal illnesses that cause stomach pain, diarrhea, headache, vomiting, and fever A microbial outbreak of *Cryptosporidium* in Milwaukee in 1993 sickened about 400,000 people and killed more than 50, most of whom had seriously weakened immune systems.

See http://www.epa.gov/Indicators/roe/html/roeWaterDr.htm.

[18] Levin, Ronnie, et al. "U.S. Drinking Water Challenges in the Twenty-First Century" Environmental Health Perspectives 110 (supp.1) 43-52 (2002); Liang, Jennifer, et al. "Surveillance for Waterborne Disease and Outbreaks Associated with Drinking Water and Water not Intended for Drinking – United States, 2003-2004". Other sources of information include: Waterborne Disease Research Summaries Published (Jul/Aug 2006) (http://www.epa.gov/NHEERL/articles/2006/waterborne_disease.html), and CDC MMWR surveillance for waterborne diseases (Dec 06) (http://www.cdc.gov/mmwr/mmwr_ss.html).

[19] NOTE: this study was based on outbreaks "reported" to the CDC. There is a real concern of under-reporting, meaning this type of surveillance study will likely seriously understate the number and extent of water borne disease outbreaks. Also, this study focused on acute effects and did not examine chronic health effects.

maintaining safe and reliable drinking water systems nationwide, Congress should allocate additional monies to provide a real increase in program funding beyond inflation. For example, the Environmental Council of the States (ECOS) is calling for $1 billion for the Drinking Water SRF in 2008.[20]

The DWSRF is undeniably a good investment for the federal government and the funds are well spent.[21] The program requires a 20% match from participating states and investments now will provide long term benefits because of the revolving nature of the program. Through June 2004, EPA had awarded $5.74 billion in DWSRF grants. When combined with state matching funds, bond proceeds, interest payments, and other funds, the total rises to $9.64 billion made available for assistance. Given the direct and tangible benefits of this funding program for citizens nationwide, there is no justification for under-funding the SRF.[22]

*c. Leaking Underground Storage Tanks*

In the 1980s, EPA determined that many of the roughly 2.2 million underground storage tanks (USTs) in the United States were leaking. Many other tanks were nearing the end of their useful life expectancy and were expected to leak in the near future.

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[20] See ECOS FY 2008 budget proposal: http://ecos.org/files/2562_file_The_States_Proposal_to_Congress_for_EPAs_2008_STAG_final1_2.doc

[21] According to the Administration's Program Assessment Rating Tool (PART) evaluation of the DWSRF, resources are used in a timely manner and for the intended purpose. The PART explains "The DWSRF program requires states to have a schedule with timing targets to ensure that federal grants are taken in a timely and efficient way. DWSRF funded projects are identified on each State's Priority Projects List. EPA Regional Offices review state programs annually. At the State level, 43 states conduct separate independent audits with the remainder scheduled for periodic audits by the EPA Inspector General, which also reviews the quality of the other independent audits. All grantees are required to submit annual reports and supply data to EPA national database (DWNIMS) that document the activities of loan recipients. The reporting and evaluations confirm that recipients are spending the funds designated to each project for the intended purpose." http://www.expectmore.gov.

[22] Additional discussion of the DWSRF is available in the EPA Drinking Water Infrastructure Needs Survey and Assessment: Third Report to Congress (2003) http://www.epa.gov/safewater/needssurvey/pdfs/2003/report_needssurvey_2003.pdf; and the CRS report on Drinking Water State Revolving Fund: Program Overview and Issues http://www.ncseonline.org/nle/crsreports/06may/RS22037.pdf

Approximately 50% of the U.S. population relies on ground water for their drinking water, and states were reporting that leaking tanks were the leading source of groundwater contamination.

In 1984, Congress responded to this growing environmental and safety threat and established a leak prevention, detection, and cleanup program for USTs containing chemicals or petroleum through amendments to the Solid Waste Disposal Act. This program directed EPA to establish operating requirements and technical standards for tank design and installation, leak detection, spill and overfill control, corrective action, and tank closure. The universe of regulated tanks was extremely large and diverse, and included many small businesses. Consequently, EPA phased in the tank regulations over a 10-year period (from 1988 through 1998). Strict standards for new tanks took effect in December 1988, and EPA's regulation required all tanks to comply with leak detection standards by late 1993. All tanks installed before 1988 had to be upgraded (with spill, overfill, and corrosion protection), replaced, or closed by December 22, 1998.

In 1986, Congress created a federal trust fund to help states clean up contamination caused by leaking underground storage tanks (or LUSTs).[23] The Trust Fund is financed by a 0.1 cent tax on each gallon of motor fuel sold nationwide. The federal UST program receives approximately $70 million each year, of which an average of greater than 80 percent (approximately $56 million) is allocated for use in the administration, oversight, and cleanup of sites within the states and in Indian country (including corrective actions where no responsible party has been identified or where a responsible party fails to comply with a cleanup order). The remaining money has been

[23] Trust fund money can be used to test for suspected leaks; to investigate contaminated sites; to assess exposures; to clean up contaminated soil and water; to provide safe drinking water; to relocate residents; and to cover reasonable administrative and planning expenses.

used by EPA for negotiating and overseeing cooperative agreements, implementing programs on Indian lands, and supporting regional and state offices. The current balance of the fund is almost $3 billion. Money from that fund automatically goes into the general treasury unless appropriated by Congress.

In general, the cleanup costs typically have been paid for by a state fund, the responsible party, and/or private insurance. The LUST trust fund has also played an important role in helping to address tank leaks, although that role has been significantly smaller than state-based financial assurance programs.[24] Collectively these programs have been successful, helping to reduce dramatically the health risks associated with LUSTs, but the challenges moving forward are significant and even more can be accomplished.

The GAO reports that there are at least 117,000 known leaking underground tanks, and despite general success in getting responsible parties to foot the bill, some 54,000 of these will require public funds for clean-up.[25] GAO estimates that approximately $12 billion in public funding will be required to clean up these already identified sites, and this number may substantially under-represent the total number and cost of needed cleanups.[26] Moreover, GAO estimates that an additional $2.5 billion in public funds will be required to clean up contaminated sites that will be identified over the next five years. Again, this number may under-report actual need, because some states either did not report or were uncertain about the use of public funds. Thus, the

[24] The 2007 GAO Report indicates that states rely primarily on state-based programs, which brought in about 1.4 billion in revenue in 2005.
[25] The GAO's most recent report, "Leaking Underground Storage Tanks" (February 2007) ("2007 GAO Report"), indicates that of the releases in current backlogs States expect responsible parties to fully cover the cost of 34% of remedial actions, while at least some public funding will be required for the other 66%.
[26] Among other things, many states were unable to estimate the cost of cleanup for many sites, and several states either did not report (or provided incomplete reports) or did not know whether or not public funds would be required for some clean ups.

need just over the next five years will be at least *$14.5 billion* according to the GAO Report.[27]

The LUST trust fund has been used effectively by states – the GAO reports that of the approximately $70 million appropriated annually in recent years, approximately 80% is distributed to states for UST-related projects (including investigation, enforcement, clean-up activities, and administrative costs). The remaining funds have been used by EPA for clean-ups on Indian Land and for the Agency's own purposes. This funding, however, has not been enough. States have specifically indicated that limitations in available funds for LUST clean-ups have resulted in fewer clean-ups. Consequently, pollutants have remained in the environment longer than necessary, potentially increasing the extent of the contamination (and cost for clean up), compromising ground water and drinking water resources, and leading to greater public exposure and adverse health impacts.

Given the expectation that significant additional cleanups will be required over at least the next five years, and the potentially complicating presence of MTBE at many LUST sites, a well funded federal LUST fund makes sense.[28] Because timeliness makes a difference, this money should be made available now, when the need is greatest, at a level that is adequate to *fully* address the problem of leaking underground tanks.

Moreover, the Energy Policy Act of 2005 (EPAct) expanded the universe of activities for which LUST funds can be used. Title XV, Subtitle B, of the EPAct adds

[27] Note that these are just direct clean-up costs, not investigation, enforcement and administrative costs.
[28] While EPA estimates average cleanup at $125,000 per site, according to the GAO Report, the presence of MTBE, and the migration of contaminant into ground water or drinking water can make clean up more expensive. While we have no way of knowing how many cleanups will be affected by MTBE, studies going back to 2001 found significant levels of MTBE contamination; for example, twenty-four states found MTBE water contamination at 60-100% of their leaking tank sites. In 2005, the American Water Works Association and the Association of Metropolitan Water Agencies estimated that the cost of MTBE cleanup for drinking water will be approximately $25-33 billion nationwide.

new leak prevention and enforcement provisions to the UST program and authorizes EPA and states to use the Trust Fund to clean up MTBE leaks and to implement and enforce new requirements. As a result, States may have significant difficulty keeping up with demand. Mandating new requirements – even important program improvements – without an increase in funding further strains the ability of the States to meet program objectives.

In the face of all of these realities, the Administration's request for only $72 million (out of the almost $3 billion available) for cleanup and other LUST prevention activities is woefully inadequate. Given the overwhelming need to address old and new threats, and given the availability of money in the fund, Congress should ignore the President's budget request and use the money in the fund to address immediate cleanup needs instead of using the money as an offset for the general treasury. Given that state funding mechanisms will fall well short of covering need over the next five years, by approximately 1.5 billion per year, Congress should appropriate as much from the LUST Trust Fund as it can without compromising the integrity of the fund itself.

Additionally, Congress should look to other successful trust fund programs to explore whether the LUST fund could be improved. There are successful trust fund models currently in existence. The Pesticides Registration Improvement Act (PRIA) established a trust fund supported by fees that the industry pays in exchange for getting more stability in the agency registration and review process of new and traditional pesticides. This Act originated as an agreement between the public interest community, the agency and the industry and has been successful, in part, because of fiscal stability. In particular, the PRIA fund was set up to have "baseline protection" which prevented

Congress from appropriating below a certain amount for the program without jeopardizing the entire program.

The LUST fund is different in that it is funded not by the regulated industry, but by everyone who purchases gasoline. However, similar baseline protection language would allow a stable source of funding for LUST cleanups. A high funding baseline would also ensure that Congress's allocation adequately addresses the problem, instead of using the fund as a budget gimmick. Alternately, LUST legislation could be written simply to prevent the fund from being used as an offset for the general treasury.

***4. Addressing Emerging Threats***

*a. UIC and $CO_2$ Sequestration*

Global warming and the challenge of reducing our output of global warming gases is currently one of the most important and urgent social and environmental issues facing this country and the global community. The most recent report from the Intergovermental Panel on Climate Change (IPCC) confirms the importance of addressing global warming. The IPCC report includes the following key findings:

- It is very likely that heat trapping pollution is the primary driver of global warming since 1950;
- If we do not curb emissions of global warming pollutants climate disruption is very likely;
- Increased hurricane intensity is likely attributable in part to global warming and will increase in the future;
- The earth will warm by 4-11 degrees Fahrenheit during the 21st Century if fossil fuel use is intensive, and by 3-8 degrees with a more moderate business-as-usual use of fossil fuels;
- Sea levels will rise by 7 to 23 inches during the 21st Century;
- Summer sea ice in the Arctic Ocean could disappear entirely before the end of

the Century;

- The oceans will continue to become more acidic due to $CO_2$ emissions.

The Climate Change Technology Program Strategic Plan shows that capturing $CO_2$ emissions from fossil fuel plants and disposing of it in deep geologic formations is a critical technology for preventing serious climate disruption. For this to become a commercially and legally viable option for mitigating greenhouse gas emissions, a robust and transparent regulatory framework for geologic $CO_2$ injection will need to be put in place in the immediate future. Whether this happens in a timely manner will depend on EPA's willingness to take the initiative to aggressively move forward to lay the foundation for the deployment of this important emerging mitigation tool. We recommend directing EPA to devote at least $5 to $10 million per year, starting in FY2008, to the development of regulations and guidelines appropriate for commercial-scale $CO_2$ disposal projects and a management framework to ensure the long-term success of this effort (this sum would include funds for state grants to effectively administer these regulations).

EPA is the only agency with the necessary experience and authority develop a regulatory framework for large-scale $CO_2$ injection at the Federal level. In a July 2006 memo (which is included as an attachment to this testimony) the EPA Office of Water concluded that geologic sequestration of carbon dioxide through well injection meets the definition of "underground injection" in section 1421 (d) (1) of the Safe Drinking Water Act (SDWA). As a result, the Agency and Primacy States as co-regulators are responsible for protecting underground sources of drinking water (USDWs) from any potential endangerment by $CO_2$ disposal projects.

While DOE is actively researching geologic carbon sequestration through small-scale pilot projects, it does not have the experience or authority necessary to develop a regulatory framework for the eventual permitting and oversight that will be necessary for large, commercial-scale applications of this technology. To facilitate such large-scale deployment, the EPA needs to adapt its current well classification system to incorporate a comprehensive regulatory framework that addresses large volume injection of carbon dioxide.

The development of a regulatory framework for commercial scale $CO_2$ disposal in deep geologic reservoirs is likely to take several years. Therefore, this process must begin as soon as possible if deployment of commercial scale projects is to proceed in the needed timeframe. Already there are several projects on the drawing board to capture and dispose of $CO_2$ in deep geologic formations: BP's Carson project in Long Beach, CA and a project that Xcel Energy is considering in Colorado are examples. The absence of a clear and environmentally robust set of rules for safe and permanent $CO_2$ disposal will impede these projects and others like them, and ultimately impair our ability to address global warming as quickly as needed. Furthermore, in order to ensure public acceptance and national regulatory certainty for industry, such authority should not be relegated to individual states or the Interstate Oil and Gas Compact Commission.

Currently EPA has the authority under the Safe Drinking Water act within its Underground Injection Control program to initiate the regulatory process and begin a public dialogue on underground injection of $CO_2$. As an interim solution, EPA has permitted injection wells associated with the DOE/NETL and the Regional Geologic Sequestration Partnership as UIC Class V experimental technology wells and/or Class II

wells.[29] However, EPA has not determined how or when these classifications might change if these wells begin to sequester large volumes of $CO_2$ for permanent disposal. To date, EPA has not appropriated resources specifically for this purpose or provided any clear signals that this activity requires priority status.

It is imperative that the key components of the necessary regulatory framework include:

- Guidelines for comprehensive injection site characterization and selection;
- Safety and operational standards for the injection process itself as well as for subsequent closure and decommissioning;
- Future monitoring of the injection site and verification that the injected $CO_2$ does not leak; and
- Clarification of the liability and indemnification provisions for the various aspects and stages of $CO_2$ capture, transport, injection and disposal.

In order to accomplish this objective in a timely manner EPA must begin immediately to:

- Collect technical data to support the development of a regulatory framework (e.g., from DOE and USGS);
- Formulate site-specific requirements to protect drinking water;
- Establish appropriate monitoring and verification standards for retention of $CO_2$;
- Identify potential risk and mitigation management options;
- Provide capacity building and technical support for states to implement regulations and process permits; and
- Establish a process for stakeholder input to include public outreach and communication.

[29] Indeed, while EPA has recently issued draft guidelines for permitting underground injection of $CO_2$ in connection with these pilot projects (giving states and regional officials wide latitude to evaluate sites on a case-by-case basis), EPA's guidance also specifically warns project developers to plan for more stringent oversight upfront if there is a possibility they will want to increase the size of a project in the future. EPA explains: "A site that is deemed to be appropriate for pilot $CO_2$ injection may not necessarily meet future requirements for commercial scale operations." *See* attached Inside EPA article, and: http://www.epa.gov/safewater/uic/wells_sequestration.html.

In light of the above discussion, this is an opportune moment to ensure that EPA proceeds to develop the guidelines and regulations that will be necessary for the deployment of commercial scale projects, where millions of tons of $CO_2$ could be injected annually for a single project. This effort is likely to require on the order of $20 to $40 million over 4 years, and the program does not currently have the resources and budget necessary to adequately pursue this work.

*b. Nanotechnology*

Nanotechnology (the creation and manipulation of matter on a scale of less than 100 nanometers, the width of just a few atoms) has emerged as one of the most rapidly developing, dynamic, and exciting fields of scientific research and commercial development. Nano-materials in particular offer the potential for tremendous advances in fields ranging from medical technologies to power generation and storage to environmental remediation strategies. Nano-materials are extremely heterogeneous, including materials composed of various elements (such as carbon, silver, cerium, silicon, etc.) – indeed, nanotechnology is likely the future of chemistry. However, the rapid emergence of new nano-materials and their increasing use in products and processes raises serious concerns regarding the potential for adverse impacts on human health and the environment.

In fact, the very qualities that make nano-materials commercially desirable can also make them potentially more toxic than their normal-sized counterparts. For example, nano-scale materials may dissolve in different ways, take on different magnetic properties, react differently to chemicals, or reflect light differently than they would at normal size. Moreover, because they are so small—the head of a pin is about 1 million

nanometers across – nano-materials can be extremely mobile, finding their way to the blood stream when inhaled, swallowed, and possibly when applied to the skin. Once inside the body, they seem to have access to most or all tissues and organs, including the brain and possibly also fetal circulation, and may cause cell damage in ways that we are only beginning to understand.

In fact, very little is currently known about the potential health effects of engineered nano-materials. The few studies that do exist that specifically examine the health consequence of exposure to a very limited universe of nano-materials provide significant reasons for concern. Additionally, we know from long experience with conventional air pollution that inhalation of ultra-fine (nano-scale) air pollutants is associated with asthma attacks, heart disease, strokes, and respiratory disease. The development of a much more comprehensive data set on nano-material toxicity is vital to ensuring the safe, productive, and beneficial development of this exciting field.

However, despite our limited understanding of the effect of nano-materials on human health, manufacturers already are incorporating these structures into hundreds of consumer products. Products as diverse as sunscreen, lotion, house paint, and stain-proof clothing already contain nano-materials. [30] Given that we already have good reason to believe that some of these materials may pose serious health and/or environmental risks, the widespread use of these materials (particularly in a manner that is likely to involve significant human exposure) is clearly unwise without meaningful up-front evaluation for potential toxicity and a framework for precautionary regulation.

[30] In fact, EPA recently reviewed 15 new chemical uses for nano-scale substances. However, EPA is withholding all information regarding these substances based on claims of Confidential Business Information (CBI), so no information is available to the public.

Given the rate at which the field of nanotechnology is progressing, and the pace at which nano-material are being incorporated into commercial products, regulators must begin to take action *now* to identify and address concerns from cradle to grave. Such a life-cycle approach must address concerns associated with the production and manufacture of the nano-materials themselves and the products into which they are incorporated, potential in-use exposures, and the safe end-of-life disposal of products containing nano-materials. Moreover, until we better understand the risks, nano-materials should be presumed dangerous to consumers and workers.[31]

Congress should specifically direct EPA to allocate adequate resources not only to examine nano-material toxicity (an absolutely essential first step), but simultaneously to aggressively develop a robust regulatory framework that is adequate to ensure that nano-materials that make it into the marketplace are safe, and that unsafe materials are appropriately managed from cradle to grave. Any such framework should be based on a precautionary approach to managing toxic chemicals and should:

- **Prohibit the untested or unsafe use of nano-materials.** Because the full scope of risks is unknown, and preliminary data demonstrates the potential for toxicity, risk management practices must presume worst-case scenarios to fully protect health and prevent unsafe releases of nano-materials to the environment.

- **Include full lifecycle environment, health, and safety impact assessments as a prerequisite to commercialization; assess all nano-materials as new substances.** Independent testing is urgently needed to understand the hazards of nano-material exposure across the lifecycle of a product. Because the toxicological profile of nano-materials cannot be predicted from the known properties of larger particles of the same chemical composition, assessing nano-materials as new substances is important. The results of testing should be made available to the public.

[31] Notably, labor unions and environmental justice advocates have recently joined together to call on the U.S. Environmental Protection Agency (EPA) to move quickly to fully disclose hazards and take protective action to prevent harm to workers and their families from nanomaterials.

- **Incorporate full and meaningful participation by public and workers in nanotechnologies development and control.** The potential of nanotechnologies to transform the global social, economic, and political landscape means we must move the decision-making out of corporate boardrooms and into the public realm.

- **Ensure prompt action on early warnings to protect communities and workers.** Specific regulations are vital to ensure that there is a mechanism for quick and effective action when it becomes apparent that a particular nano-material or class of nano-materials is like to pose a health or environmental hazard. This framework must be designed to identify and address health risks before people become exposed.

In this context, EPA must not wait to close to door until the horse has left the barn. Such an approach would be both irresponsible and inconsistent with the Agency's mission. The time is ripe for Congress to send a strong signal to EPA that addressing nano-materials is an important national priority.

***5. Taking a Stand on Environmental Justice***

The Administration budget proposal would cut the EPA Office of Environmental Justice (OEJ) budget by more than 28% to $4.6 million from $6.3 million. This funding request flies in the face of overwhelming evidence that low-income communities and communities of color are still among the most burdened by pollution. For example, in Southern California alone, 71 percent of African-Americans and 50 percent of Latinos live in non-attainments areas for air quality. Nationally, people of color are three times more likely to be hospitalized or die from asthma and other respiratory illnesses linked to air pollution.

The Administration's request is even more startling given recent reports that EPA is currently failing to implement the requirements of Executive Order 12,898 on Environmental Justice. In 2004 and 2006, reports from the Office of the Inspector General ("OIG") at EPA concluded the Agency was failing to properly implement the

Executive Order, and made specific recommendations on how the Agency should properly implement the Order. In 2005, EPA issued a memo reaffirming its commitment of EJ and directing the agency officials to "implement programs and activities to ensure that they do not adversely affect populations with critical environmental and public health issues, including minority and low-income communities." With significant cuts to OEJ's budget, it will be even more difficult for EPA to execute the recommendations of OIG and fulfill the Agency's recognized obligations under the Executive Order.

Moreover, Congress has passed amendments to EPA's appropriations bill directing the Agency to not spend any congressionally appropriated funds in a manner that contravenes or is inconsistent with the Executive Order or delays its implementation.[32] It appears that the Administration's response to the appropriations constraints is to instead reduce the budget available to implement the Order.

NRDC believes that the proposed budget cuts to this important program are irresponsible, unjustified, and directly contrary to the Agency's obligations under the Executive Order and Congress's mandate to properly implement that Order.

That concludes my testimony, thank you.

[32] *See* Public Law No: 109-054; *See* also § 202 of H.R. 2361, Department of the Interior, Environment, and Related Agencies Appropriations Act, 2006: "None of the funds made available by this Act may be used in contravention of, or to delay the implementation of, Executive Order No. 12898 of February 11, 1994."

Mr. WYNN. Thank you, Mr. Simms.

I want to thank all the witnesses for their excellent testimony. This concludes our witness statements and I will now recognize myself for 5 minutes.

I will begin with you, Mr. Langer. NFIB, I believe, represents convenience store owners, gas station owners, truck stop owners and they, to my knowledge, have taken a position that the Federal LUST Trust Fund should not be used as a deficit reduction tool but rather a trust fund, which totals $3 billion right now, and it should be used for that purpose, that is to deal with the 113,000, I believe it is, sites that need cleanup. Is that the position of NFIB?

Mr. LANGER. Well, we are a membership-driven organization, as you know. We have lots of members, and before we can take a position on an issue we have to ballot our members regarding it, and I actually went and looked throughout ballot initiatives over the last 15, 20 years. We have never balloted the issue of underground storage tanks. However, I can say if I had to hazard a guess in terms of small businesses, as a rule, small businesses, if they are collecting fees, excise taxes, et cetera, for a particular Federal program, they are going to want those fees to be used for that program and not for something else. So if they are collecting fees for underground storage tanks, they are going to want it to be used for cleaning up underground storage tanks.

Mr. WYNN. Thank you very much.

Mr. Roderick, I believe you referenced the 2002 shortfall between cleanup needs and actual spending. It is my information that in 2003 the shortfall grew to $174 million and the following year, 2004, this committee surveyed EPA regional staff and our finding was a shortfall of $263 million in terms of the gap in Superfund cleanup needs and actual spending. Have you projected the gap for the upcoming year?

Mr. RODERICK. No, sir, we have not.

Mr. WYNN. Do you have an estimate of the gap?

Mr. RODERICK. No, sir, we have not done any further work since the work that was requested in terms of estimating the gap.

Mr. WYNN. Would you in any way disagree with the $263 million as of 2004?

Mr. RODERICK. I cannot verify that number without actually doing work with it, sir.

Mr. WYNN. OK. Now, you are aware the EPA projected 40 Superfund completions for 2007?

Mr. RODERICK. Yes, sir.

Mr. WYNN. They now revised that to 24 completions. Has your office done an evaluation of this reassessment by EPA?

Mr. RODERICK. No, sir, we have not done that.

Mr. WYNN. You did not mention in your testimony that in fact this budget contains a 26 percent reduction in your budget. How do you plan on completing your mission in light of the 26 percent reduction?

Mr. RODERICK. The budget difference is about $5.1 million, or 10 percent, and I believe that will be sufficient for us to conduct our highest-priority work and I think please most of our customers with our products.

Mr. WYNN. Mr. King, you said the EPA accepted some of the things that your organization recommended, some of the State's recommendations, but that the budget basically continued the pattern of business as usual. Is that a fair assessment?

Mr. KING. That is a fair assessment.

Mr. WYNN. What do you mean when you say business as usual?

Mr. KING. Well, the concern we have is that a number of the programs that are congressionally-mandated are losing dollars when other activities are being funded, and we are concerned about those things, and as we noted in the written testimony, we did set up a priority, high, medium or moderate and low priorities so that we could hopefully direct funding to those high-priority areas that are congressionally mandated.

Mr. WYNN. And I believe on page 6, you site those priorities as the categorical grants, Brownfields, hazardous waste, financial assistance, underground storage tanks, under infrastructure, the Drinking Water State Revolving Fund. Is it fair to say that you are not satisfied with those funding levels?

Mr. KING. We would like to see more funding in those areas. That is correct, sir.

Mr. WYNN. Mr. Bollwage, you indicated on I think it is page 8 that about 15 percent of the cities cited red tape, burdensome paperwork in the State Revolving Fund. Are there any specific recommendations that you would make to us on that score?

Mr. BOLLWAGE. On the revolving loan fund?

Mr. WYNN. Right.

Mr. BOLLWAGE. One of the things that we would recommend is that the mayors would need more tools and resources to meet these costs and the conference recommends fully funding the SRF programs, grants, 30-year no-interest loans and a greater use of the private activity funds.

Mr. WYNN. Thank you.

At this time I recognize the ranking member, Mr. Shimkus.

Mr. SHIMKUS. Thank you, Mr. Chairman.

I would like to start with, this whole debate on trust funds is going to be an interesting dilemma that we have. I mean, we do have trust funds. They ought to go for the intended purposes, they never do, or at least only portions of it, and we have numerous trust funds. So budget reform would be a good process. Does anyone on the panel disagree that if you have a trust fund, that that money should go for its intended purposes? Mr. Roderick, you probably have to be given a request to do a review but do you want to mention it or do you want to say "no comment"?

Mr. RODERICK. It would probably be best to say no comment.

Mr. SHIMKUS. Mayor?

Mr. BOLLWAGE. It would be nice to have money.

Mr. SHIMKUS. Do you have trust funds in your mayoral capacity and do you use some of those funds for other purposes?

Mr. BOLLWAGE. I do not have trust funds.

Mr. SHIMKUS. If we have a trust fund, it is probably the Conference of Mayors' position that it ought to go for that intended purpose. Wouldn't you agree?

Mr. BOLLWAGE. I would tend to agree with that.

Mr. SHIMKUS. Mr. King?

Mr. KING. In South Carolina, we do have trust funds and the expectation is that those funds will be used for——

Mr. SHIMKUS. Do they? Are they?

Mr. KING. Yes, they are, and those people who have oversight on those funds look at that and——

Mr. SHIMKUS. Mr. Langer?

Mr. LANGER. I think it is fairly clear, taxes are a high issue for my members and if my members are going to be paying taxes, they obviously want them to be going to good Government services and the services they are intended to go for.

Mr. SHIMKUS. Mr. McTigue?

Mr. MCTIGUE. Absolutely, sir.

Mr. SHIMKUS. And there is some accountability there also.

Mr. MCTIGUE. Absolutely. If you set up a trust, you should abide by the rules of the trust. If you no longer want the trust, you should repeal it but you shouldn't leave it there and just not honor it.

Mr. SHIMKUS. And really use that money to fulfill other obligations that are not accountable for the trust itself.

Mr. MCTIGUE. That is even worse.

Mr. SHIMKUS. We do it all the time here.

Mr. MCTIGUE. You are taking it for the wrong purpose but it is actually unethical.

Mr. SHIMKUS. I would concur. We are so reliant on trust funds here and using that money for other purposes that it does distort the whole oversight view and the accountability. Mr. Simms?

Mr. SIMMS. I agree, it is hard to argue with the general principle that when you allocate funding to a trust fund it ought to go to what you have allocated it toward. I would add to that, when that trust fund is being allocated to something that has significant and intangible health impacts, if it is well-funded, then that is an even greater reason to make sure that that money is spent the way it was intended.

Mr. SHIMKUS. Like the nuclear trust fund to make sure we dispose adequately of high-level nuclear waste. I mean, nuclear power is putting billions of dollars into a fund, right? We are using that money for doing other things. So the trust fund is a way to address funding and accountability and, well, it is. I appreciate my friend letting you come because shouldn't we be about cost-benefit analysis and making sure that we get the biggest bang for the buck and make sure that we have some results from the analysis, Mayor? Wouldn't you like to see that? And you probably have to see that in your budgeting.

Mr. BOLLWAGE. But it is real difficult when the Brownfields program, for an example, consistently gets cut and it gets lower and lower so whether you call it a trust fund or whatever you call it, the resources are just not there.

Mr. SHIMKUS. Right. Whether there is a trust fund or whether the money gets appropriated out of the trust fund, that is the whole debate that we just had. I mean, if you are going to have a trust fund, it is ethically imperative to fulfill those obligations of that trust fund, and if you have a trust fund and you only use a portion of it, then you have a problem with that. Wouldn't you agree?

Mr. BOLLWAGE. I wouldn't disagree.

Mr. SHIMKUS. I will take that as an agreement then. My time is going to go tremendously fast, and it is unfortunate. Maybe we will get a chance to go again since we are so few members here. But I also wanted to focus on the 1993 piece of legislation that you quoted, Mr. McTigue, which I didn't now about, the Government Performance and Results Act which you credit as being a good step forward in causing us—of course, that was in the old era—it is now the new era here—when the Democrats were in control and they passed legislation and said we ought to be accountable with the results. Can you talk about that one more time?

Mr. MCTIGUE. The legislation is really very simple and it is a first internationally in that you have placed in the statute a requirement for government departments to, A, identify what public benefits flowed from the actions that they took and then to publish an account for those. I think that that is an excellent step forward. From there you have now started to use some of that information to inform the budget decision-making. That is even better. There is a publication that we prepare each year as a matter of some of the research that we do that looks at that reporting of all of the agencies, and from my testimony you will see that EPA sort of falls in the middle. It is not better or worse than the others but it is certainly not great. But the quality of information being put in front of the legislature is dramatically improving as a result of this piece of law. It was passed in 1993 but didn't become effective until fiscal 1999. So you now are into your seventh year of results coming out of that piece of law.

Mr. SHIMKUS. Thank you, Mr. Chairman.

Mr. WYNN. Thank you.

The Chair would recognize Mr. Pallone.

Mr. PALLONE. Thank you, Mr. Chairman.

I wanted to ask two questions of Mayor Bollwage, one about Brownfields and one about the Energy and Environment Block Grant Program that has been proposed by the U.S. Conference of Mayors. I don't know how familiar you are with Elizabeth. It basically includes most of the port facilities. It is known as the Port of Newark and Elizabeth but people think of it as the Port of Newark and then it also includes part of the Newark Airport and then it has a very dynamic downtown area in a traditional city. But in his time as mayor there, it has seen a major transformation. A city that a lot of people had left to move to other parts of the State has grown and he has used some of the Brownfields areas to build new developments and shopping centers, and if you go to Elizabeth now at night, you can go there 9, 10 o'clock at night. All the stores are open. It is dynamic. There is nightlife. It is a major transformation. So he really can give us a good example of how to turn things around.

But I want to ask you first, if you could give us, Mayor, an example of how Elizabeth or other neighboring communities have taken advantage of the Brownfields program to try to redevelop blighted industrial sites and maybe some examples of how the program could be improved in terms of either funding or changes to the underlying law.

Mr. BOLLWAGE. Thank you, Congressman, for those kind comments. I will take the second part first if I can because I think we should focus on that and move forward, and one is the increase in the cleanup grant amounts would be a good way to go, establishing multipurpose Brownfield grants. These grants could be used up to $1.5 million. Applicants could be required to demonstrate a plan first and a capacity for using this multipurpose funding. Most importantly is increase the total Brownfield grant program funding, overall EPA funding for Brownfields grants beginning with $350 million in fiscal year 2007 and then maybe increasing $50 million annually to a goal of $600 million to fiscal year 2012 and beyond so there is a constant attention. Reauthorization of the Brownfield legislation that you spoke about in your earlier remarks, Brownfield remediation grant sites, facilitate petroleum and UST Brownfield cleanups are just some of the issues. We prepared a document on that, Congressman, and we can forward it to you.

On the first part of your question, we took a 166-acre landfill in the city of Elizabeth that was closed in 1970 and capped it and built the Jersey Gardens Mall, which is 2 million square feet of retail. We have four hotels on this site. We now have a state-of-the-art 21-screen cinemaplex plus restaurants working with the Port Authority to, hopefully, have a ferry at that location as well into lower Manhattan. We have used Brownfield grants and that type of funding for the completion of our Hope Six grant which we took 550 units of dilapidated public housing, used some turnkey sites with Brownfield legislation for new housing. We have used some of it or at least tools of it for new schools in our city. We built nine of them over the last 3 years, and plus market-rate housing. So Brownfield tools and all the programs around it are important to urban communities like myself to develop.

Mr. PALLONE. I mean, it is just amazing how the small amount of money that comes from the program has been leveraged by them to do so many different things.

Mr. BOLLWAGE. Thank you, Mr. Chairman.

Mr. PALLONE. It is just unbelievable, I have to say. I am just running out of time so I want to get to the second question. The U.S. Conference of Mayors had this idea you mentioned of Energy and Environment Block Grant program similar to the existing CDBG and I went to the mayors' energy committee and they talked to me about this more when they had their conference here in DC. But if you could talk a little more about that and specifically what types of activities would be funded by it.

Mr. BOLLWAGE. Some of the things we could do is, integrate energy management for municipal buildings and municipal fleet of automobiles. We could stimulate a discussion in growth, especially green building programs and green building certification for code enforcement. Replacing traffic lights would be key with the LED technology that is existing. Emission reductions of the fleet, renewable energy. A new biodiesel plant just opened up in the city of Elizabeth—the owners came to see me the other day—where they are going to be bringing in the product and then shipping out the product. This is a great way to reduce emissions as well. And we prepared a book, Congressman, that I can forward to you on some of the best practices throughout the Nation and how these practices

can be implemented on even a more broad scale for use in our cities if we had such a type of a grant.

Mr. PALLONE. And if I could just tell my colleagues, again, this type of thing would be leveraged with State funds too because our State, for example, New Jersey, has a lot that they are doing now in terms of grants to towns for renewable resources and trying to make buildings more energy efficient so it is just like a small amount of Federal dollars really go a long way. Thank you, Mayor.

Mr. BOLLWAGE. Thank you.

Mr. PALLONE. Thank you, Mr. Chairman.

Mr. WYNN. I certainly thank you. Mayor Bollwage, I would also like to get a copy of that book on best practices, how they can be a very useful tool.

Mr. BOLLWAGE. Thank you, Mr. Chairman.

Mr. WYNN. I would like to recognize Mr. Terry of Nebraska now.

Mr. TERRY. Thank you, Mr. Chairman. I appreciate it.

I actually have a unique position from amongst my colleagues and our distinguished panel, that I spent 8 years on the city council and within those 8 years on the Omaha City Council. We did a Brownfield project with the old Asarko Plant site of which I was sued, being served in my law office by an organization represented here today so that makes me unique probably. But also then dealing with a Superfund site for the city of Omaha that literally is 25 percent of the land mass of Omaha, Nebraska's, city boundaries that does affect children's health in particular from lead contamination. So I have been through Brownfields and Superfund and I have got to tell you that we have been—well, to put it bluntly, the Superfund process is not an enjoyable process. It is still going on years later when we were designated as such a site. It is a very slow process. It is one where the Nebraska delegation comes crawling to the EPA every year begging that we remain a priority so they don't abandon the project. In comparison, doing it under the State DEQ, Department of Environmental Quality, a different project, the Asarko property, as a Brownfield where we partnered with the city, then partnered with the State with oversight from the EPA on an appropriate environmental cleanup, it was done in less than a year. We have a great city park back to the river. We now have the Gallup University campus there. We now have our new Qwest Center on that property, and yet the EPA or the Superfund continues to drag out.

So I would agree with the conclusion of the panel that at least on Superfund as well as the other funds that there is a funding gap between the needs and what is appropriated. But it also begs the question from seeing the process and being involved firsthand, I question the efficiency of the spending of the dollars and I wonder, Mr. Roderick, if any part of your investigation has determined the efficiency of the dollars spent, maybe just cursory percentage of dollars appropriated versus dollars actually used in cleanup.

Mr. RODERICK. No, sir, I don't believe we have examined that in the terms you are speaking of but I think we determined in Superfund that more money was going to administrative costs and less to programmatic or actually cleanup costs. That was one of the conclusions of our most recent reports. But as to dollars associated with that, I don't have the numbers.

Mr. TERRY. I think it would be interesting to know because the perception is that we use a great deal of the funds appropriated, as you said, for administrative overhead, defending lawsuits, as opposed to actually cleaning up so I wonder if appropriating more dollars really gets to cleaning up more properties, and perhaps we could be looking at ways to streamline or create efficiencies within the administration where we can more effectively use dollars.

I would like to know this question. Again, the panel seems generally in agreement that there is a gap. How do we make up that gap then if it is simply appropriating more dollars? You may be exempt from answering that question. I will start with Mr. Bollwage on down. How do we make up that gap?

Mr. BOLLWAGE. Well, one of the things that Congressman Pallone talked about earlier was doing the polluters' tax and reinstituting that again. That is one way you can do it.

Mr. TERRY. The polluter tax was a tax where we taxed industry in general to fund the Superfund?

Mr. BOLLWAGE. Yes, because now it is coming out of the general fund but you could reinstate it. You could recoup much more dollars. And we had a Superfund site in our city at Chemical Control which has been cleaned up in the 1980's.

Mr. TERRY. Mr. King?

Mr. KING. Well, quite truthfully, I can't speak for ECOS.

Mr. TERRY. Mr. Langer, do you have an opinion?

Mr. LANGER. Taxes hit our members disproportionately as do environmental regulations so we are loathe to endorse any sort of a tax on anything, frankly.

Mr. TERRY. Mr. McTigue?

Mr. MCTIGUE. Sir, I served on a government where we moved dramatically toward user pays and I still support that philosophy, that as much as you can move toward user pays, that is a good thing to do. There is a second thing though. I think in the case of every site you seek to clean, you should look at how big is the problem, how quickly can we complete this whole operation and at what cost, because if you don't look at how quickly, then I don't think that you are going to give pressure on how could we more innovatively find ways of solving these problems. We are using processes and procedures that many instances I believe are old and archaic and there are probably better processes and procedures that would be available, and they may well be much cheaper than what is being used at the moment.

Mr. TERRY. Interesting.

Mr. Simms?

Mr. SIMMS. I would agree with a couple of the points that you are making. One is that the Agency's programs including the Superfund program do deserve and require some evaluation for efficiency in how those programs are managed to make sure that we really are getting the best quality that we can be getting out of these programs when they go to a site, that that site is managed well, it happens quickly and it is done effectively.

As for the funding question, I would certainly endorse what I think I heard one of the other panelists say, that reinstating the chemical industry tax, petroleum industry, chemical industry tax for Superfund is, in my opinion, the one way to resuscitate the

monies in order to get this done and it ties those monies back to the industries that are creating the chemicals. Clearly not all the industries are contaminating but it is these chemicals that are ending up in the environment at some point and reintegrating those costs at the front end of that process is a way that makes sense and has worked clearly in the past.

I wanted to make one other observation. You are not alone here in the fact of having been sued by someone on the panel. Before I moved to NRDC, I was an attorney in the Office of General Counsel at EPA. I worked on several rulemakings that I was sued upon by myself.

Mr. WYNN. Mr. Stearns?

Mr. STEARNS. Yes. Thank you, Mr. Chairman.

So you were sued by yourself?

Mr. SIMMS. In a manner of speaking.

Mr. STEARNS. OK. Mr. McTigue, you are a vice president at George Mason, the director of Government Accountability Project. Lots of times on EPA projects, we are always talking about more money to get absolute success on these projects versus methodology, and I guess my question to you is, how do you find the EPA measure, their way of measuring absolute success in environmental protection? Do you have your own method or thoughts on how goals and measuring of success can best be achieved? Is it by throwing more money? Is that always the most appropriate way to do it?

Mr. MCTIGUE. No. Throwing more money at a problem, if you don't know what the problem is, how big it is and how it is best rectified is not the right thing to do for a start. You should identify those things.

Can I say as a compliment to EPA, from when I first became associated with it 9 years ago and looked at their first strategic plan to where they are today, they have a much clearer view of the world and what they are trying to do so they have improved dramatically. Where they are in my view still short of good performance is in identifying the scale of the problem, how big is this problem. For example, sir, with regard to Omaha, how much has the health of people in Omaha deteriorated because of the lead problem? What is the increased fatality level there compared to other places? What is the diminished wellness of the people of Omaha? And the knowledge of that would then provide for us some idea of what prioritization we would give to fixing that problem and how much we might be prepared to invest in it, and in many instances in my view, EPA falls short of scooping the problem and giving us a good idea of what sound science tells us would be the way to fix this problem permanently.

Can I just finish with this comment? When I was in the Cabinet, we had a test for all proposals that came up to us, and one of the questions in that test was, what is the problem, clearly define it, what will remedy it, what action are you going to take, when will we be finished and not have to spend money on it. You would be surprised how many times that last question sunk all of the proposals because nobody was able to say we will be finished in *X* period of time. If you haven't got that answer, I don't think you are properly addressing the problem. The EPA does not do that well.

Mr. STEARNS. If you can't define when you are going to be finished with a problem, then you can't define how much money you are going to spend?

Mr. MCTIGUE. Exactly.

Mr. STEARNS. Do you have another example where the EPA may have fallen short?

Mr. MCTIGUE. In my view, yes. If I look at the budget justification this year, and I think that it is great that we have got this information available because it was never available before.

Mr. STEARNS. Because what you are saying is, the EPA oftentimes wants more money and Congress wants to give them more money but there are cases where they haven't defined the components you just mentioned and it makes no sense to give them more money or to talk about an absolute success until all those things have been defined.

Mr. MCTIGUE. Well, one of the weaknesses in their budget presentation this year in my view is the fact that for many of places where there are changes, either increases or decreases in spending, there is not good rationale to say what is the consequence of this change. There is a presumption in many cases that this amount of money can be withdrawn and the capability of the organization will not be affected one way or the other. I think that that is a leap of faith that we shouldn't really be prepared to accept.

Mr. STEARNS. Mr. Langer, you are manager of regulatory affairs at the NFIB and this question is dealing with voluntary programs.

Mr. LANGER. Sure.

Mr. STEARNS. A lot of people have talked about the merits or lack thereof. I somehow think there is a lot of merit to them. You sort of represent the small-business community. I was a member of NFIB when I had my small business. So you have real-world experiences, and lots of times in a small business you have to comply with a lot of EPA programs and lots of times you would like to know if you could do it voluntarily without this huge mandate or this threat of fines and everything. So how has the voluntary program worked and benefited the environment in your view and is it a very useful tool?

Mr. LANGER. Well, I think one of the problems you have to look at is, the scope of the burden that is faced by these businesses in day-to-day operations. We know that regulations cost small businesses about $7,700 per employee per year for businesses with fewer than 20 employees, and that is 90 percent of the businesses that are out there. So if you are an average NFIB member with six employees, you are talking about a roughly $50,000-a-year regulatory compliance cost, and that is the cost of when you know exactly what you are doing and the amount of time you have to spend figuring out what needs to be done.

Mr. STEARNS. Fifty thousand dollars would take some of those businesses and put them in bankruptcy.

Mr. LANGER. It does. It does. The bigger problem is, we are trying to reach this goal of 100 percent compliance and it is a lofty goal. It is a laudable goal. I mean, we need to have that. We all want environmental protection. But the problem is that these small businesses simply don't know where to go to get the information so they spend a considerable amount of time having to ferret out what

they need to do, whereas if EPA took an active role—and I will give you an example, OSHA, for instance. OSHA is about as big a bogeyman to small businesses as the EPA is and when it comes down to it, OSHA has taken an active role. The new director, Ed Folk, is going out and proselytizing to small businesses about the importance of occupational safety and health in their businesses and he is getting a greater bang for the buck in doing it. He is investing them in the process, showing them how they can save money by being compliant with the regulations that are out there and showing them what they need to do in a non-punitive manner. You can go out and you get an OSHA consultation, an OSHA inspector will come out and review your business and show you what you need to be doing.

Mr. STEARNS. Thank you.

Mr. WYNN. Thank you. Since we don't have too many Members here, I think we will probably have a second round of questioning and if Members want to stay and do follow-up, they can.

I would like to proceed and I want to ask you, Mr. Roderick, it is the Inside EPA reprinted e-mail you sent out on February 9, and it said that you anticipate losing about 30 employees, FTEs. Is that correct?

Mr. RODERICK. Yes, sir, that is correct.

Mr. WYNN. And it also said that very likely you will have to close facilities.

Mr. RODERICK. That is a possibility, sir, yes, sir.

Mr. WYNN. Your term was "very likely," and your characterization was "unwelcome and disappointing," which is a little bit different from what you said here.

Now, you have staffers who work on this voluntarily Performance Track program, right?

Mr. RODERICK. Yes, sir.

Mr. WYNN. And in fact, you studied 30 member companies and found less than two out of 30 had fulfilled their commitments; 93 percent did not fulfill their commitments. Isn't that true?

Mr. RODERICK. Well, sir, I don't want to discuss that report until it is actually completely completed. We want to complete our process.

Mr. WYNN. Alright, fine, if you don't want to discuss it, but it was characterized as a gold standard, this Performance Track program was characterized as a gold standard?

And also, this was not done by congressional statute, was it, these voluntary programs?

Mr. RODERICK. No, sir.

Mr. WYNN. Thank you.

Mr. Simms, I think at the very end of your testimony you were trying to mention a couple points about the voluntary programs and also I think environmental justice. If you would kind of expand on that, I would appreciate it.

Mr. SIMMS. Well, I wanted to mention environmental justice. Environmental justice is obviously a very important issue, and the budget request reduces funding to the Office of Environmental Justice by, I believe it is 28 percent. This is a very troubling development, given that it is very clear from the data that is readily available that people in low-income and minority communities are still

disproportionately affected by pollution. In addition to that, there are clear indications in recent IG reports that EPA is already not living up to its obligations under the Environmental Justice Executive order. That was one of the issues I wanted to make sure that the panel is aware of. That funding is very important to communities that in many cases are least able to protect themselves.

Mr. WYNN. And did you want to comment on the voluntary program?

Mr. SIMMS. Well, I believe I did comment on the voluntary program, and I can expand on that a little bit. One of the things I want to make sure that this committee understands is that there are a number of voluntary programs that are very good and that have demonstrated very good results. There are a number of voluntary programs for what that is absolutely not the case, and there are voluntary programs that have a deregulatory component to them that allow otherwise regulated industries to take a regulatory off-ramp that reduce the scrutiny of permanent reviews, reduce inspections and to the extent that that happens, to the extent that these voluntary programs have a central component of the program, an element of deregulation. There has to be a heightened level of scrutiny and accountability for those programs to absolutely ensure that if that program is going to exist and it is going to remove otherwise applicable regulatory requirements, that it is going to achieve the results that it is intended to achieve and I——

Mr. WYNN. Can I just interject here? What is the authority for a non-statutory program to remove statutorily imposed regulations?

Mr. SIMMS. Well, the voluntary programs do not remove the applicability of the statutory requirements. What they do in many cases is provide alternative compliance mechanisms the statute itself does not require a certain schedule for inspections or a certain depth of process for permanent reviews and so the Agency has the authority within its discretion to implement the statutory requirements to allow for different levels of scrutiny.

Mr. WYNN. Before my time runs out, let me interject, because you make some very good points. Don't you think then if they are going to have these programs to create these, I think you described them as detours or off-ramps, that they ought to be required to submit—that the Agency rather ought to be required to submit them to Congress so that we could review them before they are implemented?

Mr. SIMMS. Absolutely, and I will go back to my three themes which are accountability, transparency, and accountability—and those things are absolutely important both EPA holding accountable the participants in these voluntary programs and Congress holding accountable EPA to make sure that the benefits of those programs are actually realized.

Mr. WYNN. Thank you. My time is up.

Mr. Shimkus.

Mr. SHIMKUS. Thank you, Mr. Chairman.

I think one thing that we found in the hearing is there is a consistency by everyone in the panel, real information, real science, evaluation of the response. Even with you, Mr. Simms, when you were talking about these voluntary programs, you are saying there

are some good programs, there may be some bad ones, but until we gather up the real information to make value judgments, likewise on a cleanup site, the same issue on the flip side is, real information, real data, let us see if there is a real return on the money we are spending. So Mr. Simms, I would encourage you to talk with Mr. McTigue because I think some of those responses, it is really the same formula, in other words, looking at it from different arenas but it is the same formula.

Let me go to the mayor for a second. As you know, Federal Brownfields law does not allow States and municipalities to use cleanup funds to pay for administrative costs, and I have been surprised by your organization's argument that this provision was a technical flaw that Congress did not intend. I noticed in your testimony that you are encouraging statutory changes to this law that you have previously emphatically considered unamendable. Do you consider this change, meaning a reduction of cleanup funding grants in favor of municipal and State bureaucracy costs, one of those you allude to in your testimony?

Mr. BOLLWAGE. Could you go through that again?

Mr. SHIMKUS. Well, yes. I will put it in common language. Brownfields funds go to cleanup. Your organization says we have some administrative costs that we would like to use some of these Brownfield dollars to go. That is really part of the basis of this whole debate on how we budget and what kind of return on the investment. Do you agree with that position?

Mr. BOLLWAGE. Well, we were one of the first cities to get a $200,000 Brownfields grant in the State. We were able to use that grant administratively to characterize what our Brownfield sites were, and going to what Mr. McTigue said, it would be a little difficult to cleanup a Brownfield if we didn't know what it was and that would have to be some type of administrative cost to assess that problem.

Mr. SHIMKUS. But I am talking about the actual Brownfields fund itself. Those monies go to cleanup. We don't want those to go to administrative costs, do we?

Mr. BOLLWAGE. Well, if you agree with Mr. McTigue's assessment, you are going to have to figure out what the problem is and then know where you are going and that would be administrative costs, and then after that if there is a fund dedicated for Brownfield cleanup then that should be used for cleanup.

Mr. SHIMKUS. Going to the Superfund debate, which I have been involved with for a long time since I have been on this committee and we did small-business relief years ago back in 1998 through the committee, there was a NCEP study that said 50 cents on every dollar was spent on litigation in the Superfund. Now, if 50 cents of every dollar is going to paperwork, bureaucracy and court claims, do we think there would be a better use of those dollars in actual cleanup?

Mr. BOLLWAGE. I can tell you in the city of Elizabeth, we had Chemical Control, which blew up in 1980, and Superfund dollars to the tune of $50 million were used to clean it up. It was not litigated in any way, shape or form. The Superfund dollars were used to cleanup what is now a cement slab. So from personal experiences, we do not deal with a lot of administrative costs on legal

bills regarding a cleanup of a Superfund site, nor do we deal with it in cleaning up the 166-acre site of the Jersey Gardens Mall, which was a Brownfield's site. We planned, we prepared and I think if you do the things that Mr. McTigue was talking about, you wouldn't deal with lawsuits, but there has to be some type of administrative costs up front.

Mr. SHIMKUS. Let me see if I can get an answer——

Mr. BOLLWAGE. I answered. You just don't like it.

Mr. SHIMKUS. Well, do you want identified cleanup funds to go for cleanup or administration costs?

Mr. BOLLWAGE. Do I want identified cleanup costs——

Mr. SHIMKUS. Cleanup funds to go to cleanup or administration costs? In other words, bulldozers, workers to cleanup the site or litigation, paperwork——

Mr. BOLLWAGE. Well, if you do the proper planning, the proper planning would avoid litigation.

Mr. SHIMKUS. Well, why don't you just answer the question?

Mr. BOLLWAGE. I am.

Mr. SHIMKUS. Should cleanup costs go to clean——

Mr. BOLLWAGE. I am going to answer the question. Cleanup costs, Congressman, should go for cleaning up the site. When you do public-private partnerships, sometimes you can get other people involved in this——

Mr. SHIMKUS. I don't have a beef with that. My focus is making sure that if we are going to do cost-benefit analysis, get a real return on our dollars, cleanup dollars should go to cleanup.

Let me just highlight some of Mr. Langer's testimony in my last 10 seconds, is the Business Gateway program is a good program to get the small businesses involved and encouraged in doing proper compliance and an easy method, and I think that would be helpful. I don't have time to receive an answer but I wanted to highlight that as a thing that I thought was important.

Thank you, Mr. Chairman.

Mr. WYNN. Certainly. I noted something that is kind of interesting. EPA spent about $23 million on administrative costs in this budget.

Mr. Terry.

Mr. TERRY. Thank you again, Mr. Chairman.

Just following up a little bit on Mr. Shimkus's comments. Mayor, you mentioned something about partnerships and I think that is the nice thing about Brownfields as opposed to being put on the priority list where you really lose a lot of control at the local level. On a Brownfield, you can see a partnership between the local community and State and I think that is a good way to share those administrative costs. I think it is fair that if we have a grant program for Brownfields from the Federal Government, that those be used or we could say those can be used strictly for the cleanup. So actually my question, since Mr. King has been fairly lonely in this discussion about the participation of State governments in the Brownfields process and how they can lend their level of expertise in the administrative parts, the environmental engineering studies, for example. Would you care to comment on being a participant and the advantage of Brownfields?

Mr. KING. I will do that from my position in South Carolina.

Mr. TERRY. Absolutely.

Mr. KING. I think Brownfields has been just tremendous. It really has helped in a lot of areas that probably would not have been redeveloped or certainly would not be as far along as they are today. We are actively engaged at the State level with helping communities in the Brownfields area and I think it has been a great partnership.

Mr. TERRY. I appreciate that.

Would you say that too as well, Mayor? Have you worked with your State in the Brownfield cleanup that is now a nice mall?

Mr. BOLLWAGE. Yes, but the Nation's mayors would like to see the Brownfields funds naturally directly come to the municipalities. As a former councilman, you would understand that. But we have very cooperative relationship in the State of New Jersey. We would have never been able to build the Jersey Gardens Mall because there was legislation to offset bringing private dollars to offset the Brownfield dollars.

Mr. TERRY. Well, in all due respect, as one of the people that voted to put up funds to do the administrative work, we were gladly putting those up to make sure that we didn't get EPA and a priorities list on us. I think the little dollars that we spent—I shouldn't say little. It was probably a million or two.

Mr. BOLLWAGE. That is why you got sued.

Mr. TERRY. I was personally served by the sheriff at my law office. I thought I was being sued for malpractice, which I never was. But I want to end with that.

Mr. McTigue, I will tell you, your comments here I think have been the most intriguing of the hearing, and just a little bit of editorial comment. I think probably one of the areas that we can help the EPA improve on are exactly the criteria that you set out. I think on their priority projects, they set goals. I think they have the right intent but sometimes they don't have it clearly defined what the objectives are, what the end game is, and we have seen that just in Omaha where in the lead contamination Superfund site, for example, they are still doing their research several years later about the health impacts within the city and I am not sure they have been able to determine what those are yet. In fact, the criteria, parts per billion within the soil, has actually changed throughout the process, which has led to a great deal of consternation within the community that maybe games are being played to save dollars. It may be. I don't know. I think it comes from the fact that perhaps that sound science hasn't been used at the beginning of the process to set the levels of contamination that truly affect the health that can all be agreed upon.

In fact, this is just an editorial, not a comment. My first meeting with the EPA was on lead in water in small municipalities in Nebraska and we asked if the EPA could be more flexible, that the city could take out the old piping and put in new piping instead of having to put in a water treatment facility and they said no, and then-Senator Kerrey asked the EPA representatives how were you able to determine the particulate level, that that level affects health; show me the study. They said we don't have one but we will get you one. Now, that established a great deal of credibility in my mind that they just artificially set a level, then produced 90 days

later a study that wow, backed up that level. And so I do agree with your level on sound science and perhaps maybe we can get to a point where we work in here not only trying to get more dollars but make sure that we set out some criteria to help them become more efficient.

Mr. Chairman, can I just have a few more seconds?

I want to ask Mayor Bollwage, on the revolving fund, this is a fund that many communities in Nebraska, not my district, but Nebraska use. My understanding of that revolving fund is that it was to go to cities or allow cities that are smaller in nature, can't really go into the market with municipal bonds. You made a comment in your statement that sounded like your city should not have been forced to have to go out into the municipal bond market to do your water treatment facilities. Did I understand your point correctly there?

Mr. BOLLWAGE. With clarification, Congressman.

Mr. TERRY. I appreciate that.

Mr. BOLLWAGE. I rushed through the comments because of the time but in my written remarks, the SRF loans, we recognize the importance that they are to the small municipality and we would like to see it funded with 30-year no-interest loans and other things. It was easier for a larger municipality like myself to go into the private financing of the bond market but for smaller municipalities, that revolving loan fund is direly important.

Mr. TERRY. Alright. Because I didn't want to have the League of Cities saying that——

Mr. BOLLWAGE. The U.S. Conference of Mayors.

Mr. TERRY. When that wasn't its——

Mr. BOLLWAGE. Oh, not at all, and I thank you for the opportunity to clarify.

Mr. WYNN. Mr. Sullivan.

Mr. SULLIVAN. Thank you, Mr. Chairman. I want to thank all the panelists for coming today. I appreciate your time you spent today here.

Mr. Simms, as I understand it, the Democrat-authored House Resolution 20 only adds money to the Superfund account and the Clean Water State Revolving Loan Fund. Since your testimony is very critical of the Bush budget proposal on area such as LUST and the Drinking Water State Revolving Fund, in light of the constitutional mandate on the two branches of government, don't you have anything critical to say to Congress about the lost opportunity to increase funding for those areas, especially considering the weight your testimony gives them?

Mr. SIMMS. I am not sure I fully understand. It is a relatively long question. I am trying to piece it together.

Mr. SULLIVAN. Sure.

Mr. SIMMS. Let me give you the gist of my testimony. The gist of my testimony is, there is an absolutely critical need. The EPA has demonstrated that need through some studies looking at the upcoming costs for water infrastructure, the number of leaking underground storage tanks and the number of Superfund sites yet to be cleaned up. My testimony is about making sure that those issues get addressed. What I have before me is the budget proposal. That is what I am looking at. That is why I am criticizing

the budget proposal for its failure to do that. As a foundational matter, what I am talking about is getting these environmental issues addressed.

Mr. SULLIVAN. OK. I have got a couple more, if I got the time. Also, Mr. Simms, you mentioned in your testimony that the EPA is increasingly reliant on voluntary, as opposed to regulatory, programs and yet you acknowledge that less than 2 percent of the EPA's budget supports these activities. What percentage, Mr. Simms, of the Agency's budget would you appropriate in your view to support partnership activities? What do you think is the proper amount?

Mr. SIMMS. Let me clarify.

Mr. SULLIVAN. If not 2 percent, what do you think is good?

Mr. SIMMS. I understand your question but it is a bit of a misnomer in terms of what my testimony says, and let me just clarify that for you so it is clear to this committee. I do not have a blanket criticism, NRDC does not have a blanket criticism of the amount of money going to partnership programs. There are some very good partnership programs. The criticism is, if money is going to partnership programs, those partnership programs have to be transparent and accountable and subject to scrutiny both through a functional process within EPA and an oversight function from Congress. It is not about how much money it is. It is about how those funds are used and demonstrating that those funds are used in an appropriate way that actually achieves the benefits that are being——

Mr. SULLIVAN. Since they are transparent, you would advocate more partnership programs and more budget money spent on them, right?

Mr. SIMMS. Well, I think there may be a point at which there is a tension between the Agency's ability to institute its core functions effectively and how many voluntary programs there are and how effective they are you could have at the same time. I don't know what that number is and it is not——

Mr. SULLIVAN. But also if it is more transparent like you are saying, I agree that it should be, wouldn't you agree that it could be more than 2 percent should be spent on those programs if they are more transparent? Wouldn't you agree?

Mr. SIMMS. I have no categorical objection to 2 percent or some level above 2 percent, as long the programs are being overseen.

Mr. SULLIVAN. Also, I got one more question, sir. You are asking for $5 to $10 million per year starting in fiscal year 2008 for EPA to develop regulations and guidelines appropriate for commercial-scale CO2 disposal projects. You say that for the EPA to develop some regulatory framework will take several years. I understand that a task force put together by the Interstate Oil and Gas Compact Commission is months away from developing guidelines for the States in this regard. It is almost complete. Before we start spending Federal dollars on Federal effort at EPA, would it not make more sense to take a close look at what the Interstate Oil and Gas Compact Commission task force produces first, and aren't the States where this kind of expertise resides?

Mr. SIMMS. I would answer that in two parts. The one is, even if the EPA starts now with this budget year focusing intensely on

what it will take to regulate $CO^2$ sequestration, that feedback between the Interstate Compact and the Agency can happen and can happen effectively. So I don't think there is a tension between giving the Agency the money to do that and having a process that is moving forward providing some information about that sort of a guidance within another entity. So I don't think that there is a real tension between the two and the amount of money we are talking about going to EPA to do this stuff is quite small and it is absolutely important that this get off the dime really quickly. If it does not, we will be already behind the eight ball when we get to the point where we really need to start putting the stuff in the ground.

Mr. SULLIVAN. Well, thank you very much for being here. I appreciate it.

Mr. SIMMS. Thank you.

Mr. WYNN. At this time the Chair would recognize Ms. Solis for 5 minutes.

Ms. SOLIS. Thank you, and I apologize, Mr. Chairman, for being late. I was in another meeting. My question, if I might, I would like to pose this to Mr. King. The Congressional Research Service recently calculated that the President's budget request of $842 million for the Drinking Water State Revolving Fund is only, in our estimation, $802 million when adjusted for inflation for 2006 dollars. That is the lowest amount of purchasing power in the history of the program, and at the same time the infrastructure needs of the States, which EPA estimates to be at $263 billion in its 2005 report, are huge and apparently growing. Your prepared testimony with respect to Drinking Water State Revolving Fund identified eroding effects of inflation on the DWSRF appropriation. I would like to have a clarification on what you mean with respect to the effect inflation is having on this critical public health program, and I know I don't have enough time so if you could please be very brief.

Mr. KING. I can do that. The message there is just the fact that the dollar today does not buy the same amount as the dollar 5 years ago, and the monies that are allocated are at the same level and that is not different than the other programs that we receive dollars from EPA. The dollars are the same, and as inflation goes on throughout the years, that buying power is not there.

Ms. SOLIS. But it does appear as though the level amount that we are looking at obviously, there is a difference there in terms of funding. You will admit that?

Mr. KING. Yes.

Ms. SOLIS. OK. Second question for Mr. King. One of the ECOS's principles is to first and foremost fund the core programs that have been enacted by this Congress such as Safe Drinking Water, Leaking Underground Storage Tanks, Air Quality Management, Hazardous Waste Management and the State Revolving Fund. Last year the ECOS identified a number of EPA contracts where contractors were tasked to design and market voluntary programs including telemarketing recruiting activities. At the same time, EPA cut core Clear Air grants to the States. Can you please explain your concerns regarding the growing use of contracts for non-core programs that have been specifically authorized by Congress?

Mr. KING. We believe that because of the congressionally mandated programs that we have an obligation to fulfill those requirements, and we just cannot address those requirements when dollars go down in those programs that were identified.

Ms. SOLIS. And are those competing programs then?

Mr. KING. In some cases they are, and as you will see in the testimony, we identified those priorities as a high priority and moderate priority and low priority and some of our moderate priorities are mandated as well but we had to establish some priorities there.

Ms. SOLIS. But they would take precedent over, say, perhaps statutory priorities?

Mr. KING. No, there are not statutory priorities that are in that category.

Ms. SOLIS. This is a question for Mr. Roderick. My time is coming to a close here. Mr. Roderick, I think that the work your office is doing on the voluntary Performance Track program is indeed important work. The program is not specifically authorized by any statute and is costing at least $5 million per year using approximately 30 full-time employees. Last year a group at Harvard University reviewed the Performance Track program and made these findings: "It is not clear that programs like the Performance Track are encouraging companies to do more than they would anyhow." That is a quote. We also have been unable to find such evidence that Performance Track encourages facilities to improve their performance. The evaluation report prepared by your office studied whether 30 or so member companies fulfilled the commitments they made to improve environmental performance at their facilities. Your staff found that only two of the 30 member companies met all of their commitments; 93 percent did not. Have you made Administrator Johnson aware of these extremely disappointing results for the program that the Agency claims is a gold standard for voluntary environmental programs?

Mr. RODERICK. Well, we do not want to comment or discuss anything to do with our ongoing work. We want to wait until it is fully complete before we discuss the process that was used and the results that were——

Ms. SOLIS. Have you spoken to the Administrator about this?

Mr. RODERICK. No.

Ms. SOLIS. You have not, for the record?

Mr. RODERICK. For the record.

Ms. SOLIS. I want to be clear. The Administrator is not aware that there is a report to this effect that I just——

Mr. RODERICK. Well, that is a different question. I am sure he is aware that there is a report but we have not had a discussion about it in any way.

Ms. SOLIS. Is there a statute that specifically authorizes EPA to establish and implement Performance Track?

Mr. RODERICK. Not to my knowledge.

Ms. SOLIS. There is not. Thank you very much.

Mr. WYNN. I would like to thank all of our panelists for being so generous with their time——

Mr. STEARNS. Mr. Chairman, I ask unanimous consent that Members may have an opportunity to submit written questions for the record?

Mr. WYNN. Without objection.

Mr. STEARNS. Thank you.

Mr. WYNN. Again, I thank the panelists for participating. Thank you for your time and your testimony. This concludes our hearing. I would note that this subcommittee will meet next week, Thursday, March 8, at 9 a.m. to hear from the Administrator of EPA, Mr. Johnson. Thank you very much.

[Whereupon, the subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]

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**U.S. House of Representatives**
**Committee on Energy and Commerce**
**Washington, DC 20515–6115**

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MARSHA BLACKBURN, TENNESSEE

June 18, 2007

The Honorable J. Christian Bollwage
Mayor of Elizabeth
50 Winfield Scott Plaza
Elizabeth, NJ 07202

Dear Mayor Bollwage:

Thank you for appearing before the Subcommittee on Environment and Hazardous Materials on Thursday, March 1, 2007, at the hearing entitled "The Environmental Protection Agency Fiscal Year 2008 Budget Request." We appreciate the time and effort you gave as a witness before the subcommittee.

Under the Rules of the Committee on Energy and Commerce, the hearing record remains open to permit Members to submit additional questions to the witnesses. Attached are questions directed to you from certain Members of the Committee. In preparing your answers to these questions, please address your response to the Member who has submitted the questions and include the text of the Member's question along with your response.

To facilitate the printing of the hearing record, your responses to these questions should be received no later than the close of business on July 2, 2007. Your written responses should be delivered to 2125 Rayburn House Office Building and faxed to (202) 225-2899 to the attention of Rachel Bleshman. An electronic version of your response should also be sent by e-mail to Ms. Bleshman at rachel.bleshman@mail.house.gov. Please send your response in a single Word or WordPerfect formatted document.

Thank you for your prompt attention to this request. If you need additional information or have other questions, please contact Rachel Bleshman at (202) 225-2927.

Sincerely,

JOHN D. DINGELL
CHAIRMAN

Attachment

cc: The Honorable Joe Barton, Ranking Member
Committee on Energy and Commerce

The Honorable Albert Wynn, Chairman
Subcommittee on Environment and Hazardous Materials

The Honorable John Shimkus, Ranking Member
Subcommittee on Environment and Hazardous Materials

July 11, 2007

The Honorable John D. Dingell
Chairman, House Energy and Commerce Committee
2125 Rayburn House Office Building
Washington, DC

Dear Chairman John Dingell:

Thank you for providing me the opportunity to speak before the Subcommittee on Environment and Hazardous Materials on Thursday, March 1, 2007, at the hearing entitled "The Environmental Protection Agency Fiscal Year 2008 Budget Request."

Attached are the answers to the specific questions proposed by The Honorable John Shimkus. The written responses are in a single Word formatted document, as you had requested.

Thank you for your attention and time, and it was more than my pleasure to answer these respective questions.

Sincerely,

J. Christian Bollwage
Mayor of Elizabeth, NJ

Attachment

Cc: The Honorable Joe Barton, Ranking Member
Committee on Energy and Commerce

The Honorable Albert Wynn, Chairman
Subcommittee on Environment and Hazardous Materials

The Honorable John Shimkus, Ranking Member
Subcommittee on Environment and Hazardous Materials

The Honorable John Shimkus - Questions

1. *I appreciated your testimony acknowledging that budgetary matters are not easy and that priority setting means that sometimes well-meaning programs have to get less or nothing at all in order to best spend finite resources. At the end of your testimony, you declined to "make our job easier" by suggesting any EPA programs for reduction or elimination. Since some of our other witnesses have had no problem making these suggestions, let me give you another chance. Which programs do you think should suffer from the budget tax?*

Thank you very much for another opportunity to respond. However, the Conference of Mayors' position, as my testimony indicated, is to support programs that assist us with our core work - providing clean and safe drinking water; treating wastewater; managing solid waste and recycling. Mayors have also been put in the business of improving air quality; cleaning up contaminated plots of land or brownfields; implementing pollution prevention techniques to reduce toxic waste; and doing our part to protect the climate through improved energy efficiency, utilizing alternative fueled fleets, and encouraging green buildings.

Any tools, assistance, or funding that Congress provides to EPA that in turn can assist us with those efforts, are welcomed by the Mayors of this nation. Other assistance that would be welcome and that would not cost anything is the elimination of unfunded federal mandates placed on cities. If Congress does not deem these programs to be important enough to be funded at the federal level, why should the financial burden be placed on local government.

As to what is not working and what programs should be cut, we will leave that to other experts to debate with the proper data and analysis.

2. *In your testimony, you state cities generally prefer using municipal bonds and pay-as-you-go arrangements as opposed to the State Revolving Loan Fund that is authorized by the Safe Drinking Water Act. The EPA budget request for fiscal year 2003 includes a proposal, known as the Water Enterprise Bond, to exempt Private Activity Bonds (PABs) that are used to finance drinking water and wastewater infrastructure from the PAB unified state volume cap. This will allow states and local communities to have greater access to PABs which in turn will help their financing efforts and increase capital investment. Since, according to your testimony, PABs represent an increasing tool of cities in affording water projects, would you support this proposal and why?*

Cities prefer municipal bonds and pay-as-you-go mostly because they are easier to execute than the State Revolving Fund (SRF) loans, and because private activity bonds are not easy to get approved under state volume caps for water and sewer at the present time. The Conference of Mayors has asked Congress to lift the state volume

caps off of PABs intended for investment in public-purpose water and sewer infrastructure. If volume caps were lifted we would experience a boost in aggregate investment in public water and sewer by cities because there would be another financial tool available. They would also allow for cost-efficient partnership approaches where the public sector can realize other public benefits from harnessing the many private sector talents in construction, planning and system operations.

Additionally, we continue to urge Congress to recapitalize the Clean Water State Revolving Fund and Drinking Water State Revolving Funds because they are used by smaller municipalities, and they provide a piece of project funding for the larger cities. No one single source of water and sewer financing can provide all of the money needed to sustain this vital infrastructure.

The Water Enterprise Bonds as envisioned by the Administration is a step in the right direction for helping cities access private equity (in the form of PABs) to help finance public-purpose water and sewer infrastructure investment. Local government is now paying more than $82 billion a year for water and sewer services and infrastructure investment. The USCM estimates that the annual costs will exceed $100 billion a year by 2010. Cities can't do it alone. They need cooperation from the federal government, they need to charge consumers more for water and sewer and they will still need to access to greater levels of private equity.

The only problem we see with the Water Enterprise Bonds is that US EPA, in its typical command and control fashion, is trying to attach even more strings to cities that use them, as if there are not enough strings and requirements already. We believe Congress should lift the state volume caps off of the PABs, and leave the already overly extensive unfunded environmental mandates in place without adding to them.

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**U.S. House of Representatives**
**Committee on Energy and Commerce**
**Washington, DC 20515–6115**

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June 18, 2007

Mr. Roger W. King
President
Environmental Council States
Deputy Commissioner, South Carolina
Department of Health and Environmental Control
c/o Environmental Council of the States
444 North Capitol Street, N.W., Suite 445
Washington, D.C. 20001

Dear Mr. King:

Thank you for appearing before the Subcommittee on Environment and Hazardous Materials on Thursday, March 1, 2007, at the hearing entitled "The Environmental Protection Agency Fiscal Year 2008 Budget Request." We appreciate the time and effort you gave as a witness before the subcommittee.

Under the Rules of the Committee on Energy and Commerce, the hearing record remains open to permit Members to submit additional questions to the witnesses. Attached are questions directed to you from certain Members of the Committee. In preparing your answers to these questions, please address your response to the Member who has submitted the questions and include the text of the Member's question along with your response.

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Thank you for your prompt attention to this request. If you need additional information or have other questions, please contact Rachel Bleshman at (202) 225-2927.

Sincerely,

JOHN D. DINGELL
CHAIRMAN

Attachment

cc: The Honorable Joe Barton, Ranking Member
Committee on Energy and Commerce

The Honorable Albert Wynn, Chairman
Subcommittee on Environment and Hazardous Materials

The Honorable John Shimkus, Ranking Member
Subcommittee on Environment and Hazardous Materials

The Honorable John Shimkus

1. Recently, a fire at a hazardous waste storage facility in North Carolina was allowed to burn and thousands of people were evacuated because the records of what was on site, the paper manifest, were destroyed with the chemicals. Had there been an electronic manifest system, emergency responders could have real time web-based data of what was on this site.

   The EPA budget proposal sets aside some funding for the creation of an electronic manifest system for hazardous waste. As you know, under Subtitle C of the Solid Waste Disposal Act, manifests of hazardous wastes are required to be maintained.

   Last year, the Senate was actively considering necessary legislation to set up an electronic hazardous waste manifest system that would be paid for out of a dedicated fund by the electronic manifest users, the waste generators, rather than on taxpayers. In fact, in a letter to the Senate on legislation establishing such a system, the Association of State and Territorial Solid Waste Management Officials (ASTSWMO) wrote:

   > Our members are overall in favor of adding the electronic manifest dimension to the existing system of paper hazardous waste manifests essential to the management and enforcement of the nation's hazardous waste management program conducted under the authority of the Resource Conservation and Recovery Act (RCRA). It is appropriate, many would say overdue, in this 21st Century economy to have the capability of using electronic reporting for such a tracking system, and we are supportive of your efforts to initiate this process.

   Recognizing the clear benefit to public safety, does ECOS join ASTSWMO in support of this kind of legislation?

2. On January 13, 2005, ECOS issued a supportive report on Performance Track and related state programs. In the Executive Summary, ECOS applauded EPA leadership and vision through Performance Track and other state programs, calling Performance Track "a fundamental change from the past approach to environmental protection, focusing on incentives and risk-based decision-making, " and concluding by saying that "these programs have the potential to move the country significantly forward in meeting and achieving its environmental goals."

   These comments clearly indicate ECOS's as supportive and endorsing of Performance Track programs as complimentary to the objectives of the core Federal and State environmental programs. Has your view changed?

The Honorable John Shimkus (continued)

3. I have three questions about the ECOS 2008 proposal to Congress on EPA's State and Tribal Assistance Grants.

   A. You include Categorical Grant funding for brownfields in a category of "High Priority" or "Core Programs" where ECOS has recommended "modest increases to assist with increased federal mandates and rules." As I understand it though, the Brownfields Categorical Grant money is not used to cover a mandate on the States, but rather to subsidize states and tribes, pursuant to Section 128(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, in covering their own response programs, including several brownfields related activities. Since the Federal brownfields has been in effect for five years and no new regulations have come from it in years, how is this an unfunded mandate worthy of a "Core Program" label?

   B. The ECOS STAG budget proposal claims that EPA Homeland Security spending is not a "High Priority" because a State's role is limited. Are you asserting that all of EPA's emergency response and homeland security efforts should be given lesser priority funding because the States' role is limited?

   C. You give very low priority to funding enforcement and compliance programs initiated after 2002. Many of these programs help prevent future environmental problems, educate the regulated community about responsible behavior, and mitigate expensive and protected enforcement costs for non-compliance. Are you saying that you would rather not have programs of this nature – resulting in gaps in environmental coverage? Or, are you saying you would rather that Federal authorities and regulations increase, meaning higher taxes and more enforcement compliance litigation?

4. Your STAG budget request for Brownfields STAG grants is actually $658,000 less that that proposed by the President. Why do you have a lesser amount than the President here and how did you arrive at that figure?

5. The chart attached to your testimony regarding ECOS's 2008 STAG budget recommendations to Congress claims that ECOS does not oppose the use of "Congressional Priorities," also known as earmarks, in EPA's appropriations. Yet, these very earmarks eat into the core funds that you insist on being restored. How do you square these two positions?

6. Your testimony complains that States are now more reliant than ever on the Drinking Water Revolving Loan Fund to help pay for program costs and that such a move leaves less money for drinking water infrastructure. Yet, Mayor Bollwage argues that cities do not consider the SRF a primary source of funding for infrastructure – instead opting for the use of bonds. How do you justify your compliant in light of the Mayor's testimony?

ECOS

THE
ENVIRONMENTAL
COUNCIL OF
THE STATES

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Robert W. King, Jr.
Deputy Commissioner
South Carolina Department of
Health and Environmental
Control
PRESIDENT

David K. Paylor
Director, Virginia Department of
Environmental Quality
VICE PRESIDENT

Stephen A. Owens
Director, Arizona Department of
Environmental Quality
SECRETARY-TREASURER

Stephanie Hallock
Director, Oregon Department
of Environmental Quality
PAST PRESIDENT

R. Steven Brown
Executive Director

July 2, 2007

Honorable John Dingell, Chairman
Energy and Commerce Committee
U.S. House of Representatives
Washington, DC

Re: Reply to Questions from Honorable John Shimkus

Dear Representative Dingell:

The following is ECOS' reply to the questions submitted to Mr. Robert King in your letter of June 18, 2007.

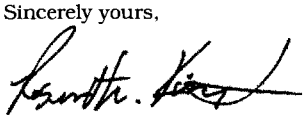
1. ECOS does not have a position on this issue. ECOS and the States have been very involved with EPA since 1998 on the "Information Exchange Network," and the movement of environmental data among States and between States and EPA remains a priority and, we believe, a success story.
2. ECOS understands the value of voluntary programs, which States use as well as EPA, and our position has not changed. However, we maintain that when resources are in short supply, the core mandated environmental programs funded through the States and Tribal Assistance Grants (STAG), must be funded first.
3. A. The referenced statute places conditions on the States to meet certain enforcement standards and public notice standards, for example, in order to be eligible for the funding. Brownfields is not a "delegated" program, but the States believe its contributions are very significant to the improvement of the environment, and therefore we consider it a core program.
   B. We do not mean to imply that EPA's overall responsibility for homeland security should be less than it is. In the case of categorical grants, however, we designated those programs that affect only some of the States (eg., Beaches), or are of a very narrow focus (homeland security at drinking water plants) as "medium" priority.
   C. We did not prioritize programs based on their inception dates. Rather, we focused on those broad-based mandatory environmental protection programs specifically authorized by statute affecting all 50 States and the territories. We made a sincere effort to prioritize, and when that is done some items by necessity are lower priority. Where possible, we tried to select programs not specifically mandated by statute as a low priority.
4. Our request for Brownfields was the same amount it received in the previous fiscal year. In prioritizing the non-categorical grants, the State environmental agencies felt the greatest need was to address water infrastructure needs first. We certainly would not oppose additional funding for Brownfields if the water infrastructure needs were addressed first.

5. ECOS followed the lead of the agency in not proposing funding for Congressional Priorities (also known as "earmarks"). However, we recognize that use of this technique is a long-standing practice, and we did not want anyone to conclude that their omission in our budget proposal necessarily implied our opposition to it. We do prefer funding to go to the State Revolving Loan Funds (SRF), because those funds get re-used, but we note that funding for water infrastructure earmarks also helps solve the nation's clean water and drinking water needs.

6. Our position is based on the opinions of the state environmental agency leaders regarding the cost of running the Drinking Water SRF, and their experiences with their cities which use these funds. While some cities are able to use other sources of funds, such as those enjoyed by Mayor Bollwage, our members' experience is that many small towns cannot access these other funds. Since there are many of these small towns, we have many transactions to complete in order to assist them, and this is the source of our request.

If we may be of further assistance, please advise.

Sincerely yours,



Robert W. King, Jr.
President

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**Committee on Energy and Commerce**
**Washington, DC 20515–6115**

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June 18, 2007

Mr. Andrew Langer
Manager of Regulatory Affairs
National Federation of Independent Business
1201 F Street, N.W., Suite 200
Washington, D.C. 20004

Dear Mr. Langer:

Thank you for appearing before the Subcommittee on Environment and Hazardous Materials on Thursday, March 1, 2007, at the hearing entitled "The Environmental Protection Agency Fiscal Year 2008 Budget Request." We appreciate the time and effort you gave as a witness before the subcommittee.

Under the Rules of the Committee on Energy and Commerce, the hearing record remains open to permit Members to submit additional questions to the witnesses. Attached are questions directed to you from certain Members of the Committee. In preparing your answers to these questions, please address your response to the Member who has submitted the questions and include the text of the Member's question along with your response.

To facilitate the printing of the hearing record, your responses to these questions should be received no later than the close of business on July 2, 2007. Your written responses should be delivered to 2125 Rayburn House Office Building and faxed to (202) 225-2899 to the attention of Rachel Bleshman. An electronic version of your response should also be sent by e-mail to Ms. Bleshman at rachel.bleshman@mail.house.gov. Please send your response in a single Word or WordPerfect formatted document.

Thank you for your prompt attention to this request. If you need additional information or have other questions, please contact Rachel Bleshman at (202) 225-2927.

Sincerely,

JOHN D. DINGELL
CHAIRMAN

Attachment

cc: The Honorable Joe Barton, Ranking Member
Committee on Energy and Commerce

The Honorable Albert Wynn, Chairman
Subcommittee on Environment and Hazardous Materials

The Honorable John Shimkus, Ranking Member
Subcommittee on Environment and Hazardous Materials

**3/1/07 Follow-up Question Response from Andrew Langer, Manager of Regulatory Affairs for National Federation of Independent Business**

**The Honorable John Shimkus**

**1. When trying to measure results from statutory mandates, how many violations does NFIB estimate result from a lack of knowledge about compliance? What kind of impact do you think that has on the environment, especially when some are advocating an economy wide cap and trade program for greenhouse gases, which could have the potential to affect every business with even more regulatory burdens?**

In speaking with NFIB members who have been cited by regulatory agencies, I would have to say that the vast majority of violations are committed unwittingly by these businesses—they simply were either not aware of the rule being applied to them, or weren't aware of how they were supposed to comply with that rule. Recently, for instance, I spoke with a member in the West who was fined nearly $50,000 for violating EPA's rules regarding proper documentation for waste oil disposal. He claimed he was unaware of the rules, and subsequent conversations with EPA officials confirmed that they hadn't engaged in any compliance outreach with his small business regarding the requirements of that rule.

Lack of knowledge of environmental regulatory requirements is compounded by the fact that most environmental laws operate under a "strict liability" standard. In other words, you need not know that what you were doing was a violation of the law in order to be held liable. You merely need to know that you were doing the act that you were doing. In the case of the NFIB member referenced above, he need not know what the laws were regarding documenting waste oil disposal. All he need know is that he was disposing of waste oil.

In terms of compliance rates, I like to talk about something we in the regulatory compliance community call the "80-80" rule: because of the sheer number of regulations on the books and their complexity, right now the ***best*** we can hope for from a regulated entity is compliance with eighty percent of all rules, eighty percent of the time.

If we were to assume that full compliance, all the time, produces optimal environmental conditions, then having people out of compliance with the law would, commensurately, compromise environmental health.

But we must keep in mind that the vast majority of these regulations are paperwork violations, whose errors or violations for the most part result in little, if any, environmental degradation.

To be certain, however, in an era in which full compliance, all of the time, is elusive, it is foolhardy, and not environmentally conscious, to pile on more environmental regulations when the ones currently on the books aren't well-understood or fully complied with.

**2. Do any of your member groups have an estimate as to how much of their budget goes to environmental compliance? Are you aware if such a study has been done on such an issue?**

While I know of no study that specifically looks at environmental regulatory costs from the perspective of a percentage of a firm's overall budget, the most recent and well-respected research on regulatory costs has been done by the Small Business Administration's Office of Advocacy. In the 2005 update to his report, ***The Impact of Regulatory Costs on Small Firms***, author W. Mark Crain concluded that for firms with fewer than 20 employees (which account for 90% of businesses in the United States), regulatory costs totaled $7647 per employee, per year. Of that $7647, environmental regulations cost nearly half, $3296.

Those numbers drop appreciably for firms with more than 20 employees, and the reason for that is simple. Firms with more employees can spread that cost around amongst those employees, and achieve competitive economies of scale. Furthermore, much of the cost borne by environmental regulations is due to their technical requirements, and the knowledge required to comply with them. Larger firms can afford to hire full-time regulatory professionals, whereas small firms must make do with the owner, the owner's family, or some other untrained employee finding out what is required of them, and how to go about doing it.

The Crain report can be found here: http://www.sba.gov/advo/research/rs264tot.pdf

**3. You mention in your testimony the benefits of compliance assistance and that the movement away from enforcement as a primary tool of compliance improvement is one that will have to be driven by Congress. Given that EPA's budget only reflects 2 percent of funds going to voluntary programs, what kind of message do you think a further cut to that budget would send to the regulated community?**

There already exists a perception among small business owners that regulatory agencies are "out to get them." With so many federal regulations applying to them, and no possible way for any one person to be in compliance with 100% of regulations 100% of the time, it creates a system in which any inspector could find fault with any business whenever that inspector visits that business. Combine that with a system in which penalties are compounded for businesses found to be out of compliance multiple times, and it raises the stakes much higher.

At NFIB, we have steadfastly tried to create a collegial, cooperative relationship between agencies and their regulated stakeholders, operating under the principle that showing a small business how to be in compliance with the law will increase compliance with the law. One would assume that if total compliance equals the achievement of the goals of whatever regulatory regime administered by the agency, then increasing the compliance rates of the entities regulated would be an important benchmark for measuring agency success.

However, the perception amongst the activist community is that agency success should be measured in the number of enforcement actions undertaken by that agency. In our opinion, this is why the strongest critiques of the agencies come from how much money they are spending on enforcement, and comparing those enforcement action numbers to past numbers of enforcement actions.

Cutting the already sparse sums spent on both voluntary programs and compliance assistance would thus reinforce the perception that already exists: that agencies believe that enforcement numbers, not compliance are true measures of success, that agencies aren't interested in fostering a collegial, cooperative environment, and that, indeed, the agencies are simply "out to get them".

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June 18, 2007

Mr. Maurice McTigue
Director, Government Accountability Project
Vice President, Mercatus Center at
George Mason University
3301 North Fairfax Drive, Suite 450
Arlington, VA 22201

Dear Mr. McTigue:

Thank you for appearing before the Subcommittee on Environment and Hazardous Materials on Thursday, March 1, 2007, at the hearing entitled "The Environmental Protection Agency Fiscal Year 2008 Budget Request." We appreciate the time and effort you gave as a witness before the subcommittee.

Under the Rules of the Committee on Energy and Commerce, the hearing record remains open to permit Members to submit additional questions to the witnesses. Attached are questions directed to you from certain Members of the Committee. In preparing your answers to these questions, please address your response to the Member who has submitted the questions and include the text of the Member's question along with your response.

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Sincerely,

JOHN D. DINGELL
CHAIRMAN

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Committee on Energy and Commerce

The Honorable Albert Wynn, Chairman
Subcommittee on Environment and Hazardous Materials

The Honorable John Shimkus, Ranking Member
Subcommittee on Environment and Hazardous Materials

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## GEORGE MASON UNIVERSITY

July 2, 2007

**Subcommittee on Environment and Hazardous Materials**

**Of the**

**Committee on Energy and Commerce**
**United States House of Representatives**

**Hearing: "The Environmental Protection Agency Fiscal Year 2008 Budget Request"**

**Follow-up response**
**By**
**The Honorable Maurice P. McTigue**

**The Honorable Shimkus's Question 1**
Do any of your past reviews show much funding goes to administrative costs and how much actually goes to remediation and environmental protection? In your view, has EPA done a better job in recent years of prioritizing funding to achieve environmental gains? How do you measure this?

**Mr. McTigue's Response:**
No. Our research is not sufficient for separating administrative costs from programmatic costs.

While our research does not measure how effectively an agency's funding has been prioritized, our research does evaluate the strategic plans and annual performance reports of agencies in terms of their mission focus and reporting quality. Over the eight years we have produced our scorecard evaluations, the annual reports of the Environmental Protection Agency (EPA) have demonstrated an increased focus on mission. In addition,

over time the EPA seems to be demonstrating an increased competence in developing intermediate measures to accomplishing long-term goals. This should be encouraged as these intermediate measures are a valuable tool when evaluating the rate of progress for any particular project.

Ultimately the decision on how to prioritize funding lies with the Congressional appropriations process. We would hope that Congress would consider both this increased focus on mission and the results of these intermediate measures when prioritizing funding for any agency program.

Missing from EPA's current strategic plan and annual report is a standard benchmark based on authoritative research against which Congress can evaluate the results of EPA programs. In the absence of this, it is impossible to arrive at an accurate judgment of whether or not the EPA is employing the right programs or policies to accomplish their long-term goals.

**The Honorable Shimkus's Question 2**

We have heard more about fostering a sustainability approach with the regulated community regarding environmental protection, where a corporation is encouraged to be cognizant of all its action on the environment, from cradle to grave. One of the best ways of inducing such behavior is through education, and voluntary partnerships. Will an effort by the EPA to reduce its number of voluntary programs send mixed messages to the regulated community that business should not continue to further their sustainability approaches, but rather wait for more command and control type programs?

**Mr. McTigue's Response:**

Improved stewardship is one of the strategic goals of the EPA. Improved stewardship comes from finding mechanisms that create incentives for all of the parties involved in the environment, to align their objectives for improved long-term health of that particular environment. These mechanisms should move all parties towards a beneficial common goal.

This can occur even though the self-interests of the parties concerned may be different, such as the conflicting self-interests between the preservationist and the resource user.

The key is finding mechanisms that make it clear to the user of resources such as land, water, the forest, or the fisheries that their best interests are served by maximizing the health and longevity of each asset.

Where these incentives are created, the need for heavy-handed command and control programs is diminished and the end results appear improved.

The arbitrary requirement to use a specific mechanism over another is not an efficient way to produce this result. This one-solution-fits-all approach fails to recognize differences between individual circumstances. It is preferable that the entire universe of

mechanisms be available to the EPA and other parties involved so that a package of best measures can be customized to produce the most beneficial results on a case-by-case basis.

**The Honorable Shimkus's Question 3**

You conclude your testimony by stating it would be "beneficial if, at the conclusion of your examination of the EPA's budget proposal, you were able to predict to the American people what environmental gains would be achieved in the coming year." Have you been able to conclude in any of your past examinations of EPA's budget what the environmental gains that were achieved that year? How do you suggest this be achieved, and is money the answer?

**Mr. McTigue's Response:**

Neither the budget process nor the strategic planning process quantifies in either time or measurable quantity how rapidly problems will diminish or benefits will improve.

It would be much more valuable if some attempt were made by both Congress and the EPA to quantify the rate of progress in producing results for each program.

For example, if using current programs of remediation meant serious brown field contamination could not be adequately alleviated for another fifty years, then the approach of both Congress and the EPA might be changed. This approach might be changed through the application of new technology, a change in process or procedure, or an increased allocation in funds to achieve the desired results in a shorter time span.

While it is simplistic, it is not unreasonable to ask the EPA when water and air will be clean. Nor is it unreasonable to ask the EPA to define "clean". Consistent and specific goals are crucial to evaluating the outcomes of any given program. With these questions answered, Congress would be in a much better position to perform their role in the EPA, which is to decide if each program is achieving an acceptable rate of progress towards the long-term goals of the EPA.

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MARSHA BLACKBURN, TENNESSEE

June 18, 2007

Mr. Patrice Simms
Senior Attorney
Natural Resources Defense Council
1200 New York Avenue, N.W., Suite 400
Washington, D.C. 20005

Dear Ms. Simms:

Thank you for appearing before the Subcommittee on Environment and Hazardous Materials on Thursday, March 1, 2007, at the hearing entitled "The Environmental Protection Agency Fiscal Year 2008 Budget Request." We appreciate the time and effort you gave as a witness before the subcommittee.

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Thank you for your prompt attention to this request. If you need additional information or have other questions, please contact Rachel Bleshman at (202) 225-2927.

Sincerely,

JOHN D. DINGELL
CHAIRMAN

Attachment

cc: The Honorable Joe Barton, Ranking Member
Committee on Energy and Commerce

The Honorable Albert Wynn, Chairman
Subcommittee on Environment and Hazardous Materials

The Honorable John Shimkus, Ranking Member
Subcommittee on Environment and Hazardous Materials

The Honorable Joseph R. Pitts
Subcommittee on Environment and Hazardous Materials

NATURAL RESOURCES DEFENSE COUNCIL

July 2, 2007

Honorable John D. Dingell
Chairman
House Energy and Commerce Committee
2125 Rayburn House Office Building
Washington, DC 20515

ATTN: Rachel Bleshman

Dear Chairman Dingell:

Thank you for the opportunity to answer further questions from the Members of the Energy and Commerce Committee. If I can be of further assistance, please do not hesitate to contact me.

Sincerely,

s/Patrice Simms
Senior Attorney

Attachment

**Barton 1:**

*Q: Should EPA "means test" its grants to fiscally solvent environmental advocacy groups in order to stretch its environmental and public health protection dollars?*

A: NRDC supports the use of federal funds in a fiscally responsible manner that ensures the protection of public health and the environment. The work made possible by federal grants is an integral part of ensuring that protection. In the long run, a means test might actually harm agency goals because many non-federal entities would forgo the important work done as a result of these grants due to a limited amount of discretionary dollars.

Although NRDC no longer accepts new federal grants, we do support efforts to make the process fair. If EPA does develop a "means test" for grants, that standard should be applied equitably to corporations (or corporate-funded organization), as well as environmental advocacy groups, academic institutions, and others.

**Barton 2**:

*Q: States have been regulating the injection of $CO_2$ . . . EPA has virtually nothing to do with any of this . . . Why do you believe that EPA has the necessary experience and authority to develop a regulatory framework for large-scale $CO_2$ injection projects?*

A: Not all states have been regulating CO2 injection for enhanced oil recovery under EPA's Underground Injection Control Program - some have claimed primacy, whereas in other cases Class II (EOR) wells are regulated by EPA (see http://www.epa.gov/ogwdw/uic/primacy2.html). In some cases, States that currently have primacy for Class II wells only filed their application in the early-mid 1980s. We believe that EPA does have relevant real world experience in regulating these injections. Moreover, under the Safe Drinking Water Act, in the UIC Program states can only be given primacy by EPA if they prove that the state program is at least as stringent as the Federal standards or that such programs are effective in protecting underground sources of drinking water. It is therefore not satisfactory to let states regulate large-scale geologic CO2 sequestration without setting minimum standards that need to be met.

I would note that we are not suggesting that EPA takes over the regulation of sequestration completely - the states will have an active and important role to play. The existing UIC Program can serve as a model whereby states may file for primacy provided they demonstrate that they meet minimum standards. Large scale $CO_2$ sequestration creates the need for a host of additional provisions, such as site characterization and approval, remediation protocols, monitoring, verifying and accounting for the injected CO2, decommissioning procedures and issues of long term liability, to name but a few. EPA should establish clear baseline standards and provide guidance and assistance to the States to ensure that $CO_2$ sequestration is done safely across the country.

**Barton 3**:

*Q: The model regulations for $CO_2$ storage which are being developed by an Interstate Oil and Gas Compact Commission (IOGCC) Task Force will be the basis by which member states develop their own regulatory frameworks. . . Why therefore do you regard regulation out of Washington as superior to state regulation?*

A: The reason that regulations governing the development of oil and natural gas might be similar between states is precisely that states have had to demonstrate adherence to minimum federal requirements. While NRDC recognizes that some states are likely to write effective and comprehensive regulations for large-scale CO2 sequestration, we believe that a consistent national system of regulation is unlikely to flow from this process. Such consistency will be critical to ensuring the safety and effectiveness of $CO_2$ sequestration. Again, we emphasize that we are not advocating a system that is entirely managed out of Washington, but one whereby Washington sets minimum standards, states can tailor their individual programs to meet their unique needs, and EPA can regulate directly where states lack either the capacity or the desire to regulate sequestration themselves.

Finally, we strongly caution against large-scale sequestration being portrayed or regulated as a continuation of oil & gas activities. As mentioned above, the regulatory needs are far more extensive. This is also a technology that needs to earn the public trust, this can only be achieved through a carefully designed regulatory framework. It is in the best interest of the technology, industrialists and environmentalists alike to ensure that sequestration is regulated in a rigorous manner and that it displays in impeccable track record. While we commend the IOGCC for its work, and its thorough investigation of the issues, we must also point out that its views and recommendation do not necessary grow from the same broad-based consideration of public health and welfare that is at the core of EPA's mission.

**Barton 4**:

*Q: "Do you think it is EPA's job to police manufacturing?"*

A: It is EPA's job to protect the public health and the environment. Undeniably, manufacturing activities can have a tremendous impact on people's health. This is true for example where people are exposed to harmful pollutants release into the air or water in connection with some manufacturing processes, or where products introduced into the marketplace contain substances that cerate a human health hazard. Manufacturing can also have significant impacts on the environment – as a result of routine pollutant releases to air, water, or land, mishandling of hazardous materials, and the introduction of dangerous materials into commerce, to name a few examples. As a result, NRDC believes that it is not only appropriate, but essential, that EPA effectively regulate the manufacturing industry, and many environmental laws require just that (e.g., the Clean Air Act, the Toxic Substance Control Act, etc).

*Q: "Are you really advocating for central planning of American manufacturing and business by the federal government?"*

A: NRDC is in no way "advocating for central planning of American manufacturing and business by the federal government?" EPA should, however, ensure that American industry follows the laws passed by Congress and take adequate precautions to ensure that the American public and our important natural resources are not put in jeopardy. Especially with regard to unique new materials, like nano-materials, for which we have very limited information about health and environmental risks, it would be prudent to adopt a precautionary approach to risk assessment that ensures that products are safe before they are introduced into the marketplace. Such an approach should involve the independent evaluation of the life-cycle risks of such materials, through a transparent process, prior to approving the materials for introduction into commerce.

**Shimkus 1:**

*Q: When should the agency consider the use of voluntary programs? What is NRDC's definition of a good voluntary program?*

A: According to EPA, voluntary programs achieve environmental results by motivating companies, communities, organization and individuals to take actions that are beneficial to them and the environment. Such programs typically focus on "pollution prevention" as opposed to end-of-process emission reductions, thereby complementing environmental regulatory programs. In theory, these programs use incentives, such as information, public recognition, and technical assistance, to spur actions that are environmentally-sound, but not required by law.

While these goals are admirable and may be effectively achieved through well-designed voluntary environmental initiatives, there is nothing that can or should replace the rule of law. Communities and the environment need agencies to enforce the law in order to ensure accountability, to ensure social objectives where voluntary initiative will not achieve them, and to carry out the will of elected representatives expressed in statutes. NRDC believes that voluntary programs have a role to play in an agency's portfolio of solutions, for example when there is no threat to public health and the environment or when encouraging new, creative ventures, such as Energy Star. Because limited resources are a fact of life, however, agencies should prioritize implementation and enforcement of legal requirements over voluntary initiatives, and explain to Congress and the American people why agencies are failing to meet statutory deadlines and other legal obligations at the same time that they are devoting substantial resources to non-Congressionally authorized, voluntary initiatives. When agencies do undertake voluntary initiatives, it is imperative that oversight, accountability and true environmental standards remain paramount to the project. Voluntary programs should complement the law, not replace it.

**Shimkus 2:**

*Q: Some voluntary programs undergo the Program Assessment Rating Tool (PART) process. Can you elaborate on your point that these programs do not receive enough oversight?*

A: As my testimony states, some voluntary programs provide important and substantial benefits when well-designed and well-implemented. Unfortunately, this is not the case for all of these programs. One of NRDC's biggest concerns with these programs is the failure to accurately assess their effectiveness. Indeed, the EPA Inspector General has identified the need for increased accountability of voluntary programs, in particular, the development of better measures, improving brand management and program design, and development more consistent program guidelines.[1] Although limited voluntary programs are assessed by the Program Assessment Rating Tool (PART), most do not receive even this mediocre-attention and therefore, their effectiveness is in question.

**Shimkus 3**:

*Q: You say in your testimony that Performance Track (PT) offers flexibility "in the form of reduced or no inspections" . . . can you tell us what data you are relying on for forming your conclusions?*

A: One of the "flexibilities" offered to members in EPA's Performance Track program is the ability to take advantage of a policy granting such members "low priority for routine inspections." EPA made clear what this means in an October 29, 2003 Memorandum addressing PT enforcement.[2] In this Memorandum the Agency explained that, in essence, its PT policy disavows inspections at PT member facilities unless the agency has "specific information" concerning serious problems such as "criminal activity, major compliance problems in a priority area of concern to the Agency, or endangerment." Notably, EPA is unlikely to have the information required to justify an inspection under its policy without actually *conducting* an inspection (which it promises not to do). Even where the Agency has specific information concerning major compliance problems in non-priority areas of concern to the Agency (which still could involve major public health hazards), or recurring non-major compliance problems, the policy consciously disavows the intention to investigate such noncompliance and, as a logical extension, prosecute that noncompliance. As a result of this policy, EPA will rarely if ever conduct inspections at PT facilities, and rather is willing to allow self-policing and voluntary "Environmental Management Systems" at PT facilities to serve as a substitute for inspections and law enforcement by government officials.

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[1] See Ongoing Management Improvements and Further Evaluation Vital to EPA Stewardship and Voluntary Programs, February 17, 2005 (Report Number: 2005-P-00007). Available at: http://www.epa.gov/oig/reports/2005/20050217-2005-P-00007.pdf.

[2] Memorandum from J.P. Suarez, EPA OECA & Jessica Furey, EPA OPEI to EPA Regional Administrators *et al.*, Oct. 29, 2003, available at http://www.epa.gov/performancetrack/benefits/oeca.pdf.

**Shimkus 4**:

*Q: You assert that EPA shuts the public and other stakeholders out of the process. What specifically do you mean?*

A: There are several examples of how EPA's PT policies shut the public out or make public participation more difficult:

- First, EPA has a poor record of engaging the public on PT and other voluntary programs. In a November 2005 letter commenting on EPA's "Description of Collaboration with the Environmental Council of the States Regarding National Environmental Performance Track and State Performance-Based Environmental Leadership Programs" (EPA Docket ID OA-2005-0003), NRDC noted that EPA has been less than successful at creating meaningful opportunities for public involvement. As of that time, EPA had not previously sought public comment in the Federal Register; it had convened the sole public meeting on that docket in Chicago (making it more difficult for many nongovernmental organizations to attend and therefore less that they would be able to participate); it allowed only 12 days after the public meeting for the submission of comments; and it failed to invite the public to an important 2005 meeting on related issues in Washington;

- EPA reportedly maintains a Performance Track "Members Only" section on its web site that is not intended to be accessible to the public;

- EPA convenes Performance Track member conferences that are not open to the public, to our knowledge, or at the very least not noticed in the Federal Register or otherwise publicly advertised in a manner designed to welcome the public;

- For individual facilities, EPA has suggested (in materials associated with the above reference docket) that the PT program may result in changes to facility-specific obligations, such as changes based on "permitting techniques that afford operational flexibility" and "streamlined monitoring, recordkeeping and reporting." However, these individual decisions (and the evaluation of whether a facility's alternative standards satisfy or exceed the objectives of the displaced or streamlined requirements) would occur entirely without public notice and comment;

- By reducing the amount and/or frequency of monitoring and reporting at PT facilities these policies inescapably reduce the amount of information available to the public, or make it inaccessible as a practical matter;

- It is unclear to what extent EPA has committed to publish information about PT facilities, such as what "flexibilities" each facility enjoys, the *comprehensive*

compliance record for PT facilities (e.g., air, water, waste), inspection schedules and results for PT facilities, etc;

- EPA's Inspector General specifically noted that the PT program cannot demonstrate that members achieve environmental results in three of four program criteria areas, including public interaction – thus, it is not at all clear that the PT program is working to meaningfully engage the public. The IG also noted that "Because Performance Track did not rely on compliance databases, the public may believe that Performance Track members did not comply with an aspect of environmental regulation." The IG also indicated that "stakeholders said that because members report on only their three or four commitments, EPA and the public cannot tell if another aspect of facility maintenance declined. This means that EPA [and the public] cannot tell if facilities made overall environmental improvements, or rather improved in one area and faltered in others."

**Pitts 1:**

*Q: Should federal dollars be awarded based on priority setting?*

A: Yes. Priority setting must be part of the process of awarding limited federal dollars. However, the ultimate goal and highest consideration should be how best to protect public health and the environment.

*Q: Should an EPA program ever be retired or downsized?*

A: Yes. Under appropriate circumstances a program should be retired or redesigned to best meet the needs of the agency and the public.

**Pitts 2:**

*Q: Has EPA repealed any federal environmental laws?*

A: No. EPA does not have the power to repeal laws, meaning statutes passed by Congress. EPA under the current administration has, however repealed, drastically altered or otherwise reversed existing EPA regulations and policies adopted by prior administrations.

**Pitts 3:**

*Q: Why is the loss of 91 FTEs in the Superfund significant since most sites are now in the cleanup stage of the program?*

A: The loss of 91 FTEs is a critical loss for the Superfund program. As funding has decreased since the 1990s, cleanups have dramatically slowed from an average of 80 cleanups per year to less than 40 in most recent years. Unfortunately, in FY2005, 50% of Superfund obligations for construction and post construction activities went to only 11

sites. Due to EPA's priority to fund ongoing work, less funding was available for new construction projects, and EPA did not have enough resources to fund 9 new construction projects evaluated by the National Priority Panel and that were ready for construction.

Funding and staff shortages come as EPA has placed 18 new sites on the National Priorities List (NPL) and proposed 12 additional sites in fiscal year (FY 2005). Although 62% of NPL sites have entered into the construction stage, 38% have not entered that stage and staff are still needed to shepherd existing and new sites along.

**Pitts 4:**

*Q: Why does NRDC support higher taxes and increased mandatory regulation in light of business' claim that they cannot afford such a mandate?*

A: NRDC believes in the "polluter pays principle." Those who profit from the use of our natural resources should also be required to clean up the land, air and water that they pollute. The public should not bear the economic cost of cleanup or the financial and quality of life costs associated with industrial pollution.

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ONE HUNDRED TENTH CONGRESS

**U.S. House of Representatives**
**Committee on Energy and Commerce**
**Washington, DC 20515–6115**

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June 18, 2007

Mr. Bill A. Roderick
Acting Inspector General
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
MC 2410T
Washington, DC 20460

Dear Mr. Roderick:

Thank you for appearing before the Subcommittee on Environment and Hazardous Materials on Thursday, March 1, 2007, at the hearing entitled "The Environmental Protection Agency Fiscal Year 2008 Budget Request." We appreciate the time and effort you gave as a witness before the subcommittee.

Under the Rules of the Committee on Energy and Commerce, the hearing record remains open to permit Members to submit additional questions to the witnesses. Attached are questions directed to you from certain Members of the Committee. In preparing your answers to these questions, please address your response to the Member who has submitted the questions and include the text of the Member's question along with your response.

To facilitate the printing of the hearing record, your responses to these questions should be received no later than the close of business on July 2, 2007. Your written responses should be delivered to 2125 Rayburn House Office Building and faxed to (202) 225-2899 to the attention of Rachel Bleshman. An electronic version of your response should also be sent by e-mail to Ms. Bleshman at rachel.bleshman@mail.house.gov. Please send your response in a single Word or WordPerfect formatted document.

Thank you for your prompt attention to this request. If you need additional information or have other questions, please contact Rachel Bleshman at (202) 225-2927.

Sincerely,

JOHN D. DINGELL
CHAIRMAN

Attachment

cc: The Honorable Joe Barton, Ranking Member
Committee on Energy and Commerce

The Honorable Albert Wynn, Chairman
Subcommittee on Environment and Hazardous Materials

The Honorable John Shimkus, Ranking Member
Subcommittee on Environment and Hazardous Materials

The Honorable Hilda L. Solis, Vice Chair
Subcommittee on Environment and Hazardous Materials

The Honorable John B. Shadegg
Subcommittee on Environment and Hazardous Materials

The Honorable Lee Terry
Subcommittee on Environment and Hazardous Materials

Bill Roderick, Acting Inspector General, U.S. Environmental Protection Agency, answers to submitted questions

The Honorable John Shimkus

1. Mr. King takes great care to mention in his statement the major shift that has occurred from the Federal level to State governments for Federal environmental program operations and enforcement responsibilities. Yet, during this transformation, EPA's own staffing levels have remained constant or increased. Is this higher level of staff prohibiting EPA from setting appropriate goals and effectively carrying out its mission? Would staffing cuts help the Agency's financial needs without risking its mission? Has the IG done work in this area? If not, would you please do so?

Answer: At this point the Office of Inspector General (OIG) cannot answer the first two questions because we have not done any work in the manpower area related to those questions. However, our recent risk assessment work does note that the EPA lacks a robust internal control structure over manpower requirements. I have directed OIG staff to begin conducting audits and evaluations focused on EPA manpower issues in 2008. I am also seeking to hire an experienced manpower analyst to support this initiative.

2. Mayor Bollwage has made several comments about the Brownfields program that I would like to explore with you.

> A. First, Mayor Bollwage claimed that more money in the brownfields program would mean more brownfields sites would be cleaned up or cleaned up faster. Is this true?
>
> Answer: Having money for sites is only one of the factors that results in sites getting cleaned up. There has to be a market for this money and EPA has to have the capacity to effectively manage an increase in Brownfields grant applications. If EPA does not receive applications from qualified applicants, at eligible sites, they cannot award grants. An increase in available grant funds that is met with a large increase in grant applications may lead to inefficiency and delay if EPA does not have the resources to effectively manage an increase in applications.
>
> B. Second, Mayor Bollwage claimed that EPA denied two-thirds of the brownfields applications because it did not have the funding. The Mayor further suggested that if EPA had more money these sites that were denied brownfields grants would be able to obtain Federal brownfields grants. Is it true that EPA denied funding to all these sites due to a lack of brownfields funding?
>
> Answer: Past OIG work has reported that EPA has denied applications for Brownfields funding. While we have not conducted a review to determine the reasons for denial of all applications, we know that EPA has denied applications that do not meet the criteria described in the public grant guidelines. In past

evaluations, we have interviewed individuals whose application for a Brownfields grant was rejected. We were not told the rejections were due to funding limitations. We believe there are multiple reasons for denying Brownfields applications.

C. Third, Mayor Bollwage suggested that Federal brownfields cleanup grants should be used to help fund cities' applications for brownfields grants, as well as the administration of the grants once received. This is not an allowable use under the law and cities - especially those that tout the success of the existing brownfields program - have willingly put up their own money for these purposes. Has previous work that you or your office done uncovered any evidence to suggest that siphoning cleanup dollars away from cleanup and instead allow it to go to administrative costs is a wise public policy choice?

Answer: The OIG has not done any work on this issue.

3. You mention in your testimony that facing a tightened budget, the EPA must maximize its resources through improved operating efficiencies. Could you explain the reasons, as your office sees it, for the increase in Administrative costs and personnel costs at the EPA? Are they related to specific program operations?

Answer: As cited earlier, our recent risk assessment work noted that the EPA does not have a robust internal control structure over manpower requirements. Our detailed reviews of the administrative costs for two EPA programs, Superfund and Brownfields, found that the workload models used to allocate resources to these programs were outdated. In addition, EPA cannot effectively manage and control the costs of these programs because it does not consistently define administrative costs, nor can it separately track administrative and programmatic payroll costs for the Brownfields program. For both programs, their authority is dispersed across numerous EPA headquarters and regional offices, impeding close alignment and oversight of costs. We do plan to conduct some audits/evaluations of manpower overhead in FY 2008.

4. You mention that you have identified some of the Potentially Responsible Parties (or PRPs) that would be responsible for cleanup of hard rock mining Superfund Mega Sites. Out of these 156 sites you mention, how many have you identified to have PRPs? How many of these PRPs are still actively operating companies? How many of them are on public land?

Answer: We found that 83 percent of the hardrock mining sites identified in our survey had one or more PRPs. In our 2004 report, we did not determine how many of these PRPs are still actively operating companies. However, based on other results of our hardrock mining survey, we recommended that EPA determine the long-term sustainability and complete environmental liability of businesses involved in current or inactive hardrock mining operations. EPA agreed. The analysis that EPA proposed to address our recommendation would have required that they determine the current business activities of these PRPs. In 2004, EPA told us that they would complete their

efforts in this area. If EPA has met this milestone they should have information on how many of these PRPs are still actively operating companies. Although our survey asked for the locations of sites and whether they were on public lands, we did not analyze those elements for our 2004 report. We can access those records from our database and provide this information to the Committee, if requested.

5. Why, in your opinion, are the Superfund and Brownfields operations at EPA being operated in a fractured manner, with no one office overseeing the operations? You mention that they could streamline their offices and I tend to agree.

Answer: There are at least two inter-related reasons. First, there is a long-standing organizational practice or culture of delegating responsibility for major program decisions and actions to the EPA Regions as well as across multiple EPA headquarters offices. This practice inherently diffuses accountability for overall national program goals and causes the "delegates" to focus primarily on their own goals. EPA's own 2004 report on the Superfund program (the "120-Day Study") acknowledged this clearly when stating: "With [Superfund] resources spread broadly across multiple EPA headquarters offices and the Regions, efforts end up less focused and less mutually supportive because different parts of the [EPA] organization see themselves as beholden to their own program areas, rather than responsible for achieving overarching programmatic goals and mandates." (page 35) Second, EPA's practice of spreading program resources and authority broadly throughout the organization is coupled with a lack of emphasis on national oversight of programs, such as: ensuring that management controls for program activities are in place; are being implemented; and that those who have who have been delegated responsibility are accountable for program goals.

OIG work has demonstrated that neither the Superfund nor the Brownfields program has accurate or current models to estimate workforce needs. Since this can result in over or underestimating EPA's staffing needs for these programs, we have made recommendations that EPA update their workload models for these programs. EPA is currently working to implement those recommendations. These actions could identify opportunities for improved staffing and operations alignment.

6. You mention in your testimony that the Office of the Inspector General has recorded $31 million in fines, restitutions, and settlements. Who did you record these from and why?

Answer: The following chart details the fines, restitutions, and settlements the OIG recorded for FY 2006.

EPA Office of Inspector General FY 2006 Fines, Restitutions, and Settlements

| Case No. | Subject | Action Type | Fine | Restitution | Special Assessment | Settlement | Total |
|---|---|---|---|---|---|---|---|
| 03-2009 | Gregory Bettwy | Criminal Sentence | $5,102 | $10,000 | $75 | | $15,177 |
| 04-14001 | William Rutterford | Criminal Sentence | $250 | | $100 | | $350 |
| 03-4005 | Joseph Jordan | Criminal Sentence | | | $600 | | $600 |
| 05-1005 | Shelley Barrett | Criminal Sentence | | $771 | | | $771 |
| 03-9008 | Thomas Austin | Criminal Sentence | $1,000 | | $100 | | $1,100 |
| 05-2007 | Desmond Dove | Criminal Sentence | | $12,325 | $105 | | $12,430 |
| 04-6004 | Indoor Air Quality, Inc. | Criminal Sentence | $100,000 | $41,541 | $1,200 | | $142,741 |
| 04-6004 | Wallace Heidelmark | Criminal Sentence | $5,000 | | $300 | | $5,300 |
| 05-9006 | Susan Close | Criminal Sentence | | $268,863 | $100 | | $268,963 |
| 03-3012 | Michael Sullivan | Criminal Sentence | $31,300 | | $100 | | $31,400 |
| 04-6007 | Ronald Check, Jr. | Criminal Sentence | $5,000 | $113,711 | $200 | | $118,911 |
| 04-6007 | James Vagra | Criminal Sentence | $32,382 | $12,177 | $200 | | $44,759 |
| 04-6007 | Gary Sanders | Criminal Sentence | $32,382 | $21,527 | $200 | | $54,109 |
| 03-4006 | Andrew Wright | Criminal Sentence | | $20,675 | $900 | | $21,575 |
| 01-5003 | Russell J. Mullins | Criminal Sentence | $40,000 | | $200 | | $40,200 |
| 01-5003 | R.J. Mullins & Assoc. | Criminal Sentence | $150,000 | | $800 | | $150,800 |
| 01-5003 | Pasquale Benenati, Jr. | Criminal Sentence | $5,000 | | $100 | | $5,100 |
| 01-5003 | James D. Cole, Jr. | Criminal Sentence | $10,000 | | $100 | | $10,100 |
| 02-5009 | Booz Allen Hamilton | Civil Settlement | | | | $3,365,664 | $3,365,664 |
| 02-5004 | Ernst & Young LLP | Civil Settlement | | | | $4,471,980 | $4,471,980 |
| 02-5003 | KPMG LLP | Civil Settlement | | | | $2,770,000 | $2,770,000 |
| 02-5003 | BearingPoint, Inc. | Civil Settlement | | | | $15,000,000 | $15,000,000 |
| 00-4005 | Washington Group International, Inc. | Civil Settlement | | | | $1,000,000 | $1,000,000 |
| 02-1004 | Univ. of Connecticut | Civil Settlement | | | | $2,500,000 | $2,500,000 |
| 04-11006 | Safety Council of SW LA | Civil Settlement | | | | $25,000 | $25,000 |
| 01-1001 | Redacted | Admin Settlement | | | | $315,000 | $315,000 |
| 02-1005 | Univ. of Connecticut | Compliance Agree | | | | $558,233 | $558,233 |
| 02-4001 | Redacted | Admin Settlement | | | | $9,138 | $9,138 |
| | | Prior Period Adj. | | | | -$93,882 | -$93,882 |
| | | | | | | TOTAL | $30,939,401 |

Six of these cases account for over $29 million of the $31 million in fines, restitutions, and settlements. In four closely related joint cases, four multinational firms (BearingPoint, Inc., Booz Allen Hamilton, Inc., Ernst & Young, LLP, and KPMG, LLP) each settled lawsuits concerning alleged false claims for travel reimbursement submitted to numerous Federal agencies, including EPA. BearingPoint agreed to pay $15 million to settle the matter; Booz Allen $3.37 million; Ernst & Young $4.47 million; and KPMG $2.77 million, respectively. In a fifth joint case, the University of Connecticut (UConn) agreed to pay $2.5 million in damages and penalties to settle eivil allegations that the university submitted false claims on approximately 500 Federal grants awarded to UConn from July 1997 through October 2004. The grant awards were made by numerous

Federal agencies including the U.S. Department of Defense, the National Science Foundation, the National Aeronautics and Space Administration, and EPA. UConn has also entered into a compliance agreement with the Federal Government that requires the university to make significant changes in its grant administration program. Finally, the sixth joint case resulted in a $1 million settlement agreement between the U.S. Department of Justice and Washington Group International, Inc. (WGI), formerly known as Morrison Knudson Corporation. It was alleged that WGI submitted false representations and certifications in progress reports submitted to the Federal Government; and that WGI improperly billed costs during its performance of a U.S. Army Corps of Engineers contract funded by EPA to perform cleanup activities at the Tar Creek Superfund Site in Oklahoma.

The Honorable Hilda L. Solis

1. Your written testimony states that while the EPA agreed to conduct a comprehensive study of regional and program office funding for environmental justice activities, it disagreed with most of the other recommendations in your 2004 report titled "EPA Needs to Consistently Implement the Intent of the Executive Order on Environmental Justice" (Report No. 2004-P-00007).

a. Please identify which, if any, of the recommendations in the Inspector General's 2004 report the EPA has complied with and to what extent they have complied.

Answer: Below is a table that details Office of Inspector General (OIG) recommendations in our 2004 environmental justice report and their status.

| OIG Recommendation | Agency Response | Status |
|---|---|---|
| **OIG Recommendation 2-1:** Issue a memorandum that reaffirms that Executive Order 12898 is the Agency's priority and that minority and low- income populations that are disproportionately impacted receive the intended actions of this Executive Order. | Non-concur | Closed 10/1/04 by OIG. |
| **OIG Recommendation 2-2:** Clearly define the mission of the Office of Environmental Justice and provide Agency staff with an understanding of the roles and responsibilities of the office. | Non-concur | Closed 10/1/04 by OIG. |
| **OIG Recommendation 2-3:** Establish specific timeframes for the development of definitions, goals and measurements that will ensure that the 1994 Executive Order is complied with in the most expeditious manner. | Non-concur | Closed 10/1/04 by OIG. |
| **OIG Recommendation 2-4:** Develop and articulate a clear vision on the Agency's approach to environmental justice. The vision should focus on environmental justice integration and provide objectives that are clear, precise, and focused on environmental results. | Non-concur | Closed 10/1/04. |
| **OIG Recommendation 2-5:** Develop a comprehensive strategic plan for environmental justice. The plan should include a comprehensive mission statement that discusses, among other things, the Agency's major functions and operations, a set of outcome-related goals and objectives, and a description of how the Agency intends to achieve | Non-Concur | Closed 10/1/04 by OIG. |

| | | |
|---|---|---|
| and monitor the goals and objectives. | | |
| **OIG Recommendation 2-6:** Provide the regions and program offices a standard and consistent definition for a minority and low-income community, with instructions on how the Agency will implement and operationalize environmental justice into the Agency's daily activities. This could be done through issuing guidance or a policy statement from the Administrator. | Non-concur | Closed 10/1/04 by OIG. |
| **OIG Recommendation 2-7:** Ensure that the comprehensive training program currently under development includes standard and consistent definitions of the key environmental justice concepts (i.e., low-income, minority, disproportionately impacted) and instructions for implementation. | Non-concur | Closed 10/1/04 by OIG. |
| **OIG Recommendation 2-8:** Perform a comprehensive study of program and regional offices' funding and staffing for environmental justice to ensure that adequate resources are available to fully implement the Agency's environmental justice plans. | Concur | EPA study completed in May 2004. Closed 10/1/04 by OIG. |
| **OIG Recommendation 2-9:** Develop a systematic approach to gathering accurate and complete information relating to environmental justice that is usable for assessing whether progress is being made by the program and regional offices. | Non-concur | Closed 10/1/04 by OIG. |
| **OIG Recommendation 3-1:** Develop a standard strategy that limits variations relating to GIS applications, including use of census information, determination of minority status, income threshold, and all other criteria necessary to provide regions with information for environmental justice decision. | Non-concur | Closed 10/1/04 by OIG. |
| **OIG Recommendation 3-2:** Require that the selected strategy for determining an Environmental Justice Community is consistent for all EPA Program and Regional offices. | Non-concur | Closed 10/1/04 by OIG. |
| **OIG Recommendation 3-3:** Develop a clear and comprehensive policy on actions that will benefit and protect identified minority and low-income communities and strive to include in States' Performance Partnership Agreements and Performance Partnership Grants. | Non-concur | Closed 10/1/04 by OIG. |

b. Has the Office of Inspector General completed an analysis of the failure of the EPA to identify environmental justice communities on the impact of the health of these communities?

Answer: The OIG has not performed such an analysis.

2. Last September the Office of Inspector General released a second environmental justice report titled "EPA Needs to Conduct Environmental Justice Reviews of its Programs, Policies and Activities" (2006-P-00034). This report found that until program and regional offices complete environmental justice reviews, the Agency (EPA) cannot determine whether its programs cause disproportionately high and adverse human health or environmental effects on minority and low-income populations. Despite this report, the Bush Administration proposed a budget which would cut funding for the Office of Environmental Justice and environmental justice programs by 28.4 percent over enacted levels.

In response to either the 2004 or 2006 report's conclusions, did the EPA analyze the impact of the proposed budget cuts on:

a. Environmental justice regional offices?
b. Environmental justice communities?
c. The ability of the EPA to comply with recommendations in either Report No. 2004-P-00007 or Report No. 2006-P-00034?

Answer: We are unaware of any analysis that EPA may have conducted on the impact a budget reduction would have on its ability to carry out its environmental justice responsibilities. This question is best addressed to EPA.

The Honorable John B. Shadegg

1. Does EPA have over capacity in infrastructure and/or manpower? Is EPA maximizing it resources regarding communications and engineering to keep current with its mission? Is EPA outmoded in any way for the work that it needs to do?

Answer: The Office of Inspector General (OIG) has not performed audit work regarding the utilization of EPA's information technology (IT) infrastructure or manpower structure. However, we are aware of several key initiatives EPA is undertaking in these areas. In its Technology Infrastructure Modernization Business Case, EPA outlined several activities related to its IT infrastructure. This included consolidating the IT infrastructure investments that were once dispersed among several IT investments. It also included adopting a centralized planning and management approach to direct activities necessary for connectivity to the IT infrastructure. These actions should allow EPA to maximize its resources regarding communications and facilitate engineering the technical infrastructure necessary to enhance EPA's readiness to fulfill its mission to protect human health and the environment.

To succeed, EPA needs secure, adaptable, and integrated enterprise information services that enable delivery of mission results across the EPA. One such initiative is EPA's development of the National Environmental Information Exchange Network (Exchange Network). The Exchange Network is a secure Internet- and standards-based approach for exchanging environmental data and improving environmental decisions. Our recent audit work disclosed that EPA needs to improve management practices to increase the utilization of the Exchange Network. However, we feel by consolidating its IT infrastructure investments, EPA has positioned itself to make better enterprise-wide IT infrastructure decisions, which ultimately should enable the Agency to adapt more quickly to technology changes that supports its core business processes.

Barring other higher priorities in FY 2008, the OIG plans to review the capacity and manpower utilization associated with many of EPA's technical infrastructure initiatives. In addition, the OIG is planning successive reviews to determine what additional steps EPA can take to increase the utilization of the Exchange Network with its business partners.

The Honorable Lee Terry

1. Many of my colleagues have suggested that Superfund only needs more money to operate better. As Mr. McTigue mentioned, Congress needs to have all the information before it so it can make sound judgments on the programs it oversees. I am very concerned about actual funding needs for Superfund and what is annually appropriated to the program. In particular, I am troubled by administrative costs as they relate to Superfund and the deleterious effect they are having on overall program resources. Could you please provide me a percentage of appropriated dollars that go into direct cleanup actions as opposed to the overall Superfund program? Please break down these amounts by cleanup, legal and other litigation expenses, and administrative overhead and offer any suggestions as to how we can get more cleanups for our money.

Answer: In response to a congressional request, the Office of Inspector General (OIG) reported in 2006 that EPA has inconsistent definitions of Superfund administrative costs. However, within certain important limitations and definitions, we reported that EPA was generally spending more on non-administrative Superfund costs, but that in recent years, the percent of administrative costs, relative to programmatic costs, began to increase. Our review did not identify categories of costs such as cleanup, legal, and litigation because this would require a different approach than the one we took to respond to the congressional request. Our report did identify multiple opportunities for EPA to direct more money to cleanups. EPA agreed to implement all our recommendations. We have confirmed through follow-up reviews that they have taken action to implement some of the recommendations that can most immediately provide additional funds for the cleanup program. We continue to monitor EPA's efforts to improve the effectiveness and efficiency of the Superfund program and believe this is a critical area for continued congressional oversight.

# THE ENVIRONMENTAL PROTECTION AGENCY FISCAL YEAR 2008 BUDGET REQUEST

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**THURSDAY, MARCH 8, 2007**

HOUSE OF REPRESENTATIVES, SUBCOMMITTEE ON ENVIRONMENT AND HAZARDOUS MATERIALS JOINT WITH SUBCOMMITTEE ON ENERGY AND AIR QUALITY, COMMITTEE ON ENERGY AND COMMERCE

*Washington, DC.*

The subcommittees met, pursuant to call, at 9:00 a.m., in room 2123 of the Rayburn House Office Building, Hon. Albert R. Wynn (chairman of the Subcommittee on Environment and Hazardous Materials) presiding.

Members present: Representatives Stupak, Capps, Allen, Solis, Baldwin, Butterfield, Barrow, Green, Dingell, Inslee, Markey, Shimkus, Terry, Sullivan, Murphy, Barton, Walden, Pitts, Pallone, Hall, Upton, Whitfield, Hastert, Burgess, Deal, and Shadegg.

Staff present: Richard A. Frandsen, Lorie Schmidt, Karen Torrent, Ann Strickland, Chris Treanor, Erin Bzymek, Alec Gerlach, David McCarthy, Jerry Couri, Tom Hassenboehler, Peter Kielty, and Kurt Bilas.

## OPENING STATEMENT OF HON. ALBERT R. WYNN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MARYLAND

Mr. WYNN. Good morning. Today we have a joint hearing on the Subcommittee on Environment and Hazardous Materials and the Subcommittee on Energy and Air Quality chaired by Mr. Boucher. This morning we are very pleased to have with us the Administrator of the EPA, Mr. Stephen Johnson. The subject of this hearing will be the Environmental Protection Agency fiscal year 2008 budget request.

For purposes of making opening statements, the chairs and ranking members of each subcommittee and the full committee will each be recognized for 5 minutes. All other members of the subcommittees will be recognized for 3 minutes. Members may waive the right to make an opening statement, and then when first recognized for questions may add those 3 minutes to their time for questions. Without objection, all members have 5 legislative days to submit opening statements for the record.

This is a somewhat momentous occasion. It is the first time in 6 years that the committee is hearing from the EPA Administrator on the EPA's budget submission. The EPA's role as our Nation's steward of the environment is critical to America's health, safety,

and economic growth, and we take our constitutional responsibility at oversight very seriously.

The President's budget requests have declined significantly during the last 6 years. This year, the EPA is only one of two agencies to see a reduction in the President's budget. This request is indicative of the administration's attitude toward environmental protection. There is growing alarm about the administration's lack of commitment to environment and public health protection. We are deeply concerned about whether the Environmental Protection Agency can fulfill its mission in terms of its core health programs, including Brownfields, Superfund, the Safe Drinking Water Revolving Act Loan Fund, Leaking Underground Storage Tanks, and Environmental Justice.

At our first budget hearing last week, we heard from several stakeholders, including the Acting Inspector General of EPA, the Environmental Council of States (ECOS), United States Conference of Mayors and the Natural Resources Defense Council. The distressing overall message we received from these witnesses was that EPA's core environmental programs have been chronically underfunded and that this lack of resources places an undue burden on the States and localities and puts our constituents' health at risk.

Mr. Chris Bollwage, the mayor of Elizabeth, New Jersey, testified on behalf of the United States Conference of Mayors. The mayors are facing unfunded mandates such as the Safe Drinking Water Act, and as a result, are often forced to pass the cost on to their constituents. Ironically, while we heard testimony on the difficulties States face trying to protect their citizens with less Federal funding, the Inspector General testified that EPA has been spending money on voluntary programs such as Performance Track, which yield questionable results.

Unfortunately, the EPA has failed to provide this committee with complete information on the amount of money and the personnel dedicated to these voluntary partnership programs. That is unacceptable. The EPA's lack of response raises serious questions about the diversion of funds and personnel to some of these programs at the expense of the core public health programs mandated by Congress.

In terms of these core programs, of particular concern to me is Superfund. The fiscal year 2008 budget request for Superfund is $35 million less than the President's fiscal year 2006 budget request, yet the EPA Inspector General testified before this committee last week that limited funding prevented EPA from beginning construction at all sites. The short-funding appears to have impacted projected completion rates. The EPA initially projected it would complete 40 sites in fiscal year 2007, but recently backtracked on its initial estimate, indicating it would only have 24 construction completions in fiscal year 2007.

Not only has the administration underfunded EPA, it has also expressed its opposition to the reinstatement of a dedicated tax for polluters that would increase revenue for the Superfund. Another concern is the Leaking Underground Storage Tank Trust Fund. Leaking underground storage tanks are the lead source of groundwater contamination in the United States, posing a significant risk to the Nation's drinking water supply. While the LUST fund sur-

plus is estimated at $3 billion in fiscal year 2008, the President's budget requests just $72 million from this trust fund for cleanup, less than last year's appropriation.

Gasoline taxes are paid by consumers, and these taxes are not going for their specified purpose: the cleanup of spills and underground contamination. Yet, the President is using the taxes designated for this environmental trust fund to offset other administration spending, such as the war in Iraq and tax cuts for the wealthy. In the meantime, however, there is a backlog of 113,000 LUST cleanups. The longer this contamination is left unaddressed, the greater the adverse impact on human health, increasing the ultimate cost of cleanups.

The President's fiscal year 2008 budget requests 26 percent less than his budget request for fiscal year 2006 for Brownfields. Current law provides an authorization of over $200 million per year, but the President's budget request is only 56 percent of the amount authorized for cleanup and assessment grants. This is troublesome when you consider that in 2006 there were 694 Brownfield project grant proposals, but only slightly more than one-third received funding.

In terms of the Drinking Water State Revolving Loan Fund, this is yet another core program that has faced cuts. The President's budget request is the lowest in the history of the State Revolving Loan Fund in real terms. The Environmental Council of States testified that declining Federal support has caused many States to institute new fees for drinking water infrastructure and service. Shortfalls in funding for the SRF program leads not only to rate increases, but also increased risks of outbreaks of water-born diseases.

Overall, States are concerned the EPA funding is insufficient to meet its mission to protect the environment and public health. Superfund and Brownfield cleanups are declining. States face increasing pressure to pass costs on to consumers. Drinking water infrastructure continues to deteriorate in the face of declining funds. The American public continues to face health risks from leaking underground storage tanks. All a result of chronic underfunding of EPA'S core health programs. Meanwhile, EPA, under this administration, is spending resources on voluntary programs with low oversight or accountability.

I look forward, as does the committee, to hearing from the EPA Administrator today about these and other issues affecting the health of our constituents and our environment.

At this time, I would recognize the ranking member of the subcommittee, Mr. Shimkus, for an opening statement.

Mr. SHIMKUS. Thank you, Mr. Chairman. Can I go into colloquy real quick and ask, the Administrator has got a time constraint? Is that true also?

Mr. WYNN. The Administrator has agreed to be here until 12:00, which is one of the reasons we began this hearing at 9:00, to accommodate his need to depart.

Mr. SHIMKUS. The only reason I mentioned that is so Members understand that the longer we talk, the less questions we get, which may be good, but I am still going to use my 5 minutes. But just so other people keep that in mind.

**OPENING STATEMENT OF HON. JOHN SHIMKUS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS**

Mr. SHIMKUS. Thank you, Mr. Chairman. I want to congratulate you on the success of your first hearing and tell you how much I look forward to today's follow-up hearing on the EPA budget proposal for fiscal year 2008.

Our hearing last Thursday on this issue was very informative. I was especially pleased to hear the agreement voiced by our witnesses that the amount of money allocated to a problem does not signify commitment. Instead, we learned that clear objectives, transparent actions, and focused resources mean more to improving public health than the amount of money dolled out to each program. I was especially happy to hear that the EPA has improved since 1999 in focusing its resources and defining its mission.

Ultimately the EPA's efforts should not be measured from the size of their budget, but whether they are protecting human health and the environment, and whether EPA is getting better and more efficient at that job with each year.

Last week helped us set the table for our time with the Administrator, and I want to welcome him before our panel. Mr. Johnson, our Republican members support congressional oversight by this committee because we believe real accountability and oversight should not be a partisan issue, and we are looking, as are our colleagues on the other side, for facts, both budgetary and scientific.

As a side note, I want to say how pleased I am that our Administrator is a scientist who understands the need for sound objective science at the EPA. This was a clear thing that we heard from our panelists last Thursday.

I also believe that having great scientific data is only so helpful if we don't know how clean we want our air, soil, or water to be. We need to be able to place into context how one environment improvement fits in with another. This, to me, is especially important because it speaks to the very heart of being able to prioritize our public health needs, and I would guess the States would agree with me after hearing how much they are feeling squeezed, trying to meet their own objectives as well as trying to implement Federal mandates.

One last item I want to touch on is the use of trust funds. I am a big proponent of using money raised in a dedicated trust fund for those activities a trust fund claims to address. I, and our witnesses, unanimously agree that once raised, these monies should go to their stated purposes. This includes a negative implication of having them being unused so they can cover deficit spending, a sin committed repeatedly by White Houses and Congresses of both parties, and I can bet after the budget goes through the process, it will be a sin committed again by the budget process here and our appropriators. We need to consider ways to make this money work for the purpose it was raised, or put the charade of having trust funds in the first place.

Mr. Chairman, I think it makes sense to focus our time on comprehensively understanding the budget of the main Federal agencies that our committee oversees. EPA's budget has ramifications for Federal, State, and local regulators. It impacts large, medium, and small businesses, and it translates into how public health pro-

tections can and will be carried out. Simply looking at the numbers does a disservice to the work of the Agency and its partners. We must admit that Congress is the constitutional home of Federal spending, not the executive branch, and that pay-go rules forced priority spending because they prohibit free spending without offsets. In this context, we need to be responsible and construct solutions that solve environmental problems rather than feed political fires.

Mr. Chairman, the Republican members of this subcommittee and I pledge to be honest brokers on the issues that lie ahead. Again, I want to welcome Administrator Johnson, and with a minute and 32 seconds remaining, yield back my time, Mr. Chairman.

Mr. WYNN. I want to thank you for that. Can I claim it?

Mr. SHIMKUS. You probably will anyway.

Mr. WYNN. I thank the gentleman for his comments.

I would like to recognize Mr. Dingell, who I believe is coming in at this moment, the chairman of the full committee. We are very honored to have him here, and without further comment, I would recognize the distinguished gentleman from Michigan.

**OPENING STATEMENT OF HON. JOHN D. DINGELL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN**

Mr. DINGELL. Good morning, and good morning to my colleagues on the committee. I want to commend you, Mr. Chairman Wynn, and you, Mr. Chairman Boucher, for holding this hearing on EPA's budget request for fiscal year 2008. This is the first time during this administration that the EPA Administrator has come before this committee to justify the agency's funding requests for environmental protection. I am sure we all welcome Administrator Johnson here for this new experience.

EPA plays a vital role in protecting the health of our public and the Nation by ensuring that the water we drink is safe, the air that we breathe is clean, the waste being generated is managed properly, and the legacy of toxic waste sites is cleaned up expeditiously. After reviewing the President's fiscal year 2008 budget, I can only conclude that it fails to meet the administration's professed goal of accelerating the pace of environmental protection, and in many areas, the budget falls woefully short of the needs previously identified by EPA. We look forward to Administrator Johnson telling us why EPA was one of only two agencies, the other being the Department of Labor, that actually faced decreases in the President's budget. Clearly, the President has not made environmental protection a priority.

To cleanup leaking underground storage tanks that are polluting the drinking water supplies of the Nation, the President's budget requests $72.5 million. In contrast, the trust fund to address these matters will receive over $300 million in annual revenues, and the trust fund surplus dedicated to these cleanups is projected to be over $3 billion in fiscal year 2008. American consumers then are being taxed, but the money is not being used for the specific purposes for which it is collected, or which the Congress intended it should be spent.

The Government Accountability Office has recently identified a $12 billion public funding need, and EPA has acknowledged over 113,000 releases from leaky underground storage tanks that have not been addressed. We want to hear why that is so.

For Brownfields grants to help communities with site assessments and clean-ups, the President continues his request from last year of $89 million, even though the Conference of Mayors has testified last week that only one in three applications has been funded over the past several years. The administration describes the Brownfields program as a vital jobs creation and economic program. If that is so, why did the President then cut the Brownfields grant budget request by $31 million or 26 percent from fiscal year 2006 when not only is it a job creation program, but it is an urgent environmental necessity.

The Drinking Water State Revolving Fund helps public water systems finance the cost of infrastructure improvements needed to achieve or maintain compliance and protect the public health. EPA's last drinking water infrastructure needs survey and assessment identified the total State need as $263.3 billion. The President's budget request of $842 million is the lowest in the history of the program, when it is adjusted for inflation.

In Superfund, the budget requests have been going down consistently over the past 5 years. There are numerous toxic waste sites on the National Priority List where cleanup has been delayed for lack of funds. Large funding shortfalls have been identified by the EPA Inspector General and acknowledged by senior EPA officials. Rather than expediting the rate at which Superfund sites are cleaned up, EPA has failed to meet the agency's own 2007 projections and has just recently announced that a reduction of 40 percent in construction completions. Only 24 Superfund sites will complete construction activities this year.

Now, the States carry out, enforce, and implement most of our major environmental statutes. Last week, the Subcommittee on Environment and Hazardous Materials was told by senior State environmental officials that if Congress accepts the 2008 proposal for STAG, that is, the State Territorial and Assistant Grants, it will mean that the States will have lost more than $1 billion in Federal support since 2004. This isn't normal. This is an enormous list of forgone opportunities to cleanup and better the environment.

The subcommittee should also examine the extent to which EPA has been shifting money away from the States to pay for pet projects or programs not specifically authorized by this committee or by the Congress. We will look forward to comments on this matter from the Administrator.

The President's budget would cut State and local air quality management grants by $35 million, or 15 percent, from fiscal year 2006 levels. These grants provide the money needed to pay State and local employees' salaries, and other expenses to develop and run State core and other local air programs. These programs, which are required by Federal law, reduce the pollution which causes asthma attacks, premature death, and other respiratory and cardiopulmonary problems.

Serious cuts have also been proposed for EPA's Office of Inspector General, which the Acting Inspector General has characterized

as unwelcome and disappointing. I would declare this to be a much more serious matter, and one on which the committee will want to have some rather strong answers, either here or at some later time. Office of Inspector General employees have been told that the President's budget will likely result in closed offices and a reduction in force for personnel.

Mr. Chairman, these are important hearings. I commend you for having them, and I observe that they are important in fulfilling the oversight responsibilities of the committee. I look forward to Administrator Johnson's testimony, and I thank you for recognizing me.

Mr. WYNN. I thank the gentleman.

At this time, the Chair would recognize Mr. Pitts.

Mr. PITTS. I will waive.

Mr. WYNN. The Chair would recognize Ms. Baldwin.

Ms. BALDWIN. I, too, will waive.

Mr. WYNN. Mr. Walden.

Mr. WALDEN. I will waive, too, Mr. Chairman.

Mr. WYNN. Mrs. Capps.

Mrs. CAPPS. I will waive.

Mr. WYNN. Mr. Terry.

Mr. TERRY. I waive.

Mr. WYNN. The Chair recognizes Mr. Green.

**OPENING STATEMENT OF HON. GENE GREEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS**

Mr. GREEN. Thank you, Mr. Chairman. I would like to ask unanimous consent to have my statement placed in the record, and I did make an opening statement the other day, but I am glad the EPA Administrator is here and I just want to mention two things.

One, I have an interest in the Superfund sites. I have a very urban district in Houston with petrochemical plants. That is our job base and our tax base, and I have been proud, since I was a State legislator, that we cleaned up what we thought was our last Superfund site. But just recently we noticed one that is actually on the border of our district in East Harris County with Congressman Poe, and so I am going to become very interested in how we get that site on, because it is actually a submerged site that is leaking dioxin into the Houston Ship Channel and into Galveston Bay and ultimately into the Gulf of Mexico.

But I know there is a concern, Mr. Chairman. I would like to also mention that I know this is a joint hearing, so I can talk about air quality, because our issues are only water quality, but I have also requested a site hearing in Houston because some of the issues that we are dealing with with air quality, air toxins in our area. So I would hopefully look forward that we acknowledge some of the few water problems. We also have a few air problems I would like to have address, so I yield back my time.

Mr. WYNN. The Chair thanks the gentleman. Also without objection, his full statement will be entered into the record.

At this time, Chair would recognize Mr. Murphy.

**OPENING STATEMENT OF HON. TIM MURPHY, A REPRESENTATIVE IN CONGRESS FROM THE COMMONWEALTH OF PENNSYLVANIA**

Mr. MURPHY. Thank you, Mr. Chairman. I will submit the rest of my statement for the record, too, but just very briefly I would like to thank Administrator Johnson for being here today.

One of the things that the EPA has done over the years is certainly pressure many cities and towns to cleanup their act, and many industries to cleanup their act, and has done so with success, particularly when there has been cooperative efforts. I mentioned in a previous hearing here how Pittsburgh used to be such a polluted city that men would come to work with two shirts so they could change at noon because it was pretty gray and dingy by lunchtime. But we have in our region now beautiful views, rivers full of fish, and still, we have a sizable coal industry that yields 50,000 related jobs in the Pittsburgh region. We no longer have the strength of steel industry that we once had, but many other industries have replaced it, and what is important as we move forward in anything is to make sure we have maintained the high interest for public health that the EPA has, and our environment is part of that, but also recognizing we need to also keep jobs in our country and remain competitive in our marketplace. We have lost so many jobs in this Nation from manufacturing sector. Many have gone overseas. It is not just a matter of how we handle things in this Nation, but very much the competitive nature we see of what happens in other nations with little or no environmental concerns and our high ones, such that they can manufacture products without any of those costs that we see as so important to public health.

As you continue your position as the Administrator of the EPA, I hope you will continue to keep this in mind: that we have to keep jobs in this Nation, we have to keep public health as high priority as working together and building the cooperation of our industries in this Nation, as well as the EPA's work in making sure we balance all these things together. I hope that as you spend your budget, that is part of what you do wisely, to multiply those dollars as we work together cooperatively with industry in this Nation to keep our manufacturing sector up in a competitive world.

And with that, I yield back my time.

[The prepared statement of Mr. Murphy follows:]

PREPARED STATEMENT OF HON. TIM MURPHY, A REPRESENTATIVE IN CONGRESS FROM THE COMMONWEALTH OF PENNSYLVANIA

United States Steel Corporation's Clairton Plant, located in Allegheny County in Pennsylvania, is the largest coke producer in North America producing approximately 4 million tons of coke a year. As evidence of U.S. Steel's corporate commitment to environmental compliance, Clairton has become the first heavy industrial facility in the United States to be certified to ISO 14001 standard for environmental management systems.

Integrated steel facilities, coke plants in particular, are one of the most heavily regulated industries in the United States. Clairton is subject to not only Federal and State regulations but also the more stringent Allegheny County regulations. Clairton is subject to the Federal standards for coke oven topside emissions and for by-product emissions and has been in compliance with these requirements since the rules were promulgated in the early 1990's. Recently, in 2006, Clairton became subject to the Federal standards for coke oven emissions from pushing, stacks and quenching and is also in compliance with these new requirements. Allegheny County also regulates emissions from coke batteries and their standards are considerably

more stringent than Federal or State. Clairton maintains a very high percentage compliance with these standards. In addition, Clairton continues to proactively develop and implement programs to address environmental challenges. U.S. Steel's Clairton Plant has been and continues to be a leader in environmental performance and stewardship.

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Mr. WYNN. I thank the gentleman.

At this time, the Chair would recognize Mr. Pallone.

Mr. PALLONE. Mr. Chairman, I will waive my statement and use the time for questions.

Mr. WYNN. Thank you.

Chair will recognize Ms. Solis.

Ms. SOLIS. Yes, Mr. Chairman, I will waive and also hold my time.

Mr. WYNN. The Chair recognizes Mr. Barrow.

**OPENING STATEMENT OF HON. JOHN BARROW, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF GEORGIA**

Mr. BARROW. Thank you, Mr. Chairman.

Mr. Administrator, you may not remember when we met a few years ago. Thank you for being with us today. I will make my comments very brief.

As we are looking at your budget, we are kind of looking at the business plan for your agency over the course of the next year, and I just want to encourage you all to look into the area of efficiency standards for heavy duty class A trucks. Emission standards without any regard to efficiency can cost us in the long run. What we gain in air quality by tightening up on emission standards, we can lose if we have trucks running consuming a lot more fuel to cover the same distances. So what I want to do is encourage you all as you build your business plan for this year and for the next, that you look into that area because I think that is an area that I am getting a lot feedback from folks in my district that focusing on the one without focusing on the other, we are losing at one end what we are gaining on the other. If you could think about something without thinking about the thing to which it relates, you have the quality of being a good lawyer. What I want us to do is I want us to be thinking about the things to which these things relate so we are not thinking of this in a lawyerly fashion, but looking at this from a common sense point of view.

That is all I wanted to share with you. It is good to be with you again, and I look forward to hearing your testimony.

Mr. WYNN. I thank the gentleman.

At this time, I recognize the gentleman from North Carolina, Mr. Butterfield.

**OPENING STATEMENT OF HON. G.K. BUTTERFIELD, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NORTH CAROLINA**

Mr. BUTTERFIELD. Thank you very much, Mr. Chairman. First, let me thank the witness for coming forward today and participating in this hearing. It is long overdue, to say the least. I also want to thank Chairman Boucher for coming together with Mr. Wynn to have this joint hearing. We need to do more of this. It should produce good results.

I have only been in the Congress now for 3 years, but my staff tells me that we have not had congressional oversight over EPA appropriations for at least the last 6 years. I hope my staff is incorrect about that, but if it is correct, we need to make sure that that problem is corrected.

After reading through the Administrator's testimony, I am somewhat alarmed, Mr. Chairman, by his assessment of our current situation. His opinion seems to be in line with the tenancies that we have come to expect from the administration. Our environment is doing better now than it was a generation ago, but not as good as it could or should be doing.

When the EPA's new Clean Air and Mercury rule was released, I applauded that step as a step in the right direction. Unfortunately, in my State of North Carolina, it took a lawsuit from our attorney general and strong rhetoric from the governor and the delegation just to get the EPA to enforce existing clean air standards on the TVA, who for years has contributed to non-attainment in many North Carolina counties. The statement that I have before me says that "the President's request continues the administration's commitments to safe drinking water." Unfortunately, the request is a $14.8 million decrease from last year's request, and the lowest it has ever been when you account for inflation.

The President's proposal on land preservation and restoration is equally troubling. This year's proposal includes $15 million less than last year's, even while EPA budget documents say that it will not complete 40 percent of the projects that you expect to complete last year. There are a number of sites where you acknowledge that remedial projects are stalled, but you won't say how many. I hope you will mention that today. You point out in your written statement that around 1,000 national priority list sites have been completed. My concern is with nearly 700 sites where that is not the case.

Are we seeing a pattern here? I hope not, but it appears to be. What I am hoping to hear today is less about how great things are going, and more about what we can do together to make sure that the EPA is properly funded and given adequate guidance to make sure that it can carry out its mission of serving the environmental interests of the American people.

Again, I want to thank the Administrator for coming today, and thank the chairman for his leadership in this area. I yield back my time.

Mr. WYNN. I thank the gentleman.

At this time, the Chair would recognize the distinguished ranking member of the full committee, Mr. Barton of Texas.

**OPENING STATEMENT OF HON. JOE BARTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS**

Mr. BARTON. Thank you, Mr. Chairman. I appreciate this hearing this morning. It is good to see our two witnesses here.

I think it is important that we focus on their budget for the upcoming fiscal year. I think it is also important that we look at the results that the agency has achieved in its 30-year history to measure the environmental progress of the United States, in light of the efforts and money that has been spent on achieving them. Last

week's witnesses raised some important issues about priority setting within the agency. Recognizing current budgetary limits, few themes arose from those witnesses that I hope we can look into a little bit deeper today.

First, what public benefit has arisen from the expenditures that have been made in the past? Many of the witnesses last week said that increases in spending do not always directly correlate to increases in environmental protection.

Number 2, I think it is very important that decision making should be grounded in the evidence and in science where the science exists, and trust funds should be used for their intended purposes. Finally, whenever it is appropriate, we should use cost-benefit analysis to determine how well the money has been spent and where to spend additional funds.

I understand that overseeing the EPA is something like herding a herd of cats, or at least attempting to. The problem is that EPA's job is monumental, and we expect on some days literally an environmental miracle from our many, many dedicated people that work at the EPA. It is not a perfect agency. We should help the EPA to make sure that it can be as perfect or as competent as possible. It is entering its fourth decade of existence. Its infrastructure and its organization is predicated on a collection of well-meaning but disparate laws. We need to ensure that the EPA's efforts are focused, reasoned, cost-effective, and successful in achieving the program goals that it is responsible for.

For this reason, I think that the most important issue for our hearing today is whether, as EPA's mission statement proclaims, "public health is being protected and a cleaner, healthier environment is being produced for the American people." The proof is in the pudding. Clean and safe water, increased land preservation and restoration, improved research, better compliance, and increased corporate stewardship are all areas that we should have measurable results, based on what EPA has actually done.

Speaking of air quality, I think this is an area where the EPA has done very well. By any objective measurement, the Clean Air Act has been a success. We have reduced emissions of most of the pollutants that the Act targets, often quite substantially. These emission reductions allow Americans to live healthier and longer lives, and preventing tens of thousands of deaths and hundreds of thousands of illnesses every year. This is a major achievement. The agency can be proud of it. Members on both sides of the aisle of this committee can also be proud of it. It is important that as we move forward, the EPA continue to improve its air quality, while at the same time, ensuring that we improve the quality of life for all Americans.

While I have got a little time, I want to comment on something that is happening on the floor today that is relevant to the EPA. Apparently, we are going to create a Select Committee on Energy Independence and Global Warming. To quote my good friend Mr. Dingell of Michigan, that's like setting up another committee to study feathers on a fish. I don't believe it is going to serve any intended purpose, other than serving as a platform for some Members to grandstand and play to the politically correct constituencies that are so—I can't say the right word without being profane—are

so insistent that we destroy our economy in the name of political correctness. By its own admission, this select committee is going to have no legislative jurisdiction. It is only going to exist for 2 years. It can't report bills. It goes out of existence December 31, 2008. In my opinion, it is a huge mistake. It is going to do nothing but muddy the waters, waste a lot of resources, and valuable time of the members that are selected to serve on it. I still hope that maybe we will come to our senses and vote that particular select committee down.

With that, Mr. Chairman, thank you for holding the hearing, and I look forward to hearing what our witnesses have to say.

Mr. WYNN. I thank the gentleman for his opening statement.

At this time, I would recognize the gentleman from Maine, Mr. Allen.

Mr. ALLEN. Mr. Chairman, I will waive my opening and ask that it be submitted for the record.

Mr. WYNN. Without objection, so ordered.

I believe that concludes our opening statements. Any other statements for the record may be included at this time.

[The prepared statements of Mr. Hastert and Mr. Burgess follow:]

PREPARED STATEMENT OF HON. J. DENNIS HASTERT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Thank you, Chairman Wynn.

I'd like to begin by thanking you, Chairman Boucher and Chairman Dingell for calling this hearing. I look forward to hearing from Administrator Johnson and working with all three of you to conduct appropriate oversight of the Environmental Protection Agency to ensure that it continues to protect the environment in a manner that looks after the health and well-being of all Americans.

While the focus of this hearing is split between the jurisdictions of our two respective subcommittees, I will confine my remarks to my subcommittee's jurisdiction and discuss air quality. Specifically, I wish to highlight the dramatic improvements in air quality seen over the last 37 years and the manner in which EPA has encouraged that improvement.

To paraphrase a noted economist—things are always getting better, but some will always insist they are getting worse. The facts speak for themselves, things are getting better. Since the Clean Air Act was enacted in 1970, emissions of the six criteria pollutants addressed by the Act have been cut in half. Specifically, emissions of lead decreased 98 percent, volatile organic compounds 54 percent, carbon monoxide 52 percent, sulfur dioxide 49 percent, and nitrogen oxides 24 percent. All this was achieved even as the economy has grown by more than 187 percent, the number of vehicle miles traveled in the United States increased by 171 percent, and U.S. energy consumption grew by 47 percent. This is a record of success upon which we can all share credit and be proud and constitutes the proper measure of EPA's success. One cannot accurately measure the success of the Clean Air Act by merely looking at the dollars appropriated.

I'm also pleased that EPA's success in the air program goes beyond command and control regulation. We have made significant progress toward cleaner air using voluntary programs developed in concert with stakeholders and State and local government. A prime example is Energy Star, a Government-backed program that improves the environment through promoting and recognizing greater energy efficiency. Through partnerships with hundreds of organizations, Energy Star has eliminated millions of tons of emissions and saved consumers money at the same time.

As we proceed, I would encourage my colleagues to use their time in this hearing to learn about EPA's successes and let the Agency know that it should continue to pursue cleaner air in a manner that best benefits all Americans. Specifically, EPA should continue to combine appropriate regulation with voluntary partnerships developed after input from interested parties.

In conclusion, I look forward to hearing from Administrator Johnson and to the exchange of ideas at today's hearing. I also welcome additional opportunities to

work with Chairmen Wynn, Boucher, and Chairman Dingell, and Ranking Members Shimkus and Barton to ensure that EPA continues to do its job in an appropriate manner.

Thank you Mr. Chairman

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PREPARED STATEMENT OF HON. MICHAEL C. BURGESS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. Chairman, thank you for convening this hearing today.

One of my most important responsibilities as a Member of Congress is to ensure that my constituents' tax dollars are being spent wisely. It is for that reason that I look forward to the ongoing debate about our national funding priorities.

Administrator Johnson, thank you for appearing before us this morning. As we begin the fiscal year 2008 appropriations cycle, it will be helpful to hear from you about the President's budget request for the Environmental Protection Agency.

My district is located in North Texas, and one of my region's most important and challenging issues over the next decade will be how best to cleanup our air, so I am especially interested to hear your testimony on the EPA's air programs.

Administrator Johnson, thank you again for appearing before us this morning. I yield back.

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Mr. WYNN. Again, I would like to welcome Administrator Johnson. We are delighted to have you here. As you can see, we have lots of questions. We will allow you a 5-minute opening statement, and your prepared testimony will be submitted and included in the full record of this hearing.

At this time, it gives me great pleasure to recognize Administrator Johnson.

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

Mr. JOHNSON. Thank you very much, Chairman Dingell and Chairman Boucher and Chairman Wynn, members of the committee. I am very pleased to be here to discuss the President's fiscal year 2008 budget request for the U.S. Environmental Protection Agency.

The President' $7.2 billion request builds upon EPA's record of accomplishments and funds its role as our Nation enters the next phase of environmental progress. Over our 36 years, EPA has laid a strong foundation to shift America to a green culture. Our citizens are embracing the fact that environmental responsibility is everyone's responsibility. So today, instead of only having 17,000 EPA employees working to protect the environment, we now have 300 million Americans as environmental partners.

These are exciting times. Our air, water, and land are cleaner today than a generation ago, and with this budget, our progress will continue.

The evolution of environmental progress has come about in part because we have proven that a healthy environment and a healthy economy can, in fact, go hand in hand. But as the economy continues to grow, so do our energy needs. In order to meet the President's ambitious clean energy and air goals, EPA's budget requests over $82 million to support our Energy Policy Act responsibilities. This includes $8.4 million to implement the renewable fuel standards and $35 million for grants to cut diesel emissions from trucks and school buses.

EPA also plays a vital role in advancing the administration's aggressive, yet practical, strategy for reducing greenhouse gas emissions. The President has requested $117.9 million for EPA's climate change programs, including $44 million for the successful Energy Star program, $5 million for the Asia Pacific Partnership Initiative, and $4.4 million for Methane to Markets Program.

The evolution of environmental progress requires EPA to work effectively with our State and local partners. The President's budget builds on this cooperation by providing $2.7 billion to help our partners improve their water quality. We are also promoting the use of innovative tax exempt private activity bonds for capital investments and drinking water and waste water projects.

Additionally, collaboration is the key to protecting America's great water bodies. In order to strengthen the efforts of EPA and our partners, the President is requesting $28.8 million for the Chesapeake Bay, $56.8 million for the Great Lakes, $4.5 million for the Gulf of Mexico, and $1 million for Puget Sound.

At EPA, we are working productively with our partners to deliver a healthier, more prosperous future. The President's budget provides $1.2 billion for the Superfund program to continue transforming hazardous waste sites back into community assets.

After highlighting some of our cooperative initiatives, we also must recognize the necessity of vigorously enforcing our Nation's environmental laws. The proposed fiscal year 2008 enforcement budget, $549.5 million is the highest enforcement budget ever.

As EPA helps shape America's green culture, we understand the need to advance environmental science. The President's commitment to sound science is reflected in his $134 million request, an increase of $9.4 million, to fund human health risk, clean air, and nanotechnology research.

Finally, I must also mention EPA's evolving role from being guardians of the environment to also guardians of our homeland. The President has requested $152 million for homeland security responsibilities in water security and decontamination.

While the Nation's environmental progress continues to evolve, so too does EPA's role. This budget will fulfill EPA's responsibilities of being good stewards of our environment, and good stewards of our Nation's tax dollars. By making smart uses of our resources, we are not only building on our Nation's environmental accomplishments, we are creating a lasting legacy for future generations of Americans.

Thank you, and I look forward to addressing your questions.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Johnson follows:]

**TESTIMONY OF**
**STEPHEN L. JOHNSON**
**U.S. ENVIRONMENTAL PROTECTION AGENCY**
**BEFORE THE**
**HOUSE COMMITTEE ON ENERGY & COMMERCE**
**ON March 8, 2007**

Mister Chairman and Members of the Committee, I am pleased to be here today to discuss the fiscal year (FY) 2008 budget request for the Environmental Protection Agency (EPA). The President has requested $7.2 billion to support the work of EPA and our partners nationwide. This funding illustrates the Administration's unwavering commitment to setting high environmental protection standards, while focusing on results and performance, and achieving the goals outlined in the President's Management Agenda.

The President's request builds on EPA's long record of accomplishments and funds its role as America enters into the next phase of environmental progress. These are exciting times for our nation's environment. Since its founding, EPA has laid a strong foundation of environmental progress. Our air, water and land are cleaner today than they were just a generation ago, and with this year's budget, this progress will continue.

While our nation's environmental results are significant, it is important to understand how they're being achieved. Over our 36 years, EPA has laid a strong foundation to shift America into a "green" culture. Today, instead of having just 17,000 EPA employees working to protect the environment, we now have over 300 million Americans as environmental partners. Americans from all sectors of society –

businesses, communities and individuals – have begun to embrace the fact that the environment is everyone's responsibility, not just the responsibility of EPA.

Mister Chairman, the FY 2008 budget will fund our new role in this next exciting phase of environmental progress.

Our nation is committed to balancing the budget, and EPA is a proud partner in this effort. EPA is not only a good steward of our environment, but it is a good steward of our nation's tax dollars. We are accountable for spending the taxpayer's money efficiently and effectively, while focusing on wisely investing in environmental results.

**Clean Air and Global Climate Change**

The FY 2008 President's Budget requests $912 million for the Clean Air and Global Climate Change goal at EPA. EPA implements this goal through its national and regional programs that are designed to provide healthier air for all Americans and protect the stratospheric ozone layer while also minimizing the risks from radiation releases, reducing greenhouse gas intensity, and enhancing science and research. In order to carry out its responsibilities, EPA utilizes programs that include many common elements, including: setting risk-based priorities; facilitating regulatory reform and market-based approaches; partnering with state, tribal, and local governments, non-governmental organizations, and industry; promoting energy efficiency; and utilizing sound science.

The Clean Air Rules are a major component of EPA work under Goal 1 and include a suite of actions that will dramatically improve America's air quality. Three of the rules specifically address the transport of pollution across state borders (the Clean Air Interstate Rule, the Clean Air Mercury Rule, and the Clean Air Nonroad Diesel Rule). These rules provide national tools to achieve significant improvement in air quality and the associated benefits of improved health, longevity and quality of life for all Americans. In FY 2008, EPA will be working with the states and industry to implement these rules.

In order to address the nation's growing energy challenges, EPA's request supports activities associated with the Energy Policy Act of 2005. These activities include the implementation of the Renewable Fuel Standards that will promote the use of

renewable fuels, diversify our energy sources, and reduce our reliance on oil. EPA's request provides $35 million to support the new Diesel Emission Reduction Grants program that is designed to reduce diesel emissions in trucks and school buses through retrofitting and replacing existing engines. This program will target projects in areas that don't meet air quality standards to help ensure improvements occur in areas of the country where the benefits are needed most.

In FY 2008, EPA's climate protection programs will continue its government and industry partnerships to achieve reductions in greenhouse gas emissions and contribute to the President's goal of reducing greenhouse gas intensity by 18 percent in 2012. The President's request for EPA's voluntary partnership climate change programs and research on technology and science in FY 2008 is $118 million. The request includes $4 million for the Methane to Markets Partnership which promotes methane recovery and use in landfills, coal mines and natural gas facilities. In addition, EPA's request provides $5 million to support the Asia Pacific Partnership - this partnership supports international efforts to reduce greenhouse gas emissions by creating new investment opportunities, building local capacity, and removing barriers to the introduction of more efficient technologies. EPA's climate partnership and technology research efforts are components of the Administration's Climate Change Technology Program. In addition, EPA's Global Change research program coordinates its efforts and actively contributes to the Administration's Climate Change Science Program.

**Clean and Safe Water**

The FY 2008 President's Budget requests $2.7 billion to implement the Clean and Safe Water goal through programs designed to improve the quality of surface water and drinking water. EPA will continue to work with its state, tribal, and local partners to achieve measurable improvements to the quality and safety of the nation's drinking water supplies as well as the conditions of rivers, lakes and coastal waters.

The President's request continues the Administration's commitments to the Clean Water and Drinking Water State Revolving Funds. The President funds the Clean Water State Revolving Fund (CWSRF) at $688 million, supporting the cumulative capitalization commitment of $6.8 billion for 2004-2011 and enabling the CWSRF to eventually revolve at an annual level of $3.4 billion. The budget proposes $842 million for the Drinking Water State Revolving Fund (DWSRF), essentially the same as the 2007 level. This request keeps the Administration's commitment of achieving a long-term $1.2 billion revolving level.

EPA has worked with Treasury and other parts of the Administration to propose expanded use of tax-exempt Private Activity Bonds for capital investments in drinking water and wastewater projects. The President's Budget proposes to exempt PABs from the private activity bond unified state volume cap. PABs are tax-exempt bonds issued by a state or local government, the proceeds of which are used by another entity for a public purpose or by the government entity itself for certain public-private partnerships. By removing drinking water and wastewater bonds from the volume cap, this proposal will

provide states and communities greater access to PABs to help finance their water infrastructure needs and increase capital investment in the nation's water infrastructure.

This Water Enterprise Bond proposal would provide an exception to the unified annual State volume cap on tax-exempt qualified private activity bonds for exempt facilities for the "furnishing of water" or "sewage facilities." To ensure the long-term financial health and solvency of these drinking water and wastewater systems, communities using these bonds must have demonstrated a process that will move towards full-cost pricing for services within five years of issuing the Private Activity Bonds. This will help water systems become self-financing and minimize the need for future subsidies.

**Land Preservation and Restoration**

The Agency's FY 2008 budget request to Congress implements the Land Preservation and Restoration goal through EPA's land program activities that promote the following themes: Revitalization, Recycling, Waste Minimization, and Energy Recovery; Emergency Preparedness and Response; and Homeland Security.

The President's budget provides $1.2 billion for the Superfund program to continue progress cleaning up the nation's most contaminated hazardous waste sites. As of the end of FY 2006, cleanup construction has been completed at 1,006 National Priorities List (NPL) sites. The Superfund program often completes short-term removal

actions to mitigate immediate health threats at sites prior to completion of investigations and the start of long-term cleanup construction. EPA has continued its efforts to efficiently utilize every dollar and resource available to clean up contaminated sites and to protect human health. In FY 2006, EPA obligated $390 million of appropriated, state cost-share, and responsible party funding to conduct ongoing cleanup construction and post-construction work at Superfund sites that includes nearly $45 million to begin construction at 18 new Superfund projects. Based upon the construction schedules, EPA expects to complete construction of all remedies at 24 sites in FY 2007 and 30 sites in FY 2008. EPA expects to complete construction at 165 sites during the FY 2007 to FY 2011 time period, the goal established in the Agency's FY 2006 to FY 2011 Strategic Plan.

In FY 2008, the Agency is requesting $34 million for the Underground Storage Tank Program to provide assistance to states to help them meet their new responsibilities, that include: 1) mandatory inspections every three years for all underground storage tanks; 2) operator training; 3) prohibition of delivery to non-complying facilities; 4) secondary containment of financial responsibility for tank manufacturers and installers; 5) various compliance reports; and 6) grant guidelines. The Agency is also submitting new legislative language to allow states to use alternative mechanisms, such as the Environment Results Program, to meet the mandatory three-year inspection requirement. This proposal provides states with a less costly alternative to meet the objectives of the Energy Policy Act.

**Healthy Communities and Ecosystems**

In FY 2008, EPA's Budget carries out the Healthy Communities and Ecosystems goal via a combination of regulatory, voluntary, and incentive-based programs. A key component of the Healthy Communities and Ecosystems goal is to reduce risks to human health and the environment through community and geographically-based programs.

In FY 2008, $162.2 million was requested for the Brownfields program to support research efforts with additional assessments, revolving loan fund, cleanup grants and workforce development programs. When leveraged with state and local resources, this Brownfield funding will help assess more than 1,000 properties, clean up more than 60 sites, and address petroleum contamination in more than 40 communities.

EPA focuses on collaborative place-based programs to protect the great waterbodies – the Chesapeake Bay, the Great Lakes, the Gulf of Mexico and the Puget Sound.

The Chesapeake Bay is the largest estuary in the United States and a water resource of tremendous ecological and economic importance. The greatest success in the last five years has been the water quality initiative that has resulted in new water quality standards for the Bay, the adoption of nutrient and sediment allocations for all parts of the watershed that meet new standards, and tributary-specific pollution reduction and habitat restoration plans. To continue to carry out these functions, the FY 2008 President's Budget requests $29 million in FY 2008, an increase of over $2 million from the previous

President's Budget request. Within the request is $8 million for competitive grants for innovative, cost-effective non-point source watershed projects, which reduce nutrient and/or sediment discharges to the Bay.

The Great Lakes are the largest system of surface freshwater on earth, containing 20 percent of the world's surface freshwater and accounting for 84 percent of the surface freshwater in the United States. The goal of the Agency's Great Lakes Program is to restore and maintain the chemical, physical and biological integrity of the Great Lakes Basin Ecosystem. The President's FY 2008 budget commits $57 million towards continuing efforts by EPA's Great Lakes program, working with state, local, and tribal partners and using the Great Lakes Regional Collaboration Strategy as a guide to protect and restore the Great Lakes. The Agency will focus on working with partners to clean up and de-list eight Areas of Concern (AOCs) by 2010, emphasizing clean up of contaminated sediments under the Great Lakes Legacy Act. EPA will continue to work towards reducing PCB concentrations in lake trout and walleye and keeping Great Lakes beaches open and safe for swimming during the beach season.

The FY 2008 President's Budget Request provides $4.5 million for the Gulf of Mexico program to support Gulf States and stakeholders in developing a regional, ecosystem-based framework for restoring and protecting the Gulf of Mexico.

EPA efforts in the Puget Sound are focused on the Basin's highest priority environmental challenges: air and water quality. The FY 2008 Budget provides $1

million for restoration activities to improve water quality and minimize the adverse impacts of rapid development.

Another major focus of the Healthy Communities and Ecosystems goal is identifying, assessing, and reducing the risks from pesticides. In FY 2008, EPA will continue identifying and assessing potential risks from pesticides. In addition, EPA will set priorities for addressing pesticide risks and promoting innovative and alternative measures of pest control. EPA will continue to meet its pesticide-related homeland security responsibilities by identifying and reviewing proposed pesticides for use against pathogens of greatest concern for crops, animals, and humans. EPA will continue to work closely with other federal agencies and industry to implement its Registration Review program that will review existing pesticide registrations on a 15-year cycle to ensure that registered pesticides in the marketplace continue to be safe for use in accordance with the latest scientific information.

**Compliance and Environmental Stewardship**

The EPA's FY 2008 Budget request of $743.8 million for the Compliance and Environmental Stewardship goal provides funding for programs that monitor and promote enforcement and compliance with environmental laws and policies. The Agency will also support stewardship through direct programs, collaboration and grants for pollution prevention, pesticide and toxic substance enforcement, environmental information, and continuing an environmental presence in Indian Country.

In FY 2008, the budget for this goal also provides $56.9 million for GAP grants, which will build tribal environmental capacity to assess environmental conditions, utilize available federal information, and build an environmental program tailored to tribes' needs. The grants will develop environmental education and outreach programs, develop and implement integrated solid waste management plans, and alert EPA to serious conditions that pose immediate public health and ecological threats. Through GAP program guidance, EPA emphasizes outcome-based results.

**Enforcement**

In FY 2008, the proposed total of $549.5 million represents the highest requested enforcement budget. This request for an increase of $9.1 million reflects the Administration's strong commitment to the vigorous enforcement of our nation's environmental laws and ensures that we will have the resources necessary to maintain a robust and effective enforcement program.

EPA's enforcement program continues to achieve outstanding enforcement results with settlements over the past 3 years resulting in commitments of nearly $20 billion in future pollution controls. As an outcome of EPA's Superfund enforcement actions in FY 06, parties held responsible for pollution will invest $391 million to clean up 15 million cubic yards of contaminated soil and approximately 1.3 billion cubic yards of

contaminated groundwater at waste sites. These results show a strong and vigorous enforcement program that will be attainable under the FY 2008 Request.

**Research**

EPA conducts research that provides a scientific foundation for the Agency's actions to protect the air that all Americans breathe. In FY 2008, EPA's air research program will support implementation of the Clean Air Act, especially the National Ambient Air Quality Standards (NAAQS). The NAAQS programs will focus on tropospheric ozone, particulate matter, carbon monoxide, sulfur dioxide, nitrogen oxides, and lead. EPA also conducts research to improve understanding of the risks from other hazardous air pollutants, known as air toxics. EPA is also one of many federal agencies that actively contribute to the Administration's Climate Change Science Program.

Other important areas of research in FY 2008 will include: 1) development of molecular microarrays for detection of bacterial pathogens and non-pathogenic microbes in drinking water source waters; 2) epidemiological studies on the illness rates resulting from untreated groundwater and distribution systems; 3) studies on the practices, such as blending, for handling significant wet weather events to identify "best practices" for preventing peak wet weather flows from overwhelming wastewater treatment facilities while protecting water quality; and 4) providing more efficient monitoring and diagnostic tools through continued research to develop methods of using landscape assessments for

monitoring and assessing watershed conditions. These programs will help assess risks and priorities for ensuring clean water.

EPA is requesting $10.2 million in FY 2008 for nanotechnology research, which will focus primarily on the potential implications of manufactured nanomaterials on human health and the environment. The Agency's efforts are coordinated with other federal agencies through the National Nanotechnology Initiative (NNI), which the Administration has identified as a FY 2008 research and development budget priority. In FY 2008, EPA's Science to Achieve Results (STAR) program will continue to fund exploratory grants on the potential implications of manufactured nanomaterials on the environment and human health, in collaboration with other federal agencies.

The Agency also will continue in-house nanotechnology research initiated in FY 2007. The integrated programs will focus on: 1) assessing the potential ecological and human health exposures and effects from nanomaterials likely to be released into the environment; 2) studying the lifecycles of nanomaterials to better understand how environmental releases may occur; 3) developing methods to detect releases of nanomaterials; and 4) using nanotechnology to detect, control, and remediate traditional pollutants.

Recognizing that environmental policy and regulatory decisions will only be as good as the science upon which they are based, EPA makes every effort to ensure that its science is of the highest quality and relevance, thereby providing the basis for sound

environmental decisions and results. EPA uses the federal Research and Development (R&D) Investment Criteria of quality, relevance, and performance in its decision-making processes through: 1) the use of research strategies and plans; 2) program review and evaluation by the Board of Scientific Counselors (BOSC) and the Science Advisory Board (SAB); and 3) independent peer review.

**Homeland Security**

Following the cleanup and decontamination efforts after the terrorist incidents in 2001, the Agency has focused on ensuring we have the tools and protocols needed to detect and recover quickly from deliberate incidents. The emphasis for FY 2008 is on several areas including decontaminating threat agents, protecting our water and food supplies, and ensuring that trained personnel and key lab capacities are in place to be drawn upon in the event of an emergency. Part of these FY 2008 efforts will continue to include activities to implement a common identification standard for EPA employees and contractors such as the Smartcard initiative.

EPA has a major role in supporting the protection of the nation's critical water infrastructure from terrorist threats. In FY 2008, EPA will continue to support the Water Security Initiative (formerly known as Water Sentinel) pilot program and water sector-specific agency responsibilities, including the Water Alliance for Threat Reduction (WATR), to protect the nation's critical water infrastructure. The FY 2008 budget provides $22 million for the Water Security Initiative to continue operation at the existing

pilot systems and to begin deployment of the last pilot systems. Ultimately, an expansion of the number of utilities will serve to promote the adoption of Water Security within the water sector. Functioning warning systems, among several utilities of potentially divergent configurations, will afford a more compelling outcome than just one utility. After start-up of the remaining pilot systems in 2008, the program will ramp down as EPA shifts its focus to evaluation of the pilots. EPA will continue support of each pilot for three years, after which the host cities will assume maintenance of these systems and over time bring them to full-scale operation. By the end of FY 2007, EPA will issue interim guidance on design and consequence management that will enable water utilities to deploy and test contamination warning systems in their own communities.

In FY 2008, the Agency, in collaboration with our water sector security stakeholders, will continue our efforts to develop, implement and initiate tracking of national measures related to homeland security critical infrastructure protection activities.

In summary, this budget will enable us to carry out the goals and objectives as set forth in our Strategic Plan, meet challenges through innovative and collaborative efforts with our state, tribal, and private entity partners, and focus on accountability and results in order to maximize environmental benefits. The requested resources will help us better understand and solve environmental challenges using the best available science and data, and support the President's focus on the importance of homeland security while carrying out EPA's mission.

Mr. WYNN. Thank you very much for your statement, and also for the very positive attitude you have had about EPA.

However, I do have some concerns. I looked at your Web site and it says "President Bush has charged EPA with accelerating the pace of environmental protection while maintaining our Nation's economic competitiveness, and I am committed to this challenge." That was your quote, but if you look at 5 years of decreasing budget request for Superfund, $31 million less for Brownfields, and basically the lowest funding in history for the Drinking Water State Revolving Fund, and being only one of two agencies with a budget decrease, I have to ask you to explain to the committee how we are going to do this acceleration that you referred to.

Mr. JOHNSON. Well, thank you, Mr. Chairman.

Our fiscal year 2008 budget the President has proposed continues to deliver results while meeting a balanced budget.

As part of our budget, we are leveraging tax dollars for the environment. Examples of that is our Brownfields program. Leveraging our Energy Star program, helping us deal with both energy security as well as greenhouse gas emissions. We have numerous examples of where our limited tax dollars are being used wisely to leverage other dollars.

Mr. WYNN. Well, despite this leveraging, on the subject of Brownfields, you are doing only about one-third, maybe a little bit more than one-third—you are responding to slightly more than one-third of the actual requests, and this is according to the National Conference of Mayors. So how do you characterize that as an acceleration of the Brownfields program?

Mr. JOHNSON. Well, sir, our goal for Brownfields program is to turn those community eyesores into community assets, and the President's budget, which is $138.6 million of State and tribal assistance grants, does that. What does that mean? We, in 2008, are focusing on delivering results. In 2008, that means we project we will assess 1,000 properties. We expect that to leverage 5,000 new jobs, and also result in leverage funds of $900 million.

Mr. WYNN. Can I just interject and ask a question?

Mr. JOHNSON. Sure.

Mr. WYNN. How many more Brownfields applications will you be able to do in 2008, because that is what the mayors are asking?

Mr. JOHNSON. Generally speaking, we get quite a few applications. For those that work through the screening process, I would say generally twice the number of applications for the funds available.

Mr. WYNN. But how many more in 2008 than in 2007, because that is basically my definition of acceleration.

Mr. JOHNSON. Again, my focus is given the funding that is available for Brownfields, we are focusing on the—and I gave you the statistics. I think it is important to point out that over the past number of years since Brownfields, in fact, the level of funding has remained relatively constant, even though, in fact, in years past the President has asked for more money for Brownfields, Congress has chosen not to give us additional funds. And in fact, for the 2008 budget, I should say, this budget request is in alignment with what Congress has been doing.

Mr. WYNN. Let me move on to Superfund briefly. You projected 40 completions and you now have adjusted that projection to substantially fewer. How do you account for that and how do you characterize that again as an acceleration in environmental protection?

Mr. JOHNSON. Well again, our focus on Superfund is turning those problem properties back into community assets, and for construction completions, it is important to note that these are long-term construction projects taking 10 to 15 years.

Mr. WYNN. I understand that. You projected 40 at the beginning of the year. You are now readjusting that to say well, now we'll only do 24, and my question is, No. 1, why less, and 2, could you have not anticipated whatever problem it is you are going tell me caused you to adjust downward?

Mr. JOHNSON. Well, what we have found is the sites of today are significantly more complex than they were yesterday, and as we were projecting 40, we were assuming that the number of remedies per site and the pace of construction was going to be far greater than what it——

Mr. WYNN. Are you suggesting they are more complex than Love Canal, which was one of the major cleanup efforts, and I guess the other follow-up question is why didn't you anticipate that they would be more difficult when you told Congress you would do 40?

Mr. JOHNSON. You mentioned Love Canal. That is a great example. Congressman Terry from Nebraska is dealing with a Superfund site called Omaha Lead, and the Love Canal site was about 70 acres. The site in Mr. Terry's home State is nearly 9,000 acres, and so in terms of size, complexity, the measurements that we have—and Mr. Chairman, if you would, I would love to present this for the record. I apologize that I don't have any bigger chart, but what it shows is that from 1993 to 2000, the number of remedies per site, which a measure of complexity, was 1.7. From 2001 to 2006, the remedies per site was 2.5. For those sites that are currently under construction, that is, constructions are not complete, the remedies per site are 4.3 remedies per site. So we are seeing very complex sites. The resources remain the same, the sites are more complex.

Mr. WYNN. My time is up. I would only comment that I cannot believe that you could not have anticipated, and did not, in fact, anticipate the higher level of complexity when you projected the 40 completions. I don't understand what happened in mid-year that caused you to conclude, oh my goodness, these are more complex than we thought.

That concludes my questions. I turn the questioning over to my colleague, Mr. Shimkus.

Mr. SHIMKUS. Thank you, Mr. Chairman, and I will just start by saying I know that Superfund remediation is a 10 to 15-year program that goes back many years. I dealt with one up in Quincy, IL, an issue.

But let me start with my questions. Some of my colleagues are criticizing the Bush administration because during the 8 years of the Clinton administration, the average number of Superfund sites completing remedy construction was 76, but in the past 6 years, that average number of sites has declined to 41.5, and you are projecting only 24 construction completions in fiscal year 2007. This is

kind of in addition to what we were just talking about. What caused the increase in construction completions during the 1990's and the drop off in 2001?

Mr. JOHNSON. In fact, in the first 12 years there were 1,251 sites that were identified, and it was acknowledged that these were long-term construction projects of 10 to 15 years. In fact, it wasn't until 1993 that the agency put in place a new measure because there was no interim measure of success, and so a new measure was put in place in 1993 called construction completion, which means when all immediate threats have been eliminated and no further on-site physical construction is needed. It doesn't mean that it is safe for complete reuse. As the agency began its effort—I shared with you statistics from 1993 to 2000, and 2001 to 2006, and what we are dealing with today. These are considerably more complex sites.

Mr. SHIMKUS. With regard to how we know or don't know, what we find is we get into the sites and we find that we discover the site conditions change. We discover at a new site new contaminants, the extent of the contamination is sometimes found to be greater, so in spite of our best efforts of planning and forecasting, these are unknown sites and it is not until we physically get in there looking at the groundwater or looking at the dirt until we fully understand the extent and the complexity. Our construction completion adjustment reflects the complexity and what we have learned as we have begun to cleanup these sites.

Mr. SHIMKUS. And I know you showed this chart earlier, and I don't know if my colleagues have that, and I would want to make sure that we share this with the minority. You talked about the remediation issue, because he raised it up. I think that remediation issue is key. Earlier sites were less difficult than sites that were held over, and that is part of the reason why it is more challenging.

Second question is my colleagues think simply increasing revenues into the Superfund is the answer to speeding up cleanups. In fact, many strongly support reinstating the Superfund taxes. Tell me, would this help EPA cleanup Superfund sites?

Mr. JOHNSON. In our judgment, no. The Superfund tax expired December 1995. It was never a tax on pollution, it was a tax on the sale of chemicals and petroleum, and the amount of funds appropriated by Congress never matched the amount of funds coming in for the tax. Again, I apologize, but I do have another chart that shows the tax revenue coming in, and it shows the appropriation level, and as you can see from the chart, the appropriation level has remained relatively constant since 1992.

Mr. SHIMKUS. Mr. Chairman, I would like to ask that be distributed. I think you all would probably want to see that, too.

Mr. WYNN. Without objection, we will include that.

Mr. SHIMKUS. Thank you, Mr. Chairman.

Mr. WYNN. I stepped on your punch line on that chart.

Mr. JOHNSON. Well, as you can see the congressional appropriations that remained relatively constant while tax revenue has gone way up in the early days, then gone down.

Mr. SHIMKUS. Thank you.

Let me just, for my final 20 seconds, let me just go to your bio. You have been in EPA for over 20 years. You are a career service

employee. You have a bachelor's in biology, and an M.S. in pathology. I want to recognize the fact that you are not a political appointee—you are, but you have come through the ranks in EPA service and we appreciate the work that you.

I yield back.

Mr. JOHNSON. Thank you very much, sir.

Mr. WYNN. Thank you.

At this time, the Chair would recognize the distinguished chairman of the full committee for questions, Mr. Dingell.

Mr. DINGELL. Mr. Chairman, I thank you for your courtesy. Mr. Johnson, welcome to the committee.

Mr. JOHNSON. Thank you.

Mr. DINGELL. Mr. Johnson, we note that you are late in issuing the fine particulate implementation rules that provide State guidance on air quality plans that they must submit in April 2008. We have been in some correspondence on this matter. On January 19, I wrote you requesting that you produce the following documents. The letter said this. "All documents relating to this rulemaking that contain or reflect discussions with, or comments from OMB, or other parts of the executive branch as a part of formal or informal review of the proposed final rule." Have you received that letter?

Mr. JOHNSON. Yes, sir.

Mr. DINGELL. I believe you have responded to it, and on February 9, you said that you did not meet the deadline that I had sent, but you would keep working on the response.

On March 1, Mr. Stupak and I requested you deliver these documents by March 7, yesterday. Were they delivered?

Mr. JOHNSON. We have committed to have a full response to you by, I believe the date is April 2.

Mr. DINGELL. Now, let me try and understand, and let me know whether you understand what we had requested. We simply requested through the committee the delivery of certain documents, is that right?

Mr. JOHNSON. You asked for certain documents, that is correct, sir.

Mr. DINGELL. Yes. Now, is there a reason why you cannot deliver those documents to the committee?

Mr. JOHNSON. As is always the case, and certainly my 26-year history with EPA, documents that are deemed deliberative need to be reviewed before being released.

Mr. DINGELL. No, no, no, Mr. Administrator. Deliberative documents are within the purview of the responsibility of this committee.

Do you assert any privilege on the refusal to deliver these documents, and if so, what privilege do you assert?

Mr. JOHNSON. Mr. Chairman, the volume of documents that you requested has not allowed us to complete our search and review process by this time, and that is why the vast——

Mr. DINGELL. So you are telling us then, Mr. Administrator, that the reason that you have not been able to deliver these is that you have not completed your search. Is that correct?

Mr. JOHNSON. That is correct, sir.

Mr. DINGELL. Alright. Now, have you found any of the documents that we are referring to?

Mr. JOHNSON. Because I am not conducting the actual document search myself, I would have to talk to one of our staff.

Mr. DINGELL. Well, the question here is very simple.

Mr. JOHNSON. Mr. Chairman, as I understand, we have found some, yes.

Mr. DINGELL. Alright. What is there that precludes you from making a partial delivery of the documents? Is there any reason why you cannot deliver some and then make available the balance of them?

Mr. JOHNSON. I would be happy to provide a partial response.

Mr. DINGELL. Then I will expect by the conclusion of business today that those documents will be delivered in response to the request through the committee, those which you have. And I expect that you will pursue with great vigor the balance of the documents which you are still trying to find. Can you deliver those documents which you've already identified as being in compliance with the request of the committee?

Mr. JOHNSON. My staff is advising me that in order to physically get the documents to make sure that they are all together, I would respectfully ask for tomorrow.

Mr. DINGELL. Alright, tomorrow will be a fine day.

Mr. JOHNSON. Thank you.

Mr. DINGELL. We look forward to them by the conclusion of business.

Now, is there any claim of privilege of any kind which would foreclose you from delivery, any of these documents, including those not currently identified, as being in compliance with the request of the committee?

Mr. JOHNSON. I am not aware of any at this time.

Mr. DINGELL. Very good.

Have you been instructed by any person that you are not to deliver these documents to the committee or that you are instructed in any way to delay or to in any way foreclose the committee from the timely delivery of these documents by any person in the administration?

Mr. JOHNSON. No.

Mr. DINGELL. Very good.

Then how long will it take you now, Mr. Johnson, to identify the balance of the documents to be submitted to this committee, if you please?

Mr. JOHNSON. In my March 7 letter to you, Mr. Chairman, I respectfully asked that we respond to your full request by April 2.

Mr. DINGELL. Is there a reason why April 2 is the date by which we would receive them? Is there any reason why they could not be delivered sooner?

Mr. JOHNSON. It is my understanding, sir, just given the volume of documents that you are requesting that it takes us time to try to find them, research, and provide them to you. We want to be complete in responding to your request.

Mr. DINGELL. Then, Mr. Johnson, I think I am to assume that you are giving this committee the assurance that all of those documents will be made available to us by April 2, is that correct?

Mr. JOHNSON. That is correct.

Mr. DINGELL. Very good.

It is always the hope of this committee that we may deal in a most friendly and a collegial and cooperative means and method with our dear friends in the executive branch, and we hope that you have the same good feeling towards us, that you share this kind of feeling and this kind of cooperation does obviate a lot of unpleasantness which could otherwise occur. I hope as events go forward that you will keep these thoughts in mind.

Mr. JOHNSON. I am fully in support of that, too, sir.

Mr. DINGELL. I note that my time is expired. I thank you, Mr. Johnson.

Mr. JOHNSON. Thank you.

Mr. DINGELL. We will withhold our request until April 2. I know that we will see those documents here, to the pleasure and appreciation of us all, on that date.

Thank you.

Mr. JOHNSON. Thank you, sir.

Mr. DINGELL. Thank you, Mr. Chairman.

Mr. WYNN. At this time, I recognize the distinguished ranking member of the full committee, Mr. Barton of Texas.

Mr. BARTON. Thank you, Mr. Chairman.

Before I ask my questions, I want the Administrator to know document requests that are legitimate, the minority totally supports the majority in getting those documents. If for some reason there is a request that you consider to be not legitimate, if you would contact myself we will work with you and Mr. Dingell to alleviate it. But in general terms, this committee requests official documents we expect them to be tendered in the timeframe that is appropriate.

I would like to ask you about the CAIR Act.

Mr. JOHNSON. Yes.

Mr. BARTON. The mercury rule that was promulgated and implemented, I think, several years ago, could you expound on how you think implementation of that Act is going and what the results have been to date?

Mr. JOHNSON. The Clean Air Interstate Rules are actually the first regulations I signed as Administrator, and it will achieve close to a 70 percent reduction of both $SO^2$ and NOx emissions over the coming years from coal fire power plants. This results in literally, over time, hundreds of billions of dollars of human health benefits to American citizens. This rule was put in place. States are in the process of implementing it, some through State implementation plans, some through partial State implementation plans, some through adopting the Federal implementation plan. But we are seeing good progress and certainly want that to continue.

With regard to the Clean Air Mercury Rule, again, we are the first Nation in the entire world to regulate mercury from coal-fired power plants. We want to eliminate mercury as a health hazard from the citizens of the United States. In fact, we are one of the world leaders in taking on that challenge of dealing with the global problem of mercury, and of course, the Clean Air Mercury Rule is one of those examples of things we put in place.

Mr. BARTON. Are we actually in the stage where it has been implemented anywhere and reductions are occurring, or is it still in the implementation stage?

Mr. JOHNSON. Well, it requires technology and it is my understanding that companies are beginning to install the technology. I will turn to Bob. Do we have any specifics of a company?

Mr. BARTON. Can you identify yourself?

Mr. MYERS. Bob Myers, Office of Air and Radiation.

We can provide specifics for the record. We are obviously at the beginning of a program in two phases. The first phase is 2010, so investments are made now to meet that degree to which equipment is on the ground now specifically for that 2010 date. We will try and provide some information.

Mr. JOHNSON. So far we are still kind of ramping up. There is not an actual cleanup or mercury reduction that has occurred yet.

Mr. MYERS. There could be some reductions. It is a matter of assessment to try to see how exactly what the rule has produced. We also have, obviously, the investments associated with CAIR and the first 2010 date is the co-benefit level for mercury, so the investments in CAIR essentially get the mercury reduction. What I can provide right now with specificity is exactly how many in the ground in the plant investments are operating right now, but we will try to do that shortly.

Mr. BARTON. It seems to me you ought to be up here instead of down there, but that is a different story.

You said we are the first Nation. Have any other nations adopted a similar rule on mercury since we have?

Mr. JOHNSON. Not that I am aware of, but that is an excellent question. Bob, are you aware of any other countries?

Mr. MYERS. Not at this point in time that I'm aware of.

Mr. BARTON. The United States of America, it is routinely pilloried in international media for dragging our feet on environmental issues. Not only leading the way, we are the only Nation even attempting to control mercury, is that correct?

Mr. JOHNSON. I would have to check the record to see what other countries, because we have been aggressively pushing other countries as part of our international effort to deal with mercury from a variety of sources, including air, including stocks of mercury, as well as things including mercury that is included in little switches of older cars that we have taken a very aggressive stance on here in the United States.

Mr. BARTON. My time is expired. I will have some questions in writing, Mr. Chairman, for EPA on the funding of the leaking underground storage tank program. I am dismayed that we have—the trust fund is growing and expenditures for actual cleanup seem to be declining, and I hope that is area on a bipartisan basis we can work with the administration to increase funding, because we do have many localities that have leaking underground storage tanks, and that was one of the priorities in the Energy Policy Act, to beef that fund up and to get the States doing inspections and actually cleaning it up. So we will have some questions for the record for that.

I yield back.

Mr. WYNN. I thank the gentleman. I concur that that is a likely area for bipartisan cooperation. The trust fund is clearly being underutilized and that is of detriment to our citizens. At this time, the Chair would recognize Ms. Baldwin for a total of 8 minutes.

Ms. BALDWIN. Thank you, Mr. Chairman.

Mr. Administrator, are you familiar with the Supreme Court case *Cooper Industries, Incorporated* v. *Aviall Services, Incorporated* ?

Mr. JOHNSON. Yes, I am familiar with it.

Ms. BALDWIN. In that case, the Court held that a private party may not obtain contribution from other liable parties under CERCLA section 113(f)(1) unless the private party has been the subject of an administrative order or enforcement action by the EPA. This holding is very important because it challenges the previous practices of parties initiating voluntary cleanups without EPA intervention or involvement.

I am wondering if you could tell us what effect this case has had on voluntary cleanups throughout the United States?

Mr. JOHNSON. Well, we are currently monitoring the *Aviall* decision, because as you point out, in fact the Circuit Court split in January 2007 and the Supreme Court has granted cert. So at this point, we are monitoring the situation and I am unaware, at this point, of specific impacts on particular Brownfield sites, but as I said, we are currently monitoring.

One of the things that I would like to note, that is a program very much akin to Brownfields and one that certainly urge members of Congress to pass, and that is our Good Samaritan legislation. There are over 500,000 abandoned hard rock mines in the United States, key word abandoned. And we have Good Samaritans who want to go in and cleanup, but because of liability provisions associated with our Clean Water Act and CERCLA, they don't want to become the liable party for the entire site. And so we think it is a good thing to allow Good Samaritans to get in and help these sites, and so here is a great opportunity to accelerate environmental progress. And so I urge Members of Congress to help us move forward.

Ms. BALDWIN. I want to continue speaking a little bit about *Aviall*. Of course, my understanding is it goes beyond Brownfields in terms of its impact. Attorneys in the field have described the impact of the case as having created a needless policy crisis, so I am not sure that I am hearing from you the same level of concern about the impact of this.

I guess since it has been over 2 years since the original Supreme Court decision in December 2004, and you certainly responded to, I think it is Chairman Dingell's inquiries about the impact of the *Aviall* decision. Have you made any real effort in the EPA to collect data on the impact that this might be having on voluntary cleanups? Again, I would hope that the EPA is encouraging this type of activity with regard to the 113(f)(1) section.

Mr. JOHNSON. We definitely want to encourage continued cleanup through Brownfields. It is a highly successful program, and as I said, want to extend it to hard rock mines.

Let me ask my staff.

Ms. BUHL. Good morning. I am Lynn Buhl and I am in the Enforcement Program at EPA.

Yes, we were concerned by the ruling *Aviall*, and we have asked our regional offices repeatedly if they are getting phone calls, if they are getting a number of parties coming in and asking to enter into an agreement with us when they may not otherwise have done

so, and the answer is not really. A couple of States have expressed concern. It is very hard for us, though, to know what is not happening in the private sector that we simply are not a part of.

So we are worried about it. We are a little suspicious that a lot of things may not be happening that we would like to see happening, but we just don't have the anecdotal evidence.

Ms. BALDWIN. OK.

I am curious. The EPA has consistently said that the Agency supports voluntary cleanups. Even in your testimony, Mr. Administrator, you talked about having 300 million partners in your efforts to protect the environment.

Mr. JOHNSON. Yes.

Ms. BALDWIN. Does the EPA support the Fifth Circuit Court of Appeals decision in *Aviall*, and as you may recall, when it was at the Fifth circuit, the decision would have encouraged voluntary cleanups and subsequent contribution actions by allowing parties performing cleanups to recover some of their costs without EPA's involvement through an enforcement action order. I am wondering what posture you took at the 5th circuit.

Ms. BUHL. I believe we took the position that you need to take a very strict interpretation of the statute.

Ms. BALDWIN. Did your agency, when DoJ was taking the position on behalf of the U.S. Government, did you express concerns about the path they were taking in terms of the impact on voluntary cleanup, again, something I hope that you would want to encourage?

Ms. BUHL. I apologize. I was not there at the time and not present in the discussions, but I am happy to inquire and follow up on your question.

Ms. BALDWIN. I want to switch to the issue of mercury. Last July, the EPA issued its first ever comprehensive overview of the Agency's activities surrounding mercury. EPA's roadmap for mercury focused on six key areas where the goal is to reduce health risks associated with mercury exposure. Among them are research and monitoring. The roadmap states that the Office of Research and Development will continue to pursue its long-term goals to reduce health risks associated with mercury and to better understand the transport and fate of mercury in the environment. I am wondering what is the Office of Research and Development's current budget for mercury research specifically?

Mr. JOHNSON. I will ask Dr. George Gray to come up to the microphone, who heads up our office's research and development, but in the meantime, as I mentioned to Mr. Barton, that mercury really is a global challenge and EPA and the United States are leading the way. I mentioned our Clean Air Mercury Rule, we have now a partnership program for getting the mercury out of those old automobiles. That is 75 tons of mercury that would have gone into the environment, either the air, water, or land, that we have eliminated through this agreement.

Ms. BALDWIN. But I am sure you are interested in this issue and, in fact, have legislation of my own on this specific issue.

What I am really interested in, though, is knowing the budget level for the Office of Research and Development with regard to mercury research.

Mr. GRAY. I am George Gray, the Assistant Administrator for the Office of Research and Development.

This year's presidential budget helps us accelerate our efforts on mercury and increases our budget to $4.3 million for our research on mercury. That research ranges from looking at ways to further implement the Clean Air Mercury Rule, looking at technologies for removing mercury from power plant gases, to understanding the way in which it moves around in geochemical cycles. We have a strong program that has, as I said, an increase of about $500,000 in this year's presidential budget.

Ms. BALDWIN. And then the roadmap also looks at——

Mr. WYNN. Excuse me, the gentlelady's time is expired.

Ms. BALDWIN. Oh, I will submit my final question in writing. Thank you.

Mr. JOHNSON. Thank you.

Mr. WYNN. I thank the gentlelady.

At this time, the Chair would recognize former Speaker, the distinguished gentleman from Illinois, Mr. Hastert.

Mr. HASTERT. Thank you, Mr. Chairman. It is interesting, because what I found that the EPA probably does some of its best work when it works together with other Government agencies. In my home district in Illinois, the town of West Chicago, at one time we had 13 billion cubic feet of fluorium tailings, and it was through the cooperative efforts of the Illinois EPA, the U.S. EPA, not only did we get those fluorium tailings moved to a safe place—these were just dumped in the middle of a town, radioactive material, but a lot of the other material that was produced during the 1950's, nobody really knew about radiation then. It was taken for people to use in sandboxes and dumped as fill and found its way into Crest Creek and then the Dupage River, and a cooperative effort of the U.S. EPA, the Illinois EPA and some lucrative regulatory agencies, we have been able to clean this up, and we are almost there. It has only taken us almost 22 years. I think that type of cooperation when your agency doesn't stand alone as an entity by itself, it really reaches out to State and local agencies to work together, you have been, at least in my view, the most successful.

Which takes me to another issue. In the area of Missouri and Wisconsin and Illinois, we end up every spring with an issue of biofuels, and biofuels are a result of trying to meet clean air standards in changing climates. Of course, the winter blend of gasoline is different than the summer blend of gasoline. But every year, we see a spike in the cost of gasoline in those areas, especially the metropolitan areas of Wisconsin, Milwaukee, Madison, the areas of Chicago and East St. Louis, and St. Louis area. And so it has been a frustration for us to try to get some type of accommodation for transition. Can you give us an idea of how that might be implemented?

Mr. JOHNSON. Yes, sir, I can.

Of course, our goal with our fuel program is to both meet our air quality standards as well as to make sure that we have an abundant and affordable fuel supply. The President asked me shortly after our situation with Hurricanes Katrina and Rita, and concern over gasoline shortage to work with our States, our governors, to evaluate biofuels and to see whether there was a problem both in

availability and impact on price. Working with our State partners—and thank you for the great comments about our partnership—we looked at the issue of biofuels and I would be happy to provide a copy of that to you and for the record, because what it indicated was is that while on occasion there might be an issue with availability of biofuels, by and large it was a tool that States, particularly governors, wanted and needed to be able to manage both air quality issues as well as fuel supply.

So I would be happy to supply——

Mr. HASTERT. I think probably the issue is not the biofuels themselves, it is the transition periods, and the peripheral vision of blending those fuels, trying to get them in empty tanks and move through the availability of pipelines to move this, stuff has to be flushed, and there is a transition time where it is not really winter, it is not really summer, I see a possibility of at least a leniency at least blending these fuels so they are not completely separate, and then moving into the complete fuel line as temperatures get warmer. So it is a consideration, it something we have talked about for a long time. I appreciate your attention to it.

One last thing I would like to cover. You have the new diesel standards coming into effect this year and I wonder, what kind of cost analysis have you done as far as increased costs? What is the increased cost to engines and operation, do you know at all?

Mr. JOHNSON. We have done extensive cost analysis on diesel engines, both on road, off road, and a proposed regulation that I just proposed last Friday dealing with marine engines and locomotives. I would be happy for the record to give you the specifics and our detailed analysis.

Locomotives, for example, I do know that it is somewhere between about 2 percent of the cost of moving to a clean diesel locomotive and of course, the requirement is a number of years away because we are in the process of——

Mr. HASTERT. Is that about the same for truck engines?

Mr. JOHNSON. Truck engines, Bob, do you recall? I don't have the specifics off the top of my head.

Mr. MYERS. Yes, we did perform a detailed regulatory impact analysis associated with the cost increases in truck engines. It depends on the technology. Again, I would like to verify for the record, but I think in terms of the high end of the range was along the lines of roughly $1,500 and hundreds of dollars at the low end of the range. That would be not necessarily the increase of costs if somebody might price it. We do our analysis based on what we think the actual cost to the manufacturer would be.

Mr. HASTERT. Alright, I appreciate it. I just want to say I think that is a giant step in cleaning up air, and of course, diesel is one of the most intrusive pieces of clean air. But on the other hand, that cost is passed on to consumers and the consumers then pick up that cost, whether it is the cost of freight, cost of buying a truck or a diesel mower or whatever it happens to be, so I appreciate what you have done. I appreciate your service. I would like to have those cost analyses for the record.

Thank you very much.

Mr. JOHNSON. Thank you. If I could, Mr. Chairman, just to add to that, the cost for the diesel locomotive and marine would be

about $600 million is what our estimate shows. The public health benefits, 20 times that, $12 billion per year, and so we see that kind of significant ratio of cost and benefit throughout all of our diesel, and of course, just to lastly add, we look at all of our diesel regulations that we put in place and add that to the Clean Air Interstate Rule, in fact, short of getting lead out of gasoline, these are the most health protective and health beneficial standards to our air in the history of the United States.

Mr. HASTERT. I thank the gentleman, and I yield back.

Mr. WYNN. At this time, the Chair would recognize Mrs. Capps for 8 minutes.

Mrs. CAPPS. Thank you, Mr. Chairman. Welcome, Mr. Johnson.

Mr. JOHNSON. Thank you.

Mrs. CAPPS. I am going to be putting up a chart that is entitled "Hazardous Substance Superfund Account" and this is provided by the Congressional Research Service.

[The chart follows:]

**CRS - 4**
**Hazardous Substance Superfund Account (Prior to Transfers): Enacted Appropriations and Adjusted for Inflation in 2006 Dollars FY1997 – FY2007 and FY2008 Requested**

| | (in Billions of Dollars) | |
|---|---|---|
| Fiscal Year | Enacted Appropriations Nominal Dollars | Adjusted for Inflation in 2006 Dollars |
| **1997** | **$1.277** | **$1.549** |
| **1998** | **$1.368** | **$1.640** |
| **1999** | **$1.364** | **$1.614** |
| **2000** | **$1.265** | **$1.473** |
| **2001** | **$1.267** | **$1.436** |
| **2002** | **$1.270** | **$1.412** |
| **2003** | **$1.265** | **$1.378** |
| **2004** | **$1.258** | **$1.336** |
| **2005** | **$1.248** | **$1.286** |
| **2006** | **$1.242** | **$1.242** |
| **2007** | **$1.252** | **$1.221** |
| **2008** | **req.$1.245** | **$1.185** |

Mrs. CAPPS. If you have a chance to notice, the President's request for 2008 is at the bottom of the chart. You see that it is actually less in terms of real dollars for cleanup than any of the previous 10 years, I will give you a minute to find it, but is this not correct? The President's request for 2008, the bottom of that middle column——

Mr. JOHNSON. The President's request is $1.2 billion.

Mrs. CAPPS. Yes, which is, if you look at all of the numbers on the right column, it is actually less in terms of real dollars for cleanup than any of the previous 10 years. Is this correct?

Mr. JOHNSON. I don't know how this was——

Mrs. CAPPS. This was provided by CRS.

Mr. JOHNSON. Taking it at its root then it is what it is.

Mrs. CAPPS. Alright. Then my first question out of several, can you explain to me what is going on here? Why is the President's request not keeping up with inflation?

Mr. JOHNSON. Well, the President's request is focusing on, again, for Superfund of turning problem properties into community assets, and the President's budget helps achieve—in fact, it achieves what our goals and objectives are for——

Mrs. CAPPS. I don't want to interrupt you, but I want to get on to something more specific. It is true, though, that it is a decrease in funding?

Mr. JOHNSON. Well, let me also point out that I think it is also important that if you look at Superfund, it is not just EPA, but when you look at across the Federal Government, Department of Defense, it is actually $8.5 billion.

Mrs. CAPPS. You are on the witness stand here today, sir, with all due respect, and I am looking at this portion of the funding.

Now I want to turn to a more specific local situation in my district, but it appears to me that without funding, the pace of cleanups will be adversely affected. Two years ago, the Acting Assistant Administrator, Mr. Dunn, commented that effects of the funding shortfall—and this is his quote "For the last 3 years, EPA hasn't started cleanup at some new sites. If we assume that EPA's budget will remain flat for the foreseeable future, construction funding could be delayed at more and more sites." Another quote more recently from Assistant Administrator Ms. Bodine, announcing that EPA would only achieve 24 Superfund construction cleanups as opposed to the 40 cleanups cited in the President's proposed budget.

Yesterday EPA proposed the Halaco Engineering Company in my district in California for listing on the National Priorities List. Your proposal identifies to the surrounding communities that this is, indeed, a dangerous place, would be probably hazardous to one's health, and yet, there is going to be a time lag by all of the facts that we have. I want you to give me assurances to my constituents that the Halaco site is going to be remediated anytime soon, given that this EPA Superfund levels are effectively decreasing.

Mr. JOHNSON. Yes. With regard to the specific site, I will ask Susan Bodine if she would come to the table. We will say for those sites that we have identified that there is an imminent hazard, then we aggressively pursue, making sure that we bring an interim answer to a point so that we are eliminating that imminent hazard.

Mrs. CAPPS. Thank you. Could I ask if you would please, I would like to have these documents in writing so that I can convey them, because I do want to go—well, go ahead and give me a brief answer, but I would like something more lengthy that I can share with my constituents.

Ms. BODINE. Susan Bodine, Assistant Administrator for Emergency Response.

You quoted former Acting Administrator on the concern that we had unfunded new starts. In 2005, we had nine unfunded new starts, in 2006 there were six unfunded new starts.

Mrs. CAPPS. Is this not a correct quote or a statement by you that you would be achieving 24?

Ms. BODINE. Yes, that is accurate. We have actually provided information to Chairman Wynn and Chairman Dingell with respect to the reasons as to why——

Mrs. CAPPS. Right, well, I would like to have those reasons as well. I would like to get that in writing.

Ms. BODINE. I can provide that to you.

And then with respect to the Halaco site, yes, it has been proposed to the national list. We will take comment on that proposal and presumably in due course it will be listed. As we have talked about and as other members have discussed, Superfund is a long-term process so we would be proceeding with the investigation and picking the remedy for that site. Those are not high-cost activities, and at the point of that we would get to construction, it, of course, would then be—if there are responsible parties, we would be asking them to cleanup. The fund lead, at that point, it would go through our prioritization process where we have our experts prioritize sites based on their level of risk.

Mrs. CAPPS. Thank you.

Ms. BODINE. At the beginning of the process——

Mrs. CAPPS. Exactly, but there is now a delay, because there is a backlog of sites.

Ms. BODINE. No, there is no delay in moving forward with listing or with doing investigation or with picking remedies and I can't tell you what would happen 5 or 6 years from now when this would be ready for funding.

Mrs. CAPPS. OK, thank you.

I do have another topic to bring up, since this time with Mr. Johnson is very important to me. Turning to clean air, the EPA finally issued standards for ozone and fine particle pollution requirements, which now means that the State and local governments need to meet these responsibilities. At the same time, in this budget you are proposing $35 million in budget cuts. Does this mean a decrease in grants to State and local air pollution control agencies who are charged with meeting these standards?

Mr. JOHNSON. What it means is that we certainly value the work of our States and this is a shift of the monitoring network to the States. It was never envisioned that the Federal Government would continually pay for monitoring networks, so this represents a shift of a portion of that to the States.

Mrs. CAPPS. So this would be a burden for States and local agencies to meet these standards?

Mr. JOHNSON. Well, with regard to the standards, we were just talking earlier about the Clean Air Interstate Rule, which was the Federal Government's role in dealing with that trans-state boundary air pollution, but yes, the States for their local air provinces would need to develop appropriate mitigation for the issues in their State.

Mrs. CAPPS. And they will do this now with these new standards being published? They have been in effect for several years but they have now been published so that they now have new requirements to meet.

Mr. JOHNSON. There are new requirements to meet, that is correct, and they have to go through——

Mrs. CAPPS. It is hard for me to justify these cuts at a time when States are right in the middle of developing and implementing their own strategies for ozone fine particulate and many other programs, and I wish I had more time, because as a public health nurse, I find the President's budget so unacceptable. In times of rising rates of childhood asthma, cancer, neurological and developmental disorders, decreasing funding for environmental programs—I don't see how we can justify decreasing them. I believe, Mr. Chairman, that we have a lot of work ahead of us to restore funding in these very critical areas.

I have no more time, but I would love to have a response from you.

Mr. JOHNSON. Well, if the chairman would allow, in fact, there are a number of items in our budget, for example, one that I want to point out is that we—actually as part of the President's budget, there is an increase of $6 million to fund children's health research centers, so we are going from seven to nine to help in that. As I mentioned in my opening testimony, for research and development we have additional funds in there to help particularly air research for children by way of roads, because of the concern over asthma.

So there are a number of very specific programs in our budget which are designed to help us better understand and better protect our most sensitive subpopulations.

Mrs. CAPPS. But in this area, which is your responsibility, there are cuts.

Mr. JOHNSON. In air monitoring, it is a shift to where responsibility to the State, which was always something that the Federal Government would never pay for all State monitoring, but that was a responsibility that was shared by the States and the Federal Government——

Mrs. CAPPS. So it is a shared responsibility.

Mr. JOHNSON. It is a shared responsibility.

Mr. WYNN. The gentlelady's time is expired.

Mrs. CAPPS. Thank you.

Mr. WYNN. The Chair would recognize Mr. Pitts for 8 minutes.

Mr. PITTS. Thank you, Mr. Chairman.

Mr. Administrator, there appears to be some confusing regarding the Agency's efforts to address climate change. Could you describe the Agency's efforts in this regard?

Mr. JOHNSON. If I could, sir, I would like to put in the context of the administration, in fact, our Nation's commitment to—we have an unparalleled commitment, international commitment in

the United States to address climate change. From 2001 through 2006, we as a Nation have spent $29 billion to fund science, technology, and even providing some tax incentives to address climate change. At EPA, we have a part of the program which deals with issues such as Energy Star, Methane to Markets, climate leaders, Asia Pacific Partnership. We are an active participant, and as an administration, we have an aggressive program to address climate change.

If I might, Energy Star, for example, in 2005 by consumers buying products with the little Energy Star label, they saved $12 billion in energy costs. If you want to put that in terms of greenhouse gas emissions, they reduced greenhouse gas emissions equivalent to 23 million automobiles.

And so what we are finding is our programs are working. Of course, the President in his State of the Union has now put two charges before you members of Congress, and that is to pass the alternative fuel standard, as well as the CAFE standard, both of which help not only energy security, but also help us on the environment, particularly greenhouse gas.

Mr. PITTS. Thank you.

Another line of questioning, Brownfields. Brownfields funding is an important program to many of us on this committee, and I have a couple of questions based on the testimony our committee received last week from the U.S. Conference of Mayors.

First, Mayor Bollwage seemed to suggest that anyone who sends a Brownfields application to EPA should automatically get a Federal grant. The first question is, is it the Agency's experience that every grant application it receives is worthy of funding?

Second, Mayor Bollwage claimed that EPA denied two-thirds of the Brownfields applications because it did not have the funding, and the mayor suggested that if EPA had more money, these sites that were denied Brownfields grants would be able to obtain Federal grants. Is it true, second, that EPA denied funding to these sites solely due to the lack of Brownfields funding?

And lastly, Mayor Bollwage suggested that Federal Brownfields cleanup grants should be used to help fund cities applications for Brownfields grants, as well as the administration of the grants once received. This is not an allowable use under the law, and cities, especially those that tap the success of the existing Brownfields program have willingly put up their money for these purposes. Do you support changing the statute to allow cleanup grant dollars to be siphoned away from cleanup, and instead allowed to go to administrative costs?

Mr. JOHNSON. Alright, yes, sir. Let me try to take each of your questions in turn.

First, to make sure that everyone is aware that the fiscal year 2008 budget request is actually higher than what the President's budget request was for Brownfields last year. In fact, as I already mentioned, as you look through the history of Brownfields, in fact that in spite of the President's request for much larger sums, Congress has chosen to keep this program relatively stable. We think it is a great program. It leverages dollars, it converts those eyesores into sources of pride.

With regard to administrative costs, we do not support. In fact, as you are well aware, the current legislation prohibits those administrative costs from—being able to use the funds for administrative costs. The reason why we don't support it is that we want to see those dollars not go to administrative costs, but we want to see them go to cleanups. And, in fact, as you appropriately point out, what we are finding is that people are willing to invest in the administrative costs to be able to get a grant to go forward with.

With regard to the grants that we receive, we receive a great number of grant applications. Not every one of them is worthy for funding. I don't have the statistics, but I would be happy to share with you for the record what information we have as to the numbers and which ones have been evaluated and found to be worthy or not.

Mr. PITTS. Thank you, I appreciate you providing that information.

Mr. JOHNSON. Thank you.

Mr. PITTS. Thank you, Mr. Chairman.

Mr. WYNN. Does the gentleman relinquish the balance of his time?

Mr. PITTS. Yes, I yield back.

Mr. WYNN. I thank the gentleman.

At this time, the Chair would recognize Mr. Pallone of New Jersey for 8 minutes.

Mr. PALLONE. Thank you, Mr. Chairman.

I just want to quickly go back to the Brownfields issue, and then move on to Superfund.

My own interpretation of history here, because I was involved in the authorization of the Brownfields program, and it was really the first and maybe the only pro-environment bill that the President signed. So I am a little sympathetic to the fact that the President does support the Brownfields program. I am not going to disagree with you. But it is true, of course, that the Republican majority in the last few years since it went into effect has not been funding it adequately. So I guess my point I am trying to make to the Administrator is if it was possible to get significantly more money for some of these applications that Mr. Pitts mentioned, you clearly would fund more of these. In other words, these applications have merit, they are just not being funded because you only have limited resources.

If you could just answer that question.

Mr. JOHNSON. Again, there is a lot of work to be done and there are a number of potential Brownfield sites, and again, the President's 2008 budget continues the progress and we are looking forward to having the budget passed so we continue that progress.

Mr. PALLONE. I know you can't say you want more money, so all I am asking is a lot of these applications that are not being funded clearly do have merit, is that true?

Mr. JOHNSON. I don't know what the statistics are, but again, we will be happy to provide it for the record. I do know that a number of applications come in that have not been completely well-thought through, if will, and others that have merit. But I would be happy to provide that information for the record.

Mr. PALLONE. OK. I mean, I would point out that when it comes to the assessment and there are these other grants, so these assessments and another kind of grants where the President's budget actually is less. I mean, in that category there was $120.5 million in 2006 but in 2007, the budget request was only $89 million, and now it is $89 million again. So that account has gone down.

But I am not looking to criticize the administration on this. I think more of the blame rests with the Republican majority in not providing more funding and actually limiting some of the funding, as you suggest.

With regard to Superfund, my concern is that according to your own site managers, there are 15 Superfund sites in New Jersey where human exposure is not, I stress not, under control, more than any other State. But there are a number of these sites around the country where the human exposure is not under control. My concern is that I would think that protecting human health is probably the most important issue when it comes to these Superfund sites, and yet it seems like controlling exposure to people has not been a top priority.

So I just wanted to ask you, isn't it time that you get human exposure under control? If you had, again, more funding, would you do more to get human exposure under control in New Jersey and across the country? Why isn't that seemingly a priority? Is it because of the money, or is there another reason?

Mr. JOHNSON. No, it is a priority. I think that it would be helpful and beneficial to have Susan Bodine come up and explain what we mean by Superfund sites that are not under control.

Mr. PALLONE. That would be helpful, if you would. I know my time is running out, but——

Ms. BODINE. Again, beginning in about 1993 we identified sites as where there was a complete exposure pathway. It doesn't mean that there is actual exposure, because of course, we are not going to go in and test people to see if they have actually been exposed, but where we find a complete exposure pathway and we have identified all of those as human exposure not under control.

We do take everything possible to take steps to cut off that exposure, but for example, if we put up a fence and we see evidence that someone is cutting through a hole in the fence and getting on the site, we will list that as exposure not under control.

For example, if we put a community on bottled water, or if they are all on a community water system but one person refuses, at this point we will say that is not under control because we have this one outlier.

So there are a variety of reasons why a site may be not under control. Where we have immediate acute exposures, we take action right away through our emergency removals, our time critical removal programs. That doesn't mean there may still be long-term risks——

Mr. PALLONE. I appreciate that and I appreciate your response, but I just want to give you one example. One of these sites is the Ringwood Mines Landfill site in New Jersey, this is in my opinion one of the biggest Environmental Justice tragedies in the country, and I use Environmental Justice. It involves a minority low-income community, actually Native American, in our State of New Jersey,

that has toxic paint sludge dumped on them by the Ford Motor Company, and the Agency came in and said they have conducted an Environmental Justice assessment, and said that the site is "an adversely impacted area", but really nothing was meaningfully done, in my opinion, to do anything about the human exposure, other than to say OK, it is adversely impacted from the Environmental Justice point of view.

I just want to use that as an example. Do you plan to do more work and comprehensively address the injustices, and in this case, the human exposure? I could go through all 15, but I think this is one of the worst. As you know, this is one where you did relist the site and I do appreciate that. It was off the list and now it is on the list, but now that it is back on the list, something has got to be done about the human exposure, because everything that she described is true. I mean, there are immediate problems, there are long-term problems, but I don't really feel that any of them are really being significantly addressed at this time. I don't know if you can comment on this.

Ms. BODINE. Yes. Ford Motor Company is taking actions at that site under an administrative order issued by EPA. I have statistics which I have provided for the record on the thousands of cubic yards of sludge, and yes, this is a problem. There is paint sludge and other materials that were on the site and that have been removed as part of the administrative order actions, as part of these emergency actions, and we are continuing to do more site characterization at some of the mined areas around it. But all of that work is proceeding and it is a priority.

Mr. PALLONE. Alright. Let me just ask one more thing. I only have a minute left.

This goes back to the Toxics Release Inventory Program. You know that myself and the two New Jersey Senators introduced a bill, and Ms. Solis also playing a major role in trying to go back to the original regulation as opposed to the changes that the EPA promulgated.

I was concerned because the GAO found that the EPA did not adhere to all aspects of its rulemaking guidelines when they developed a new TRI reporting requirements. What is your answer to the GAO report on that? I mean, it seems to confirm the fact that not everything was done properly in this rulemaking, which obviously we now want to overturn.

Mr. JOHNSON. Well, the GAO also points out in the report that the Administrator and Assistant Administrators have flexibility in the rulemaking process, and in fact, we did follow the Agency process. There is flexibility and we went through the appropriate notice and comment rulemaking. We certainly had an active program in the Agency to come to the final recommendation and my final decision on TRI.

I should note that since this is a budget hearing, that TRI is an important program. This year's 2008 request is $15.7 million, which is the highest request in 5 years. So it is a program we certainly support and believe in, and certainly is reflected in the President's 2008 budget.

Mr. PALLONE. Thank you.

Thank you, Mr. Chairman.

Mr. WYNN. Thank you.

The Chair would recognize Mr. Terry for 8 minutes.

Mr. TERRY. Thank you. I do appreciate that opportunity, Mr. Chairman, and like a couple of my colleagues on this committee, I want to focus on Superfund in my district, and I do appreciate that you brought it up in our discussion or answer to the chairman, considering the complexity of it.

I will make one comment that I think is shared amongst all of us on this committee that have Superfund or other environmental issues, and this is we want it done yesterday. We don't like it done over a 10-year or like the Speaker said, 22 years. We want it done in 1 day and we want it done perfectly, and ours should be the priority over everybody else's. I realize you have those political complexities on top of the scientific complexities.

I am generally pleased with the dedication of the EPA to the Superfund site in my district. As you mentioned, Administrator Johnson, it is 9,000 acres and makes up, I think, almost about 15 percent of the geographic area of my district. It is a changing area. It is mostly African American. There are a lot of young families in that area. I appreciate that you have made those households with children the priority and cleaning those properties first.

So I appreciate your dedication. I will, with every one of my colleagues in the delegation, continue to hound you to make sure that it stays on track and isn't diverted for political purposes because some other district becomes a political hotspot or something. So you have been above that political fray and I appreciate that, because it really is a safety issue within my district.

Now, with funding, I would support additional funding within the Superfund so that you don't have to make as many priority choices between projects. But I am a little bit unsure how your budget works. I just want to ask a couple of questions within the Superfund fund.

There has been discussions with the panel we had up here last week that suggested that the tax on chemicals and petroleum should be reinstated to bring the amount of your budget up to past. Well, you have proven that it is at least equal using general funds as it was in the past. So I appreciate you showing that.

So my follow-up would be the other part of making industry just levy a tax on industry because they exist, the alternative is what is currently written in the law, and I know firsthand because of my district that you have been very aggressive in making polluters pay, and in my view, you have even gone so far, it is like if you brush by one of the potential responsible parties on the street, you would then become another potential responsible party. It is down to the point where I think you have gone way beyond what we think of polluters.

My question then is in that regard about how aggressive you have become or the administration has become on making sure that the polluters are paying the full cost of remediation in a Superfund site, is that reflected, those dollars that come in, are those reflected in your budget or is that just the Government dollars? And how effective is your aggressiveness in making polluters pay in? Now, certainly in our blood sight you have an issue of the SARCO leaving the country and folding and defaulting on their ob-

ligations, so I just wonder how effective that has been, whether that is on budget or off budget, how are those dollars accounted for?

Mr. JOHNSON. Well, we have been very successful and we do aggressively go after the polluter, because we do believe that polluters should be the ones paying. On average, we are achieving about 70 percent polluter pays, we have a responsible party. Certainly the law charges us to seek that responsible party and have them pay, and that is what we do.

Having said that, we also try to be reasonable, particularly for those that are, if you will, the small contributors to it. Is there a diminimus threshold? We certainly prefer to settle. As I have often said, the air and the water and our land get any cleaner when we are sitting in a courtroom, and so we continue to try to negotiate settlement.

With regard to numbers, let me ask Marcus, my deputy, to share with you the number that we now——

Mr. PEACOCK. Just to get a sense of how large the breadbox is here, Congressman, the total PRP commitments for cleanups from fiscal year 2001 through 2006 was almost $6 billion, so those dollars are not reflected in the President's request. In fact, PRP spends money on PRP lead sites, we never find out what that amount of money is, and that is most certainly in the billions as well.

Mr. TERRY. Very good. So actually, there is more investment in cleanups than what we are discussing here today within the budget?

Mr. JOHNSON. That is correct, and as I pointed out that that is what is in EPA's budget. The PRP lead is another pot of money which Marcus Peacock just went over, and then when you look at our other Federal partners, it is $8.5 billion. So as a government, between our $1.2 billion in Superfund and then our other Federal partners, $8.5 billion, we as a Nation are investing a great deal of money in cleaning up these hazardous waste sites.

Mr. TERRY. I appreciate that. Certainly, in my particular version of justice, I think you should go after those that cause the pollution. The polluters should pay for the remediation, and I appreciate your aggressiveness.

I will just make a quick editorial comment on Brownfields, because Omaha—and I was involved in the City Council, as I mentioned, when one of the authorities on our panel last week actually sued me personally and in my capacity as a City Council member, which I will never forget, but the Brownfields that we cleaned up really was a partnership between the State and the city, and both of us put up some money as well as the polluter. And that was done and cleaned up within about 2 years from beginning to end. So there are times, at least in my view, that when the local communities take control of a site, and no offense, but leave the EPA out except for being advisory, it actually works better. And so when we pound our chest about more Federal involvement in the Brownfields, I sit there and cringe. No offense to that, but sometimes the local folks when they want to step up can actually do a darn good job of making a Brownfield useful for the community.

And that ends my time.

Mr. JOHNSON. That is one of the reasons it is one of the most complicated sites.

Mr. WYNN. At this time, the Chair would recognize distinguished vice chair of the subcommittee and a leading advocate on environmental issues, the gentlelady from California, Ms. Solis.

Ms. SOLIS. Thank you, Mr. Chairman, and good morning, Mr. Johnson.

Mr. JOHNSON. Good morning.

Ms. SOLIS. I just want to go straight into a line of questioning and hopefully, you will be able to respond yes or no on some of these questions.

When were you first informed by the Inspector General about his draft evaluation of Performance Track?

Mr. JOHNSON. My recollection of the first discussion that I had with regard to Performance Track was actually with the head of my policy office, who said that he had had a discussion with the Inspector General with regard to Performance Track.

Ms. SOLIS. But you have not had that particular conversation with the Inspector General yourself?

Mr. JOHNSON. No, following that conversation, I did meet with the Acting Inspector General and talked about Performance Track, but really more in the sense of as the Inspector General performs program evaluations. By the way, I believe are very valuable to the Agency and are very appropriate, and encouraging our Inspector General to do more, that in the program evaluations what is helpful for me as a senior manager is to not only know and understand what is wrong or what areas need to be fixed, but also highlight those things that are going extraordinarily well so we continue to do those things.

Ms. SOLIS. Did you think that the evaluation was fair and balanced?

Mr. JOHNSON. I didn't see the evaluation, so——

Ms. SOLIS. But when you spoke to the Inspector—what date was that?

Mr. JOHNSON. I don't know, I would have to go back and look at a calendar.

Ms. SOLIS. Can you get me that information?

Mr. JOHNSON. I would be happy to.

Ms. SOLIS. OK.

Moving on, my next question. Mr. Johnson, as I understand the eligibility for Performance Track, a facility supposedly is not allowed to be a member if it or its parent company is under investigation or has convicted an environmentally related crime within the last 5 years. If that is true, how are three Monsanto facilities members, despite their parent company having paid $1 million in fines as a result of criminal indictment by the Department of Justice? How are they then eligible for this program?

Mr. JOHNSON. On the specifics, I would have to defer to Brian Mannix, the head of our policy shop. Let me say, the Performance Track which was launched in the year 2000 now has 470 members. It was recognized by Harvard University in 2006 as one of the top innovations in Government.

I think it is important to put it in perspective. It is an outstanding program. It is beyond compliance, and the specifics, Brian?

Mr. MANNIX. I wouldn't want to comment on the enforcement record of a particular company without a chance to review it, so I would be happy to answer that for the record, but I don't know the answer.

Ms. SOLIS. But they did remain a part of the performance track program, in spite of the fact that according to your old standards they would have been outside of the bounds of the program?

Mr. MANNIX. Some facilities are part of the Performance Track program, yes.

Ms. SOLIS. That fall out of the restrictions that you place on them for being a part of it, that is what I am trying to get at.

Mr. MANNIX. I am sorry?

Ms. SOLIS. For example, in the case of Monsanto, they have been convicted of environmentally related crimes in the last 5 years, and yet they are a part of this program.

Mr. MANNIX. Again, there are facilities in the program as to what the enforcement record is at other sites in the company, I would have to review that before——

Ms. SOLIS. OK, and you could give us that information?

Mr. MANNIX. Yes.

Ms. SOLIS. OK.

This week, EPA announced new members with a press release stating that Performance Track facilities must meet all environmental regulatory requirements, and you praised Members as environmental leaders, because they go beyond what is expected or required by law. I have a chart that I would like to share with you.

[The chart follows:]

# US Steel Clairton Works

## MEMBER PERFORMANCE TRACK SINCE 2001

Performance Track Member No. A030024

### 10 Formal Enforcement Actions in the Past 3 Years

| Statute | Type of Action | Date | Penalty |
|---|---|---|---|
| Clean Air Act | State Administrative Order Issued | 05/17/2004 | $6,750 |
| Clean Air Act | State Administrative Order Issued | 12/14/2004 | $31,050 |
| Clean Air Act | State Administrative Order Issued | 12/14/2004 | $10,675 |
| Clean Air Act | State Administrative Order Issued | 02/28/2005 | $11,150 |
| Clean Air Act | State Administrative Order Issued | 05/10/2005 | $4,125 |
| Clean Air Act | State Administrative Order Issued | 09/30/2005 | $16,200 |
| Clean Air Act | State Administrative Order Issued | 03/24/2006 | $11,950 |
| Clean Air Act | State Administrative Order Issued | 05/08/2006 | $3,800 |
| Clean Air Act | State Administrative Order Issued | 08/16/2006 | $29,300 |
| Clean Air Act | State Administrative Order Issued | 11/24/2006 | $15,250 |

*From: EPA's Enforcement and Compliance History Online (ECHO)*
(Printed 3/7/07)

My chart shows one example of a facility which is a member of the Performance Track despite compliance problems. The company, U.S. Steel/Clairton Coke Works has paid over $140,250 in fines for 10 separate Clean Air Act violations in just the past 3 years. Is this the kind of compliance history that a company is allowed to have and still qualify to be a part of the Performance Track program? Yes or no.

Mr. MANNIX. Again, I would have to review the record of the company before commenting on the specifics.

Ms. SOLIS. Please provide the committee that information.

My next question, in your testimony, the Agency is supposedly a good steward of taxpayer dollars, but my understanding is that EPA has awarded contractors millions of dollars to support Government employees implementing this program Performance Track. Contractors run telemarketing call centers to recruit applicants for this program. They draft press releases, templates, and articles to promote Fortune 500 companies and design advertising and motivational posters to hang at Performance Track workplaces, such as these that are noted here before the committee.

Are you spending the taxpayer's dollars to pay contractors to do public relations work for corporations?

Mr. MANNIX. In part, Performance Track is a recognition program, and yes, we do provide posters to companies so that they can proudly display their membership and their accomplishments.

Ms. SOLIS. Even when those same groups are found in violation of the law?

Mr. MANNIX. We don't tolerate violations of the law.

Ms. SOLIS. OK, next question.

The California Air Resources Board estimates that each year there are about 5,400 premature deaths and 2,400 hospitalizations and about 140,000 cases of asthma. This is a filter that I would like to demonstrate to the committee that is currently being used, a filter that is a monitor located near the ports of Los Angeles and Long Beach in a residential neighborhood that is predominantly low income minority. The filter was white, white as this paper, and now it looks like this, and there are three little dots to show you what it looked like when it was placed at the facility. Twenty-four hours later, which is equal to the amount of a typical human would breathe in 2½ half months, this is what it would look like, that accumulation in just that one cycle of 24 hours. The black color is largely diesel exhaust, and a toxic air contaminant in California, due to its carcinogenic risk.

While I am pleased that EPA proposed a rule for locomotives and marine vessels, I am very concerned that it will not protect the health and well-being of minority and low income communities. My staff has reviewed this new rule that you just issued, and for the life of me, we can't find any discussion that would speak to the issue of Environmental Justice for review under this proposed rule. So could you please speak to that? Is there any mention at all?

Mr. JOHNSON. I am pleased to, because this rule applies to all Americans, and in fact, the good news is because of our aggressive stance on diesel, on road, off road, and the proposal that I just signed on a week ago Friday, we will see significant health benefits

across the population, particularly those sensitive subpopulations near or around port cities.

Ms. SOLIS. But is there an exact area in the 800-page document where that is cited? That is what we want to know.

Mr. JOHNSON. I would have to look. As I said, I know that it applies to all Americans, and in fact, anyone who is close to a port or to where locomotives are will benefit even greater than those that live further away.

Ms. SOLIS. Well, this is a very, very critically important issue for many of us across the country, but in particular, in Long Beach and the Wilmington area, and as just noted, this filter is quite alarming to know that just in the course of 24 hours, this is the same impact that is occurring with those young families that reside around the area. Many of them, I have to tell you, are military families.

Mr. JOHNSON. That is why we have been aggressively going after diesel and in fact, urge you to support the President's 2008 budget request, because there is $35 million in that budget to help deal with legacy engines, whether they be from trucks, school buses, or construction equipment.

Our goal is to have that black puff of smoke which you see evidenced on that filter something you only read about in a history book.

Ms. SOLIS. Very deadly carcinogenic.

Thank you.

Mr. WYNN. The gentlelady's time is expired. I thank the gentlelady.

Next speaker will be the distinguished gentleman from Pennsylvania, Mr. Murphy.

Mr. MURPHY. Thank you, Mr. Chairman.

I want to get back to the issue of Clairton Coke Works, because it is a Pittsburgh company, in a moment, but first I want to ask a couple questions.

First, how does the EPA work with industry when your are implementing some new standards that may impact upon them financially and also impact upon our job and manufacturing base? How do you go about that?

Mr. JOHNSON. We have a number of programs that range from enforcement to compliance assistance to education, training, outreach, to partnership, and my experience after 26 years of being at EPA is that when we can come together to work collaboratively to address environmental challenge with our partners, it works a lot better. In fact, the results are cheaper, faster, and better results.

We do have, as part of that effort, we have identified 13 sectors in our business community where we have been aggressively reaching out to them to help and to work with them to achieve greater environmental results while maintaining economic competitiveness.

Mr. MURPHY. Thank you.

Also, earlier you were referring to the mercury issue and the work that the United States has done as a Nation to really work at eradicating mercury through automobiles, air, et cetera. I know it is a significant concern for coal companies in trying to eliminate and reduce that, and yet, my understanding of the science of mercury is that it floats in the atmosphere, such as China, which is

opening up a power plant every week, does not have controls on that, and the mercury that they produce—correct me if I am wrong on this, but even if we eliminate all of it from our factories we would still see a significant amount of mercury coming in, drifting in from other places around the world that do not scrub out or eliminate their mercury. Am I correct on that?

Mr. JOHNSON. That is correct. There is trans-boundary air pollution. Pollution knows no political or geographic boundaries; that is precisely why the President asked a number of us, myself included, to be part of the strategic economic dialog with China. In my case, to work with them to help address the pollution, which obviously affects their citizens, but also creates trans-boundary air pollution.

One of the initiatives of the President's 2008 budget is the Asia Pacific Partnership, which our $5 million is part of the President's overall $50 million request, to help in this very effort, so it is a critical effort that we work with our international trading partners, particularly China, India, South Korea in particular.

Mr. MURPHY. I hope that continues because I know it concerns me that when we are taking measurement samples of our air to compute in there, a lot of what is measured is not even coming from the continental United States.

On the issue of so much that we are working on with air pollution, it is so important we work together on this. We still have to recognize 50 to 55 percent of our energy comes from coal. The Pennsylvania seam may have had more of an economic impact in the United States than almost any other geological formation on Earth, and we continue to be dependent upon it. I know there are forces who are trying to shut down coal's role, but we need it, especially in manufacturing, one of those being coke, and I am sorry that the gentlelady from California has left, because I wanted to ask—my understanding is the Clairton Coke Works that U.S. Steel owns, which is actually in Mr. Doyle's district, and many of the employees are from mine and many from U.S. Steel Works are also in my district as well. My understanding is that they are in compliance. They worked for several years with the EPA on this. I hope that is something you can get back to us and——

Mr. JOHNSON. We have to get back to you on that.

Mr. MURPHY. Because it should be one of those things we have to find out if working together with the EPA has yielded a positive outcome, which we all want to see, but we also want to make sure we are not shutting down an industry. The steel industry in Pittsburgh is obviously important, and this Clairton Coke Works has been around for a long time, working and producing a vital element to make steel. So I hope that is something you can get back to us on and see. Because if there is some good news of how the compliance and working together has yielded some positive results, we would like to know about that and see how money is spent on that.

Thank you very much. I yield back.

Mr. WYNN. I thank the gentleman.

Next we will hear from Mr. Allen, distinguished gentleman from Maine for 8 minutes.

Mr. ALLEN. Thank you, Mr. Chairman, and thank you, Mr. Johnson, for being here.

Mr. JOHNSON. Thank you.

Mr. ALLEN. I want to begin by going back—your testimony is that the budget request for the Drinking Water State Revolving Fund is essentially the same as the 2007 level, but it doesn't appear that any of your budget considerations have taken into account the concerns expressed by the State environmental directors last week. Their basic point was that a dollar today doesn't buy as much as a dollar 5 years ago.

We have a chart, and I would like that to be put up.

[The chart follows:]

**CRS - 12**
**Drinking Water State Revolving Fund (SRF) Program: Enacted Appropriations and Adjusted for Inflation in 2006 Dollars FY1997 — FY2007 and FY2008 Requested**

| | (in Millions of Dollars) | |
|---|---|---|
| Fiscal Year | Enacted Appropriations Nominal Dollars | Adjusted for Inflation in 2006 Dollars |
| 1997 | $1,275.0 | $1,547.0 |
| 1998 | $725.0 | $869.1 |
| 1999 | $775.0 | $917.0 |
| 2000 | est. $816.9 | $947.4 |
| 2001 | $823.2 | $932.7 |
| 2002 | $850.0 | $945.0 |
| 2003 | $844.5 | $920.3 |
| 2004 | $845.0 | $897.6 |
| 2005 | $843.2 | $869.2 |
| 2006 | $837.5 | $837.5 |
| 2007 | est. $837.5 | $816.8 |
| 2008 | req. $842.2 | $802.0 |

This chart is prepared by the Congressional Research Service, and what it shows is that when you look at the fiscal year 2008 budget request, adjusted for inflation, and this looks at the last 10 years of funding for this particular program, adjusted for inflation in 2006 dollars. When you look at that, your budget requests to $802 million, or the lowest in the history of the program.

Mr. JOHNSON. Correct.

Mr. ALLEN. Do you agree with that?

Mr. JOHNSON. It meets the President's commitment for a sustainable infrastructure and remember, this is a revolving loan fund and so as time goes on, that account continues to be built. The President's commitment was for drinking water between the years 2004 and 2018 that there be $12 billion revolving at $1.2 billion per year. The President's request of $842.2 million, which I believe is a $5 million increase, helps achieve the President's commitment.

And may I also add, I think one of the important things that I would certainly urge Members of Congress to take a look at is the notion of private activity bonds. We have an outside group of financial advisors as well as a number of others, including mayors and others, have said if you could fix the private activity bond issue on the revolving loan fund, we believe we will get more investment.

Mr. ALLEN. But we haven't fixed that yet, have we?

Mr. JOHNSON. We haven't fixed it yet and that is part of the President's 2008 budget request is to fix that is actually amending section 146 of Internal Revenue Tax Code, so it would eliminate that cap.

Mr. ALLEN. Right. I understand that, but you wouldn't disagree that the amount of money requested because of the factor of inflation is—the amount of money that can be put through this program buys less each year. That is what the chart says.

Mr. JOHNSON. Having not seen the chart, just taking it by its face value, that is what the chart indicates. However, again, what the 2008 budget does do is it meets the President's commitment of revolving at $1.2 billion a year, and that is——

Mr. ALLEN. But the only point I am trying to make, and I don't think you disagree with this, is if you have a flat commitment year after year after year, you can do less each year because everything costs more. That is the basic point. I think that is pretty simple, isn't it?

Mr. JOHNSON. The point I was trying to reach is that in the case of our water infrastructure, this is another case where environmental responsibility is everyone's responsibility. The Federal Government has a role. Certainly rate payers have a role, and we have been looking for innovative ways to help accelerate the pace of dealing with our infrastructure. Private activity bonds is one.

The other one which I just want to mention is a partnership program which we have initiated called Water Sense, and it is modeled after Energy Star. In fact, I just launched it this past year because I thought that it was important for consumers to be made aware of and to have a certification process so that consumers could make the preferential purchase that they are more efficient, and so we see a number of efforts to help ensure that our infrastructures——

Mr. ALLEN. I understand those programs are fine, but my understanding is if you look at overall water infrastructure funding by the Federal Government, it has declined over the last 4 years by about 50 percent overall. Your Agency did a need survey and assessment in 2005 and concluded the total drinking water infrastructure needs stood at more than $263 billion. In Maine, it is $300 million alone. I mean, I think what you are saying is somebody else has to pay for that. It can't be the Federal Government because we are going to keep our commitment flat. That seems to be what the President's commitment is and what you are suggesting the Agency should do.

Mr. JOHNSON. What I am saying is I agree that the needs are great and in the range of $300 billion. Also, pointing out that it is not just the Federal Government's responsibility, but from individuals to——

Mr. ALLEN. I hear you.

Let me ask you another question before my time runs out.

The Department of Defense, I understand, in contrast to previous BRAC grounds, has decided to withdraw funding to EPA for oversight of the 2005 round of BRAC cleanups. Traditionally, DoD has funded oversight by reimbursing EPA for full-time equivalent staff. For example, in fiscal year 2006, EPA had 75.5 FTEs dedicated to oversight work at 73 sites from the first four rounds of BRAC, and most of that was allocated to the regional offices. The DoD's intention in the 2005 BRAC ground is not to fund these FTEs.

Now, if that is the case, the burden of paying for oversight of BRAC related cleanups moves to you, and given the meager EPA budget request, it is hard for me to see how that occurs, which means those costs would now be born by States or localities, making property transfer and disposal much more difficult, and in many cases, endangering people who live near those sites. My basic question is, were you consulted? Do you agree? Is this a good thing for DoD to pass those costs on to you?

Mr. JOHNSON. Well, we at EPA continue to participate and seek reimbursement from Department of Defense, and Susan, if you would have some additional comments to provide?

Ms. BODINE. Yes. As the Congressman pointed out, we have reimbursable FTEs for BRAC 1 through 4, and not for BRAC 5. We did consult with our regional offices as to the impacts of BRAC 5 and were told that the additional resources, the reimbursable FTEs wouldn't be necessary, but that we are going to continue to monitor the situation so if it turns out that we do need additional resources, then we will go to DoD and seek reimbursement. But we were told, based on our review, that it wasn't necessary.

Mr. ALLEN. So but if they are not necessary, does that mean that you are just taking people who are doing other things for EPA and moving them into that work? I mean, the work doesn't go away, I don't think.

Ms. BODINE. No, but it is much—the BRAC 5 have many fewer NPL sites, national priority list sites. The work is much less and it is work that we can do within our existing resource base.

Mr. ALLEN. OK. Do the States agree with that conclusion?

Ms. BODINE. I believe the States expect us to still participate in the BRAC process, and we will continue to participate in the BRAC process.

Mr. ALLEN. Thank you. My time is expired.

Mr. WYNN. The gentleman's time has expired.

Next we go to the gentleman from Oklahoma, Mr. Sullivan.

Mr. SULLIVAN. Thank you, Mr. Chairman. Thank you for being here today.

Mr. JOHNSON. Thank you.

Mr. SULLIVAN. Mr. Johnson, as you may be aware, the attorney general of my State of Oklahoma, has sued a number of poultry companies for the natural resource damages under CERCLA. Because of the downstream liability concerns for smaller contract poultry producers, this case has caused many in my State to question whether manure is really a hazardous substance within the definition of pollutant or contaminant under CERCLA. I personally think we should see if there are ways to ensure environmental protection without the default assumption being that the courthouse is the first stop in these efforts.

I have two questions for you, sir.

First, I understand that you testified before the House Appropriations Committee about an administrative effort the EPA was undertaking in regard to animal waste and CERCLA. Could you please explain that effort and its scope for me?

Second, if my State of Oklahoma is successful in its suit and other parties use the courts to establish that manure is the constituent or contaminant under CERCLA, could you please explain the enforcement predicament that this would place on the Agency. How much would EPA have to increase enforcement staffing and funding to patrol farms that EPA has historically, as a group, not considered an environmental threat?

Mr. JOHNSON. Thank you. Again, our interest is to make sure we are providing environmental protection while at the same time supporting agriculture.

In the case of the comment that I made is yes, we will be proposing a regulation that would exempt air releases from animal waste from CERCLA emergency notification requirements. We have heard from our 26-State emergency planning commissions that they believe that it is a waste of their time to hear a report from an emergency because there is a farm, if you will, nearby. And so we are going to be proposing a regulation that does not exempt farms from regulation under CERCLA. It does not exempt farms from regulation under the Clean Air Act, and of course, we have an ongoing science process to better understand what the air emissions may or may not be from agriculture. We are looking to try to have effective regulations that are efficient, while at the same time, focusing on where problems may be and not where they are not.

And so, soon we will be having that draft regulation coming out for public comment.

Mr. SULLIVAN. I will tell you, what I am really interested in—and for 5 years I have been here, is we have a problem with the poultry industry. We are downstream from them and they have been dumping litter and runoff and all that, and we have had mis-

management practices at the State which haven't really helped that much.

I will tell you what is frustrating, sir, is that EPA will come down in our area if someone has—let us say a developer has some silt fences that aren't working and someone calls. Well, the region 6 people come up and find those builders, but they will not get involved. And this thing, I think the EPA is the Environmental Protection Agency for the entire United States. What they say is that you need to work this out. Well, you wouldn't tell a developer and someone complaining about those silt fences failing, you would come and find them. Well, how come the EPA has not gotten involved in this effort? Why don't they step in and try to do something about this, because my city of Tulsa is looking at changing and redoing their water supply. It is going to cost hundreds of millions of dollars to do that. Our lakes and streams are terrible. I don't know if you have seen them, but you can't even see your foot if you are standing in four inches of water, and it is just absolutely atrocious that nothing has been done.

Can you answer that, why the EPA will not get involved? They say you guys figure it out.

Mr. JOHNSON. Let me ask Ben Grumbles, who is the head of our water program. He can give you a good up-to-date report.

Mr. SULLIVAN. Is the problem too big for the EPA?

Mr. GRUMBLES. The problem, particularly when in an interstate context, it involves a great deal of collaboration. EPA, as I know you know when you first came to Congress and I met with you to respond to and address various concerns, we have a couple of key areas where we are involved and Congressman, we commit to continue to stay involved and to help work out the water quality standards issue, for one, about when there are different standards for different States upstream, downstream, it is important for EPA to be involved in that.

In the context of runoff or non-point source pollution, the way the Clean Water Act is written, it really does put a greater role for the States. There is not a Federal EPA regulatory role, but that doesn't mean we don't step up and help, through science and a collaborative process. There is also the watershed approach, the planning that I know is a focus for us to work with you and your constituents, and the upstream constituencies.

I also would say that when there are large CAFOs, it is important to regulate them, and that is why we are committed to finalizing a regulation on nitrogen and phosphorus under the Clean Water Act for concentrated animal feeding operations, including poultry.

Mr. WYNN. The gentleman's time is expired.

Mr. SULLIVAN. Well, we really need your help.

Mr. WYNN. At this time, the Chair would recognize Mr. Stupak, the gentleman from Michigan, for 5 minutes.

Mr. STUPAK. Thank you, Mr. Chairman, but I believe it would be 8 minutes.

Mr. WYNN. Did you waive originally? You claimed the time you sat in the chair.

Mr. STUPAK. No, I didn't give an opening statement, but I will take 2 minutes for sitting in the chair, so I should be up to 10 minutes.

Mr. WYNN. I think we are going in the wrong direction, Mr. Stupak.

The gentleman is recognized for 8 minutes.

Mr. STUPAK. Thank you, Mr. Chairman.

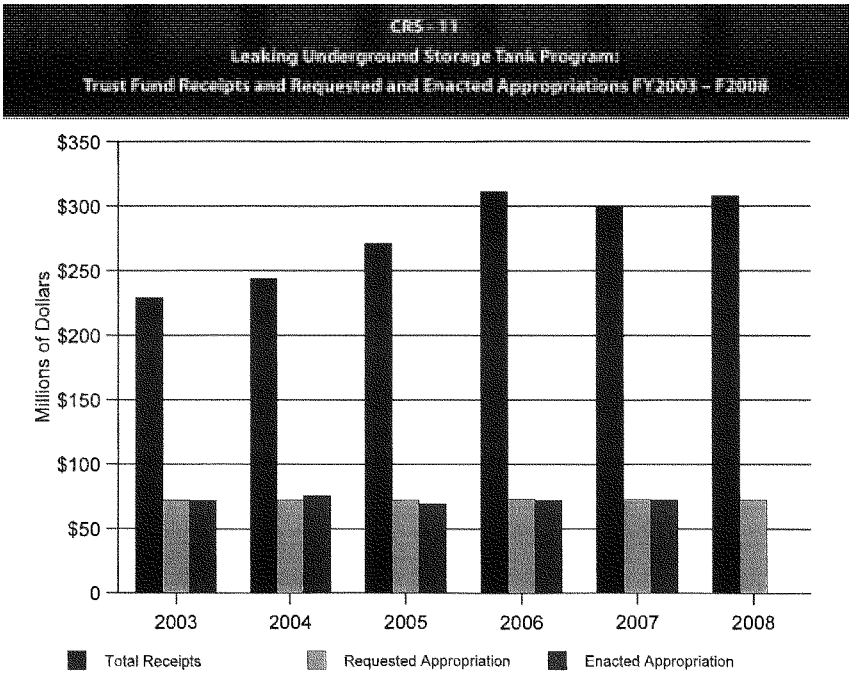
Mr. Johnson, thanks for being here.

Mr. JOHNSON. Thank you.

Mr. STUPAK. Two weeks ago, the General Accounting Office reported that it would cost $12 billion in public funds to cleanup half of the 54,000 leaking underground storage tanks. Michigan's share would be $1.64 billion. American motorists are being taxed on every gallon of gasoline to pay for the leaking underground storage tank trust fund to cleanup petroleum and MTBE leaks from these tanks. The trust fund will have a surplus of over $3 billion in fiscal year 2008.

I want to direct your attention to the chart here, and I believe they are just handing you a copy right now.

[The chart follows:]


CRS - 11
Leaking Underground Storage Tank Program:
Trust Fund Receipts and Requested and Enacted Appropriations FY2003 – F2008
$350
$300
$250
$200
$150
$100
$50
0
Millions of Dollars
2003
2004
2005
2006
2007
2008
Total Receipts
Requested Appropriation
Enacted Appropriation

Mr. JOHNSON. Yes, thank you.

Mr. STUPAK. It was prepared by the Congressional Research Service, using EPA budget numbers. It shows annual revenues of $300 million to the trust fund, $200 million from tax revenues and over $100 million from interest on existing trust fund corpus. With over $300 million in annual revenues, why is the EPA only seeking $72.5 million from the LUST fund when there are over 113,000 cleanups not completed? Why wouldn't you ask for $300 million?

Mr. JOHNSON. Well, this is a prime example of why we don't want the Superfund tax, because while the tax revenue has come in, as you look even——

Mr. STUPAK. Well, this about LUST.

Mr. JOHNSON. Exactly precisely the point is that this is exactly what has happened with the Superfund tax, as is what is happening with the underground storage tank tax is that while the revenues have gone up, Congress has appropriated considerably less money.

Mr. STUPAK. What did you ask for? You only asked for $72.5 million. Have you ever asked for $300 million?

Mr. JOHNSON. We continue to ask for and align ourselves——

Mr. STUPAK. Asked for how much? How much did you ask for?

Mr. JOHNSON. We asked for $72.4 million. That is for cleanups, and $22.3 million for inspections.

Mr. STUPAK. You asked for $94 million.

Mr. JOHNSON. We are urging Congress to take a look at the requirement for inspections every 3 years, and in fact, what we have heard from the States is that it would be much more efficient to allow self certification——

Mr. STUPAK. But you have all this money here to cleanups. We have over 113,000 leaking underground storage tanks. How come we are not asking for the money to cleanup when the money is there?

Mr. JOHNSON. We don't have the money. Congress has the money. What we have asked for is—and what the President has asked for continues the steady progress towards addressing underground—leaking underground storage tanks.

Mr. STUPAK. It doesn't look like any steady progress to me on that chart, it looks pretty flat or actually going backwards. I mean, the frustration of American people is they are paying for every gallon of gas and putting $200 million in this fund, and we still can't get the leaking underground storage tanks cleared up. So why don't you just ask for the $200 million, and we'll leave $100 million in for interest. Why don't you just ask for that so we can get this program done?

Mr. JOHNSON. We want to continue to make steady progress while achieving a balanced budget. We estimate that 350,000 of the leaking underground storage tanks have already——

Mr. STUPAK. Well, you believe it is proper to place a gasoline tax on the public, but instead, use those funds as a Federal deficit reduction device rather than cleaning up contaminated leaking underground storage tanks?

Mr. JOHNSON. Again, that is a decision for Congress, and what I can say is even before 2003 and 2001, Congress has chosen to ap-

propriate a relatively level of source. Let me just give you another statistic, if I could——

Mr. STUPAK. I don't want you filibustering here. I have 8 minutes. I'm trying to get 2 more from the chairman and he won't give it to me, so I can't let you filibuster.

Mr. JOHNSON. Mr. Chairman, please.

Mr. STUPAK. The EPA decelerated the pace of environmental protection by dropping the Agency's annual cleanup performance goal of leaking underground storage tanks from 22,000, that is what it was in 2003. You were going to do 22,500. Now, you went down to 13,000 in 2008. That is a 42 percent drop. It seems like the Agency is not making any progress. You are going backwards. The goal is 22,500 in 2003, now you are down to 13,000 in 2008. That is a 42 percent drop over 6 years. Why?

Mr. JOHNSON. I have to ask. Susan, do you want to come up?

While Susan is coming up, the one I wanted to point out was this President's budget is higher than any amount appropriated in all but 6 years since 1987.

Mr. STUPAK. No, my question, sir, is fiscal year 2003, 22,500 were targeted for cleanup. Fiscal year 2008, the budget year we are in, it is 13,000. That is a 42 percent drop. Why?

Ms. BODINE. Thank you, Congressman.

The underground storage tank program is a State run program, and——

Mr. STUPAK. I am very familiar with it. Just answer the question. Why is it going down 42 percent in 6 years? No filibustering, please.

Ms. BODINE. We rely on the States to tell us how many tanks they are going to be cleaning up, and they are telling us that they will cleanup fewer because the ones that are left——

Mr. STUPAK. So if the States ask for more money, you will give them more money?

Ms. BODINE. They are telling us that with States——

Mr. STUPAK. Have the States asked for more money? Yes or no.

Ms. BODINE. I would have to get back to you on that. I don't know that, but I can get back to you on that.

Mr. STUPAK. Alright. Let me ask this question. In 1992, there was an agreement between Michigan and Canada, solid municipal waste moving from Canada into the United States. In 1982, the EPA was going to put forth a proper framework for notice and consent of the movement of waste and the flow of trash between our two countries. EPA has never done it. In 1993 in a question to Mr. Dingell, when asked when those rules and regulations would be put out, the EPA said "shortly". It is now 14 years. We still do not have a program. And everybody who came from EPA—and over the last 6 years we haven't had many EPA hearings, but each time I ask and each time I use the word shortly, and each time I get back these nice letters saying we are working on it. We have the pilot program. We will have this completed shortly. It is 14 years. We still don't have the rules or regulations.

Mr. JOHNSON. We lack the authority to ban municipal waste imports.

Mr. STUPAK. Yes, I have heard that before so I asked for language, and we never get any language from the EPA. If you lack

authority, how could you do a pilot program if you didn't have authority?

Mr. JOHNSON. Our pilot program went to look at to see whether, in fact, they were——

Mr. STUPAK. Moving trash?

Mr. JOHNSON. Well, what the movement was and did it contain any hazardous waste, or was it indeed municipal solid waste as it was. And we concluded that the report inspections was completed in fiscal year 2006, and I would be happy to provide another copy of that for the record, if you would like.

Mr. STUPAK. Well, when are you going to put forth the rules and regulations, 14 years?

Mr. JOHNSON. Again, we lack the authority to ban municipal solid waste imports.

Mr. STUPAK. But do you support Mr. Dingell's bill, then, H.R. 518?

Mr. JOHNSON. We have taken no position on that bill.

Mr. STUPAK. You haven't taken a position on any one of the bills we have introduced for the last 6 years on this issue. Will you take a position on Mr. Dingell's bill, H.R. 518, which is a bipartisan bill signed by Great Lakes members who want to see the flow of Canadian trash greatly curtailed into this country?

Mr. JOHNSON. We have not taken a position.

Mr. STUPAK. Will you take a position? Six years you have been trying to take a position. We change the numbers every 2 years, the same bill. Will you take a position on that bill?

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

Mr. WYNN. The gentleman's time is expired.

Mr. STUPAK. Fourteen more years I am going to have to wait? I don't know if I will be here that long.

Mr. WYNN. The Chair recognizes Mr. Deal of Georgia.

Mr. DEAL. Thank you, Mr. Chairman. I would yield to Mr. Murphy briefly.

Mr. MURPHY. I thank the gentleman.

I just want to clarify. I have been checking this issue about the Clairton Coke Works, because they have been around for many years. The Clairton Coke Works is operated by U.S. Steel and is actually in full compliance with the EPA and full compliance with the National Emissions Standards. Not only that, it actually operates under stricter standards than the EPA or the National Emissions Standards, because the State of Pennsylvania has stricter standards and Allegheny County has even stricter standards than the State of Pennsylvania, and it is operating under strict standards for all of those.

Mr. Chairman, I would like with unanimous consent to be able to provide all this information, as well ask the gentlelady from California to provide her information, because it may be an example of how the EPA and industry can work together to make sure they are working for the public health and achieve the things that we wish.

I yield back.

Mr. WYNN. Since the gentlelady from California is not here, for her I am happy to include without objection, and I will certainly ask her if she would like her information included.

Mr. DEAL. Mr. Johnson, thank you for being here today.

Mr. JOHNSON. Thank you.

Mr. DEAL. Very briefly, since the issue of poultry waste and CERCLA has come up, as a representative from perhaps one of the largest broiler producing districts in the entire United States, my communities have serious concerns about the expansion of authority, regulation or otherwise, under CERCLA, which we do not think was initially intended to address this issue.

So a little bit different perspective than perhaps what you have heard earlier references made to that, but moving on to another consideration. And it would be primarily observation, followed by a very brief question or two. We have heard from many of my colleagues, many on the Democratic side of the aisle, about issues that relate to Superfund, relate to Brownfields, et cetera, and it has been with criticism that enough money is not being spent, actions are not being taken fast enough, and then, of course, criticism of existing industries, such as Mr. Murphy has already tried to clarify, the issue about alleged continuing pollution.

I would point out that in this concept that we have heard of Environmental Justice, I would like to insert another term for your consideration, and that is geographic justice. My constituents in rural areas don't really complain about spending Federal dollars to cleanup these sites, but I would point out that in most instances, those are sites that are the result of industrialization in this country, and they provided, even though they polluted in hindsight, they provided good paying jobs for those parts of the country that benefited richly from those job sites. Just as the jobs that are now being complained about industries that they don't particularly like, many of my constituents would welcome them to the rural parts because they need those kind of jobs. We are not complaining about spending money for these geographical sites that have benefited in the past but now have pollution problems.

But there is an issue of geographic justice that I don't think is being paid much attention to. For example, I think we ought to, in our environmental policies, not promote further concentrations of population, further concentrations of industry in areas that are already polluted, but I am afraid that many of the policies that we have in place are doing exactly that. Instead of dispersing, we are promoting further concentration. Let me give you specific examples of that.

My congressional district in the northwest corner borders Alabama and Tennessee. That portion is in the Chattanooga metropolitan statistical area. Several of my rural counties are now in non-compliance under air quality. They have very good information that it is not because of things that are coming within their area or things they have any control over. In fact, they had a study from NASA that showed that one of their non-compliances was because they were burning wheat fields in the Midwest and it was simply blowing there.

My time is running out.

My question is this. You indicated that there is going to be a shift of responsibility for air monitoring to the States. Many of those counties, the one in particular that is in non-compliance, has no testing site within the county. They have testing sites in an-

other State, Alabama and Tennessee, and they are concerned. They feel like if you want to get a good reading, get one from them and not penalize readings coming from somewhere else. In fact, one of the readings in my State is in the middle of a national forest, and it is in non-compliance because of pollen in the air.

Who has the authority to determine the location of air monitoring sites? Is it the State or is the Federal Government? Whose approval has to be obtained?

Mr. JOHNSON. It is done in cooperation. Again, we work with our State partners to make sure these we are trying to achieve national——

Mr. WYNN. The gentleman's time is expired.

Mr. DEAL. Mr. Chairman, let him answer my question, my only question.

Mr. WYNN. Because of the pending vote, I am trying to get another Member recognized. I am sure he would be happy to submit his answer to you or give you an answer in private.

Mr. JOHNSON. I would be happy to have my staff also sit down with you. Thank you.

Mr. WYNN. I would like to recognize the gentleman from Massachusetts, Mr. Markey.

Mr. MARKEY. Administrator Johnson, the Intergovernmental Panel on Climate Change has determined that the planet is warming as a result of carbon dioxide pollution and other emissions of greenhouse gases, by mankind, and that we could face a potential environmental catastrophe of severe hurricanes and other storms, droughts, rising sea levels, and massive species extinction if we do not reverse current trends.

Do you agree with the IPCC's findings?

Mr. JOHNSON. Yes, we do. In fact, and because of investment by the United States and——

Mr. MARKEY. Do you do agree?

Mr. JOHNSON. Yes.

Mr. MARKEY. Do you support a mandatory cap and trade program to curb carbon and other greenhouse gas emissions?

Mr. JOHNSON. Sir, what I do support is what the President announced at the State of the Union, and that is an aggressive yet practical strategy——

Mr. MARKEY. No, you support a mandatory program to?

Mr. JOHNSON. Yes, in fact, support a mandatory program in the sense of CAFE standard, as well as a mandatory——

Mr. MARKEY. Do you support a mandatory 4 percent annual increase in CAFE standards over the next decade?

Mr. JOHNSON. Support an increase in CAFE standards——

Mr. MARKEY. Mandatory.

Mr. JOHNSON. Mandatory increase in CAFE standards, yes.

Mr. MARKEY. So you support a mandatory 4 percent?

Mr. JOHNSON. Four percent.

Mr. MARKEY. That is what the President used in his State of the Union address. So you support a mandatory 4 percent increase?

Mr. JOHNSON. That is what I support.

Mr. MARKEY. OK. And that is very helpful to me.

So do you support a mandatory cap and trade system?

Mr. JOHNSON. No, I do not.

Mr. MARKEY. No, you do not, OK.

Would you support a Federal renewable portfolio standard to mandate that electric utilities get 20 percent of their generation from clean renewable sources, such as wind, solar, geothermal or biomass by 2020?

Mr. JOHNSON. Let me just make clear on the CAFE. The proposal from the President is to ask Congress to defer to Department of Transportation to actually——

Mr. MARKEY. So you don't support mandatory——

Mr. JOHNSON. The President identified is part of a 20 percent in 10 years, the 5 percent would come from CAFE——

Mr. MARKEY. So you don't support——

Mr. JOHNSON. I just want to make it clear——

Mr. MARKEY. No, you are not clear. You don't support a mandatory 4 percent increase in CAFE, is that correct?

Mr. JOHNSON. I support what the President asked for.

Mr. MARKEY. Is that mandatory or not mandatory?

Mr. JOHNSON. It is a mandatory CAFE standard through the Department of Transportation to determine the percentage to achieve what the President has outlined——

Mr. MARKEY. Alright. I can't let you go on. The answer is either mandatory or non-mandatory, not mandatory except that the Department of Transportation decides it is not mandatory. Which is it for you, sir, mandatory or not?

Mr. JOHNSON. For me, I support the President.

Mr. MARKEY. OK. That's all we need to know.

Would you support mandating a 10 percent increase in overall electric power sector efficiency and a 5 percent increase in natural gas utility efficiency by 2020 to be achieved by demand reduction programs, more efficient power generation, transmission, and distribution systems, accelerating introduction of more energy efficient buildings and appliances? Would you support that?

Mr. JOHNSON. I support increased energy efficiency.

Mr. MARKEY. But again, we need goals. Everyone supports it. Is it a goal that will deal with catastrophe or is it——

Mr. JOHNSON. I support energy efficiency.

Mr. MARKEY. Well, that doesn't help us again.

What you are telling me, again, Mr. Administrator, is that the Bush administration's policy of denial and delay is continuing as you sit there today. It is little wonder that today is the first time in nearly 6 years that the EPA Administrator has actually appeared before this committee. The FBI does not have as good a witness protection program as the Bush administration and the Republican Congress has had to keep the EPA from actually testifying on these issues.

Today we can see why. You really don't have a policy to deal with the number one environmental challenge now facing the planet, the threat of global warming. I can only hope that this policy soon comes to an end and that your administration, Mr. Administrator, becomes serious about working for mandatory goals that are set in each one of those areas rather than this non-specific, completely useless testimony in terms of helping Congress understand what the goals of this administration are.

You also have a requirement to set standards for the underground sequestration of emissions from coal-fired plants. When do you plan on providing those specific guidelines?

Mr. JOHNSON. With regard to geologic carbon sequestration, EPA and Department of Energy have been working on guidance that would guide the pilot projects so that we can evaluate the technical aspects for these class 5 experimental technology wells. We have started the public dialog. This is an issue for underground injection——

Mr. MARKEY. How many years before you can give a——

Mr. WYNN. The gentleman's time is expired.

Mr. MARKEY. Can you provide the answer so the committee has it?

Mr. JOHNSON. I would be happy to provide one for the record.

Mr. MARKEY. Thank you.

Mr. WYNN. The subcommittee has no further members seeking questions.

I remind members if they have additional questions, they can submit them for the record to be answered by the witness. The questions should be submitted to the committee clerk in electronic form within the next 10 days. The clerk will notify your offices of the procedures.

I want to thank the Administrator, Mr. Johnson, and his team for appearing before us today, and without objection, this hearing is now adjourned.

Mr. JOHNSON. Thank you, Mr. Chairman.

[Whereupon, at 11:50 a.m., the subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]

HENRY A. WAXMAN, CALIFORNIA
EDWARD J. MARKEY, MASSACHUSETTS
RICK BOUCHER, VIRGINIA
EDOLPHUS TOWNS, NEW YORK
FRANK PALLONE, JR., NEW JERSEY
BART GORDON, TENNESSEE
BOBBY L. RUSH, ILLINOIS
ANNA G. ESHOO, CALIFORNIA
BART STUPAK, MICHIGAN
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DARLENE HOOLEY, OREGON
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GREGG A. ROTHSCHILD, CHIEF COUNSEL

ONE HUNDRED TENTH CONGRESS

**U.S. House of Representatives**
**Committee on Energy and Commerce**
**Washington, DC 20515–6115**

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CHARLIE NORWOOD, GEORGIA
BARBARA CUBIN, WYOMING
JOHN SHIMKUS, ILLINOIS
HEATHER WILSON, NEW MEXICO
JOHN B. SHADEGG, ARIZONA
CHARLES W. "CHIP" PICKERING, MISSISSIPPI
VITO FOSSELLA, NEW YORK
STEVE BUYER, INDIANA
GEORGE RADANOVICH, CALIFORNIA
JOSEPH R. PITTS, PENNSYLVANIA
MARY BONO, CALIFORNIA
GREG WALDEN, OREGON
LEE TERRY, NEBRASKA
MIKE FERGUSON, NEW JERSEY
MIKE ROGERS, MICHIGAN
SUE MYRICK, NORTH CAROLINA
JOHN SULLIVAN, OKLAHOMA
TIM MURPHY, PENNSYLVANIA
MICHAEL C. BURGESS, TEXAS

February 21, 2007

The Honorable Stephen L. Johnson
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460-0001

Dear Administrator Johnson:

I am writing to confirm the invitation for you to testify before the Subcommittee on Environment and Hazardous Materials and the Subcommittee on Energy and Air Quality on Thursday, March 8, 2007, at 9:00 a.m. in 2123 Rayburn House Office Building. The hearing is entitled "The Environmental Protection Agency Fiscal Year 2008 Budget Request."

Following are important details concerning the preparation and presentation of your testimony.

***The Form of Your Testimony.*** You are requested to submit an advance written statement of your proposed testimony, which may be of any reasonable length and may contain supplemental materials. Please be aware, however, that the Committee cannot guarantee that supplemental material will be included in the printed hearing record. Your written statement should be typed, double spaced, and have enclosed a one-page summary of the major points you wish to make. You will have an opportunity to present an oral summary of your testimony to the Subcommittees. In order to ensure sufficient time for Members to ask questions, your oral presentation should be limited to five minutes.

Please include in your written statement answers to the attached questions.

Pursuant to Rule 4(b)(1) of the Rules of the Energy and Commerce Committee (copy enclosed), I am requesting you to provide 150 copies of your written statement at least two working days in advance of your appearance. This will allow Members and staff the opportunity to review your testimony.

You, or an employee of your office or agency, should deliver your written statement in person, and arrangements for delivery should be made in advance by contacting the Legislative Clerk of the Committee. If your written statement, including supplemental materials, exceeds one box in volume, advanced notice of delivery must be given to the Legislative Clerk in order to satisfy the security procedures of the Capitol Police. In order to obtain security clearance, information needed for delivery includes the name of the person who will be delivering the testimony, the time of delivery, and the number of boxes being delivered. If you are unable to provide the requisite number of printed copies of your testimony in person, please contact the Legislative Clerk in advance to arrange for alternative means of delivery. In accordance with the guidelines established by the Chief Administrative Officer of the House, however, no commercial carriers will be allowed access to the House Office Buildings.

Rule 4(b)(1) of the Committee Rules also requires that, if you have the technological capability, you should also submit a copy of your testimony in electronic format, i.e., on a computer disk or as an e-mail attachment. The Committee will post your testimony to the Committee Web site (at "http://energycommerce.house.gov") after the hearing. This will increase public access to your testimony and reduce the Committee's printing costs. Please be aware that submission of your testimony in electronic form does not relieve you of the obligation to submit the requested number of printed copies of your testimony. Additional guidelines for submission of testimony in electronic format are enclosed.

As noted, the electronic and printed copies of your testimony are required two working days before the hearing and should be sent to the attention of the Legislative Clerk for the Committee on Energy and Commerce in room 2125 Rayburn House Office Building, Washington, D.C. 20515. The electronic copy of your testimony should be sent to Mr. Chris Treanor at **chris.treanor@mail.house.gov**.

***Publication of the Hearing Record.*** Rule XI, clause 2(e)(1)(A) of the Rules of the House requires the Committee to keep a written record of committee hearings that is a substantially verbatim account of remarks made during the proceedings, subject only to technical, grammatical, and typographical corrections. Your testimony, the transcript of the hearing, and any other material that the Subcommittee agrees to include in the hearing record (subject to space limitations) will be printed as a record of the hearing. You will receive a copy of the printed hearing record when it becomes available, usually 30 to 60 days after the date of the hearing.

Please be aware that, under the rules of the House, witnesses have a right to be accompanied by their own counsel, who may advise the witnesses on their constitutional rights but cannot testify.

If you have any questions concerning any aspect of your testimony, please have your staff contact Richard Frandsen or Lorie Schmidt of the Committee on Energy and Commerce staff at (202) 225-2927.

Sincerely,

Albert R. Wynn
Chairman
Subcommittee on Environment and Hazardous Materials

Rick Boucher
Chairman
Subcommittee on Energy and Air Quality

Enclosures: (1) Electronic Format Guidelines
(2) Rules for the Committee on Energy and Commerce **(via U.S. Mail only)**

cc: The Honorable John D. Dingell, Chairman
Committee on Energy and Commerce

The Honorable Joe Barton, Chairman
Committee on Energy and Commerce

The Honorable John Shimkus, Ranking Member
Subcommittee on Environment and Hazardous Materials

The Honorable J. Dennis Hastert, Ranking Member
Subcommittee on Energy and Air Quality

**Questions for**
**the Honorable Stephen L. Johnson, Administrator**
**Environmental Protection Agency**

1. Please provide a list identifying by name each of the Environmental Protection Agency's (EPA) voluntary/partnership programs for both Headquarters and Regional Offices. For each program identify the amount of funding, the budget account from which the program is funded, and the number of FTEs dedicated to, or working on, the program for FY06, FY07, and the same information for the FY08 budget request. Further, for each program identify the contracts that have been awarded, the date awarded, and the dollar amount of each contract that supports the voluntary/partnership program activities.

2. Please describe the activities that the agency is carrying out and the associated budget requests for FY08 that the agency is seeking to determine the environmental and human health effects that may arise from applications of nanotechnology. Further, please identify any regulatory activities that are being funded in the FY08 budget request with respect to nanotechnology, and the amount of such funding.

3. With respect to the agency's mandate under Section 108(b)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) to promulgate financial responsibility requirements for classes of facilities, please describe the agency's activities and funding requests to carry out this requirement.

4. With respect to EPA's responsibilities for implementing the new sections of the Solid Waste Disposal Act -- Sections 9010 (Operator Training), 9011 (Release Prevention and Compliance), 9012 (Delivery Prohibition), and 9013 (Tanks on Tribal Lands) that were added by Title XV, Subtitle B of the Energy Policy Act of 2005, please provide a detailed summary of EPA actions and plans, as well as the specific funding amounts requested in the FY08 budget request, to implement these provisions.

**QUESTION:** What activities does the Agency plan to carry out to determine the environmental and human health effects that may arise from application of nanotechnology? The reply must also identify any regulatory activities that are being funded in the FY 2008 Budget request and the amount of funds requested.

**ANSWER:** EPA plans to provide research products on nanotechnology as well as work on regulatory and/or stewardship programs. The following provides a brief description of both research and regulatory work that the agency plans.

**Nanotechnology Research:**

- EPA is developing a nanotechnology research framework for fiscal years 2007–2012 that is problem-driven, focusing on addressing the Agency's programmatic needs. Under this framework, the Agency will conduct research to understand whether nanoparticles, in particular those with the greatest potential to be released into the environment or trigger a hazard concern, pose significant risks to human health or ecosystems by looking at their life cycles. EPA will also conduct research to identify approaches for detecting and measuring nanoparticles in the environment; to use nanotechnology for pollution prevention and enhancing manufacturing processes; and to facilitate the development of nanotechnology-based materials in an environmentally benign manner.

- EPA's FY 2008 President's Budget requests $ 10.2M for Nanotechnology Research.

- EPA plans to conducts its nanotechnology research through coordinated use of its Science to Achieve Results (STAR) extramural grants program,[1] which awards grants for peer reviewed research proposals from the nation's best universities and non-profit institutions, and the Agency's in-house research programs, which have cultivated EPA-relevant expertise in environmental science and engineering.

- EPA's nanotechnology research program and the research framework currently under development are guided by a recently completed EPA nanotechnology White Paper,[2] which was developed by a cross-agency committee working under the auspices of EPA's Science Policy Council. The White Paper identifies research needs specific to EPA's mission and programs. EPA research is also being guided by the information needed to conduct assessments of nanomaterials' risks to humans and the environment.

- EPA is working through the interagency National Nanotechnology Initiative (NNI) to ensure a comprehensive and coordinated approach to nanotechnology. For example, EPA's nanotechnology research is informed by the NNI's recently completed environmental, health, and safety research needs report.[3] The Agency is also collaborating with the international community. For example, EPA is chairing the Organisation for Economic Co-operation and Development (OECD) Working Party on Manufactured Nanomaterials (WPMN).

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[1] See http://es.epa.gov/ncer/ for more information.
[2] Available on-line: http://www.epa.gov/osa/pdfs/nanotech/epa-nanotechnology-white-paper-final-february-2007.pdf
[3] Available on-line: http://nano.gov/NNI_EHS_research_needs.pdf

- EPA is uniquely positioned to lead in the ecosystem and exposure research areas, due to the Agency's existing expertise. Also, because of expertise in areas such as fine particulate toxicology, the Agency plans to engage in limited human health effects research. The Agency is forming partnerships and collaborations with other agencies to fill research needs. For example, EPA is currently working with the National Institute of Environmental Health Sciences (NIEHS) to ensure that human toxicity research is conducted that is relevant and timely for environmental decision making.

**Regulatory and Stewardship Efforts:**

- EPA's FY 2008 President's Budget requests $ 1.58M_ for Nanotechnology related regulatory in addition to stewardship program.

- Current regulatory activity regarding nanotechnology under TSCA and FIFRA includes review of Premanufacture Notices for nanoscale materials as part of the New Chemicals Program and review of applications for pesticidal products containing nanomaterials under FIFRA.

- EPA's Office of Pollution Prevention and Toxic Substances (OPPT) is currently designing and developing a stewardship program for nanoscale materials under its existing chemicals program. The purpose of the stewardship program is to collect data to prioritize research needs and inform the risk assessment and risk management processes.

- In addition, EPA's Office of Pesticide Programs (OPP) has formed an internal Nanotechnology Workgroup to consider regulatory, policy, and science issues associated with registering a pesticide product that contains nanomaterials while ensuring its efforts are consistent with other Agency efforts, such as the TSCA program. The Pesticides Program expects to receive applications for pesticidal products containing nanomaterials in the next two years. These costs are included in the base budget for the pesticides program.

**QUESTION:** With respect to the agency's mandate under Section 108(b) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) to promulgate financial responsibility requirements for classes of facilities, please describe the agency's activities and funding requests to carry out this requirement.

**ANSWER:**

- EPA is investigating the degree and duration of risk associated with modern production, transportation, treatment, storage or disposal of hazardous substances.
- In carrying out this investigation, EPA is examining facilities proposed to the National Priorities List (NPL) since 1990 that are not regulated under Subtitle C of the Solid Waste Disposal Act. EPA chose the 1990 date because, by that date, most of the nation's waste management regulations had been promulgated, allowing EPA to identify and focus on whether a substantial amount of risk remains notwithstanding modern waste management practices.
- With respect to these facilities, EPA is analyzing to what degree sites are being listed on the NPL because of historic waste management practices or more recent practices.
- If EPA's analysis suggests that there are likely to be classes of facilities where modern production, transportation, treatment, storage or disposal of hazardous substances will create substantial risk in the future that may need to be addressed under the Superfund program, EPA will then determine the appropriate level of financial responsibility needed to protect against the identified level of risk.
- No specific funding requests for support of CERCLA 108(b) rulemaking have been made at this time. All funding employed to date has come from the Superfund base budget within the Office of Solid Waste and Emergency Response.

**QUESTION:** With respect to EPA's responsibilities for implementing the new sections of the Solid Waste Disposal Act – Sections 9010(Operator Training), 9011 (Release Prevention and Compliance, 9012 (Delivery Prohibition), and 9013 (Tanks on Tribal Lands) that were added by Title XV, Subtitle B of the Energy Policy Act of 2005, please provide a detailed summary of EPA actions and plans, as well as the specific funding amounts requested in FY08 budget request, to implement these provisions.

**ANSWER:** EPA has worked closely with its state, tribal, and industry partners to implement the underground storage tank (UST) provisions of the Energy Policy Act. To date, EPA has completed or made significant progress including:

- EPA published final grant guidelines in four key areas: delivery prohibition-section 9012 (August 7, 2006), secondary containment - section 9003 (November 15, 2006), financial responsibility - section 9003 (January 22, 2007), and public record - section 9002 (January 22, 2007). These grant guidelines provide the terms and conditions for states receiving federal funding to implement the UST program. EPA designed the guidelines to fully implement the Energy Policy Act requirements while providing flexibility to state implementing agencies. EPA developed these guidelines in partnership with states, following consultation with industry, and after public review and comment.
- On January 23, 2007, EPA published two additional draft grant public review and comment addressing inspections (section 9005) and the states' report on government owned USTs (section 9003). EPA expects to finalize these guidelines this spring.
- EPA is working on operator training guidelines (section 9010). EPA expects to publish this for public review and comment this spring, and finalize the guidelines by this year.
- EPA is working closely with our state partners to ensure that all USTs that had not been inspected since December 22, 1998 are inspected by August 8, 2007. We are on track to meet that deadline.
- EPA published a strategy for working with tribes to implement the UST program in Indian Country (section 9013). This strategy lays out a road map for continued progress by working closely with tribes. We are also working on a report to Congress on the status of implementation of the UST program in Indian Country, which we will submit to Congress by August 8, 2007.
- EPA facilitated the submission of reports to Congress by federal agencies (section 9007) documenting the compliance status of federally owned or operated USTs. EPA owns 17 USTs and submitted its own report as well, confirming all 17 USTs are in compliance.

EPA continues to work closely with our state partners and to provide assistance and support. We will also work to provide compliance assistance tools for industry, such as a reference on our web site of all state delivery prohibition programs, to assist the delivery

industry in determining the relevant program in each state. To date, EPA has met all Energy Policy Act deadlines for UST requirements.

FY08 Funding Request

The President's Budget requests $22,237,700 in State and Tribal Assistance Grant funding in FY 2008 to support state and tribal work to meet the UST provisions of the Energy Policy Act. These funds will be used to conduct inspections and implement the various grant guideline requirements, as well as implement the original UST program. This is approximately a $10.5 million dollar increase relative to pre-Energy Policy Act funding levels. In addition, the President's Budget proposes an amendment to the inspection requirements in section 9005 of the Solid Waste Disposal Act to allow state to use an alternative inspection program. This program would have UST owners conduct annual self-evaluations and submit certification of their compliance status, and the state would conduct targeted, for-cause, and a statistically valid number of random inspections. This amendment would provide states another option to meet the inspection requirements, which would be less costly to implement relative to funding on-site inspections by state or contract inspectors.

The President's budget provided $72,461,000 in Leaking Underground Storage Tank Trust Fund funding to continue to clean up leaking UST sites. This request is consistent with historical funding levels.

**House Committee on Energy and Commerce**
**Questions for**
**The Honorable Stephen L. Johnson, Administrator**
**Environmental Protection Agency**
**(Budget Hearing, March 8, 2007)**

**Questions** [one of four questions]

1. Please provide a list identifying by name each of the Environmental Protection Agency's (EPA) voluntary/partnership programs for both Headquarters and Regional Offices. For each program identify the amount of funding, the budget account from which the program is funded, and the number of FTEs dedicated to, or working on, the program for FY'06, FY'07, and the same information for the FY'08 budget request. Further, for each program identify the contracts that have been awarded, the date awarded, and the dollar amount of each contract that supports the voluntary/partnership program activities.

**Answer:**

Our partnership programs are an important building block of our core practices. They are part of a broad range of tools we use to help us accomplish EPA's mission of protecting human health and the environment. They have substantially influenced the actions of many businesses, communities, individuals, and other government agencies, producing results that are real and meaningful.

We employ voluntary partnership programs because we, our state partners, and others have learned that one approach can not effectively solve all environmental challenges and that any one challenge can often not be solved by only one approach. We have also learned that many of the new or evolving environmental challenges we face have fundamentally different characteristics from those we have faced in the past.

EPA's voluntary programs reflect a common theme expressed in EPA's first Strategic Plan issued in 1997 by Administrator Browner and revised in 2006 by Administrator Johnson. EPA's Strategic Plan recognizes that solving a particular environmental problem may require some or all of a full suite of tools and that voluntary partnership programs can enhance the effectiveness of regulatory programs or help achieve environmental results we would not otherwise be able to accomplish. Many of these programs operate on small budgets and leverage external resources through partnerships, influencing individual behavior, or building upon organizations' internal incentives.

At the request of Administrator Johnson, EPA has taken steps to evaluate the effectiveness of partnership programs and strengthen their foundation, development, and coordination. Begun during the summer of 2006, we anticipate completing an

analytic framework for both assessing each program's performance and making recommendations for enhancing their overall efficiency and effectiveness in 2007.

Appendix A contains detailed responses for a subset of EPA's voluntary programs. EPA will provide information on additional programs on Wednesday, March 14. We welcome the Committee's interest in our partnership programs and would be happy to provide additional information and engage in a productive discussion of the various mechanisms that help the Agency and our partners achieve environmental results.

Attachments:

Appendix A

## Voluntary Programs–Contract Data

(Dollars in Thaousands)

| Program Name | | ContractAward #1 (Name of Contractor) | Award Date #1 (MM/DD/YY) | Contract Cost #1 ($ In Thousands) | Contract Award #2 (Name of Contractor) | Award Date #2 (MM/DD/YY) | Contract Cost #2 ($ In Thousands) |
|---|---|---|---|---|---|---|---|
| Community Action for a Renewed Environment (CARE) | OAR | Prime: Industrial Economics, Inc. Sub: National Academy of Public Administration | 09/05/06 | $150.0 | Information Experts | 04/10/06 | $12.0 |
| Energy Star | OAR | SRA | 12/15/06 | $8,000.0 | CADMUS | 12/15/06 | $10,000.0 |
| Energy Star | R1 | Rabb Associates | 09/02/06 | $5.0 | | | |
| Energy Star | OAR | ICF | 12/18/06 | $1,900.0 | | | |
| Energy Star | OAR | CADMUS | 12/01/05 | $48,000.0 | ICF | 09/25/06 | $21,000.0 |
| Green Suppliers Network (GSN) | R1 | University of NH | 09/01/06 | $6.0 | University of NH | 09/01/06 | $3.0 |
| Green Suppliers Network (GSN) | OPPTS | Eastern Research Group | 2/6/02-2/1/07 | 139.2 | Batelle Memorial Institute | 02/08/02 | 10 |
| High Production Volume Challenge | OPPTS | Syracuse Research Corporation SYRACUSE/DLYNCH SYRACUSE/DLYNCY | 10/01/00 04/01/04 12/22/06 01/11/07 | $1,430.0 | SYSTALEX CORPORATION | 03/09/05 01/22/07 | $240.0 |
| Hospitals for a Healthy Environment | OPPTS | RIVANNA NATURAL DESIGNS INC | 4/7/2006 | $17 | | | |
| Performance Track | OPEI | ABT (68-W-01-039) | 05/17/01 | $87.0 | IEC, EP-W-04-023 | 05/13/04 | $105.0 |
| Performance Track | OPEI | PLOW SHARE GROUP INC | 6/28/2005 | $100.0 | RESOLVE - 68-24-0001 - SERVICES | 10/2/2006 | $9.0 |
| RCC - WasteWise | OSWER | ERG | 02/13/02 | $570.0 | | | $491.0 |
| Sector Strategies | OPEI | ABT ASSOCIATES | | $240.0 | ICF | | |
| Sector Strategies | OPEI | IEC - EP-W-04-023 - CONSULTING SERVICE FOR SSP | 8/18/2006 | $75.0 | SRA | | $57.0 |

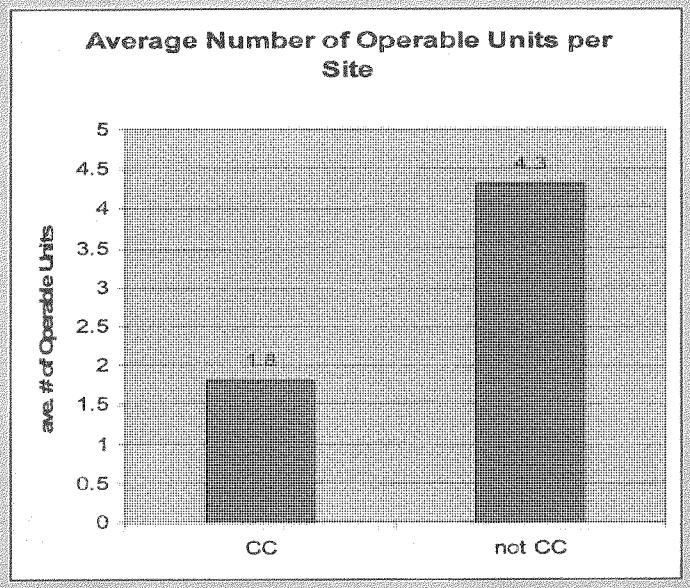
## Voluntary Programs–Contract Data

(Dollars in Thousands)

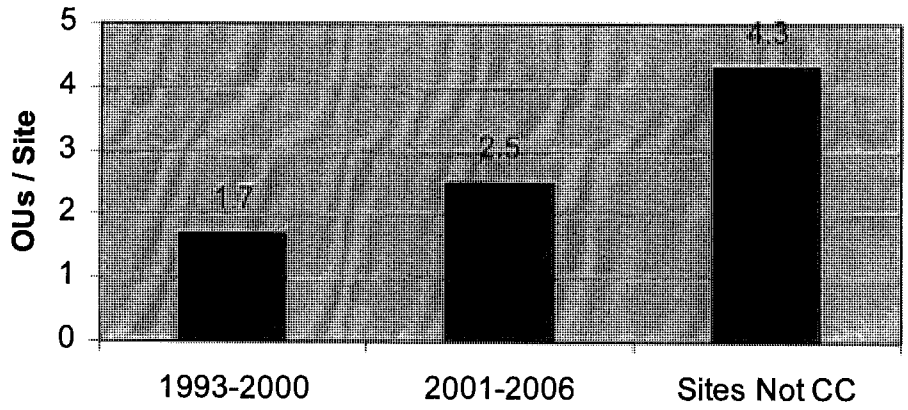
| Program Name | | | Contract Award #3 (Name of Contractor) | Award Date #3 (MM/DD/YY) | Contract Cost #3 ($ in Thousands) | Contract Award #4 (Name of Contractor) | Award Date #4 (MM/DD/YY) | Contract Cost #4 ($ in Thousands) |
|---|---|---|---|---|---|---|---|---|
| Community Action for a Renewed Environment (CARE) | OAR | | | | | | | |
| Energy Star | OAR | | ICF | 12/18/06 | $12,000.0 | TMN | 03/07/05 | $900.0 |
| Energy Star | R1 | | | | | | | |
| Energy Star | OAR | | | | | | | |
| Energy Star | OAR | | SRA | 07/07/04 | $28,000.0 | OPTIMUS | 01/01/04 | $4,500.0 |
| Green Suppliers Network (GSN) | R1 | | | | | | | |
| Green Suppliers Network (GSN) | OPPTS | | NAEM | 11/17/06 | $11,300.0 | | | |
| High Production Volume Challenge | OPPTS | | Battelle Memorial Institute Battelle -- Taylor | 3/3/2004 1/22/2007 | $240.0 | Versar Inc | 7/1/2004 | $20 |
| Hospitals for a Healthy Environment | OPPTS | | | | | | | |
| Performance Track | OPEI | | IEC, EP-W-05-047 | 08/10/05 | $1,157.0 | ICF - EP-W-06-045 | 07/19/06 | $672.0 |
| Performance Track | OPEI | | | | | | | |
| RCC - WasteWise | OSWER | | | | | | | |
| Sector Strategies | OPEI | | ENVIRONMENTAL STEWARDSHIP CONTRACT (Mission Contract Start-up) | 07/14/06 | $10.0 | ERG (EASTERN RESEARCH GROUP, INC) | 08/10/06 | $60.0 |
| Sector Strategies | OPEI | | | | | | | |

# Remaining Sites Are More Complex

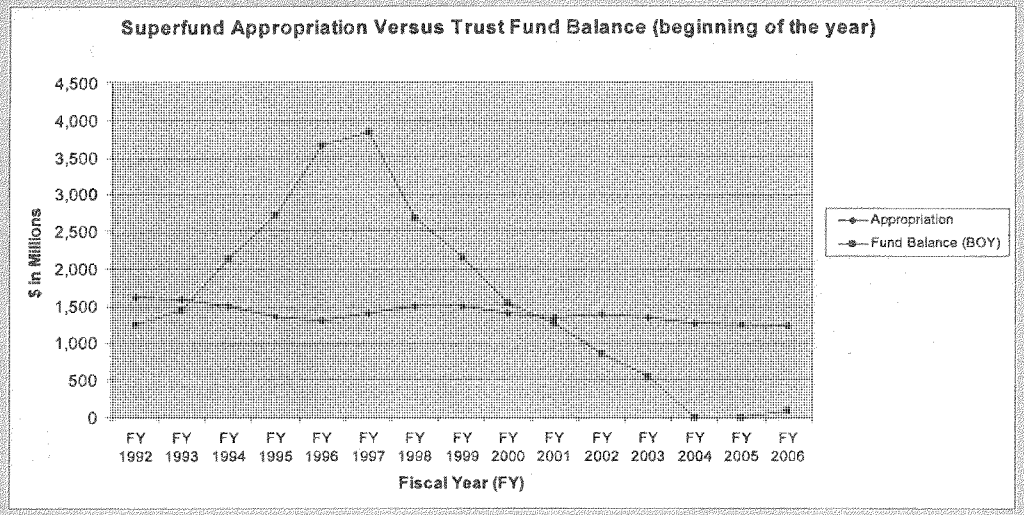
## Remaining Sites Have More Operable Units



## Average Number of Operable Units per Construction Complete Site



# Trust Fund Balance Does Not Affect Appropriations



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EDWARD J. MARKEY, MASSACHUSETTS
RICK BOUCHER, VIRGINIA
EDOLPHUS TOWNS, NEW YORK
FRANK PALLONE, JR., NEW JERSEY
BART GORDON, TENNESSEE
BOBBY L. RUSH, ILLINOIS
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DENNIS B. FITZGIBBONS, CHIEF OF STAFF
GREGG A. ROTHSCHILD, CHIEF COUNSEL

ONE HUNDRED TENTH CONGRESS

**U.S. House of Representatives**
**Committee on Energy and Commerce**
**Washington, DC 20515–6115**

JOHN D. DINGELL, MICHIGAN
CHAIRMAN

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MARY BONO, CALIFORNIA
GREG WALDEN, OREGON

July 10, 2007

The Honorable Stephen L. Johnson
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460-0001

Dear Mr. Johnson:

Thank you for appearing before the Subcommittee on Environment and Hazardous Materials and the Subcommittee on Energy and Air Quality on Tuesday, March 8, 2007, at the hearing entitled "The Environmental Protection Agency Fiscal Year 2008 Budget Request." We appreciate the time and effort you gave as a witness before the Subcommittee.

Under the Rules of the Committee on Energy and Commerce, the hearing record remains open to permit Members to submit additional questions to the witnesses. Attached are questions directed to you from certain Members of the Committee. In preparing your answers to these questions, please address your response to the Member who has submitted the questions and include the text of the Member's question along with your response.

To facilitate the printing of the hearing record, your responses to these questions should be received no later than the close of business on **Wednesday, July 25, 2007**. Your written responses should be delivered to room **2125 Rayburn House Office Building** and faxed to **(202) 225-2899** to the attention of Rachel Bleshman. An electronic version of your response should also be sent by e-mail to Ms. Bleshman at **rachel.bleshman@mail.house.gov**. Please send your response in a single Word formatted document.

Thank you for your prompt attention to this request. If you need additional information or have other questions, please have your staff contact Rachel Bleshman at (202) 225-2927.

Sincerely,

JOHN D. DINGELL
CHAIRMAN

Attachment

cc: The Honorable Joe Barton, Ranking Member
Committee on Energy and Commerce

The Honorable Albert Wynn, Chairman
Subcommittee on Environment and Hazardous Materials

The Honorable John Shimkus, Ranking Member
Subcommittee on Environment and Hazardous Materials

The Honorable Rick Boucher, Chairman
Subcommittee on Energy and Air Quality

The Honorable J. Dennis Hastert, Ranking Member
Subcommittee on Energy and Air Quality

The Honorable Hilda Solis, Vice Chair
Subcommittee on Environment and Hazardous Materials

The Honorable Tammy Baldwin
Subcommittee on Environment and Hazardous Materials

The Honorable Michael C. Burgess
Subcommittee on Environment and Hazardous Materials

The Honorable John B. Shadegg
Subcommittee on Environment and Hazardous Materials

The Honorable Cliff Stearns
Subcommittee on Environment and Hazardous Materials

The Honorable Vito Fossella
Subcommittee on Environment and Hazardous Materials

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OCT 5 2007

OFFICE OF CONGRESSIONAL AND
INTERGOVERNMENTAL RELATIONS

The Honorable John D. Dingell
Chairman
Committee on Energy and Commerce
U.S. House of Representatives
Washington, D.C. 20515-0115

Dear Chairman Dingell:

Thank you for the opportunity to respond to questions for the record that followed a March 8, 2007 hearing on the Environmental Protection Agency's (EPA) Fiscal Year 2008 Budget Request. I hope this information will be useful to you and the members of the Committee.

If you have any further questions, please contact me, or your staff may contact Jim Blizzard in my office at (202) 564-1695.

Sincerely,

Christopher P. Bliley
Associate Administrator

Enclosure

## Questions Submitted for the Record by Chairman Dingell

BROWNFIELDS - UNFUNDED PROJECTS

Question: In response to a question from Representative Pallone, you agreed to provide information with respect to unfunded brownfield applications over the past several years.

a. For each of the Fiscal Years 2005, 2006, and 2007, please provide the total number of brownfields projects that were funded and the total number that were not funded.

b. For the unfunded brownfield projects in each year please identify the number, if any, in each fiscal year that the EPA determined had no merit?

Answer: EPA has received more than 2,100 proposals from FY 2005 – FY 2007. Year-by-year data are as follows:

| Fiscal Year | Proposals Received | Proposals Selected | Proposals Not Selected | Failed Threshold |
|---|---|---|---|---|
| 2005 | 673 | 295 | 329 | 69 |
| 2006 | 694 | 305* | 368 | 32 |
| 2007 | 801 | 295 | 481 | 25 |

Section 104(k)(5)(B)(ii) of the Brownfields Law established criteria for the EPA's Brownfields program to compete and select grants. By statute, the highest ranking proposals are selected for award by the EPA. All proposals are evaluated by panels consisting of EPA staff, as well as other Federal representatives. These panels assess how well the proposals meet the criteria outlined in the Proposal Guidelines. Each fiscal year, EPA makes selections based on the evaluated point scores, the amount of available funding, and consideration, if any, of other factors such as fair distribution of funds between urban and non-urban areas and among EPA's ten Regions.

* This number includes the additional 13 cleanup grants that were selected in lieu of those proposals originally selected for funding which did not obtain ownership by the June 30, 2006 deadline.

BROWNFIELD GRANT PROGRAM – DE-EMPHASIZED FUNDING

Question: The chart (Appendix 1) prepared by the Congressional Research Service shows that the President's Budget requests for site assessment and cleanup grants under Section 104(k) fell from $120.5 million for each of the four fiscal years from FY03-FY06 to just over $89 million in FY07 and FY08 - a reduction of 26 percent.

a. Why has the President de-emphasized funding for this brownfield grant program that was authorized in the law at $200 million annually?

Answer: The FY 2007 and FY 2008 President's Budget was consistent with what the Agency had been appropriated in FY 2005 and FY 2006. With the historical and current budget constraints that exist for federal funding, this level of funding was realistic considering the competing priorities and available resources for the Agency.

# Brownfields Project Grants Requested and Enacted Appropriations FY2003 - FY2008

| Fiscal Year | Section 104(k) Project Grants (in millions of dollars) | |
|---|---|---|
| | Requested | Enacted |
| 2003 | $120.5 | est. $89.9 |
| 2004 | $120.5 | est. $92.9 |
| 2005 | $120.5 | $89.3 |
| 2006 | $120.5 | $88.7 |
| 2007 | $89.1 | est. $88.7 |
| 2008 | $89.3 | |

BROWNFIELDS – PRESIDENTS' REQUEST FOR ADMINISTRATIVE EXPENSES

Question: Since the President's Budget requests $23.5 million for administrative expenses for the Environmental Protection Agency (EPA) to use in administering the brownfield's program, does EPA support allowing the Mayors to use a small percentage of a Section 104(k) grant for administrative purposes? If not, please explain why not.

Answer: The Brownfields Law prohibits grantees from paying for administrative costs under Section 104(k)(4)(B)(III). The prohibition is stated in EPA's application materials and in the assistance agreement. The law does not provide any authority to waive the administrative costs prohibition.

BROWNFIELDS – REDUCE ADMINISTRATIVE COST

Question: Why can't EPA significantly reduce its more than $23.5 million dollar administrative costs for the brownfields program so more money can go to site assessment and cleanup grants?

Answer: The Brownfields administrative costs funding in the EPM appropriation is represented in its own program project entitled "Brownfields EPM". Out of $23.5 million requested in the FY 2008 President's budget for this program, approximately $15.6 million is for payroll expenses, and an additional $6.0 million is for contracts and grants which provides financial assistance for hazardous waste training to state and tribal co-implementers and supports outreach for environmental justice issues involving tribal and other disadvantaged communities. Finally, EPA uses this money to conduct research on cleanup incentives, pilot additional techniques to accomplish redevelopment and create examples and best practices that can be replicated in other communities.

In FY 2008, EPA will receive a total of 127.9 full-time equivalents (FTE) for Headquarters and Regional support. Collectively, these FTE award and manage more than 1,600 grants awarded through FY 2006, develop policy, technical outreach, and oversight for the program. EPA upholds strong grant management standards and continues to maintain these efforts as good stewards of federal resources.

BROWNFIELDS – ADMINISTRATIVE EXPENSES – SECTION 128 GRANTS

Question: What amount of the $23.5 million in administrative expenses does EPA use for the Section 104(k) grants and what portion is allocated to administering the Section 128 grants that go primarily to support State voluntary cleanup programs?

Answer: All of the requested $23.5 million will be used to administer the Comprehensive Environmental Response, Compensation, and Liability Act Section 104(k) and 128(a) brownfields grants and provide support for the grant competition, outreach, tribal and environmental justice activities, and Agency mission related contract costs. To fully maximize the EPM funds and gain greatest benefit for localities, EPM funding is not allocated nor obligated by specific grant type.

PRESIDENT'S BUDGET REQUEST FOR SUPERFUND PROGRAM

Question: Over the past three years, the President's budget request for the Superfund program has fallen from $1.279 billion in FY06 to $1.259 billion in FY07 to $1.244 billion in FY08. Why have the President's budget requests for Superfund consistently fallen over the past three years while many sites are ready to begin cleanup actions and many others have exposures not under control?

Answer: The President's budget request for the Superfund appropriation has been reduced between FY 2006 and FY 2008 due to an Administration goal to impose spending restraint while promoting programmatic economic policies and aligning the President's request with previous congressionally appropriated Superfund appropriation levels lower than what the President requested.

Although the President's budget request for the Superfund appropriation was reduced between FY 2006 and FY 2008, funding for remedial action at Superfund sites increased during this time period. Funding for remedial action was $251 million in FY 2006 and is anticipated to be $255 million in FY 2007 and $259 million in FY 2008. The Agency has supplemented the Superfund appropriation, and in particular the Superfund response programs, with resources deobligated from prior years as well as resources from state cost share agreements. EPA also continues to leverage responsible party resources to conduct cleanup actions and reimburse the Federal government for Federal-financed cleanups. The Agency is dedicated to ensuring Superfund site cleanups are completed to protect human health and the environment, and continues to address imminent human health threats through Superfund removal actions.

COOPER INDUSTRIES, INC. V. AVIALL SERVICES, INC. - DOJ

Question: Representative Baldwin asked Ms. Buhl whether EPA officials expressed concerns about the approach the Department of Justice was taking when they argued for the Supreme Court to overturn the 5th Circuit Court of Appeals decision in *Cooper Industries, Inc* .v. *Aviall Services, Inc.* Please indicate whether the EPA expressed any concerns with the Department of Justice's position at the U.S. Supreme Court arguing to overturn the 5th Circuit Court of Appeals decision in *Cooper Industries, Inc* .v. *Aviall Services, Inc.* If so, please explain the manner in which EPA's concerns were expressed to the Department of Justice and the specific nature of the concerns.

Answer: The United States government's position on the issues presented by the *Aviall* case can be found in the attached Aviall Amicus Brief.

COOPER INDUSTRIES, INC. V. AVIALL SERVICES, INC. - HORINKO

Question: Did then Assistant Administrator Marianne Horinko send a memorandum, letter, or any other written communication to the Department of Justice that related to the Fifth Circuit decision in *Cooper Industries, Inc.* v. *Aviall Services, Inc.* and/or the position the Department of Justice should take or consider taking in the U.S. Supreme Court review of the 5th Circuit decision *Cooper Industries, Inc.* v. *Aviall Services, Inc.?* If so, please identify the date of any such communication by Assistant Administrator Horinko?

Answer: EPA's Office of Solid Waste and Emergency Response has no record of any written communication from then Assistant Administrator Marianne Horinko to the Department of Justice regarding the Fifth Circuit Court decision in Cooper Industries, INC, v. Aviall Services, Inc. The United States government's position on the issues presented by the *Aviall* case can be found in the attached Aviall Amicus Brief.

No. 02-1192

# In the Supreme Court of the United States

COOPER INDUSTRIES, INC., PETITIONER

*v.*

AVIALL SERVICES, INC.

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT*

**BRIEF FOR THE UNITED STATES AS AMICUS CURIAE**

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## QUESTION PRESENTED

Whether a party that is potentially liable under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601 *et seq.*, for cleanup of property contaminated by hazardous substances, but has not been sued under CERCLA to undertake or to pay for the cost of the cleanup, may nevertheless seek contribution under CERCLA from other jointly responsible parties.

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# In the Supreme Court of the United States

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COOPER INDUSTRIES, INC., PETITIONER

*v.*

AVIALL SERVICES, INC.

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT*

**BRIEF FOR THE UNITED STATES AS AMICUS CURIAE**

This brief is submitted in response to the Court's order inviting the Solicitor General to express the views of the United States. The petition for a writ of certiorari presents the question whether a party that is potentially liable under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601 *et seq.*, for cleanup of property contaminated by hazardous substances may seek contribution from other jointly responsible parties in the absence of a CERCLA suit that would determine and discharge the underlying liability. The United States submits that the court of appeals' divided en banc decision, which holds that a contribution action is available in that situation, is mistaken and that this Court should grant the petition to resolve that important and unsettled issue.

## STATEMENT

Aviall Services, Inc., sued Cooper Industries, Inc., in the United States District Court for the Northern District of

Texas to recover expenses that Aviall has incurred in cleaning up property Aviall purchased from Cooper. During their respective ownerships, Cooper and Aviall each disposed of hazardous substances at the site. Aviall asserted that Section 107 of CERCLA, 42 U.S.C. 9607, subjects Aviall and Cooper to joint and several liability for the cleanup, and it claimed that Section 113(f)(1) of CERCLA, 42 U.S.C. 9613(f)(1), therefore renders Cooper liable to Aviall for contribution. The district court dismissed that claim without prejudice, ruling that, unless and until Aviall is itself subject to suit under CERCLA, it cannot seek contribution from other potentially liable parties. Pet. App. 90a-100a.. A divided panel of the United States Court of Appeals for the Fifth Circuit affirmed that judgment. *Id.* at 47a-89a. The en banc court of appeals, in a divided decision, vacated the panel's judgment and reversed. *Id.* at 9a-45a.

**A. The CERCLA Liability Scheme**

Congress enacted CERCLA in 1980 in response to the serious environmental and health dangers posed by property contaminated by hazardous substances. *United States* v. *Bestfoods*, 524 U.S. 51, 55 (1998). CERCLA, as amended and expanded through the Superfund Amendments and Reauthorization Act of 1986 (SARA), Pub. L. No. 99-499, 100 Stat. 1613, "grants the President broad power to command government agencies and private parties to clean up hazardous-waste sites." *Key Tronic Corp.* v. *United States*, 511 U.S. 809, 814 (1994). It "both provides a mechanism for cleaning up hazardous waste sites, and imposes the costs of the cleanup on those responsible for the contamination." *Pennsylvania* v. *Union Gas Co.*, 491 U.S. 1, 7 (1989) (citations omitted); see H.R. Rep. No. 253, 99th Cong., 1st Sess. Pt. 3, at 15 (1985) ("CERCLA has two goals: (1) to provide for clean-up if a hazardous substance is released into the environment or if such release is threatened, and (2) to hold responsible parties liable for the costs of these clean-ups.").

CERCLA provides the President (acting primarily through the Environmental Protection Agency (EPA), see Exec. Order No. 12,580, 3 C.F.R. 193 (1987)), with alternative means for cleaning up contaminated property. Section 104 of CERCLA authorizes EPA itself to undertake response actions designed to remove hazardous substances and provide appropriate remediation, using the Hazardous Substance Superfund. See 42 U.S.C. 9604; see also *Bestfoods*, 524 U.S. at 55. Alternatively, Section 106(a) authorizes EPA to compel, by means of an administrative order or a request for judicial relief, the responsible parties to undertake response actions, which the government then monitors. See 42 U.S.C. 9606(a). Under either approach, the United States may recover its response costs from responsible parties through a cost recovery action under Section 107(a). See 42 U.S.C. 9607(a).

Section 107(a) authorizes the United States, as well as other entities, to seek recovery of cleanup costs from four categories of "covered persons"—sometimes referred to as "potentially responsible parties" or "PRPs"—associated with the release or threatened release of hazardous substances. 42 U.S.C. 9607(a). Those entities are: (1) owners and operators of facilities at which hazardous substances are located; (2) past owners and operators of such facilities at the time hazardous substances were disposed; (3) persons who arranged for disposal or treatment of hazardous substances; and (4) certain transporters of hazardous substances to the site. 42 U.S.C. 9607(a)(1)-(4). Congress has broadly defined the pertinent statutory terms—including "facility," "hazardous substance," "owner or operator," "person," "release," "transport," and "disposal"—to reach a wide range of entities and activities. See CERCLA § 101(9), (14), (20)-(22), (26) and (29), 42 U.S.C. 9601(9), (14), (20)-(22), (26) and (29).

Section 107(a) of CERCLA specifically provides that the United States, individual States, and Indian tribes are entitled to recover from covered persons "all costs of removal or

remedial action incurred" that are "not inconsistent with the national contingency plan." CERCLA § 107(a)(1)-(4)(A), 42 U.S.C. 9607(a)(1)-(4)(A). The national contingency plan consists of federal regulations that prescribe the procedure for conducting hazardous substance cleanups under CERCLA and other federal laws. See CERCLA § 105, 42 U.S.C. 9605; 40 C.F.R. Pt. 300; see also CERCLA § 101(23), (24) and (31), 42 U.S.C. 9601(23), (24) and (31); Clean Water Act of 1977 (CWA) § 311(c) and (d), 33 U.S.C. 1321(c) and (d).

CERCLA also authorizes entities other than the United States, individual States, and Indian tribes to recover their costs of cleaning up contaminated property under certain circumstances. For example, a party that complies with a government order under Section 106(a) to respond to an actual or threatened release of hazardous substances may petition the government for reimbursement of its expenses on the ground that it is not liable for the response costs or that the government's decision in selecting a response action was arbitrary and capricious or otherwise not in accordance with law. See CERCLA § 106(b), 42 U.S.C. 9606(b). If the government denies the petition, the party may file a judicial action seeking reimbursement. See CERCLA § 106(b)(2)(B), 42 U.S.C. 9606(b)(2)(B).

In addition, Section 107 of CERCLA provides that persons "other" than the United States, an individual State, or an Indian tribe may recover "any other necessary costs of response" that are incurred "consistent with the national contingency plan." CERCLA § 107(a)(1)-(4)(B), 42 U.S.C. 9607(a)(1)-(4)(B). The courts of appeals have ruled that persons who are not themselves liable may clean up contaminated property and then invoke this provision to seek reimbursement from the same four categories of potentially liable parties that are subject to government cleanup actions.[1] The

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[1] See *In re Reading Co.*, 115 F.3d 1111, 1120 (3d Cir. 1997); *Rumpke of Ind., Inc.* v. *Cummins Engine Co.*, 107 F.3d 1235, 1241-1242 (7th Cir.

courts of appeals have uniformly concluded, however, that a person who falls within one of those four categories cannot rely on Section 107(a) to seek full cost recovery on a theory of joint and several liability from another jointly liable party; rather, a party that is subject to CERCLA liability is limited to seeking contribution from other jointly liable parties in accordance with Section 113(f).[2]

Section 113(f), which Congress added as part of the 1986 SARA amendments, explicitly addresses when a potentially liable party may seek contribution. See 42 U.S.C. 9613(f). Section 113(f)(1) provides in pertinent part:

> Any person may seek contribution from any other person who is liable or potentially liable under [Section 107(a)], during or following any civil action under [Section 106] or under [Section 107(a)]. * * * Nothing in this subsection shall diminish the right of any person to bring an action for contribution in the absence of a civil action under [Section 106] or [Section 107].

42 U.S.C. 9613(f)(1). Section 113(f)(2) additionally states that a party that resolves its liability to the United States or a State through an administrative or judicially approved settlement shall not be subject to contribution "regarding mat-

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1997); *Redwing Carriers, Inc.* v. *Saraland Apartments*, 94 F.3d 1489, 1496 (11th Cir. 1996); *United Techs. Corp.* v. *Browning-Ferris Indus.*, 33 F.3d 96, 100 (1st Cir. 1994), cert. denied, 513 U.S. 1183 (1995); *Akzo Coatings, Inc.* v. *Aigner Corp.*, 30 F.3d 761, 764 (7th Cir. 1994).

[2] See, *e.g.*, *Bedford Affiliates* v. *Sills*, 156 F.3d 416, 423-425 (2d Cir. 1998); *Centerior Serv. Co.* v. *Acme Scrap Iron & Metal Corp.*, 153 F.3d 344, 356 (6th Cir. 1998); *Pneumo Abex Corp.* v. *High Point, Thomasville & Denton R.R.*, 142 F.3d 769, 776 (4th Cir.), cert. denied, 525 U.S. 963 (1998); *Pinal Creek Group* v. *Newmont Mining Corp.*, 118 F.3d 1298, 1301 (9th Cir. 1997), cert. denied, 524 U.S. 937 (1998); *New Castle County* v. *Halliburton NUS Corp.*, 111 F.3d 1116, 1121-1123 (3d Cir. 1997); *Redwing Carriers, Inc.*, 94 F.3d at 1496; *Control Data Corp.* v. *S.C.S.C. Corp.*, 53 F.3d 930, 935 (8th Cir. 1995); *United States* v. *Colorado & E. R.R.*, 50 F.3d 1530, 1534-1536 (10th Cir. 1995); *United Techs. Corp.*, 33 F.3d at 103; *Akzo Coatings, Inc.*, 30 F.3d at 764.

ters addressed in the settlement." 42 U.S.C. 9613(f)(2). Section 113(f)(3)(B) further provides:

> A person who has resolved its liability to the United States or a State for some or all of a response action or for some or all of the costs of such action in an administrative or judicially approved settlement may seek contribution from any person who is not party to a settlement referred to in paragraph (2).

42 U.S.C. 9613(f)(3)(B). See CERCLA § 122, 42 U.S.C. 9622 (governing CERCLA settlements).[3]

The central issue in this case is whether Section 113(f) authorizes a party that is potentially subject to CERCLA liability, but has not been sued under Section 106 or 107(a) of CERCLA and has not resolved its CERCLA liability through an administrative or judicially approved settlement, to seek contribution under CERCLA from another jointly liable party.

**B. The Facts And Proceedings Below**

Aviall provides aircraft maintenance services. In 1981, it purchased Cooper's aircraft engine maintenance business through an asset purchase agreement. Aviall later discovered hazardous substance contamination, allegedly arising from the activities of both Aviall and Cooper, at Texas facilities acquired from Cooper. Aviall notified Texas environ-

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[3] Section 122(a) authorizes the President (or his delegate) to enter into an agreement with persons (including responsible parties) to perform response actions if the President determines such action will be done properly by such person. 42 U.S.C. 9622(a). Section 122(d) provides that such agreements, other than "de minimis settlements" under Section 122(g), shall generally be entered in the appropriate United States district court as a consent decree. 42 U.S.C. 9622(d); see 42 U.S.C. 9622(g). Section 122(g) "de minimis settlements," 42 U.S.C. 9622(g), and Section 122(h) settlements, reached by the head of any department or agency with authority to undertake response action, 42 U.S.C. 9622(h), may be embodied in an administrative order. See CERCLA § 122(i), 42 U.S.C. 9622(i).

mental authorities of the contamination. Those authorities confirmed that Aviall was in violation of state environmental laws and directed the company to take corrective actions. In 1984, Aviall commenced cleanup activities, and, in 1995, it contacted Cooper seeking reimbursement for the response costs. Aviall later sold the facilities, but remained contractually responsible for the cleanup. Pet. App. 10a, 48a, 91a.

Aviall commenced this action against Cooper in federal district court to obtain recovery of its cleanup expenditures. Aviall's complaint alleged that Cooper had breached its contractual and warranty obligations under the asset purchase agreement. Pet. App. 91a-92a. In addition, although neither the United States nor Texas had sued Aviall to compel cleanup or to recover response costs, Aviall asserted that Cooper was liable to Aviall for contribution under Section 113(f) of CERCLA and Texas law. *Ibid.* The CERCLA contribution claim provided the sole basis for federal jurisdiction. *Id.* at 98a-99a.

The district court rejected Aviall's CERCLA contribution claim. The court concluded that "[t]he plain language of § 113(f)(1) provides that contribution claims may only be brought '*during* or *following* any civil action under [§ 106] or under [§ 107(a)].' (emphasis added)." Pet. App. 94a. The court additionally concluded that the last sentence of Section 113(f)(1) is merely a savings clause that preserves independent contribution remedies so that "parties who cannot fulfill the prerequisites of § 113(f)(1) are not precluded from bringing contribution claims that are otherwise available, such as under state law." *Ibid.* The district court accordingly dismissed Aviall's CERCLA contribution claim, but without prejudice in the event that a Section 106 or 107 action were brought against Aviall in the future. *Id.* at 97a-98a & n.4. The court declined to retain federal jurisdiction over the remaining state law claims. *Id.* at 99a-100a.

A divided panel of the court of appeals affirmed. Pet. App. 47a-89a. The majority concluded that, "as a matter of

statutory text and structure, CERCLA requires a party seeking contribution to be, or have been, a defendant in a § 106 or § 107(a) action." *Id.* at 57a; see *id.* at 52a-56a. The majority, like the district court, construed the final sentence of Section 113(f)(1) as merely a "savings clause" that preserved independent bases for contribution, such as Aviall's contribution claims against Cooper under Texas law. *Id.* at 56a. The majority also stated that the legislative history of CERCLA, prior CERCLA decisions, and the policy goals of CERCLA all supported its construction of the statutory text. *Id.* at 57a-66a. Judge Wiener dissented, reasoning that the first sentence of Section 113(f)(1) does not categorically require that a party seek contribution in response to a Section 106 or 107(a) action and that the final sentence of Section 113(f) explicitly authorizes a party to seek contribution in the absence of such suits. *Id.* at 66a-78a. Judge Wiener also stated that the legislative history, case law, and policy arguments supported his construction. *Id.* at 78a-89a.

The court of appeals granted Aviall's petition for rehearing en banc "[b]ecause of the importance of this question to the allocation of financial responsibility for CERCLA cleanups." Pet. App. 12a, 46a. The en banc court, by a divided vote, reversed the judgment of the district court. *Id.* at 9a-45a. The majority adopted the reasoning of Judge Weiner and concluded:

> [S]ection 113(f)(1) does not constrain a PRP for covered pollutant discharges from suing other PRPs for contribution only "during or following" litigation commenced under sections 106 or 107(a) of CERCLA. Instead, a PRP may sue at any time for contribution under federal law to recover costs it has incurred in remediating a CERCLA site. Section 113(f)(1) authorizes suits against PRPs in both its first and last sentence which states without qualification that "nothing" in the section shall "dimin-

> ish" any person's right to bring a contribution action in the absence of a section 106 or section 107(a) action.

Pet. App. 13a-14a. Judge Emilio Garza, joined by Judges Smith and Barksdale, dissented, concluding that "the plain language and statutory structure of CERCLA's contribution provisions demonstrate that the contribution remedy in § 113(f)(1) requires a prior or pending § 106 or § 107 action." *Id.* at 41a-42a.

## DISCUSSION

The en banc court of appeals has misconstrued CERCLA's contribution provisions. By its plain language, Section 113(f)(1) provides a party that is jointly liable for response costs under CERCLA with a right to contribution, but only "during or following" a Section 106 or Section 107(a) civil action that would quantify and resolve that liability. Section 113(f)(1)'s savings clause does not negate that express limitation, but instead preserves any additional rights to contribution that a party may have under other laws. The en banc court's erroneous decision conflicts with the plain language of the statute and endorses an interpretation of CERCLA that has broad repercussions on the allocation of financial responsibility for CERCLA cleanups. Because the issue is important and recurring, and the court of appeals' decision endorses an unauthorized invocation of federal court jurisdiction, this Court should grant the petition for a writ of certiorari.

### A. The Court Of Appeals Erred In Construing CERCLA's Contribution Provisions

CERCLA subjects parties that have contributed to the release or threatened release of hazardous substances to liability for the resulting response costs. CERCLA §§ 106, 107(a), 42 U.S.C. 9606, 9607(a). CERCLA, which operates against a "venerable common law backdrop," *Bestfoods*, 524 U.S. at 62, subjects a responsible party to joint and several

liability in accordance with common law principles if the harm from the release of hazardous substances is not divisible, and it provides a corresponding statutory right of contribution from other jointly liable parties. CERCLA § 113(f), 42 U.S.C. 9613(f). See *Key Tronic Corp.*, 511 U.S. at 816.[4]

Section 113(f)(1) of CERCLA explicitly identifies the circumstances in which a jointly liable party may seek contribution:

> Any person may seek contribution from any other person who is liable or potentially liable under [Section 107(a)], *during or following any civil action under [Section 106] or under [Section 107(a)].*

42 U.S.C. 9613(f)(1) (emphasis added). Consistent with the traditional understanding of contribution principles, that provision allows a jointly responsible party to seek contribution, but only "during or following" a Section 106 or Section 107(a) civil action that would quantify and resolve the joint liability it seeks to apportion among other responsible parties. See *Northwest Airlines, Inc.* v. *Transport Workers Union*, 451 U.S. 77, 87-88 (1981) ("Typically, a right to contribution is recognized when two or more persons are liable to the same plaintiff for the same injury and one of the joint tortfeasors *has paid* more than his fair share of the common liability." (emphasis added)).[5]

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[4] See, *e.g.*, *Centerior Serv. Co.*, 153 F.3d at 348; *United States* v. *Alcan Aluminum Corp.*, 990 F.2d 711, 721-722 (2d Cir. 1993); *United States* v. *Alcan Aluminum Corp.*, 964 F.2d 252, 268-269 (3d Cir. 1993); *United States* v. *Kayser-Roth Corp.*, 910 F.2d 24, 26-27 (1st Cir. 1990), cert. denied, 498 U.S. 1084 (1991); *United States* v. *R.W. Meyer, Inc.*, 889 F.2d 1497, 1507 (6th Cir. 1989), cert. denied, 494 U.S. 1057 (1990); *United States* v. *Aceto Agric. Chems. Corp.*, 872 F.2d 1373, 1377 (8th Cir. 1989); *United States* v. *Monsanto Co.*, 858 F.2d 160, 167, 172 (4th Cir. 1988), cert. denied, 490 U.S. 1106 (1989).

[5] See also, *e.g.*, *United Techs. Corp.*, 33 F.3d at 99 ("Contribution is a standard legal term that enjoys a stable, well-known denotation. It refers

The court of appeals concluded (Pet. App. 24a-25a) that the first sentence of Section 113(f)(1) allows contribution actions in the absence of an ongoing or completed Section 106 or 107(a) action on the mistaken ground that if Congress had not intended to authorize such actions it would have provided that contribution actions shall "only" be brought during or following a Section 106 or Section 107(a) action. Pet. App. 24a-25a. Congress's intentions, however, are clear from the plain language of the statutory text. Section 113(f)(1)'s permissive phrasing—a "person *may* seek contribution"—indicates that Congress intended to permit contribution claims to be brought when the stated prerequisites—namely, that contribution be sought "during or following" a Section 106 or Section 107(a) action—are satisfied. It does *not* provide authorization for contribution claims where those prerequisites are *not* satisfied. The court of appeals' contrary interpretation renders the "during or following" requirement entirely superfluous, in violation of basic canons of statutory construction. See, *e.g.*, *Dole Food Co.* v. *Patrickson*, 123 S. Ct. 1655 (2003); *Connecticut Nat'l Bank* v. *Germain*, 503 U.S. 249, 253 (1992).[6]

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to a claim 'by and between jointly and severally liable parties for an appropriate division of the payment one of them *has been compelled to make*.'") (emphasis added) (quoting *Akzo Coatings, Inc.*, 30 F.3d at 764); Restatement (Third) of Torts § 23 comment b (1999) ("A person seeking contribution *must extinguish the liability* of the person against whom contribution is sought for that portion of liability, either by settlement with the plaintiff or by satisfaction of judgment.") (emphasis added); Uniform Contribution Among Tortfeasors Act § 1(d), 12 U.L.A. 123 (1955) (accord); *Black's Law Dictionary* 328 (6th ed. 1990) (defining contribution as a right "of one *who has discharged a common liability* to recover of another, also liable, the aliquot portion which he ought to pay or bear") (emphasis added).

[6] Contrary to the court of appeals' suggestions, Section 113(f)(1)'s syntax is not "confused" and its grammar is not "inexact." Pet. App. 13a. Rather, Section 113(f)(1) speaks unambiguously through the familiar syntax and grammar that is routinely employed in granting a permissive, but limited, license. For example, a sign stating that "Visitors May Enter

The court of appeals also mistakenly relied (Pet. App. 25a-27a) on the last sentence of Section 113(f)(1), which provides that "[n]othing in this subsection shall *diminish the right* of any person to bring an action for contribution in the absence of civil action under [Section 106] or [Section 107]." 42 U.S.C. 9613(f)(1) (emphasis added). The court erroneously construed that sentence, which is clearly written in the form of a "savings" clause, as affirmatively creating a right to contribution. The specific terms of the savings provision, however, merely preserve any *independent* right to contribution that exists apart from Section 113(f)(1), such as the state law right to contribution that Aviall invoked in this very case (Pet. App. 91a). See *United States* v. *Locke*, 529 U.S. 89, 105 (2000).[7]

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Through The Front Door During Normal Business Hours" informs the visitor that, if he wants to enter through the front door, he must do so during the prescribed period. It does not grant the visitor the right to use the front door at any time he wishes. See Pet. App. 34a-35a (Garza, J., dissenting).

[7] The court of appeals suggested that Congress added the last sentence of Section 113(f)(1) to indicate that the federal courts "had been right," in CERCLA cases decided before Congress added Section 113(f)(1) through the 1986 SARA amendments, in engrafting an implied federal common law right of contribution onto CERCLA. Pet. App. 26a. The court's reasoning, however, rests on a mistaken understanding of the pre-SARA caselaw and, in any event, is unpersuasive. As the First Circuit explained in *United Technologies*, the pre-SARA courts were divided on the question whether there was an implied right to contribution under CERCLA. 33 F.3d at 100. Those lower courts that did recognize such a right employed the term "contribution" in its "traditional legal sense." *Id.* at 100-101. As the First Circuit also explained, the term contribution is traditionally understood to denote "a claim 'by and between jointly and severally liable parties for an appropriate division of the payment one of them *has been compelled to make.*'" *Id.* at 99. See note 5 , *supra*. Congress expressly provided for contribution under those circumstances through the first sentence of Section 113(f)(1) by allowing contribution "during or following" a Section 106 or 107(a) action. If Congress had intended to create an even broader form of contribution, it would have written the first sentence of Section 113(f)(1) to accomplish that result. It

In addition to misconstruing Section 113(f)(1), the court of appeals overlooked the significance of Section 113(g)(3), which addresses the limitations periods for contribution actions. See 42 U.S.C. 9613(g)(3). As previously explained (pp. 5-6, *supra*), Section 113(f)(1) expressly allows contribution "during or following" a Section 106 or 107(a) civil action, while Section 113(f)(3)(B) expressly allows contribution after an administrative or judicially approved settlement. See 42 U.S.C. 9613(f)(1) and (3)(B). Section 113(g)(3) provides two corresponding limitations periods:

> No action for contribution for any response costs or damages may be commenced more than 3 years after—
>
> (A) the date of judgment in any action under [CERCLA] for recovery of such costs or damages, or
>
> (B) the date of an administrative order under [Section 122(g)] (relating to de minimis settlements) or [Section 122(h)] (relating to cost recovery settlements) or entry of a judicially approved settlement with respect to such costs or damages.

42 U.S.C. 9613(g)(3). Section 113(g)(3)(A) thus establishes a three-year limitations period for contribution actions brought "during or following" a Section 106 or 107(a) action, while Section 113(g)(3)(B) designates a three-year limitations period for contribution actions brought after the party has resolved its liability through an administrative or judicially approved settlement. But Section 113(g)(3) does *not* provide a limitations period for contribution actions in the absence of a Section 106 or 107(a) action or a settlement,

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would not have perpetuated the pre-SARA uncertainty by depending on courts to fashion a novel form of contribution, foreign to traditional legal understanding, through Section 113(f)(1)'s savings clause. See, *e.g.*, *Morissette* v. *United States*, 342 U.S. 246, 263 (1952) ("absence of contrary direction may be taken as satisfaction with widely accepted definitions, not as a departure from them").

which indicates that Congress did not intend to create a federal right to contribution in that situation.

The plain language of Section 113(f)(1), particularly when read in light of Section 113(g)(3), conclusively establishes that a party may not seek contribution under CERCLA in the absence of a Section 106 or 107(a) action. There accordingly is no need to resort to legislative history to answer that question. But in any event, the legislative history includes committee reports and statements in the floor debates indicating that contribution is not available in the circumstances presented here. The pertinent Senate and House bills that ultimately became SARA contained differently worded contribution provisions. But each chamber indicated that the object was to provide for contribution during or following a Section 106 or 107(a) action or after a CERCLA-based settlement.[8]

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[8] The Senate bill initially provided that a contribution action may be brought "[a]fter judgment in any civil action under section 106 or under [Section 107(a)]." See S. Rep. No. 11, 99th Cong., 1st Sess. 103 (1985) (proposed Section 107(*l*)(2)). The Senate report stated that "[t]his amendment clarifies and confirms the right of a person *held jointly and severally liable under CERCLA* to seek contribution from other potentially liable parties." *Id.* at 44 (emphasis added). The Senate later revised its proposed language through a floor amendment to allow contribution "during or following" a Section 106 or 107(a) action so that contribution claims could be resolved in one suit. See 131 Cong. Rec. 24,449 (1985). The sponsors explained that the floor amendment would allow "any defendant in a Government enforcement action under CERCLA * * * to file a claim for contribution against others * * * *as soon as the enforcement action has been brought.*" *Id.* at 24,450 (Sen. Stafford) (emphasis added); see also *id.* at 24,452 (Sen. Thurmond); *id.* at 24,453 (Sen. DeConcini). The House bill initially provided that "any defendant alleged or held to be liable in an action under section 106 or section 107" may bring a contribution action. See H.R. Rep. No. 253, 99th Cong., 1st Sess. Pt. 1, at 13 (1985) (proposed Section 113(g)(1)). Like the Senate report, the House report stated that the proposed language "clarifies and confirms the right of a person *held jointly and severally liable under CERCLA* to seek contribution from other potentially liable parties." *Id.* at 79 (emphasis added). The House Judiciary Committee later made

Similarly, the court of appeals' reliance on "policy considerations" (Pet. App. 31a) is misplaced. Congress expressed the controlling policy through Section 113(f)(1)'s text, which adopts the traditional practice of allowing a party to seek contribution only if that party is itself subject to suit. The judiciary's task is "to apply the text, not to improve upon it." *Pavelic & LeFlore* v. *Marvel Entm't Group*, 493 U.S. 120, 126 (1989). The congressional judgment set forth in the statutory text accordingly should control. See, *e.g.*, *Rodriguez* v. *United States*, 480 U.S. 522, 525-526 (1987) (per curiam). See also Pet. App. 44a-45a (Garza, J., dissenting).[9]

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minor "technical" changes to the House bill that "simply clarif[y] and emphasize[] that persons who settle with EPA (and who are therefore not sued), as well as defendants in CERCLA actions, have a right to seek contribution from other potentially responsible parties." H.R. Rep. 253, *supra*, Pt. 3, at 18. The House-Senate conference, which produced the final language, adopted without further pertinent elaboration the Senate's "during or following" formulation and the House provisions allowing contribution following settlement. See H.R. Rep. No. 962, 99th Cong., 2d Sess. 37, 222 (1986).

[9] CERCLA seeks to encourage voluntary private party cleanups, but there is no evidence in the record of this case to support the court of appeals' assumption (Pet. App. 31a) that the availability of a contribution action in the absence of a Section 106 or 107(a) suit is critical in encouraging such cleanups. Even if the court's assumption were correct, contribution under those circumstances poses a heightened risk that the contributing party may be subject to double liability. Under CERCLA, a responsible party's voluntary cleanup does not discharge the underlying liability to the government except as provided in a settlement or federal court judgment to which the government is a party. 42 U.S.C. 9613(f)(2). Hence, a party that is ordered to pay "contribution" in the absence of such a resolution has no guarantee that its payment will discharge its liability and remains potentially subject to a future government cost recovery action if any relevant government agency later investigates and determines that the voluntary conduct is inadequate or improper. See Restatement (Third) of Torts § 23 (1999), Reporter's Note, cmt. b ("A person seeking contribution must extinguish the liability of the person against whom contribution is sought. See Uniform Contribution Among Tortfeasors Act § 1(d). Otherwise, the person against whom contribution is sought would be subject to double liability.").

**B. This Court Should Grant The Petition For A Writ Of Certiorari**

The court of appeals granted en banc review on the issue in this case "[b]ecause of the importance of this question to allocation of financial responsibility for CERCLA cleanups." Pet. App. 12a. The issue here is indeed important, and the en banc court's erroneous resolution augments its significance. The court of appeals' decision allows the unauthorized invocation of federal court jurisdiction, endorses a mistaken view of the CERCLA liability scheme, and condones the unauthorized imposition of financial liability under federal law. The en banc Fifth Circuit is the first court to address the issue squarely in a concrete context, but its decision is inconsistent with the statutory restrictions respecting contribution under the CERCLA liability scheme. There is little to be gained in allowing a new federal cause of action to continue in existence before correcting the court's erroneous interpretation.

As explained above, ten courts of appeals have uniformly ruled that Section 107(a)(1)-(4)(B) of CERCLA allows a "person" that falls within one of CERCLA's four categories of liable parties to obtain a recovery from another jointly liable party only through a contribution action under Section 113(f). See 42 U.S.C. 9607(a)(1)-(4)(B); pp. 4-5 & note 2, *supra*. That result avoids the anomaly of a jointly liable party suing another jointly liable party for the full costs of a CERCLA cleanup. It also ensures that parties that have settled with the government and received protection from "claims for contribution regarding matters addressed in the settlement," CERCLA § 113(f)(2), 42 U.S.C. 9613(f)(2), are not subject to double liability through a Section 107(a) suit on the theory that such a suit imposes direct liability rather than contribution.[10]

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[10] The United States endorsed the uniform conclusion of the courts of appeals on this issue in its response to an order of this Court inviting the

As a practical matter, the uniform view of the courts of appeals that a responsible party can seek reimbursement for response costs under CERCLA only through a contribution action, when coupled with the understanding that a responsible party may seek contribution under CERCLA only "during or following" a Section 106 or 107(a) action or after settlement, imposes a coherent structure on the allocation of CERCLA response costs and a sensible limitation on CERCLA contribution suits. That construction ensures that CERCLA does not create a free-ranging federal cause of action under which responsible parties may sue each other at

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United States' views on a petition for writ of certiorari filed in *Pinal Creek Group* v. *Newmont Mining Corp.*, 118 F.3d 1298 (9th Cir. 1997), cert. denied, 524 U.S. 937 (1998) (No. 97-795). In that case, the court of appeals ruled that a private party that was concededly liable for the costs of responding to hazards at a mine site under CERCLA could not recover its cleanup costs by bringing an action against other responsible parties seeking to hold them jointly and severally liable for those expenses. The United States urged the Court to deny certiorari on the ground that the courts of appeals were in agreement that a potentially responsible party must sue for contribution under Section 113(f), stating:

> Section 107(a)(4)(B) of CERCLA provides that a responsible private party shall be liable for "necessary costs of response incurred by any other person consistent with the national contingency plan." 42 U.S.C. 9607(a)(4)(B). Section 107(a)(4)(B)'s reference to "any other person" is broad enough to allow one jointly responsible party to sue another for the former's response costs. See *Key Tronic Corp.* v. *United States*, 511 U.S. 809, 818 (1994) (Section 107 "impliedly authorizes private parties to recover cleanup costs from other PRPs."). Section 107(a)(4)(B) does not describe, however, what form that liability should take. *Key Tronic*, 511 U.S. at 818 & n.11. Section 113 fills that void. When read in combination, the clear implication of Sections 107(a)(4)(B) and 113 is that the jointly responsible party is limited to seeking contribution in accordance with Section 113(f).

Brief for the U.S. as Amicus Curiae at 10, *Pinal Creek Group*, *supra* (No. 97-795). Since the early stages of this litigation, Aviall has predicated its contribution claim on that understanding of the relationship between Section 107(a) and Section 113(f). See Pet. App. 94a ("Aviall has dropped the independent § 107(a) claim and instead asserts a so-called 'combined' § 107(a) and § 113(f)(1) claim.").

any time for damages they jointly caused. Rather, a responsible party that satisfies its CERCLA liability to the government, through settlement or judgment, may obtain contribution from other responsible parties within a statutorily prescribed limitation period. That construction also puts CERCLA in alignment with the traditional legal rules governing joint liability and contribution.[11]

The en banc court's contrary conclusion that CERCLA authorizes responsible parties to bring federal suits for contribution whenever they please endorses errant CERCLA-based contribution suits, subject to no express limitation period, arising out of the many contaminated sites throughout the Nation. See General Accounting Office, *Community Development: Local Growth Issues—Federal Opportunities and Challenges* (RCED-00-178) 118 (Sept. 2000). The federal courts face a substantial burden in resolving those complex cases, in which they confront the conceptually awkward task of ordering a responsible party to pay "contribution" to another responsible party when the joint liability they potentially owe to the federal or state government under CERCLA has not been discharged. See note 9, *supra*.[12]

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[11] See Restatement (Third) of Torts § 23 cmt. b (1999) ("A person seeking contribution must extinguish the liability of the person against whom contribution is sought for that portion of liability, either by settlement with the plaintiff or by satisfaction of judgment."); see also p. 10 & note 5, *supra*. That construction also allows a responsible party to clean up a CERCLA site voluntarily and apportion the costs among other responsible parties by entering into a settlement with the federal or state government to resolve its CERCLA liability, to the extent practicable within government resources. If a party enters into such a settlement, it would then be immune from contribution claims regarding matters addressed in the settlement, and it would have the express right to seek contribution from non-settling responsible parties, based on its discharge of the joint liability through the settlement. See CERCLA § 113(f)(2) and (3), 42 U.S.C. 9613(f)(2) and (3).

[12] Upon examination of the issue, Congress might wish to create an appropriate remedy, apart from contribution under Section 113(f), for responsible persons who engage in voluntary cleanups and seek to recover

Aviall's suit illustrates some of the potential problems posed by such CERCLA contribution claims. Aviall initially characterized its suit as "primarily, but not exclusively, a contract case," Pet. App. 92a, and the district court properly determined that the suit should be resolved in state court, *id.* at 99a-100a. In reversing, the en banc court opened the door for Aviall, or any other owner of a contaminated site, to bypass the state courts and initiate a federal suit, ostensibly for CERCLA "contribution," to recover expenditures for cleanup activities as CERCLA response costs. The federal courts will be responsible for applying CERCLA's complex provisions to what even Aviall characterized as "primarily" state law contract claims. It appears highly improbable that Congress intended for CERCLA to expand so dramatically the jurisdiction of the federal courts, when CERCLA's text gives the federal courts a far more structured and limited role. See *Rumpke of Ind., Inc.* v. *Cummins Engine Co.*, 107 F.3d 1235, 1241 (7th Cir. 1997) ("a § 106 or § 107(a) action apparently must either be ongoing or already completed before § 113(f)(1) is available").

This Court may, of course, allow the issue in this case to "percolate" in the lower courts until a conflict among the courts of appeals develops. But as *Rumpke* forebodes, and in view of the inevitably recurring nature of the issue, the prospects are high that a circuit split will emerge. The ensuing percolation is likely to impose a substantial cost on an

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their costs from other responsible persons. A properly fashioned remedy could further Congress's objective of facilitating cleanup of "brownfields" sites, without requiring government enforcement actions or settlements and the resulting expenditures of limited government resources. See Small Business Liability Relief and Brownfields Revitalization Act, Pub. L. No. 107-118, 115 Stat. 2356. But as this Court noted in the context of CERCLA's provisions respecting recovery of attorney's fees, the matter "is a policy decision that must be made by Congress, not by the courts." See *Key Tronic Corp.*, 511 U.S. at 819, n.13 (quoting *FMC Corp.* v. *Aero Indus., Inc.*, 998 F.2d 842, 847 (10th Cir. 1993)).

already overtaxed federal judiciary. Not only are there a substantial number of potential plaintiffs who may have an incentive to bring such suits, but those suits, which typically involve multiple parties, are inherently complex. They usually involve difficult questions of allocating necessary response costs based on expert testimony, including scientific inquiry about conditions at the site. And, as this case illustrates, they may import, through the federal court's supplemental jurisdiction, state law issues that would normally be resolved in state court.

In short, if the United States is correct that CERCLA does not authorize contribution claims in these circumstances, then allowing such litigation to go forward will result in a wasteful expenditure of time and resources for all concerned. This question is best resolved sooner rather than later, and it is sufficiently important to warrant resolution now.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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DECEMBER 2003

BROWNFIELDS – PRESIDENT'S FY08 BUDGET REQUEST

Question: You testified in response to a question from Representative Pitts that the "fiscal year 2008 budget request is actually higher than what the President's budget request was for brownfields last year."

However, is it correct that the total brownfields budget request is actually lower ($162.2 million) in FY 08 compared to the total budget request ($163.3 million) in FY07?

Answer: The testimony referred to grants to the state, Tribal, and local governments under Section 104(k). While the total FY 2008 President's Budget request for the Brownfields Program is $1 million lower than the FY 2007 President's Budget request the amount requested in the FY 2008 President's Budget for Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), Section 104(k) is $100,000 more than the FY 2007 President's Budget and $600,000 more than the FY 2006 Enacted budget.

The FY 2008 President's Budget requests $89.2 million to provide support for the Brownfields competitive grants awarded under CERCLA Section 104(k). The total amount requested in the FY 2008 President's Budget for the Brownfields Program is consistent with the amount appropriated to the Agency in its FY 2006 Enacted budget.

Question: Is it also correct that the total request in FY08 is actually $47.9 million lower than the President's total brownfields request of $210.1 million in FY06?

Answer: Yes, the FY 2008 President's Budget is $47.9 million lower than the FY 2006 President's Budget request. The FY 2008 President's Budget request is consistent with the Agency's FY 2006 Enacted Budget of $162.4 million.

Question: If you compare the FY08 budget request for brownfields grants under Section 104(k) for site assessment and cleanup to the FY07 request, is it correct that the President's budget request went up only $200,000 dollars from $89.1 million in FY07 to $89.3 million in FY08?

Answer: Yes, the FY 2008 President's Budget request for CERCLA Section 104(k) is an increase of $200,000 more than the FY 2007 President's Budget.

Question: Is it also correct that the $89.3 million request under Section 104(k) in FY08 is $31.2 million dollars lower than the FY06 request for Section 104(k) brownfield grants of$120.5 million?

Answer: Yes, the FY 2008 President's Budget is $31.2 million lower than the FY 2006 President's Budget request. The FY 2008 President's Budget request is consistent with the Agency's FY 2006 Enacted Budget of $88.7 million.

SUPERFUND CLEANUPS – PAYMENT PERCENTAGES

Question: You testified that EPA is requiring polluters to pay for 70 percent of the cleanups with 30 percent being paid for by general taxpayer revenues. The 70-30 percent figure is the historical figure that the Superfund program has used to differentiate the percentage of sites where polluters are paying for the cleanups versus taxpayers using general revenues. Senior agency officials have recently indicated that the more accurate percentage is 50-50. What is the most accurate figure, taking into account recently listed sites where there may not be viable potentially responsible parties?

Answer: Potentially responsible parties (PRPs) are cleaning up or helping pay for clean up at 71 percent of the 1,413 National Priorities List (NPL) sites where cleanup is underway or construction of the remedy is complete. This percentage counts federal facilities as PRP lead. We cannot accurately predict what the percentage will be in the future, however, some believe that there will be more "orphan" sites (where there are no viable PRPs) in the future and thus, the percentage of PRP participation may decrease.

SUPERFUND CLEANUP SITES – PRESIDENT'S REQUEST BY AGENCY

Question: Administrator Johnson testified that the Federal Government overall will spend $8.5 billion under the President's FY08 budget request to cleanup hazardous waste sites, including $1.2 billion for the Superfund program administered by the EPA. Please break out the $8.5 billion figure by Federal agency and indicate for each agency how many hazardous waste sites remain to be cleaned up.

Answer: The total for hazardous waste site cleanup requested in the FY 2008 President's Budget is $8.9 billion. The breakout below includes the number of Federal sites on the National Priority List (NPL) remaining to be cleaned up:

| Agency | FY 2008 Cleanup Appropriation Request | # of NPL Sites Remain to be Cleaned-up |
|---|---|---|
| EPA | $1.2B | ** |
| DOE | $5.7B | 14 |
| DoD | $2.0B | 96 |
| Other* | N/A | 6 |
| Total | $8.9B | 116 |

*Other Federal Agencies: U.S. Department of Agriculture - 1; U.S. Coast Guard - 1; U.S. Department of Interior - 1; Federal Aviation Administration - 1; and NASA - 2. FY 2008 Appropriation amounts not currently available.

**There are no EPA facilities on the NPL. EPA does use its appropriation for non-Federal sites where cleanup is not being performed by non-Federal potentially responsible parties.

There are several important explanatory points accompany the breakout above. Cleaning up remaining NPL sites is not the only authorized purpose to which these appropriations are used. For example, EPA has important post-construction responsibilities at NPL sites, and manages a large removal program apart from the NPL. Similarly, the Department of Defense manages significant efforts at sites not on the NPL, and many Department of Energy sites are contaminated in a manner that make them not comparable to other agencies' hazardous waste sites.

SUPERFUND CLEANUP COST – RULEMAKING UNDER SEC. 108 OF CERCLA

Question: In August 2005, the Government Accountability Office found that "EPA could better ensure that bankrupt and other financially distressed businesses meet their cleanup obligations by making greater use of existing authorities" and stated that the EPA inaction to implement a financial assurance mandate "has exposed the Superfund program and U.S. taxpayers to potentially enormous cleanup costs at gold, lead and other mining sites and other industrial operations, such as metal plating businesses ."

What specific actions, including rulemaking under Section 108 of CERCLA, has EPA taken to require financial assurance at mining operations so taxpayers will not be saddled with cleanup costs?

Answer: EPA is conducting several analyses to determine whether the regulatory authority in the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) Section 108 should be used to ensure that classes of facilities (other than those regulated under Subtitle C of the Solid Waste Disposal Act) maintain financial responsibility consistent with the degree and duration of risk associated with the handling of hazardous substances. These analyses are examining the various entities, operating under modern waste management programs, that have created environmental and public health risks of concern and become a National Priorities List site. Further analysis of the identified industrial sectors will allow EPA to determine whether particular classes of facilities should be identified for the development of financial responsibility requirements.

Mining, recycling, dry cleaning, chemical and metal manufacturing, and metals processing and handling are among the industrial sectors that EPA is currently evaluating. Along with the potential risk posed by these industries, we will examine economic characteristics of each industry class and also examine pending and existing legislation that may supplant a need for additional regulation or may indicate a gap that needs filling. By the end of the calendar year, EPA will determine the appropriate action under Section 108 of CERCLA. A paper that provides a summary of our analytical findings will be completed once that decision is made.

SUPERFUND NATIONAL PRIORITIES LIST – BANKRUPT MINING COMPANIES (POTENTIALLY RESPONSIBLE PARTIES)

Question: Please identify each Superfund National Priorities List site that has not reached construction complete status where there are bankrupt or financially insolvent mining companies who are potentially responsible parties (PRP). For each such site, provide the name of each bankrupt or financially insolvent mining company.

Answer: The following information is based on a collection of data from EPA's regional offices.[1]

**REGION 2**

Li Tungsten Site, NJ. → W.R. Grace and Company and Fansteel Incorporated (bankrupt).

**REGION 5**

Taylor Springs, IL → Asarco (bankrupt).

**REGION 6**

Tar Creek Site, Ottawa County, OK → Asarco (bankrupt).

Tex Tin Corporation Superfund Site, Texas City, Texas → Kaiser Aluminum (bankrupt).

**REGION 7**

Big River Mine Tailings, MO → Asarco (bankrupt).

Madison County/Catherine Mine, MO → Asarco (bankrupt).

Omaha Lead, Omaha, NE → Asarco (bankrupt).

Tri-State Mining Site: Oronogo/Duenweg Mining Belt Site (aka Jasper County, Missouri) → Eagle Picher and Asarco (both bankrupt).

Tri-State Mining Site: Cherokee County, Kansas Superfund Site → Eagle Picher and Asarco (both bankrupt).

Tri-State Mining Site: Newton County, Missouri → Eagle Picher and Asarco (both bankrupt).

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[1] An insolvent company may still have assets but has not filed for ether reorganization or dissolution under the Bankruptcy Code, i.e., is not bankrupt. A bankrupt company has filed for protection under either Chapter 11 (Reorganization) or Chapter 7 (Dissolution) of the Bankruptcy Code.

EPA utilizes the Northern American Industry Classification System (NAICS) developed by the Department of Commerce to identify "mining companies." The NAICS mining classification includes mines and the facilities (mills and smelters) that process the ore into refined metal. These activities are often collectively referred to as the "primary metals sector."

**REGION 8**

Asarco Globe Plant, Denver, CO → Asarco (bankrupt).
California Gulch, Leadville, CO → Asarco (bankrupt).

Eureka Mills Site, Eureka, UT → Chief Consolidated Mining Co. (insolvent).

Gilt Edge, SD. → Brohm Mining Corp. operated this mine and both Brohm and its parent company, Dakota Mining, declared bankruptcy in 1998 (bankrupt).

Silver Bow Creek, Mine Flooding Operable Unit, MT → Asarco (bankrupt).

Standard Mine Site, Gunnison County, CO → Standard Metals Company (bankrupt).

Summitville Mine Site, Del Norte, CO → Summitville Consolidated Mining Co. (bankrupt).

Vasquez Blvd./VB-I70, Denver CO → Asarco (bankrupt).

**REGION 9**

Lava Cap Mine Site, CA → Keystone Cooper Corp., originally a wholly owned subsidiary of the Lava Cap Gold Mining Corp. (insolvent).

**REGION 10**

Bunker Hill Mining and Metallurgical Superfund Site, Idaho → Asarco and Sunshine Mining (both bankrupt).

Midnite Mine, WA → Dawn Mining Co. (insolvent).

Asarco Commencement Bay, Near Shore Tideflats, Ruston North Tacoma, Asarco Smelter, and the Offshore Sediments Operable Units → Asarco (bankrupt).

Kaiser Aluminum & Chem. Corp., Tacoma, WA → Kaiser Aluminum (bankrupt).

Kaiser Aluminum (Mead Works), Spokane, WA → Kaiser Aluminum (bankrupt).

Hylebos Waterway Problem Areas, Contaminated Sediment Operable Unit 01, Commencement Bay Nearshore Tideflats Superfund Site, Tacoma, WA → Asarco (bankrupt).

SUPERFUND SITES – ASARCO, LLC LIABILITY

Question: Please list each site where ASARCO, LLC is liable to the United States for response costs and or natural resource damages incurred or to be incurred by the United States

under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and provide the amount of the Federal claim.

Answer: On August 1, 2006, the United States filed a bankruptcy proof of claim on behalf of EPA with the United States Bankruptcy Court for the Southern District of Texas, Corpus Christi Division in the ASARCO, LLC Chapter 11 bankruptcy. The table below, drawn from the Proof of Claim, sets forth the approximate value of EPA's bankruptcy claims against ASARCO, LLC on a site-by-site basis. The bankruptcy court, through cost estimation hearings[2], will determine the value of EPA's allowed claim at each site. The cost estimation hearings began in August 2007 and will continue through the fall.

| Site | EPA Past Cost Claim | EPA Future Costs Claim |
|---|---|---|
| Flux Mine Site (AZ) | $11,000 | $170,000 - $250,000 |
| Hayden Facility (AZ) | $2,500,000 | $500,000 - $2,000,000 |
| California Gulch (CO) | $12,000,000 | $122,000,000 |
| Globe Site (CO) | $66,000 | $14,000,000 |
| Vasquez Blvd./Interstate 70 Superfund Site (CO) | $450,000 | $3,000,000 |
| Bunker Hill/Couer d'Alene (ID) | $138,000,000 | $387,000,000 |
| Circle Smelting Site (IL) | $8,000,000 | $5,000/year |
| Taylor Springs (IL) | $175,000 | $9,000,000 - $38,000,000 |
| Cherokee County (KS) | $27,000 | $8,000,000 |
| Big River Mine tailings and Federal Mine Tailings Sites (MO) | $1,100,000 | $18,000,000 - $28,000,000 |
| Jasper County Superfund Site (MO) | $2,700,000 | $32,000,000 |
| Madison County Superfund Site (Includes Catherin Mine) (MO) | $22,000,000 | $36,000,000 |
| Newton County (MO) | | $3,500,000 (past and future together) |
| Combination Mine Site (Part of Black Mine) (MT) | $31,000 | $500,000 |
| East Helena Superfund Site (MT) | $1,800,000 ($6,000,000 Stipulated Penalties) | $6,000,000 |
| Omaha Lead (NE) | $62,000,000 | $103,000,000 - $208,000,000 |
| Stephen Bennett Mine Site (NM) | $800,000 | None |
| Tar Creek (OK) | $145,000,000 | $129,000,000 - |

[2] The cost estimation hearings are, essentially, "mini-trials" at which the bankruptcy judge will hear evidence and assign a value to EPA's claims at each site.

| Site | EPA Past Cost Claim | EPA Future Costs Claim |
|---|---|---|
| | | $335,000,000 |
| El Paso County Metal Survey Site (TX) | $17,700,000 | $8,700,000 |
| Murray Smelter (UT) | $47,000 | $140,000/year |
| Richardson Flat Tailings (UT) | $600,000 | None |
| Commencement Bay Nearshore Tideflats Superfund Site (WA) | $1,700,000 | $49,000,000 - $53,000,000 |

SUPERFUND SITE – ASARCO, LLC COST RECOVERY

Question: What actions has the United States Government undertaken to recover the response costs or natural resource damages from ASARCO, LLC and what amount do you estimate will ultimately be recovered from ASARCO, LLC?

Answer: On August 1, 2006, the United States filed a bankruptcy proof of claim on behalf of EPA with the United States Bankruptcy Court for the Southern District of Texas, Corpus Christi Division in the ASARCO, LLC Chapter 11 bankruptcy. EPA's claims against ASARCO, LLC address remediation costs at more than 20 sites across 8 EPA Regions. Large components of EPA's claims consist of unliquidated[3] claims and claims for future work, for which a record of decision has not yet been issued. The sum total of EPA's claims against ASARCO, LLC for all of the sites is in excess of $1.5 billion.

The bankruptcy court, through cost estimation hearings[4], will determine the value of EPA's allowed claim at each site. In preparation for the cost estimation hearings, EPA is preparing (1) detailed analysis of all of its past cost expenses, (2) its liability case against ASARCO, LLC at each site, and (3) expert reports with respect to future costs at each site. The cost estimation hearings began August 2007 and will continue through the fall. At this stage of the ASARCO, LLC bankruptcy litigation, we cannot estimate how much EPA or any creditor will recover on their claims. Ultimate recovery in bankruptcy proceedings is typically less, and often substantially less, than the amount included in the proof of claim.

This response concerns EPA's claims only. The Department of the Interior is the trustee agency for Natural Resource Damages ("NRD") claims.

SUPERFUND CLEANUPS – PRP COMMITMENTS FOR FUTURE RESPONSE WORK

[3] An "unliquidated" claim is a claim for performance of work that has not been reduced to a dollar amount.

[4] The cost estimation hearings are, essentially, "mini-trials" at which the bankruptcy judge will hear evidence and assign a value to EPA's claims at each site.

Question: Deputy Administrator Peacock testified that "the total PRP commitments for cleanups from Fiscal Year 2001 through 2006 was almost $6 billion." However, in Fiscal Year 2001 private party commitments for future response work was $1.7 billion and in FY06 it had fallen to $391 million dollars – a drop of over 75 percent in commitments obtained for cleanup work from private parties.

What explains this huge drop in obtaining private party cleanup commitments for future response work? What affect [sic] will it have on the pace of completing cleanups at Superfund sites?

Answer: The dollar amount of private party commitments fluctuates significantly from year to year and is highly dependent on the types of sites that are ready for enforcement action – a settlement or an order to compel potentially responsible parties (PRPs) to conduct cleanup. In some years, the universe of sites with viable, liable PRPs that are ready for design and construction may contain sites that require less costly remedies (i.e., the basis for PRP commitment estimates), while in other years the universe of sites may contain one or more cleanups with very high response costs. The PRP commitments for future work in 2001 (which were actually approximately $1.3 billion, in addition to approximately $400 million in cost recovery) were unusually high, because a single settlement at the Iron Mountain Mine site in California included cleanup commitments of $814 million. The fluctuations in the responsible party commitments from year to year do not affect the pace of cleanup.

PERFORMANCE TRACK PROGRAM

Question: In response to a question from Representative Solis, you agreed to provide the date(s) that you had spoken with the Acting Inspector General, Mr. Roderick, about the Performance Track program and the Performance Track evaluation report or a draft of that report.

Please provide the dates of any such communications between you and the Mr. Roderick, Acting Inspector General.

Answer: Consistent with my statement to the subcommittee during the March 8, 2007 hearing, at no time did I have an in depth conversation with Mr. Roderick regarding the specific details of the Performance Track program, the Office of Inspector General's (OIG's) performance track evaluation report, or draft report.

I recall the general topic of the Performance Track evaluation report was raised in conversations I had with Mr. Roderick twice. First, on December 18th, 2006, during one of my regularly scheduled general discussions with the OIG, I asked Mr. Roderick to let me know whether or not I should sign a letter presented to me by the Office of Policy, Economics, and Innovation (OPEI). OPEI had requested I sign a memorandum that celebrated the fifth anniversary of the performance track program and noted it successes. OPEI had also informed me that the OIG was reviewing the program and was close to releasing the findings; therefore I asked the Acting IG to let me know if, based on those findings, a letter noting the program's successes would be appropriate for me to sign.

The second conversation occurred on January 16th, 2007 just before the start of one of my senior staff meetings. The Associate Administrator for OPEI notified me that the OIG had released the draft Performance Track evaluation report. I thanked the Acting IG for his work.

PERFORMANCE TRACK PROGRAM - MONSANTO FACILITIES CONVICTED

Question: In response to a question from Representative Solis, Mr. Mannix agreed to provide an explanation of how three Monsanto facilities can remain in the Performance Track Program after the parent company was criminally convicted of an environmentally-related crime within the past five years. (See Appendix 2 press release from the U.S. Department of Justice.) Please provide that explanation.

Answer: Performance Track adheres to compliance screening guidelines that were developed for all EPA partnership programs in collaboration with EPA's Office of Enforcement and Compliance Assurance (OECA). When Performance Track members apply to the program, they undergo a compliance screening review that includes an assessment of information housed in EPA databases and consultation with regional offices, state environmental officials, and the U.S. Department of Justice. We also assess the compliance status of members on a regular basis while they are in the program and when they re-apply for membership at the end of three years.

It is important to note that Performance Track is a facility-based program, designed to highlight and encourage sound environmental management practices at the facility rather than company level. Therefore, a poor compliance record at one facility would not ordinarily disqualify a well-run facility within the same company from Performance Track membership. However, if there are compliance problems elsewhere in the company, we may—at the Agency's discretion, and depending on the particular facts and the gravity of the conduct—deny membership to a facility that otherwise would qualify. Such situations are infrequent.

Monsanto Corporation currently has three facilities in the Performance Track Program: Luling, LA; Muscatine, IA and Augusta, GA. The first two facilities entered the program in 2001, while the third facility entered in 2005. The Agency conducted a compliance screen of each of these facilities when they applied to the program, and none of these uncovered criminal violations of environmental laws that would have warranted barring these Monsanto facilities entry into the program.

During a 2006 review of Monsanto's compliance record, the Agency learned of a Department of Justice announcement in January 2005 indicating that Monsanto Company had been charged with violating the Foreign Corrupt Practices Act in connection with an illegal payment to a senior Indonesian Ministry of Environment official and false certification of the bribe by a Monsanto employee as a consultant fee. The "financial irregularities," according to Monsanto, were discovered by the company itself in 2001 disclosed to U.S. authorities in November 2002. A copy of the full press release is attached.

EPA carefully evaluated Monsanto's violation of the Foreign Corrupt Practices Act and determined that this issue did not affect Monsanto facilities that are in the program and should not be relevant to their continued membership. The Monsanto facilities already in Performance Track have shown high standards of conformance with the program's criteria.

Appendix 2

# Department of Justice

**FOR IMMEDIATE RELEASE** **CRM**
**THURSDAY, JANUARY 6, 2005** **(202) 514-2008**
**WWW.USDOJ.GOV** **TDD (202) 514-1888**

## MONSANTO COMPANY CHARGED WITH BRIBING INDONESIAN GOVERNMENT OFFICIAL: PROSECUTION DEFERRED FOR THREE YEARS

***Company Agrees To Cooperate With Investigation, Retain Independent Compliance Expert, Pay $1 Million Penalty***

**WASHINGTON, D.C.** - Assistant Attorney General Christopher A. Wray of the Criminal Division announced today that Monsanto Company has been charged with violating the Foreign Corrupt Practices Act (FCPA) in connection with an illegal payment of $50,000 to a senior Indonesian Ministry of Environment official, and the false certification of the bribe as "consultant fees" in the company's books and records.

A criminal information filed today in the District of Columbia charges Monsanto, a St. Louis, Missouri-based public company and global producer of technology-based solutions and agricultural products, with violating the anti-bribery and false books and records provisions of the Foreign Corrupt Practices Act, Title 15, U.S.C. §§ 78dd-1(a) and (g) and 78m(b). Monsanto has agreed to accept responsibility for the conduct of its employees in paying the bribe and making the false books and records entries, adopt internal compliance measures and cooperate with ongoing criminal and SEC civil investigations. An independent compliance expert will be chosen to audit the company's compliance program and monitor its implementation of and compliance with new internal policies and procedures. Monsanto has also agreed to pay a monetary penalty of $1 million.

Based on Monsanto's acceptance of those conditions and others, the Department of Justice has agreed to defer prosecution on the criminal information for three years. The Department of Justice has agreed to dismiss the criminal information after three years if Monsanto fully complies with the terms of the deferred prosecution agreement.

According to the filed information and the agreed statement of facts, the agricultural products marketed by Monsanto include various genetically-modified crops, including cotton. Monsanto hired an Indonesian consulting company to assist it in obtaining various Indonesian governmental approvals and licenses necessary to sell its products in Indonesia. At the time, the Indonesian government required an environmental impact study before authorizing the cultivation of genetically modified crops. After a change in governments in Indonesia, Monsanto sought, unsuccessfully, to have the new government, in which the senior environment official had a post, amend or repeal the requirement for the environmental impact statement.

Having failed to obtain the senior environment official's agreement to amend or repeal this requirement, in 2002 a Monsanto employee responsible for certain activities in the Asia-Pacific Region authorized and directed the Indonesian consulting firm to make an illegal payment totaling $50,000 to the senior environment official to "incentivize" him to agree to do so. The Monsanto employee also directed representatives of the Indonesian consulting company to submit false invoices to Monsanto for "consultant fees" to obtain reimbursement for the bribe, and agreed to pay the consulting company for taxes that company would owe by reporting income from the "consultant fees."

In February 2002, an employee of the Indonesian consulting company delivered $50,000 in cash to the senior environment official, explaining that Monsanto wanted to do something for him in exchange for repealing the environmental impact study requirement. The senior environment official promised that he would do so at an appropriate time. In March 2002, Monsanto, through its Indonesian subsidiary, paid the false invoices thus reimbursing the consulting company for the $50,000 bribe, as well as the tax it owed on that income. A false entry for these "consulting services" was included in Monsanto's books and records.

The senior environment official never authorized the repeal of the environmental impact study requirement.

"Companies cannot bribe their way into favorable treatment by foreign officials," said Assistant Attorney General Wray. "Today's agreement, which requires Monsanto's full cooperation, acceptance of responsibility, and significant compliance and monitoring steps, will help ensure that such dishonest and illegal activity does not occur in the future."

Monsanto has also settled related civil enforcement proceedings by the Securities and Exchange Commission. Today, the Commission filed a federal court complaint charging Monsanto with violating the FCPA and issued an administrative order finding that Monsanto violated the anti-bribery, books and records, and internal controls provisions of the FCPA. Monsanto consented to the entry of a final judgment in the federal lawsuit requiring it to pay a $500,000 civil penalty and consented to the Commission's issuance of its administrative order.

The criminal case is being handled by Acting Deputy Chief Mark F. Mendelsohn of the Fraud Section. The investigation was assisted by the SEC.

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05-008

PERFORMANCE TRACK PROGRAM -
EXEMPTIONS AND FLEXIBILITIES UNDER CAA AND RCRA

Question: Facilities that join Performance Track are provided certain benefits and incentives. For example, Performance Track members become eligible for certain exemptions to Clean Air Act MACT requirements and hazardous waste rules under the Resource Conservation and Recovery Act.

*a.) Please describe the regulatory exemptions and "flexibilities" that have been made available to Performance Track Facilities.*

Answer: The following regulatory exemptions and "flexibilities" are available to Performance Track Facilities:

Extended Accumulation of Hazardous Waste for Performance Track Members

The first Performance Track rule was published on April 22, 2004 (69 FR 21737). The rule provides an incentive under EPA's Resource Conservation and Recovery Act (RCRA) that extends on-site storage times for large-quantity generators of hazardous wastes to up to 180 days (270 days if the waste is transported 200 miles or more) to accumulate hazardous waste without a RCRA permit or interim status. The waste must be managed in containers, tanks, drip pads, or containment buildings, in accordance with the applicable requirements, and the quantity of hazardous waste must not exceed 30,000 kilograms.

The generator maintains records at the facility for each unit used for extended accumulation times, and maintains documentation confirming that all procedures are complied with. Each container or tank must be clearly marked and visible for inspection with the words "Hazardous Waste," and the date upon which each period of accumulation begins. The generator must comply with the requirements for owners and operators in 40 CFR Part 265, with §265.16, and with §268.7(a)(5), and is exempt from all the requirements in subparts G and H of part 265, except for §§265.111 and 265.114.

The generator must also implement pollution prevention practices prior to its hazardous waste recycling, treatment, or disposal, and include certain information in its Performance Track Annual Performance Report, which must be submitted to the EPA Regional Administrator and the director of the authorized state agency. That information must include the total quantity of each hazardous waste generated, how it has been managed, the number of off-site shipments, the types and locations of destination facilities, how the wastes were managed at the destination facilities (e.g., recycling, treatment, storage, or disposal), any changes in on-site or off-site waste management practices as a result of extended accumulation times or other pollution prevention provisions, and any hazardous waste spills or accidents.

Member facilities qualify for this benefit by meeting the following requirements:

- Member facilities must submit prior written notice to the EPA Regional Administrator and the director of their state permitting authority of their intent to extend hazardous waste accumulation time.
- Notices must identify the generator and facility, state when extended accumulation will begin, describe the wastes to be accumulated, list the units that will be used for that purpose, and state that the facility has made all the changes to it operations, procedures, and equipment necessary to accommodate the extended time periods for accumulating hazardous wastes. Federal form 8710-18 has been created for this purpose.
- For generators that intend to accumulate for up to 270 days because required transport is more than 200 miles, the notice must contain a certification that an off-site permitted or interim status treatment, storage, or disposal facility capable of accepting the waste is not located within 200 miles.

Reduced Self-Inspections for Performance Track Members

Under the Performance Track rule, published on April 4, 2006 (71 FR 16862), member facilities that are large and/or small quantity generators, hazardous waste treatment, storage, and disposal facilities (TSDs), and certain manufacturing, transportation, utility, and mineral processing facilities, may request that self-inspections of tank systems, containers, containment buildings, and areas subject to spills be reduced to a frequency of once a month, compared with daily or weekly for non-Performance Track members.

To qualify for this incentive, each facility must submit an application to the state regulatory authority and identify itself as a Performance Track member. Any Performance Track facility that discontinues its membership, or is terminated from the program must notify the State Director immediately, in writing, of its change in status. Also, the facility must revert to the "non-Performance Track member" inspection frequency within seven calendar days and place a dated copy of this notification in its operating record. If the Performance Track member is a permitted TSD, the permit modification must contain language that explains the procedure for change of status.

Reduced Frequency of Reporting Under MACT

The April 22, 2004 Performance Track rule (69 FR 21737) also reduced the frequency of reports required by Performance Track members under the Maximum Available Control Technology (MACT) provisions of the Clean Air Act. Semi-annual reports may be submitted annually, and in certain cases members may submit an annual certification for these requirements in lieu of an annual report. This incentive does not apply to major air sources, but it does apply to area air sources if they are not required to hold CAA Title V permits.

Member facilities qualify for this benefit by meeting the following requirements:

- Facilities should submit a written request to their state permitting authority for permission to reduce their reporting burden.

- Requests should identify the facility and should state when the facility would like to take advantage of the incentive, describe the facility's emissions, applicable requirements, and methods for meeting the requirements of the incentive.

*b.) Further, please provide a list of the member facilities that have filed notices or otherwise indicated that they intend to take advantage of the regulatory exemptions and "flexibilities" offered under the Clean Air Act and the Resource Conservation and Recovery Act.*

Answer: No Performance Track facilities are using the MACT provision. A list of facilities using the two RCRA provisions is attached.

*c.) Please include the date of the notice to the EPA and/or the State.*

Answer: These regulatory programs have been delegated to the states and this information would be maintained by the state agencies. EPA does not retain this information from delegated programs.

PERFORMANCE TRACK PROGRAM:
U.S. STEEL CLAIRTON WORKS FACILITY COMPLIANCE

Question: In response to a question from Representative Solis, Mr. Mannix agreed to provide an explanation of how the U.S. Steel Clairton Works facility in Pennsylvania is allowed to be part of the Performance Track Program in light of its compliance history showing that it had paid $140,250 in penalties for 10 separate Clean Air Act violations in the past 3 years. Please provide the response to this question from Mr. Mannix.

Answer: Due to violations of program qualification requirements, as of May 21, 2007 the U.S. Steel Clairton Works facility was no longer a member of Performance Track.

Performance Track members must have a record of compliance with environmental laws and commit to sustaining the level of compliance required for acceptance to the program. The compliance screening process includes the review of information gathered from enforcement databases, EPA's Office of Enforcement and Compliance Assurance (OECA), National Program Offices and Regional offices. EPA develops additional compliance information in consultation with the Department of Justice as well as State and local environmental agencies.

EPA evaluated U.S. Steel's compliance record at the time of their original application in 2001 and again during their membership renewal in 2004. Although the facility experienced periodic instances of noncompliance with its air permit, U.S. Steel was always characterized by the Allegheny County Health Department (ACHD) as cooperative and exemplary within its sector. Both the County and the EPA Region 3 office endorsed Clairton Works for program membership.

While Performance Track's program compliance criteria do not require a perfect record of compliance, it does dictate that any compliance issues identified are addressed quickly and responsibly by the facility. Over the duration of U.S. Steel's membership, any violations cited by ACHD were always corrected in a timely matter according to discussions with ACHD staff. However, as a result of EPA's semi-annual Performance Track member compliance reviews, EPA's Region 3 office and Allegheny County determined that the facility no longer met the program compliance criteria due to a pending enforcement action by ACHD. The facility formally left the Performance Track program on May 21, 2007 and on June 1, 2007, U.S. Steel entered a consent agreement and final order with Allegheny County.

PERFORMANCE TRACK PROGRAM: U.S. STEEL CLAIRTON WORKS FACILITY VIOLATIONS AND PENALTIES

Question: Has the U.S. Steel Clairton Works facility been required to pay other penalties since March 8, 2007, for environmental violations? If so, please describe the dates(s) of the violations and any penalties paid.

Answer: On June 1, 2007, the Allegheny County Health Department (ACHD) entered a Consent Order and Agreement with U.S. Steel Clairton that settled alleged violations of ACHD air pollution control rules. The settlement included a civil penalty of $395,900, expenditures totaling $70,000 for Supplemental Environmental Projects, and requirements for U.S. Steel to perform corrective actions at the facility. Prior to reaching a final settlement with Allegheny County, the facility undertook corrective actions that included a 3-year, $75 million battery repair project.

PERFORMANCE TRACK PROGRAM- U.S. STEEL CLAIRTON WORKS

Question: Does the U.S. Steel Clairton Works facility remain in the Performance Track program? If not, when was U.S. Steel Clairton removed from the program?

Answer: As of May 21, 2007, the U.S. Steel Clairton Works facility withdrew its membership from the Performance Track program.

PERFORMANCE TRACK PROGRAM- DOLLARS TO CONTRACTORS

Question: Is EPA spending taxpayer dollars to pay contractors to do public relations work for corporations that are members of the Performance Track program? If so, please identify each such public relations activity, in addition to providing posters to companies, that is being funded with taxpayer dollars and the amount of money that was spent in FY06 for that activity.

Answer: No, EPA's National Environmental Performance Track program has not paid contractors to do public relations work for corporations that are members of the program. Consequently, no funds were spent in FY 2006 for these types of activities.

Prior to 2004, however, Performance Track posters were developed, for members to hang inside their facilities to raise awareness among employees for their environmental programs. Such awareness is a key component to an effective environmental management system and is one of the criteria for a company to participate in Performance Track.

EPA LIBRARY- FUNDING LEVELS

Question: What is the status of the Agency's library digitization effort?

Answer: Currently, unique EPA documents from the libraries in Regions 5, 6, and 7 and the Headquarters Library have been digitized. The Agency has requested a third party review of its digitization effort; this review is currently underway. Once the review is completed and its recommendations assessed by the Agency, we will determine the actions that may need to be taken. When that process is completed we will begin digitization of the remaining unique EPA documents.

Question: What funding is provided for these efforts in FY07?

Answer: EPA has spent approximately $78,950 for digitizing materials for closed libraries in FY07. EPA has an additional $170,000 remaining for digitization in FY07 (two year appropriation) that can be used in FY08.

Question: What funding levels has EPA requested for FY08 for this effort?

Answer: The digitization of the remaining unique EPA documents awaits the completion of the independent expert review of our digitization specifications and procedures. Once the review is both completed and peer-reviewed, we will develop a revised digitization plan, including budget requirements. However, EPA has an additional $170,000 remaining for digitization in FY07 (two year appropriation) that can be used in FY08.

EPA LIBRARY-ACCESS

Question: What is EPA's plan for the future of the agency's libraries?

Answer: The Office of Environmental Information in collaboration with EPA library managers and professional librarians is reviewing and updating the strategic plan for the EPA

Library Network of the future. This strategic plan will be shared with external stakeholders such as the professional library associations and other federal librarians.

Question: Please describe how the public will continue to have access to the entire collection and the plan for digitization of the entire collection.

Answer: The public is able to access the holdings of all the libraries, including repository libraries, in the EPA National Library Network either via interlibrary loans or by visiting the sites that maintain walk-in access. The public can identify the materials held in the libraries by searching the Online Library System (OLS), the catalog of the holdings of the libraries in the Network. OLS is available at http://www.epa.gov/natlibra/ols.htm

The public also has access to EPA's digital library of EPA documents, National Environmental Publications Internet Site (NEPIS), from the EPA Web site at http://www.epa.gov/nscep . EPA has digitized about 26,000 unique EPA documents (published by or on behalf of EPA). This number includes unique EPA documents held in the collections of the libraries that closed access to their physical spaces. We plan to continue digitizing the rest of the unique EPA documents held by the Network libraries within the next 2 years.

The public will also be able to obtain hardcopy EPA documents free of charge through the National Service Center for Environmental Publications (NSCEP) by calling 1-800-490-9198 or by visiting http://www.epa.gov/nscep

Question: Please also describe how EPA's staff, the public, business community, and the academic community will continue to have access to reference and research support.

Answer: EPA staff continues to have access to reference and research services. Those located in sites without walk-in access can obtain these services from either one of the OARM libraries in RTP or Cincinnati. The public, business and academic communities and any other external groups who wish to reach one of the libraries that closed walk-in access are asked to call a regional public information center or a customer call center with their information requests. Phone numbers are posted on the EPA Web site in the Web page specific to the library they want to reach. Access to reference and research service from the rest of the libraries in the Network remains available as in the past. Please see attachment for hours of operation.

Question: Does the agency plan to impose charges or fees on EPA program offices, non-EPA libraries, or the public for use of the collection?

Answer: EPA is not planning to impose charges or fees for the use of the collection in the EPA National Library Network.

**Chart A: US Environmental Protection Agency**
**Library Network - Hours of Operation**

| EPA Library Network | Days Open | Current Hours of Operation | Comments |
|---|---|---|---|
| Headquarters Washington, DC | | | No walk-in services as of October 1, 2006. Has become a Repository Library. HQ Staff being served by the RTP library for reference services and interlibrary loan requests. |
| Region 1 Boston, MA | Tues, Wed, Thur | 9:30am – 3:00 pm 16.5 hrs/week | Hours were reduced April 2006,Staff notified via e-mails Previous schedule was Mon – Fri 9:00am to 5:00pm 40 hrs/week |
| Region 2 New York, NY | Tues, Wed, Thur | 10:00am – 2:00 pm 12 hrs/week | Hours were reduced 12/11/06, Staff notified via LAN and signs posted near Library Previous schedule was Mon-Thurs 9:00am to 12:00pm, 1:00pm to 4:00pm, 24 hrs/week. The library in Edison, NJ, was closed in 2004. |
| Region 3 Philadelphia, PA | Mon - Fri | 8:00am – 5:00 pm | Region 3 also manages the Ft. Meade library and provides services to the Environmental Science Center (ESC) staff at that location |
| Region 4 Atlanta, GA | Mon - Fri | 8:00am - 4:00 pm | |
| Region 5 Chicago, IL | | | No walk-in services as of 8/28/06. OARM Cincinnati library serving staff via virtual reference services and interlibrary loan requests. |
| Region 6 Dallas, TX | | | No walk-in services as of 10/1/06. OARM RTP library serving staff via virtual reference services and interlibrary loan requests. |
| Region 7 Kansas City, KS | | | No walk-in services as of 10/1/06. OARM RTP Library serving staff via virtual reference services and interlibrary loan requests. |
| Region 8 Denver, CO | Mon - Fri | 10:00am -4:00 pm | |
| Region 9 San Francisco, CA | Mon - Thur | 9:00am – 12:00 pm, 1:00pm – 4:00 pm 24 hrs/week | Hours were reduced 1/17/06, Staff notified via all-hands message Previous schedule was Mon – Fri 9:00am -4:00pm, 35 hrs/week |
| Region 10 Seattle, WA | Mon - Fri | 9:00am – 12:00 pm, 1:00pm – 2:30 pm 22.5 hrs/week | Hours have been reduced, Previous schedule was Mon – Fri 8:00am to 4:00pm 40 hrs/week |
| Office of Prevention, Pesticides and Toxics Substances Chemical Library, Washington, DC | | | No walk-in services as of August 2006. Staff being served by OPPTS library contractor and by OARM Library in RTP. |

| | | | |
|---|---|---|---|
| National Enforcement Investigation Center (NEIC) Denver, CO | Mon - Fri | | Mon – Thurs 7:30- 5:30, Fri 8:30 – 4:30, Available to staff 24/7. Located in a secure facility, physical access to the public is by appointment only or by email/phone. |
| NERL - Environmental Sciences Division Technical Research Center, Las Vegas, NV | Mon - Fri | 8:30am – 4:30 pm | Open to the public by appointment only. |
| NERL - Ecosystem Research Division Library, Athens, GA | Mon – Fri | 8:00am – 5:00 pm | |
| NHEERL - Atlantic Ecology Division Library, Narragansett, RI | Mon - Fri | 8:00am – 4:30 pm | |
| NHEERL - Gulf Ecology Division Library, Gulf Breeze, FL | Mon - Fri | 7:30am – 4:00 pm | |
| NHEERL - Mid-continent Ecology Division Library, Duluth, MN | Mon - Fri | 8:00am – 4:30 pm | |
| NHEERL - Western Ecology Division Library, Corvallis, OR | Mon - Fri | 8:00am – 5:30 pm | The library is open 8-5:30 M-F but the front door to the building is locked at 4:30 pm so the public access hours are actually Mon-Fri, 8 am - 4:30 pm |
| NRMRL - Ground Water and Ecosystems Restoration Division Library, Ada, OK | Mon - Fri | 8:30am – 4:30 pm | |

| | | | |
|---|---|---|---|
| Andrew W. Breidenbach Environmental Research Center Library, Cincinnati, OH | Mon - Fri | 7:30am – 5:00pm | |
| NERL - Atmospheric Sciences Modeling Division Library, Research Triangle Park, NC | Mon - Fri | 8:00am – 4:30pm<br><br>Public hours:<br>9:00am – 3:00pm | |
| Legislative Reference Library Washington, DC | Mon - Fri | 9:00am – 4:00pm | Open to the public by appointment. |
| Office of General Counsel Law Library Washington, DC | Mon - Fri | 10:00am – 1:00pm<br>2:00pm – 5:00pm | |
| National Vehicle & Fuel Emissions Laboratory Library, Ann Arbor, MI | Mon - Fri | 7:00 am – 4:30 | |
| RTP Library Services, Research Triangle Park, NC | Mon - Fri | 8:00am – 4:30pm<br><br>Public hours:<br>9:00am – 3:00pm | |

ENVIRONMENTAL JUSTICE - OFFICE OF THE INSPECTOR GENERAL

Question: Executive Order 12898 directs agencies to make environmental justice part of their mission by reviewing the effects of their programs on minority and low- income populations. In September 2006, the EPA's Office of the Inspector General reported that a majority of EPA offices had not performed the required environmental justice reviews and, therefore, could not determine whether agency programs caused a disproportionately adverse effect on environmental justice communities. The OIG recommended steps to ensure compliance with the Executive Order, and EPA accepted the recommendations. However, the EPA's 2008 budget request reduces funding for environmental justice activities by 28 percent.

How does the agency plan to address the need for environmental justice reviews and possible corrective actions, in view of this request for reduced funding for environmental justice programs?

Answer: The budget decrease refers to an earmark received in FY 2006, but not requested in FY 2008. As a matter of policy, the Agency does not sustain Congressional earmarks in its budget request.

Although Congress did not provide an earmark in FY 2007, EPA increased funding by $850,000 for the environmental justice grant program. The funding request in FY 2008 is sufficient to begin the environmental justice reviews. The Agency has committed to conducting EJ reviews and does not rely on an earmark to continue the EJ reviews in the future.

Question: When will EPA begin conducting the reviews?

Answer: EPA expects to start the reviews in FY 2008. The Agency submitted a corrective action plan to the Inspector General (IG) which was accepted on May 18, 2007. The IG stated that "we accept the proposed actions and appreciate your constructive approach to the issues raised in our report." EPA provided draft milestones for this process, and will report to the IG in December 2007 of our progress. Follow-up activities are currently ongoing.

Question: What is the agency's planned schedule for the reviews?

Answer: Below is the schedule furnished to the IG's office. A "pilot" test of one of the draft protocols is being considered for this calendar year, which may have an impact on the selection of programs, policies and activities for which reviews will be conducted and to a limited degree, on the timing.

**August 2007**: EPA teams complete working draft protocols.

**December 2007**: Final draft protocols submitted to Environmental Justice (EJ) Executive Steering Committee for review and approval. EPA's program and

regional offices will identify the programs, policies, and activities for the relevant EJ priority areas as identified in their EJ Action Plans for which reviews will be conducted, including a schedule for the reviews.

**March 2008**: Final protocols completed and submitted to regions and programs for implementation.

Question: When will the results of the reviews be made available to the public?

Answer: EPA's Office of Environmental Justice (OEJ) has been designated the responsible office to: (a) compile the results of environmental justice reviews, and (b) recommend appropriate actions to review findings and make recommendations to the decision-making office's senior leadership. OEJ will make the results of the reviews available to the public after this process has been completed. An exact date has not yet been identified because the length of time to complete these reviews will not be clear until the protocols are piloted.

SUPERFUND NPL SITES - BRAC 5

Question: How many Superfund National Priority List sites are in BRAC 5 and how many resources in dollars and FTEs will be required to perform EPA's oversight responsibilities for these sites?

Answer: Base Realignment and Closure (BRAC) 5 consists of 72 National Priority List (NPL) installations. These include 6 base closures, 33 base realignments, and 33 gaining bases. Unlike previous BRAC Rounds, the work performed at BRAC 5 NPL installations can be funded out of the Superfund Federal Facilities Response program budget. The Regions estimate they will utilize 28 to 30 Superfund full-time equivalents (FTEs) and approximately $5.0 million to perform oversight responsibilities at BRAC 5 NPL installations in FY 2008.

CERCLA NOTIFICATION REQUIREMENTS – STATE EMERGENCY PLANNING COMMISSIONS

Question: You testified that EPA "will be proposing a regulation that would exempt air releases from animal waste from CERCLA emergency notification requirements" and stated that EPA had heard from 26 State emergency planning commissions that it "is a waste of their time to hear a report" from a farm.

a. Did EPA initiate the contacts with the State emergency planning commissions?

Answer: In August 2005, the Agency received a petition entitled, "Petition for Exemption from EPCRA and CERCLA Reporting Requirements for Ammonia from Poultry

Operations" (Poultry Petition), from the National Chicken Council (NCC), National Turkey Federation (NTF), and U.S. Poultry & Egg Association (USPOULTRY). In December 2005, EPA published a notice of data availability in the Federal Register (70 FR 76452, Dec. 27, 2005) that requested public comment on the petition. The Agency also stated that we were interested in hearing from State Emergency Planning Commissions (SERC) and Local Emergency Planning Committees (LEPCs) about the usefulness of release reports that are required under EPCRA and its implementing regulations (40 CFR 355 – Emergency Planning and Notification).

Question: b. In any case in which it did so, please identify the EPA official(s) who initiated such contacts.

Answer: EPA did request public comment on the petition. However, the Agency did not initiate direct contact with the State emergency planning commissions on this matter.

CERCLA AND THE EMERGENCY PLANNING AND COMMUNITY RIGHT TO KNOW ACT (EPCRA)

Question: Please identify any State emergency planning commissions that have indicated their support for the current reporting requirements for ammonia and hydrogen sulfide under CERCLA and the Emergency Planning and Community Right to Know Act (EPCRA)?

Answer: The Agency has not received any correspondence from State Emergency Planning Commissions indicating their support for the current reporting requirements for ammonia and hydrogen sulfide under Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the Emergency Planning and Community Right to Know Act (EPCRA).

NATIONAL ASSOCIATION OF CLEAN AIR AGENCIES LETTER

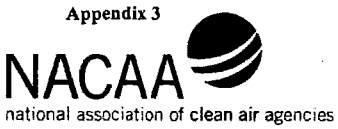
Question: Shortly after your testimony, Chairman Dingell received a letter dated March 20, 2007, from the National Association of Clean Air Agencies (Appendix 3) that stated that Administrator Johnson had failed to mention that State and local air pollution agencies had informed the EPA that a blanket exemption was not warranted given the demonstrated health effects associated with ammonia and hydrogen sulfide.

Why did you fail to inform the Subcommittee of the opposition of State and local air pollution control agencies to the proposed plan to exempt emissions of air pollutants from animal feeding operations from reporting requirements of CERCLA and EPCRA?

Answer: On November 9, 2006, the Office of Solid Waste and Emergency Response (OSWER) had a conference call with several members of the National Association of Clean Air

Agencies (NACAA). The purpose of the call was to share EPA's thoughts on how we were contemplating a response to the increasing concern raised by industry and in Congressional Committee Act (2004, 2005, and 2006) reports that the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and Emergency Planning and Community Right to Know Act (EPCRA) reporting requirements were unclear and creating confusion among the regulated industry. Some of the NACAA members had questions about whether EPA would consider assisting farms to determine their emissions. However, EPA did not interpret the discussion as representing an opposition of State and local air pollution control agencies to our proposed plan to exempt emissions of air pollutants from animal feeding operations from reporting requirements of CERCLA and EPCRA.

Appendix 3




March 20, 2007

The Honorable John D. Dingell
Chairman
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

Dear Representative Dingell:

We are writing in response to recent testimony provided by EPA Administrator Stephen Johnson before the House Energy and Commerce Committee regarding EPA's plan to exempt emissions of air pollutants from manure from reporting requirements under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and the Emergency Planning and Community Right to Know Act (EPCRA). Administrator Johnson indicated at a hearing held on March 8, 2007, that state and local officials implementing Title III of the Superfund Amendments and Reauthorization Act consulted by EPA did not object to eliminating the CERCLA and EPCRA reporting requirements for ammonia and hydrogen sulfide emissions from manure.

However, what Mr. Johnson failed to mention is that EPA staff also sought the input of state and local air pollution control agencies, who voiced a different view. During a conference call EPA's Office of Solid Waste and Emergency Response held with the National Association of Clean Air Agencies (NACAA) on November 9, 2006, we expressed several concerns to EPA about exempting from EPCRA and CERCLA the reporting of emissions of ammonia and hydrogen sulfide from manure, which we discuss below:

- Ammonia and hydrogen sulfide are air pollutants with demonstrated health effects. Human exposure to ammonia triggers respiratory problems, causes nasal and eye irritation and in large enough amounts can be fatal.[1] It also contributes directly to the formation of fine particulate matter ($PM_{2.5}$), which causes severe health effects in people, including death, heart attacks and increased severity of asthma attacks, as well as visibility impairment.[2] Hydrogen sulfide is a toxic air

[1] Schiffman, S.S., et al., *Health Effects of Aerial Emissions from Animal Production and Waste Management Systems*, available at http://www.cals.ncsu.edu/waste_mgt/natlcenter/summary.pdf and Agency for Toxic Substances and Disease Registry, "Public Health Statement for Ammonia" (September 2004), available at http://www.atsdr.cdc.gov/toxprofiles/phs126.html#bookmark05.
[2] EPA, "Review of the National Ambient Air Quality Standards for Particulate Matter: Policy Assessment of Scientific and Technical Information," (OAQPS Staff Paper) (December 2005), available at http://www.epa.gov/ttn/naaqs/standards/pm/data/pmstaffpaper_20051221.pdf.

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pollutant that can cause severe health effects, even death, at high concentrations of exposure.[3] As reported in the *Dayton Daily News*, "At least 24 people in the Midwest have died from inhaling hydrogen sulfide and methane from manure since the 1970s, including fifth-generation Michigan dairy farmer Carl Theuerkauf and four members of his family, who collapsed one by one in 1989 after breathing methane gas from a manure pit."[4]

- Air emissions from animal farming operations (AFOs) are not trivial. AFO ammonia emissions represent *half* the U.S. ammonia emissions inventory.[5] Monitoring conducted of Premium Standard Farms (PSF) by EPA (under a settlement agreement) in 2004 shows that PSF releases 3 million pounds of ammonia annually from barns and lagoons at its Somerset facility, making it the fifth largest industrial emitter of ammonia in the country.[6] In Iowa, the greatest number of air complaints the state air agency receives concern emissions from manure storage pits. Iowa monitored ten homes for ammonia and hydrogen sulfide emissions and recorded high ammonia emissions on a regular basis and high hydrogen sulfide emissions periodically.[7]

- AFOs produce millions of tons of manure each year. According to EPA, AFOs generate approximately 500 million tons of waste each year, three times more raw waste than is generated yearly by people in the U.S.[8] Thus, manure is not a minor source of air emissions.

- Given the paucity of monitors in rural states, CERCLA and EPCRA reports may be the only source of information to people affected by excessive air emissions from AFOs.

- EPA is currently conducting a monitoring study to collect information about the air emissions from AFOs and to determine whether air emissions from AFOs, including emissions from manure, warrant regulation. EPA should not consider a blanket exemption from reporting requirements for air pollutant emissions from manure while data on this very subject is being collected. (Farms participating in this monitoring study have already received a waiver from enforcement of

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[3] Agency for Toxic Substances and Disease Registry, "Public Health Statement for Hydrogen Sulfide" (July 2006), available at http://www.atsdr.cdc.gov/toxprofiles/phs114.html.
[4] Wagner and Sutherly, "The supersizing of America's livestock farms," *Dayton Daily News* (December 1, 2002).
[5] National Research Council, "Air Emissions from Animal Feeding Operations: Current Knowledge, Future Needs" (pre-publication copy released Dec. 12, 2002), at p. 42
[6] Premium Standard Farms, *Air Emissions Monitoring Completion Report* (Nov. 17, 2004) and EPA, "Toxics Release Inventory" (2004), available at http://www.epa.gov/triexplorer.
[7] Iowa Department of Natural Resources Ambient Air Monitoring Group, "Results of the Iowa DNR Animal Feeding Odor Study" (January 2006).
[8] 68 *Federal Register* at pp. 7179-80.

CERCLA and EPCRA reporting provisions for air emissions of hydrogen sulfide and ammonia.)[9]

- We are also concerned about the precedent this action will set with respect to application of the Clean Air Act to air emissions from manure.

In our discussions with EPA, we suggested other means for reducing the perceived regulatory burden and uncertainty with respect to CERCLA and EPCRA: EPA could determine a size threshold for farms, based on animal units, below which a farm might reasonably assume its air emissions of ammonia and hydrogen sulfide were below CERCLA and EPCRA reporting thresholds. We do not believe a blanket exemption is warranted given the demonstrated health effects associated with ammonia and hydrogen sulfide, the amounts of manure produced by AFOs and the usefulness of the data contained in CERCLA and EPCRA reports to state and local air agencies and the people living near these facilities.

On a related issue, we understand that legislation has been introduced to exempt from CERCLA and EPCRA reporting of all air pollutant emissions from manure. We would oppose such a statutory exemption for the same reasons cited above. A legislative exemption is even more problematic because such an exemption would require legislative action to be reversed, as opposed to an EPA interpretation that could be changed administratively.

Please feel free to contact me at 202-624-7864 if you have any questions.

Sincerely,

S. William Becker
Executive Director

[9] 70 *Federal Register* at p. 4963. Specifically, EPA covenants not to sue participating AFOs – whether or not they are actually monitored – for "civil violations of CERCLA section 103 or EPCRA section 304 from air emissions of Hydrogen Sulfide ($H_2S$) or Ammonia ($NH_3$) that are not singular unexpected or accidental releases such as those caused by an explosion, fire or other abnormal occurrence."

CERCLA AND EPCRA – ANIMAL FEEDING OPERATIONS REPORTING AMMONIA RELEASES

Question: Under current law, how many poultry growing, turkey growing, or other animal feeding operations should be reporting hazardous releases of ammonia under CERCLA section 103(a) and EPCRA section 304(a)?

Answer: It is difficult to assess the number of poultry growing, turkey growing, or other animal feeding operations that should be reporting hazardous releases of ammonia under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) section 103(a) and Emergency Planning and Community Right to Know Act (EPCRA) section 304(a) because the notification requirements under CERCLA and EPCRA rely on the owners or operators of the facility to make a notification when the release into the environment is equal to or greater than 100 pounds/day (the reportable quantity). The Agency does not know the compliance rate of animal feeding operations fulfilling the reporting requirements under CERCLA and EPCRA, and therefore we are unable to provide an estimate of how many animal feeding operations should be reporting hazardous releases of ammonia under CERCLA and EPCRA.

Question: a. How many animal feeding operations actually reported ammonia releases in FY06?

Answer: The number of animal feeding operations that actually reported ammonia releases in FY06 is estimated as 140. Due to limitations of the database used by the National Response Center (NRC) to capture information regarding the release reports, the number of animal feeding operations that actually reported ammonia releases in FY 2006 and FY 2007 was estimated using the following methodology:

The NRC provided EPA with a spreadsheet that contained a listing of facilities that reported ammonia releases in 2006 and 2007. Because the NRC does not collect specific information regarding the type of facility, we were not able to sort data by whether the facility was an animal feeding operation. Some assumptions were necessary. First, only facilities that contained "farm" or "dairy" in their name were considered. Second, of those "farm" or "dairy" operations, only those reporting continuous releases were considered. Episodic notifications were most likely due to releases from tanks (i.e. ammonia tanks that may be used for fertilizer or refrigeration) and therefore not included in the estimate.

The estimate of 140 includes the number of animal feeding operations that reported the ammonia releases to the NRC (27) and the number of animal feeding operations that submitted notifications to the EPA under the Air Compliance Agreement because the farm confines more than 10 times the "large Concentrated Animal Feeding Operation" threshold of an animal species (113).

Question: b. How many animal feeding operations actually reported ammonia releases in

FY07 to date?

Answer: The number of animal feeding operations that actually reported ammonia releases in FY 2007 to date is estimated as 130. Due to limitations of the database used by the NRC to capture information regarding the release reports, the number of animal feeding operations that actually reported ammonia releases in FY 2006 and FY 2007 was estimated using the following methodology:

The NRC provided EPA with a spreadsheet that contained a listing of facilities that reported ammonia releases in 2006 and 2007. Because the NRC does not collect specific information regarding the type of facility, we were not able to sort data by whether the facility was an animal feeding operation. Some assumptions were necessary. First, only facilities that contained "farm" or "dairy" in their name were considered. Second, of those "farm" or "dairy" operations, only those reporting continuous releases were considered. Episodic notifications were most likely due to releases from tanks (i.e. ammonia tanks that may be used for fertilizer or refrigeration) and therefore not included in the estimate.

The estimate of 130 includes the number of animal feeding operations that reported the ammonia releases to the NRC (116, of which 114 of these reports were from one company, Seaboard Farms), and the number of animal feeding operations that submitted notifications to the EPA under the Air Compliance Agreement because the farm confines more than 10 times the "large Concentrated Animal Feeding Operation" threshold of an animal species (14).

## CERCLA AND EPCRA – ANIMAL FEEDING OPERATIONS REPORTING HYDROGEN SULFIDE RELEASES

Question: Under current law, how many poultry growing, turkey growing or other animal feeding operations should be reporting hazardous releases of hydrogen sulfide under CERCLA section 102(a) and EPCRA section 304(a)?

Answer: It is difficult to assess the number of poultry growing, turkey growing, or other animal feeding operations that should be reporting hazardous releases of hydrogen sulfide under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) section 103(a) and Emergency Planning and Community Right to Know Act (EPCRA) section 304(a) because the notification requirements under CERCLA and EPCRA rely on the owners or operators of the facility to make a notification when the release into the environment is equal to or greater than 100 pounds/day (the reportable quantity). The Agency does not know the compliance rate of animal feeding operations fulfilling the reporting requirements under CERCLA and EPCRA, and therefore we are unable to provide an estimate of how many animal feeding operations should be reporting hazardous releases of ammonia under CERCLA and EPCRA.

Question: a. How many such facilities actually reported hydrogen sulfide releases in FY06?

Answer: The number of animal feeding operations that actually reported hydrogen sulfide releases in FY06 is estimated as 25. Due to limitations of the database used by the National Response Center (NRC) to capture information regarding the release reports, the number of animal feeding operations that actually reported hydrogen sulfide releases in FY 2006 and FY 2007 was estimated using the following methodology.

The NRC provided EPA with a spreadsheet that contained a listing of facilities that reported hydrogen sulfide releases in 2006 and 2007. Because the NRC does not collect specific information regarding the type of facility, we were not able to sort data by whether the facility was an animal feeding operation. Some assumptions were necessary. First, only facilities that contained "farm" or "dairy" in their name were considered. Second, of those "farm" or "dairy" operations, only those reporting continuous releases were considered. Episodic notifications were most likely due to releases from tanks (i.e., tanks that may be used for fertilizer or refrigeration) and therefore not included in the estimate.

There were no additional notifications submitted to the EPA under the Air Compliance Agreement for farms that confine more than 10 times the "large Concentrated Animal Feeding Operation" threshold of an animal species.

Question: b. How many such facilities have actually reported hydrogen sulfide releases in FY07?

Answer: The number of animal feeding operations that actually reported hydrogen sulfide releases in FY 2007 to date is estimated as 104. Due to limitations of the database used by the NRC to capture information regarding the release reports, the number of animal feeding operations that actually reported hydrogen sulfide releases in FY 2006 and FY 2007 was estimated using the following methodology.

The NRC provided EPA with a spreadsheet that contained a listing of facilities that reported hydrogen sulfide releases in 2006 and 2007. Because the NRC does not collect specific information regarding the type of facility, we were not able to sort data by whether the facility was an animal feeding operation. Some assumptions were necessary. First, only facilities that contained "farm" or "dairy" in their name were considered. Second, of those "farm" or "dairy" operations, only those reporting continuous releases were considered. Episodic notifications were most likely due to releases from tanks (i.e., tanks that may be used for fertilizer or refrigeration) and therefore not included in the estimate.

One company, Seaboard Farms, reported 103 of these hydrogen sulfide releases. There were no additional notifications submitted to the EPA under the Air Compliance Agreement for farms that confine more than 10 times the "large Concentrated Animal Feeding Operation" threshold of an animal species.

AIR COMPLIANCE AGREEMENT (ACA)

Question: EPA has stated the "[t]he AFO Air Compliance Agreement (ACA) is an important part of EPA's strategy to address air emissions from AFOs. In addition to resolving the compliance status of AFOs under the relevant statutes, it will provide critical data that will allow EPA to quantify emissions coming from AFOs (including poultry operations) and, if necessary, to identify appropriate regulatory and non regulatory responses for controlling those emissions." 70 Fed. Reg. 764542 (Dec. 27, 2005). Why is EPA seeking to exempt animal feeding operations from reporting hazardous releases under CERCLA and EPCRA before it collects data under the Air Compliance Agreement?

Answer: The Agency's rationale for its proposed exemption from the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and Emergency Planning and Community Right to Know Act (EPCRA) notification requirements takes into account the purpose of reporting under those statutes (responding to chemical emergencies in order to mitigate their immediate effects) and not the purpose of the air compliance agreement (development of methodologies to predict emissions). Neither CERCLA nor EPCRA give EPA the authority to control emissions. Regulatory authority over emissions to air is provided by the Clean Air Act.

CERCLA EMERGENCY RESPONSE – HAZARDOUS SUBSTANCE FROM ANIMAL AGRICULTURE

Question: EPA has stated that "because decisions on whether to use CERCLA emergency response authority is made on a case-by-case basis, we cannot predict that a notification of a release of a hazardous substance from animal agriculture will never result in an emergency response action." *See* EPA Responses to November 16, 2005, AFO Hearing Follow Up Questions, House Energy and Commerce Committee, Subcommittee on Environment and Hazardous Materials, United States House of Representatives. What information does EPA now have that would allow it to prescribe in advance of an actual environmental threat that CERCLA emergency authority would never be an appropriate response to an environmental or public health threat at an animal feeding operation?

Answer: While it is true that decisions on whether to use the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) emergency response authority is made on a case-by-case basis and EPA cannot predict that a notification of a release of a hazardous substance from animal agriculture will never result in an emergency response action, the Agency is confident the subset of releases of hazardous substances to the air from animal waste will not result in an emergency response action. This conclusion is based on a historical pattern of not requiring an emergency response to such releases and the belief there are a lack of reasonable or feasible response options available when the release is in the air from animal waste. However, we do maintain that releases of hazardous substances to other media (i.e., water) or from sources other than animal waste (i.e., an ammonia tank located on a farm) could result in an emergency response action.

EPCRA OR CERCLA HAZARDOUS RELEASES OF AMMONIA OR HYDROGEN SULFIDE

Question: Does the Clean Air Act or any other Federal statute other than EPCRA or CERCLA, require animal feeding operations to report hazardous releases of ammonia or hydrogen sulfide?

Answer: The Clean Water Act (CWA) section 311 requires notification of ammonia and hydrogen sulfide releases.

The Clean Air Act does not require the reporting of ammonia or hydrogen sulfide releases. Facilities subject to the Clean Air Act are required to track and report their releases through the federal permit system. However, currently very few AFOs (most are in California) are subject to Clean Air Act requirements and therefore most are not required to track their releases. All states are required to report ammonia emissions under the Consolidated Emissions Reporting Rule (CERR). The CERR requires States to report ammonia emissions from major sources (emit more than 100 tons per year) every year and for all facilities (regardless of size) every three years.

AMMONIA EMISSIONS FROM THE LIVESTOCK SECTOR

Question: Is it correct that EPA has estimated that the livestock sector produces approximately 73 percent of ammonia emissions nationwide? If not, please identify the amount of ammonia emissions from the livestock sector.

Answer: The National Emissions Inventory (NEI), which the Agency uses to track emissions of ammonia, is updated annually. A review of recent inventories indicates the percentage of ammonia emitted from livestock ranged from approximately 76.5 percent in 1990 to approximately 73 percent in 2000. In 2001, the Agency revised the methodology for estimating emissions of ammonia from livestock and the percentage of ammonia from livestock dropped to around 65 percent of total ammonia emitted. The revised methodology was implemented to take advantage of recent research concerning the amounts of ammonia emitted from livestock facilities and also air modeling that indicated the inventory was likely over estimating the amount of ammonia emitted.

CERCLA AND EPCRA - AMMONIA EMISSIONS AT THREE MILE CANYON FARMS

Question: Some animal feeding operations have reported ammonia emissions at levels that far exceed the reporting threshold of 100 pounds per day under CERCLA and EPCRA. Is it correct that Three Mile Canyon Farms in Boardman, Oregon, reported that its 52,300 dairy cow operation emits 15,500 pounds of ammonia per day, more than 5,675,000 pounds per year? *See* Letter from Tom Lindley on behalf of three mile Canyon Farms to EPA Region X, April 18, 2005.

Answer: Yes, Three Mile Canyon Farms in Boardman, Oregon, a dairy cost operation, did report under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and the Emergency Planning and Community Right to Know Act (EPCRA) daily ammonia emissions of 15,500 pounds.

AMMONIA EMISSIONS AT DESERT ROSE DAIRY

Question: Is it correct that Desert Rose Dairy, a 8,750 head dairy in Idaho, reported ammonia emissions of 710 pounds per day, more than seven times above the reporting threshold under CERCLA and EPCRA? If not, please identify the levels of this company's daily ammonia emissions?

Answer: Yes, Desert Rose Dairy in Idaho reported under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and the Emergency Planning and Community Right to Know Act (EPCRA) daily ammonia emissions of 710 pounds.

AMMONIA EMISSIONS AT SEABOARD FARMS - DORMAN SOW FACILITY

Question: Is it correct that Seaboard Farms, a swine operation in Oklahoma, has estimated that the total average daily emissions of ammonia from its Dorman Sow facility is 192 pounds per day? If not, please provide the average daily emissions of ammonia from this facility.

Answer: For its Dorman Dow facility, Seaboard Farms filed an initial report that listed two primary effluent treatment lagoons. That report calculated the total amount of ammonia as 262 pounds per day. However, on their first anniversary follow-up report both lagoons and barns were listed. The first anniversary report reflects a federal judge ruling that each lagoon and barn is a separate facility. The first anniversary follow-up report provides the total amount of ammonia calculated as 250 pounds per day. Seaboard attributes this drop in the reported emissions to be based on a better refinement of their initial calculations.

AMMONIA EMISSIONS AT BUCKEYE EGG FARM'S FACILITY IN CROTON, OHIO

Question: Is it correct that Buckeye Egg Farm's facility in Croton, Ohio reported ammonia emissions of over 4,300 pounds per day -43 times the reporting threshold under CERCLA and EPCRA? If not, please provide the average daily emissions of ammonia from this facility.

Answer: There is more than one Buckeye Egg Farm facility in Croton, Ohio that reported ammonia releases under the Comprehensive Environmental Response, Compensation

and Liability Act (CERCLA) and Emergency Planning and Community Right to Know Act (EPCRA). Buckeye Egg Farm reported releasing 1,051,032 pounds of ammonia in Croton, Ohio. Below are the five locations with their corresponding ammonia emissions:

- Layer Site 1 - 11995 Croton Road, Croton, OH: 177,188 lbs.
- Layer Site 2 - 9300 Croton Road, Croton, OH: 282,523 lbs.
- Layer Site 3 - 11652 Clover Valley Road, Croton, OH: 269,258 lbs.
- Layer Site 4 - 11492 Westley Chapel Road, Croton, OH: 282,737 lbs.
- Pullet Site 4 - 10127 Benner Road, Croton, OH: 39,326 lbs.

AMMONIA EMISSIONS FROM PREMIUM STANDARDS FARMS

Question: Is it correct that measurements taken pursuant to EPA's settlement agreement with Premium Standards Farms revealed that the company released 3 million pounds of ammonia annually (8,219.2 lbs per day) from the cluster of barns and lagoon at its Somerset facility? (See Premium Standard Farms, Air Emission Monitoring Completion Report (Nov. 17, 2004).) If not, please provide the level of ammonia releases from the Premium Standard Farms Somerset facility.

Answer: The numbers cited are correct if you assume that the average daily emission rates for days when emissions were monitored at Premium Standard Farms' Locust Ridge site (Table 1 in the November 17, 2004 report) are the actual daily emission rates for all days at the Somerset facility. EPA believes for several reasons, however, that this assumption cannot be made and that emissions are likely to be lower than 3 million pounds annually at Somerset: (1) the data that formed the basis for the barn emissions numbers in Table 1 of the report were only collected when the barns at Locust Ridge were fully stocked with animals, and for significant periods of time during the year, the barns at Somerset are either empty or only partially stocked; (2) the average daily emission rates for lagoons in Table 1 of the report is for uncovered lagoons, and most of the lagoons at Somerset have permeable covers on them, which significantly reduce ammonia emissions; and (3) there may have been a disproportionate amount of data collected from lagoons at Locust Ridge during warm weather months, when ammonia emissions are expected to be highest, and actual ammonia emissions from lagoons over the entire year at Somerset may be lower.

Based on their knowledge of the Premium Standard Farms facilities, EPA's Regional Office in Kansas City, Kansas, has estimated that the ammonia emissions from Premium Standard Farms' Somerset facility may be closer to 2 million pounds annually or 5,700 pounds per day. Once the Animal Feeding Operations Air Compliance Agreement national air emissions monitoring study is completed in 2 years, both Premium Standard Farms and EPA should be able to further refine their ammonia estimates for the Somerset facility.

## PROPOSED EXEMPTION FROM REPORTING REQUIREMENTS OF CERCLA AND EPCRA

Question: In the face of data showing that large animal feeding operations release ammonia in equal or greater quantities than the Nations' largest chemical manufacturers, what is the justification for EPA's proposed exemption of animal feeding operations from the reporting requirements of CERCLA or EPCRA?

Answer: Releases of ammonia to the air from animal waste would generally not require an emergency response action under the authorities of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Similarly, emergency reporting that is required by the Emergency Planning and Community Right to Know Act (EPCRA) is for the purpose of developing emergency plans. Neither CERCLA nor EPCRA give EPA the authority to control emissions. Regulatory authority over emissions to air is provided by the Clean Air Act.

## HYDROGEN SULFIDE RELEASES FROM ANIMAL FEEDING OPERATIONS

Question: EPA studies indicate that exposure to hydrogen sulfide has profound effects on the respiratory system and can be lethal. Does EPA have more recent data showing that hydrogen sulfide releases from AFOs are no longer dangerous to human health?

Answer: The existing assessment for hydrogen sulfide in EPA's Integrated Risk Information System (IRIS, 2003) describes the dose-related spectrum of toxic effects that result in humans exposed to hydrogen sulfide, from subtle but adverse alterations in the upper respiratory tract at low exposures, to lethality at high exposures. The current IRIS assessment indicates that chronic human exposures to hydrogen sulfide concentrations below .002 mg/m3 are without appreciable risk of adverse health effects. We are aware of no new studies that change the IRIS assessment.

Question: According to press reports there have been a number of deaths caused by released of hydrogen sulfide, ammonia, and other contaminants from manure pits at animal feeding operations (Appendix4). What information does EPA have with respect of fatalities or injuries caused by releases of hydrogen sulfide from manure pits at animal feeding operations?

Answer: EPA has no information regarding fatalities or injuries caused by releases of hydrogen sulfide from manure pits at animal feeding operations. EPA believes that information related to fatalities or injuries that occur on-site at animal feeding operations and are caused by releases of hydrogen sulfide, ammonia, and other contaminants is under the jurisdiction of the Occupational Safety and Health Administration (OSHA).

Appendix 4

# The supersizing of America's livestock farms

For cheaper grocery prices, are we risking our health, the environment and squeezing out small farmers?

By Mike Wagner and Ben Sutherly
Dayton Daily News

**SOUTH CHARLESTON** | For three years, Ohio regulators didn't know what was going on inside the long white barns of the state's largest cattle farm.

They didn't know the farm was storing uncovered piles of manure, stacked higher than a basketball hoop, on a cement slab outside.

Or that rain was washing some of that waste into the nearby Little Miami, a national scenic river.

They didn't know about Ohio Feedlot Inc. even though its 9,000 cattle generated about 131,000 tons of manure a year, almost double the amount produced by Dayton's 166,000 residents.

They didn't know because the owner didn't tell them.

Regulators didn't discover the long-closed Clark County feedlot had reopened until a prospective buyer contacted the Ohio Environmental Protection Agency to see whether the 185-acre farm met state regulations.

"We couldn't keep up with the large farms," said Jim Simpson, an Ohio EPA supervisor in the agency's Dayton office. "They just kept coming and snowballed us, and that's what happened with that feedlot."

Livestock farms across America have gone the way of Wal-Mart and the retail industry, building superfarms at the pace Wal-Mart and its discount cousins build superstores. But the supersizing of livestock farming, while revolutionizing food production in America, has overrun regulators, caused untold harm to the environment and public health, created an uproar over the treatment of animals and squeezed many small farmers out of business.

Even the very definition of livestock farming has been shaken.

Chicken houses the size of two-car garages have given way to metal buildings longer than a football field with tens of thousands of chickens inside. Hogs are kept in metal-gated pens on concrete slats, a thousand animals under one roof.

Fifty years ago, the average egg farm in Ohio had fewer than 100 birds; now it has close to 10,000. A single operator, Buckeye Egg Farm, has 14 million chickens spread over four counties.

Giant companies like Tyson Foods and Perdue Farms are contracting with farmers to expand operations and eliminate overhead. For farmers, the choice has become painfully simple: Get bigger or get out.

Large livestock farms are one reason Americans can buy a dozen eggs for 99 cents, a gallon of milk for $2, a pound of bacon for $3 and a ribeye steak for under $5.

But they are also the reason school bus driver Bernadine Edwards has to close her farmhouse windows even in the dead heat of the Kentucky summer. She is surrounded by 82 chicken houses packed with 2 million birds.

They are the reason Ron Osterholm, a health official in Cerro Gordo County, Iowa, successfully pushed for a yearlong ban on livestock expansion in his county. Before another farm comes in, Osterholm wants to test the air near the largest farms to determine their risk to public health.

And they are the reason the Illinois River in Oklahoma is turning bright green.

A nine-month *Dayton Daily News* examination traced many problems on large farms to lax standards, uneven enforcement and rules that vary from state to state.

Even finding the farms that states are supposed to regulate is nearly impossible. Most states require permits for farms that have at least 100,000 chickens, 55,000 turkeys, 2,500 hogs, 1,000 beef cattle or 700 milk cows. But states can't enforce regulations on farms they don't know about, and many states don't know how many megafarms they have.

Some don't even look.

In Virginia, the Department of Environmental Quality waits for farms to apply for a permit.

"We don't run up and down the road looking for them," said Scott Haley, an environmental planner for the department. "Occasionally, we find operations through complaints."

Added Rich Powell, a geological scientist for the Surface Water Quality Bureau in New Mexico: "You've probably figured out that most of the people who should be permitted are not permitted."

Just 18 of the 46 states with megafarms have conducted a formal inventory or survey to find them, the *Daily News* examination found.

The regulatory climate has helped lure Dutch farmers who have opened dozens of dairies in the Midwest. Ohio officials are concerned: Five Ohio dairies have already been warned about environmental violations.

The *Daily News* traveled to 11 states and the Netherlands, and compiled a comprehensive database of megafarm regulations in every state. The examination found:

• Megafarms are rapidly replacing small and midsized livestock farms. Government statistics show megafarms grew 47 percent from 1982 to 1997, while small and midsized farms declined 25 percent. Put another way, about 2,600 megafarms replaced 339,000 smaller farms. But the number of large farms now is likely much higher. In Ohio, the number of megafarms more than tripled in the last decade, to 139 farms.

• State after state is overhauling megafarm regulations, but operators can still go years without facing inspections, must violate rules repeatedly to risk harsh penalties and are exempt from many environmental standards. Half the states don't require megafarms to meet air-quality standards and just four states enforce limits on toxic gas from large farms.

• Megafarms increasingly operate like factories yet skirt federal standards designed to protect the public and the environment from industrial pollutants. A federal lawsuit in Kentucky seeks to have 80 chicken houses regulated as industrial plants, claiming their ammonia emissions pose a public health threat. Buckeye Egg reported releasing 3.3 million pounds of ammonia in 2000, ranking it among the state's top factories, power plants and other industrial sources.

• Pollution investigations linked to Ohio's livestock farms are on the rise. Livestock farming was suspected in 311 investigations since 1993, up 29 percent from the previous decade. In 2001 and 2002, the state linked 81 incidents to livestock operations — more than from any other source, including oil spills and sewage. An estimated 74,000 fish were killed in those incidents.

• At least 24 people in the Midwest have died from inhaling hydrogen sulfide and methane from manure since the 1970s, including fifth-generation Michigan dairy farmer Carl Theuerkauf and four members of his family, who collapsed one by one in 1989 after breathing methane gas from a manure pit. But the death toll from manure may be much higher. Cryptosporidium, a microorganism found in animal waste, killed 104 people and sickened 403,000 others in Milwaukee in 1993 in an outbreak some blamed on manure from nearby livestock farms. A local health department and the Centers for Disease Control and Prevention also suspected that manure caused seven miscarriages in a small farming community in Indiana between 1991 and 1993 by contaminating wells. "I thought the water I was drinking was good water," said Melissa Dickerson, who was 22 and pregnant for the first time.

• "Big Chicken" often equals less regulation. Twenty-three states exempt dry-litter poultry operations — the bulk of their chicken farms — from regulations that other megafarms must follow. They include Iowa, the nation's top egg-producing state; North Carolina, the top turkey-producing state; and Georgia and Arkansas, the top two producers of meat chickens. The exemption rankles officials in some neighboring states. Oklahoma and Arkansas are embroiled in a border war about pollution runoff from chicken houses in Arkansas to scenic rivers in Oklahoma.

"Yes, we are getting cheap food, but we're being sold a bill of goods," said Don Stull, professor of anthropology at the University of Kansas. "If we look at the real costs — costs to the environment, costs of the loss of the family farm and costs to rural communities — what price are we really paying for that?"

Those who operate and defend the farms say the problems have been blown out of proportion.

"A lot of people are trying to take the big farms down with all this factory farm crap," said David Holcomb, a poultry farmer near the Arkansas-Oklahoma border. "We feed the nation. We give it the cheapest and safest food we have ever had. And yet so many people want to destroy us."

Farmers also bristle at criticism that animals are mistreated on large livestock farms.

"What's good for the health of the chicken is usually good for the farmer's pocketbook," said Marcus Rust, whose family runs Rose Acre Farms of Seymour, Ind., the nation's

second largest egg producer.

Most high-rise egg houses pack up to eight chickens to a cage, with each bird allotted a space roughly equal to half a sheet of notebook paper. But Rust said cages are healthier for chickens because farmers can control the birds' diets. "The chicken is a scavenger," he said. "They eat whatever they can find."

Under pressure from animal welfare groups, the United Egg Producers in June introduced new standards for the industry, including one that increases the minimum cage space for chickens up to 40 percent by 2008.

"That brings us more in line with European regulations," said Joy Mench, an animal science professor at the University of California at Davis and a member of UEP's advisory committee.

Ohio, like many states, is rewriting rules for its megafarms. But the state also switched regulators, transferring most of the regulatory authority that was under the Ohio EPA for more than 25 years to the Ohio Department of Agriculture.

The Ohio Farm Bureau, the lobbying voice of agriculture and a generous contributor to state candidates, pushed hard for the bill, which passed in 2001.

"It was something that was extremely important to us and perhaps was one of the most important bills that we've worked on," Farm Bureau lobbyist Larry Gearhardt said. "We spent a tremendous amount of time trying to massage the bill and have it drafted the way it should be to run a good program."

The federal government on Dec. 13 is expected to announce stricter rules for governing megafarms. Under drafts of the proposed rules, the U.S. EPA would require that more farms be permitted and that they be inspected more frequently. The rules also would prohibit the spreading of manure and wastewater within 100 feet of surface water, and would require large meat-producing corporations to share environmental responsibility with the farmers they employ.

A spokeswoman for the U.S. EPA said the agency would not comment on any findings in the *Dayton Daily News* story, citing the pending announcement of the new rules.

Fred Dailey, director of the Ohio Department of Agriculture, which took over most of the state's authority for regulating megafarms in August, said he's committed to cleaning up problems. The department's livestock environmental permitting program has 13 employees, including six who do inspections.

"We don't turn a blind eye," Dailey said. "There's no future for the livestock industry in this state unless it's properly regulated."

Jim Buchy, the assistant director for the Ohio Department of Agriculture and a former state legislator, said megafarms are a necessary response to market forces.

"We have this pristine view of mom and dad on a farm with 80 acres and a few milk cows running around, a few chickens running around, a barnyard and a couple of pigs," he said.

"That type of agriculture disappeared over 50 years ago."

**Dirty water**

Before the hog and chicken farms in northern Darke County got big, Jeff Schlecty would draw his bow and arrow, aim at a carp in the Wabash River and hope he didn't hit a small-mouth bass.

"There were so many nice bass, you really had to watch," Schlecty said.

If the 33-year-old Schlecty went fishing in the Wabash now, he likely wouldn't catch a single small-mouth -- because there might not be any left.

Two Ohio EPA water-quality studies on the rivers, creeks and streams that feed the Wabash tell why small-mouth bass are vanishing.

"The water in those areas is not in good shape, and the primary cause of the (pollution) is not septic tanks, treatment plants or fertilizer -- it's manure, mainly from large farms," said Robert Miltner, an aquatic biologist for the Ohio EPA. "The problems with manure and farms have been building for many years, and this confirmed what we believed all along. We didn't find a single small-mouth bass in the Wabash River."

The Wabash begins near New Weston, an hour's drive north of Dayton, and winds 475 miles through Ohio and Indiana before emptying into the Ohio River near Evansville. The Ohio portion of the river is the state's "most degraded watershed," according to the EPA report.

"It's unlikely the Wabash will ever support healthy aquatic communities," the report

states.

EPA researchers tested for fish quality, bacteria and other contaminants during 18 months in 1999 and 2000. The studies found the poorest water quality in northern Darke and southern Mercer counties — an area with hundreds of small and medium-sized livestock farms and 71 of the state's 139 megafarms.

Acre for acre, those two counties produce more eggs than anywhere else in the United States.

Since the passage of the Clean Water Act in 1972, the nation's rivers have been getting cleaner. But that's not true of the Ohio portion of the Wabash.

Ohio regulators say chicken, hog and dairy farms — some of which regulators have directly linked to fish kills and other pollution problems — are the principal reason the Wabash River is so polluted.

In many spots along the Wabash, manure from farmland can wash directly into the river. In Indiana, the Wabash also cuts through farmland but a green buffer — visible from the air — protects the river from the runoff.

"There is nothing there — no buffers on either side," said Rick Wilson, a megafarm inspector for the Ohio EPA, as he looked down from a small plane above the river in Mercer County. "Trees, grass or some kind of buffer protects the water and aquatic life from (manure), from runoff, but it's just not there."

Tom Menke, a consultant for more than 100 of Ohio's megafarms, didn't dispute the poor water quality in the area, but he said it is due more to septic tanks and sewage from treatment plants.

Larger livestock farms produce millions of gallons of manure, which is often impounded in lagoons or pits beneath barns. The manure is then pumped into tanker spreaders or through a dragline pulled by a tractor and injected into the soil. Sometimes the lagoons overflow or leak. Other times, farmers apply too much manure or put it on frozen or saturated soil, and excess nutrients seep into rivers.

Ohio wildlife officials linked the deaths of 333,000 fish during the last decade to livestock.

Small and midsized farms cause a majority of the fish kills linked to livestock in Ohio, but several megafarms have repeatedly violated pollution laws. Those farms were also responsible for some of the largest fish kills.

Between 1994 and 1997, Cal-Maine Foods egg farms in Darke County were cited three times for spilling chicken manure and chicken parts into rivers and streams, including a 1994 incident that killed 49,000 fish in the Stillwater River. The Mississippi-based company is the nation's largest egg producer.

"Handling manure was not a high agenda item," said Fred Adams, Cal-Maine's chief executive officer. "But in the last few years, it has become very, very important. We do whatever is necessary to comply with laws. The biggest challenge we had some 10 years ago is recognizing it's a top priority."

Sunnyside Farms near Fort Recovery was cited six times in the last decade for discharging chicken manure and water used to wash eggs. The farm is owned by Midwest Poultry Services of Mentone, Ind., the nation's 10th largest egg producer. Robert Krouse, Midwest Poultry's president, said the company has taken steps to improve how it puts wash water on fields. He also said the company is monitoring those field applications more closely.

Daylay Egg Farm of West Mansfield was ordered to pay $60,000 in August for repeated mishandling of manure and wash water at four egg megafarms in Union County between October 1995 and July 2000. In July 2000, one of the farms discharged chicken manure into the Scioto River, killing an estimated $2,400 worth of fish. The state reduced the penalty after Daylay, the nation's 24th largest egg producer, agreed to invest in improvements to prevent future environmental problems. The company declined comment over the telephone.

Buckeye Egg has consistently run afoul of pollution laws, angered neighbors about fly and odor problems and caused harm to the environment.

In 1983, a Buckeye Egg farm in Licking County spilled chicken manure into a creek, killing nearly 150,000 fish; two spills in 1999 killed 17,500 fish. Dailey, the director of the Ohio Department of Agriculture, sent Buckeye Egg a letter in August detailing 87 environmental violations. The farm is still in business, but its owner, Anton Pohlmann, returned to Germany and put the company up for sale.

"It only takes one bad actor in a state, and probably every state has at least one company that's a chronic violator, that has ignored all the best management practices of livestock production," said Paul Lasley, rural sociologist at Iowa State University.

Not all violators are megafarms.

In August, 11,790 fish died after cow manure spilled into a tributary of the Wabash River and eventually reached the river itself in Fort Recovery. The discharge came just three months after a May 9 investigation at the same dairy revealed an overflowing manure storage pond. Recent rains had kept the farmer, Michael Fullenkamp, from withdrawing liquid manure from the pit and spreading it on fields. Fullenkamp declined comment on the incidents.

EPA records show the Fullenkamp dairy had 350 cows, 400 replacement heifers and housing for about 50 calves — a big farm, but not a megafarm.

"I think the image is that if you weren't a large farm, you wouldn't be a polluter," said Neil Diller, chief financial officer for Cooper Farms, which processes more than 4 million turkeys a year in Ohio. While that perception is inaccurate, Diller said getting bigger raises the environmental stakes.

"The bigger operators have to be better operators because when something goes wrong, it's a lot bigger wrong," he said.

"It's a thin line we walk all the time between being efficient and being responsible."

**Farm or factory?**
The thundering buzz echoed through the Kentucky cornfields, and grew louder as Leesa Webster walked the long dusty driveway that connects her property to her mother's.

"It sounds like an airport or something over there," Webster said, pointing to the top of a steep hill.

Over the hill was a chicken farm. It's the kind of farm where the whirr of industrial-sized fans in warehouselike buildings can be heard a mile away. The kind where hundreds of thousands of chickens are herded onto a conveyer belt and boxed into crates.

The kind where forklifts load the crates onto a converted school bus that drives them to the slaughterhouse.

Chicken operations like this Tyson Chicken farm south of Owensboro, Ky., fuel the debate of farm or factory.

Larger operators often post employee information in English and Spanish and have workers punch time cards and wear hairnets. On cattle and hog farms, engineers design manure pits capable of holding tens of millions of gallons of liquid manure. And on some farms, the owners spend thousands of dollars to cool and heat their buildings.

At the Tyson farm, each broiler chicken house is typically 400 to 500 feet long and contains 20,000 to 25,000 broiler chickens. The houses are dimly lit more than 20 hours a day to help stimulate eating around the clock. Unlike egg farms, where chickens are kept in cages, broilers are scattered about the floor of the house, a huge canvas of white. Each house typically has two six-ton feed bins.

Large poultry companies like Tyson are known as integrators. They own the chickens from the time they hatch until they land in the frozen food section of a grocery store.

The people running the houses are known as growers, but they consider themselves farmers. The view isn't always shared by those who live near the chicken houses.

"There is no farming going on down there," said Webster, holding her nose to block the stench of dead chickens. Today's big farms may resemble factories, but they aren't regulated like them.

Only a fraction of today's megafarms operate under a federal permit to minimize water pollution. Those wanting to erect a megafarm don't have to have the land rezoned. And federal standards for workplace safety are enforced only on farms with more than 10 employees. Automation allows many megafarms — even some large ones — to stay below that number.

Kelley Donham, an occupational and environmental health professor at the University of Iowa, said many large farms view regulations as an obstacle to doing business. He said that mentality can make it difficult for public health officials to work with farms in a proactive manner.

"They don't want regulations," Donham said. "They say, 'Show me the bodies, show me some kind of disease that this causes. Otherwise, don't talk to me.' "

Yet researchers have documented that working inside large livestock operations can be hazardous. An Iowa report released this year said at least 25 percent of workers in hog megafarms report respiratory health problems. Some workers spend 70 hours a week inside confinement buildings, breathing manure fumes from hundreds and sometimes

thousands of livestock.

Worker health risks could be reduced through management practices, engineering controls, use of personal protective equipment and health surveillance, the report said.

"However, such programs are exceedingly rare in today's (megafarm) industry."

**A real threat**
The doctor slowly moved the ultrasound wand across a pregnant Melissa Dickerson's abdomen.

There was no heartbeat.

A routine check-up three months into the 22-year-old Dickerson's pregnancy turned into tragedy.

Dickerson, pregnant for the first time, tried to do everything right. She knew she should drink lots of water, so she did. What she didn't know was that the well water was contaminated at the family's farm near LaGrange, Ind., a town with 2,300 people and four working traffic lights.

"I had no idea what was going on," said Dickerson, now a 31-year-old mother of two sons. "I just wanted to know why it happened because I didn't want another miscarriage."

Two neighbors suffered the same loss. The three women, all living within two miles of each other in LaGrange County, had a total of seven miscarriages between 1991 and 1993.

All three women got their water from wells and lived within one mile of a farm with 450 hogs. The LaGrange County Health Department and the CDC concluded the wells were contaminated by manure from the hog farm — a conclusion the hog farmer denies.

Until now, the women have never been interviewed.

"I don't want to reopen a very painful time in my life, but I do think it's important that women are reminded to check the water they are drinking, especially during pregnancy," said one of the women, who didn't want to be identified and had two miscarriages during the two-year period. "There was a lot of pain for everyone during all that."

The miscarriages intensified the national debate about whether manure poses a real health threat to humans.

Manure provides a vital source of nutrients in soil. But manure also can be deadly if contaminants seep into drinking supplies and cause high nitrate levels. Babies one to four months old are particularly susceptible and may develop blue baby syndrome, a blood disorder associated with high nitrate intake.

Pinpointing the source of bad water is difficult. Local health officials didn't suspect the LaGrange County miscarriages were caused by contaminated well water until a local resident tested his well and found dangerous levels of nitrates.

County Health Department Director William Grant interviewed 19 families and concluded three women were drinking bad water. The Double D Hog farm appeared to be the main source of contamination, but there were other farms in the area and several septic tanks located near the aquifer.

"We were able to conclude that the nitrate levels in that area where the miscarriages were occurring were more than double compared to the households where women were having healthy births," Grant said. "We took a lot of heat from our findings."

No one took more heat than David Beiswanger, former owner of the Double D hog farm, who said Grant and the government were wrong to blame him.

"There were some people in our little town running around telling people I was a baby killer and that my farm was killing unborn children in this area," said Beiswanger, 49, who sold the farm in 1997. "Imagine what that felt like for me."

Grant and the CDC concluded that waste went into the aquifer through a crack in Beiswanger's manure pit. Beiswanger replaced the pit but denies it had a leak. He said digging up the pit was "the biggest mistake I made because it made it look like I needed to replace it when I didn't."

Fertilizer, other farms or the sheer age of the wells could have polluted the groundwater, Beiswanger said.

"It's possible that there was some problem with my farm, but I'm supposed to be innocent until proven guilty and none of them — Grant or the CDC — had any proof that I was guilty of anything," he said.

An expert who assisted Grant during the investigation believes there was a direct link between the miscarriages and manure.

Dr. Solomon Isiorho, a professor of Geo Sciences at Indiana-Purdue University, was already conducting an extensive water-quality study of more than 600 wells in LaGrange County when he learned of Grant's investigation.

Isiorho tested the wells in the area of Beiswanger's hog farm.

"Based on what I had in front of me, there was no other reason as to why these women were having miscarriages," he said. "The chemistry of the water suggested that there was nothing else in the water besides nitrate."

**No one was watching**
Dave Long was proud that hardly anyone knew he had reopened Ohio Feedlot Inc.

He used wood chips instead of sawdust for bedding in the cattle stalls, and the system did such a good job of controlling odor and flies he won an entrepreneurial business award from Wittenberg University in 2001.

"No one even knew we were out here," he said. "We ran a clean operation."

Ohio Feedlot may have been the state's first megafarm when it took in 20,000 beef cattle in 1968. But business dropped off and the feedlot shut down for seven years in the 1990s. State officials didn't know Long had reopened the farm until a prospective buyer, Smithfield Foods Inc., contacted them to see if the farm was in compliance with the state's environmental regulations.

Long said he didn't think he needed a permit because his cattle were under roof. He also said the manure that washed into the Little Miami River was from Garick PayGro, the composting company next door. He said he allowed PayGro to store manure on the slab.

"I knew it was going in (the river)," he said, "but that was PayGro's manure — not mine."

But officials for PayGro, which is headquarted near Cleveland, said the company never stored manure on Long's property.

"The manure was not ours. Dave Long stored manure on the concrete slabs because he had nothing to do with it," said Gary Trinetti, president of the Garrick Corp. "We would never tell somebody to put all this manure on their property if it were our manure."

Trinetti said the only time PayGro purchased manure from the feedlot was during a five-month period in 2000. Carl Kipp Jr., technical director at PayGro and one of the co-founders of Ohio Feedlot, said the concrete slab was built in the mid-1980s. He said manure piles stored on the slab were typically about 50 feet wide and 10 to 15 feet high.

He said Long stored manure on the slab for three years.

"I would see it out there every day," Kipp said. PayGro, which was fined $4,000 in 1992 after a manure spill into the Little Miami killed 5,467 fish, recently applied for a federal pollution permit that will allow the Ohio EPA to more closely monitor the composting facility.

Cathy Alexander, a supervisor in Ohio EPA's Division of Surface Water, said state officials don't know how much manure seeped into the Little Miami during the three years Long owned the feedlot. But a water test in August 2001 found ammonia levels downstream of the farm were four times greater than upstream.

"It really doesn't matter to us whose manure it was," Alexander said.

Smithfield finalized the Ohio Feedlot purchase in October. This time, the EPA demanded that the owners obtain a federal permit to operate as a megafarm.

The troubles at the feedlot show how difficult it is for states to track farms that expand and change constantly.

Ohio EPA Executive Director Christopher Jones admits that his agency did not make regulating megafarms a priority for two decades. "When you had to deal with issues like large farms, you would go after them when there were complaints," he said.

But Jones said during the past four years the EPA became more aggressive by inspecting farms and tracking their compliance with state environmental regulations.

Farmers like Bill Siefring, who owns an egg farm near Rossburg, say tougher regulations penalize all megafarmers for the abuses of a few.

"I think there needs to be things in place, but to make them so strict that it makes it

where you don't want to be in the business — I don't know if that is the direction to go either," Siefring said. "When we first got in this business in 1986 or 1987, you could still operate and do things without a lot of people looking over your shoulder.

"Now it's like everybody and their brother's looking over my shoulder."

**Staff writers** Ken McCall, Laura A. Bischoff, Dale Dempsey and Martha Hickman Hild contributed to this report.

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*Manure pits hazardous to workers The Star Press September 5, 2004 Sunday*

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**HEADLINE: Manure pits hazardous to workers**

**BYLINE:** Seth Slabaugh, Staff

**BODY:**
A worker at a Delaware County hog farm said he didn't know at the time that it was hazardous to enter manure pits.

By Seth Slabaugh

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MUNCIE -- Rodney Walker didn't know his life was in danger when he entered the manure pits on four occasions at Seldom Rest hog farm.

Nor did he know for a long time that it was hazardous for him, his wife and their child to live less than 100 yards from the confined animal feeding operation (CAFO) where Walker was a pig caretaker.

It was last summer when he first read about the health risks associated with working at and living next door to a CAFO on a Web site called BioMuncie.org, operated by Carol Blakney -- a Muncie artist and social activist -- and Blakney's sister, a science teacher and former research chemist. By then, Walker had been working at Seldom Rest six years.

Since 1975, there have been at least 66 fatalities at manure pits in the United States, including four in Indiana, according to Randy Beaver, a safety consultant who is finishing a master's thesis on the issue at Purdue University.

In a 1989 case in Michigan, a 65-year-old dairy farmer, his two sons ages 37 and 28, a 15-year-old grandson, and a 63-year-old nephew died, according to the National Institute for Occupational Safety and Health.

While climbing out of the pit after making repairs, the younger son was overcome and fell to the bottom. The grandson entered the pit to attempt a rescue. He too was overcome and collapsed. The nephew, the older son and the dairy farmer then entered the pit one at a time. Each was overcome and collapsed in turn. A carpet installer working at the farm house then entered the pit and was overcome but was rescued by an assistant. Finally, the owner of a local farm implement dealership arrived with two of his employees and extricated the victims using a rope, according to NIOSH.

'My research has shown that in some cases there was as little as 11/2 inches to 2 inches of manure in the pit area and the person was overcome and collapsed and died due to that exposure," Beaver said.

Manure pits can generate four potentially dangerous gases: methane, hydrogen sulfide, carbon dioxide and ammonia.

Warnings not heeded

In six years, Walker and his employers, William and Kaye Whitehead, entered manure pits on rescue missions four times after slats in the floors of hog barns failed and pigs fell in, Walker said.

The Whiteheads declined several requests for an interview. During one conversation with The Star Press, Kaye Whitehead did say that Walker was not asked to enter manure pits; he just jumped in on his own.

According to the Occupational Safety and Health Administration, a farm worker should not enter a manure pit unless he is wearing a self-contained breathing apparatus, a lifeline and a harness, and a rescue person is standing by. In addition, employers should post hazard signs on all manure pits, educate workers about the hazards of manure pits, and should always keep at least 12 inches of clear space between the highest manure level and the floor slats, according to OSHA.

At Seldom Rest, no such safety precautions were taken, no warning signs were posted, Walker was not educated about manure-pit hazards, and pits were sometimes so full that manure came not only within inches of the slats but up through the slats, Walker said.

But because Seldom Rest does not employ more than 10 people, it is not subject to federal workplace safety regulations, said Tim Crouse, deputy commissioner of the Indiana Department of Labor.

'We are typically not permitted to inspect farms with 10 or fewer employees," he said.

Given the fact that the Whiteheads have both headed the Indiana pork producers association and Kaye Whitehead served as a director of the National Pork Board, it's impossible they didn't know that entering manure pits was life threatening, Blakney said.

'Warnings have been out for many years," she said. 'Anyone who treats animals like that, it doesn't surprise me that they treat employees like that."

In 1971, a professional paper was presented that detailed European and American deaths from exposure to decomposing manure-pit gases, Beaver said. Since then, warnings have been issued to farmers by extension services, the Centers for Disease Control, NIOSH and the National Safety Council.

Still, Beaver believes there is a lack of awareness among farmers about the seriousness of the hazard.

'Air monitors are very inexpensive now, which is one option to warn the worker," he said.

'They would suck the pit out as low as they could first," Walker said. 'It made me sicker than hell the last time I got in one. I was wheezing and couldn't hardly talk. Here we had just paid $150 for tickets to the Brickyard 400. It was all I could do to make it through the day."

Walker's wife, Diane, told him to go sleep with Bill Whitehead because the odor of manure persisted on Walker.

After reading about manure-pit hazards at BioMuncie.org last summer, 'I told him if he ever jumped in again I was going to kill him, because I had read you can collapse within 15

seconds," Diane said.

Health problems

In 1997, Walker was working for the Fayette County highway department when he saw a job advertisement in a farmer's magazine for a pig caretaker at Seldom Rest.

'The job sounded real enticing because it came with a house and the utilities were included," Walker said. The pay was $18,200 a year. The hours were 8-5 Monday through Friday, six hours on Saturday and six hours every other Sunday. 'Basically, you get one day off every 13 days," Walker said.

He was not satisfied with the $10 pay raise he got on his fifth anniversary at Seldom Rest. It was the only raise he ever received, he said. At that time he also was given $250 a month instead of medical insurance. 'We used that to pay bills," Walker said. 'You can't afford a policy on that."

Walker, 41, began having health problems, as did his wife and son, Brayton, 7. In addition to hernias, Walker experienced respiratory problems, dizziness, an unsteady gait, memory loss and nausea. He was diagnosed with ataxia, or a lack of coordination. Diane suffered headaches and mild depression. 'In the mornings when I blew my nose, it would be full of blood," she said.

'We'd have to take our son out of school for vomiting, nosebleeds and headaches," Walker said. 'Many times he didn't go to school because he'd wake up vomiting."

Based on information they read at BioMuncie.org, the Walkers began to suspect the family was suffering from hydrogen sulfide poisoning. That helped convince Walker to stage a one-man protest against his employers on March 19, when he was fired.

The Walkers also lost their house at Seldom Rest. But since they moved to another location, the family's symptoms disappeared. 'Diane and me are almost giddy," Walker said. Brayton, who rarely had enough energy to go outdoors when the family lived on the hog farm, quit vomiting, is more energetic, and plays outdoors for hours.

The American Public Health Association last year called for a precautionary moratorium on new CAFOs. Formed in 1872, APHA is one of the oldest and largest organizations of public health professionals in the world, representing more than 50,000 members.

The proposed moratorium was based on evidence of adverse health and economic impacts on CAFO workers, 'as well as evidence, albeit less certain, indicating impacts on children and CAFO neighbors from exposure to large concentrations of manure and their subsequent emissions of dust, toxins, microbes, antibiotics and pollutants into air and water."

Despite receiving food stamps and Medicaid assistance while working at Seldom Rest, Walker and his family became saddled with $17,000 in medical bills and filed bankruptcy last week.

'I had surgery in 2003 for hernias," Walker said. 'It was from bending over and picking up 800 to 1,000 piglets a week. Because the crates are 3 feet tall, I couldn't bend over in the proper manner at the knees. I had to bend at the waist to grab these animals. I turned it in as a workmen's comp[ensation] claim. I told Mid-America Surgery Center that Seldom Rest was responsible. Kaye got called and she told Mid-America she was not responsible. Kaye told me I could have gotten those hernias anywhere and she wasn't liable."

Contact news reporter

HYDROGEN SULFIDE FROM ANIMAL FEEDING OPERATIONS – STUDIES OR HEALTH ASSESSMENTS

Question: Does EPA have recent data showing that hydrogen sulfide releases from animal feeding operations are no longer dangerous or potentially dangerous to human health? If so, please identify any such studies or health assessments.

Answer: As part of a voluntary agreement with the Animal Feeding Operations (AFO) industry, EPA is overseeing the first-ever nation-wide study of air emissions from poultry, dairy, and swine AFOs over the next 2 years. At the completion of the monitoring study, EPA will use the data, along with any other relevant and available data, to develop emissions estimating methodologies. One of the pollutants included in this study is hydrogen sulfide. EPA will not be able to accurately assess what chronic health risks exist for emissions of hydrogen sulfide from this source category until that study is completed.

In addition, EPA is in the process of collecting emissions data from all sources of hydrogen sulfide as well as ambient concentration and exposure data to evaluate whether or not this pollutant should be regulated as a Hazardous Air Pollutant (HAP) under the Clean Air Act. At this point, the data are not sufficient to support such a determination, but EPA is continuing to collect and evaluate additional data. The results of the AFO study and other measurement programs will be evaluated, when they become available, to assist in this determination.

STUDIES ON AMMONIA EXPOSURE RISK FROM ANIMAL FEEDING OPERATIONS

Question: Ammonia is a human toxin that EPA lists alongside arsenic, cyanide, and benzene as hazardous substances under CERCLA. (40 C.F.R. section 302.4). Human exposure to ammonia can trigger respiratory problems, cause nasal and eye irritation, and can be fatal. Has EPA conducted any studies to determine the risk associated with ammonia exposure from large animal feeding operations? If so, please identify them.

Answer: Although EPA has not conducted a detailed risk analysis for releases of ammonia from Animal Feeding Operations (AFOs), EPA did prepare a screening-level acute risk estimate for this compound. The risk analysis was conducted assuming one hundred pounds (the reportable quantity under CERCLA – Comprehensive Environmental Response, Compensation, and Liability Act and EPCRA – Emergency Planning and Community Right-to-Know Act) of ammonia from a manure storage lagoon at an AFO. The results of this study suggest that ambient air concentrations at nearby downwind locations approach, but do not exceed, the threshold for acute respiratory irritation.

CONTROLLING AMMONIA EMISSIONS FROM AFO'S UNDER EPCRA AND CERCLA

Question: Ammonia emissions can pollute surface waters and harm the environment. How does the EPA propose to control ammonia emissions from animal feeding operations to protect threatened watersheds such as the Chesapeake Bay if it intends to deprive itself, States, and the public from the primary source of information about ammonia emissions by exempting animal feeding operations from EPCRA and CERCLA?

Answer: EPA does not believe that promulgation of an exemption from section 103 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and section 304 of the Emergency Planning & Community Right to Know Act (EPCRA) notification requirements for releases to the air of ammonia from animal waste (manure) at animal feeding operations will reduce or delay the collection of data.

By July 2006, approximately 2,568 facilities entered into a settlement agreement with EPA. These 2,568 agreements represent nearly 14,000 farms throughout the country. As part of that agreement, facilities paid civil penalties for prior Clean Air Act, CERCLA or EPCRA violations in exchange for conditional covenants not to sue and liability releases from EPA. In addition, participating animal feeding operations were responsible for the payment of approximately $2,500 per farm into a fund to conduct a nationwide emission monitoring study and for making their facilities available for emissions testing under that nationwide monitoring study.

The monitoring study which began in the spring of 2007 and is expected to continue for approximately 2 years is being conducted at a representative sampling of animal feeding operations. At the completion of the monitoring study, EPA will use the data along with any other relevant, available data to develop emissions estimating methodologies. The monitoring study will continue to collect emissions data from these representative facilities regardless of any exemption to CERCLA notification requirements. In addition to using these data to develop emissions estimates the Agency will use this information to make informed regulatory decisions on the need for control of these facilities.

## INTERNATIONAL SOLID WASTE IMPORTATION AND MANAGEMENT ACT OF 2007 (H.R. 518)

Question: You promised to provide a response for the record to Representative Stupak as to when you will take a position on H.R. 518, the International Solid Waste Importation and Management Act of 2007. Please provide that response.

Answer: EPA shares the concerns expressed in the April 23, 2007, letter from the U.S. Trade Representative and State Department to Congressman Boehner regarding H.R. 518. We are particularly concerned that H.R. 518 would authorize states to restrict the receipt and disposal of municipal solid waste (MSW) generated outside the United States. For example, Michigan has passed a law prohibiting all importation of foreign MSW that would become effective ninety days after passage of federal legislation authorizing State limits of foreign MSW imports (see Michigan Public Acts 57, 58 and 59). This could result in a patchwork of individual and

possibly conflicting state and federal laws and regulations on the receipt and disposal of foreign MSW that could make it more difficult to manage cross-border waste flows in an environmentally sound and economically efficient manner.

Additionally, the bill requires the Agency to consider numerous factors for MSW imports (e.g., landfill capacity, vehicular traffic, road deterioration) that go beyond the environmental factors EPA has historically and currently considers with respect to hazardous waste imports and exports. For example, homeland security, one of the factors identified in the bill, is being addressed at the entrance ports by Customs and Border Protection in the Department of Homeland Security. Instead, EPA believes that decisions on MSW imports should address environmental criteria similar to those applied for hazardous waste, such as whether the specific wastes and management method proposed in the notification would be permitted at the listed destination facility (for the full list of criteria for hazardous waste imports, please visit http://www.epa.gov/compliance/monitoring/programs/rcra/importexport.html).

Moreover, the language of the bill (Section 4011(b)(1)) is unclear in reference to the authority of the Administrator to act immediately as the Designated Authority of the U.S., and implement and enforce the notice and consent and other provisions of the current U.S.-Canada Agreement Concerning the Transboundary Movement of Hazardous Waste ("Agreement"). This responsibility would be in addition to the previously mentioned factors and the State and local views on any proposed imports. The provision states that no regulations are needed to enable the implementation, despite the fact that Section 4011(b)(2) directs the Administrator to issue final regulations with respect to the Administrator's responsibilities in Section 4011(b)(1) within 24 months and thus the language of the two sections is clearly contradictory and lacks clarity in implementation.

LUST CLEANUPS – STATE/ADMINISTRATION REQUEST FOR MORE FUNDING

Question: In response to a question from Representative Stupak on whether the States have asked for more funding and/or a higher budget request from the Administration to clean up leaking underground storage tanks, Ms. Bodine promised to respond. Please provide that response from Ms. Bodine.

Answer: To date, EPA has not received any formal requests from the states for additional funding or a higher budget request from the Administration beyond the FY 2008 President's budget request to clean up underground storage tanks. The request of about $72 million from the LUST Trust Fund should enable EPA, states, and tribes to complete 13,000 cleanups in FY 2008, meeting the national cleanup goal. In addition, the President's request of about $22 million in State and Tribal Assistance Grant funding provides critical resources for states and tribes for implementing leak detection, leak prevention and the new Energy Policy Act requirements.

LUST – EPA's ANNUAL PERFORMANCE GOAL FOR CLEANUPS

Question: Please provide the specific reasons why EPA's annual performance goal for Clean up of leaking underground storage tanks has fallen steadily from 22,500 in FY 03 to13,000, in FY08.

Answer: Cleaning up petroleum from leaking underground storage tanks is an important priority for the Agency. As of May 2007, 357,346 leaking underground storage tanks have been cleaned up by EPA and the states. To put this number in perspective, it means that over 75 percent of confirmed releases have been cleaned up and EPA and the states have managed to exceed our performance goal in both FY 2005 and in FY 2006.

EPA's annual performance goal for cleanups has steadily fallen to reflect a real trend in cleanups becoming more difficult and taking longer to complete because results from the leak prevention component of our program have continued to improve, thereby reducing the number of new releases in need of cleanup and leaving only the older, more difficult cleanups to be completed. Factors affecting the pace of cleanups include the severity of the contamination, the sensitivity of the nearby receptors, and the complexity of the cleanup, including MTBE (methyl tertiary-butyl ether), groundwater impacts, and soil types. EPA is currently analyzing what factors most strongly influence the cleanup progress in most states to determine strategies for most efficiently overcoming these difficulties. However, EPA does not expect annual cleanup rates to return to the FY 2003 goal of 22,500.

LUST – ENERGY POLICY ACT – STATE SELF-CERTIFICATION

Question: With respect to the Administration's proposal to legislatively change the three year mandatory inspection requirement for underground storage tanks that was enacted in the Energy Policy Act of 2005 to a self-certification provision, you testified that "what we have heard from the States is that it would be much more efficient to allow self-certification."

Within hours of Administrator Johnson's testimony, the Committee staff received a communication from the executive director of the Environmental Council of the States (ECOS) that stated, "I just want to clarify to you that neither ECOS nor ASTSWMO has endorsed this approach, nor were we consulted in its development." Further, the communication stated that "in a recent straw vote of persons attending the State UST meeting in San Antonio (which just finished yesterday), this approach did not receive a favorable assessment by a very wide margin."

Why did you apparently misrepresent this position in your testimony before the Subcommittee? Do you now agree that ECOS and ASTSWMO do not endorse the legislative changes proposed by the Administration to the mandatory three-year inspection requirement of Section 9005(c) of the Solid Waste Disposal Act?

Answer: The proposed amendment to the Energy Policy Act's inspection requirements would allow states to use an alternative inspection program in lieu of on-site inspections. This

alternative will provide states with another option for meeting the inspection requirements, while using fewer resources than on-site inspections.

In developing this legislative proposal, EPA reviewed the use of self-certification programs by States and determined that this compliance mechanism was used by States in a variety of programs. There are several sectors where Environmental Results Programs (ERPs) have been applied such as autobody and autobody repair, dry cleaning, printing, auto salvage, photo processing, and underground storage tanks. Massachusetts, Rhode Island, Florida, Delaware, Maryland, and the District of Columbia are implementing ERPs in these business sectors. For example, the dry cleaning sector evaluates their facilities for leak detection by comparing the information collected before and after they have completed the ERP self certification. The information collected through self certification questions and inspections allow regulators to evaluate environmental performance and compliance of an individual facility as well as an entire business sector. The statement referred to the above-referenced uses of self-certification by States, not to any endorsement of the specific legislation proposal.

EPA INTERNATIONAL PROGRAMS – FTE'S

You have identified one of your four priority policy areas as "protecting the global environment."

Question: Why has the Administration budget request cut the number of requested FTEs for international programs to 74.9 FTEs in FY08 -a significant reduction from the 94.8 FTEs in the enacted budget in FY06 and a 15 FTEs reduction from the President's budget request of 89.9 FTEs for FY07

Answer: A point of clarification, the FY 06 enacted budget contained 90.6 FTE for international programs. The decrease to 89.9 FTEs for FY07 reflects EPA's workforce management strategy that will help the Agency better align resources, skills and Agency priorities. With the maturation of EPA's International Capacity Building program, the opportunity to transfer lessons learned, achieve program implementation savings, and enhance environmental gains will result in greater efficiencies.

EPA's Office of International Affairs will build upon its strong relationships within the Agency, as well as those with other USG agencies, foreign governments, and international organizations to advance our collective environmental goals and objectives in the most efficient way possible. In doing so, OIA will refocus its priorities to ensure that we are leveraging our resource base for the greatest environmental results.

This budget objective is not a statement on the value of international programs, but rather a reflection of the need to balance the Administration's overall budget constraints with the Agency's domestic priorities. We recognize that this will have an impact on the Agency's current international engagements, but I am committed to ensuring that EPA remains a world

leader in environmental protection and that the Agency continues to efficiently support the Administration's and the Agency's priorities.

## Questions Submitted for the Record by Representative Barton

WATER PRIVATE ACTIVITY BOND

Question: The EPA budget request for fiscal year 2008 includes a proposal, known as the Water Enterprise Bond, to exempt Private Activity Bonds (PABs) that are used to finance drinking water and wastewater infrastructure from the PAB unified state volume cap. This will allow states and local communities to have greater access to PABs which in turn will help their financing efforts and increase capital investment. Have the states and municipalities been supportive of the private activity bond proposal?

Answer: States and municipalities have been supportive of the proposal to allow private activity bonds for drinking water and wastewater infrastructure. At their 75th Annual Meeting in June 2007, the U.S. Conference of Mayors adopted a resolution on water infrastructure that called on Congress to extend "to all infrastructure projects those federal policy options that enable public-private partnerships and stimulate greater investment by the private sector, such as Private Activity Bonds."

Although it has not passed a formal resolution, the Council of Infrastructure Financing Authorities, which represents the financial managers of Clean Water and Drinking Water State Revolving Fund programs, has also indicated support for PABs. Kevin Ward, Executive Administrator of the Texas Water Development Board, spoke of the Council's support when he testified on their behalf in a hearing before the House Transportation and Infrastructure Committee's Subcommittee on Water Resources and the Environment on January 19, 2007.

PRIVATE ACTIVITY BONDS – COST SHARING

Question: What do you envision as the process the water utilities will have to demonstrate to show they are moving toward full cost pricing for services within five years of issuing the PABs?

Answer: EPA is currently engaging in a broad dialogue with stakeholders on the range of issues associated with moving towards full cost pricing of drinking water and wastewater services. As we continue this effort, we will be working to identify specific characteristics that would inform how the Agency would assess any individual utility's success in achieving full cost pricing. The Agency will incorporate stakeholder input into regulations implementing this proposal after enactment by Congress.

PRIVATE ACTIVITY BONDS – SRF CAPITALIZATION GOAL

Question: If the ultimate goal of the SRF is to reach capitalization goal of achieving a $1.2 billion revolving level, how does the current request of $842 million help you reach that goal, and what role will the private activity bond proposal play?

Answer: The current request of $842 million for the Drinking Water SRF will keep the Agency on track towards achieving a $1.2 billion DWSRF long term revolving level. In addition, the current request of $688 million for the Clean Water SRF will keep the Agency on track towards achieving a $3.4 billion CWSRF long term revolving level. Allowing PABs may help us to achieve the goal because it could facilitate greater SRF leveraging to reach investor-owned water utilities that were previously excluded from tax exempt bond pools. Additionally, the infrastructure financing needs in the nation far exceed the capacity of the SRF programs. A key goal of the PABs is to provide municipalities with another financing tool to help meet their infrastructure needs.

DIESEL EMISSIONS PROGRESS

Question: Can you describe the Agency's progress regarding diesel emissions?

Answer: The Agency has a comprehensive program called the National Clean Diesel Campaign (NCDC) that unites EPA's regulatory and voluntary programs to most effectively address emissions from diesel engines. The NCDC program includes three landmark clean air regulations all linked to the introduction of clean Ultra Low Sulfur Diesel (ULSD) fuel which started in June 2006. The fuel change alone is projected to reduce PM emissions in calendar year 2007 by more than 5,000 tons, a reduction level that will increase dramatically as new technology engines are introduced in compliance with these three programs.

- EPA's Light Duty Tier 2 Rule that for the first time required diesel passenger cars to be as clean as gasoline cars. In 2008, automobile manufacturers are planning to introduce a number of new 2009 model year clean diesel passenger cars to the US market that meet the promise of EPA's Tier 2 program, vehicles that will be as clean as comparable gasoline vehicles while offering substantially better fuel economy.
- EPA's Clean Diesel Rule for Highway Trucks and Buses, finalized in 2001, set stringent emission standards for heavy-duty diesel engines and called for the introduction of clean, ultra-low sulfur diesel fuel. Model year 2007 new highway diesel engines are as much as 95 percent cleaner than 2006 models, and sulfur levels in fuel are 97 percent lower than 2005 levels. The combination of cleaner vehicles and cleaner fuels will result in dramatic environmental improvements. By 2030, EPA expects annual reductions of 2.6 million tons of nitrogen oxides, 115,000 tons of hydrocarbons, and nearly 17,000 tons of air

- toxics compared to what emissions levels would be under previous regulations. In addition, this program will result in particulate matter and nitrogen oxide emission levels that are 90 percent and 95 percent below today's levels, respectively.

- EPA's Clean Diesel Rule for Nonroad Engines and Fuels, finalized in 2004, put in place a set of fuel and engine requirements to address emissions from a wide range of nonroad diesel engines. These rules cover nonroad engines ranging from large agricultural machines and mining trucks to small diesel generators and pumps. Like EPA's Clean Diesel Truck and Buses Program, the Nonroad Diesel Program integrates engine and fuel controls as a system to gain the greatest emission reductions. Engine standards will start to take effect in 2008 with final standards phasing in through 2014. These standards will reduce particulate matter and nitrogen oxide emissions by 90 percent from new engines. The new fuel requirements will decrease the allowable levels of sulfur in fuel used in nonroad diesel engines, locomotives, and marine vessels by more than 99 percent.

We are continuing to broaden the range of diesel engines addressed through the NCDC's regulatory program by new standard setting rulemakings that we expect to finalize by 2008.

- EPA will issue new, more stringent, locomotive engine emission standards that will require the use of advanced emission-control technologies similar to those required by the Clean Diesel Rule for Nonroad Engines. The availability of clean nonroad diesel fuel required under the new nonroad fuel standards will enable the use of this technology on locomotives.
- EPA will also issue more stringent emission standards for all new commercial, recreational, and auxiliary marine diesel engines, except for very large engines used for propulsion on deep-sea vessels. These standards will be based on the same clean diesel engine technologies as the other NCDC programs.

In 2008, EPA will also continue to implement the non-regulatory parts of the National Clean Diesel Campaign aimed at addressing emissions from diesel engines already in use today that are not subject to the new regulations. This approach promotes the reduction of emissions through a variety of cost-effective and innovative strategies, including switching to cleaner fuels, retrofitting engines through the addition of emission control devices, idle reduction strategies and early replacement of vehicles, engines or equipment.

Through the Campaign, EPA has targeted five sectors that provide the best opportunity to obtain significant reductions. These sectors are school buses, ports, construction, freight, and agriculture. EPA provides technical and financial assistance to stakeholders interested in reducing their fleets' emissions effectively and efficiently. In 2008, more than 500 partners will be involved in approximately 220 innovative clean diesel projects nationwide.

In addition, EPA evaluates emissions reductions technologies on the market and verifies their effectiveness through its Technology Verification Program. Over twenty-five technologies are currently verified with EPA. After several years' field experience, the technologies are again evaluated through an in-use testing program.

Other highlights of the National Clean Diesel Campaign's voluntary program include the competition and award of about $40 million in grant funds since 2003, resulting thus far in 175 clean diesel grant projects across the country. In addition, EPA provides technical assistance

tools, such as a web-based calculator for quantifying emissions from diesel projects, and SIP and cost-effectiveness guidance for quantifying emissions reductions from diesel projects.

To date, the National Clean Diesel Campaign's voluntary programs have reduced diesel emissions from year 2000 levels by 30,000 tons of PM and over 200,000 tons of NOx.

## RAILROAD LOCOMOTIVES AND MARINE DIESEL RULE

Question: I'd particularly like you to focus on the newest piece, the railroad locomotives and marine diesel rule. Do state and local air officials support the locomotive rule? How about the railroads? What about the engine manufacturers?

Answer: State and local air officials support the proposed locomotive and marine diesel engine rule and have told EPA that the emissions from this rulemaking will play a critical part in state efforts to attain and maintain the NAAQS through the next two decades. They are urging EPA to finalize this rule by the end of this year. While supporting the overall rule, state air officials are concerned about the timeframe for standards becoming effective and are requesting that the final program be implemented more quickly by setting earlier effective dates for both the interim Tier 3 standards and the long-term, Tier 4 standards for both locomotives and marine diesel engines.

Railroad Companies are generally supportive of the proposed rule and believe that the emission standards are both aggressive and technology-forcing. Railroads have expressed their commitment to work with EPA to finalize the proposal and to also work with the locomotive builders and after treatment industry to insure the nation's freight railroads are even cleaner in the future. Railroads do worry that the standards may be too costly and they would like to see provisions changed to lower cost or decrease their compliance risk.

Both locomotive manufacturers and marine engine manufacturers support the framework of the proposal and especially the long term approach to setting emission standards. Manufacturers have indicated that meeting the emission reductions called for in EPA's proposal will be challenging and worry the overall emission reduction program may be too costly to implement. Finally, locomotive manufacturers have expressed concern about either the level of the Tier 4 standards or the timeframe for standards becoming effective.

## ENVIRONMENTAL AND HUMAN EFFECTS OF NANOTECHNOLOGY

Question: What activities does EPA plan to carry out to determine the environmental and human health effects that may arise from the application of nanotechnology? Are these efforts more regulatory in nature or are they stewardship programs? What statutory authorities are you using for these programs?

Answer: Under the Toxic Substances Control Act (TSCA) EPA is considering several steps, both voluntary and regulatory, to develop data on the health effects and other risk assessment aspects of nanoscale materials. Also, EPA has issued and participated in the development of documents that are intended to help guide EPA's nanotechnology research efforts.

Stewardship Program:

EPA is developing a Nanoscale Materials Stewardship Program (NMSP) to obtain information on existing chemical nanoscale materials, encourage use of a basic set of risk management practices, and initiate efforts to develop in-depth test data on the hazards and exposures of nanoscale materials. This voluntary program will thus help the Agency assemble existing data and information from manufacturers and processors of existing chemical nanoscale materials, help to minimize exposures and releases during production and use, and encourage the development of test data needed to provide a firmer scientific foundation for future work and regulatory/policy decisions.

Regulatory Measures:

EPA is already reviewing nanoscale materials that are new chemicals under TSCA section 5. This section requires persons to give EPA a 90-day advance notice of their intent to manufacture or import a new chemical substance, including any new chemical nanoscale materials, not listed on the TSCA Inventory. During this review, additional information may be requested from the submitter as appropriate (*e.g.*, material characterization, engineering controls and on-site treatment information) to help assess risks that may arise from the manufacture and use of the new chemical. As needed, EPA can take control actions under TSCA section 5(e) to, inter alia, limit exposures or uses, or to obtain test data needed to assess the nanoscale material.

EPA will consider issuing a TSCA section 8(a) rule as a complement to its Stewardship Program to obtain reporting of information on, among other things, the manufacture or processing of nanoscale materials. EPA will also consider issuing a TSCA section 8(d) rule to obtain reporting on existing health and safety information on nanoscale materials.

Section 8(e) of TSCA requires that manufacturers, processors, and distributors of nanoscale materials notify EPA of information that "reasonably supports the conclusion that a

chemical substance or chemical mixture presents a substantial risk of injury to human health or the environment." This includes toxicity data or product/environmental contamination data but may also contain information on exposure, environmental persistence or actions being taken to reduce human health and environmental risks

International and Standards- Related Activities:

EPA is sharing information on research programs, risk assessment approaches and regulatory experiences with member countries of the Organization for Economic Cooperation and Development's (OECD) Working Party on Manufactured Nanomaterials. EPA will also participate in the project to test a representative set of nanomaterials for health and environmental effects, sharing the burden of implications research across the OECD members. This OECD work will complement the effort under the Stewardship Program to develop in-depth test data on nanoscale materials.

EPA is also participating in several efforts to develop voluntary consensus standards for nanoscale materials and/or nanotechnology. These include efforts by the American National Standards Institute Nanotechnology Standards Panel, U.S. Technical Advisory Group to Technical Committee 229 on Nanotechnology of the International Standards Organization, and American Society for Testing and Materials Committee E56 on Nanotechnology.

White Paper and Interagency Documents:

In February, 2007, EPA's Science Policy Council issued a White Paper that describes the key science issues that EPA should consider to ensure that society benefits from advances in environmental protection that nanotechnology may offer, and to understand and address any potential risks from environmental exposure to nanomaterials. The purpose of the paper is to inform EPA management of the science needs associated with nanotechnology, to support related EPA program office needs, and to communicate these nanotechnology science issues to stakeholders and the public.

The paper begins with an introduction that describes what nanotechnology is, why EPA is interested in it, and what opportunities and challenges exist regarding nanotechnology and the environment. It then moves to a discussion of the potential environmental benefits of nanotechnology, describing environmental technologies as well as other applications that can foster sustainable use of resources. The paper next provides an overview of existing information for components needed to conduct a risk assessment. Following that there is a brief section on responsible development and the Agency's statutory mandates. The paper then provides an extensive review of research needs for both environmental applications and implications of nanotechnology. To help EPA focus on priorities for the near term, the paper concludes with staff recommendations for addressing science issues and research needs, and includes prioritized research needs within most risk assessment topic areas (*e.g.*, human health effects research, fate and transport research). The complete White Paper is available on the Internet at http://www.epa.gov/OSA/nanotech.htm.

EPA's White Paper and environmental, health, and safety research needs documents from interagency bodies help guide EPA's nanotechnology research efforts. These inform the Agency's Office of Research and Development, which sponsors extramural research and conducts intramural research on understanding and preventing harmful environmental and human health effects that may result from the applications of nanotechnology.

LEAKING UNDERGROUND STORAGE TANKS (LUST) – INCREASE FINANCIAL RESOURCES

Question: On its website, the Office of Underground Storage Tanks reports that as of September 2006, only 76% of tanks in the nation were in "significant operational compliance with spill, overfill and corrosion protection requirements for release prevention." Only 72% were "in significant operational compliance with the leak detection requirements." And only 62% were in "significant operational compliance with both the release prevention and leak detection requirements."

The LUST Trust Fund was established to help clean up petroleum releases when no responsible party could be found. In 2005, Congress expanded its authorized uses to include enforcement and prevention activities. This authority was reaffirmed at the end of last Congress. The Trust Fund receives more than $200 million in new revenues each year, and earns approximately $90 million in interest on the balance of the Fund-that is more than $290 million in new income each year. Yet, the Agency is requesting only $72 million from the Trust Fund and another $23 million from STAG.

If Congress were to increase the financial resources for the LUST program, from the Trust Fund, above the Administration's request, would not the Agency and the state programs that receive funding from the Agency be better able to achieve higher compliance rates, thereby preventing future releases? And would not additional funding help alleviate the backlog of 113,915 cleanups that have not yet been completed?

Answer: Answer: The FY 2008 President's budget request provides sufficient resources to continue progress in cleanup, detection, and prevention activities. The President's budget reflects the need to balance competing demands, providing funding to put states on track to meet the inspection requirements in the Energy Policy Act while allowing EPA and the states to continue reducing the backlog of cleanups that have not yet been completed.

Moreover, meeting the three-year inspection requirement imposed by the Energy Policy Act will lead to increased vigilance by UST owners, which should result in higher compliance rates and fewer releases to the environment. Reducing cleanup backlog remains an Agency priority, and EPA has been working with states to better target resource allocation and use existing resources as efficiently as possible to achieve more cleanups.

LUST – ENERGY POLICY ACT OF 2005 – STATE IMPLEMENTATION

Question: Has the EPA conducted a survey of state tank offices to determine the financial resources each state will need in order to implement the requirements of the Energy Policy Act of 2005? If so, what were the results of that survey?

How many states currently do not comply with the requirement that every tank be inspected once every three years? Assuming that Congress does not implement any changes to the inspection requirements of the law, what are the financial requirements for states to satisfy this mandate?

Answer: EPA has not conducted a survey of states to determine the financial resources each state will need to implement the underground storage tank (UST) requirements in the Energy Policy Act of 2005. The EPA has worked closely with the states to identify the individual obstacles, opportunities and needs.

The Agency does have limited information on how many inspections each state conducts annually. Currently, 20 states are conducting enough inspections to address a third or more of their UST facilities every year if they inspect each UST only once. The remaining 30 states are inspecting less than one third of their facilities every year, with some inspecting less than ten percent.

If Congress does not enact the legislative change requested in the FY 2008 President's budget request, the Agency would need approximately $38 million to put states on track to meet the three-year inspection requirement, as requested in the FY 2007 President's budget request.

## Questions Submitted for the Record by Ranking Member Shimkus

BUDGET AND STRATEGIC PLANNING—
EFFECT ON ENVIRONMENTAL PROTECTION

Question: How do you think the agency has improved on its strategic planning and budgeting in recent years, in light of the fiscal constraints of the current budget, and in your view has this had a correlative effect on enhanced environmental protection?

Answer: The Agency has made substantial progress in representing its critical goals and objectives in terms of measurable environmental results. The most recent Agency Strategic Plan under the Government Performance and Results Act (GPRA) has substantially more metrics of program outcomes in the form of credible, measured improvements in air, water, and land quality than earlier versions. Thirty environmental outcome indicators from the draft Report on the Environment have been included in the Strategic Plan. In addition, the Agency has made important strides in integrating GPRA and Program Assessment Rating Tool (PART) performance measures, so that 92 percent of the OMB-approved PART long-term metrics are contained in the Strategic Plan.

These long-term environmental outcome measures form the basis for annual performance measures, which are included in the Agency's Annual Plan and Budget, and against which the Agency reports progress in the annual Performance and Accountability Report. Improved measures are key to demonstrating the Agency's progress in achieving environmental results.

Other improvements in strategic planning have included enhanced consideration of emerging and cutting-edge issues; improved joint planning with federal, state, and tribal partners; and expansion in the number of geographic, place-based programs with specific measurable environmental outcomes.

These improvements position the Agency better to address the significant environmental challenges it faces, make sound resource decisions, and measure the results it achieves with taxpayer dollars.

BUDGET AND STRATEGIC PLANNING—
ADMINISTRATIVE VERSUS ENVIRONMENTAL

Question: Do any of your past reviews show how much funding goes to administrative costs and how much actually goes to remediation and environmental protection? In your view, has the agency done a better job in recent years of prioritizing funding to achieve environmental gains? How do you measure this?

Answer: The Agency's administrative costs are approximately 15 percent; a large portion of that percentage is for rent. However, the Agency believes that 100 percent of its funding, including administrative costs, supports environmental protection. For instance, sound contract and grants management, effective financial controls, and reliable and secure IT infrastructure are critical to achieving our mission. Also, enabling and support functions are vital to the success of the operating programs. At the same time, the Agency has worked to streamline operations in these areas. Recent examples include streamlining our administrative/IT operations in the areas of telephone communication, email services, access to data files, and consolidating financial services functions.

Yes, the Agency has done a better job of prioritizing funding to achieve environmental gains in recent years. We have made significant advancements in developing environmental outcome measures for our programs and have increasingly used program performance results as a factor in making resource decisions, including using results from the Office of Management and Budget's Program Assessment Rating Tool. From the outset, the Agency has been a leader in Budget and Performance Integration under the President's Management Agenda, and has recently achieved a Green status score for its efforts.

BUDGET AND STRATEGIC PLANNING—MEASURING SUCCESS

Question: Does EPA have a way to measure absolute success in environmental protection? Do you have your own methodology or thoughts on how goals and measuring of success can be achieved?

Answer: Measuring absolute success is not possible. However, the Agency has adopted the following principles in implementing an integrated planning and budgeting framework. First, the Agency is committed to the greatest possible use of measurable environmental outcomes to represent our long-term objectives and performance goals. To this end, the Agency has made steady progress in concentrating attention on strategic performance metrics that are increasingly measured in terms of better air, water, drinking water, land, and human and ecological health condition. The most recent Agency Strategic Plan under the Government Performance and Results Act (GPRA) demonstrated this effort, using thirty environmental outcome indicators from the draft Report on the Environment. Second, the Agency strives to directly measure progress towards these tangible achievements on an annual (or shorter-term) basis, such that management strategies and programmatic priorities can be directed by observable results. Third, these measurable commitments and results guide the Agency's budget formulation. Finally, any effective management process involves review and evaluation of actual results to get a clearer, more realistic understanding of how to represent and achieve environmental outcomes–a feedback loop of program evaluation.

BUDGET AND STRATEGIC PLANNING- COST TO BUSINESSES AND CITIZENS

Question: Can you give a rough estimate of how much American businesses and citizens spend controlling pollution?

Answer: The Agency does not currently have information on the total amount spent by American businesses and citizens to control pollution in accordance with the requirements contained in all of the environmental regulations issued by federal, state or local governments. As part of the development of each new regulation issued by the Agency, there is consideration of the economic consequences of the regulation. For the few regulations expected to have significant economic impacts, more detailed analyses are prepared to estimate the economic costs, benefits and impacts on U.S. businesses, governments and citizens.

Each year, the Office of Management and Budget (OMB) uses this economic information to prepare a report to Congress on the total costs and benefits of all new federal regulations. A key feature of this report includes a presentation of the quantified and monetized costs and benefits of recently promulgated economically significant regulations reviewed by the OMB, which includes any rule expected to individually generate costs (and/or benefits) of at least $100 million in any one year. In their latest published final report to Congress (released in January 2007), OMB included an estimate of the accumulated costs and benefits for the set of EPA rules issued over the ten-year period from October 1, 1995, to September 30, 2005. The total annual costs for this subset of federal environmental regulations was estimated by OMB to be $23.6-$26.2Billion (2001 $).

Though OMB's report provides an incomplete picture of total spending in the United States, it is one of the few ongoing rigorous attempts to calculate the accumulated costs of federal environmental regulations. One of the other major efforts underway to collect information on environmental expenditures incurred by the U.S. business community is a joint project between the Agency and the Department of Commerce, Census Bureau. A national survey of expenditures for environmental protection by U.S. manufacturers - the Pollution Abatement Costs and Expenditures (PACE) data - had been conducted annually by the Census Bureau from 1973-1994, but was discontinued as a consequence of budget impacts. Growing concerns about the loss of the data, including recommendations from the Agency's Science Advisory Board for its renewal, and additional feedback from users of the data, led the Agency to agree to work with Census to help finance the costs of renewing the survey.

The results of the first attempt (1999) can be found at the following Census website. http://www.census.gov/econ/overview/mu1100.html. With the assistance of the Office of Management and Budget and a team of external peer reviewers, EPA and Census undertook a thorough evaluation of the 1999 data, which lead to the design of a new and improved PACE survey instrument. The new PACE survey was administered to collect 2005 data, and the results of the survey are expected to be published by Census prior to the end of 2007.

Source: 2006 Report to Congress on the Costs and Benefits of Federal Regulations and Unfunded Mandates on State, Local and Tribal Entities. Office of Management and Budget, Office of Information and Regulatory Affairs (January 2007) http://www.whitehouse.gov/omb/inforeg/2006_cb/2006_cb_final_report.pdf (accessed on 8/2/07)

E-MANIFEST

Question: Recently, a fire at a hazardous waste storage facility in North Carolina was allowed to burn and thousands of people were evacuated because the records of what was on site, the paper manifest, were destroyed with the chemicals. Had there been an electronic manifest system, emergency responders could have real time web-based data of what was on this site.

I noticed EPA's budget proposal sets aside some funding for the creation of an electronic manifest system for hazardous waste. Does EPA support bipartisan legislation introduced in the last Congress by Senator Thune, to implement this electronic manifest program?

Answer: EPA sees the benefits of an electronic manifest system and has taken a number of steps to make it a reality. In general, the Agency does agree that user fee funding is the appropriate approach, as it would provide means of recovering the costs of the e-Manifest system, and shifts the funding burden from the taxpayers to the actual users who are expected to benefit from the substantial savings projected under this electronic approach. However, EPA believes certain technical adjustments are needed in the user fee portions of the bill.

Funding will be required for the operation and maintenance of the system. However the actual costs would be dependent upon the design for the system. Once this is known and EPA has the authority to collect a user fee, then EPA can develop a fee structure that will cover the annual operations and maintenance costs as well as the development costs. The fee structure would be designed to cover the costs to operate the system as well as recoup initial development costs. The U.S. Treasury would be repaid for the development costs as EPA collects the user fee.

EPA LAB CLOSINGS

Question: On September 13, 2006, the Public Employees for Environmental Responsibility, or PEER, sent out a news release entitled "Bush Administration Plans Even Bigger EPA Cuts for '08." Does the EPA budget for 2008 call for the closure of any EPA laboratories? Do you have any plans to propose closing EPA laboratories?

Answer: The FY 2008 budget request does not call for the closure of any EPA laboratories. As part of the FY 2008 budget process, the Agency began developing a plan to implement a study of its laboratory infrastructure requirements, capabilities, and operations. Similar studies have been carried out by the Agency in the past, with the most recent comprehensive laboratory study completed in July 1994. The goal of this review is to improve the effectiveness and efficiency of EPA's laboratory network (*i.e.*, 39 laboratories in 30 cities) in order to ensure our ability to meet the environmental challenges of the future. This review will not result in the creation or closure of laboratories during the Administrator's tenure.

In the near term, the study will focus on identifying efficiency and effectiveness opportunities at individual laboratories. Workgroups are working to more clearly frame and determine the scope of the laboratory infrastructure review and encourage each laboratory to brainstorm efficiency and cost saving measures. Savings and efficiency data are currently being requested from all the Agency's laboratories. A report from the near term study is anticipated in September of 2007.

For the long term study, the Agency plans to engage an outside expert panel that will assess and evaluate the ability of EPA's laboratory network to address the Agency's mission over the next 10 years. Efforts are underway to identify options for working with an outside expert panel.

## Questions Submitted for the Record by Representative Solis

TOXIC RELEASE INVENTORY PROGRAM

Question: This year is the 20th anniversary of the United Church of Christ report titled "Toxic Waste and Race" which was based on data available from the Toxic Release Inventory program. This data may no longer be available under the changes the EPA finalized last December. For that reason and others, The United Church of Christ and others oppose the new rule, having written to me on February 27, 2007 stating: "These changes will disproportionately and adversely impact those populations who are disproportionately concentrated near TRI facilities and in nonattainment areas, which tend to be low-income and minority populations." Please tell me if prior to finalizing the new rule the EPA:

Identified the communities that will lose reports? Yes or No.

Answer: Yes, the Environmental Justice Analysis Document conducted by EPA is attached for your information. From this analysis the EPA found that the rule does not appear to have a disproportionate impact on communities with greater than average low-income and minority populations, since facilities in these communities are no more likely than facilities elsewhere to become eligible to use the shorter reporting form (Form A) as a result of the rule.

Background: On December 18, 2006 EPA published a final TRI rule known as the "Burden Reduction" rule. No facilities were exempted from TRI reporting in this final rule, and no chemicals have been eliminated from the list for which facilities must report. Instead, if companies want to save time by using the shorter Form A for reporting, they will have to make sure that they eliminate or minimize releases and other disposal, and shift to environmentally preferable ways of managing chemicals. For both PBTs and non-PBTs expanded Form A eligibility under the final rule is structured in a way that favors recycling and treatment over releases, thereby discouraging chemical releases and encouraging preferred waste management practices such as recycling.

While Form A does not provide the same details as Form R about the releases and other waste management of a chemical, Form A provides information beyond the name of the chemical. In addition to providing facility identification information, Form A can be used by communities as a "range report," i.e., an indication that the facility manages between 0 and 500 pounds of a persistent, bioaccumulative and toxic (PBT) chemical as waste and has no releases or other disposal of the PBT chemical. For a non-PBT chemical, a Form A will indicate that the facility manages between 0 and 5,000 pounds of the chemical as waste, of which no more than 2,000 pounds is released. The remainder is treated, recycled, or used for energy recovery.

The total amount of releases that may no longer be reported on Form R is 5.7 million pounds, which is 0.14% of the total releases reported to TRI annually at the national level.

Question: Analyzed the rule's impact on the socio-economic status of the people living in those communities? Yes or No.

Answer: Yes, please refer to the attached Environmental Justice Analysis for a review of how the TRI rule is expected to impact the socio-economic status of populations living near TRI-reporting facilities.

Question: Analyzed the environmental justice impacts of this rule on affected communities? Yes or No.

Please provide any analysis related to the aforementioned questions.

Answer: Yes, please refer to the attached Environmental Justice Analysis.

TO: Marc Edmonds, US EPA

FROM: Will Smith, US EPA

DATE: November 1, 2006

RE: EJ analysis of the Phase II and alternative Phase II rules

This is an Environmental Justice (EJ) comparison of demographics of the U.S. population with the population 1-mile proximate to facilities reporting form R in RY 2003 and subject to either the Phase II proposed rule or the Phase II alternative 5000/2000 lb rule.

**Data**

RY 2003 frozen TRI data, released April, 2005. U.S. Census 2000 Summary File 3 (SF 3) Block Group data. Census 1999 estimates of poverty.

**Data Summary**

In RY 2003 there were 21,489 facilities that reported 80,169 form R's. The proposed Phase II rule would allow 7,644 of these facilities to have used form A for 14,496 of these forms R's. The Phase II alternative 5000/2000 rule would allow 6,631 of these facilities to have used form A for 11,971 these form R's. The form R's considered are those that could be converted under the proposed rule (or alternative rule) and not under the status quo.

| facilities reporting form R in 2003 | form R's filed in 2003 | Phase II proposed 5000 lb | | Phase II alternative 5000/2000 lb | |
|---|---|---|---|---|---|
| | | facilities affected | form R's converted | facilities affected | form R's converted |
| 21,489 | 80,169 | 7,644 | 14,496 | 6,631 | 11,971 |

The group of Phase II 5000/2000 facilities is a subset of Phase II facilities, and the same is true for the form R's converted.

To study socio-economic characteristics of the population near these facilities, proximate populations within 1 mile were derived using Census block groups. Block groups are clusters of blocks and may comprise between 300 and 3,000 people, though they have an optimal population size of 1,500. To derive the proximate population, all Census block groups were examined. A Census block group is proximate if it lies wholly or partially within a predefined distance from a TRI facility. A proximity distance of 1 mile was used. All block groups were run through a proximity calculation, and if the block-group is proximate to a TRI facility (meaning its centroid is within 1 mile from one or more TRI facilities) it was designated as proximate. This formed a dichotomy of block groups for population study.

The three proximate population groups that are discussed and compared with the general U.S. population with respect to selected demographic statistics are the following –

- TRI proximate population – population within 1-mile proximity to facilities that filed a form R report for RY 2003.
- Phase II proximate population - population within 1-mile proximity to facilities that filed a form R report for RY 2003, but could have used form A instead under the proposed rule
- Alternate proximate population - population within 1-mile proximity to facilities that filed a form R report for RY 2003, but could have used form A under the alternative 5000/2000 lb rule.

Associated with each facility is the population 1-mile proximate to the facility. Each of the three population groups named is formed by aggregating the facility proximate populations for facilities that belong to the group with care taken to omit double-counting when proximate areas overlap.

**Analysis of Minority**

In 2000, the percent minority in the U.S. population was 31.8%.

The percent minority for the TRI proximate population is 41.8% which is higher than the U.S. rate of 31.8%.

The percent minority in the proximate population associated with the Phase II proposed rule is 43.5%, which is slightly higher than that for the TRI proximate population.

The percent minority in the proximate population associated with the Phase II alternative rule is 43.8%, which is slightly higher than that for the TRI proximate population but nearly the same as that for the phase II proximate population.

The percent minority for each of the three proximate population groups is clearly larger than the U.S. rate. The percent minority for both the Phase II proximate population and the Phase II alternative proximate population is slightly larger than that of the proximate population for all TRI facilities. This difference from the general population appears to be characteristic of populations proximate to all TRI facilities rather than related to Phase II facilities.

Even though the percent minority in each of the proximate population groups is higher than the U.S. rate, it should be noted that 72% of all TRI facility 1-mile proximate populations have percent minority below the U.S. rate; for Phase II facilities it is 70% and for Phase II alternative facilities it is also 70%. Further analysis shows that this statistic appears different from previous aggregated results and deserves repeating: For any facility reporting a form R in RY 2003 the percent minority in its 1-mile proximate population is twice as likely to be below the U.S. rate. This last result appears to differ from the results for the percent minority in the population 1-mile proximate to all facilities. This happens because about 1000 facilities have large minority proximate populations.

**Analysis of Poverty**

In 1999, 12.9 percent of the population was below the Census poverty level. The percent below poverty within 1-mile proximity of facilities that filed a form R report for RY 2003 was 16.5%.

The percent below poverty within 1-mile proximity of facilities that filed a form R report for RY 2003 but could have used form A instead under the proposed rule was 17%.

The percent below poverty within 1-mile proximity of facilities that filed a form R report for RY 2003 but could have used form A instead under the alternative rule was also 17%.

| Minority and Poverty Demographics of populations within 1-mile proximity to a facility that filed at least one form R report for reporting year (RY) 2003, versus the U.S. Population | | | | |
|---|---|---|---|---|
| | Within U.S. Population | Within 1-mile proximity of all facilities that filed a form R report for RY 2003 | Within 1-mile proximity of those facilities that filed a form R report for RY 2003, but could have used form A instead under the Phase II proposed 5000 lb rule. | Within 1-mile proximity of those facilities that filed a form R report for RY 2003, but could have used form A instead under the Phase II alternative 5000/2000 lb rule. |
| % Minority | 31.8% | 41.8% | 43.5% | 43.8% |
| % Below U.S. Census Bureau Poverty Level | 12.9% | 16.5% | 17.0% | 17.0% |

**Potential Reporting of Less Detailed Data Under the Proposed Rule**

Of the 7,644 facilities where the potential reporting of less detailed data is at issue under this rule, 28% (2,129) of them could have 100% reporting of less detailed data, that is, all form R's could be converted to form A's. This represents 21% of the total potential data at issue. The aggregate proximate population for these facilities is 46.8% minority and 17.6% of this population is below the poverty level. Some 409 of these facilities have no 1-mile proximate population.

There are a total of 1,786 facilities (23%) with no 1-mile proximate population so the potential reporting of less detailed data near these is somewhat mitigated. This represents 23% of the total data at issue.

Some 8% of facilities have high percent minority (80% or more) in their respective proximate populations. This represents 9% of the total potential data at issue.

The following table partitions the facilities into quadrants by splitting percent minority on the 31.8% minority in the U.S. population and percent below poverty on the 12.9% below poverty level in the U.S. This allows one to focus on reporting of less detailed data by high and low values of minority and poverty.

| | Reporting of Less Detailed Data, Phase II proposed 5000 lb | | | |
|---|---|---|---|---|
| | Facility 1-mile proximate populations | | | |
| | Number form R's converted | | | |
| | | | | |
| | % Below Poverty at or below U.S. level | % Below Poverty above U.S. level | No proximate population | |
| % Minority at or below U.S. level | 4,598 | 1,843 | | 6,441 |
| % Minority above U.S. level | 1,206 | 3,509 | | 4,715 |
| No proximate population | | | 3,340 | 3,340 |
| | 5,804 | 5,352 | 3,340 | 14,496 |

For minority we find that 33% (4715 of 14496) of potential reporting of less detailed data occurs in proximate populations where the percent minority is greater than that in the U.S. population. For poverty we find that 37% (5352 of 14496) of potential reporting of less detailed data occurs in proximate populations where the percent below poverty is greater than that in the U.S. population.

We find that 24% (3509 of 14496) of potential reporting of less detailed data occurs in proximate populations where both the percent below poverty and percent minority are greater the U.S. rates, respectively. About 32% of the potential reporting of less detailed data occurs when minority and poverty are both less than the U.S. rates, respectively.

Total potential reporting of less detailed data under the proposed rule is 18.1% (=14496/80169).

## Potential Reporting of Less Detailed Data Under the Alternative Rule

Of the 6,631 facilities where the potential reporting of less detailed data is at issue under this rule, 26% (1,746) of them could have 100% reporting of less detailed data, that is, all form R's could be converted to form A's. This represents 20% of the total potential data at issue. The aggregate proximate population for these facilities is 47.2% minority and 17.5% of this population is below the poverty level. Some 329 of these facilities have no 1-mile proximate population.

There are a total of 1,493 facilities (23%) with no 1-mile proximate population so the potential reporting of less detailed data near them is somewhat mitigated. This represents 22% of the total data at issue.

Some 9% of facilities have high percent minority (80% or more) in their respective proximate populations. This represents 9% of the total data at issue.

The following table partitions the facilities into quadrants by splitting percent minority on the 31.8% minority in the U.S. population and percent below poverty on the 12.9% below poverty level in the U.S. This allows one to focus on reporting of less detailed data by high and low values of minority and poverty.

| | **Reporting of Less Detailed Data, Phase II alternative 5000/2000 lb** | | | |
|---|---|---|---|---|
| | **Facility 1-mile proximate populations** | | | |
| | **Number form R's converted** | | | |
| | | | | |
| | % Below Poverty at or below U.S. level | % Below Poverty above U.S. level | No proximate population | |
| % Minority at or below U.S. level | 3,876 | 1,486 | | 5,362 |
| % Minority above U.S. level | 1,038 | 2,948 | | 3,986 |
| No proximate population | | | 2,623 | 2,623 |
| | 4,914 | 4,434 | 2,623 | 11,971 |

For minority we find that 33% (3,986 of 11,971) of the potential reporting of less detailed data occurs in proximate populations where the percent minority is greater than that in the U.S. population. For poverty we find that 37% (4,434 of 11,971) of the potential reporting of less detailed data occurs in proximate populations where the percent below poverty is greater than that in the U.S. population.

We find that 25% (2,948 of 11,971) of the potential reporting of less detailed data occurs in proximate populations where both the percent below poverty and percent minority are greater than the U.S. rates, respectively. About 32% of the potential reporting of less detailed data occurs when minority and poverty are both less than the U.S. rates, respectively.

Total potential reporting of less detailed data for the alternative rule is 14.9% (=11971/80169).

**Conclusions**

The EJ results for the proposed Phase II rule are very nearly the same as those for the Phase II alternative rule. There appears to be some disparity with respect to minority and poverty in population 1-mile proximate to facilities when compared to U.S. rates. This disparity is probably associated with all TRI facilities not just those affected by the Phase II proposed rule or its alternative. This apparent disparity is driven by about 1000 facilities in urban areas that have large minority populations within proximity -- the percent below poverty within proximity of these 1000 is generally much higher than the U.S. rate. For example, the percent minority in the population 1-mile proximate to all facilities is larger than the U.S rate, but on a facility-by-facility basis the percent minority in the facility 1-mile proximate population is twice as likely to be below the U.S. rate. If these 1000 facilities were removed then the percent minority in the population 1-mile proximate to the remaining facilities would be the same as the U.S rate.

In terms of potential reporting of less detailed data, the proposed rule would result in more potential reporting of less detailed data (18.1%) than the alternative rule (14.9%).

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CLOSING OF REGION 10 ENVIRONMENTAL JUSTICE OFFICE

Question: Last October the Seattle Times reported that EPA Region 10, which is home to Hanford Nuclear Reservation and 40 percent of Native American and American Indian tribes, closed its environmental justice office due to budget cuts. Specifically, the October 31, 2006 article, "EPA officials say the office closure was forced by budget cuts."

Prior to the closure of the Region 10 office, did the EPA complete an analysis of the impact of its closure on environmental justice communities in Region 10? If yes, please provide the analysis. If no, please explain why.

Answer: Region 10 did not close the Environmental Justice office or stop doing environmental justice work. The region conducted a reorganization and moved the placement of these functions to a new organizational unit. The Region 10 reorganization, which involved five offices, was designed to streamline the region, improve program performance, and achieve budget efficiencies. The Environmental Justice program moved from within an office focused on regional management and administration to the Office of Ecosystems, Tribal and Public Affairs (ETPA). This decision reflected Region 10's continuing strong commitment to providing Environmental Justice to the community by ensuring that this program was located in an office more central to the Region's core environmental programs and focused on serving communities.

The Agency believes this change will strengthen the Environmental Justice program and our ability to serve communities, making for an organization more efficient and more responsive to the public we serve.

Question: Did you approve the closure of this office? If no, who approved closure of the Environmental Justice office?

Answer: There was no office closure. Region 10 undertook this reorganization for a variety of strategic reasons including the need to balance unit sizes within the Region, calibrate the number of required supervisory positions, and improve alignment with headquarters National Program offices. The Region 10 reorganization was designed to streamline the region, improve program performance, and achieve budget efficiencies.

IMPACT OF ENVIRONMENTAL JUSTICE PROGRAM CUTS

Question: The EPA budget recommends a 28.4 percent cut to environmental justice programs over enacted levels. Prior to proposing these cuts, did the EPA analyze the impact of the proposed cuts on environmental justice communities? If yes, please provide the analysis. If no, please explain why no analysis was completed.

Answer: No, EPA did not analyze the impact of proposed cuts on environmental justice communities because it did not, in fact, decrease its funding to those programs. EPA actually increased funding by $850,000 for the environmental justice grant program. However, as a matter of policy, the Agency does not sustain Congressional earmarks in its budget request. The budget decrease reflects that absence of an earmark received in FY 2006, but not requested in FY 2008.

PERFORMANCE TRACK FACILITIES' VIOLATION

Question: According to the Enforcement and Compliance History Online (ECHO) report dated April 27, 2007, 27 larger Performance Track facilities in California have a record of violation. These facilities are:

1. Alza Corp (Menlo Park)
2. Alza Corp (Mountain View, CA)
3. Alza Corp (Mountain View, CA)
4. Alza Corp (Vacaville, CA)
5. Baker Petrolite Taft Acrolein Plant (Taft, CA)
6. Bentley Mills Incorporated (Industry, CA)
7. EKC Technology Incorporated (Hayward, CA)
8. Hewlett Packard San Diego Site (San Diego, CA)
9. International Rectifier (El Segundo, CA)
10. Lifescan Incorporated (Milpitas, CA)
11. Lockheed Martin Aeronautics Company (Palmdale, CA)
12. Lockheed Martin Aeronautics Palmdale Site 7 (Palmdale, CA)
13. National Aeronautics and Space Administration (Mountain View, CA)
14. Naval Air Station North Island (San Diego, CA)
15. Nitinol Devices and Components (Fremont, CA)
16. NMB Corporation (Chatsworth, CA)
17. Ogden Martin Systems of Stanislaus (Crows Landing, CA)
18. Pfizer La Jolla Laboratories (San Diego, CA)
19. Ricoh Electronics Incorporated (Santa Ana, CA)
20. Ricoh Electronics Incorporated (Tustin, CA)
21. Rohm and Haas Chemicals LLC (La Mirada, CA)
22. RW Johnson Pharmaceutical Research Institute (San Diego, CA)
23. U.S. Borax Incorporated Wilmington Facility (Wilmington, CA)
24. USAF Plant Site 2 (Palmdale, CA)
25. 3M Dental Products Division (Irvine, CA)
26. 3M Optics Tech Center (Petaluma, CA)
27. 3M Unitek (Monrovia, CA)

For each of these facilities please answer the following questions:

a. Please identify the nature and extent of the violation.

Answer: National Environmental Performance Track members undergo a comprehensive facility and corporate level review of their environmental compliance record prior to their admission in the program. Upon program admission, a Performance Track member's compliance status, as shown in Enforcement and Compliance History Online (ECHO) and EPA's internal database, the On-Line Tracking System (OTIS), is reviewed twice yearly. In addition, a comprehensive compliance screen is again conducted at the end of a 3-year period if the facility renews its membership.

Performance Track members must have a record of compliance with environmental laws and commit to sustaining the level of compliance required for acceptance to the program. The compliance screening process was developed in conjunction with EPA's Office of Enforcement and Compliance Assurance (OECA). The compliance screening includes the review of information gathered from enforcement databases, OECA, National Program Offices, and EPA's Regional offices. EPA develops additional compliance information in consultation with the Department of Justice as well as state and local environmental authorities.

Please be aware that the program's compliance criteria require a sustained, but not perfect record of compliance. Minor, infrequent non-compliance may be acceptable as long as the program applicant or member maintains a strong overall compliance record, addresses any compliance issues quickly and responsibly, and demonstrates environmental leadership.

Of the 27 facilities listed above, EPA identified 4 duplicate entries and determined that there are a total of 23 Performance Track facility locations that are not in full environmental compliance (see explanation in reference (1) below). In order to efficiently detail the compliance status and nature of current violations for the 23 Performance Track facilities, EPA has developed a table (see attached Table 4a-1) outlining basic facility information as well as specific information describing violations appearing in the ECHO and OTIS databases.

It should be noted that while your question references an ECHO report dated April 27, 2007, that only represents a "snap shot" in time. The ECHO system is frequently updated, reviewed for quality control purposes, and limited to a 3-year anecdotal history for compliance information. Therefore, information appearing on an April 27 report may not coincide with information contained in a report run at a later date. EPA prepared data for this response using information in the ECHO and OTIS databases as of July 17, 2007.

Of the 23 facilities identified, 15 facilities showed no violations or noncompliance issues in individual ECHO reports. The remaining eight facilities received either an informal Notice of Violation (NOV), a formal NOV without penalty, or a formal NOV with penalty assessed. In addition, one of the eight facilities failed to meet the program compliance criteria at the time of its renewal and is no longer a member of Performance Track. The aforementioned facilities are listed in the attached table along with short compliance summaries. The following references will assist the reader with interpretation of the data in the table:

1. For the purposes of EPA's investigation, we determined that only 23 Performance Track facilities were listed in the inquiry. Two facilities, Alza Corporation-Menlo Park and Lockheed Martin-Palmdale appear more than once on the inquiry list. The

ECHO database presents facility information based upon EPA assigned identification numbers. Often a facility will possess multiple, media-specific identification numbers, consequently giving the ECHO report the appearance of multiple facilities under one facility name. Please note the following:

a. The Alza facilities numbers 1 through 3 on the list are considered to comprise one individual facility under Performance Track.

b. The Lockheed Martin facilities numbers 11 and 12 as well as the United States Air Force Base-Palmdale, number 24, are one individual Performance Track facility with multiple site components.

2. Please note that the EPA chart provided for this inquiry also includes ECHO/OTIS compliance information on what EPA or the states deem "minor violations" for certain facilities. Minor violations are often discovered as a result of routine compliance inspections and addressed by the facility at the time of inspection or in a very short timeframe. EPA and the state enforcement programs usually address these minor violations with a verbal or written informal warning to the facility.

**Table 4a-1**
**Response to Solis Question 4a.**
**As of August 3, 2007**

| Facility | P.T. ID # | Address | Media-Type of Violation | Nature & extent of violation |
|---|---|---|---|---|
| 1. Alza Corp (Menlo Park) | A090065 | 1900 Charleston Road Mountain View, CA | N/A | No violation/non-compliance information identified in database as of 7/17/07. |
| 2. Alza Corp (Mountain View, CA) | A090065 | 1, 2, & 3 are considered one facility for Performance Track purposes. | | |
| 3. Alza Corp (Mountain View, CA) | A090065 | 1, 2, & 3 are considered one facility for Performance Track purposes. | | |
| 4. Alza Corp (Vacaville, CA) | A090083 | 700 Eubanks Drive Vacaville, CA | EPCRA, TRI Late Filer | 8/31/04. EPA issued the facility a violation under the Emergency Planning and Community Right to Know Act (EPCRA) for failure to file two Toxic Release Inventory (TRI) forms (2000/2001) by the July 1st due date. The action included a penalty of $5,000. The facility has remained in compliance and has filed all forms on time prior to 2000 and all forms after 2002.<br><br>7/17/03. The State of California issued the facility a Resource Conservation and Recovery Act (RCRA) written informal warning based on two minor violations. Their business plan needed to be updated and a Methylene Chloride spill needed to be remediated. The facility returned to compliance one month later on 08/17/03. |

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|---|---|---|---|---|
| **5.** Baker Petrolite Taft Acrolein Plant (Taft, CA) | A090001 | 19815 S. Lake Rd. Taft, CA 93268 | CWA | No violation/non-compliance information identified in database as of 7/17/07. |
| **6.** Bentley Mills Incorporated (Industry, CA) | A090085 | 14641 E. D.Juan Rd. Industry, CA 91746 | CAA, Failed Stack Test | 5/21/2004. The State of California's South Coast Air Quality Management District issued a Notice of Violation (NOV) for a failed source test that occurred on 12/19/02 for exceedances of permitted NOx air emissions. The Administrative Order was then filed on 6/11/2004 with a penalty ($10,000). The facility was brought into compliance on 1/20/04 when they applied for a new (higher) permit level. |
| **7.** EKC Technology Incorporated (Hayward, CA) | A090058 | 2520 Barrington CT. Haywood, CA 94545 | CWA RCRA | 12/05/06. RCRA 3 QTRs non compliance.<br>The OTIS database indicates 3 quarters of non compliance under RCRA beginning in December of 2005. The local agency, Certified Unified Program Agencies, issued a RCRA written informal notice on 12/6/05 citing two minor labeling violations and a request that the second rinse of the facility rinse water be tested for potential hazardous waste determination. The facility tested the rinsate over the next 3 quarters and determined the material was not hazardous. The database indicating a potential violation was updated to show continuous compliance. No enforcement action. |
| **8.** Hewlett Packard San Diego Site (San Diego, CA) | A090075 | 16399 W. Bernardo Dr. San Diego, CA 92127 | | No violation/non-compliance information identified in database as of 7/17/07. |
| **9.** International Rectifier (El Segundo, CA) | A090057 | 233 Kansas St. El Segundo, CA 90245 | | No violation/non-compliance information identified in database as of 7/17/07. |
| **10.** Lifescan Incorporated (Milpitas, CA) | A090007 | 1000 Gibraltar Dr. Milpitas, CA 95035 | | No violation/non-compliance information identified in database as of 7/17/07. |

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|---|---|---|---|---|
| 11. Lockheed Martin Aeronautics Company (Palmdale, CA) | A090067 | 1011 Lockheed Way Palmdale, CA 93599 Additional Multiple Site Addresses | CAA, RCRA | The Antelope Valley Air Pollution control District issued four NOVs on 10/17/2002. (These appear as one NOV in our database.) Our database also shows "CAA state administrative order issued" on 10/30/02, which is related to the 10/17/02 violations. The Air District proposed a $4,500 fine, but agreed to an alternative settlement that included a transition to biodiesel fuel for equipment, purchasing a hybrid vehicle, and Lockheed's participation in the local Clean Cities Coalition. Collectively the violations are considered minor and do not rise to the level of Significant Non-Compliance.<br><br>4/16/02. Written Informal RCRA (minor labeling issue).<br><br>Note: In accordance with the Performance Track sustained compliance policy, EPA determined that the Lockheed Martin "facility" continues to meet the membership standards set forth in the Performance Track program compliance criteria.<br><br>Additional note: this is a large, secure DOD facility. Several sites are consolidated for the purpose of Performance Track membership. Potential violations for all Palmdale, CA sites participating in the Performance Track program are identified. |
| 12. Lockheed Martin Aeronautics Palmdale Site 7 (Palmdale, CA) | A090067 | 11, 12, and 24 are considered one facility for Performance Track purposes. In ECHO, the facility appears 3 times due to different permit numbers. | | |

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|---|---|---|---|---|
| **13.** National Aeronautics and Space Administration (Mountain View, CA) | A090039 | Moffett Field, Mountain View, CA 94035 | RCRA Generator | EPA is currently conducting a comprehensive review of NASA's compliance records and is also clarifying which facilities and/or tenants have associated violations and of those, which are considered part of the Performance Track facility. See notes below.<br><br>RCRA in Viol Qtr 2 thru Qtr 11. Dec 04 to Jun 07; investigating RCRA State issued written informal notice 10/15/03 investigating RCRA State-issued written informal notice 5/18/05 -closed 6/17/05. Case was against tenant Navy Exchange Gas Station.<br><br>RCRA State issued written informal notice 12/15/05, referred to EPA on 3/17/07 for enforcement. Case is against tenant - Defense Fuel Support Point (DOD).<br><br>RCRA State issued written informal notice 1/25/06, Closed 3/16/06. Case was against tenant CA Air National Guard. |
| **14.** Naval Air Station North Island (San Diego, CA) | A090050 | NAS-North Island San Diego,CA 92135 | N/A | No violation/non-compliance information identified in database as of 7/17/07. |
| **15.** Nitinol Devices and Components (Fremont, CA) | A090006 | 47533 Westinghouse Dr. Fremont, CA 94539 | N/A | No violation/non-compliance information identified in database as of 7/17/07. |
| **16.** NMB Corporation (Chatsworth, CA) | A090062 | 9730 Indep. Ave. Chatsworth, CA 91311 | N/A | No violation/non-compliance information identified in database as of 7/17/07. |

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|---|---|---|---|---|
| **17.** Ogden Martin Systems of Stanislaus (Crows Landing, CA) | A090088 | 4040 Fink Rd. Crows Landing, CA 95313 | N/A | No violation/non-compliance information identified in database as of 7/17/07. |
| **18.** Pfizer La Jolla Laboratories (San Diego, CA) | A090077 | 10777 Science Ctr San Diego, CA 92121 | N/A | No violation/non-compliance information identified in database as of 7/17/07. |
| **19.** Ricoh Electronics Incorporated (Santa Ana, CA) | A090035 | 2320 Redhill Ave. Santa Ana, CA 92705 | N/A | No violation/non-compliance information identified in database as of 7/17/07. |
| **20.** Ricoh Electronics Incorporated (Tustin, CA) | A090038 | 1101 Bell Ave. Tustin, CA 92780 | N/A | No violation/non-compliance information identified in database as of 7/17/07. |
| **21.** Rohm and Haas Chemicals LLC (La Mirada, CA) | A090036 | 14445 E. Alondra Blvd. La Mirada, CA 90638 | CWA | 7/15/04. The State issued a Clean Water Act (CWA) NOV for late reporting (45 days late). No penalty was assessed. The facility returned to compliance in the next quarter. All reports have been filed on time.<br><br>Additional investigation discovered that a 12/3/01 OTIS report shows CWA violations for 8 quarters beginning in 10/14/1992. It is likely that because this facility is considered a "minor" for the purposes of CWA, and states are not required to report data to OTIS for minor facilities, that the noted violations are anomalies. |
| **22.** RW Johnson Pharmaceutical Research Institute (San Diego, CA) | A090004 | 3210 Merryfield Row, San Diego, CA 92121 | N/A | No violation/non-compliance information identified in database as of 7/17/07. |

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|---|---|---|---|---|
| **23.** U.S. Borax Incorporated Wilmington Facility (Wilmington, CA) | A090020 | 300 Falcon St. Wilmington, CA 90777 | CWA | In accordance with EPA compliance policy, EPA will not renew the facility's Performance Track membership in 2007 because of a pattern of non-compliance with applicable CWA regulations. |
| **24.** USAF Plant Site 2 (Palmdale, CA) | A090067 | 11, 12, & 24 are considered one facility for Performance Track purposes. | | |
| **25.** 3M Dental Products Division (Irvine, CA) | A090016 | 2111 McGaw Ave. Irvine, CA 92614 | RCRA | 5/3/06 5 quarters of RCRA noncompliance. The state issued a RCRA written informal notice for two minor labeling violations and one violation of one container that exceeded the 90-day storage regulations. The inspector from the local regulatory agency reports that the facility has returned to compliance. The database has not yet been updated. No enforcement action. |
| **26.** 3M Optics Tech Center (Petaluma, CA) | A090034 | 1331 Commerce St Petaluma, CA 94952 | N/A | No violation/non-compliance information identified in database as of 7/17/07. |
| **27.** 3M Unitek (Monrovia, CA) | A090051 | 2724 S. Peck Monrovia, CA 91016 | N/A | No violation/non-compliance information identified in database as of 7/17/07. |

(b) Was this facility in compliance when they joined Performance Track?

(c) Has this facility had significant no compliance in the three years prior to acceptance into Performance Track?

Answer (b and c): Table 4b-1 addresses questions 4(b) and 4(c) relative to the list of 27 California Performance Track facilities included in your inquiry. The information in this table was gathered by U.S. EPA's Office of Compliance using available historical information in the Agency's compliance databases. Please note that the actual number of Performance Track facilities addressed in this response is 23 due to double counting in the original inquiry list of 27 facilities.

In response to question 4b, EPA performed a data analysis on each facility to determine the facility's compliance record as of the initial date of acceptance to the Performance Track program. According to the data analysis, each facility in question met the Performance Track program compliance criteria at the time of their program acceptance. A facility's program eligibility is evaluated based upon its record of sustained compliance with all applicable federal and/or state environmental requirements.

The response identifies an individual facility's significant violations or designations of significant non-compliance (SNC) as of a date 3 years prior to the facility's acceptance into the Performance Track program. A separate field included in the spreadsheet provides a short summary of the enforcement or compliance issue associated with facility. EPA's analysis indicates that two facilities -- Lockheed-Martin (Palmdale, CA) and Bentley Mills Inc. (Industry, CA) -- had compliance issues within the 3 year period prior to their acceptance into Performance Track. EPA, in conjunction with the state, conducted a comprehensive review of the specific circumstances surrounding each facility's prior compliance history. In both instances, EPA determined that each facility met the Performance Track compliance criteria and recommended admission to the program.

(d) Has this facility fulfilled its environmental commitments for continuous improvements in environmental performance?

Answer: Yes, the facilities listed have fulfilled their obligations for continuous improvement under the Performance Track program. Performance Track member facilities typically set four beyond-compliance, environmental improvement goals during their 3-year terms of membership. Small facilities (facilities with fewer than 50 employees) typically set two goals. Members are expected to make good faith efforts to meet their goals over the 3-year membership term. Members identify in their applications how they plan to meet their goals and report annually on their progress.

The Performance Track program is designed to elicit voluntary "stretch" goals from its members. Just as companies set, but do not always meet, ambitious public targets for corporate earnings, Performance Track members set public targets for environmental performance that present a challenge. The measure of success of the Performance Track business model is the environmental improvements that are realized, rather than the percent of goals that are achieved.

The program has demonstrated considerable success following this model. For example, members, nationwide, have collectively made more than 1,500 commitments to benefit the environment. They have reduced their water use by 3.5 billion gallons, greenhouse gas emissions by 97,000 metric tons of carbon dioxide equivalent, nitrogen oxide emissions by 6,000 tons, sulfur oxide emissions by 17,000 tons and hazardous waste generation by 133,000 tons, and they have conserved more than 14,000 acres of land.

The 23 Performance Track members[5] referenced in question 4 have made notable environmental improvements. Highlights of these improvements include:

- Lifescan Incorporated in Milpitas, CA reduced its greenhouse gas emissions by 31%, converted 79% of the water used on site to recycled water, and reduced hazardous waste generation by 44%.
- 3M Dental Products Division in Irvine, CA reduced its use of packaging materials used for its finished product by 85%.
- International Rectifier in El Segundo, CA reduced its water use by 20% and its use of lead solder by 74%.
- Alza Corp in Mountain View, CA exceeded all four of its goals in the second year of reporting on 3-year goals. So far, the facility has reduced its greenhouse gas emissions by 86% and water use by 18%.
- NMB Corporation in Chatsworth, CA has reduced its use of nitric acid by 51% and eliminated the use of trichloroethylene (TCE) after completing 2 years of the 3-year membership term;
- Alza Corp in Vacaville, CA exceeded all of its goals in its first year of the membership term, reducing greenhouse gas emissions by 19%, water use by 17%, and use of methylene chloride by 60%.
- Dupont EKC, in Hayward, CA reduced its water use by 58% and its non-transportation energy use by 17%.
- After completing the first year of the membership term, Pfizer La Jolla has reduced its generation of hazardous waste by 19% and non-transportation energy use by 32%.

[5] The 27 facilities for which information was requested represent 23 actual Performance Track members. This is because two of the facilities are listed multiple times in EPA's Enforcement and Compliance History Online (ECHO), due to the fact that the facility has multiple identification numbers. However, for Performance Track purposes they are considered one facility.

**Table 4b-1: Compliance, Significant Noncompliance (SNC) and Significant Violation (SV) History for Selected California Perforamce Track Facilities**

| Facility Name, As Identified by Representative Soils | Member ID | Performance Track Facility Name | Date Accepted | Date Renewed, 1st time | Date Renewed, 2nd Time | ID Number(s) | In Compliance when Accepted? | | | SNC/SV 3 Yrs Prior to Acceptance? | | | Notes |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | CAA | CWA | RCRA | CAA | CWA | RCRA | |
| Alza Corp (Menlo Park) | A090065 | ALZA Corporation- Bay Area R&D Operations | 2/1/2005 | N/A | N/A | 110002761182 | | | Y | | | N | |
| | | | | | | 110002761182 | | | Y | | | N | |
| | | | | | | 110000868903 | | | Y | | | N | |
| | | | | | | 110002915310 | | | Y | | | N | |
| Alza Corp (Vacaville, CA) | A090083 | Global Pharmaceutical Supply Group Vacaville | 08/01/2006 | N/A | N/A | 110000485831 | | | Y | | | N | |
| Baker Petrolite Taft Acrolein Plant (Taft, CA) | A090001 | Taft Manufacturing Company | 12/13/2000 | 04/01/2004 | 04/01/2007 | 110000519999 | | | Y | | | N | |
| Bentley Mills Incorporated (Industry, CA) | A090065 | Bentley Prince Street, Inc. | 02/01/2007 | N/A | N/A | 110000477902 | Y | | | Y | | | Title V permit violation of NO2 requirements. State/District SV Day 0 on 01/08/2004. State/District NOV issued on 05/21/2004. Addressing State AO issued on 08/11/2004, including a $10,000 civil penalty. Resolved as of 01/20/2006. |
| EKC Technology Incorporated (Hayward, CA) | A090058 | DuPont EKC Technology | 08/01/2004 | 04/01/2007 | N/A | 110000483147 | | | Y | | | N | |
| Hewlett Packard San Diego Site (San Diego, CA) | A090075 | Hewlett-Packard San Diego | 08/01/2005 | N/A | N/A | 110000886649 | | | Y | | | N | |
| International Rectifier (El Segundo, CA) | A090057 | International Rectifier - El Segundo | 08/01/2004 | 04/01/2007 | N/A | 110000474479 | Y | | Y | N | | N | |
| Lifescan Incorporated (Milpitas, CA) | A090007 | LifeScan, Inc | 12/13/2000 | 04/01/2004 | 04/01/2007 | 110000603050 | | | Y | | | N | |
| Lockheed Martin Aeronautics Company (Palmdale, CA) | A090067 | Lockheed Martin Aeronautics Company - Palmdale | 08/01/2005 | N/A | N/A | 110018950982 | Y | | Y | Y | | N | Title V permit violation of facility-wide permit requirements. State/District SV Day 0 on 08/25/2002. State/District NOV issued on 10/17/2002. Addressing State AO issued on 10/30/2002 (no civil penalty indicated). Resolved as of 06/30/2003. |
| | | | | | | 110018950982 | | | Y | | | N | |
| | | | | | | 110002914311 | | | Y | | | N | |
| | | | | | | 110002333528 | | | Y | | | N | |
| National Aeronautics and Space Administration (Mountain View, CA) | A090039 | NASA Ames Research Center | 02/01/2003 | 04/01/2006 | N/A | 110000495759 | Y | | Y | N | | N | Performance Track membership under current EPA review. |
| Naval Air Station North Island (San Diego, CA) | A090050 | FRC Southwest | 02/01/2004 | 04/01/2007 | N/A | 110000602223 | Y | | Y | N | | N | |
| Nitinol Devices and Components (Fremont, CA) | A090008 | Nitinol Devices and Components | 12/13/2000 | 04/01/2004 | 04/01/2007 | 110002922749 | | | Y | | | N | |
| NMB Corporation (Chatsworth, CA) | A090052 | New Hampshire Ball Bearings, Inc. | 02/01/2005 | N/A | N/A | 110001194341 | | | Y | | | N | |
| Ogden Martin Systems of Stanislaus (Crows Landing, CA) | A090088 | Covanta Stanislaus, Inc. | 02/01/2007 | N/A | N/A | 110000514876 | Y | | Y | N | | N | |
| Pfizer La Jolla Laboratories (San Diego, CA) | A090077 | Pfizer, La Jolla Laboratories | 02/01/2006 | N/A | N/A | 110002931490 | | | Y | | | N | |
| Ricoh Electronics Incorporated (Santa Ana, CA) | A090035 | Ricoh Electronics, Inc. - OMG | 08/01/2002 | 04/01/2005 | N/A | 110000490578 | | | Y | | | N | |
| Ricoh Electronics Incorporated (Tustin, CA) | A090038 | Ricoh Electronics, Inc. - RSG / TMG, Ca. | 02/01/2002 | 04/01/2006 | N/A | 110000490284 | | | Y | | | N | |
| Rohm and Haas Chemicals LLC (La Mirada, CA) | A090036 | Rohm and Haas- La Mirada Plant | 02/01/2002 | 04/01/2006 | N/A | 110000475414 | | Y | Y | | n/a | N | NPDES Minor Discharger Permit; Note: 2001 OTIS indicates 8 queries of non-compliance. |
| RW Johnson Pharmaceutical Research Institute (San Diego, CA) | A090004 | Johnson & Johnson Pharmaceutical Research & Development, L.L.C. La Jolla | 12/13/2000 | 04/01/2004 | 04/01/2007 | 110002926843 | | | Y | | | N | |
| U.S. Borax Incorporated Wilmington Facility (Wilmington, CA) | A090043 | U S. Borax - Wilmington Operations | 08/01/2003 | 04/01/2006 | N/A | CA0000787 | | Y | Y | | n/a | N | NPDES Minor Discharger Permit Also FRS ID # 110000476075 |
| USAF Plant Site 2 (Palmdale, CA) | A090067 | Lockheed Martin Aeronautics Company - Palmdale | 08/01/2005 | N/A | N/A | 110008486327 | | | Y | | | N | |
| 3M Dental Products Division (Irvine, CA) | A090016 | 3M ESPE | 12/13/2000 | 04/01/2004 | 04/01/2007 | 110000783048 | | | Y | | | N | |
| 3M Optics Tech Center (Petaluma, CA) | A090034 | 3M Optical Systems | 08/01/2001 | 04/01/2004 | 04/01/2007 | 110018899333 | | | Y | | | N | |
| 3M Unitek (Monrovia, CA) | A090051 | 3M Unitek Corporation - Monrovia, California | 02/01/2004 | 04/01/2007 | N/A | 110002141806 | | | Y | | | N | |

**Source: Jerry Lappan (U.S. EPA, Office of Compliance, 202-564-5024) using available historical data in agency databases.**

## Questions Submitted for the Record by Representative Baldwin

COOPER INDUSTRIES, INC. VS. AVIALL SERVICES, INC. – VOLUNTARY CLEANUPS

Question: In *Cooper Industries, Inc.* v. *Aviall Services, Inc.*, the Court held that a private party may not obtain contribution from other liable parties under CERCLA -Section 113(f)(1) unless the private party has been the subject of an administrative order or enforcement action by the EPA. This holding is very important because it challenges the previous practice of parties initiating voluntary cleanups without EPA intervention or involvement. Could you please outline what effect this case has had on voluntary cleanups?

Answer: The Supreme Court in *United States v. Atlantic Research Corp.*, 127 S.Ct. 2331 (2007), held that persons, including potentially responsible parties can recover response costs under CERCLA Section 107. EPA has heard that the *Aviall* decision has had an impact on voluntary cleanups. However, as a result of the Court's decision in *Atlantic Research*, voluntary cleanups by private parties should no longer be impacted by the Court's holding in *Aviall*.

COOPER INDUSTRIES, INC. VS. AVIALL SERVICES, INC. – DECISION ON CLEANUPS

Question: It has been more than two years (since December 2004) from the date of the Aviall decision and yet the Agency responded to Mr. Dingell's inquiry that you do not have any data to help us determine the effect of the decision on cleanups. Have you made any effort to collect such data in recent months?

Answer: EPA continues to monitor the impact of the Aviall case on brownfields programs and state voluntary cleanup programs (VCP). We do not have statistical data regarding what impacts this decision has made on state programs. However, based on conversations with state and local officials, attorneys, and other brownfields stakeholders about the impact of Aviall and related cases, EPA has determined that there have been some impacts to state programs. For example, some state VCP officials report that potentially responsible parties (PRPs) are requesting state officials file orders in court against the PRPs to enhance their chances for cost recovery. State officials report that such court filings are cumbersome and negotiations can last for more than a year. Conversely, cleanup of a property under a state VCP program, without a court order, is less costly and less time consuming. In addition, state and local officials report that in some cases, developers and property owners are stopping voluntary cleanup efforts and requesting settlement before proceeding in order to protect their contribution rights. These actions result in project delays, diversion of state resources, and reduced flexibility for regulators.

COOPER INDUSTRIES, INC. VS. AVIALL SERVICES, INC. – RAPID VOLUNTARY CLEANUPS

Question: If the EPA has not been formally tracking this issue, please explain why not? Many people believe that this decision undermined the goal of promoting rapid voluntary cleanups.

Answer: EPA is monitoring the impact of the Aviall and related cases on brownfields programs and state voluntary cleanup programs, including the June 2007 Supreme Court decision in U.S. v. Atlantic Research that further interpreted whether and how potentially responsible parties (PRPs) may recover cleanup costs from other potentially responsible parties. EPA is working with state and local officials, attorneys, brownfields professionals, and other brownfields stakeholders to gather information about the impact of Aviall and related cases on voluntary cleanups. State and local program officials inform EPA that in certain cases, PRPs and developers have stopped or delayed voluntary cleanup efforts to pursue court orders or settlements to protect their contribution rights. This results in delays in property cleanups and increased costs to both private parties and government programs.

AVIALL COURT OF APPEALS DECISION – VOLUNTARY CLEANUPS AND CONTRIBUTION ACTIONS

Question: The EPA has consistently said that the Agency supports voluntary cleanups. Did the EPA support the Fifth Circuit Court of Appeals decision in *Aviall?* As you may recall, the Fifth Circuit decision would have encouraged voluntary cleanups and subsequent contribution actions by allowing parties performing cleanups to recover some of their costs without EPA's involvement through an enforcement action or order. Did your Agency express concerns about the path that DOJ was taking? If so, what was the reasoning?

Answer: The views of the United States are represented in the following attachments: Brief for the United States as Amicus Curiae Supporting Petitioner in Cooper Industries, Inc. Petitioner, v. Aviall Services Inc., No. 02-1192 (Sup. Ct.) ("Aviall Amicus Brief"), the Petition for a Writ of Certiorari and Brief for the United States in United States of America, Petitioner, v. Atlantic Research Corporation, No. 06-562 (S. Ct.) ("ARC Cert. Petition" and "ARC Brief", respectively).

See Attachments: 1) Aviall US Amicus Brief 12-12-03; 2) 2006-0562.pet.ARC; and 3) Atlantic Research (06-562) PP

AVIALL RULING – ADDITIONAL FUNDING

Question: In light of *Aviall,* how much additional funding has the Agency devoted to pursuing Administrative settlements so that parties can meet the *Aviall* ruling in subsequent contribution actions?

Answer: Many potentially responsible parties (PRPs) expressed concern to EPA that the Supreme Court's December 2004 decision in *Cooper Industries v. Aviall* created uncertainty regarding a settling party's contribution rights under Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). However, EPA is using existing resources and staff to develop ways to provide as much certainty to settling parties as possible. Notably, EPA amended its model settlements to include a clear statement that a party that settles administratively should have contribution rights under the statute. See, *Interim Revisions to CERCLA Removal, RI/FS, and RD AOC Models to Clarify Contribution Rights and Protection Under Section 113(f)* (August 3, 2005) and *Interim Revisions to CERCLA Section 122(h) Past Cost Recovery and Peripheral Party Cashout Model Administrative Agreements to Clarify Contribution Rights and Protection Under Section 113(f)* (September 21, 2006).

VOLUNTARY CLEANUPS – SHARE OF THE COST RELIEF TO PRIVATE PARTIES

Question: After the *Aviall* decision, companies that have engaged in voluntary cleanups are now seeking to recover a share of the costs from other liable parties under CERCLA Section 107, but the Administration is opposing the right to do so under Section 107 in the cases now pending at the U.S. Supreme Court.

If you are taking no formal steps to quantify or calculate the impact of the *Aviall* decision on voluntary cleanups and if the EPA is taking a legal position that Section 107 does not offer any avenue for relief to private parties who want to conduct voluntary cleanups-how are you able to still encourage voluntary cleanups by private companies?

Answer: EPA's Brownfields Program provides financial and technical support to encourage voluntary cleanup and revitalization. The Supreme Court decision in *United States v. Atlantic Research Corp.*, 127 S. Ct. 2331 (2007), held that persons, including potentially responsible parties, can recover response costs incurred for voluntary cleanups under CERCLA Section 107.

AVIALL CASE AND ATLANTIC RESEARCH CASE – EFFECT ON PRIVATE PARTY VOLUNTARY CLEANUPS

Question: Do you agree that the Administration's legal positions in the *Aviall* case and the *Atlantic Research Case* from the 8th Circuit now before the U.S. Supreme Court are having a

chilling effect on private party voluntary cleanups? If not, please describe the evidence you have that shows voluntary cleanups have not been adversely impacted.

Answer: The United States government's position on the issues presented by the *Aviall* and *Atlantic Research* cases can be found in the attached Aviall Amicus Brief, the ARC Cert. Petition and ARC Brief.

State voluntary cleanup programs continue to show robust results, although some stakeholders reported some delayed or postponed projects. However, as a result of the Court's decision in *Atlantic Research*, EPA believes that voluntary cleanups by private parties may no longer be impacted by the Court's holding in *Aviall*.

## Questions Submitted for the Record by Representative Burgess

CLEAN AIR INTERSTATE RULE (CAIR)

Question: Mr. Administrator, EPA issued the Clean Air Interstate Rule (CAIR). I understand that this rule will achieve the largest reduction in air pollution in more than a decade. Can you describe the rule and how it will dramatically reduce air pollution that moves across state boundaries?

Answer: On March 10, 2005, EPA announced the Clean Air Interstate Rule (CAIR), a rule that offers steep and sustained reductions in air pollution as well as dramatic health benefits at more than 25 times greater than the cost by 2015.

CAIR covers 28 eastern states and the District of Columbia. In this rule, EPA finds that Sulfur Dioxide ($SO_2$) and Nitrogen Oxide ($NO_x$) emissions from 23 states and the District of Columbia contribute to unhealthy levels of fine particles in downwind states. In addition, $NO_x$ emissions in 25 eastern states and the District of Columbia contribute to unhealthy levels of 8-hour ozone in other downwind states. Please see list of affected states below.

**Coverage of the Clean Air Interstate Rule**

States listed below are required to control for both fine particle pollution and ozone transport unless otherwise noted.

| | |
|---|---|
| Alabama | Minnesota (fine particle pollution only) |
| Arkansas (ozone only) | Mississippi |
| Connecticut (ozone only) | Missouri |
| Delaware (ozone only) | New Jersey (ozone only) |
| Florida | New York |
| Georgia (fine particle pollution only) | North Carolina |
| Illinois | Ohio |
| Indiana | Pennsylvania |
| Iowa | South Carolina |
| Kentucky | Tennessee |
| Louisiana | Texas (fine particle pollution only) |
| Maryland | Virginia |
| Massachusetts (ozone only) | West Virginia |
| Michigan | Wisconsin |

- Through the use of the proven cap and trade approach, CAIR will achieve substantial reductions of $SO_2$ and $NO_x$ emissions and is a powerful component of the Administration's plan to help over 450 counties in the eastern U.S. meet EPA's protective air quality standards for ozone and/or fine particles. The rule requires States, that significantly contribute to downwind non-attainment of the ozone and/or

fine particle standard, to either participate in a region-wide cap and trade program or to develop an alternative plan to achieve the same amount of emission reductions. All affected CAIR states have chosen to participate in the EPA-administered cap and trade programs for $SO_2$ and $NO_x$.

- In 2010, CAIR will reduce $SO_2$ emissions from power plants by 4.3 million tons, 45% lower than 2003 levels, across states covered by the rule. By 2015, CAIR will reduce $SO_2$ emissions by 5.4 million tons, or 57% from 2003 levels, in these states. At full implementation, CAIR will reduce power plant $SO_2$ emissions in affected states to just 2.5 million tons, 73% below 2003 emission levels. In 1990, national $SO_2$ emissions from power plants were 15.7 million tons compared to 3.5 million tons that will be achieved with CAIR.

- CAIR also will achieve significant $NO_x$ reductions across states covered by the rule. In 2009, CAIR will reduce $NO_x$ emissions by 1.7 million tons or 53% from 2003 levels. In 2015, CAIR will reduce power plant $NO_x$ emissions by 2 million tons, achieving a regional emissions level of 1.3 million tons, a 61% reduction from 2003 levels. In 1990, national $NO_x$ emissions from power plants were 6.7 million tons, compared to 2.2 million tons that will be achieved with CAIR.

- $SO_2$ and $NO_x$ contribute to the formation of fine particles and $NO_x$ contributes to the formation of ground-level ozone. Fine particles and ozone are associated with thousands of premature deaths and illnesses each year. Additionally, these pollutants reduce visibility and damage sensitive ecosystems.

- By the year 2015, CAIR will result in:

  - Nearly $100 billion in annual health benefits, annually preventing 17,000 premature deaths, millions of lost work and school days, and tens of thousands of non-fatal heart attacks and hospital admissions

  - Nearly $2 billion in annual visibility benefits in southeastern national parks, such as Great Smokey and Shenandoah

  - Significant regional reductions in sulfur and nitrogen deposition, reducing the number of acidic lakes and streams in the eastern U.S.

For more information on the Clean Air Interstate Rule, please visit www.epa.gov/cair.

## Questions Submitted for the Record by Representative Shadegg

VOLUNTARY PROGRAMS

Question: There has been a lot of talk about the merits or lack thereof of EPA voluntary programs. In fact, one of the witnesses from the small business community last week praised EPA's promotion and development of state voluntary cleanup programs. By doing so, he said EPA has encouraged businesses to work proactively with regulators to remediate contaminated properties throughout the country. How has this program and other voluntary partnerships benefited the environment in your view? What measures do you use to check these results?

Answer: The questions allude to *hazardous waste cleanup programs being run by the States*, as well as *other partnership programs being run by EPA* to address a wide variety of environmental issues. These voluntary partnerships have benefited the environment by encouraging businesses to enroll properties in state voluntary cleanup programs (VCPs) to ensure that cleanup meets the standards which protect human health and the environment. For instance, State VCPs ensure that the assessment and cleanup activities comply with state standards, cleanups are protective of the community, and that all necessary institutional and engineering controls are recorded and in place prior to reuse. EPA supports the establishment and enhancement of these programs as authorized under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Section 128(a). Liability protections afforded to owners who enroll properties in VCP programs are an incentive to remediate and reuse contaminated properties which might otherwise not be economically attractive. In addition, lending institutions are more likely to support redevelopment projects involving sites addressed under VCPs. Since VCPs are state or tribal programs, not federal programs, performance measures are established and maintained by states and tribes. EPA works closely with the states and tribes and retains federal authorities to bring an enforcement action at properties addressed via VCPs, should they fail to provide adequate protection of human health or the environment.

The measures used to check for results in these programs include reports on outcomes such as quantities of municipal solid waste reduced, British Thermal Units (BTUs) of saved energy, and gallons of conserved water. Some well established programs such as EnergySTAR are able to show actual environmental outcomes (e.g. greenhouse gas reductions); other programs, such as Sunwise, are measuring programs activities or outputs (e.g. numbers of students with increased awareness of protective measures). The bottom line is that these diverse and innovative programs are demonstrating measurable environmental results that would not be otherwise achieved.

VOLUNTARY PROGRAMS – REDUCING NUMBER OF PROGRAMS

Question: Do you believe an effort by EPA to reduce its number of voluntary programs would send mixed messages to the regulated community that they should not continue to further

their sustainability approaches in business and rather wait for more command and control type programs?

Is this the wrong message to be sending to the regulated community?

Answer: Reducing the number of voluntary programs would limit EPA's ability to work with those parts of the business community that are not typically engaged in sustainable practices beyond those requirements established through command and control types of programs.. Therefore EPA believes that eliminating a number of programs would not send the right message to the regulated community and diminish the environmental benefits that are being obtained by them.

EPA is increasingly using voluntary partnership programs as a complement to regulatory programs and to fill regulatory voids -- considering them as one of a suite of tools available to the Agency to fulfill its mission of environmental protection. These programs encourage both businesses and individuals to take steps to achieve environmental results that would not be possible otherwise. Increasingly, we are aware that today's challenging environmental problems require more innovative approaches that can far exceed the reach of traditional command and control regimes.

EPA's latest, most conservative estimate puts the number of businesses and other groups participating in these programs at over 20,000. We are committed to serving these stakeholders by assuring that Voluntary/Partnership Programs are well designed and accurately evaluated.

## Questions Submitted for the Record by Representative Stearns

VOLUNTARY PROGRAMS – PART PROCESS

Question: Last weeks testimony from one of the witnesses stated that "few if any" of EPA's voluntary programs have been evaluated using the government's internal review mechanism called Program Assessment Rating Tool or PART. Can you elaborate or do you have additional information? My understanding is that a number of these programs, which are very important to this Committee-such as Energy Star, the indoor air program, and the Design for the Environment Program-have undergone the PART process and received relatively high ratings? Is that true?

Answer: The Agency, following Program Assessment Rating Tool (PART) guidance, has generally defined PART programs at the level for which resource allocation and management decisions are made. The following outlines five EPA programs that involve voluntary activities and have undergone the PART assessment. The list includes the title of the PART assessment; the PART rating, as available; the date of the PART; and the specific voluntary activities within the PART. Many of the voluntary activities account for a relatively small portion of the overall program; therefore, in general, the PART assessments did not explicitly incorporate the individual purpose, strategic planning, management and results of each individual voluntary activity. Rather, the PART assessments focus on the purpose, planning, management and results of the overall program and incorporate individual activities as supporting evidence when appropriate.

**Brownfields Revitalization** – rated Adequate in 2003.
- This program is completely voluntary.

**EPA Climate Change Programs** - rated Adequate in 2004.
- Ag Star
- Asia Pacific Partnership
- Best workplaces for commuters
- Carbon Removal
- Climate Leaders
- Coalbed Methane Outreach
- Combined Heat & Power
- Energy Star
- Green Power Partnerships
- International Capacity Building
- Landfill Methane Outreach
- Methane to Markets
- Natural Gas Star
- Resource Conservation Challenge (RCC) WasteWize
- SmartWay Transport

- State and Local Voluntary Programs
- Voluntary High Global Warming Potential (GWP) Programs

**Resource Conservation and Recovery Act (RCRA) Corrective Action** - rated Adequate in 2004.
- EPA's Recycling, Waste Minimization and Waste Management Program

**Pollution Prevention (P2) Program** – rated Moderately Effective in 2006.
- Presidential Green Chemistry Challenge
- Design for the Environment (DfE)
- Green Supplier Network (GSN)
- Hospitals for a Healthy Environment (H2E)
- Environmentally Preferable Purchasing (EPP)
- Federal Electronics Challenge (FEC)
- Electronic Product Environmental Assessment Tool (EPEAT)
- Green Buildings Program
- Pollution Prevention Resource Exchange (P2Rx)
- Green Engineering Program
- P2 Grants Program
- Source Reduction Assistance Grants Program

**Chemical Risk Reduction (CRR)** – conducted in 2007; results are planned to be released in mid-August.
- High Production Volume (HPV) Chemicals Program
- Voluntary Children's Chemicals Evaluation Program (VCCEP)
- PFOA Stewardship Initiative
- Nanotechnology Stewardship Initiative
- Sustainable Futures Program

VOLUNTARY PARTNERSHIP PROGRAMS DEFINITION

Question: Regarding how EPA defines voluntary partnership programs, I've seen a number of definitions-some broad, some narrow. I think that really makes a difference when we are trying to ascertain cost effectiveness. I personally think that voluntary and partnership approaches can close gaps in environmental protection and play a positive role in just about everything EPA does-but we have to recognize that there are a wide variety of different kinds of programs. Could you opinion on this? Does EPA have a definition for voluntary programs?

Answer: EPA recognizes that both voluntary and partnership programs complement regulatory programs and can be used to fill regulatory voids. Currently, EPA employs 54 national level programs that differ in size, budget, target audience, and types of incentives being offered. While they are just one part of a large suite of tools available to the Agency to fulfill its mission of environmental protection, these programs encourage both businesses and individuals to take steps to achieve environmental results that would not be possible otherwise.

Because of the diversity of these programs, there has at times been confusion about what EPA means when it refers to voluntary or partnership programs. The EPA recognizes that there are in fact distinct characteristics for the two types of programs. Specifically, EPA defines **voluntary activities** as those programs that are:

1. Primarily for the purpose of compliance assistance;
2. Part of a negotiated legal settlement (e.g. Supplemental Environmental Project);
3. Primarily for the purpose of managing or funding a grant;
4. Primarily for the purpose of raising awareness, increasing knowledge, or providing technical assistance in a passive role (vs. actively convincing external parties to take specific environmental action steps and offering technical assistance in doing so); or

In contrast, EPA's definition of **partnership programs**, as adopted by its Innovation Action Council, includes those programs that:

1. Are designed to proactively target and motivate external parties to take specific environmental action steps.
2. Do not compel, by law, external parties to take environmental action steps.
3. For which EPA is responsible for providing leadership and has decision making authority.

There are further restrictions which clarify this definition of partnership programs. For example, it does not include compliance assistance programs or programs which rely primarily on grants. Also, EPA Partnership Programs are distinct in their design to deliver measurable environmental results by motivating companies, organizations, communities, and individuals to take environmental action using interactive, non-regulatory, and typically market-based approaches. These approaches include:

1. **External participants and agreements.** The program invites external parties—companies, organizations, or governments—to sign an agreement to take environmental action steps or at least has an identifiable list of self-selected program participants.

2. **Certification/labeling.** The program establishes standards of environmental performance for a product, service, building, facility, organization, or company.

3. **Recognition.** The program offers some type award or special designation to external parties for taking environmental action steps (e.g. recognition ceremony, certificate).

4. **Technical assistance.** The program provides expert guidance in taking environmental action steps recommended by the program (e.g. part of an MOU).

5. **Regulatory flexibility.** As an incentive for outstanding environmental performance, the program offers some flexibility in complying with environmental regulations.

6. **Professional networking.** The program provides opportunities for professionals outside EPA to meet with EPA and each other and to discuss environmental practices.

7. **Other incentives to adopt environmentally preferable products/practices.** The program helps achieve cost savings through market aggregation/group purchasing; matching buyers and sellers; financing assistance; product differentiation; enhanced brand/corporate reputation; analytical tools; help in reducing risks; enhanced worker productivity; enhanced employee recruiting, etc.

VOLUNTARY PROGRAMS – ROUTINE INSPECTIONS

Question: NRDC alleged in our hearing last week that EPA, through Performance Track (PT), offers flexibility "in the form of reduced or no inspections..." My understanding is that EPA views facilities with a strong record of performance as a lower priority for routine inspections, but it is important to note that all PT members are still subject to periodic inspections. In fact, as I understand it, there has been no net reduction of inspections for PT members. Can you elaborate on this?

Answer: The Performance Track (PT) program's inspection policy is that members are considered low priority for routine inspections; however, they are not immune from them. Inspections at certain classes of facilities are mandated by statute and EPA has established guidelines on the frequency of inspections that states must adhere to when developing inspection targets. Additionally, facilities may be inspected at any time when EPA or a state believes that a PT member has a serious compliance issue and/or there is a tip or complaint about possible non-compliance.

It is also important to recognize that the low priority for routine inspection policy is applicable only at the Federal level. The data show that EPA inspection rates for PT members have gone down over time, consistent with the low inspection policy. However, we do not have definitive data on changes in state inspection rates for PT members. PT is a Federal program implemented in coordination with the states, who conduct the vast majority of inspections. While states are encouraged to adopt the Federal guidelines as a way to allocate inspection resources more efficiently, very few states have elected to adopt the policy

## Questions Submitted for the Record by Representative Fossella

LUST TRUST FUND

Question: How is the LUST Trust Fund funded? How much did the LUST Trust Fund receive in new revenues in 2006? How much is currently in the LUST Trust Fund? How much interest is the LUST Trust Fund accumulating? How much is the Administration requesting from this LUST Trust Fund for FY08? Where is the additional $139 million going? How does the Administration intend to use its requested funding for LUST to operate the entire LUST program, especially in view of the reforms enacted by Congress as part of the Energy Policy Act of 2005?

Answer: The Leaking Underground Storage Tank (LUST) Trust Fund is financed by a 0.1 cent federal tax on each gallon of motor fuel sold in this country. This tax was originally authorized in 1986 and is in effect through September 30, 2011. As of September 2006, the balance in the fund was approximately $2.7 billion and is available for financing authorized uses as appropriated by Congress in the future. In FY 2006, the fund earned more than $97 million in interest and generated approximately $200 million in tax revenue.

The FY 2008 President's budget requests about $72 million from the LUST Trust Fund, which should enable EPA, states and tribes to complete 13,000 cleanups. The President's budget also includes about $22 million in State and Tribal Assistance Grant (STAG) funding for states and tribes to implement leak detection, leak prevention and the new Energy Policy Act (EPAct) requirements.

The Administration intends to use the requested funding for LUST to continue making progress in cleanup activities. Traditionally, the LUST Trust Fund has been used as a dedicated source of funding for the cleanup of leaking tanks. The FY 2008 President's Budget will continue to provide grants to states for their work as the primary implementers of the program's preventative activities. The EPAct expanded the authorized uses of the LUST Trust Fund to include inspections, delivery prohibition, secondary containment, operator training and other areas of the underground storage tank leak prevention program.

LUST TRUST FUND RESOURCES

Question: In the final days of the 109th Congress, Congress passed legislation authorizing the use of LUST Trust Fund resources to pay for the new mandates established by the Energy Policy Act of 2005. The LUST tax collects more than $200 million each year. Your budget

requests $72 million from the Trust Fund and an additional $23 million from the STAG account to help states implement these mandates. Can you explain why the Agency would prefer to use STAG resources to implement the underground storage tank requirements rather than using the money collected by the LUST tax, which is now available for these purposes?

Answer: The FY 2008 President's budget requests about $72 million from the LUST Trust Fund which will enable EPA, states and tribes to successfully continue cleanup activity. The President's budget also includes about $22 million in State and Tribal Assistance Grant (STAG) funding for states and tribes to implement leak detection, leak prevention and the new Energy Policy Act (EPAct) requirements.

Traditionally the LUST Trust Fund has been used as dedicated source of funding for the cleanup of leaking tanks. The FY 2008 President's Budget continues this policy, while continuing to provide grants to states for their work as the primarily implementers of the program's preventative activities.

When the Agency prepared its FY 2008 budget, the tax penalty in the Transportation Equity Act had not yet been addressed by Congress. Until that was addressed, neither EPA nor the states could spend Leaking Underground Storage Tank (LUST) funds on the new prevention activities contained in the Energy Policy Act without a significant penalty which says that no new revenue would go into the LUST Trust Fund.

The Agency requested funds for FY 2008 in both the LUST and State and Tribal Assistance Grants (STAG) accounts in the same manner as in previous fiscal years when we requested LUST funds for cleanup activities and STAG funds for prevention activities. This was done so that EPA and the states could continue to work on both cleanup and prevention activities in FY 2008 without any consequences to the LUST Trust Fund. At the very end of the 109th Congress, the House and Senate rescinded the tax penalty and consequent funding limitation. However, the legislative change was made too late to be incorporated into the President's FY 2008 budget.

Some of the core program activities, such as equipment review and approval, equipment compatibility activities and most compliance assistance activities are not eligible for LUST funding. We are currently evaluating which specific activities would not be eligible for LUST funding.

LUST – GAO STATE SURVEY

Question: The Views and Estimates of the Energy and Commerce Committee on the Fiscal Year 2008 Budget Request assert that "The General Accountability Office recently released a state survey showing that it would cost $12 billion in public funds to clean up

approximately 54,000 known releases where there is no viable tank owner or operator." Is this an accurate characterization of that GAO report?

Answer: No. As the GAO report states, the number of releases from tanks without a viable owner or operator is unknown. The 54,000 releases referred to in the Government Accountability Office (GAO) have known owners or operators. On February 22, 2007, the GAO released a report entitled, "Leaking Underground Storage Tanks: EPA Should Take Steps to Better Ensure the Effective Use of Public Funding for Cleanups" (GAO-07-152). This report estimates a cost of $12 billion in public funds from state and federal sources to fully cleanup known releases however the report considers cleanup costs paid from dedicated state financial assurance funds to be "public cleanup costs" and the $12 billion dollar figure incorporates these state dedicated funds.

The 54,000 known releases referred to in the GAO report are releases being cleaned up using state financial assurance funds. These financial assurance funds have been set up in more than 30 states, using revenue from fees on tank owners and operators and state gasoline taxes, to help tank owners and operators in their states meet the underground storage tank financial assurance requirements. In fact, GAO reports that, in 2005, these state funds collected approximately $1.4 billion in revenue and expended approximately $1.032 billion.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF AIR QUALITY PLANNING AND STANDARDS
EMISSION STANDARDS DIVISION
RESEARCH TRIANGLE PARK, NC 27711

February 19, 2004

SUBJECT: Update of my memo of June 3, 2003 ("Screening-level Acute Risk Estimates for Emissions of Hydrogen Sulfide and Ammonia from Hypothetical Feedlot Wastewater Treatment Lagoons") to reflect the revision of the acute exposure guideline level for hydrogen sulfide

FROM: Roy L. Smith, Ph.D.
Risk and Exposure Assessment Group (C404-01)

THRU: Dave Guinnup, Leader
Risk and Exposure Assessment Group (C404-01)

TO: Sally L. Shaver, Director
Emission Standards Division (C504-03)

**Preface**

As you requested, I have updated the following analysis of feedlot wastewater treatment lagoons to reflect the development of a new, less stringent AEGL for hydrogen sulfide. I've edited only the text relating to that standard, plus minor clarifying changes to reflect the elapsed time.

**Introduction**

In response to your request of 1 April 2003, this memo examines potential acute health effects from ammonia and hydrogen sulfide emissions from feedlot wastewater lagoons.

The analysis estimated acute inhalation exposure and risk, assuming lagoon emissions of 100 pounds per day of each compound. The procedure used the SCREEN3 air dispersion model to estimate concentrations of ammonia and hydrogen sulfide downwind from hypothetical wastewater lagoons of 1 and 2 acres. These estimated concentrations were then compared with appropriate acute dose-response assessment benchmarks associated either with no adverse effects, or with mild reversible respiratory irritation. The release parameters used as inputs to the dispersion model were generally conservative, and it was assumed that a person could be exposed for one hour at the downwind point of highest concentration.

The results of the analysis suggest that daily emission of 100 lb. of ammonia would produce downwind concentrations that slightly exceed no-effect levels but would not reach levels associated with respiratory irritation, even near a lagoon. In contrast, daily emission of 100 lb. of hydrogen sulfide would produce concentrations substantially exceeding both no-effect and mild-effect thresholds for about a mile downwind.

**Methods**

*1. Dispersion Modeling*

The SCREEN3 model is EPA's recommended single source Gaussian plume model, which provides maximum ground-level concentrations for point, area, flare, and volume sources. The model requires inputs for emission rate, source release height, source type (point, area, or volume), receptor height, and land use (urban or rural). SCREEN3 modeling runs were made for 1-acre (64 m by 64 m) and 2-acre lagoons (90 m by 90 m), sizes typical of such impoundments. The release height was set at zero (because lagoons are at ground level) and the receptor height was also assumed to be zero. The modeled emission rate was 100 pounds per day, equal to the RQ. The modeling results (which apply both to ammonia and hydrogen sulfide) are shown in Table 1.

Table 1. Modeled concentrations of ammonia or hydrogen sulfide downwind of typical feedlot wastewater lagoons.

| Downwind Distance (m) | Ambient Concentration ($\mu g/m^3$) | |
|---|---|---|
| | 1-Acre | 2-Acre |
| 100 | 3980 | 3067 |
| 200 | 2014 | 1502 |
| 300 | 1347 | 1021 |
| 400 | 992.2 | 770.3 |
| 500 | 767.6 | 612.1 |
| 600 | 612.7 | 501.9 |
| 700 | 501.2 | 421.1 |
| 800 | 422.5 | 362.5 |
| 900 | 361.7 | 316.1 |
| 1000 | 313.5 | 278.4 |
| 1100 | 275.8 | 248.1 |
| 1200 | 245 | 222.8 |
| 1300 | 219.2 | 201.2 |
| 1400 | 197.5 | 182.8 |
| 1500 | 179.2 | 166.8 |
| 1600 | 163.3 | 153 |
| 1700 | 149.7 | 140.9 |
| 1800 | 137.8 | 130.2 |
| 1900 | 127.3 | 120.8 |
| 2000 | 118.2 | 112.5 |
| 2100 | 110.4 | 105.4 |
| 2200 | 103.5 | 99.11 |
| 2300 | 97.27 | 93.36 |
| 2400 | 91.67 | 88.14 |
| 2500 | 86.59 | 83.43 |
| 2600 | 81.94 | 79.1 |
| 2700 | 77.7 | 75.1 |
| 2800 | 73.81 | 71.46 |
| 2900 | 70.25 | 68.1 |

| Downwind Distance (m) | Ambient Concentration (μg/m³) 1-Acre | 2-Acre |
|---|---|---|
| 3000 | 66.98 | 65.01 |
| 3500 | 54.5 | 53.12 |
| 4000 | 45.55 | 44.53 |
| 4500 | 38.87 | 38.08 |
| 5000 | 33.72 | 33.09 |

*2. Acute Dose-Response Assessments*

To determine whether these estimated ambient concentrations could cause adverse acute health effects in humans, I compared them to acute dose-response assessment values from the following four sources, summarized in Table 2.

- US Agency for Toxic Substances and Disease Registry (ATSDR). ATSDR, which is part of the US Department of Health and Human Services, develops and publishes Minimum Risk Levels (MRLs) for toxic substances. The MRL is defined as an estimate of daily human exposure to a substance that is likely to be without an appreciable risk of adverse effects (other than cancer) over a specified duration of exposure. Exposures above an MRL do not necessarily represent a threat, and MRLs are therefore not intended for use as predictors of adverse health effects or for setting cleanup levels. MRLs are published as part of pollutant-specific toxicological profile documents, and also in a table of "comparison values" that ATSDR regularly updates and distributes (available on-line at http://www.atsdr.cdc.gov/mrls.html ).

- California Environmental Protection Agency (CalEPA). The CalEPA Air Resources Board has developed dose-response assessments for many substances, including reference exposure levels (RELs) for acute inhalation exposure. CalEPA defines the REL as a concentration level at (or below) which no health effects are anticipated, a concept that is substantially similar to that of ATSDR's MRLs. CalEPA's acute RELs are available on-line at: http://www.oehha.ca.gov/air/acute_rels/index.html.

- National Advisory Committee for Acute Exposure Guideline Levels (NAC). EPA's Office of Prevention, Pesticides and Toxic Substances established the NAC in 1995 to develop Acute Exposure Guideline Levels (AEGLs) and supplementary information on hazardous substances for federal, state, and local agencies and organizations in the private sector concerned with emergency planning, prevention, and response. The NAC is a discretionary Federal advisory committee that combines the efforts of stakeholders from the public and private sectors to promote efficiency and utilize sound science. AEGLs for a substance take the form of a matrix, with separate ambient levels for mild (AEGL-1), moderate (AEGL-2), and severe (AEGL-3) effects. Each of the effect levels are provided for as many as four different exposure periods, typically 0.5, 1, 4, and 8 hours. Table 2 provides only the 1-hour AEGL-1s for ammonia and hydrogen sulfide. The NAC formally proposed AEGL for ammonia in January, 2001, and published the AEGL for hydrogen sulfide as an interim value (i.e., after public review and revision) in July, 2003.

- American Industrial Hygiene Association (AIHA). AIHA has developed emergency response planning guidelines (ERPGs) for acute exposures at three different levels of severity of health effects. These guidelines (available on-line through the US Department of Energy at http://www.bnl.gov/scapa/scapawl.htm) are conceptually similar to AEGLs in that they represent concentrations for exposure of the general population for up to 1 hour associated with effects expected to be mild or transient (ERGP-1), irreversible or serious (ERPG-2), and potentially life-threatening or lethal (ERPG-3). Table 2 below includes only ERPG-1 values.

While dose-response assessments from any of these sources may reasonably be used as benchmarks in acute health risk assessments, readers should note that these assessments represent two different types of endpoint. The ATSDR MRL and Cal EPA REL concentrations are ambient levels at which *no adverse effects* are expected, whereas the AIHA ERPG-1 and NAC/AEGL-1 are levels at which *mild, reversible effects* may occur. Therefore, the ERPG-1 and AEGL-1 values will generally be higher than REL or MRL values, and the threshold for mild effects will probably occur somewhere between the two sets of values.

Table 2. Acute dose-response assessments for ammonia and hydrogen sulfide.

| Acute Benchmark | $H_2S$ ($\mu g/m^3$) | $NH_3$ ($\mu g/m^3$) | Source | Definition |
|---|---|---|---|---|
| REL | 42 | 3,200 | California Environmental Protection Agency | A concentration or dose at (or below) which no health effects are anticipated. |
| MRL | 98 | 1,184 | Agency for Toxic Substances and Disease | An estimate of daily human exposure to a substance that is likely to be without appreciable risk of adverse effects over a duration ranging from 24 hours to two weeks. |
| ERPG-1 | 139 | 17,413 | American Industrial Hygiene Association | The maximum airborne concentration below which it is believed nearly all individuals could be exposed for up to one hour without experiencing other than mild transient adverse health effects or perceiving a clearly defined objectionable odor. |
| AEGL-1 | 710 | 17,413 | National Advisory Committee for Acute Exposure Guideline Levels | The 1-h airborne concentration of a substance at or above which it is predicted that the general population could experience mild odor, taste, or other sensory irritations. |

The endpoint for the four ammonia assessments was irritation of the respiratory tract, eyes, and mucus membranes. This irritation, if not severe enough to cause burns, usually disappears in a few hours to a few days after exposure ceases. The endpoint for the hydrogen sulfide assessments was similar respiratory and mucus membrane irritation, but the effects may persist longer and be accompanied by additional effects to the central nervous system (e.g., memory problems, headaches, and dizziness).

**Results and Discussion**

The SCREEN3 modeling results (Table 1) showed that the 1-acre lagoon would produce higher concentrations than the 2-acre lagoon at all downwind locations, assuming the same

emission rate from each. The discussion below therefore focuses on the 1-acre lagoon.

For ammonia, the modeled concentrations exceeded the REL at 100 m, and exceeded the MRL at locations less than 400 m. The ERPG-1 and AEGL-1 levels were not exceeded. For hydrogen sulfide, all four acute benchmarks were exceeded downwind to a distance of 600 m (where the ambient level dropped below the AEGL-1). The ERPG-1 was exceeded to 1800 m, the MRL to 2300 m, and the REL to 4500 m.

Because the MRL and REL are no-effect levels, and slight exceedances do not necessarily indicate a likelihood of adverse effects, the results for ammonia suggest that acute respiratory irritation to a downwind receptor would be either mild or nonexistent, even close to the lagoon. Therefore, the assumed 100 lb/d emissions from a 1-acre lagoon should not create adverse acute health effects to offsite receptors.

The modeled concentrations for hydrogen sulfide exceeded 1-h no-effect benchmarks by one to two orders of magnitude within 1000 m of the lagoon, and did not descend below the mild-effect AEGL-1 until 600 m downwind. Given this degree and geographic scope of exceedance, it is likely that emission of 100 lb/d of hydrogen sulfide from a 1-acre lagoon could cause acute respiratory irritation and effects to the central nervous system in downwind receptor populations to a distance of 0.6 to 1.8 kilometers.

In summary, it appears that the assumed ammonia emission rate would result in ambient air concentrations at nearby downwind locations that approach, but do not exceed, the threshold for acute respiratory irritation. The 100-lb/d ammonia emission rate therefore appears to be appropriately protective, though not overprotective. The assumed 100 lb/d hydrogen sulfide emission rate appears likely to create downwind concentrations that substantially exceed the threshold for mild adverse effects.

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