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S. HRG. 107–324

NOMINATIONS OF THE 107th CONGRESS, FIRST SESSION

HEARINGS

BEFORE THE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS UNITED STATES SENATE

ONE HUNDRED SEVENTH CONGRESS

FIRST SESSION

ON

MAY 17, 2001: LINDA FISHER, TO BE DEPUTY ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY; **JEFFREY HOLMSTEAD**, TO BE ASSISTANT ADMINISTRATOR FOR AIR AND RADIATION, ENVIRONMENTAL PROTECTION AGENCY; **STEPHEN JOHNSON**, TO BE ASSISTANT ADMINISTRATOR FOR TOXIC SUBSTANCES, ENVIRONMENTAL PROTECTION AGENCY; AND **JAMES CONNAUGHTON**, TO THE COUNCIL ON ENVIRONMENTAL QUALITY

JULY 25, 2001: DAVID A. SAMPSON, TO BE ASSISTANT SECRETARY FOR ECONOMIC DEVELOPMENT, DEPARTMENT OF COMMERCE; **ROBERT FABRICANT**, TO BE GENERAL COUNSEL, ENVIRONMENTAL PROTECTION AGENCY; **GEORGE TRACY MEHAN III**, TO BE ASSISTANT ADMINISTRATOR FOR WATER, ENVIRONMENTAL PROTECTION AGENCY; **JUDITH ELIZABETH AYRES**, TO BE ASSISTANT ADMINISTRATOR FOR INTERNATIONAL ACTIVITIES, ENVIRONMENTAL PROTECTION AGENCY; **DONALD R. SCHREGARDUS**, TO BE ASSISTANT ADMINISTRATOR FOR ENFORCEMENT AND COMPLIANCE ASSURANCE, ENVIRONMENTAL PROTECTION AGENCY

SEPTEMBER 21, 2001: BRIG. GEN. EDWIN J. ARNOLD, TO THE MISSISSIPPI RIVER COMMISSION; **BRIG. GEN. CARL A. STROCK**, TO THE MISSISSIPPI RIVER COMMISSION; **NILS J. DIAZ**, TO BE COMMISSIONER, NUCLEAR REGULATORY COMMISSION; **PATRICK HAYES JOHNSON**, TO BE FEDERAL COCHAIRPERSON, DELTA REGIONAL AUTHORITY; **HAROLD CRAIG MANSON**, TO BE ASSISTANT SECRETARY FOR FISH, WILDLIFE, AND PARKS, DEPARTMENT OF THE INTERIOR; **MARIANNE LAMONT HORINKO**, TO BE ASSISTANT ADMINISTRATOR FOR SOLID WASTE AND EMERGENCY RESPONSE, ENVIRONMENTAL PROTECTION AGENCY; **PAUL MICHAEL PARKER**, TO BE ASSISTANT SECRETARY OF THE ARMY FOR CIVIL WORKS; AND **MARY E. PETERS**, TO BE ADMINISTRATOR, FEDERAL HIGHWAY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

OCTOBER 17, 2001: WILLIAM W. BAXTER, TO THE TENNESSEE VALLEY AUTHORITY; **KIMBERLY TERESE NELSON**, TO BE ASSISTANT ADMINISTRATOR FOR ENVIRONMENTAL INFORMATION, ENVIRONMENTAL PROTECTION AGENCY; AND **STEVEN A. WILLIAMS**, TO BE DIRECTOR, U.S. FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

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78–075 PDF WASHINGTON : 2002

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[1]NOTE: During the first session of the 107th Congress, the committee roster appeared in the *Congressional Record* on January 25, 2001.
On June 6, 2001, the majority of the Senate changed from Republican to Democrat when Senator James M. Jeffords, of Vermont, changed party affiliation from Republican to Independent. Senator Harry Reid, of Nevada, assumed the chairmanship of the committee. On July 10, 2001, Senator Jeffords was appointed as chairman of the committee by the Democratic Leader.

C O N T E N T S

Page

MAY 17, 2001

OPENING STATEMENTS

Baucus, Hon. Max, U.S. Senator from the State of Montana 27
Bond, Hon. Christopher S., U.S. Senator from the State of Missouri 8
Carper, Hon. Thomas R., U.S. Senator from the State of Delaware 8
Clinton, Hon. Hillary Rodham, U.S. Senator from the State of New York 21
Inhofe, Hon. James M., U.S. Senator from the State of Oklahoma 6
Reid, Hon. Harry, U.S. Senator from the State of Nevada 4
Smith, Hon. Bob, U.S. Senator from the State of New Hampshire 1
Voinovich, Hon. George V., U.S. Senator from the State of Ohio 26

WITNESSES

Connaughton, James, Nominated to be a Member of the Council on Environmental Quality 14
Committee questionnaire 104
Prepared statement 102
Responses to additional questions from:
Senator Baucus 114
Senator Reid 115
Fisher, Linda, Nominated to be Deputy Administrator, Environmental Protection Agency 9
Committee questionnaire 30
Prepared statement 28
Responses to additional questions from:
Senator Baucus 41
Senator Reid 38
Senator Voinovich 40
Senator Wyden 43
Holmstead, Jeffrey, Nominated to be Assistant Administrator, Office of Air and Radiation, Environmental Protection Agency 11
Committee questionnaire 45
Letters, Comments on PM standards 72
Prepared statement 44
Responses to additional questions from:
Senator Baucus 69
Senator Clinton 70
Senator Corzine 71
Senator Lieberman 69
Senator Reid 56
Senator Smith 66
Senator Voinovich 67
Statement, Testimony before House committee on air quality standards ... 61
Johnson, Stephen, Nominated to be Assistant Administrator, Office of Toxic Substances, Environmental Protection Agency 13
Committee questionnaire 83
Prepared statement 81
Responses to additional questions from:
Senator Baucus 100
Senator Clinton 102
Senator Reid 98
Senator Smith 96

Page

Johnson, Stephen, Nominated to be Assistant Administrator, Office of Toxic Substances, Environmental Protection Agency—Continued
Responses to additional questions from—Continued
Senators Smith/Reid 95
Senator Wyden 101

ADDITIONAL MATERIAL

Statement, nomination of Stephen Johnson, Senator Mikulski 2

JULY 25, 2001

OPENING STATEMENTS

Bond, Hon. Christopher S., U.S. Senator from the State of Missouri 120
Chafee, Hon. Lincoln, U.S. Senator from the State of Rhode Island 125
Inhofe, Hon. James M., U.S. Senator from the State of Oklahoma 123
Jeffords, Hon. James M., U.S. Senator from the State of Vermont 117
Smith, Hon. Bob, U.S. Senator from the State of New Hampshire 120
Voinovich, Hon. George V., U.S. Senator from the State of Ohio 122

WITNESSES

Ayres, Judith Elizabeth, Nominated to be Assistant Administrator for the Office of International Activities, Environmental Protection Agency 131
Committee questionnaire 179
Prepared statement 177
Fabricant, Robert, Nominated to be General Counsel, Environmental Protection Agency 127
Committee questionnaire 149
Prepared statement 148
Frost, Hon. Martin, U.S. Representative from the State of Texas 118
Hutchison, Hon. Kay Bailey, U.S. Senator from the State of Texas 117
Mehan, George Tracy, III, Nominated to be Assistant Administrator for the Office of Water, Environmental Protection Agency 128
Committee questionnaire 159
Prepared statement 157
Responses to additional questions from:
Senator Graham 176
Senator Smith 175
Senator Voinovich 177
Sampson, David A., Nominated to be Assistant Secretary for Economic Development, Department of Commerce..... 119, 125
Committee questionnaire 141
Prepared statement 138
Responses to additional questions from Senator Smith 146
Schregardus, Donald R., Nominated to be Assistant Administrator for the Office of Enforcement and Compliance Assurance, Environmental Protection Agency 135
Committee questionnaire 191
Prepared statement 189
Responses to additional questions from:
Senator Boxer 198
Senator Chafee 201
Senator Corzine 201

SEPTEMBER 21, 2001

OPENING STATEMENTS

Jeffords, Hon. James M., U.S. Senator from the State of Vermont 205
Carper, Hon. Thomas R., U.S. Senator from the State of Delaware 222

Page

WITNESSES

Arnold, Brigadier General Edwin J., Nominated to be a Member and President of the Mississippi River Commission 208
Committee questionnaire 230
Prepared statement 228
Cochran, Hon. Thad, U.S. Senator from the State of Mississippi 206
Diaz, Nils J., Nominated to be a Member of the Nuclear Regulatory Commission 209
Committee questionnaire 239
Prepared statement 237
Responses to additional questions from:
Senator Corzine 268
Senator Reid 270
Horinko, Marianne Lamont, Nominated to be Assistant Administrator, Office of Solid Waste and Emergency Response, Environmental Protection Agency 216
Committee questionnaire 301
Prepared statement 299
Responses to additional questions from:
Senator Bond 315
Senator Boxer 318
Senator Clinton 320
Senator Corzine 319
Senator Jeffords 311
Senator Smith 313
Johnson, Patrick Hayes, Nominated to be Federal Cochairperson, Delta Regional Authority 209
Committee questionnaire 274
Prepared statement 272
Responses to additional questions from Senator Jeffords 288
Manson, Harold Craig, Nominated to be Assistant Secretary for Fish, Wildlife, and Parks, Department of the Interior 214
Committee questionnaire 322
Prepared statement 320
Responses to additional questions from:
Senator Baucus 333
Senator Boxer 334
Senator Jeffords 331
Senator Smith 334
Parker, Paul Michael, Nominated to be Assistant Secretary of the Army for Civil Works, Department of the Army 218
Committee questionnaire 338
Prepared statement 337
Responses to additional questions from:
Senator Baucus 346
Senator Boxer 349
Senator Clinton 352
Senator Corzine 351
Senator Daschle 352
Senator Graham 348
Senator Smith 344
Senator Wyden 347
Peters, Mary E., Nominated to be Administrator of the Federal Highway Administration, Department of Transportation 219
Committee questionnaire 355
Letter, Representative Bob Stump 354
Prepared statement 352
Responses to additional questions from:
Senator Jeffords 363
Senator Lieberman 366
Strock, Brigadier General Carl A., Nominated to be a Member of the Mississippi River Commission 210
Committee questionnaire 291
Prepared statement 289

ADDITIONAL MATERIAL

Letter, nomination of Mary Peters, Rep. Bob Stump 354

Page

Statements:
Lincoln, Hon. Blanche Lambert, U.S. Senator from the State of Arkansas 227
McCain, Hon. John, U.S. Senator from the State of Arizona 226

OCTOBER 17, 2001

OPENING STATEMENTS

Jeffords, Hon. James M., U.S. Senator from the State of Vermont 367

WITNESSES

Baxter, William W., Nominated to be a Member of the Board of Directors of the Tennessee Valley Authority 368
Committee questionnaire 384
Prepared statement 382
Responses to additional questions from:
Senator Bunning 390
Senator Jeffords 389
Senator Wyden 392
Nelson, Kimberly Terese, Nominated to be Assistant Administrator, Office of Environmental Information, Environmental Protection Agency 371
Committee questionnaire 395
Prepared statement 392
Responses to additional questions from:
Senator Bond 405
Senator Smith 403
Roberts, Hon. Pat, U.S. Senator from the State of Kansas 373
Thompson, Hon. Fred, U.S. Senator from the State of Tennessee 367
Williams, Steven A., Nominated to be Director, U.S. Fish and Wildlife Service, U.S. Department of the Interior 374
Committee questionnaire 408
Prepared statement 406
Responses to additional questions from:
Senator Baucus 419
Senator Boxer 419
Senator Chafee 418
Senator Lieberman 423
Senator Smith 417

ADDITIONAL MATERIAL

Frist, Hon. Bill, U.S. Senator from the State of Tennessee 381

NOMINATIONS OF THE 107th CONGRESS, FIRST SESSION

THURSDAY, MAY 17, 2001

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

The committee met, pursuant to notice, at 9:30 a.m. in room 628, Senate Dirksen Building, Hon. Bob Smith (chairman of the committee) presiding.

CONSIDERATION OF THE NOMINATIONS OF LINDA FISHER, JEFFREY HOLMSTEAD, STEPHEN JOHNSON, AND JAMES CONNAUGHTON

Present: Senators Smith, Reid, Inhofe, Carper, Bond and Clinton.

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

Senator SMITH. The nomination hearing will come to order.

I would say good morning to the witnesses and our apologies for being late but the Senate had other ideas for us this morning as we had votes on the Senate floor.

I'm going to give each of you an opportunity in just a moment to introduce your families who are here but first, by way of brief introduction for each of you, the purpose today is consider all four of your nominations for various positions at EPA—Linda Fisher, as Deputy Administrator of the EPA; Jeffrey Holmstead for the position of Assistant Administrator for Air and Radiation; Stephen Johnson to serve as Assistant Administrator for Toxic Substances; and finally Jim Connaughton, nominated to be a member of the Council on Environmental Quality. I'd like to thank them for joining us here today and for their willingness to meet with as many Senators and their staffs as possible since the President sent us their names. They are all very well qualified and I can say from my meetings with them, they are also quality individuals with quality families who we will meet here in a moment.

The Office of Government Ethics has certified that all four of these nominees' financial disclosure forms indicate that they are in compliance with all applicable laws and regulations governing conflicts of interest.

Linda Fisher, as President Bush's nominee, is no stranger to the Agency. She has served in various positions in both the Reagan and Bush Administrations and while there, Ms. Fisher was awarded the EPA Award for Sustained Outstanding Contributions to

International Environmental Protection in 1991 and the EPA Outstanding Service Award in 1984.

After leaving EPA, she joined the private sector working for Monsanto, a company widely recognized for forward thinking on environmental matters. She most recently held the title of Vice President for Government Affairs at Monsanto.

She holds a BA from Miami University, an MBA from George Washington and earned her law degree from the Ohio State University.

Jeffrey Holmstead, the nominee to be the new EPA Assistant Administrator for the Office of Air and Radiation also served in the first Bush Administration in the White House Counsel's Office. In his position as Assistant Counsel Mr. Holmstead's primary focus was environmental law, most recently working on the implementation of the Clean Air Act. He also worked with the Reactivity Research Working Group and has been very involved in their efforts exploring new and more effective approaches for controlling ground level ozone.

Mr. Holmstead holds a BA and an AA from Brigham Young, as well as a law degree from Yale.

Stephen Johnson has been nominated to serve as EPA's Assistant Administrator for the Office of Prevention, Pesticides and Toxics. He has 25 years of direct experience with the issues facing the Office of Prevention, Pesticides and Toxic Substances. He joined EPA in 1979 in the position of pathologist in that same office. Most recently he has served as Acting Assistant Administrator in that office.

For his service, he has received numerous annual performance awards, Special Act Award, 1991; Meritorious Presidential Rank Award, 1997; and has been nominated to receive the Distinguished Presidential Rank Award.

Mr. Johnson earned a BA from Taylor University and a BS from George Washington.

I would ask unanimous consent that a letter of support for Mr. Johnson from Senator Mikulski be entered in the record at this time.

[The information referred to follows:]

U.S. SENATE,
Washington, DC 20510, May 17, 2001.

Hon. BOB SMITH, *Chairman,*
Committee on Environment and Public Works,
U.S. Senate,
Senate Office Building,
Washington, DC 20510.

DEAR SENATORS SMITH AND REID: I regret that I could not be there in person today to introduce Stephen Johnson, and I hope you will share this letter with the members of your committee as they consider Mr. Johnson's nomination.

As you know, Mr. Johnson has been nominated to serve as EPA's Assistant Administrator for the Office of Prevention, Pesticides, and Toxic Substances. He is currently acting in this position, where he has the important responsibility of implementing our nation's pesticide, toxic substance, and pollution prevention laws.

Mr. Johnson is a lifelong resident of Maryland, and he has worked in public service for over 20 years. In his many years of service to EPA, he has held positions of increasing responsibility and earned several awards of distinction. His dedication and service to EPA demonstrates his commitment to upholding the Agency's critical mission.

I believe that Mr. Johnson's nomination represents a unique accomplishment for a career civil servant, and I hope that the committee will give him every appropriate consideration.

Sincerely,

BARBARA A. MIKULSKI,
United States Senator.

Senator SMITH. Finally, James Connaughton has been nominated to be a member of the President's Council for Environmental Quality. Mr. Connaughton has been a partner in the Environmental law firm of Sidley Austin Brown & Wood since 1991. He has spent his career working on a variety of environmental issues including compliance, environmental management, legislative issues and damage assessment. He has substantial experience with handling ecological risk and natural resource damage assessment and is knowledgeable in the implementation of local, State and Federal laws pertaining to environmental risk assessment.

Before joining Sidley Austin, Mr. Connaughton clerked for the Honorable Marvin Aspen, U.S. District Court, Illinois.

He received his undergraduate degree from Yale and his law degree from Northwestern.

Welcome to all of you.

Before I turn to Senator Reid and other members for opening statements, I would ask each of you at this time if you have family members here to please feel free to introduce them. We will start with you, Ms. Fisher.

Ms. FISHER. Thank you, Mr. Chairman.

I appreciate the fact we can go ahead and introduce the children first. They have all pledged to perfect behavior throughout the hearing. We will keep our fingers crossed.

Senator SMITH. That may not be true with the Senators.

[Laughter.]

Ms. FISHER. Let me first introduce my two children who are joining me today, my son, Keenan, 7 years old and a first grader at St. Patrick. As you can tell from his build, he is a hockey player and likes baseball and basketball. Next to him is my daughter, Kelly. Kelly is a kindergartener at St. Patrick's and a 6-year-old. She likes gymnastics and soccer.

Senator SMITH. Mr. Holmstead?

Mr. HOLMSTEAD. I am delighted to be able to introduce my children as well. I am afraid we're running short on granola bars so I don't know how long they'll last before they need to excuse themselves.

Let me first introduce my wife, Lisa Holmstead who is a full-time mother of our four children. Our oldest is Emily, who is 11 and a fifth grader at the Rachel Carson Elementary School in Gaithersburg, Maryland. Her nickname is the reading machine. Next is my 8-year-old Eric. He's a second grader at the Rachel Carson Elementary School. He has an orange cast on his foot as a result of a biking accident but he's hobbling around pretty well. Next is my 5-year-old daughter Elizabeth, who is in kindergarten and who loves to have breakfast with her dad. Finally is my 2-year-old son, Eli who is very happy to be here. He's being held by my mother, his grandmother, Mellie Holmstead and my father who is seated next to her, Kay Holmstead. Both of them are visiting for this event from Bolder, Colorado.

Senator SMITH. Nice to have you here.

Mr. Johnson?

Mr. JOHNSON. Thank you, Mr. Chairman.

I'd like to introduce my family as well. My wife, Debbie, is with me today and our three children and our son-in-law. Our youngest daughter is Allison. She's a freshman at Taylor University in Indiana and our son, Matthew, who is a junior at Taylor University. Their final exams are next week, so they really enjoyed the opportunity to get out of class for a day to join us here.

Senator SMITH. Would you have been here if it had been next week?

[Laughter.]

Mr. JOHNSON. And our oldest daughter, Kerry and our son-in-law, Jeremy, are with us today as well.

It's also my pleasure—and I'm not sure how unusual or routine this is—but my mother-in-law and father-in-law are here today. I'd like to introduce my father-in-law, John Jones and my mother-in-law, June Jones.

For the record, I would like to note that believe I am in good standing as a son-in-law, at least as of this morning.

Senator SMITH. Mr. Connaughton?

Mr. CONNAUGHTON. Mr. Chairman, first, I'll introduce my wife, Susanna Connaughton, and our two children, Spencer, who is nine and a third grader at Sidwell Friends School; and Grace, who is six and she's at the Norwood School.

Also with me are my parents, Jim and Monica Connaughton. You should know my parents came to this country shortly before I was born from Ireland, so I know this is a special moment for them.

Also here is my mother-in-law, Stacey Bolten. I'm also in good standing with her. She lives next door to us so I'd better be.

My sister, Eileen Hart, is here with my nephew, T.J., my niece, Tara, and my other nephew, Michael.

Not here in person, but here in spirit are my sister, Bernadette; my brother, Paul; my brother, John; their spouses and an additional ten nieces and nephews. There also is a whole crowd back in Ireland who are very eager to see the report of this hearing.

Senator SMITH. Welcome to all of you. It's nice to have you here. It's nice to see you here to support your family member to have the honor of being nominated for a position in government. A lot of us feel it is honorable service and in spite of what you read, there are a lot of fantastic people who serve and make great sacrifices to serve in government.

Senator Reid?

OPENING STATEMENT OF HON. HARRY REID, U.S. SENATOR FROM THE STATE OF NEVADA

Senator REID. Thank you, Mr. Chairman.

Senator Mikulski has asked us to enter into the record a very nice letter that she wrote on your behalf, Mr. Johnson, culminating with "I believe Mr. Johnson's nomination represents a unique accomplishment for a career civil servant. I hope the committee will give him every appropriate consideration."

I would ask permission that my full statement be made a part of the record.

Senator SMITH. Without objection.

[The prepared statement of Senator Reid follows:]

STATEMENT OF HON. HARRY REID, U.S. SENATOR FROM THE STATE OF NEVADA

Thank you, Mr. Chairman for holding this hearing this morning. I know the Administration, and in particular, Administrator Whitman, are anxious to get their people in place to help with the important issues ahead.

As many of you know, I have sent a letter to the President and Administrator Whitman informing them that I intend to hold Administration nominations until the radiation standard for Yucca Mountain, including the groundwater standard, is published in the Federal Register.

The proposed Yucca Mountain Repository would be located approximately 90 miles from Las Vegas, Nevada's largest and expanding city. In addition to being home to more than 1.3 million Nevadans, Las Vegas and its neighboring communities draw more than 30 million visitors each year. Contamination of groundwater or the surrounding environment from radiation would create an unacceptable human health risk and would threaten the tourism and recreation-based economy, which provides jobs and important tax revenue to Nevada and its communities.

The NRC must determine whether Yucca Mountain will meet radiation release standards established by the EPA under authority granted by the 1992 Energy Policy Act. The Act requires EPA to set the standards based on, and consistent with, the findings and recommendations of the National Academy of Sciences' "Technical Bases for Yucca Mountain Standards" report. EPA not only considered the report but also public comments received on the report from public hearings as well as additional written comments. EPA also considered previous applicable regulations such as the generic standards for radioactive wastes used at the Waste Isolation Pilot Project in New Mexico.

EPA held public hearings in Nevada and Washington, DC. in October 1999 and had a 90-day comment period in late 1999.

Although the EPA submitted a final rule to the Office of Management and Budget (OMB) in late January 2001, the standards have not been published.

I am concerned that the Nuclear Regulatory Commission and the Department of Energy are attempting to weaken the provisions of the EPA standards through the interagency review. The DOE and NRC are legally responsible for site recommendation and licensing respectively, NOT radiation standards.

There is a clear separation of authority. Through their actions, the DOE and NRC may give the impression that they are seeking to establish limits they believe Yucca would satisfy. This would undermine the public's confidence in the objective, scientific nature of the site recommendation and standard setting processes and set a worrisome precedent for EPA's ability to conduct its statutory responsibilities using sound science.

This standard is not only important to the citizen's of my State of Nevada, it is important for all of us because, under the law, EPA—the Agency responsible for protecting our environment—should be allowed to do just that—protect the environment.

The chairman and I have talked and, at this time, I will not object to reporting nominees from the Environment and Public Works Committee.

I have also talked to Administrator Whitman. I have agreed to support the nomination of Ms. Fisher, who is nominated to be Administrator Whitman's Deputy, because the Administrator agrees with me and has assured me that she will do everything she can to get the EPA standard for Yucca Mountain published.

However, until the standard for Yucca Mountain that represents the best judgment of the EPA—not the NRC or DOE—is published in the Federal Register, I will hold other Administration nominees from moving out of the Senate.

I would like to thank Mr. Holmstead for responding to questions I had before this hearing and would like to ask unanimous consent that the questions and his responses appear in the hearing record at the appropriate place.

We also have some additional information that we have requested Mr. Holmstead to supply to the committee and hope that we can get that information soon and review it expeditiously.

With that, Mr. Chairman, I look forward to hearing from the nominees here today.

Senator REID. I want to say to the nominees we have had an ongoing battle the past several months with setting groundwater standards at Yucca Mountain, the site of the proposed repository for nuclear wastes. I have had a number of conversations with the

Administrator, Governor Whitman, and I last week made an announcement that we as Democrats wouldn't show up at this hearing but I received a call from Governor Whitman indicating that she was unable to do her work because she is understaffed and she needed somebody to help her. As a result of that, we are going to move very quickly on Ms. Fisher and hold up the other three until the groundwater standards are issued. Governor Whitman indicated she could do that.

I say for your families, this is what government politics I guess is all about. There's nothing wrong with it except I'm concerned that the Nuclear Regulatory Commission, the Department of Energy and some in the Administration are trying to weaken the provisions of the EPA standards through the interagency review. The DOE and NRC are legally responsible for site recommendation and licensing respectively, not setting radiation standards.

This is so important that we have even had a vote on a matter in relation to this on the Senate floor. It was vetoed by the President. We had enough votes to sustain the President's veto, so this is a matter of some concern.

I'm confident that Governor Whitman will move this along quickly. In my last conversation with her, I told her I'd just done an interview where I said nice things about her and she said, "That's going to get me in more trouble." So I think I'll say some real bad things about her today and maybe that will help her with getting some things done.

I am impressed with the qualifications of each of the individuals here. I especially appreciate Mr. Holmstead. We had some questions and he had to grant a waiver so that we could get some of this information. It appears none of it is going to be of any consequence but it is something we needed to do to look at these records. We appreciate your cooperation.

Thank you, Mr. Chairman, for your punctuality in holding this hearing. As you know, we had two votes on the education bill, the Elementary and Secondary Education bill today and we are moving now onto the tax bill. I am responsible for helping to manage that, so I will have to depart, recognizing this hearing is important. We are going to do everything we can to move this along with the cooperation of Linda Fisher and Governor Whitman.

Senator SMITH. Thank you, Senator Reid.

For the witnesses and their families' benefit, it is the action of the Senate unfortunately that there are so many things going on and members do come in and out. Sometimes we have two or three committee meetings at the same time. Don't ask why that happens because I don't know but it does and we haven't been able to figure out how to be two places at the same time.

Senator Inhofe?

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

Senator INHOFE. Thank you, Mr. Chairman.

I'll say to the families who are here today that it's extraordinary that we have a lovefest like this. It isn't always the case, it's just that we have such exceptional people. I would repeat everything

good and you and I thank all of you for taking the time to come by and visit personally.

Over the last few years, I've had several serious concerns, including an increase in the volume of the cost of regulations and the diminishing returns caused by regulators chasing smaller and smaller risks at greater and greater costs to businesses and families.

I'm going to mention about four areas and if you will just take some notes and either address these areas in your opening statement or when you respond to questions, or for the record at a future time, maybe when you get back. I would like to have your opinions in all these areas.

The first is transparency. Too often the EPA's regulatory system is slow, sloppy, secretive and they have not done things out in the open. I'd like to make sure we have the opportunity to have the entire public be able to know what's going on, what regulations are out there, what rules are being suggested, and have everyone be heard.

Second is cost of benefit. I think it's time to reframe the debate on environmental regulation by focusing on making smarter decisions to maximize benefits, minimize costs and save more lives. There was a Harvard study not long ago that came to the conclusion that roughly 60,000 lives are lost each year due to the current regulatory system, chiefly because billions of dollars are squandered on eliminating negligible and nonexistent risk while failing to protect the public. I would like to have you take the time to look at this study—we'll be glad to supply it to you from our office—and I'd like to get the response of each of you to that.

Sound science, at our Tuesday budget hearing, I was very encouraged by Administrator Whitman's comments on sound science. She said, "The environmental policy should always be based on the soundest information available." I was also encouraged by her comments regarding the need to realize that "science and public policy proceed along fundamentally different lines. We will continue to use the best available science and scientific analysis to aid the development of environmental policies." Too often we have seen politics, particularly in the previous Administration, used to support the policies as opposed to sound science.

The third general area is regulation through litigation and guidance. The prior Administration bypassed the safeguards of the Administrative Procedure Act which requires Federal agencies to provide opportunities for informed and meaningful public participation. They used such things as interim final rules, guidance documents and policy statements which did not really require any kind of public comment. We want this out in the public, we want to know ourselves but more important we want the public to be aware.

In April, the U.S. Court of Appeals in Appalachian Power v. EPA actually had to strike down an abusive EPA guidance document. The court found, EPA was creating broad new authority through the guidance document; the EPA did intend the guidance document to have a binding effect; and the guidance was illegally issued outside of the APA rulemaking process. Such activities must and will be stopped. The new source review is a good example of this. I'd

like to have you directly address that in one of the three forms that I suggested.

The debate over regulation is not about whether a better quality of life, cleaner air or safety and more productive workplaces is desirable; it's about how regulations affect the quality of life. Are Americans better off or worse off when government regulators intervene?

With that, if you could give me the response either for the record or during the course of this hearing, I'd appreciate it. I feel very fortunate in having four people of your quality and qualifications serving with us.

Senator SMITH. Thank you, Senator Inhofe.

Senator Carper?

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

Senator CARPER. Thank you and welcome to each of you and your families and supporters.

About 3 months ago, we sat here in this room and Governor Whitman sat at that table and we had the opportunity to question her with respect to her nomination as Director of EPA. She and I were Governors of neighboring States for the last 7 years and I have a great deal of respect for her. I said, "You have a reputation of always surrounding yourself with excellent people in New Jersey, not only in environmental areas but in other areas as well." I said, I have no concern if left to your own devices as Director of EPA, you'll surround yourself with excellent people.

My fear which I expressed at the time was that she would not be given free rein in terms of choosing the people who surrounded her. I understand today half the people at this table are people she chose—I'm kidding. I understand she's chosen you all. I have it on good word that you're capable, able, hardworking people.

Ms. Fisher, have you ever been to Ohio?

Ms. FISHER. I was raised there.

Senator CARPER. Ever been to Ohio State?

Ms. FISHER. Yes.

Senator CARPER. A couple members of this committee went to law school and I was an undergraduate at Ohio State. I welcome you and hear very good things about you.

Mr. Johnson, people sing your praises, and Mr. Holmstead, and Mr. Connaughton, I here mostly good things about you. I will be honest, a couple of concerns have been raised and I hope during the course of the hearing we will be able to address any of those.

Having been through a confirmation hearing of my own, I have some idea what you have to go through to be considered. It is an awful process. You're to be commended for being here. We look forward to this hearing and getting to know each of you.

Thank you.

Senator SMITH. Senator Bond?

OPENING STATEMENT OF HON. CHRISTOPHER S. BOND, U.S. SENATOR FROM THE STATE OF MISSOURI

Senator BOND. The chairman mentioned there are conflicting hearings. I may be holding a record this morning. There are four

hearings I'm supposed to attend this morning but it is very important for me to be able to say on the record how impressed I am with the four nominees in front of us. Some of them I have worked with personally over many years and know them well. Others I know them by reputation, by the record they have achieved, by their level of service. I've enjoyed the opportunity to get to know them.

We have very tough tasks set out for you and I'll have some questions. I want to be here for one round of the questions.

I do want to say I'm sorry Senator Reid left. I do appreciate the fact that we could move forward with this hearing. I hope we can move very quickly to confirm all four. As Senator Carper, I have some experience as Governor and it's one thing to be able to appoint the top policy head of a department. That's great, you get all these policy pronouncements but without the people to make it work, you can't get things done that I think Senator Reid and our colleagues on both sides of the aisle want to see done.

This is a critical time in this Administration because many of the departments are sitting there with one head or one plus one and the frogs in their pocket are the we that they talk about. There is such a disconnect when you don't have the folks with responsibility to move the programs forward.

I hope, Mr. Chairman, we can resolve the questions Senator Reid has quickly. I think it can be done more quickly if we had a full complement in EPA.

Thank you for holding the hearing. I appreciate the fact that Senator Reid allowed us to go forward with this hearing.

Senator SMITH. Thank you, Senator Bond.

Let me make one quick announcement. A lot of members do have busy schedules but I'm going to stick to 5 minutes on the first round and then we'll see where we are after that, so we can get through as quickly as possible.

To each of the witnesses, we'll have a light here for a 5-minute summary. Your complete statement will be made a part of the record. If you could summarize in 5 minutes, I would appreciate it.

Ms. Fisher, we'll start with you.

STATEMENT OF LINDA J. FISHER, NOMINATED TO BE DEPUTY ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY

Ms. FISHER. Thank you.

I'm delighted that President Bush and Governor Whitman have invited me to become a member of their environmental team. They are committed to continuing the tradition of a strong environmental program that has marked this country's history for the past 30 years. I am committed to that as well.

The American people are overwhelmingly supportive of a strong government role in protecting the environment. The EPA has met that role with remarkable energy and enthusiasm in the past and I am confident that EPA will continue to serve the American public with distinction under the Bush Administration.

The American public trusts EPA to protect their families, their communities and the land and water and air of our country. I understand the enormous responsibilities that come with that trust

and I will do everything in my power to be sure those responsibilities are met.

As you know, I did serve for 10 years in several management positions at EPA. During that time, I witnessed firsthand the personal dedication of EPA's career staff. I saw the importance of bringing the best science to bear on the difficult policy questions the Agency faces and I saw the critical need for sound, economic analysis to support those decisions.

I also learned the importance of a strong enforcement program and how important that is to the credibility of the entire Agency's programs. I had the opportunity to work in the spirit of collegiality with Members of Congress and I grew to understand the importance of involving all of the public in our decisionmaking. This experience at EPA, and what I took away from it, will help me meet the challenges that face every Deputy Administrator.

At the same time, I understand that the environmental issues we face have evolved since I was here at EPA. Numerous, widely dispersed and small sources of pollution in some places are the cause of the most serious environmental problems. New problems like climate change have moved to center stage. For these new and emerging problems, the Agency's traditional regulatory approaches which were critical to past success might not be the most efficient or effective. For these reasons, EPA is changing too. The Agency today is trying a broader array of regulatory tools to meet new environmental challenges.

For example, over the past decade, economic incentives have proliferated at the Federal, State and local level. Under Governor Whitman's leadership, EPA will expand the use of these tools to help solve ongoing and emerging environmental problems.

For the last several years, EPA has also undertaken a number of pilot projects to test innovative ways of streamlining the regulatory system. State governments as well have tried these new tools. President Bush and Governor Whitman want to shape EPA to meet the environmental challenges of the 21st Century by integrating into the Agency's entire structure and culture new ideas for protecting the environment.

Therefore, over the new few months, we are going to take a hard look at these bold experiments, try to identify what has worked well, what hasn't worked and understand why. Then in partnership with the States, try to integrate where appropriate the most effective new ideas into our programs.

Part of our incentive for incorporating innovation has been driven by the business community itself. More than ever before in our history businesses are recognizing their role as stewards of the environment. They recognize that corporate environmental stewardship and social responsibility are increasingly essential if they are to operate successfully in the global marketplace. More and more businesses today are forming voluntary partnerships not just with EPA and State regulatory agencies, but also with the public through nongovernmental organizations.

Encouraging and strengthening these partnerships with the States, with the public and with the private sector to achieve more voluntary environmental protection will be one of my goals at EPA. If tomorrow's EPA is to fully and successfully incorporate the kinds

of innovations I have mentioned today—innovations like economic incentives and streamlined and flexible and regulatory systems, then tomorrow's EPA employees will need different kinds of training and skills.

Yet today EPA faces very serious human resource issues. For example, about 50 percent of our senior management may actually retire from the Agency over the next 5 years. Developing a diverse and well-trained work force that is prepared to meet new environmental challenges will be one of the most difficult challenges I think Governor Whitman's team is going to face. It is a problem I will be personally involved with resolving.

I would like to say a word about global environment. More and more U.S. companies are operating in the global marketplace. My experience in the private sector working to forge global acceptance of bioengineered agricultural products showed me the global dynamic of many environmental issues we face today. Problems that are as broad as climate change or as focused as pesticide residues are important to virtually all nations and they affect everyone on earth.

How this nation and other nations respond to the environmental issues presented by worldwide economic growth and expanded global trade will directly affect not just our competitiveness but also our ability to protect our global environment. Therefore, we must work in concert with other governments if we are to attain our environmental and economic goals.

During my tenure as EPA Deputy Administrator I will support Governor Whitman as we join in partnerships with countries to solve problems that affect the planet we all share.

Thank you very much. I look forward to working with you and members of this committee as we move forward in the next 4 years. I will be happy to answer your questions.

Senator SMITH. Thank you.

Mr. Holmstead?

STATEMENT OF JEFFREY HOLMSTEAD, NOMINATED TO BE ASSISTANT ADMINISTRATOR, OFFICE OF AIR AND RADIATION, ENVIRONMENTAL PROTECTION AGENCY

Mr. HOLMSTEAD. Thank you.

It is a great honor to be here today as the President's nominee to be Assistant Administrator for the Office of Air and Radiation at EPA. I am pleased to be joined by my wife, my children and my parents.

I sincerely hope that this committee and the full Senate will see fit to confirm me because I am very eager to have the chance to work with Governor Whitman as she starts her tenure as the Administrator of EPA. I believe that with the support of President Bush and this committee, I will be able to help Governor Whitman make continued improvements in the quality of our air, while at the same time making EPA's regulatory programs less burdensome and more cost effective.

Growing up in Boulder, Colorado gave me a great appreciation for the environment and the outdoors. Even so, when I graduated from law school in 1987, I did not plan to spend my career working on environmental problems. After a year of practicing corporate

law, I had the opportunity to serve in the White House under President George Bush, Sr. where I spent most of my time working on environmental issues. At the White House, I soon found that working to find effective ways to protect and improve the environment was more challenging and rewarding than anything else I could imagine.

Ever since, I have focused my career on environmental issues. It is indeed a great honor to be nominated by the President to continue working on the issues of such great interest to me personally and of such vital importance to all of us.

I share Governor Whitman's commitment to protecting the environment and her goal of leaving the environment cleaner than she found it. I recognize that the job for which I am seeking confirmation will present many challenges and many difficult issues, but I honestly believe that we can overcome the challenges and resolve the issues. My optimism comes from the belief that we all share the goals of using good science to identify our environmental goals and developing good policies to achieve those goals cost effectively.

Starting from these shared goals, I hope to have the chance to work with all the stakeholders that care about environmental issues to increase cooperation and decrease the acrimony that has occasionally gone along with these issues in the past. I think we can take pride in the progress that all of us—States, industry, advocacy groups, Congress and EPA—have made in cleaning our nation's air over the last three decades.

Since 1970, when Congress first passed the Clean Air Act, we have come a long way in advancing both the science and the art of environmental protection. Both EPA and the States have become more effective at designing programs to achieve our common goals. As Linda mentioned, we are using more market-based strategies and other flexible regulatory tools. More and more, State and local agencies and environmental groups are working with businesses to solve environmental problems as partners. EPA has been both a partner and often a leader in these efforts.

I believe that EPA can and should do even more. Just because a program gets results does not mean that it cannot be improved. An effort to make a program simpler and more flexible should not be viewed as an excuse to make it less effective. If EPA is open to new possibilities, if we actively seek the best ideas from everyone—our partners at the State and local level, our stakeholders and our staff—we can develop better approaches for protecting and improving our nation's air. If we base these approaches on the best available science and if we focus on results and allow people to find innovative ways to achieve those results, we can continue to improve the quality of our air and make our regulatory programs less burdensome and more cost effective.

If I am confirmed, I will look forward to working with you and your staffs to achieve these goals. Thank you.

Senator SMITH. Thank you, Mr. Holmstead.

Mr. Johnson?

STATEMENT OF STEPHEN JOHNSON, NOMINATED TO BE ASSISTANT ADMINISTRATOR, OFFICE OF PREVENTION, PESTICIDES, AND TOXIC SUBSTANCES, ENVIRONMENTAL PROTECTION AGENCY

Mr. JOHNSON. Thank you.

I am honored and privileged to have the opportunity here before you this morning and to be nominated to serve as the Assistant Administrator for the Office of Prevention, Pesticides and Toxic Substances. As a career civil servant for the last 20 years, it is a privilege and distinct honor to have the support of President Bush and Governor Whitman.

During my brief remarks this morning, I will mention several key priorities and principles that I will pursue if confirmed. Then I'd like to close with a few personal comments.

Given my private sector and EPA experience, I understand the importance of practical and reasonable solutions to today's environmental challenges. If confirmed, I will foster an atmosphere that is accessible and responsive, I will also aggressively promote decisions based in sound science, strive to foster consensus-based and common sense approaches as we advance public health and environmental protection.

As you know, our office's major responsibilities include pesticide and industrial chemical regulation, food safety and pollution prevention. These areas pose enormous challenges as well as opportunities. Important work remains.

Let me mention a few key priorities. Our regulatory oversight of pesticides, industrial chemicals, biotechnology, food safety and pollution prevention will continue to require sustained and dedicated attention. Making sure our decisions our based on sound science will require expertise within the EPA and active participation of the scientific community, including extensive peer review.

I hope to build on the solid progress under the Food Quality Protection Act to reassess the older pesticides, while assuring an abundant food supply.

My office has the additional challenge of addressing the cutting edge issues of biotechnology. I will help ensure that the United States regulatory system is based in science and maintains consumer confidence. This is a key focus.

On the subject of industrial chemicals, voluntary partnerships particularly the high production volume testing program and the children's testing program, will be key priorities as well.

I am committed to strengthening the many voluntary initiatives and to advance pollution prevention, initiatives such as integrated pest management as well as partnerships with many organizations like the American Hospital Association.

I'd like to briefly mention my operating philosophy and principles I will follow if confirmed as Assistant Administrator. These include advancing the best science to support or regulatory decisions; open and regular communication with all our stakeholders—in other words, transparency; building strong and trusting relationships with all stakeholders; working to quickly address the concerns of our stakeholders; establishing partnerships; strengthening those partnerships with our other Federal agencies, particularly the Department of Agriculture, the Food and Drug Administration, our

States and local communities; and within OPPTS to promote professionalism, dedication and diversity within the staff; and truly build human capital that we can all be proud of.

I'd like to close with a few personal observations. My father is a World War II veteran and worked in the Department of the Navy for more than 30 years. He has a strong commitment to public service. Growing up, I always admired his government service. His commitment to public service has helped me appreciate the importance of reaching for excellence in government. I am proud to have the opportunity to continue in that tradition.

I've been fortunate to be able to devote the majority of my career to public service and environmental protection. For me, serving in the government with a goal to help all Americans and their families has been a distinct privilege. When I reflect on the past and consider the future, I know that I will face difficult, complex and serious issues. Having a foundation in sound science, exercising common sense, utilizing cost benefit analysis, coupled with extensive stakeholder participation, I believe will result in quality decisions.

As Assistant Administrator, I hope to achieve national goals with a keen sense of the needs and realities of our individual families and communities. I hope that my service will reflect positively on my children, their everyday choices and the community that each of us lives in.

Thank you for the opportunity to appear before you today. I look forward to working with you on a bipartisan basis to advance public health and environmental protection. I would be glad to answer any questions you may have.

Thank you, Mr. Chairman.

Senator SMITH. Thank you.

Speaking of a bipartisan basis, it is important to point out that you've served Presidents Reagan, Bush, and Clinton thus far in your work and now coming back again to work with another President, so that is true bipartisanship.

Mr. Connaughton?

STATEMENT OF JAMES CONNAUGHTON, NOMINATED TO BE A MEMBER OF THE COUNCIL ON ENVIRONMENTAL QUALITY

Mr. CONNAUGHTON. Thank you, Mr. Chairman.

It is an honor to appear before you and the other distinguished members of this committee.

I am both grateful and honored that President Bush has nominated me to be a member of the Council on Environmental Quality and if confirmed, to appoint me as chairman.

Being a lawyer, I'm going to start with the law and it is an important one, NEPA. When Congress enacted NEPA over 30 years ago and created the Council on Environmental Quality, Congress declared it is the continuing policy of the Federal Government to create and maintain conditions under which man and nature can exist in productive harmony and fulfill the social, economic and other requirements of present and future generations.

Senator John Chafee, one of the greatest environmental statesmen of the Senate, described this quite simply as a tall order but an important one. I agree and fully embrace NEPA's broad policy

objective. It is why I joined the environmental profession and have focused my practice on promoting compliance and innovative approaches to environmental protection.

Environmental stewardship is a family matter in my house. My daughter, Grace, 6 years old, constantly amazes my wife, Susanna and I, with her passion for nature and for conservation. She has wonderful little stickers all over the house telling us to turn off the water and turn off the lights.

Every day my son, Spencer, comes into the room first thing in the morning and says, "OK, Daddy, give me an environmental issue," and then he earnestly and confidently discusses how to address it. Their passion and concern reinforces my own commitment to environmental stewardship. For that reason, I look forward with great enthusiasm to leading CEQ in its core mission, first, to provide objective, well informed and realistic advice to the President, his advisors and the Cabinet about the future direction of environmental police. Second, to coordinate the implementation of environmental programs and resolve policy disputes among Federal agencies, State, tribal and local government and private citizens. Third, to promote a balanced decisionmaking process that accounts for the views of all affected parties.

With respect to these three core tasks, I'd like to highlight three aspects of my background that are particularly relevant to this nomination. The first is the strength of my commitment to serving the public interest. I have an exceptional role model, my father. With the unflagging support of my mother, he spent over 30 years as a clinical professor of child psychiatry working to improve the lot of children and families, often in the most desperate of circumstances, in Baltimore's inner city. I will count myself fortunate if I can bring to government service even a fraction of the decency and dedication to the public good that my father demonstrated every day of his career.

Second, I am a strong proponent of searching for and harnessing the power of consensus in meeting shared environmental goals. I have had the privilege of traveling the world helping to create international standards that promote effective, resulted oriented environmental management and responsible environmental communication. These standards reflect the consensus of hundreds of dedicated professionals from industry, environmental organizations, consumer organizations, government and academia from the U.S. and 50 other countries.

Tens of thousands of organizations today are quietly and efficiently adopting these standards to improve environmental performance. Remarkably, participation in this process and implementation of these standards is entirely voluntary. I have seen firsthand the dramatic results that such voluntary, market driven action can achieve. It is faster, it is cheaper and it works.

Third, I am a forceful advocate and practitioner of environment stewardship where it matters most, at the source. I have spent much of the last 4 years traveling the country helping countries implement what is known as ISO 14001, the international environmental management system standard from Oklahoma City, OK to Ocala, FL, from Detroit, MI to East Liberty, OH, from Windfall, PA to Kingstree, SC, I have worked with business managers and oper-

ators on the factory floor showing them how to integrate environmental obligations into their day to day operational procedures and their long term strategic business planning.

Their efforts are predicated on three fundamental commitments: compliance, prevention of pollution and continual improvement. These hardworking people are the nation's front line in environmental protection. We must do what we can to capitalize on their energy, unleash their creativity and remove obstacles to their success.

President Bush has encouraged Americans to join him in renewing our commitment to protecting the environment and leaving our children and grandchildren with a legacy of clean water, clean air and natural beauty. Embarking on the twenty-first century of environmental quality requires not only reinforcement of what is working but also the zealous application of new ideas and new methods.

If confirmed, I look forward to advancing NEPA's goal of ensuring productive harmony between man and nature, to a constructive dialog with Congress, with Federal, State, tribal and local government agencies and most important, with the public whose trust we all hold.

Thank you.

Senator SMITH. Thank you.

Let me start by asking two questions which we have to ask as part of the committee responsibility. You can answer it together. Are you willing at the request of any duly constituted committee of the Congress to appear in front of it as a witness if requested.

[All witnesses respond in the affirmative.]

Senator SMITH. The record will show all witnesses answered yes.

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

[All witnesses respond in the negative.]

Senator SMITH. The record will show all witnesses answered no.

If each of you could take about a minute and cite for me, starting with you, Ms. Fisher, what you would see as your greatest challenge as you come into that position? I'll give you the parameters of where I would like to go. Many of you have talked about the command control of the past which has worked but I think we are now transitioning into a new role where more and more businesses are becoming good environmental partners. We're talking about good science now, talking about cooperation as opposed to confrontation, market-based initiatives. So I would say as you step into that role, starting with you as the Deputy, what do you see as the greatest challenge for you?

Ms. FISHER. First, we need to recognize that the environmental problems we are going to face are going to need different solutions and we will need to move the EPA staff, as well as the regulated community, toward different kinds of solutions. We are all comfortable with how we have done business in the past and one of our biggest challenges is going to be to learn to address problems differently and in different ways than we have in the past, and to get comfortable with those, although they look and feel different, that may get us a lot of environmental protection.

Second, as I mentioned in my testimony, this issue of the work force, the retirements that we face, identifying people who are coming up through the ranks and reaching out beyond EPA to find others to bring into the Agency that can serve in these very critical positions, is probably the secondmost important priority.

Third is streamlining, the traditional regulatory approach. It has gotten us huge successes in the past as you mentioned, but we are going to have to find ways to make that regulatory system much more flexible, much more nimble if we're going to be successful.

Senator SMITH. Mr. Holmstead in your area of the air, we now see a situation where energy production is a problem, yet at the same time we do have air standards to meet. I might ask you to comment on that particular part in terms of your priority, how you feel about that, where you would go with that issue?

Mr. HOLMSTEAD. I think there are a number of innovative, flexible things that we can do to encourage more energy to come on line sooner and to address the issues that face many of our refineries in terms of the kinds of processes they are currently required to undergo before they can make changes. I think we can look for additional flexibility in terms of the issue of boutique fuels, which to some extent is contributing to the gas prices that we face. These issues are both challenges and opportunities. I believe we can accomplish all of those goals.

Stepping back and talking more broadly, I think the greatest challenge and the greatest opportunity is to work with all of you and your staff to fashion legislation to address multiple pollutants from electric utilities. As you know, the President and the Governor have made this issue a high priority and, therefore, it becomes perhaps my highest priority.

There are a number of very cost effective opportunities to reduce pollutants from electric utilities. Because of the way the process has worked over the years, there's a number of largely uncontrolled plants and I think using the kinds of trading approaches, flexible approaches that have been successful over the past 10 years, there is a great opportunity for the Agency working together with you and others to achieve some very significant reductions in that area.

Senator SMITH. The same question for you, Mr. Johnson, in the pesticide area?

Mr. JOHNSON. I think certainly the greatest challenges that we face deal in some specific areas which I mentioned in my testimony, including implementation of the Food Quality Protection Act and how we reassess these older pesticides, making sure they meet today's standards and particularly are protective of sensitive subpopulations such as children.

A statement Governor Whitman has used that I'd like to refer to is that the mission of EPA has not changed in the Bush Administration. The methods by which we accomplish that mission may change. I think there are a number of opportunities as we move forward both in implementation of the Food Quality Protection Act, as well as dealing with issues of industrial chemicals, issues of biotechnology and others, that we do so in a partnership way.

My program has some excellent experience with partnerships. One we are heavily involved with now is the High Production Volume Challenge Program, a partnership between the American

Chemistry Council, Environmental Defense and EPA, all working together to address an issue where we have a lack of data on some of these industrial chemicals. In a collaborative, voluntary way we are getting that information. We have made the information available to the public. So I think there are those kinds of examples we need to build on.

Senator SMITH. Mr. Connaughton, same question.

Mr. CONNAUGHTON. The challenge for CEQ is one that CEQ has held for 30 years and that is bringing the Federal departments together in a manner where national decisions can be made, in a way that promotes our environmental goals but also now more importantly than ever, also meets our social and economic needs.

The issues that cut across Federal agencies often lead to a pretty robust, extensive and unfortunately lengthy internal Federal dialog before we begin to see action in the country. At the same time, the process often does not give appropriate weight to local input, local needs and the ability and trust that I think we can now, 30 years after the beginning of the modern environmental regulatory age, give to local and State authorities to regain control of the direction in which they want to take their communities.

Senator SMITH. Senator Carper?

Senator CARPER. Several of you in your statements mentioned your parents. I see one or two in the audience who might actually be your parents. Whether you were alluded to or not by your children, particularly those of you who were cited as wonderful role models in public service, I want to say thank you and thank you for raising these children with the kind of values that have led them to this hearing today and to their nomination.

Mr. Connaughton, you spoke of your two children and I think you mentioned you have a little girl who goes around putting up stickers that say turn off the lights and turn off the water. I have two boys, 11 and 12. When I arrived home last night, every light in our house was on. What's her name?

[Laughter.]

Mr. CONNAUGHTON. Her name is Grace and you don't want her in your house because she will tell your boys, "nature is nature is nature," and she knows the connection.

Senator CARPER. Grace, I want some of those stickers to take home.

To the children and your spouses, we thank you for your willingness to share your moms and dads and your spouses with the people of our country.

Mr. Connaughton, you mentioned not only are you being nominated to serve on the Council on Environmental Quality but you might even be its chairman. We have heard some talk that there may be a reorganizing of the Council on Environmental Quality, some change in its composition, its role. Have you heard anything along those lines and if so could you share what discussions you've heard?

Mr. CONNAUGHTON. Actually, I'm not aware of any change in composition in terms of the way CEQ has operated even throughout the Clinton Administration. CEQ's mission is a statutory one. Also its mission of interagency coordination and advice to the President is a necessary one. It is my understanding, based on con-

versations with the Administration in preparing for this hearing, that it is also an intentional one for the Administration. The idea is to continue to maintain CEQ as an important center for communication and dispute resolution within the Federal agencies and to ensure that the President has close at hand substantive environmental policy advisors who can help him and the Cabinet and his advisors in the White House, and ensure that environmental considerations are integrated into public policy decisionmaking.

Senator CARPER. Ms. Fisher, during the last Administration, those of us who live on the Delmarva Peninsula worked closely with your predecessor and with Governor Whitman's predecessor on the issue of water quality. I live in a State where there are 300 chickens for every person and there are downstream consequences for all those chickens. Historically our farmers have used the chicken nutrients to fertilize our farm fields. We face a situation today where we have about a third as much farmland as we had in 1960 over which to spread the nutrients and about three times as many chickens. The problem is we have too much nutrients, too much phosphorous and are concerned about runoff into waterways and ultimately into the Chesapeake Bay.

I had a great opportunity to work with EPA over the last couple of years where it said to States, we'll let you figure out how to meet the standards. We want to set high standards, cleanup our waterways, reduce runoff, but we'll work closely with the States. I want you to know a little of the history of that and ask you to comment philosophically on how you would be inclined to come at it.

We find if you go to the folks closest to the problem sometimes they have a pretty good idea how to fix it. I have found that farmers, for the most part, are pretty good conservationists. What we have tried to do in our State is to empower them to come up with solutions. For example, we have called for development of nutrient management plans for each of our farmlands. We've not mandated it but have asked it to be a voluntary activity. In one of our neighboring States, they made it a mandatory activity.

In a year in my State, close to 100,000 acres of farmland now have voluntary nutrient management plans. In our neighboring State, I am told none. It says volumes about what you can get done when you involve the people on the ground in this case in addressing that. Would you give me your take on that? By the way, Mike McCabe was the EPA official who worked directly with us and very closely.

Ms. FISHER. I had lunch with him a few weeks ago as I was embarking on this new opportunity at EPA to learn from his experiences.

I think you have identified an area where many of the agricultural pollution problems we face are not going to lend themselves to the typical EPA approach of command and control regulation. We have found in the past that working in partnership with the States and the farm community can be very helpful in identifying as you suggest the most efficient and effective ways of protecting the environment. I think particularly with sectors of the economy that aren't used to environmental regulation, a cooperative approach and one closer to the people frequently work a lot better.

I have not heard particularly what happened in Delaware but I'll definitely look into it. I think what you described sounds like the model for how we are going to have to deal with many of our emerging problems.

Senator CARPER. Thank you.

May I ask indulgence to ask a question on behalf of Senator Reid? It's a yes or no question.

Senator SMITH. All right.

Senator CARPER. This is for Mr. Holmstead. In the pre-hearing questions I think you responded to, Senator Reid asked if you supported the revised national ambient air standard quality for ozone and PM 2.5 as published in 1997? His question is either a yes or no answer, do you?

Mr. HOLMSTEAD. The short answer is yes.

Senator CARPER. That's a great answer.

Senator SMITH. Senator Inhofe?

Senator INHOFE. As I listened to your opening statements of the five concerns that I had, I think most of you covered most of them. Just so we don't overlook them, would you mind responding to each for the record. Mr. Johnson, I think you covered all of them but I'd like to get it all down so we'll be able to refer to it at a later date.

There is a chart here that we've put together. I have been concerned that so much discussion has taken place during this time of energy crisis as to what is causing the cost and the shortages. A recent report entitled, "The U.S. Downstream, the EPA Takes Another Bite Out of America's Fuel Supply," by Merrill Lynch concluded that EPA's clean air regulations "will clearly have the impact of reducing existing U.S. refinery capacity."

As we've gone through these hearings in the past few years with the recognition that we are at nearly 100 percent refinery capacity, it's very difficult to come to any conclusion other than many of these regulations play a part in this. I would ask a commitment of you folks that when you're promulgating rules and talking about rules that you will consider the energy ramifications those rules might provide.

For the record, they all nodded yes.

Mr. HOLMSTEAD. Senator, if I might add, I believe the President's energy advisors have actually advised that he issue an Executive Order that specifically requires us to consider the energy impacts of any regulations we develop.

Senator INHOFE. There has another area that hasn't been covered and one that I feel very strongly about. A statement was attributed to Administrator Browner when she left office saying "At least I won't have to hear Inhofe's Jimmy Dunn story anymore." Well, we are going to hear it one more time.

Back in 1994 or 1995, I can't remember which, I got a call from a guy named Jimmy Dunn. I happen to know him very well and have known him for many years. He is a third generation of Mill Creek Lumber in Tulsa, Oklahoma. It is a very competitive industry. It was in 1994 because I was still in the House at that time. He said, Inhofe, the EPA has just put me out of business. I said, what did you do wrong? He said, I don't know what I did wrong, I've been giving my used crankcase oil to the same contractor for the last 10 years. He's a contractor licensed by the Federal Govern-

ment, by the County of Tulsa, by the State of Oklahoma. They traced some of this to the Double Eagle Superfund site and I got a letter from the EPA saying they are going to fine me $5,000 a day. I said, fax the letter to me. He faxed it and it's very carefully worded to inflict terror on people.

I say this in a very serious vein because I spent 30 years in the real world many times being abused by the bureaucracy myself so I know what it's like to be on the receiving end of a bureaucracy that has no limits in terms of resources to expend to go after someone. When you casually read this, you would assume you would be fined that amount.

As it turned out, it didn't happen but I've often wondered how many Jimmy Dunn's are out there that never wrote a letter or made a phone call to a Member of Congress to someone who is accountable to the public? You're going to have to talk to people in your departments, people answering to you, that there is going to be a new attitude in responding to the public and recognition that we, the four of you and us at this table, actually work for the public and keep in mind they are the ones paying for all this fun. I'd like to ask you to make a conscious effort to do that. If we do get letters, I won't be shy about reading them in these public hearings.

Thank you.

Senator SMITH. Senator Clinton?

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

Senator CLINTON. I'm always relieved that there is only one Jimmy Dunn story. I don't mind hearing it over and over.

Senator INHOFE. Oh, no, I've got a lot more.

[Laughter.]

Senator CLINTON. As often as Senator Inhofe has told it, I would imagine there would be a lot more stories he could add to it. The point is very well taken. Obviously we are looking to enforce our laws in a conscious manner and in a way that brings people together around the goals we share, not to drive people apart or inflict terror on anyone. We want to end up with a cleaner environment for our children, especially as beautiful children as are here today.

I think the objective that all of us on this committee share is certainly one I heard echoed from each of you. I commend you for being willing to take on the responsibilities that each of you has signed up for and look forward to working with you.

I had a couple of specific questions. The first are for Mr. Holmstead. In response to questions with respect to the current enforcement actions against certain power plants, you have stated, and I agree 100 percent, that the EPA should set clear standards and then vigorously enforce them.

I'm interested in your reaction to a recommendation that appears in the energy policy document that the Administration has issued today that the President direct the Attorney General to review existing enforcement actions regarding new source review to ensure the enforcement actions are consistent with the Clean Air Act and its regulations.

You probably know New York has brought some of those enforcement actions out of frustration. We are the recipient of a lot of pollution from elsewhere and are looking for a way to work with our neighbors in the Midwest to try to end that and give them the support they need to be able to do that.

Given your new position, do you believe these enforcement actions are consistent with the Clean Air Act and its regulations?

Mr. HOLMSTEAD. I know that those enforcement actions have been controversial and some companies have claimed there was somehow a change in the criteria used. I have to say that never was involved in any of those cases and I really don't know exactly what the criteria are. I know that a lot of very smart and conscientious people at the Agency believe those are fully justified. I have no reason to question that.

I'm also aware of the President's recommendation that the Department of Justice take a close look to make sure they are consistent with the Clean Air Act and I will obviously be supportive of that effort. I have no idea how this review may come out, but I expect it will be completed fairly quickly.

Senator CLINTON. I appreciate that and your personal attention to it is very welcome.

Following up on that, acid rain has been a particular problem in the northeast. It is something that affects the chairman's State and my State and is a real challenge we are trying to deal with but we can't do it in our States. There is no way New Hampshire and New York can control the acid rain because we don't generate it. The wind patterns obviously bring it to us.

There is a very specific issue that I'm concerned about and that is whether or not you support the NOx SIP Call and whether you support a Federal requirement to make the NOx SIP Call annual as opposed to only governing the 5-month ozone season. Do you have any response to that?

Mr. HOLMSTEAD. I—and anyone I think who believes in cost-effective regulations—believe that the NOx SIP Call is a very effective way to reduce not only the problem of acid rain but other problems as well. As you know, NOx is a significant contributor to ground level ozone and to fine particulates and other things. I have to say I have not thought a lot about whether the NOx SIP Call should be an annual program.

The President and Governor Whitman, and others, have made it clear that having a multi-pollutant bill is a high priority. As you know NOx is only one of the casues of acid rain. The primary cause is SO_2. We recently entered the Acid Rain Trading Program under Title 4, and it will be fully implemented by the year 2010. So those emissions will continue to decrease over the next 9 years. I think it's pretty clear that we can and we should do more cost effectively; but under our current Clean Air Act authority, we have no other mechanism for getting additional SO_2 reductions.

So I look forward to working with you and others to develop a multipollutant bill that would further address that issue.

Senator CLINTON. I am so pleased to hear that. I think this committee in a bipartisan way can produce a multipollutant bill that would take care of NOx, SO_2 and mercury. We obviously have disagreements about carbon dioxide but it certainly would add to the

ability of all of us from the Federal and State perspective to be able to control the acid rain problem.

I have a quick question for Mr. Connaughton. I thank you for literally talking with me on the run yesterday. One thing I haven't gotten used to is I set an appointment, then I have to go vote, and run down the hall with a nominee running with me to be able to have a conversation. I appreciate that.

Mr. CONNAUGHTON. I like dynamic conversations.

Senator CLINTON. That was dynamic and I was impressed you weren't winded.

I want to make clear for the record something you and I talked about yesterday which you graciously provided in a letter dated May 4 with respect to your previous representation of General Electric. I want to be sure I understood that you will recuse yourself, not just for one year but a full recusal for the time of your service on decisions related to the Hudson River PCB cleanup where General Electric is a responsible party. Is that correct?

Mr. CONNAUGHTON. That is correct, Senator.

Senator CLINTON. What about other matters in which GE is involved or other previous clients? Will that similarly affect your recusal policy?

Mr. CONNAUGHTON. In preparing for this hearing, I worked very closely with the Office of Government Ethics. They evaluated all the matters that I worked on and we prepared the letter you saw on May 4. I think there were six or seven particular matters where the full recusal was described. We wanted to do that before this hearing so there would be no question about that.

Then as we move forward, I have committed and will live up to the ethics laws. CEQ typically doesn't get into the particular details in these matters, so it would be very unusual for any of those kinds of conflict scenarios to arise, but certainly I'll be exercising appropriate prudence and an abundance of prudence. It does not serve either the President and the Federal Government nor outside stakeholders to create appearances of conflict where it is not necessary. The goal is to advance environmental policy.

Senator CLINTON. Thank you, Mr. Connaughton.

Senator SMITH. Senator Bond?

Senator BOND. A few general comments. If anybody would like some more Jimmy Dunn stories, we can provide them. Missouri is full of them and don't think just because we don't take up the time that they aren't there. We're happy to supply them at your request.

Second, the discussions brought to mind one of the guiding principles that Administrator Whitman has set forth and that is to use sound science. Acid rain particularly floats my boat because I was one who worked with Senator Byrd on the acid rain trading system to cram through the acid rain provisions in the Clean Air bill. It was done in a hurry to make sure that law was in place prior to the completion of the multiyear, $1 billion NAPAP study, National Acid Precipitation Assessment Project which determined that frankly all the cost and burdens that were put forth in those particular provisions on clean air, were excessive and perhaps much of the benefit could be achieved by putting lime in 26 lakes in the northeast. Whether the science has changed or not, I think the precedent that this Congress adopted at the urging of the Adminis-

tration and with the leadership of some in Congress of moving prior to getting the science is precisely the kind of effort we don't want to see. We don't want EPA doing that and I hope you would help rein us in prior to making similar precipitous moves in the future.

There has been a lot of discussion about the National Energy Policy and I guess since 10:45 a.m. has now come and the President has officially released it, I was reading through the recommendations. It looks like EPA has a big chunk of the pizza pie that's come out. I was particularly interested, Mr. Connaughton, in Chapter 3, the NEPD Group recommends the President issue an Executive Order to rationalize permitting for energy production in an environmentally sound manner by directing Federal agencies to expedite permits and other Federal actions necessary for energy-related project approvals on a national basis.

An interagency task force is to be chaired by CEQ to ensure Federal agencies responsible for permitting energy related facilities are coordinating their efforts. I assume this doesn't come as a surprise to you. Do you have any feelings at this point as to the direction or the possible benefits in terms of energy supply that might come from such a rationalization?

Mr. CONNAUGHTON. I too recently learned. I have not yet seen the policy but anyone reading the school newspaper we all read knows that was coming.

I look forward to taking on that challenge. It is an important one for our economy and at the same time, it is important that we meet the goals of NEPA in ensuring that it's done in an environmentally responsible way. To me this is mainly a process issue; it is not an environmental issue, per se, internally, but certainly externally getting new energy supplies up and on line has an environmental dimension. Generally, newer is cleaner. Getting our old infrastructure replaced in an effective and timely way I think promotes not just our economic good but also our environmental good.

In terms of the process, it's going to be daunting. There are numerous Federal agencies with numerous responsibilities in any of these kinds of initiatives. I am a very goal oriented person. In the time I have spent running around the country and other parts of the world with very large organizations, we have had our greatest success when we defined a goal and then reached consensus on process. I find that is a very effective way of making things happen fast.

I'm hopeful with the authority provided under NEPA, and with close cooperation of the folks internal to the Government but as importantly external stakeholders, we can see real results in terms of streamlining.

Senator BOND. I suggest once you have an opportunity to review this document, you will be further daunted because CEQ obviously is going to play an important role as it should as will the Environmental Protection Agency.

I'd like to turn to Linda Fisher for another particular area of great interest to me and that is infrastructure development and maintenance. We think it is imperative for this country, highways, runways, waterways, pipelines, power plants, not just for convenience and economic growth but good highways in Missouri mean

saving lives. We kill people on inadequate highways where we are not able to build highways.

Today, it can up to 8 to 10 years to go through the process for a highway project, 10 to 15 years to build a runway for an airport. I think that is unacceptable. We all want sound environmental protections based on science and common sense. We need to build, modernize and maintain our infrastructure because, as Mr. Connaughton said, newer is usually safer. I think EPA can do more to streamline and coordinate the efforts.

What recommendations would you have and how can EPA take steps to ensure that the environmental goals and protections mandated are observed but we can move these projects to get the infrastructure we need?

Ms. FISHER. I think EPA has actually already started a process with CEQ to look at the permitting issues raised or presented by some of the infrastructure improvements and expansions, particularly in the transportation sector. It's an area that has been identified for the Agency and they have already begun to see what they can do to make streamlining changes.

Senator BOND. Thank you, Mr. Chairman.

Senator SMITH. Do you have any further questions, Senator Bond? I'd be happy to yield.

Senator BOND. I appreciate your indulgence. I wanted to ask a quick question to Mr. Johnson. I'm very impressed with your record of service.

I would like your assessment on whether you feel the food safety laws that you have, FDA has, and USDA has, provide adequate authority and responsibility to understand and consider and make approval or disapproval decisions on new products produced with modern biotechnology?

Mr. JOHNSON. I believe the laws we have and the framework the Government has, and certainly the role of the Department of Agriculture and the Food and Drug Administration and EPA, is a sufficient regulatory framework to carry out our responsibilities to ensure that this type of technology is advanced, is promoted and at the same time that we can assure complete public health and environmental protection.

Having said that, it is an area of rapidly evolving science and it is one that there are new science issues that confront us each and every day. So I believe it really calls on each of us, both at EPA, USDA and FDA, to make sure we have a very close, coordinated working relationship and to make sure that while the laws are adequate, we need to make sure there is close cooperation to ensure we are making the right decisions.

I think certainly we have taken a number of steps. In fact, there is a senior Ag biotech advisory committee that is Cabinet level. A number of the Secretaries, including Governor Whitman, sit on it to oversee and help ensure we have that close coordination.

Senator BOND. The process is working now though?

Mr. JOHNSON. So process is working now, correct.

Senator BOND. I can't leave without putting on my small business hat to ask Linda Fisher if she's familiar with the provisions of SUBRA, the Red Tape Reduction Act, which requires that EPA convene panels to consider the impact on small businesses and how

the goals of a particular regulation can be achieved with minimal impact on small businesses that might otherwise be unnecessarily hindered without achieving any greater environmental benefit. Are you familiar with that process and do you agree to support it and ensure its terms are met?

Ms. FISHER. Yes, Senator, I am familiar with it. It is one of the laws passed since I left government. I have been briefed on it and do intend to support it and ensure it is properly implemented at EPA.

Senator BOND. As the author of the law, we'd be happy to help you. We have some people who are available if you have any questions about it. We look forward to working with all of you on that.

Thank you again, Mr. Chairman, for your indulgence.

Senator SMITH. Thank you, Senator Bond.

I want to thank all of the witnesses for being here. I must say your parenting is obviously done very well. All these young children and we haven't had any eruptions or problems at all. I complement you on that.

I want to make a couple of closing announcements. I do have a business meeting scheduled for next Wednesday, the 23d at 9:30 a.m. to move your nominations from the committee to the floor. Largely because of the impending Memorial Day recess, I want to report these nominees at that meeting.

It is my understanding that all the nominees have made themselves available to each of the members and their staffs and at least one has already received and responded to some 30 or so written questions. Any additional written questions that may be offered would be due by noon tomorrow and if those questions are received, they will be provided to you. If you can get those back to us in writing by noon Tuesday, the 22d, we will be ready to report you out the following day on Wednesday.

That is all we have at this time. Thank you to each one of you for being here.

The hearing is adjourned.

[Whereupon, at 11:15 a.m., the committee was adjourned, to reconvene at the call of the Chair.]

[Additional statements submitted for the record follow:]

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

Mr. Chairman, I want to thank you for holding this nomination hearing so quickly. I think it is important for us to move these nominees and confirm them.

I know a lot of members have a number of issues with different programs at the Agency, and right now we only have one Senate confirmed person over at the EPA and that is Administrator Whitman. Many of the issues that members are raising would best be addressed through the oversight process so I believe we should confirm these people as quickly as possible and hold as many Oversight Hearings as we need. It makes no sense to continue to beat up on an agency with only one nominee in place.

I am thoroughly impressed with the caliber of today's nominees.

Linda Fisher, Deputy Administrator of EPA—I have been impressed with Ms. Fisher for a number of years, in fact I tried to get her to come back to Ohio to be the head of the Ohio EPA when I was Governor. With her experience at the EPA I believe she will make a great Deputy.

Jeff Holmstead, Assistant Administrator for Air—I met with Mr. Holmstead yesterday and I was impressed with his experience. He worked on the Clean Air Act Amendments of 1990 in the first Bush White House so I know that he understands the issues and has a lot to contribute.

Steve Johnson, Assistant Administrator for Prevention, Pesticides, and Toxic Substances—Mr. Johnson is a career EPA employee and I think it's great that the President nominated him for this position. As I have stated before I am very concerned about the Human Capital Crisis in the Federal work force. Nominating a career employee sends a very positive message that excellence in government is rewarded. That's a positive message we need to send to attract high caliber recruits into the work force.

Jim Connaughton, Member of the Council for Environmental Quality—Mr. Connaughton brings excellent credentials including his voluntary work with the ISO–14,000 process which are the international environmental compliance standards. In that capacity I understand he has worked with over 60 different business sectors, environmental groups and international countries, reaching consensus. This is exactly the type of job skill needed at CEQ. You need someone who can problem solve with multiple parties.

I think the President has made four excellent choices for these important positions. The major issue which I would like you all to address is how we deal with the Human Capital Crisis in the Federal work force. I would like suggestions from you on how we can better attract top candidates and an understanding of how the problem affects the EPA.

Ms. Fisher, specifically I would like you to address an issue with the SES (Senior Executive Service) employees. We have a lot of talented and dedicated employees who have been in their jobs for a number of years. I know the SES program recommends that senior managers rotate their jobs, I believe every 5 years. I would like you to look into this and see when it was last done. It is a good way of relieving job boredom and it provides managers with an opportunity to spread their skills across the Agency and creates a more vibrant workplace.

I look forward to working with all of you and I hope we can get you confirmed as quickly as possible. Thank you Mr. Chairman.

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

Thank you Mr. Chairman. I would like to thank the nominees and their families for being here today.

As I'm sure you know, the Environmental Protection Agency is very important to my State. And, for the most part, I think the EPA has done a good job partnering with the people in Montana. I'd like to continue that trend with the present administration. My No. 1 concern, of course, is the health and safety of the people of my State and the nation. And that concern goes hand in hand with protecting our environment.

Our industrial history has left Montana with a legacy of contamination, from acid mine drainage to asbestos. The clean-up of Montana's sites has been a tremendous financial and technological challenge, costing hundreds of millions of dollars. We've had some terrible tragedies as well. Hundreds of people in Libby, Montana have become sick or died because of their exposure to asbestos. This asbestos originated at a vermiculite mine nearby. Workers brought the dust home on their clothes, mine waste was used at the local high school track. Per capita, more people have been diagnosed with asbestos related diseases in Libby than anywhere else in the country. In short, Libby, Montana has become one of the worst industrial disasters in the history of the nation.

It's my top priority to ensure the residents of Libby get the help they need to make their homes and community safe for them, their children and their grandchildren. And, to make sure that this type of disaster never happens again in this country. I want the EPA to be able to effectively protect people from the hazards of asbestos, and other toxic substances.

EPA is currently conducting assessments of the indoor air levels of asbestos in Libby homes, many of which have asbestos insulation that originated at the Libby mine. I encourage EPA to thoroughly investigate the potential danger posed by this type of asbestos insulation in homes. Libby residents, and people from across the country who have homes insulated with same type of asbestos, are understandably concerned that their insulation may be increasing their exposure to harmful asbestos fibers. I will be very interested to see the results of EPA's assessments, and to discuss further with the Agency the potential impacts of those results, both on public health and on possible removal efforts.

I know not all of the nominees here today are involved in this issue, but I wanted to stress its importance to me and my State, and the nation. I will be interested to hear your views on this subject, and others, such as pesticide harmonization and

natural resource damages. I thank you for your time, and I look forward to working with all of you if you are confirmed.

STATEMENT OF LINDA FISHER, NOMINEE FOR DEPUTY ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY

Mr. Chairman, and distinguished members of this committee. I have the honor and pleasure to appear before you today as the nominee to be EPA's new Deputy Administrator. I am delighted that President Bush and Governor Whitman have invited me to become a member of their environmental team. I believe I am uniquely qualified to support that team, and contribute to the environmental and human health improvements that are a major goal of the Bush Administration.

President Bush and Governor Whitman are committed to continuing the tradition of strong environmental progress that has marked this country's history for the past 30 years. I am committed to it as well.

The American people are overwhelmingly supportive of a strong government role in protecting the environment. The Environmental Protection Agency has met that role with remarkable energy and enthusiasm in the past, and I am confident EPA will continue to serve the American people with distinction under the Bush Administration. The American public trust EPA to protect their families, communities, and the land, air, and water where they live. I understand the enormous responsibility that comes with that trust, and I will do everything in my power to make sure those responsibilities are met.

To this end, I believe my previous experience at EPA will be of great benefit. As you know, for 10 years I served in several management positions at EPA. During that time I witnessed first-hand the personal dedication of EPA's career staff. I saw the importance of bringing the best possible science to bear on difficult policy questions. I saw the critical need for solid economic analysis as a bedrock support for environmental decisions. I learned the importance of a strong enforcement program to the credibility of the Agency's programs. I had the opportunity to work in a spirit of collegiality with Members of Congress in order to attain our shared environmental goals. I grew to understand the importance of involving the public in our decisionmaking. This experience at EPA—and what I learned from it—will help me meet the challenges that face every EPA Deputy Administrator, and will help me provide more capable service to Governor Whitman, President Bush, and most important to the American people.

At the same time, I understand that environmental issues have evolved a great deal since I left EPA. Numerous, widely dispersed, and smaller sources of pollution are in some places the cause of the most serious environmental problems. New problems, like climate change, have moved to center stage. For these new and emerging problems, the Agency's traditional regulatory approaches, so critical to bringing about past successes, may not be the most efficient or effective response.

For these reasons EPA is changing, too. The Agency today is testing a broader array of regulatory and non-regulatory tools to meet new environmental challenges. For example, over the past decade environment-related economic incentives have proliferated at the Federal, State, and local levels. Whether they take the form of environmental fees and charges, deposit-refund systems, marketable permits, information systems, or other voluntary programs, economic incentives have shown that they can make a unique, effective, and low-cost contribution to the nation's environmental efforts. Under Governor Whitman's leadership, EPA will expand the use of economic incentives to help solve both ongoing and emerging environmental problems.

For the last several years EPA also has undertaken a number of pilot projects to test innovative ways of streamlining the regulatory system, making it more flexible, and cutting red tape. State governments as well in New Jersey, for example have taken the lead in testing promising new ways of controlling pollution from point sources. President Bush and Governor Whitman want to shape EPA to meet the environmental challenges of the 21st century by integrating into the Agency's whole structure and culture the best new ideas for protecting the environment. Therefore, over the next few months we're going to take a hard look at these bold experiments, and identify what works, what doesn't work, and why. And then in partnership with the States, we will integrate, where appropriate, the most effective ideas throughout our programs.

Part of our incentive for incorporating innovation throughout EPA is being driven by the business community, which like EPA is also changing to meet the challenges of the future. More than ever before in our history, many businesses are recognizing their role as stewards of the environment. They recognize that corporate environ-

mental stewardship and social responsibility are increasingly essential if they are to operate successfully in the global market place. It is important to attracting the best employees, it strengthens their relationships with their communities, and it builds a more positive relationship with their customers and shareholders. More and more businesses today are forming voluntary partnerships not only with EPA and State regulatory agencies, but also with non-governmental organizations, here and abroad. Encouraging and strengthening those partnerships with the public, with the States and with the private sector to achieve more voluntary action, will be one of my goals at EPA.

If tomorrow's EPA is to fully and successfully incorporate the kinds of innovations I've mentioned today innovations like economic incentives, streamlined and flexible regulatory systems, and voluntary partnerships , then tomorrow's EPA employees will need different kinds of skills and training. Yet EPA today is facing serious human resource issues. For example, 50 percent of our senior leadership may retire within the next 5 years. Developing a diverse, well-trained work force that is well prepared to meet new environmental challenges with a broader array of creative, more flexible tools, may be one of the most difficult problems facing our new management team at EPA, and one that I intend to be personally involved with.

I would like to say a final word about the global environment. More and more, US companies are operating in the global market place. My experience in the private sector, working to forge global acceptance of bioengineered agricultural products, showed me the global dynamic of many environmental issues today. Problems as broad as climate change and as focused as pesticide residues are important to virtually all nations, and they affect virtually everyone on earth. How this nation and other nations respond to the environmental issues presented by worldwide economic growth and expanded global trade will directly affect not only our competitiveness, but also the quality of our global environment.

Therefore, we must work in concert with other governments if we are to attain our mutual environmental and economic goals. During my term as EPA Deputy Administrator I will support Governor Whitman and the rest of EPA as we join in partnership with countries to solve problems that affect this precious planet that we all share.

Thank you very much. I will be happy to answer any questions you may have.

UNITED STATES SENATE

COMMITTEE ON ENVIRONMENT
AND PUBLIC WORKS

ROOM 410 DIRKSEN BUILDING WASHINGTON, DC 20510

INFORMATION

REQUESTED OF PRESIDENTIAL NOMINEES

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

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

Name of Nominee: LINDA JANE FISHER

Business Address: EPA, 1200 Pennsylvania Avenue, NW
Washington, DC 20460

Business Phone: (202) 564-4711

Home Address: 3225 Idaho Avenue, NW
Washington, DC 20016

Home Phone: **(202) 364-0554**

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

Name: FISHER (Last) LINDA (First) JANE (Middle)

Position to which nominated: DEPUTY ADMINISTRATOR, EPA

Date of Nomination:

Date of birth: 26/06/52 (Day) (Month) (Year) **Place of birth:** Saginaw, Michigan

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

Name and ages of children: Kelly 6

Keenan 7

Education:

Institution	Dates attended	Degrees received	Dates of degrees
Miami Univ	1970-74	BA	1974
George Washington Univ	1976-78	MBA	1978
Ohio State University	1980-82	JD	1982

Employment record:

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

1974-76 Congressman Clarence J. Brown R-OH Legislative Assistant

1976-1980 Cong. Ralph S. Regula/Budget Comm. R-OH Legis. Assistant

1981-1983 Chester Hoffman Wilcox Clerk

1983-1993 U.S. EPA

Employment record—continued

- Special Assistant to Assistant Administrator - OSWER
- Chief of Staff - Administrator Lee M. Thomas
- Assistant Administrator - Office of Policy, Planning and Evaluation
- Assistant Administrator - Office of Pollution, Prevention and Toxic Substances

1993 - 1995 Latham & Watkins Washington, DC "Of Counsel"

1995 - 2000 Monsanto Company Washington, DC VP for Government Affairs

Honors and awards:

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

EPA Award for Sustained Outstanding Contributions to International Environmental Protection (formerly the Fitzhugh Green International Award) - 1991

EPA Outstanding Service Award - 1984

Memberships:

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

Organization	Office held (if any)	Dates
Ohio Bar		1983 - Present
D.C. Bar		1988 - Present
The Keystone Center	Trustee	1993 - 2000
Washington Golf & Country Club		2001

Qualifications:

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

I am very honored to be asked by President Bush and Administrator Whitman to serve in the position of Deputy Administrator. EPA is an Agency that carries huge responsibility in protecting our environment. It is an Agency that Americans trust and count on to ensure the safety of their food, and the cleanliness of their air and water. I take that trust very seriously.

I bring to this position a career dedicated to environmental public policy issues in both the public and private sector. Because I had the distinct privilege of serving for 10 years at the U.S. Environmental Protection Agency, I have had an opportunity to understand how the Agency works, and to appreciate the significant role the Agency plays in protecting the Nation's environment and resources and the impact it can have on many sectors of our economy. I have also learned how important it is to have sound science and public involvement as the basis of our decision making.

During my years in the private sector, I worked for a large multinational involved in the controversial business of agricultural biotechnology. This gave me an opportunity to better understand the impact global environmental issues can play in the marketplace, and the critical importance of working with stakeholders to achieve successful outcomes to policy issues.

With the consent of the Senate, I look forward to serving as Deputy Administrator at EPA. I believe that both my experience at the Agency and in the private sector will help me be successful in this capacity. Both of these experiences have given me a unique insight which will make me a more effective leader at EPA.

Future employment relationships:

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

I will continue to have connections with Pharmacia as outlined in the Financial Disclosure submission.

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

NO PLANS

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

NO

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

This is not a fixed term

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

NO

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

Chief of Staff - Position listed below came available

AA for OPPE - Change of Administration; reassigned to OPPTS

AA for OPPTS - Change of Administration

Financial Statement:

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

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

SEE SF-278

2. Are any assets pledged?

Yes, shares of Pharmacia stock are held by Pharmacia as collateral against the loan listed in SF-278. The shares will be sold and the loan paid off as set forth in SF-278 and ethics agreement.

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

NO

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

YES

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

NO

Potential conflicts of interest:

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

SEE SF-278 and Ethics Agreement

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

SEE SF-278 and Ethics Agreement

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

As an attorney (1993-1995) I represented a few clients before the Agency. These relationships have been terminated for 6 years. While at Monsanto, I worked with the Office of Pesticides on biotech and agricultural chemical issues including serving on the Agency's TRAC (Tolerance Reassessment Advisory Committee)

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

SEE SF-278 and ETHICS AGREEMENT

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

SEE ATTACHMENTS

Political affiliation and activities:

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

Leadership PAC for Senator Christopher Bond

Leadership PAC for Senator Richard Lugar

Chair of Monsanto PAC

See attached FEC list of contributions

Published writings:

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

I have spoken at ABA Conferences on various environmental issues. I testified before the Senate Finance Committee on biotechnology and trade. While at EPA, I testified numerous times before this Committee, Senate Agriculture Committee, Senate Health, Education, Labor and Pensions Committee, House Commerce, House Agriculture, House Government Operations.

Co-authored "New Solutions for Old Environmental Problems" in Environmental Strategy America 1995-96; the TSCA Handbook, with several lawyers from Latham & Watkins.

Member of the Independent Review Board of the President's Committee of Advisers on Science and Technology

Additional Matters:

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

NO

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

YES

3. Having completed this form, are there any additional questions which you believe the Committee should ask of future nominees?

NO

AFFIDAVIT

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

Subscribed and sworn before me this 9th day of MAY, 2001.

Notary Public
FRANCIS P. BONDS
NOTARY PUBLIC, DISTRICT OF COLUMBIA
My Commission Expires 31 August 2001

United States
Office of Government Ethics
1201 New York Avenue, NW., Suite 500
Washington, DC 20005 3917

May 4, 2001

The Honorable Robert C. Smith
Chairman
Committee on Environment and Public Works
United States Senate
Washington, DC 20510-6175

Dear Mr. Chairman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by Linda J. Fisher, who has been nominated by President Bush for the position of Deputy Administrator, Environmental Protection Agency.

We have reviewed the report and have also obtained advice from the Environmental Protection Agency concerning any possible conflict in light of its functions and the nominee's proposed duties. Also enclosed is a letter dated May 1, 2000, from Ms. Fisher to the agency ethics official, which discusses Ms. Fisher's commitments with respect to divestitures and recusals. Unless a specific date has been agreed to, the nominee must fully comply within three months of her confirmation date with the actions she agreed to take in her ethics agreement.

Based thereon, we believe that Ms. Fisher is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

Marilyn L. Glynn
General Counsel

Enclosures

OGE - 106
August 1992

RESPONSES BY LINDA FISHER TO ADDITIONAL QUESTIONS FROM SENATOR REID

Question 1. Little or nothing is known about the health effects of exposure to tens of thousands of chemicals commonly used in this country; and the standards and procedures for restricting chemicals under the Toxics Substances Control Act, particularly as interpreted by the court in the asbestos decision, are so cumbersome that TSCA is not an effective tool for protecting the public from what can be very dangerous and even deadly substances. The more I learn about cancer clusters and disease outbreaks with suspected environmental links, the more I am convinced that we have to place a higher priority on understanding the health impacts of chemicals and environmental contaminants, and on protecting the public from exposure to substances that may adversely affect their health.

As Deputy Administrator, will these be priority issues for you, and will you commit to working with me, and this committee, toward improvements in these areas?

Response. Yes, I am committed to ensuring that EPA has the ability to effectively regulate industrial chemicals in this country and to protect public health and the environment. Although TSCA was passed 25 years ago this year and has not been reauthorized since that time, it does still provide the Agency with the authority necessary to assess new chemicals coming into the marketplace, gather information on chemicals currently produced and circulated in commerce, identify and require further testing on chemicals that may pose risks, and control production and commercial distribution of those chemicals which may pose an unreasonable risk to health or the environment. In addition, TSCA requires chemical companies to provide the Agency with all available scientific information regarding health and safety concerns on the chemicals that they produce.

Since the 1970's, EPA has implemented TSCA to ensure that new chemicals are screened prior to their introduction into the marketplace. Currently, EPA is reviewing about 1200 new chemical submissions a year. Last year, 700 were permitted to be sold in the U.S. To address the most widely used chemicals in this country, EPA launched the High Production Volume (HPV) Challenge program in 1998, which asked the U.S. chemical industry to voluntarily provide health and safety data to the public on the almost 2800 HPV chemicals. In addition, the Agency established a voluntary initiative to gather critical data on those chemicals that may pose a risk to children.

You may also be aware that the Agency has significant efforts underway to reduce chemical emissions, to prevent pollution from the outset, to design and provide safer chemicals from the start, and to work with the chemical industry to find safer chemical substitutes.

The Agency appreciates the interest that this committee has in our ability to ensure that chemicals are used safely in this country, and we stand ready to work with you in addressing some of the challenges in implementing TSCA.

Question 2a. I am very concerned about the proposal to cut 270 positions from the EPA enforcement staff nationwide. I think that the States play a vital role in enforcement, but the States and Federal Governments play complementary roles and should both be sufficiently funded.

Do you think that there has been unnecessary money devoted to Federal enforcement at EPA? If so, which cases or programs do you feel should not have been taken?

Response. I believe that the FY02 budget request has sufficient resources to sustain a vigorous environmental monitoring and enforcement program while providing the States with additional resources to carry out delegated enforcement and monitoring activities. This will allow the Federal program to focus on those aspects of environmental enforcement which the States cannot do, or in which they need assistance, e.g., non-delegated programs, addressing significant violations by large, multi-State industries, or acting as backup for State and tribal enforcement efforts.

Question 2b. Can you guarantee that the States can replace all the Federal actions which would have been taken but for the funding shift?

We are not identifying specific actions that must be conducted by the States with the grant funds. However, as the Administrator has said, the States are closer to the environmental problems and will be able to use the grant funding effectively to enforce environmental laws at the local level and ensure a consistent national level of environmental enforcement.

Question 2c. Do you plan on requiring the States to use the money for strictly enforcement actions? How do you plan to measure the success of the State enforcement programs?

Response. The States will have flexibility to use the grants for enforcement and enforcement related activities, including compliance monitoring and compliance assistance for the regulated community. States will be held accountable for their results through reporting mechanisms established in the grant guidance and agreements that will be developed during the coming months, with input from States, Tribes, and other stakeholders.

Question 3. In light of the cuts in positions in your Office of Enforcement and Compliance Assurance at EPA, what activities do you think might be affected? Are there certain programs or initiatives that you are planning on protecting from these cuts? What will you do if there is a case, for example, in a small State with a small legal office, that the State does not have the resources to address?

Response. The enforcement programs affected by the workyear reduction will be identified as we work with the regional offices and States during development of the fiscal year 2002 work plans. EPA will continue to have a vital role in shaping and carrying out the nation's environmental compliance and enforcement program. The Agency will continue to take actions where there are significant violations at compa-

nies with facilities in more than one State, where States are not yet delegated programs, and where the Federal Government is the statutory lead. EPA will also backup States where they cannot get the job done.

Question 4. Soon industry will begin screening tests of high production volume chemicals, under the voluntary program worked out by EPA, Environmental Defense and the chemical industry. This is long overdue. I think the public would be shocked to learn how little is known about the potential dangers of chemicals before they are allowed into commerce. My question is about the need for action beyond the HPV program. Simply comparing requirements of TSCA with those under the Food Quality Protection Act raises some seemingly obvious deficiencies in TSCA. Has EPA prioritized chemicals for testing, so that those that, based on current information, pose the greatest threat to health or high risk of exposure will promptly be subject to analyses beyond HPV screening? What about chemicals that new biomonitoring data reveals are pervasive in the general population?

Response. As you know, the HPV Challenge Program, launched in October 1998, will provide EPA and the public with Internet access to screening level health and environmental effects data on over 2,100 widely used chemicals. The data made publicly available through this collaborative effort will allow a diverse set of stakeholders, including Federal, State and local governments and other interested parties to set priorities for the collection of additional information. This program will help the Agency prioritize higher order testing and exposure analyses to ensure that risk assessment and management activities focus on chemicals which may present the greatest risks. In addition, EPA has established a Master Testing List (MTL) which serves as an agenda to prioritize industrial chemical testing needs of EPA and other Federal agencies. EPA also participates in the Organization for Economic Cooperation and Development's (OECDs) HPV Screening Information Data Set (SIDS) Program, which screens HPV chemicals to evaluate the need for followup action from a global perspective. The OECD process provides a platform to harmonize chemical testing protocol and laboratory testing, as well as opportunities for international collaboration to share costs.

In December, 2000, EPA launched a pilot of the Voluntary Children's Chemical Evaluation Program (VCCEP) that specifically used biomonitoring data as a key parameter to identify and focus on chemicals to which children would have the highest likelihood of exposure. EPA selected chemicals for the first tier pilot which were found to be present according to available biomonitoring data to be present in the human body (adipose tissue/blood/breast milk and breath) and found by existing environmental data to be present in a person's environment(in food, drinking water, breast milk, air). The VCCEP was developed through an extensive stakeholder involvement process. The program is designed to ensure that health effects and exposure data are made available in a phased (tiered) process. Development of such data will allow EPA and others to evaluate potential health risks to children associated with certain chemical exposures so that appropriate mitigation measures may be taken. EPA will use available biomonitoring data in setting chemical risk assessment priorities.

Question 5. Shouldn't the Congress and EPA be taking a hard look at issues under TSCA beyond HPV testing, such as (1) whether there's a need to more effectively set priorities to ensure prompt focus on additional testing of chemicals that pose the greatest risk of exposure or adverse health effects, and (2) whether the current standard and mechanisms under TSCA for testing and restricting chemicals promote timely and effective action necessary to ensure basic protections to public health?

Response. Yes, if it is the will of Congress, the Agency stands ready to assist this committee on efforts to address improvements to TSCA.

RESPONSES BY LINDA FISHER TO ADDITIONAL QUESTIONS FROM SENATOR VOINOVICH

Question 1. As part of my concern for the Human Capital Crisis currently affecting the Federal work force and EPA in particular I am interested in the general work assignments of the Senior Executive Service (SES) employees. We have a lot of talented and dedicated employees who have been in their jobs for a number of years. I know the SES program recommends that senior managers rotate their jobs on a regular basis. I would like a commitment from you to look into this and see when it was last done. It is a good way of relieving job boredom and it provides managers with an opportunity to spread their skills across the Agency and creates a more vibrant workplace.

Response. I too am greatly concerned by the serious Human Capital Crisis facing the Federal work force and EPA in particular. I appreciate your thoughtful remarks on this matter and am pleased to respond to your question regarding EPA's efforts to rotate members of the Senior Executive Service (SES).

You have my commitment that I will explore this issue further, but I would like to provide some preliminary information so that I am timely in my response to your request. As part of its overall Human Capital Strategy, EPA has been closely examining its work force, including issues such as recruitment, retention, retraining, and retirement. This strategy focuses on the issues facing our most junior positions as well as our those in our distinguished SES corps. We recognize that we must maintain an energized unit of senior leaders with a wide and diverse spectrum of skills and experiences to see us through the challenges that lie ahead.

Accordingly, we have begun to consider options for an SES rotational program that incorporates the best features of previous efforts to formally rotate members of EPA's SES corps. We will also integrate new and innovative approaches that will enhance previous efforts. SES rotations will carefully assess individual and organizational needs so that the right opportunities are created and lasting benefits are realized. This proposal will be vetted among the senior management team in the coming weeks and finalized accordingly.

While I agree that more should and can be done to broaden the experiences of our SES and to revitalize its members, our current SES corps is quite mobile. Please consider the following data: approximately 59 percent of our SES employees have been in their positions for less than 5 years; 25 percent of our SES employees have changed positions within the last 5 years; 10 percent of SES employees at EPA are reassigned to different positions each year; and of these reassignments, approximately 30 percent are across program or regional office lines and 10 percent are geographic.

RESPONSES OF LINDA FISHER TO ADDITIONAL QUESTIONS FROM SENATOR BAUCUS

Question 1. Do I have your commitment that you will maintain momentum on the issues which continue to challenge the EPA in Libby, Montana, including maintaining funding, until we have a clean bill of health for the people in Libby, MT? I can't tell you right now exactly what we'll need, because the situation there is fluid, but I want to know that you are committed to doing what's necessary to protect the people in Libby from further contamination, as quickly as possible.

Response. EPA has committed substantial resources for Libby, MT, cleanup activities and is committed to sustained funding for further cleanup action. Cleanup activities involve various commercial properties (Export Plant and Screening Plant), some residential areas, and the school areas (including the high school track, middle and elementary school play areas). In fiscal year 2000, EPA expended $12 M for cleanup. Thus far in fiscal year 2001, EPA has committed $18M to clean up. EPA is now engaged in sampling scenarios for 15–25 homes to determine the full extent of contamination in the Libby community. In late fiscal year 2001, EPA will ascertain the need for further cleanup activity at residential properties.

Question 2. Ms. Fisher, you've testified in front of this committee before on asbestos related issues. As I'm sure you know, EPA tried to tighten regulations on asbestos, but ultimately failed. There is overwhelming scientific evidence and information on the hazards of asbestos, and despite that, EPA is still not allowed to more effectively protect people from it. EPA needs the necessary tools to more effectively regulate dangerous substances such as asbestos. I want to know if you, Ms. Fisher, are committed to working with me and the members of this committee and Congress to make sure no further tragedies like Libby happen because of asbestos or other toxic substances.

Response. You can be assured that I personally and the Agency will do everything possible to ensure that there are no future situations like the one in Libby. The situation in Libby is tragic, and EPA is taking meaningful steps to help better understand and resolve the matter. Let me outline some of the steps being taken:

1. I understand that the agency is at the early stage of forming a Blue Ribbon Panel which will seek expert views on how the Agency should proceed with our asbestos and durable fibers program. The Panel's charge will be to explore options including but not limited to:

- Revising the current NESHAP for asbestos
- Regulatory actions
  - banning products
  - labeling requirements
  - product reporting requirements for manufacturers and importers

- notification and disclosure rules for property transfers
- Consumer education efforts
- Possible legislative action on asbestos products
- Durable Fiber Testing Program
- Peer review of risk assessment methodologies

2. An agency-wide Asbestos Coordination Team (ACT) was also formed over a year ago as a way to share information within the Agency (Superfund, OPPT, Regional offices, ORD) as well as outside the Agency with our other Federal partners (DOL, HHS, DOT, ATSDR, CPSC).

3. The ONE (OSHA, NIOSH, MSHA, and EPA) Committee meets on a regular basis to share information and current activities within each Agency. Both EPA and MSHA have inspected the three remaining vermiculite mines and will continue to do so on a regular basis to avoid another Libby-like situation. In addition, other mines where asbestos contamination may be present have been inspected.

4. The Superfund program has conducted site assessments of the approximately 250 sites where asbestos contaminated vermiculite was processed. Of those 250 sites, 16 require more in depth assessment and possible cleanup.

5. OPPT and Region 8 in Libby are conducting a vermiculite home attic insulation study to 1) determine if the insulation is contaminated with asbestos and 2) if so, does that asbestos pose a risk to the home owner. In August 2000, OPPT completed a study of vermiculite gardening products and found that while a few of the products contained low levels (<1 percent) of asbestos, the risks to consumers using these products were minimal.

Question 3. I'm sure you know that EPA is considering placing Libby on the National Priorities List, in order to direct more funding to Libby for remediation efforts. Business folks obviously are concerned about what Superfund designation will do to complexion of the community, that such a designation will be looked on as a stigma, keeping business and investment away from Libby.

I want your assurance that you will not make this decision without fully exploring the ramifications with the people of Libby, and the State of Montana. I don't want placing Libby on the national priorities list to take the place of other funding options.

Response. EPA is currently gathering environmental data in order to make an informed National Priorities List (NPL) listing decision in Libby, MT. EPA has monthly meetings with the Libby community (called the Community Advisory Group), in which we obtain feedback on all courses of action related to the Libby cleanup. EPA fully appreciates that there may be a "stigma" associated with listing on the NPL. In making decisions about the best way to clean up the contamination, EPA will maximize the use of resources as expeditiously as possible. If listing is deemed necessary, such a decision will include a timetable for removing the Libby site from the NPL as soon as possible.

Question 4. The last 12 years of public policy on Superfund is that polluter should pay, and that Superfund should not become a public works program relative to clean-up. It's a good public policy; it worked even under the first Bush Administration. However, Superfund has become a policy of containment, rather than clean-up. In over about 70 percent of Federal sites, the Record Of Decision calls for containment, not clean-up. I worry that we will get a policy of containment, not clean-up, for all superfund sites, rather than just containment in areas where permanent clean-up is not feasible.

With the number of Superfund sites in Montana that still require substantial clean-up efforts, obviously, this concerns me. Following the policy of the polluter pays, and putting more emphasis on clean-up, do you have any thoughts on reforming Superfund that you could agree with?

Response. EPA is willing to work with Congress on legislative proposals that can achieve bi-partisan support to improve Superfund. As you know, brownfields legislation is a priority of the President and has been a more immediate focus of attention for this Administration. EPA supports S. 350, "The Brownfields Revitalization and Restoration Act of 2001." Further, EPA supports H.R. 1831, "The Small Business Liability Relief Act." I will be interested in discussing Superfund legislation with Congress more fully as the session develops.

With respect to the selection of cleanup remedies, EPA selects remedies that address statutory provisions in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) regarding permanence and treatment. These provisions ensure that cleanups are protective over the long term, and facilitate the return of previously contaminated property to beneficial use. In fact, since the Superfund program began, treatment remedies have been selected for use at 58 percent of all NPL sites.

Question 5. Ms. Fisher, as you know, price discrepancies exist between the United States and Canada when it comes to farm pesticides. The price charged to US farmers is sometimes almost twice as much as what the Canadian farmer pays. Generally, the Canadian and US pesticides are almost identical and are manufactured by the same company, or related companies. Recent surveys have placed prices in the US from 117 percent to 193 percent higher than those in Canada for virtually the same products.

Last year, the Environmental Protection Agency was placed in the position of being an accessory to this scheme because of the laws governing the importation of farm pesticides. Although the EPA knew there was not an environmental or health risk, the Agency had to stop financially strapped farmers from buying a less expensive, but identical, product from Canada. Montana farmers have been losing between 10 to 40 million dollars per.

First, what does pesticide harmonization mean to you?

Response. Pursuant to my ethics agreement of May 1, 2001 (copy attached) I stated that I would not participate in any particular matter having an effect on my holdings in certain publicly held stocks until I divest these interests or obtain a waiver. Among my holdings I own stock in several pharmaceutical and pesticide manufacturing companies. I also continue to have an on-going financial relationship with my former employer, Pharmacia Inc. As stated in my ethics agreement, I will divest my interests within 3 months of my Senate confirmation. Until I divest these interests or obtain a waiver, I will recuse myself from participating in the matters related to these particular questions. I note that these questions have also been posed to Stephen Johnson, the nominee for the position of Assistant Administrator for Prevention, Pesticides and Toxic Substances, and I understand that he will be providing answers to the committee.

Question 6. What actions need to be taken to have cross border availability of pesticides and what would the timeline look like?

Response. See above.

Question 7. Legislation was introduced—legislation that was drafted with the technical help of the EPA I might add—to prevent the agency from being used in this manner again. Unfortunately, the legislation was not passed. Thus, the Agency, and our farmers, are going to be in the same position again this year, and the Agency will be once again be used to fix the prices our farmers pay. Legislation to solve this problem has been introduced again this year.

Do you support this type of legislation? If legislation fails to pass Congress again this year, how would you solve this problem?

Response. See above.

RESPONSES BY LINDA FISHER TO ADDITIONAL QUESTIONS FROM SENATOR WYDEN

Question. Last year, EPA declared almost six miles of the Lower Willamette River as it passes through Portland, Oregon to be a Superfund site. Congress has authorized the Corps of Engineers to remove contaminated sediments from navigable waters to enhance the environment and improve water quality. The Corps and public and private parties on the Willamette are interested in using this so-called "environmental restoration" authority to expedite the clean-up of the river and to reduce the Superfund transaction costs that divert funds from actual clean-up work. In particular, they would like to enforce Superfund's standards by working with EPA to coordinate the Corps' "environmental restoration" process with the Superfund process.

I would appreciate your help in ensuring that EPA seriously considers this creative and cost-effective approach to the clean-up of the Lower Willamette. If you are confirmed, would you study this possible blended approach and try to make it succeed in the case of the Willamette Superfund site?

Response. The Portland Harbor site, which includes portions of the Lower Willamette River, was listed on the NPL on December 1, 2000. Since then, a Memorandum of Understanding between EPA, six Tribal Nations, Federal and State Trustees, and the Oregon Department of Environmental Quality has been developed. The Region is currently negotiating an Administrative Order on Consent (AOC) and the Statement of Work (SOW) with several Potentially Responsible Parties to do the Remedial Investigation and Feasibility Study (RI/FS). Part of these negotiations involve discussions related to the Army Corps of Engineers' "environmental restoration " authority. As part of the on-going activities, EPA has been working closely with the Corps of Engineers to evaluate approaches for integrating Army Corps of Engineers activity or funding, including environmental restoration authority, which may become available for work at the site.

It is EPA's expectation that we will continue to work with all parties to consider creative, cost-effective and technically sound approaches to address the contamination at the Portland Harbor Superfund site.

STATEMENT OF JEFFREY HOLMSTEAD, NOMINEE FOR ASSISTANT ADMINISTRATOR, OFFICE OF AIR AND RADIATION, ENVIRONMENTAL PROTECTION AGENCY

Thank you Mr. Chairman and members of the committee for the opportunity to testify before you this morning. It is an honor to be here today as the President's nominee to be the Assistant Administrator of the Office of Air and Radiation. I am especially pleased to be joined by my wife, my four children, and my parents.

I obviously hope that this committee and the full Senate will see fit to confirm me, because I am eager to have the chance to work with Governor Christie Todd Whitman as she starts her tenure as Administrator of the Environmental Protection Agency. I believe that, with the support of President Bush and this committee, I will be able to help Governor Whitman make continued improvements in the quality of the nation's air while at the same time making EPA's regulatory programs more effective and less costly.

As Senator Campbell can understand, growing up in Boulder, Colorado, gave me a great appreciation for the environment and the outdoors. Even so, when I graduated from law school in 1987, I did not plan to spend my career working to solve environmental problems. But after a year of practicing corporate law, I had the opportunity to serve in the White House of President George Herbert Walker Bush, where I spent much of my time working on environmental issues. After arriving in the White House, I soon found that the work of trying to find effective ways to protect and improve the environment was more challenging and rewarding that anything else I could imagine. I have focused my career on environmental issues ever since. It is a great honor to be nominated by President George W. Bush to continue working on the issues that are of such vital importance to all of us and our children.

I share Governor Whitman's commitment to protecting the environment of the United States and her goal of leaving the environment cleaner than she found it. I recognize that the job for which I am seeking confirmation will present many challenges and many difficult issues. But I believe we can overcome the challenges and resolve the difficult issues. My optimism comes from a sincere belief that we all share the goal of using good science to identify our environmental goals, and good policy to achieve those goals cost-effectively. Starting from this shared goal, I hope to have the opportunity to work with all stakeholders to increase cooperation and decrease the acrimony that has occasionally accompanied these issues in the past.

I think that we can take pride in the progress that all of us States, industry, advocacy groups, Congress, and EPA have made in cleaning the nation's air over the last three decades. Since 1970, when Congress first passed the Clean Air Act, we have made many advances in the science and the art of environmental protection. Both EPA and the States have become more effective at designing programs to achieve our common goals. We are using more market-based strategies and other flexible regulatory tools. More and more, State and local agencies are working with businesses and communities to solve environmental problems as partners. EPA has been both a partner and often a leader in these efforts. But I believe that EPA can do even more.

In other areas of endeavor it has been said that we can see further than the people who came before us because we stand on their shoulders. Thirty-one years have passed since the Clean Air Act of 1970, 24 years since the amendments of 1977 and 11 years since the President's father signed the 1990 Clean Air Act Amendments into law. Much progress has been made over the years and just as importantly, much has been learned. These lessons put us on a path of continued progress for the future.

Just because a program gets results does not mean it cannot be improved. An effort to make a program simpler and more flexible should not be viewed as an excuse to make it less effective. If we are open to new possibilities, if we actively seek out the best ideas from everyone our partners, our stakeholders, and our staff we can develop better approaches for protecting and improving our nation's air. By basing those approaches on the best available science, by focusing on results and allowing people to find innovative ways to achieve those results, we can continue to improve the quality of the nation's air and make our regulatory programs more effective and less costly.

If I am confirmed, I look forward to working with you and your staffs to achieve these goals. Thank you.

UNITED STATES SENATE

COMMITTEE ON ENVIRONMENT
AND PUBLIC WORKS

ROOM 410 DIRKSEN BUILDING WASHINGTON, DC 20510

INFORMATION

REQUESTED OF PRESIDENTIAL NOMINEES

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

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

Name of Nominee: **JEFFREY RALPH HOLMSTEAD**

Business Address: **1200 Pennsylvania Avenue, N.W., Mail Code 6101A**
Washington, D.C. 20460

Business Phone: **(202) 564-7408**

Home Address: **232 Kent Oaks Way, Gaithersburg, MD 20878**

Home Phone: **(301) 208-6583**

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

Name: HOLMSTEAD (Last) JEFFREY (First) RALPH (Middle)

Position to which nominated: Assistant Administrator, U.S. Environmental Protection Agency, Office of Air and Radiation

Date of Nomination: April 30, 2001

Date of birth: 20 (Day) 06 (Month) 1960 (Year) **Place of birth:** American Fork, Utah

Marital status: Married **Full name of spouse:** Elizabeth Tisdel Holmstead

Name and ages of children:

Emily Kay Holmstead, Age 11

Elizabeth Anne Holmstead, Age 5

Eric Noble Holmstead, Age 8

Eli Jeffrey Holmstead, Age 2

Education:

Institution	Dates attended	Degrees received	Dates of degrees
Yale Law School	9/84 - 6/87	J.D.	6/87
Brigham Young University	9/82 - 4/84	B.A., A.A.	4/84
Brigham Young University	9/78 - 12/79	None	None

Employment record:

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

Consultant/Advisor - U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460, April 2001 to Present

Associate/Partner - Latham & Watkins, 555 - 11th Street, N.W., Washington, D.C. 20004, March 3, 1993 to April, 2001

Assistant Counsel, Associate Counsel - White House Counsel's Office, 1600 Pennsylvania Avenue, N.W., Washington, D.C. 20500, September 1989 to January 1993

Employment record—continued

Associate - Davis, Polk & Wardwell, 1300 I Street, N.W., Washington, D.C 20005. September 1988 to September 1989

Law Clerk - Judge Douglas H. Ginsburg, U.S. Courthouse, 3rd & Constitution Avenue, N.W., Washington, D.C. 20001. August 1987 to August 1988

Summer Associate - Cravath, Swaine & Moore, New York, New York, June 1987 to August 1987

Summer Associate - Perkins Coie, Seattle, Washington, July 1986 to September 1986

Summer Associate - Gibson, Dunn & Crutcher, Los Angeles, California, May 1986 to July 1986

Summer Associate - Davis, Graham & Stubbs, Denver, Colorado, June 1985 to August 1985

Honors and awards:

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

Newcomer Award Winner, 1984

Rhodes Scholar Finalist in Colorado, 1983

Brigham Young University Trustees Scholar, 1978 - 1980, 1982 - 1984

Memberships:

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

Organization	Office held (if any)	Dates
American Bar Association	None	1999 to Present
Federalist Society	None	1984 to Present
Brigham Young University Alumni Assoc.	Board Member	1998 - Confirmation

Qualifications:

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

From 1989 until 1993, I served in the White House Counsel's Office under President George H.W. Bush. During my tenure in the Counsel's Office, my primary focus was on environmental law and policy. Much of my time and attention was devoted to the implementation of the Clean Air Act Amendments of 1990. In 1993, I joined the Environmental Department of the law firm of Latham &

Watkins. My practice at Latham & Watkins included a wide variety of environmental matters arising under a number of federal and state laws. Much of my practice focused on the Clean Air Act and on the development and improvement of regulatory policy. For several years, I worked with the Reactivity Research Working Group (RRWG), which is exploring new and more effective approached for controlling ground-level ozone. I also helped to develop a major voluntary agreement between the Semiconductor Industry Association (SIA) and EPA that will substantially reduce global warming emissions from U.S. semiconductor manufacturing operations.

Future employment relationships:

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

I have already resigned from my former law firm and have severed all connections except as disclosed on my Standard Form 278.

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

I have no plans to resume employment with any former employer after completing my government service.

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

No.

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

N/A

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

No.

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

I resigned from the White House staff on January 20, 1993, upon the Inauguration of President Clinton.

Financial Statement:

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

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

None, except as disclosed on my Standard Form 278.

2. Are any assets pledged?

No.

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

No

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

Yes (although I filed a timely extension request for my 2000 tax return).

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

No.

Potential conflicts of interest:

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

See SF-278 and attached ethics agreement with Agency's Ethics Officer

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

See SF-278 and attached ethics agreement with Agency's Ethics Officer

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

See SF-278 and attached ethics agreement with Agency's Ethics Officer

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

See SF-278 and attached ethics agreement with Agency's Ethics Officer

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

See SF-278 and attached ethics agreement with Agency's Ethics Officer

Political affiliation and activities:

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

None

Published writings:

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

See Attached List.

Additional Matters:

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

N/A

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

Yes

3. Having completed this form, are there any additional questions which you believe the Committee should ask of future nominees?

No

Publications:

"Developing a National Emissions Inventory for 4, 4'-Methylene Diphenyl Diisocyanate" (co-author). Paper presented at the 10th Annual Emission Inventory Conference, sponsored by the Environmental Protection Agency, Denver Colorado, May 3, 2001.

Pesticide Regulation Deskbook (co-author). Published by the Environmental Law Institute, Washington, DC, January 2001

"The Food Quality Protection Act: A New Way of Looking at Pesticides" (co-author), ELR News & Analysis, October, 1998.

Toxic Substances and Pesticide Regulation Deskbook (co-author). Published by the Environmental Law Institute, Washington, DC, 1995.

"Optimizing Coating Formulations for Total Environmental and Product Performance" (co-author). Paper presented at the 2nd Biennial International Conference on Low- and No-VOC Coating Technologies, Research Triangle Park, NC, March 1995.

AFFIDAVIT

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

Subscribed and sworn before me this 9th day of MAY , 20 01 .

Notary Public

FRANCIS P. BONDS
NOTARY PUBLIC, DISTRICT OF COLUMBIA
My Commission Expires 31 August 2004

MAY - 7 2001

Anna L. Wolgast
Acting General Counsel and
Designated Agency Ethics Official
U.S. Environmental Protection Agency (2310)
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Ms. Wolgast:

The purpose of this letter is to describe the steps that I will take to avoid conflict of interest or loss of impartiality if I am confirmed and appointed as Assistant Administrator for Air and Radiation of the U.S. Environmental Protection Agency (EPA). These steps are as follows:

I have resigned from the law firm of Latham & Watkins. With the exception of continued participation in the law firms's existing 401(k) plan, I will sever all other employment relations with the firm as follows: pursuant to my partnership agreement, I will receive a lump sum payment of my capital account and partnership share by May 31, 2001, and, I will discontinue my health insurance, term life insurance, and disability insurance with the firm's plan by May 31, 2001. Further, for one year from the date of my resignation as a partner of Latham & Watkins, consistent with the requirements of 5 C.F.R. Part 2635, subpart E, I will not participate in any particular matter involving specific parties in which Latham & Watkins is a party or represents a party if the circumstances would cause a reasonable person with knowledge of the relevant facts to question my impartiality in the matter, unless my participation is specifically authorized pursuant to section 2635.502(d). Further, I will not participate in any particular matter involving specific parties in which any of the clients for whom I provided legal services is a party or represents a party, for a period of one year from the date of my last representational activities on behalf of that client, if the circumstances would cause a reasonable person with knowledge of the relevant facts to question my impartiality in the matter, unless my participation is specifically authorized pursuant to section 2635.502(d). These recusals do not extend to general rulemaking or policy matters in which the firm or such clients may provide comments.

Upon confirmation, I will resign from my position as a member of the Board of Directors of the Brigham Young University Alumni Association. For one year after I cease to serve as a member of the Board of Directors of the Brigham Young Alumni Association, consistent with the requirements of 5 C.F.R. Part 2635, subpart E, I will not participate in any particular matter involving specific parties in which Brigham Young University is a party or represents a party if the circumstances would cause a reasonable person with knowledge of the relevant facts to question

my impartiality in the matter, unless my participation is specifically authorized pursuant to section 2635.502(d).

As to the following stock interests that I hold in my KKR Investment Fund, I will divest these interests within three months from the date of my Senate confirmation: Accuride Corporation, Amphenol Corporation, Dayton Power and Light, Inc., and Eventflow Company, Inc. Until I divest these interests, (except for the publicly traded Amphenol stock as long as my holdings in that stock are within the individual and aggregate "minimal value" exemptions under 18 U.S.C. § 208(b)(2)), I will not participate personally and substantially in any particular matter that has a direct and predictable effect on these interests unless I obtain a waiver under section 208(b)(1).

With respect to all assets reported on schedule A of my SF 278 Financial Disclosure Report or other assets that I may acquire in the future, I will continuously monitor my holdings and I will not participate personally and substantially in any particular matter that has a direct and predictable effect on these interests unless I obtain a waiver under section 208(b)(1) or qualify for a regulatory exemption.

If confirmed and appointed as Assistant Administrator for Air and Radiation, I will issue directions to my staff that any matters from which I am recused are not to be referred to me and are to be decided by the Deputy Assistant Administrator or another appropriate EPA official with subject matter responsibility, without my participation.

Finally, I understand that my obligation to comply with ethics laws and regulations is ongoing and will require vigilance regarding any changes in my financial interests, the financial interests of persons and organizations imputed to me under the ethics laws and regulations, and other outside interests. I will keep the Agency's ethics officials informed about any new or changing interests and will take all appropriate steps to avoid or remedy potential conflicts.

Sincerely,

Jeffrey Holmstead

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

7 - 7 2001

OFFICE OF
GENERAL COUNSEL

Amy Comstock, Director
Office of Government Ethics
Suite 500, 1201 New York Avenue, NW
Washington, D.C. 20005-3919

Dear Ms. Comstock:

As required by 5 C.F.R. §2634.605(c), I have reviewed the Public Financial Disclosure Report (SF 278) submitted by Jeffrey Holmstead in connection with his nomination as Assistant Administrator for Air and Radiation of the Environmental Protection Agency (EPA).

Mr. Holmstead's letter to me describing his proposed ethics agreement (copy enclosed) states that he will take the following steps if confirmed as Assistant Administrator:

1. Mr. Holmstead has resigned from the law firm of Latham & Watkins. With the exception of continued participation in the law firm's existing 401(k) plan, he will sever all other employment relations with the firm as follows: pursuant to his partnership agreement, he will receive a lump sum payment of his capital account and partnership share by May 31, 2001, and, he will discontinue his health insurance, term life insurance, and disability insurance with the firm's plan by May 31, 2001. Further, for one year from the date of his resignation as a partner of Latham & Watkins, consistent with the requirements of 5 C.F.R. Part 2635, subpart E, he will not participate in any particular matter involving specific parties in which Latham & Watkins is a party or represents a party if the circumstances would cause a reasonable person with knowledge of the relevant facts to question his impartiality in the matter, unless his participation is specifically authorized pursuant to section 2635.502(d). Further, he will not participate in any particular matter involving specific parties in which any of the clients for whom he provided legal services is a party or represents a party, for a period of one year from the date of his last representational activities on behalf of that client, if the circumstances would cause a reasonable person with knowledge of the relevant facts to question his impartiality in the matter, unless his participation is specifically authorized pursuant to section 2635.502(d). These recusals do not extend to general rulemaking or policy matters in which the firm or such clients may provide comments.

2. Upon confirmation, he will resign from his position as a member of the Board of Directors of the Brigham Young University Alumni Association. For one year after he ceases to serve as a member of the Board of Directors of the Brigham Young Alumni Association, consistent with the requirements of 5 C.F.R. Part 2635, subpart E, he will not participate in any particular matter involving specific parties in which Brigham Young University is a party or represents a party if the circumstances would cause a reasonable person with knowledge of the relevant facts to question his impartiality in the matter, unless his participation is specifically authorized pursuant to section 2635.502(d).

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RESPONSES OF JEFFREY R. HOLMSTEAD TO ADDITIONAL QUESTIONS FROM SENATOR REID

Question 1. Will you, if confirmed, do everything in your power to ensure that the Agency complies with its statutory requirement to promulgate a rule that sets strong public health and safety standards for the protection of the public from releases of radioactive materials from the proposed Yucca Mountain site?

Response. Under the Energy Policy Act, EPA is required to set health and safety standards for the disposal of high level radioactive waste, including any such waste that may be stored or disposed of at the proposed Yucca Mountain site. If I am confirmed, I will work to ensure that EPA fulfills this obligation and all other statutory obligations that have been assigned to the Office of Air and Radiation.

Question 2. What are your views on the final rule EPA sent to OMB and what are your plans for moving that forward?

Response. Although I have worked in the field of environmental law for almost 12 years, I have never had the opportunity to work on radiation issues, and I am not yet familiar with the details of this rule. I understand that the Administrator supports the need for groundwater protection at Yucca Mountain and I am supportive of this approach. Otherwise, I have not formed any views on the rule. If I am confirmed, however, I will work to ensure that EPA meets its statutory obligations in a timely fashion, including its obligations under the Energy Policy Act.

Question 3. Once a rule is final, will you, if confirmed, do everything in your power to ensure that all NRC and DOE activities comply with that rule and other applicable Agency requirements, assuming the Administration proceeds with further consideration of the Yucca Mountain site?

Response. Under the Energy Policy Act, EPA's role is to publish a rule setting forth standards designed to protect public health and the environment from any potential releases of radioactive materials. The Act charges the Nuclear Regulatory Commission (NRC) with the responsibility for determining compliance with that standard. I am confident that the NRC will do it's job in a responsible manner and ensure that any of DOE's activities at the Yucca Mountain site comply with the standards.

Question 4. Will you, if confirmed, actively oppose further action on the proposed Yucca Mountain site if environmental data indicates that the final standard cannot be met or is unlikely to be met?

Response. As noted above, NRC is responsible for determining compliance with the EPA standard, and I am very confident that it will carry out its responsibilities effectively. If I am confirmed, I will closely follow the activities of DOE and NRC and call attention to any issues that may affect public health or the environment.

Question 5. What role should EPA have in setting radiation protection standards in general, relative to other Federal agencies?

Response. I understand that the EPA is the only Federal agency charged with setting standards for protecting public health and the environment from avoidable exposure to radiation. Thus, the Agency develops guidance for all other Federal agencies to follow. As part of this process, EPA sets "fence line" standards for NRC-licensed and Department of Energy (DOE)-owned facilities. I am supportive of EPA's current role.

Question 6. Please describe your role in the White House Counsel's office and the work that you did for or as part of Vice President Quayle's Council on Competitiveness: In particular, please describe positions that you may have taken with respect to Clean Air Act regulations or opinions on then-pending legislation or litigation, including the landmark Wisconsin Electric Power Company case on new source review.

Response. I served in the White House Counsel's Office from 1989 to 1993—first as Assistant Counsel to the President (from 1989 to 1990) and then as Associate Counsel to the President. During my time in the Counsel's Office, I worked on a wide variety of issues, including government ethics and matters of constitutional law. My primary focus, however, was environmental law and policy. I was part of a small White House group that worked with Federal agencies and Departments on a broad range of environmental issues, including the implementation of the Clean Air Act Amendments of 1990.

I was not a member of the Council on Competitiveness; nor did I work for the Council on Competitiveness. My boss, C. Boyden Gray, was the Counsel to the President and was one of several senior officials who attended meetings of the Council on Competitiveness. Because I was often responsible for doing the staff work to prepare him for these meetings, I had the opportunity to interact on a regular basis with the staff of the Competitiveness Council.

I was not involved in the Wisconsin Electric Power Company case on New Source Review. Nor was I involved in any other litigation involving the Clean Air Act. Although I was not part of the Administration's legislative team that was working on the 1990 Clean Air Act Amendments, I was involved in developing some of the Administration's positions on the 1990 Amendments—primarily on Title V. (Much of the work to develop the Administration's positions on the 1990 Amendments had been done before I arrived at the White House in August 1989.)

I was involved in numerous meetings and discussions (probably hundreds) about Clean Air Act regulations and other issues that arose during the implementation of the 1990 Amendments. Because my White House files were Federal records, I was not able to retain any of them when I left the White House. As a result, I do not have a record of all the Clean Air Act issues I may have worked on. Listed below are the significant issues that I can recall, and the positions I took on them:

- Title V Operating Permit Regulations—I worked with EPA staff to ensure that the Title V program would allow for necessary operational flexibility. Along with many other people in the Administration, I was concerned that Title V had the potential to become an NSR-type pre-approval? program that would require facilities to go through a lengthy review process to make even minor changes.
- Recycling Requirement for Waste Combustors—I (and many others in the Administration) questioned whether it was legitimate under the Clean Air Act for EPA to require operators of Waste Combustors to sort and recycle materials from the wastes that were shipped to them for incineration.
- Use of Contingent Valuation Studies—At several meetings regarding a proposal to address visibility impairment in the Grand Canyon, I questioned the use of contingent valuation studies as a way to calculate benefits.
- Acid Rain Program—I was a strong proponent of the acid rain trading program and was involved in numerous meetings to discuss technical issues related to how it would function. I do not recall specific issues or the positions I took on them.
- Air Toxics Regulations—Again, I was involved in numerous meetings related to the Title III program designed to reduce emissions of hazardous air pollutants (HAPs). In general, I advocated the use of sound science in ranking HAPs under Section 112(g) and the use of subcategories to ensure that EPA did not use a "one-size-fits-all" approach for developing MACT standards.

Question 7. During your tenure in the White House Counsel 195 office, did you have any role in or do work on private property rights legislation or litigation? Do you believe that any public health or environmental protections unconstitutionally limit private property rights?

Response. I do not recall working on private property rights legislation or litigation, although it is possible that I may have attended meetings at which these issues were discussed. I agree with the Supreme Court that, under certain circumstances, government actions designed to protect the environment may constitute a "taking" of private property that would require the government to pay just compensation.

Question 8. Did you, at any point during your tenure in the White House Counsel's office, formally recommend changes to the Clean Air Act? If so, what changes did you recommend?

Response. As noted above, I was involved in developing some of the Administration's positions on the 1990 Amendments to the Clean Air Act. I do not recall ever recommending that further changes be made to the Clean Air Act after the 1990 Amendments were passed by Congress and signed by the President.

Question 9. Have you advocated any changes to the Clean Air Act since your tenure at the White House? If so, what changes did you advocate and on whose behalf did you advocate them?

Response. In several meetings with clients over the last 8 years, I have discussed possible changes to the Clean Air Act. In these meetings, I have discussed the pros and cons of making certain changes to the Act. However, I do not believe that I have ever advocated any changes to the Act on behalf of any client (or on behalf of anyone else).

Question 10. Are there any other changes to the Clean Air Act that you have publicly advocated?

Response. As noted above, I do not believe that I have ever publicly advocated any changes to the Clean Air Act.

Question 11. Do you support the revised NAAQS for ozone and PM–2.5 as published in 1997?

Response. The Supreme Court has endorsed EPA's efforts to protect the health of millions of Americans from the dangers of air pollution, and has affirmed the Agency's constitutional authority to set these kinds of health protection standards in the future. Congress delegated to EPA the standard-setting function, and the Court found that EPA has carried it out appropriately. The Agency is continuing to defend these standards in court and is preparing the way for their implementation. I am supportive of these actions.

Question 12. What views, if any, have you expressed publicly or in litigation regarding the science underpinning the revised ATAAQS for ozone and PM–2.5?

Response. I have not publicly expressed any personal views regarding the science underpinning the revised NAAQS for ozone and PM–2.5. Nor have I been involved in any litigation on the subject. I did represent a client during the rulemaking process and submitted comments on it's behalf. These comments are attached.

Question 13. Did you participate in any litigation regarding the NAAQS while in private practice? If so, please describe the positions that you advocated and the clients involved.

Response. I did not participate in any litigation regarding the NAAQS while in private practice.

Question 14. What are your views on the recent Supreme Court decisions on the revised NAAQS for ozone and PM–2.5 and the NOx SIP call?

Response. The Supreme Court's decision on the revised NAAQS for ozone and PM–2.5 is obviously important for several reasons. It affirmed the constitutionality of a key provision of the Clean Air Act. It also affirmed EPA's long-standing interpretation that the Clean Air Act precludes EPA from considering cost when setting these health-based standards, while also noting that cost can be considered in implementing the standards. Although the decision settled these key issues, it also made clear that the Agency must reevaluate its implementation strategy and seek to harmonize subparts I and II of Part D of Title I. This will be a substantial challenge and, if I am confirmed, I will look forward to working on it.

The Supreme Court decision on the NOx SIP Call let stand an important decision by the Court of Appeals for the District of Columbia Circuit. The D.C. Circuit's decision upholding the NOx SIP Call will (1) help protect public health in the eastern portion of the United States, and (2) allow States to use an innovative trading program that provides industry the flexibility to achieve the necessary emission reductions in the most cost-effective way.

Question 15. Will you work to make the new nonattainment area designations for the new ozone standard, as required by law, as expeditiously as possible?

Response. If I am confirmed, I intend to move forward expeditiously with all the necessary steps to implement the new ozone standard. These steps include designating nonattainment areas and developing an implementation strategy that responds to the Supreme Court's remand.

Question 16. What are your views on EPA's UvB proposal now pending at OMB and will you pledge to move it forward expeditiously?

Response. Although I am aware of the importance of this proposal, I have not reviewed it. Nor have I closely followed the scientific questions involved. As a result, I cannot comment on the proposal. If I am confirmed, I will do my best to ensure that a proposed rule is published expeditiously.

Question 17. Some Senators have called for changes to the new source review process. Does this require legislation or should such changes be accomplished through regulation?

Response. The Agency has been reviewing the new source review program and working with stakeholders to determine how the new source review program should be modified so that we can achieve our environmental goals more efficiently. If I am confirmed, I would like to do a thorough but efficient study of the NSR program. When that study is complete, I will work with the various stakeholders to determine whether any appropriate changes should be done through regulation or legislation.

Question 18. The Agency has begun a number of enforcement actions against power plant owners for violating new source review requirements. Do you agree with Administrator Whitman's publicly reported position that those actions should not be dropped? Will you support continued and vigorous enforcement using the criteria that led to those enforcement actions?

Response. I agree with Administrator Whitman that it is important to "first offer the carrot, but not to retire the stick." In my view, EPA should set clear standards and then vigorously enforce them. With respect to the current NSR enforcement actions against power plant owners, I have not been involved in any of those actions and am not familiar with the criteria that led to them.

Question 19. According to several sources, you are or were an adjunct scholar at Citizens for the Environment, which is affiliated with Citizens for a Sound Economy. Please explain that group's purpose and mission and it's relationship to CSE, and your role as it related to policy position or political campaign development.

Response. In 1993, shortly after I left the White House, a former government colleague who was then working with citizens for the Environment (CFE) asked me if I would testify on behalf of CFE on a bill that would elevate EPA to cabinet status. In May 1993, I testified in support of the bill at a joint hearing of the Environment, Energy, and Natural Resources Subcommittee and the Legislation and Na-

tional Security Subcommittee. (A copy of my written testimony is attached.) Because I worked with CFE staff to prepare the testimony and was testifying on behalf of CFE, I became an adjunct scholar at CFE.

At that time, CFE was (and I believe still is) a nonprofit, nonpartisan organization that searches for market-oriented solutions to environmental problems. It was created in 1990 under the auspices of the Citizens for a Sound Economy Foundation, an educational foundation based in Washington D.C.

In about 1995, I also made a lunchtime presentation to CSE staff to provide general background information on the Clean Air Act. Although I may have attended one or two other meetings at CSE, I have not done any further work with CSE or CFE. Except for the position in support of the 1993 bill to elevate EPA to cabinet status, I have not been involved in developing any policy positions for CSE or CFE. Nor have I been involved in any political campaign development activities with CSE or CFE.

Question 20. What policy positions, if any, has Citizens for the Environment taken with respect to the Clean Air Act or the Agency's radiation protection responsibilities, while you have been a member?

Response. Although I have served as an adjunct scholar to CFE, I do not believe that I have ever been a member of CFE. I have not worked with CFE to develop any positions on Clean Air Act or radiation protection issues and am not aware of any position that CFE may have taken on any such issue.

Question 21. If these two groups are affiliated closely, such as sharing board members or funding sources or staff resources, please explain what policy positions that Citizens for a Sound Economy has taken with respect to the Clean Air Act or the Agency ? radiation protection responsibilities, while you have been a member of the Citizens for the Environment?

Response. As far as I know, I have never been a member of CSE. I have not worked with CSE to develop any positions on Clean Air Act or radiation protection issues and am not aware of any position that CSE may have taken on any such issue.

Question 22. Please list any other political affiliations with or your membership in groups that have proposed amending the Clean Air Act or other statutes which the Asst. Administrator for Air and Radiation must implement. Please include the major proposals and the organizations' missions.

Response. As far as I know, no group that I am a member of or otherwise affiliated with has proposed any amendment to the Clean Air Act or any other statute that the Assistant Administrator for Air and Radiation must help to implement. I have certainly not been involved in developing any such proposal.

Question 23. Apparently, while at Latham and Watkins, you co-authored a book with the Environmental Law Institute on pesticide regulation. Have you advocated changes to the Food Quality Protection Act or FIFRA? If so, what changes did you advocate and on whose behalf?

Response. I have been in several client meetings at which possible changes to the Food Quality Protection Act (FQPA) have been discussed. However, I have never advocated any such changes in public. One or more of my clients may have supported legislation to amend the FQPA, but I was not involved in developing such legislation or in any effort to advocate for it.

Question 24. Do you believe that implementation of the FQPA is proceeding quickly enough to remove dangerous pesticides from use and production?

Response. Under the FQPA, EPA must reassess all existing pesticide tolerances in accordance with a statutory schedule. I understand that EPA has complied with this schedule and continues to place a high priority on reassessing pesticides that appear to pose the greatest risk. I believe that the Agency is strongly committed to the task of removing dangerous pesticides from use and production.

Question 25. As you may know, the accident prevention provisions of the Clean Air Act were amended recently because of FBI and industry concerns about providing worst-case scenario data on the Internet. Does the public have a right to know about the potential for catastrophic chemical/toxic air accidents that could affect individuals 'property and their community?

Response. I believe that the public should have access to information about potential accidental air releases in their communities. I also believe, however, that this type of public access must be balanced against the need to protect those same communities against terrorist acts. I understand that the Office of Solid Waste and Emergency Response has issued a final rule under section 112(r) of the Clean Air Act regarding the availability of this information, but I am not familiar with that rule.

Question 26. What role should the Air program office play in reducing greenhouse gas emissions, pursuant to our treaty commitments under the U.N. Framework Convention on Climate Change to reduce those emissions to 1990 levels?

Response. I believe that the Office of Air and Radiation (OAR) should continue to play its historic and important role in reducing greenhouse gas emissions. I believe that the programs run by OAR have and will continue to achieve significant results. Domestically, since President George H.W. Bush established the first programs (Green Lights and ENERGY STAR) in 1992, OAR has entered into thousands of voluntary partnerships with large and small businesses, State, and local governments, and others. The programs are reducing the growth in U.S. greenhouse gas emissions, while saving money for American families and businesses. In addition, OAR is working with auto manufacturers to develop dramatic fuel economy improvements in all types of motor vehicles, from cars to heavy duty trucks. OAR also has a large program of bilateral cooperation activities which help further reduce greenhouse gas emissions. Work is focused in countries that are large greenhouse gas emitters and that offer large "win-win" opportunities for reducing emissions—countries with economies in transition to a free market and key developing countries.

Question 27. Will you, if confirmed, ensure that this committee and its staff receives timely and useful technical assistance from the Air program offices should we begin work on preparing legislation to require reductions in greenhouse gases from electric power generators or other sectors?

Response. Yes. The Agency's policy has long been to provide timely and useful technical assistance at the request of this committee and its staff. If confirmed, I will use my best efforts to see that the Office of Air and Radiation faithfully adheres to this policy.

Question 28. As you may know, the Administration has not yet released guidance to the stales on best available retrofit technology (BART) under the regional haze rule, despite requests from several Governors and environmental groups. There does not seem to be any need to delay the BART proposal. What would your plans be with respect to this important matter?

Response. I have not made any specific plans with respect to the BART Guidance. I recognize its importance and know that it is a high priority action that needs (and is receiving) a thorough review by Governor Whitman and her staff. If I am confirmed, I will do my best to ensure that this guidance is completed and released in a timely manner.

Question 29. As you may know, Administrator Whitman indicated at her nomination hearing that she and the President believe that Federal facilities should be treated the same as private facilities, in terms of compliance with environmental requirements. Do you agree?

Response. I support the position of the President and the Administrator that Federal facilities should be held to the same environmental standards that apply to private facilities. This issue is a priority for her and, as she has said, it will require significant coordination among Federal agencies and with the States, tribal governments, and Congress.

Question 30. What are the greatest challenges awaiting the next Assistant Administrator for Air and Radiation?

Response. Obviously, there are a number of important and challenging issues that face the Office of Air and Radiation. They include making continued progress in cleaning the air, reducing the number of people living in nonattainment areas, reducing the number of asthma attacks in children, reforming new source review, and many others. Perhaps that greatest challenge is finding a way to bring stakeholders together to find appropriate solutions for these and other issues. Because we all share the goal of using good science to protect the environment in the most efficient and cost effective manner possible, I believe that we should be able to work together and find ways to address the legitimate concerns of all stakeholders.

TESTIMONY OF JEFFREY R. HOLMSTEAD ON BEHALF OF CITIZENS FOR THE ENVIRONMENT ENVIRONMENT, ENERGY, AND NATURAL RESOURCES SUBCOMMITTEE LEGISLATION AND NATIONAL SECURITY SUBCOMMITTEE

MAY 6, 1993

Good morning. My name is Jeff Holmstead. I am an attorney with. the law firm of Latham & Watkins, but this morning I am not representing my law firm or any of it clients. Rather, I am appearing on behalf of Citizens for the Environment (also known as CFE), where I serve as an adjunct scholar. I very much appreciate the opportunity to appear before you this morning.

Citizens for the Environment is nonprofit, nonpartisan organization that searches for market-oriented solutions to environmental problems. CFE was created in 1990 under the auspices of the Citizens for a Sound Economy Foundation, an educational foundation based in Washington, DC. that has over 250,000 members nationwide.

As an organization that is committed to the free market, we recognize the important role played by the Environmental Protection Agency. While many people, including our organization, question the intervention of the Federal Government into the private market in many areas, it is clear that, because of market failures, protecting the environment is not only a valid but an important function of government. Because individuals and firms do not bear the full social cost of any pollutants that they discharge into the environment—so-called negative externalities the private market will not effectively control such discharges. Therefore, to correct this market failure, it is important for the government to take action to ensure that individuals and firms internalize the full social costs of their actions. In recognition of this important role played by the Environmental Protection Agency, we support its elevation to cabinet status.

We believe that there are also other reasons for Congress to elevate the Agency to cabinet status. First, it is clear that the American people are committed to the protecting the environment. Making the Agency a department and giving it a place at the cabinet table will reflect the importance that we as a country place on environmental protection. Second, as others have noted, most other countries have accorded cabinet or ministry status to the agencies responsible for environmental protection in their countries. Although the State Department is charged with conducting international negotiations—including negotiations involving environmental issues—the interests of the United States may be better served in such negotiations by giving our Environmental Protection Agency a status equal to that of its counterparts in other countries.

Third, and perhaps most important, we believe that elevating EPA to cabinet status will bring more political accountability to the Agency. Currently, the United States spends more of its resources on environmental protection than any other country in the world. Most estimates suggest that the cost of environmental regulation in the United States is currently between $100 and $150 million a year. By the end of the decade, this number is expected to reach close to $200 million—about 3 percent of our gross national product. Most Americans have come to realize in recent years that such regulatory costs are the equivalent of a hidden tax that is added to the cost of virtually every product or service they buy.

While there is no doubt that most Americans are willing to have their resources spent on environmental protection, they also expect—. and have a right to expect . . that those resources will be spent wisely. If they are unhappy about the actions that the Federal Government is taking to protect the environment either because of the level of protection provided or the way in which their resources are being spent—? they should be able to express their dissatisfaction in the voting booth. Yet many people still regard EPA as an independent agency that is largely outside the President's control. We believe that, in order to ensure that the President is politically accountable for the Agency's actions, it is important for the Agency to be recognized as part of his cabinet.

We also believe that the agency should be elevated in a straightforward manner without unnecessary legislative mandates. Quite apart from the concerns that we have about several of the proposals that have been discussed in recent months, we are strongly of the view that such a "clean" bill has the best chance of being enacted. If history is any guide, the more the bill is loaded up with extraneous measures, the less its chances of actually being passed by the Congress and signed by the President. We therefore urge the Subcommittee to support a clean bill that would elevate the Agency to cabinet status.

Because of our interest in ensuring political accountability, the only additional measures we would support are those designed to enhance public scrutiny of the Agency's actions. For instance, we would support a measure along the lines of that sponsored by Senator Johnston that would require rules promulgated by the new Department to be accompanied by an analysis comparing the costs of the rule with the risks to human health and the environment that the rule is meant to address. Similarly, we would support a requirement similar to Senator Murkowski's proposal to require public cost-benefit assessments for certain rulemakings.

We have particular concerns about certain proposals that the Subcommittee is considering. We do not believe that it is necessary or desirable to create a separate Bureau of Environmental Statistics. Under its current structure, the Agency already can (and does) collect and assess all the data that would come under the jurisdiction of the new Bureau. Adding new bureaucracy would simply require more expenditures of taxpayer dollars at a time when there is significant public sentiment for

cutting government spending. We are also concerned that such a Bureau may create the illusion that many important environmental issues are purely statistical, when in fact they are much more complicated. For example, risk assessments appear to be exclusively a scientific and statistical exercise, when in fact they contain a number of important policy assumptions. We are concerned that if risk assessments or similar environmental analyses are assigned to a separate Bureau within the Agency, these sorts of policy choices will not be subject to necessary public scrutiny.

We also oppose other proposals that would be unnecessary or duplicative. For instance, some have suggested the creation of a new Commission to study the Agency's structure and operations. Numerous groups—both inside and outside the Federal Government., have already studied such issues. Although the issues themselves may warrant further consideration, we question whether taxpayer dollars should be used to create a commission to study them further at this time. Such a commission is likely to be viewed as yet another unnecessary government expenditure at a time when the public is demanding fiscal restraint.

In conclusion, Citizens for the Environment supports the elevation of the Environmental Protection Agency to cabinet status. We urge the Subcommittee to do just that, without additional measures that will add unnecessary costs and reduce the chances of final passage. The only additional measures we would support are those specifically designed to enhance the public accountability of the new department.

Again, I appreciate the opportunity to appear before you this morning. I would be pleased to answer any questions that you may have.

Question 31. One of the items you mentioned in answer to the pre-hearing questions was your work on regulations to implement Title V of the Clean Air Act, specifically on the operating permit program. Some have characterized your involvement as advocating less public participation in that permitting process than the law requires and allows. Is that accurate? And, if so, should public or citizens' participation be limited in permit decisions that might increase pollution in their neighborhood?

Response. I strongly support public participation in regulatory decisions, including the right of citizens to comment on significant permitting decisions. I have never advocated the use of less public participation in the permitting process than the law requires. I have always taken the position that EPA should strike the proper balance to ensure that (1) the public has an opportunity to comment on significant permitting actions and (2) the permitting process provides sufficient flexibility for facilities to make minor changes without the need to go through a lengthy and burdensome process. Requiring a public process for insignificant changes hurts businesses by unnecessarily delaying actions, hurts permitting agencies that are understaffed and overworked by creating additional workload, and hurts the public by diverting attention from truly important regulatory actions. I believe that lines can be drawn between significant and insignificant actions and that State and local permitting agencies can be trusted to ensure that actions are properly characterized.

I also believe that some of the new permitting ideas that EPA has been exploring, such as Plant-wide Applicability Limits or PALs, are promising and should be further investigated. PALs focus public comment on a relatively few situations. The PAL approach gives the public a meaningful opportunity to comment on the full range of air issues associated with a facility, and also provides the facility with an appropriate amount of flexibility.

Question 32. As you may know, the Sierra Army Depot in Herlong, California, was recently recognized as the largest air polluter in California. That facility, which conducts open burning and detonation of old munitions, sends the bulk of its toxic emissions downwind into the Washoe Valley, affecting thousands of Nevadans. The Depot's Title V permit is now being revised and the public and I have had a chance to comment on those revisions and the relevant regulations and guidance. Should the public have been excluded from the opportunity to comment on that permit revision?

Response. No. There is clearly a role for the public in the Title V permitting process, and the role the public played in the permitting of the Sierra Depot is an appropriate one. In this case, citizens requested that EPA reopen the Depot's permit to correct several alleged flaws. The Washoe County District Health Department also wrote in support of this request. As I understand it, EPA examined the permit and found that it did, in fact, contain flaws that would justify a reopening. Under EPA regulations, when a Title V permit is reopened, the public must have an opportunity to comment on a draft of the corrected permit. As you note, such an opportunity was afforded in the case of Sierra Depot. In addition to your comments, several concerned citizens, citizen groups, and a nearby Indian Tribe also submitted comments on the proposed permit, as revised. I understand that the Lassen County Air Pollu-

tion Control District is considering all these comments is d?veloping its final permit, which is expected to be issued very soon.

Question 33. Would it be your intention to prepare and support imposition of a Federal Implementation Plan for those States that refuse to complete adequate final SIP revisions to satisfy the NOx SIP Call by the statutory deadline?

Response. If confirmed, I will work to ensure that the emission reductions associated with the NOx SIP Call are achieved. My hope is that we will be able to work with the States to ensure that they submit plans to achieve these reductions without having to resort to Federal implementation plans. Although I believe that we will be able to accomplish this goal, I would support the use of a Federal plan for any State that may refuse to complete an adequate final SIP revision.

Question 34. I was glad to read in your answers that you believe the BART (best available retrofit technology) guidance is a high priority, since that will help implement the Regional Haze rule. This will help assure that our scenic vistas in the West are not diminished. What did you mean when you wrote that you "questioned the use of contingent valuation studies as a way to calculate benefits in rules . . . to address visibility impairment in the Grand Canyon?" How else do you recommend that the government and the public assess the intangible benefits of these scenic vistas? Do you believe that it is EPA's responsibility to ensure that air quality related values, such as visibility, are protected?

Response. I believe that EPA has an important responsibility to protect and enhance air quality related values such as visibility. I also believe that the Agency must use the full range of analytical tools, including contingent valuation studies, in deciding how to protect these values. It is important, however, to recognize both the strengths and the limitations of all analytical tools, including contingent valuation studies.

As you may know, in the context of visibility issues, a contingent valuation study is often based on a survey in which people are shown two photographs of a scenic vista—one that shows a clear view of the scene and another that shows a hazy view of the same scene. They are then asked how much they would be willing to pay to make the hazy scene look like the clear one. By extrapolating their answers to a much bigger population (perhaps the entire population of the United States), the researchers then estimate the total monetary value of improving the scenic vista in question. As many researchers have acknowledged, there are several problems with this approach. First, studies have suggested that the amount someone may say they would be willing to pay for a particular "good" is often quite different than the amount they are actually willing to pay when offered the opportunity to purchase it. Second, unless properly designed, contingent valuation surveys tend to understate uncertainties. For example, in the case of visibility, there is an implication that regulatory action can make the "hazy vista" look 'like the clear one. In fact, however, actual visibility may depend on a variety of factors, many of which cannot be controlled by regulatory action.

Notwithstanding the limitations of contingent valuation studies, I believe that they can be useful tools for decisionmakers who must decide how to protect visibility and other intangible benefits. In the end, I believe that publicly accountable officials should use an open process to consider all the available information and weigh all the relevant factors. Then they should exercise their best judgment in deciding how to protect and enhance air quality related values and explain their decision to the public.

Question 35. I would appreciate your reassurance that you are committed to openness and transparency in the Federal regulatory review matters involving the Clean Air Act. As you know, the Clean Air Act contains many requirements to ensure that citizens are capable of obtaining information on these Federal processes. In particular, I would like to know that you intend to comply with the spirit and letter of section 307(d)(4)(i) of the Act and will not seek to modify that provision or the regulations implementing that section.

Response. As noted above, I strongly support an open rulemaking process. From my own experience, I know that many stakeholders have valuable information and insights that can only be provided through an open process. I will comply with section 307(d)(4)(i) and do not intend to seek modification of that provision or any regulations implementing it.

Question 36. The answers to the pre-hearing questions are a little confusing on one last point. Were you or were you not a member of Citizens for the Environment (CFE) and Citizens for a Sound Economy (CSE)?

Response. As I explained in my answers to the pre-hearing questions, I have served as an Adjunct Scholar to CFE. which is affiliated with CSE. In those answers to the pre-hearing questions, I stated that I do not believe that I have ever been

a member of CFE" and that. "[a]s far as I know, I have never been a member of CSE." I qualified my answers because I thought it was possible that one or both of these organizations might consider me a member because of my service as an Adjunct Scholar, even though I have taken no other action to become a member. After receiving your follow-tip questions, I contacted CSE to see whether they have any record of my being a member of either organization. As of now (when my responses are due), I have not received a response. All I can state is that I cannot recall ever taking any action (such as paying dues) to become a member of either organization, and I do not receive any sort of membership benefits (such as publications) from either organization.

Question 37. As you know, the EPA is often criticized for failing to have an adequate scientific basis for many of its policy decisions. During her nomination hearing, Administrator Whitman pledged to address this problem by making "science the foundation for EPA's policymaking." 'What steps would you lake as the Assistant Administrator to ensure sound science is used in the policymaking process at the Office of Air and Radiation?

Response. The quality and credibility of EPA's policy decisions depend on sound assessment of the best available scientific information. I believe that EPA, as a whole, has made important progress in improving the quality of scientific research, scientific assessment, and the peer review process upon which it relies—and that the air office has taken part in this process. In this regard, recent developments include the Research Coordination Teams for defined strategic goals, multi-year planning (such as that encouraged by the NRC for particulate matter), an Agency-wide Science Inventory, and an expanded grants program to invite fresh ideas from the academic community.

Even with this progress, I think more can be done. If I am confirmed, I intend to encourage continued improvements within the Office of Air and Radiation and in the Agency as a whole. I agree with many of the NRC recommendations for improving science at EPA, including developing scientific leadership and talent, a balanced and stable research program, developing partnerships and outreach to other Federal Departments, States, universities, industry, and other countries, holding both our research and regulatory programs accountable to periodic review, and implementing and improving the peer review process.

I would look forward to working closely with EPA's Office of Research and Development and others in the Agency to improve the quality and relevance of scientific research and to insure our draft regulations undergo scientific scrutiny within and outside the agency. The recent outreach and review of the NATA project by EPA's Science Advisory Board is an example of the way in which we can improve our assessment of air toxics. If confirmed, I intend to hold the work of my staff to the highest standards in ensuring the quality of our work, and to encourage the development of procedures to determine how well things are working on a continuous basis.

Question 38. There is substantial uncertainty about the health effects of low-level radiation, although this is a potential threat to the American people from a variety of sources. According to the EPA, however, the sound science initiative does not include funding for radiation. Do you believe the EPA should make understanding low-level radiation exposure an element of the sound science performance goal?

Response. While there is some uncertainty associated with the risk estimates of low radiation exposures, all major scientific organizations and national and international regulatory agencies currently use the Linear No Threshold (LNT) model as the basis for their radiation protection strategies. Although EPA uses this approach, it is also sponsoring and closely following two important activities to evaluate health effects at low levels of' radiation. The first is the National Academy of Sciences, BEIR VII, study to assess the dose-response relationship at low exposures based on new data from Japanese survivors. Second, EPA is closely following the Department of Energy's (DOE's) Low Dose Radiation Research Program, a $20 million, 10-year effort to evaluate health risks from exposures to low levels of radiation by looking specifically at the biological mechanisms that cause cancer.

If I am confirmed, I will work to ensure that EPA's radiation science continues to incorporate the best available information. I also will work with the EPA's Office of Research and Development (ORD) to determine whether radiation science work done by OAR should be included in the GPRA Sound Science Performance Goal that is managed by ORD.

Question 39. The EPA is responsible for establishing the radiation release standards for Yucca Mountain. The EPA has, however, come under pressure from the Nuclear Regulatory Commission and the Department of Energy to modify parts of the standard. Do you believe the EPA should be the lead agency in setting this stand-

ard? Do you believe the EPA should apply the same standards to drinking water supplies to Yucca Mountain as it applies to drinking water supplies throughout the rest of the country? Will you work to make sure the standard which is released by the EPA truly reflects the best judgment of the EPA and not that of the NRC or DOE?

Response. I am supportive of EPA's role as the lead agency in setting radiation release standards for Yucca Mountain. As Governor Whitman has said, protection of groundwater at Yucca Mountain is important for current residents and future generations. As stated in my answers to the pre-hearing questions, I have not been involved in policy discussions on Yucca Mountain, but if I am confirmed before the Yucca Mountain standards are established, I will seek to ensure that they reflect EPA's best judgment.

Question 40. In your response to pre-hearing questions you indicated "The EPA is the only Federal agency charged with setting standards for protecting public health and the environment from avoidable exposure to radiation." Could you please explain what you mean by "avoidable"? What determines the level of radiation exposure that should be avoidable? Does high cost of compliance make some radiation exposure unavoidable?

Response. Everyone is exposed to background levels of radiation that are unavoidable. Examples include naturally occurring radioactive materials in air and water, and cosmic radiation from the sun, which increases at higher elevations. EPA defines avoidable exposure as radiation from man-made activities that create new radioactive isotopes (such as nuclear power plants) or that concentrate those found in nature (such as radon in homes). I do not believe that compliance costs or technical achievability should be a significant factor in determining whether risks are considered to be avoidable or unavoidable. In my view cost and technical achievability should be considered in determining the best way to reduce the risk from radiation, regardless of how it is classified.

Question 41. There is considerable overlap of regulatory responsibility between the Nuclear Regulatory Commission and the EPA on radiation standards. For example, the Nuclear Regulatory Commission has considered developing standards for the release of metals from nuclear weapons facilities or commercial power plants that may have some contamination through the material. This material should also be regulated by the Environmental Protection Agency as this material may enter general commerce and appear in everyday household products. Also the Nuclear Waste Policy Act gives the EPA and NRC separate responsibilities for setting and enforcing radiation standards at Yucca respectively. But the EPA has general responsibilities for protecting the public and environment from radiation exposure, and should enforce those at Yucca Mountain. In your response to my pre-hearing question regarding the role of the EPA in setting general radiation protection standards, you indicated "EPA sets 'fence-line' standards for NRC-licensed facilities and DOE-owned facilities." Do you believe the EPA should also regulate products such as contaminated metals coming from these facilities that may be recycled into consumer products? What about ensuring compliance with radionuclide standards for air emissions from these facilities as well? Do you agree that the EPA should apply this "fence-line" standard at Yucca Mountain as well?

Response. While EPA is not currently developing standards for recycling radioactive materials, the Agency is following the activities of the National Academy of Sciences and the Nuclear Regulatory Commission (NRC) to ensure that these materials are addressed in a responsible manner. EPA's current efforts are focused on controlling the indiscriminate or accidental loss of sealed radiation sources that have the potential to cause a greater risk to the public if ruptured in scrap yards or steel mills. In the meantime, we are regulating air emissions from DOE's facilities under our National Emission Standard for Hazardous Air Pollutants, Subpart I-I. With regard to Yucca Mountain, EPA's proposed standard addressed all exposure pathways, including air.

RESPONSES OF JEFFREY R. HOLMSTEAD TO ADDITIONAL QUESTIONS FROM SENATOR SMITH

Question 1. Describe your role as a "contact" during a 1998 lobbying campaign related to EPA rules designed to address interstate air pollution.

Response. In 1998, I was a partner at the law firm of Latham & Watkins. Among other Things, I was responsible for overseeing the firm's compliance with the Lobbying Disclosure Act (LDA). In this regard, my primary responsibilities were (1) to educate my colleagues about their obligations (and the firm's obligations) under the LDA; (2) to ensure that anyone at the firm who became a "lobbyist" within the

meaning of the LDA was promptly registered as such; and (3) to ensure that the firm filed semiannual reports on the "lobbying activities" of any of its partners and employees. Because I was responsible for the firm's LDA compliance, I was listed as the "contact" person on all the LDA forms submitted by the firm, even though I was never a lobbyist.

I had no involvement in the lobbying campaign mentioned above. Nor do I have any recollection of this effort or who may have been involved in it. If I was listed as a "contact," I assume that my law firm must have filed an LDA report regarding these lobbying activities. I believe that a review of the LDA forms submitted by Latham & Watkins during 1998 will show that I am listed as the contact person on all such forms.

I would also like to address two other issues that have been raised in recent press reports. A recent article in the BNA Daily Environment Report states that, when I served in the White House Counsel's Office, I was "detailed" to the Competitiveness Council. This is simply incorrect. I was never detailed to the Competitiveness Council (or anywhere else).

Second, according to the same article, a group called the Clean Air Trust claims that I "testified before Congress in favor of requiring EPA to consider costs in developing air quality standards under the Clean Air Act." Again, this is simply incorrect. I have never testified on this issue. Until last week, when I had the opportunity to appear before your committee, the only time I gave testimony to Congress was in 1993, when I testified in support of a proposal to elevate EPA to cabinet status. A copy of this testimony was attached to my answers to the pre-hearing questions.

In my testimony, I said that, although I generally preferred a "clean" bill that would simply elevate EPA to cabinet status, I could support "a measure along the lines of that sponsored by Senator Johnston that would require rules promulgated by [EPA] to be accompanied by an analysis comparing the costs of [a] rule with the risks to human health and the environment that the rule is meant to address." Senator Johnston's measure would not have done anything to change the Agency's approach for setting air quality standards under the Clean Air Act.

RESPONSES OF JEFFREY R. HOLMSTEAD TO ADDITIONAL QUESTIONS FROM SENATOR VOINOVICH

Question 1. During your nomination hearing you were asked whether you supported the 1997 NAAQS for ozone and particulate matter, yes or no. Considering the pending litigation and the planned scientific review I do not believe a simple yes or no suffices, particularly since the Agency is currently reassessing the science. Would you please elaborate on your answer.

Response. As you know, the Supreme Court recently resolved two key issues related to the 1997 NAAQS for ozone and particulate matter (PM)—that the statutory provision under which EPA sets the NAAQS is not an unconstitutional delegation of legislative power and that EPA may not consider costs in setting the NAAQS. However, the 1997 NAAQS for ozone and PM are still under review by the U.S. Court of Appeals for the District of Columbia Circuit (the D.C. Circuit). The Agency is committed to defending these standards in court and is preparing the way for their implementation. Like Governor Whitman, I am supportive of these actions.

I also recognize, however, that the Agency may still need to respond to legal or policy issues that may arise from the ongoing litigation in the D.C. Circuit. At a minimum. EPA must still respond to the D.C. Circuit's remand to consider whether ground-level ozone has a beneficial effect by providing protection against UvB radiation. If I am confirmed, I will work to ensure that EPA responds to this and any other issues raised by the D.C. Circuit expeditiously and based on sound science.

With respect to the on-going reassessment of the science, I support the Agency's goal of completing the scientific review of PM health effects before fully implementing the PM 2.5 standard that EPA set in 1997. I understand that this review is well under way. If I am confirmed, I will work to ensure that it is completed as expeditiously as possible. in accordance with the requirements of a thorough scientific review.

Question 2. As you may know, the Science Advisory Board was highly critical of the first draft report under EPA's Residual Risk program for Secondary Lead Smelters. The SAB identified a number of assessments and analysis that they found were either missing or incomplete such as population risks and uncertainty analysis. The report acknowledged that of the 174 source categories, the Lead Smelter Industry should be one of the easiest Reports since the industry is relatively data-rich. In fact the SAB noted "lack of data will likely pose much greater problems when other source categories are addressed in the future, appropriate recognition of this prob-

lem is needed by both Congress and the Agency in order to develop an adequate data base to support the residual risk analysis program. " I am concerned that over the last 10 years this issue has been ignored by the Agency. Will you commit to conducting a review, when you are confirmed, to ascertain the state of the Agency's preparedness for the residual risk program, identifying the steps and timeline for the Agency to complete the necessary work?

Response. Based on my prior work in the private sector, I understand the challenges that EPA faces in trying to develop a data base that will allow the Agency to evaluate the need for residual risk standards and to develop such standards where necessary. I understand that the Agency has already started a process to review the needs of this program and to set a time line for completing the necessary work. If I am confirmed, I will closely follow these efforts and work to ensure that the Agency has an effective strategy for meeting the needs of the residual risk program.

Question 3. As you are probably aware, several reports have been issued within the last 10 years critical of the overall quality and independence of the science supporting EPA regulations. These include EPA's own report in 1992, Safeguarding the Future: Credible Science, Credible Decisions, and more recently, the National Resource Council's 2000 report, Strengthening Science at the U.S. EPA. What are your thoughts on ways to strengthen the science behind important clean air regulatory decisions, such as rules on air toxins and criteria pollutants?

Response. The quality and credibility of EPA's policy decisions depend on sound assessment of the best available scientific information. I believe that EPA, as a whole, has made important progress in improving the quality of scientific research, scientific assessment, and the peer review process upon which it relies—and that the air office has taken part in this process. In this regard, recent developments include the Research Coordination Teams for defined strategic goals, multi-year planning (such as that encouraged by the NRC for particulate matter), an Agency-wide Science Inventory, and an expanded grants program to invite fresh ideas from the academic community.

Even with this progress, I think more can be done. If I am confirmed, I intend to encourage continued improvements within the Office of Air and Radiation and in the Agency as a whole. I agree with many of the NRC recommendations for improving science at EPA, including developing scientific leadership and talent, a balanced and stable research program, developing partnerships and outreach to other Federal Departments, States, universities, industry, and other countries, holding both our research and regulatory programs accountable to periodic review, and implementing and improving the peer review process.

I would look forward to working closely with EPA's Office of Research and Development and others in the Agency to improve the quality and relevance of scientific research and to insure our draft regulations undergo scientific scrutiny within and outside the agency. The recent outreach and review of the NATA project by EPA's Science Advisory Board is an example of the way in which we can improve our assessment of air toxics. If confirmed, I intend to hold the work of my staff to the highest standards in ensuring the quality of our work, and to encourage the development of procedures to determine how well things are working on a continuous basis.

Question 4. I believe exposure data is an area the EPA has virtually ignored. In testimony before the Senate Environment and Public Works Committee, Dr. Mort Lippmann, Interim Chair of EPA's Scientific Advisory Board (SAB), criticized the "highly conservative nature of unit risk factors for air toxins" and urged EPA to support efforts to develop an alternative approach to quantifying health effects from air toxins that would yield more "realistic" estimates of population impacts. This is a critical point given that EPA is about to issue a number of residual risk standards for air toxins. Would you support this effort to develop an alternative approach to quantifying risks from air toxins that would result in more realistic estimates of population risks?

Response. Yes. I believe that EPA should take steps to make sure that its programs are based on the best possible estimates of real-world exposure. I understand that, as part of the residual risk program, EPA intends to conduct population-based risk assessments in order to ascertain the full distribution of exposures and risks within a population. EPA is already working toward developing alternative methods to support such population-based risk estimates. I also understand that EPA recently held a workshop to address this topic in conjunction with the SAB. The Agency has committed to support followup efforts to this workshop as well as additional efforts within and outside the Agency. I am supportive of these efforts.

RESPONSES BY JEFFREY R. HOLMSTEAD TO ADDITIONAL QUESTIONS FROM SENATOR BAUCUS

Question 1. Can you assure this committee that should you be confirmed, clean air standards will be premised solely on sound science?

Response. If I am confirmed, I will work to ensure that all actions taken by the Office of Air and Radiation are based on sound science. As you know, a recent decision by the Supreme Court made it clear that the Agency may not consider costs when its sets national ambient air quality standards (NAAQS). I can assure the committee that, if I am confirmed, I will work to ensure that any actions related to the NAAQS are consistent with this decision.

RESPONSES BY JEFFREY R. HOLMSTEAD TO ADDITIONAL QUESTIONS FROM SENATOR LIEBERMAN

Question 1. One of the more important regulatory initiatives for the air quality in my home State of Connecticut is the NOx SIP call, which would greatly reduce the ozone pollution transported into Connecticut from States to the West. Could you comment on your view of the SIP call and your plans to enforce it?

Response. I believe that the NOx SIP Call represents a cost-effective approach for improving air quality in many areas of the Eastern United States. If I am confirmed, I will work to ensure that the emission reductions associated with the NOx SIP Call are achieved. My hope is that we will be able to work with the States to ensure that they submit plans to achieve these reductions without having to resort to Federal implementation plans. Although I believe that we will be able to accomplish this goal, I would support the use of' a Federal plan for any State that may refuse to complete an adequate final SIP revision.

Question 2. Another problem of concern to the State of Connecticut is the fuel additive MTBE, which is required under the Clean Air Act's oxygenate requirement . Do you support giving States relief from the oxygen mandate if it will not result in any environmental harm?

Response. I know that the use of MTBE has raised concerns about contamination of drinking water and groundwater. Clean air and clean water are equally important, and I do not believe that we should pursue one at the expense of the other. The Clean Air Act has a specific provision that allows EPA to waive the oxygenate requirement under certain conditions. I support giving States relief from the oxygenate requirement if they can show that these conditions are met. I would also be open to legislative action to address the issue of MTBE.

Question 3. I have also been very interested in pursuing comprehensive, multi-pollutant legislation to control emissions from power plants. In our hearing on climate change 2 weeks ago, however, it became clear that any such legislation must include a commitment to reduce carbon or it will not provide the regulatory certainty that our utilities need. Regrettably, President Bush's energy plan released today only proposed regulating three pollutants. What approach would you advocate?

Response. If I am confirmed, I will look forward to working with the committee to develop comprehensive, multi-pollutant legislation to control power plant emissions. I understand the need for regulatory certainty for electric utilities. I support the President's position on a multi-pollutant bill, and I believe that the Administration's approach will provide the regulatory certainty needed.

Question 4. One issue that this administration must face is climate change. In recent weeks, a number of Senators, including Senators Stevens and Byrd, have expressed concern about this issue. Senator Byrd even pointed out the need for mandatory commitments to reduce our carbon emissions. Could you please comment on what approach you would recommend we take on this critical issue.

Response. Like President Bush and Governor Whitman, I take the issue of climate change very seriously. As you may know, the Administration is now conducting a cabinet-level review to develop a climate change policy that protects and the environment, consumers, and the economy. I understand that the cabinet-level group is trying to identify the policies that the United States should pursue domestically and internationally. Governor Whitman is a member of the team reviewing our policy options. The President has said that he is optimistic that, by working constructively with our friends and allies through international processes. we can develop technologies, market incentives, and other innovative approaches to global climate change. if I am confirmed, I look forward to participating in this important effort.

The Office of Air and Radiation has a great deal of expertise in several areas important to developing policy responses to the issue of climate change, including:

using voluntary programs to achieve energy efficiency gains and the reduction of various greenhouse gases; doing research to demonstrate more energy efficient vehicle technologies: and using emissions trading programs that help lower the costs of achieving environmental protection goals. I support these kinds of approaches, as well as any others that the President may decide to pursue in regard to climate change.

Question 5. I applaud the Bush Administration's decision to move forward earlier this year with the implementation of new diesel fuel and engine standards for 2007. The rulemaking was exhaustive and inclusive and I believe has arrived at a resolution that will benefit all interested parties. In that regard, I am concerned about any effort to open the rule to review, especially in light of the need to provide certainty for business planning, as requested by the affected industries. Could you comment on your plans to implement the rule and whether you have any plant to initiate a review of it?

Response. EPA remains committed to implementing the 2007 heavy-duty vehicle and fuel standards—and to the environmental objectives that they will achieve. The Agency has announced that it will seek an independent review of progress made by the engine manufacturers and oil refiners toward meeting the program requirements. Although EPA has not decided what independent group will conduct the review, the Agency anticipates that it will begin in mid–2002 and conclude by early 2003.

Question 6. I am troubled by the recent recommendation by President Push in his National Energy Plan that the Attorney General review existing enforcement actions regarding New Source Review to ensure that the enforcement actions are consistent with the Clean Air Act and its regulations.

The Clean Air Act defines "modification" as a physical change o?r change in the method of operation that increases the amount of an air pollutant emitted by the source. 42 U.S.C. § 7411(a). By regulation, EPA exempted from the definition of "physical change" those projects which are routine maintenance, repair and replacement. EPA historically has analyzed the "routine maintenance" exemption by using a test that assesses four primary factors—(1) the nature and extent; (2) purpose; (3) frequency; and (4) cost of the proposed work. See Memorandum from Don R. Clay, EPA Acting Assistant Administrator for Air and Radiation, to David A. Kee, Air and Radiation Division, EPA Region V (Sept. 9, 1988); Letter from Don R. Clay, Acting Assistant Administrator for Air and Radiation, to John W. Boston, (Feb. 15, 1989). This approach was upheld by the Seventh Circuit Court of Appeals. WEPCo v. Reilly, 893 F.2d 901 (7th Cir. 1990). EPA's more recent use of the same test in its enforcement case against TVA also was upheld by the EPA Environmental Appeals Board. Tenn. Valley Auth., 9 E.A.D. CAA Docket No. 00–6 (U.S. Envtl. Prot. Agency, Sept. 15, 2000), EAB Final Order.

In view of this legal background, do you agree that EPA's interpretation of the NSR provisions, and in particular, the routine maintenance exception, as exemplified in the WEPCO and TVA cases, is a correct interpretation of the Clean Air Act and applicable regulations?

Response. As you know, there is considerable controversy surrounding this issue. The Agency believes that its interpretation of the NSR provisions is a correct interpretation of the Clean Air Act and the applicable regulations, and I have no reason to question this view. As I understand it, however, some companies believe that EPA is currently interpreting certain factors in a new and improper way. The President has asked the Department of Justice (DOJ) to review this issue in the context of certain cases, and I hope that DOJ will complete this review very quickly. In the meantime, EPA and its co-plaintiffs are continuing to litigate and to negotiate in the hope of reaching appropriate settlements in these cases.

RESPONSES BY JEFFREY R. HOLMSTEAD TO ADDITIONAL QUESTIONS FROM SENATOR CLINTON

Question 1. As some States move to phaseout MTBE, do you support providing States with relief from the oxygen mandate under the Clean Air Act in cases where such relief would provide both price relief at the pump and improve the environmental performance of gasoline?

Response. The Clean Air Act has a specific provision that allows EPA to waive the oxygenate requirement under certain conditions. I support giving States relief from the oxygenate requirement if they can show that these conditions are met. I would also he open to legislative action to address this issue.

Question 2. Please provide an outline of the specific timelines and emissions reductions that you would support as part of a multi-pollutant bill. In addition, please describe those mechanisms that you would support in legislation for achieving these emissions reductions in a timely and cost-effective manner?

Response. The Administration has just started to put together a multi-pollutant bill. If I am confirmed, I look forward to working to develop of this bill and to securing its passage by Congress. As this time, however, I cannot provide you with specific timelines and emission reduction levels. I believe that the Administration's bill will establish a flexible. market-based program (with appropriate measures to address local concerns) to significantly reduce and cap emissions of sulfur dioxide, nitrogen oxides and mercury from electric utilities. I believe that such reductions should he phased-in over a reasonable time while providing market-based incentives such as emission trading credits to achieve the required reductions.

RESPONSES BY JEFFREY R. HOLMSTEAD TO ADDITIONAL QUESTIONS FROM SENATOR CORZINE

Question 1. Earlier this year, the Supreme Court upheld the 1997 air quality standards. Are these standards appropriate in your view? And are you committed to implementing them?

Response. As you indicated, the Supreme Court recently affirmed the Agency's constitutional authority to set these kinds of health protection standards. However, the 1997 NAAQS for ozone and PM are still under review by the U.S. Court of Appeals for the District of Columbia Circuit (the D.C. Circuit). The Agency is committed to defending these standards in court and is preparing the way for their implementation. Like Governor Whitman, I am supportive of these actions.

The Agency may still need to respond to legal or policy issues that may arise from the ongoing litigation in the D.C. Circuit. At a minimum, EPA must still respond to the D.C. Circuit's remand to consider whether ground-level ozone has a beneficial effect by providing protection against UvB radiation. If I am confirmed, I will work to ensure that EPA responds to this and any other issues raised by the D.C. Circuit expeditiously and based on sound science. I will also work to ensure that the Agency takes all actions that are necessary to implement the NAAQS as quickly as possible.

Question 2. The Supreme Court decided in EPA's favor earlier this year on the "NOx SIP call". Not all of the States have submitted revisions for their State Implementation Plans, and the deadline is approaching. Are you committed to preparing and implementing a Federal Implementation Plan for States that fail to submit their own plans?

Response. If confirmed, I will work to ensure that the emission reductions associated with the NOx SIP Call arc achieved. My hope is that we will be able to work with the States to ensure that they submit plans to achieve these reductions without having to resort to Federal implementation plans. Although I believe that we will be able to accomplish this goal, I would support the use of a Federal implementation plan for any State that may refuse to complete an adequate final SIP revision.

Question 3. EPA's "New Source Review" actions against power plants have been the subject of considerable controversy. Do you think that these actions should continue? If you haven't yet studied the specifics of the cases, 'can you explain the framework and criteria you would use to evaluate the issue?

Response. I am aware that there is considerable controversy surrounding these cases. As you anticipated, however, I have not studied the specifics of these cases or the arguments made by the power plants. I understand that these cases are continuing while the Department of Justice (DO.!) reviews them in accordance with the National Energy Policy Report. EPA career staff' recently met with their counterparts at the Department of Justice to begin determining the framework for the DOJ review. I believe that the review should be, based on the law as written and on prior precedent in the area. Governor Whitman recognizes that a lengthy review process could prove problematic and has asked Attorney General Ashcroft to conduct his review as expeditiously as practicable.

LATHAM & WATKINS,
March 12, 1997

Office of Air and Radiation
Docket and Information Center
Attention: Docket No. A–95–54
U.S. Environmental Protection Agency,
401 M Street, SW
Washington, DC

RE: PROPOSAL TO ESTABLISH NAAQS FOR FINE PARTICLES

DEAR SIR OR MADAM: On behalf of the Electronic Industries Association (ETA), we hereby submit the enclosed comments on the Environmental Protection Agency's proposal to establish National Ambient Air Quality Standards (NAAQS) for fme particles. 61 Fed. Reg. 65638 (Dec. 3, 1996). If you have any questions or need further information, please contact me at 202–637–2287.

Sincerely yours,

JEFFREY R. HOLMSTEAD of *Latham & Watkins*

LATHAM & WATKINS,
March 12, 1997

Office of Air and Radiation
Docket and Information Center
Attention: Docket No. A–95–54
U.S. Environmental Protection Agency,
401 M Street, SW
Washington, DC

RE: PROPOSED INTERIM IMPLEMENTATION POLICY

DEAR SIR OR MADAM: On behalf of the Electronic Industries Association (ETA), we hereby submit the enclosed comments on the Environmental Protection Agency's proposed Interim Implementation Policy on New or Revised National Ambient Air Quality Standards (NAAQS). 61 Fed. Reg. 65752 (Dec. 13, 1996). If you have any questions or need further information, please contact me at 202–637–2287.

Sincerely yours,

JEFFREY R. HOLMSTEAD of *Latham & Watkins*

LATHAM & WATKINS,
March 12, 1997

Office of Air and Radiation
Docket and Information Center
Attention: Docket No. A–95–54
U.S. Environmental Protection Agency,
401 M Street, SW
Washington, DC

RE: ANPR ON IMPLEMENTATION OF NEW OR REVISED NAAOS

DEAR SIR OR MADAM: On behalf of the Electronic Industries Association (ETA), we hereby submit the enclosed comments on the Environmental Protection Agency's advance notice of proposed rulemaking (ANPR) that seeks comments on the future implementation of new or revised National Ambient Air Quality Standards (NAAQS) for ozone and fine particles. 61 Fed. Reg. 65764 (Dec. 13, 1996). If you have any questions or need further information, please contact me at 202–637–2287.

Sincerely yours,

JEFFREY R. HOLMSTEAD of *Latham & Watkins.*

March 12, 1997.

COMMENTS BY THE ELECTRONIC INDUSTRIES ASSOCIATION BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY ON THE PROPOSED NATIONAL AMBIENT AIR QUALITY STANDARDS FOR PARTICULATE MATTER

NATIONAL AMBIENT AIR QUALITY STANDARDS FOR PARTICULATE MATTER, PROPOSED RULE

A–95–54
61 Fed. Reg. 65638

David Isaacs, Esq., Deputy General Counsel and Staff Director, Environmental Affairs, Electronic Industries Association.

Timothy I. Mohin of Intel Corporation,
Joe Downing III of Texas Instruments.
Chairpersons of the EIA Clean Air Working Group

Of Counsel:
Jeffrey R. Holmstead,
David A. Kass,
Latham & Watkins

March 12, 1997.

COMMENTS BY THE ELECTRONIC INDUSTRIES ASSOCIATION BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY ON THE PROPOSED RULE FOR THE IMPLEMENTATION OF NEW OR REVISED OZONE AND PARTICULATE MATTER, NATIONAL AMBIENT AIR QUALITY STANDARDS

Interim Implementation Policy on New or Revised Ozone and Particulate Matter National Ambient Air Quality Standards, Notice of Proposed Policy

A–95–38
61 Fed. Reg. 65752

David Isaacs, Esq., Deputy General Counsel and Staff Director, Environmental Affairs, Electronic Industries Association.

Timothy I. Mohin of Intel Corporation,
Joe Downing III of Texas Instruments.
Chairpersons of the EIA Clean Air Working Group

Of Counsel:
Jeffrey R. Holmstead,
David A. Kass,
Latham & Watkins

March 12, 1997.

COMMENTS BY THE ELECTRONIC INDUSTRIES ASSOCIATION BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY ON THE PROPOSED RULE FOR THE IMPLEMENTATION OF NEW OR REVISED OZONE AND PARTICULATE MATTER, NATIONAL AMBIENT AIR QUALITY STANDARDS AND REGIONAL HAZE REGULATIONS

Implementation of New or Revised Ozone and Particulate Matter National Ambient Air Quality Standards and Regional Haze Regulations, Advance Notice of Proposed Rulemaking

A–95–58
61 Fed. Reg. 65764

David Isaacs, Esq., Deputy General Counsel and Staff Director, Environmental Affairs, Electronic Industries Association.

Timothy I. Mohin of Intel Corporation,
Joe Downing III of Texas Instruments.
Chairpersons of the EIA Clean Air Working Group

Of Counsel:
Jeffrey R. Holmstead,
David A. Kass,
Latham & Watkins

(March 12, 1997)

INTRODUCTION AND SUMMARY

The Electronic Industries Association (EIA) submits these comments on the proposals by the United States Environmental Protection Agency (EPA) to (I) establish new National Ambient Air Quality Standards (NAAQS) for fine particles, 61 Fed. Reg. 65638 (Dec. 13, 1996); (2) revise the NAAQS for ozone, Id. at 65715; (3) adopt an "interim implementation policy" relating to the new or revised NAAQS for fine particles and ozone, Id. at 65752; and (4) seek comment on future implementation issues relating to the new or revised NAAQS, Id.. at 65764. In these comments, EIA will not address EPA'5 proposal to establish a new reference method and other requirements for monitoring ambient levels of fine particles, Id. at 65780, but will address all the other proposals that EPA published on December 13, 1996.

These comments were prepared by EIA's Clean Air Working Group, which has the active participation of major U.S. electronics manufacturers EIA is the oldest and largest trade association representing the U.S. electronics industry. It is comprised of more than 1,000 member companies that design, manufacture, distribute and sell electronic parts, components, and systems for consumer, commercial, military, and aerospace use. EIA has been involved in a broad range of implementation and flexibility issues under the Clean Air Act (CAA). Our focus has been on ensuring the compatibility of CAA requirements with the hundreds bf routine process upgrades, advancements, and innovations that an electronics or other high technology manufacturer must undertake each year to compete in the global marketplace, to control costs, to maintain quality, to meet corporate pollution prevention goals, and to satisfy new regulatory requirements.

EIA strongly supports the goals of the Clean Air Act and recognizes the importance of setting the NAAQS at levels that will protect human health and the environment. Over the years, EIA and its members have worked cooperatively with EPA and with state and local governments to develop and implement innovative programs that are designed to protect and improve the quality of our nation's air, while at the same time addressing the flexibility needs of the electronics industry? As discussed further below, the technologically dynamic nature of the electronics industry distinguishes it from other traditional manufacturing sectors. For this reason, ETA has focused its advocacy efforts on addressing the unique flexibility needs of its members. . As part of this effort, ETA was pleased to participate in the EPA-sponsored Pollution Prevention in Permits ("P4") Pilot, which resulted in the first cap-type permit for an electronics facility.

The American electronics industry is proud of its environmental record and strongly supports measures needed to protect public health and the environment. In this case, however, ETA has several serious concerns about EPA's proposals to revise the ozone NAAQS and establish new NAAQS for fine particles. It also has concerns .about the approach that will be used to implement such standards if they are adopted. ETA's views, which are discussed more fully in the body of the comments, are summarized below:

Proposed Revisions to the NAAQS for Ozone

- EPA's Clean Air Scientific Advisory Committee (CASAC) concluded that the proposed NAAQS for ozone would not be "significantly more protective of public health" than the current standard, and that there is no "bright line" that distinguishes the current ozone standard from any other standard under consideration. CASAC letter of November 30, 1995. As a result, CASAC stated that the selection of any specific standard for ozone is strictly a "policy judgment." Id.
- In making this policy judgment, EPA should consider the costs of lowering the ozone standard. Under these circumstances, nothing in the Clean Air Act precludes the Agency from taking costs into account when setting the NAAQS. Indeed, where there is no scientific basis for choosing one standard over another, we believe it would be arbitrary and capricious not to consider the costs of achieving alternative standards.
- EPA estimates that the imposition of all reasonably available control measures would cost approximately $2.5 billion a year and would only allow "partial attainment" with the proposed NAAQS for ozone. The cost of control measures that would be required to reach full attainment are almost certain to be much higher:
- The establishment of a new NAAQS would also impose significant costs on state and local governments. EPA estimates that, under the proposed standard, the number of ozone nonattainment areas would roughly triple. This would impose an enorrnous burden on state and local agencies, which would be required to go

through a lengthy planning process to gather data and develop programs to meet the new standards.

• Although the electronics industry is not a significant source of ozone precursors, many electronics manufacturers have made key planning decisions based on the current NAAQS for ozone. For example, many companies have taken steps to ensure that their facilities will not be treated as "major sources" under various EPA programs—an approach that helps to protect air quality while providing the facilities with operational flexibility. A change in the NAAQS standard has the potential to undermine this approach.

• Thus, lowering the ozone NAAQS would impose significant costs on governments, businesses, and consumers, but would not result in meaningful health benefits. Under these circumstances, EPA should not lower the NAAQS for ozone. Specifically, EPA should either retain the current ozone NAAQS or establish an equivalent standard with a longer averaging period. If EPA decides to switch to a longer-averaging period, it should select a standard that will not undermine the programs that government agencies and businesses have developed to meet the current standards.

Proposed NAAQS for $PM_{2.5}$

• EPA and its scientific advisors have acknowledged that there is much uncertainty about the health effects of fine particles. Based on the current record, it is not clear that the proposed NAAQS for $PM_{2.5}$ is. necessary to protect the public health. Indeed, in light of the uncertainty about fine particles, there may be little or no public health benefit from the proposed NAAQS for $PM_{2.5}$.

• According to EPA, it will cost approximately $6 billion a year to achieve even "partial attainment" with the proposed standards. The cost of full attainment is likely to be much higher.

• Under these circumstances—where there are uncertain health benefits and certain (and significant) costs—EPA should not establish new standards for $PM_{2.5}$ at this time. Rather, the Agency should retain the current PM standards until such time as further research can address the significant uncertainties about the health effects of fine particles. In this regard, we note that EPA is seeking congressional funding for a major research program that is specifically designed [t]o reduce the great uncertainty about PM's health effects." Budget of the U.S. Government, Fiscal Year 1998.

Proposed Interim Implementation Policy

• The technologically dynamic nature of the electronics industry distinguishes it from other traditional manufacturing sectors. To avoid obsolescence, a typical electronics manufacturing facility will undergo numerous chemical and equipment alterations in the span of a single year and will install several completely new generations of technology during its operational lifetime. In order to be competitive in the global marketplace, an electronics facility must have the flexibility to make these changes quickly.

• If EPA proceeds to establish an interim implementation policy, the policy should be designed to preserve the operational flexibility that the electronics industry and other quick-to-market industries need to remain competitive internationally.

• Under EPA's proposed interim implementation policy, all "moderate" ozone nonattainment areas would automatically be reclassified as "serious" nonattainment areas. Among other things, this would lower the major source threshold in these areas from 100 tons per year to 50 tons per year. As a result, many facilities that currently qualify as minor sources would become major sources and thus would potentially be subject to a lengthy permitting process when making physical or operational changes.

• Such an automatic "buildup" would not result in substantial emissions reductions and should not be included in any interim implementation policy.

Long Term Implementation issues

• If the Agency proceeds to revise the ozone NAAQS or establish new NAAQS for $PM_{2.5}$, it should develop an innovative and flexible implementation policy that will achieve cost-effective emissions reductions without hampering operational flexibility.

• Such a policy should be designed to spread the compliance burden fairly among industrial, public, and governmental sectors. The policy should not focus exclusively on private manufacturing facilities.

• The implementation policy should not lower major sources thresholds or otherwise expand existing permitting processes that could prevent quick-to-market companies from making physical or operational changes that are needed to respond to the changing demands of the marketplace.

• Many states have developed so-called "minor NSR" programs that take into account the flexibility needs of the electronics industry. These programs, which have been carefully crafted to protect air quality while allowing flexibility, should not be reopened under any long-term implementation policy.

• The nature of the electronics manufacturing process results in high air flow volume with low concentrations of pollutants. Under these circumstances, states have developed regulatory requirements for electronics facilities that rely on pollution prevention, work practices, and other environmental management techniques to control emissions. Such programs should be left in place.

I. THE PROPOSED STANDARDS

A. EPA Should Base the Proposed Revision to the Ozone NAAQS on Sound Science and Should Take Other Relevant Factors Into Account

EIA strongly supports the goals of the Clean Air Act and recognizes the importance of setting the NAAQS at levels that will protect human health and the environment. ETA also believes, however, that the Agency must rely on sound science and widely accepted principles of public policy when developing the NAAQS. EPA's Clean Air Scientific Advisory Committee (CASAC), a group of scientific experts established by the Clean Air Act and appointed by the EPA Administrator, has reviewed the scientific data regarding the health effects of ozone, and has concluded that the scientific evidence does not point to any specific level as being appropriate for the ozone NAAQS. In reviewing the scientific data regarding the health effects of ozone, CASAC concluded as follows:

> [T]here is no "bright line" which distinguishes any of the proposed standards (either the level or the number of allowable exceedances) as being significantly more protective of public health. For example, the differences in the [estimated] percent of outdoor children responding between the present standard [0.12 ppm averaged over 1 hour] and the most stringent proposal (8-hour, one exceedarice, 0.07 ppm) are small and their ranges overlap for all health endpoints.

CASAC letter of November 30, 1995. Thus, there is no scientific basis for concluding that the proposed ozone standard would necessarily provide greater health benefits than the current standard. For this reason, CASAC specifically stated that, within the range of standards being considered by EPA, the selection of a specific standard was not a scientific issue, but was strictly a "policy judgment." Id. EPA itself acknowledged this fact in the preamble to its proposal to revise the NAAQS for ozone. *See* 61 Fed. Reg. at 65727.

In making this policy judgment, EPA should consider the costs of lowering the ozone standard. EPA has historically taken the position that, under the Clean Air Act, it may not consider the costs of establishing the NAAQS, but must set them based solely on scientific evidence about health and environmental effects.[1] In this case, however, CASAC has stated that the scientific evidence alone does not point to any particular standard, and that the standard must. be based on other policy considerations. Under these circumstances, nothing in the Clean Air Act precludes the Agency from taking costs into account when setting the NAAQS. Indeed, where there is no scientific basis for choosing one standard over another, we believe that it would be arbitrary and capricious not to consider the costs of achieving alternative standards.

EPA has estimated that the cost of "partial attainment' with the proposed ozone standards would be approximately $2.5 billion per year. *See* EPA Ozone Regulatory Impact Analysis (Ozone RIA). For at least two reasons, however, this estimate significantly understates the likely cost of the ozone proposal. First, the Agency was not able to identify enough control measures to allow 24 of the projected ozone nonattainment areas to reach attainment with the proposed standard, and therefore did not include the full cost of reaching attainment in those areas. In fact, according EPA's analysis, there are four cities (Los Angeles, New York City, San Diego, and

[1]In support of this position, some commentators have referred to the 1980 decision by the D.C. Circuit Court of Appeals in Lead Industries Association v. EPA, 647 F.2d 1130 (D.C. Cir. 1980). This case, however, addressed the issue of whether EPA is required to take costs into account when developing NAAQS, not whether the Agency has the discretion to consider costs if it so chooses. In Lead Industry, the petitioner argued that the Clean Air Act required EPA to consider costs when setting the NAAQS. Not surprisingly, the Court rejected this argument. Although there is some language in the Lead Industries decision indicating that EPA is precluded from considering costs when setting NAAQS, this language is clearly dicta, and is not part of the Court's holding. Neither this nor any other case has held that EPA lacks the discretion to consider costs when setting or revising the NAAQS.

Bakersfield) where the control measures identified by EPA would not be sufficient to attain even the current standard. *See* Appendix A of the Ozone RIA.

Second, EPA's cost estimates only include the cost of actual control measures, and do not include the planning and other costs that would be borne by businesses and government agencies. These costs could also be substantial. EPA estimates that, under the proposed standard, the number of ozone nonattainment areas would roughly triple. This would impose an enormous burden on state and local environmental agencies, which would be required to go through a lengthy planning process to gather data and develop policies and programs to meet the new standards.

Although the electronics industry is not a major source of ozone precursors, it would likely be adversely affected by the proposed ozone standard. Many electronics manufacturers have made key planning decisions based on the current NAAQS for ozone. For example, many companies have taken steps to ensure that their facilities will not be treated as "major sources" under various EPA programs. This approach not only benefits the companies by ensuring that they will have operational flexibility, but also benefits the environment by capping potential emissions from these facilities. A change in the NAAQS standard has the potential to undermine this approach and cause significant disruptions in the electronics industry.

We understand the need to invest in clean air and a healthy environment, and we do not object to any regulatory requirement simply because of the burden that it may impose on our industry. Notwithstanding the cost and potential disruption of the proposed revision to the ozone NAAQS, EIA would support the proposal if it would provide meaningful health or environmental benefits. But EPA's own scientific advisors have concluded that the proposed ozone standards would not necessarily provide such benefits. Under these circumstances—where the proposal would clearly impose significant costs on governments, businesses, and consumers but not necessarily provide meaningful benefits—the appropriate "policy judgment" seems clear. EPA should not revise the NAAQS for ozone as outlined in the proposed rule. Rather, ETA believes that the Agency should either retain the current ozone NAAQS or establish an equivalent standard with a longer averaging period. As noted in the preamble to the proposed rule, CASAC has indicated that a longer—averaging period would be more appropriate for addressing the adverse health effects related to ozone exposures. In addition, a longer averaging period may provide a more stable standard that is less likely to force an area into nonattainment based on unusual weather patterns. If EPA decides to switch to a longer-averaging period, it should select a level (and an implementation approach) that will not undermine the programs that government agencies and businesses have developed to meet the current ozone standards.

B. EPA Should; Not Establish New NAAQS for $PM_{2.5}$ Until Further Research Can Address the Major Uncertainties About the,Health Effects of $PM_{2.5}$

CASAC also conducted a comprehensive review of the scientific data regarding the health effects of fine particles—i.e., airborne particulate matter measuring 2.5 microns or less ($PM_{2.5}$). Based on this review, it concluded that there is much uncertainty about the underlying science, and that a number of important questions should be addressed before EPA proceeds to set a NAAQS for $PM_{2.5}$. In a letter dated June 13, 1996, CASAC advised the Agency that, because of the judicial deadline for making a decision about whether to revise the current PM NAAQS, CASAC did not have "adequate time to analyze, integrate, interpret, and debate the available data on this very complex issue."

EPA itself has recognized that there are substantial uncertainties about the potential health effects of $PM_{2.5}$. As part of the Administration's recent budget proposal, the Agency has requested $26.4 million in order to conduct the research that is necessary *"[to reduce the great uncertaii#y about PM'S health effects."* Budget of the United States Government, Fiscal Year 1998, p. 81 (emphasis added). According to the budget proposal, this amount of funding is needed to support research in three areas: "(1) evaluating the relationship between health effects and PM exposures; (2) determining the amount and size of particles inhaled and retained in the lungs; and (3) investigating biological mechanisms by which PM concentrations in outdoor air may induce health effects and, in doing so, evaluating potential links between PM exposures and health effects." Id.

In spite of these uncertainties, it might be appropriate to establish a NAAQS for fine particles if it would be relatively inexpensive to achieve such a standard. The Regulatory Impact Analysis (MA) prepared by EPA, however, estimates that it will cost $6.3 billion per year to achieve partial attainment with the proposed standard. EPA PM Regulatory Impact Analysis (MA) at 7–8. As with the proposed ozone standard, the Agency has not attempted to estimate the cost of full attainment because "it is not possible to estimate the costs of the as yet unknown measures that

will be required to allow residual nonattainment areas to come into compliance." *See* Letter of Sally Katzen, Administrator of the Office of Information and Regulatory Affairs, to Chairman Thomas Bliley, Jr. (February 14, 1997). Thus, there is also significant uncertainty about the full cost of the proposal.

The Agency has not yet been able to collect basic data regarding PMG5**2.5** emissions, including what sources are responsible for $PM_{2.5}$, what chemical components form $PM_{2.5}$ in the atmosphere, and what steps will likely be needed to address $PM_{2.5}$ emissions. In its proposed Interim Implementation Policy, for example, EPA notes it cannot develop an implementation policy for fine particulates "until it is able to technically predict and measure emissions of fine particles generated by individual sources and better understand and estimate the formation and dispersion of ambient fine particle concentrations in the atmosphere." 61 Fed. Reg. at 65762.

EIA recognizes that absolute certainty should not be a prerequisite for the imposition of environmental standards, and that EPA must often move forward to protect public health in the face of unanswered questions. In this case, however, there are enormously important questions that must still be addressed, and the cost of moving forward is very high. In light of the many questions surrounding fine particulates, including the uncertainty about the health effects data and the types of sources that are responsible for airborne concentrations of $PM_{2.5}$, ETA believes that the Agency should not establish NAAQS for $PM_{2.5}$ at this time. EPA is under no obligation to establish a new NAAQS for $PM_{2.5}$. It can comply with the existing judicial deadline and the underlying requirements of the Clean Air Act by reaffirming the current PM_{10} standards and taking the time needed to address the significant scientific uncertainties about the potential health effects of fine particles. Rather than setting a new standard for $PM_{2.5}$, EPA should follow the advice given by CASAC and "implement a targeted research program to address these unanswered questions and uncertainties." *See* CASAC letter of June 13, 1996.

II. IMPLEMENTATION ISSUES

A. The Electronics Industry Has Unique Flexibility Needs that Must Be Addressed in Any Implementation Policy

The technologically dynamic nature pf the electronics industry distinguishes it from other traditional manufacturing sectors. To avoid obsolescence, a typical electronics manufacturing facility will undergo numerous chemical and equipment alterations in the span of a single year and will install several completely new generations of technology during its operational lifetime.

In the electronics industry, the ability to bring a new product to market rapidly is of paramount importance to the product's ultimate success. Even a 1- or 2-week delay in a new product announcement or the shipping of a new product can have serious effects on the product's ultimate success. Each year, a typical electronics manufacturing company may announce as many as several hundred new hardware products in the United States alone. Obviously, these products cannot simply appear on the customer's floors, but require new and modified manufacturing processes, often with a completely new generation of technology.

As a result, electronics manufacturing processes are in continuous evolution. Roughly every 18 to 24 months, new generations of products are introduced through implementation of new processes, and of these processes, approximately one-third involve major departures from the prior processes in terms of chemistries, equipment and/or chemical use. Process alterations are essential to meet the competitive demand for upgrades, advancements and innovations. To provide a concrete example of the types of business challenges faced by both the electronics and semiconductor manufacturers in our industry, EIA has undertaken an informal survey of its members.

One EIA member, Intel Corporation, has analyzed its semiconductor operations. This analysis demonstrates that beginning at startup, and for each subsequent 5-year period that follows, a typical facility using the latest process technology would:

- Introduce at least two new generations of technology, which may occur either through constant alterations phased in over time or by completely "gutting" the interior of the facility other than the piping, ducts and other components which link the manufacturing operation with the general facility services area.
- Make 30 to 45 process chemical alterations per year as existing processes are refined and new processes are developed.
- Install 5 to 15 new equipment types and/or new processes to meet technical needs that were identified at facility startup, but for which at the time of startup, no equipment or process satisfying the requisite specifications have actually been developed, constructed and validated.

• Undertake hundreds of minor process "tweakings," such as an amendment in flowrate or temperature adjustments.

EIA has also gathered information from other members regarding the types and frequency of routine process upgrades, advancements and innovations made each year in typical electronics operations. The results indicate that, in general, an electronics manufacturer will undertake 100–3 00 alterations per year depending on the size of the facility. Approximately one-quarter of these alterations involve the installation of equipment, primarily in replacement or "like-kind" replacement situations.

To remain competitively viable, a U.S. manufacturer cannot afford any significant regulatory delays prior to implementing process and equipment alterations. Thus, any implementation policy for new or revised NAAQS must take into account the following:

• The global competitive dynamics of our industry create the economic reality that process alterations must be implemented swiftly to retain existing markets and/or capture new markets. Thus, to remain competitively viable, a U.S. manufacturer cannot afford any significant regulatory delays prior to implementing process alterations.

• Regulatory regimes that require permitting or other environmental authorities to comprehend and catalogue each and every process detail create inordinate administrative burdens for both regulators and industry due to the ever-evolving nature of electronics and semiconductor processes. Moreover, in many cases, such regimes are simply incompatible with our industry's competitive need to implement process changes in a swift, decisive manner.

In sum, regulatory flexibility—as defined by the ability to undertake these routine changes without significant delay—is critical to our industry's global competitiveness.

B. If EPA Revises the Ozone NAAQS or Sets New NAAQS for $PM_{2.5}$, the Interim Implementation Policy Should Not Reduce Operational Flexibility by Automatically Lowering Maj or Source Thresholds

EPA has proposed an "interim implementation policy" that would become effective when a new or revised NAAQS is finalized and would remain in effect in an individual state until the state has developed (and EPA has approved) a state implementation plan (SIP) designed to meet the new NAAQS. For the most part, the proposed policy would simply adopt a "no backsliding" policy that would keep all current programs and requirements in place. In at least one key respect, however, the proposed policy would go beyond this no backsliding principle. Under the proposal, all "marginal" ozone nonattainment areas would automatically be reclassified as "moderate" areas, and all moderate areas would become "serious" areas. Among other things, this would lower the New Source Review (NSR) major source threshold from 100 tons per year (tpy) to 50 tpy in moderate areas that are reclassified as serious during the interim period.

This change is likely to have a significant impact on many facilities currently located in moderate nonattainment areas. Many companies, including members of ETA, have diligently pursued a minor source strategy since 1990, using careful strategic planning and, in some cases, expensive pollution prevention and other control measures, to ensure that their plants are not categorized as major sources. This strategy has preserved operational flexibility for the facilities and, at the same time, has yielded important environmental benefits by capping potential emissions at these plants. By automatically lowering the major source thresholds, the proposed interim policy has the potential to undermine this minor source strategy.

Significantly, there is no evidence to suggest that lowering major source thresholds will have an appreciable impact on reducing emissions. In many areas, emissions of ozone precursors come primarily from mobile and area sources. For example, 1996 emissions data compiled by the Arizona Department of Environmental Quality shows that in Maricopa County, Arizona, stationary sources are responsible for only about 6 percent of VOC emissions and 5 percent of NOx emissions. The rest of the VOC and NOx emissions in the county come from area and mobile sources. In other areas, emissions of concern come primarily from older, stable facilities that do not intent to make physical or operational changes and therefore will not be subject to NSR. In these areas, extending the NSR program to smaller stationary sources has little or no potential to reduce emissions of ozone precursors. If EPA proceeds to establish an interim implementation policy, the policy should not include an automatic "bump up" that would lower major source thresholds in certain areas. Rather, it should simply adhere to the no backsliding principle.

C. If EPA Revises the Ozone NAAQS or Sets New NAAQS for $PM_{2.5}$, it Should also Establish a Long-term Interim Implementation Policy that Allows for Innovation and Flexibility

EPA has taken the position that subparts 2 and 4 of part D of title I of the Clean Air Act would not apply to the revised ozone and $PM_{2.5}$ NAAQS, because those subparts were "explicitly tied" to the ozone and PM NAAQS that were in place when the 1990 Clean Air Act Amendments were adopted. *See* 61 Fed. Reg. at 65753. As a result, the Agency has announced that it will develop a new policy, including a new classification scheme, to implement the proposed NAAQS. If EPA takes this opportunity to move beyond the strictures of subparts 2 and 4, it should seek to develop an innovative and flexible implementation policy that will achieve cost-effective emissions reductions without hampering operational flexibility. Any such policy should ensure that the electronics industry and other similar industries are able to carry out necessary process changes without incurring regulatory delays. The following implementation issues are of particular importance to the electronics industry:

Major Source Permitting: EPA should not adopt an implementation policy that relies on increasingly stringent major source thresholds for purposes of New Source Review (NSR) or similar permitting programs. As noted above, such an approach has little or no potential to achieve significant emissions reductions, but could significantly limit the operational flexibility that dynamic industries need to compete effectively in the global marketplace. Many ETA members have diligently pursued a minor source strategy since 1990, using careful strategic planning and, in some cases, expensive control measures, to ensure that their plants are not categorized as major sources. As a result, most electronics facilities are not subject to major source NSR permitting obligations, and are able to make physical or operational changes without going through a lengthy regulatory process. An implementation policy that adopts more stringent major source thresholds and thereby brings smaller sources into the NSR program could wreak havoc on the electronics industry by subjecting routine changes to NSR review.

Minor NSR: Electronics sources are typically regulated under SIP permitting programs for minor sources (generally known as minor NSR) and have relied on these programs to obtain controls and limitations on their potential to emit, thereby avoiding major source status. Historically, these minor NSR programs have also been important tools for states to regulate sources with respect to attainment requirements. Many states have fashioned their minor NSR programs in a manner that recognizes the electronic industry's unique flexibility needs and the lack of environmental significance of the industry's routine process upgrades, advancements and innovations by allowing the use of blanket registrations, targeted exemptions, and other similar measures. Any change in these programs could disrupt the minor source strategy employed by electronics manufacturers and could create regulatory delays that would seriously hamper global competitiveness.

It is also important that any implementation policy be designed to preserve the work that has been done to develop innovative cap-type permits. These permits encourage pollution prevention and other creative approaches for controlling emissions, while at the same time providing the flexibility that electronics companies need to compete in the global marketplace.

Emissions Controls: The nature of the electronics manufacturing process results in high air flow volume with low concentrations of pollutants. Under these circumstances, states have developed regulatory requirements for electronics facilities that rely on pollution prevention, work practices, and other environmental management techniques to control emissions. Many states have fashioned their "reasonably available control technology" (RACT) rules for electronics sources in a flexible manner that does not mandate specific end-of-pipe control technologies. Moreover, the constant evolution of the manufacturing process encourages an electronics manufacturers to "build in" emission controls as part of the planning process. Thus, any change in the RACT rules necessitated by a revision to the NAAQS could have serious flexibility implications for electronics manufacturers.

Monitoring And Other Compliance Demonstration Approaches: As part of the SIP revision process that will be necessary to implement any new or revised NAAQS, states will be required to develop a "comprehensive, accurate, current inventory of actual emissions from all sources." Electronics sources present unique monitoring challenges due to the high volumes of air and low levels of pollutants that typify the manufacturing process. To date, states have been flexible in working with the electronics industry to develop emissions data based on real-world factors. Implementation of any NAAQS revision must be undertaken with this same flexible approach to monitoring and compliance demonstration.

Equitable Allocation of Compliance Burden: In addition to the specific issues noted above, EIA also urges the Agency to adopt an implementation policy that spreads the compliance burden fairly among the industrial, public, and governmental sectors. The policy should not focus primarily on private industrial sources for reductions of ozone and PM precursors, but should seek cost-effective emission reductions from the general public (including mobile sources and consumer products) and from governmental sources as well. As noted above, mobile and area sources are responsible for the vast majority of emissions in many parts of the country. Any implementation policy should reflect this fact and shOuld not require states and localities to focus undue attention on other sources that contribute only marginally to nonattairiment problems.

CONCLUSION

ETA appreciates the opportunity to comment on EPA's proposals to revise the NAAQS for ozone, to establish a new NAAQS for $PM_{2.5}$, and to develop implementation policies designed to attain the proposed standards. EIA believes that EPA should either retain the current ozone NAAQS or establish an equivalent standard based on a longer averaging period. If EPA decides to switch to a longer averaging period, it should select a standard that will not undermine the programs that regulatory agencies and businesses have developed to meet the current standard. EIA also believes that EPA should not establish NAAQS for $PM_{2.5}$ at this time. Rather, it should retain the current PM standards until such time as further research can address the significant uncertainties about the health effects of fine particles. If the Agency adopts either of the proposals, ETA urges the Agency to develop interim and long-term implementation policies that address the unique flexibility needs of the electronics industry.

STATEMENT OF STEPHEN L. JOHNSON, NOMINEE FOR ASSISTANT ADMINISTRATOR, OFFICE OF PREVENTION, PESTICIDES, AND TOXIC SUBSTANCES, ENVIRONMENTAL PROTECTION AGENCY

Introduction

Good Morning, Mr. Chairman, Senator Reid, and members of the committee. I am honored to have the opportunity to appear before this committee. Today I'm seeking your confirmation to serve as Assistant Administrator for the Office of Prevention, Pesticides, and Toxic Substances at EPA. As a career civil servant for the last 20 years, it is a privilege and a distinct honor to have the support of President Bush and Governor Whitman to serve EPA as part of this Administration.

Given my background at EPA and in the private sector, I know the importance of developing practical and reasonable solutions to our environmental and public health challenges. As you know, pesticide and chemical regulation can be a contentious subject, with many polarizing issues. If confirmed as the Assistant Administrator, I will foster an atmosphere with our stakeholders to ensure the Agency is accessible and responsive. Given my scientific education and experience working within the various scientific disciplines at EPA, I will aggressively promote decisions that are based in sound science. I will also work to foster consensus-based and common-sense approaches as we advance public health and environmental protection. I look forward to working with Governor Whitman and the EPA team to advance public health and environmental protection.

Role of OPPTS

The Office of Prevention, Pesticides, and Toxic Substances (OPPTS) has a variety of programs that are at the forefront of protecting public health and the environment, including regulating pesticides and industrial chemicals, as well as promoting pollution prevention and innovative partnerships with our stakeholders. We have enormous challenges, but we also have a solid record of accomplishments.

During my tenure at EPA, pesticide and industrial chemical regulation has changed dramatically. In the pesticides area, we are implementing the Food Quality Protection Act (FQPA), which is strengthening food safety for all consumers, especially for infants and children, from pesticides residues in food. We are almost 5 years into FQPA implementation to ensure pesticides meet the tougher standards, while at the same time ensuring that American agriculture has the tools to continue to provide a healthy and abundant food supply.

Key Priorities

Despite the progress in recent years, important work remains. Our regulatory oversight of pesticides, industrial chemicals, biotechnology, food safety, and pollution prevention will continue to require sustained and dedicated attention. Making sure

our decisions are based on sound science will require continued consultation with the scientific community, peer review and highly trained professionals at EPA. Meeting our commitments under Chemical Right-to-Know, FQPA, protecting children from lead-based paint risks, bringing our stakeholders together to develop workable solutions, and promoting diversity in OPPTS, along with a host of many other issues, will require continued attention.

My priorities include building on the solid progress under the FQPA to reassess the older pesticides while ensuring an abundant food supply. We expect to meet the statutory commitments, while using sound science and extensive stakeholder involvement. OPPTS will further streamline the process to license (register) new pesticides, while seeking new ways to better involve our stakeholders in registration decisions. My office has the further challenge of addressing the cutting edge issues in biotechnology. I believe this technology holds tremendous promise. However, we must continue to advance our science and strengthen the regulatory system to ensure biotechnology products meet rigorous health and environmental standards. Our goal is to assure the public that there is a credible regulatory system in place to for food safety and environmental protection.

On the subject of industrial chemicals, voluntary partnerships on the High Production Volume chemical testing program and the Voluntary Children's Chemical Evaluation Program will continue to be key priorities. Reducing priority PBT pollutants, developing innovative partnerships, managing the lead-based paint program, and the core TSCA programs, will continue to be important areas of focus. I remain committed to our many initiatives with States and industry to advance pollution prevention approaches. Also, given today's global environment, OPPTS will continue the important scientific and regulatory work with the international community. I am firmly convinced that these priorities demonstrate that a healthy environment and a robust economy can go hand in hand.

Key Principles

As I address these and other priority issues, I want to mention my personal operating philosophy and principles I will follow if confirmed as the Assistant Administrator. They include commitments to: 1) Advance the best science to support our regulatory decisions; 2) Open communication and regular consultation with our stakeholders; 3) Build strong and trusting relationships with all our customers, including Congress, the States, the tribes, the industry, the scientific community, other government agencies, farmers, the international community, and the consumer advocate community; 4) Work to quickly address the concerns of our stakeholders; 5) Establish partnerships with all stakeholders to develop common-sense and innovative solutions; 6) Strengthen partnerships with other Federal agencies, particularly with USDA, FDA; and HUD, NIOSH, and OSHA; and 7) Promote professionalism, dedication and diversity within the OPPTS staff.

To advance these principles, I have already begun the process of meeting with many stakeholders and employees in OPPTS to hear a variety of opinions on the challenges we face and the future direction we should forge. I believe these steps will strengthen partnerships to ensure we meet the changing demands in safeguarding public health and the environment.

Conclusion

I would like to close with two personal observations. My family has a strong commitment to public service. My father served in the Department of the Navy for more than 30 years. Growing up, I always admired my father's government service. During college in the early 1970's, I began my public service as a GS–4 intern, and I am proud to have worked at EPA for more than 20 years. This experience has led me to have a deep appreciation and abiding respect for the importance of reaching for excellence in government.

On another personal note, I have been fortunate to be able to devote the majority of my career to public service and environmental protection. For me, serving in the government, with the goal to help all Americans and their families, has been a distinct privilege. When I reflect on my past service and consider the future, I know that I will face difficult, complex, and serious issues. I have confidence that having a foundation in sound science and commonsense, coupled with inclusive stakeholder participation, will result in quality decisions.

As Assistant Administrator, I hope to achieve national goals with keen sense of the needs and realities of our individual families and communities. I hope that my service will reflect positively on my children, their everyday choices, and the community that each of us live in.

I look forward to working with you on a bipartisan basis to advance the mission of protecting public health and the environment on behalf of the American people.

Thank you for the opportunity to appear before you today. I'll be glad to answer any questions you may have.

UNITED STATES SENATE

COMMITTEE ON ENVIRONMENT
AND PUBLIC WORKS

ROOM 410 DIRKSEN BUILDING WASHINGTON, DC 20510

INFORMATION

REQUESTED OF PRESIDENTIAL NOMINEES

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

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

Name of Nominee:	**Stephen L. Johnson**
Business Address:	**U.S. Environmental Protection Agency** **1200 Pennsylvania Ave, NW** **Washington, D.C. 20460**
Business Phone:	**(202) 260-2902**
Home Address:	**5922 Jefferson Blvd** **Frederick, MD 21703**
Home Phone:	**(301) 371-7528**

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

Name Johnson (Last) Stephen (First) Lee (Middle)

Position to which nominated: Assistant Administrator for Prevention, Pesticides and Toxic Substances
Date of Nomination: April 26, 2001

Date of birth: 21 March, 1951 (Day) (Month) (Year) **Place of birth:** Washington, DC

Marital status: Married **Full name of spouse:** Deborah Lynn Johnson
Name and ages of children: Carrie Lynn Johnson Jenkins, Age 23
Matthew Stephen Johnson, Age 20
Allison Leigh Johnson, Age 19

Education:

Institution	Dates attended	Degrees received	Dates of degrees
University of Maryland	9/77-12/77	Coursework	
George Washington University	9/74 - 6/76	M.S.	
Taylor University	9/69 - 6/73	B.A.	

Employment record:

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

January 2001 to Present – *U.S. Environmental Protection Agency, Office of Prevention, Pesticides, and Toxic Substances, Acting Assistant Administrator* – The responsibilities of OPPTS include implementing the nation's pesticide, toxic chemicals, right-to-know, pollution prevention, and lead-based paint laws, regulatory and scientific programs. This senior-level position establishes policy and manages communication and coordination efforts throughout the Administration, with Congress and with a diverse group of stakeholders on scientific and regulatory issues affecting pesticides and toxic chemicals. The office employs approximately 1,450 people, with a budget of around $250 million.

Employment Record (Continued)

January 1999 to December 2000 – *U.S. Environmental Protection Agency, Office of Prevention, Pesticides, and Toxic Substances, Deputy Assistant Administrator and Principal Deputy Assistant Administrator* – In this role I served as the career Deputy to the Assistant Administrator, and helped manage the nation's scientific and regulatory programs for pesticides and toxic chemicals. In this position I played a key role in implementing the Food Quality Protection Act (FQPA), the Toxic Substances Control Act (TSCA), EPA's biotechnology program, and worked substantially on the science policies associated with FQPA implementation. My major responsibilities also included serving as the Agency's spokesperson on pesticides and biotechnology issues, and managing OPPTS financial and personnel resources.

September 1997 to December 1998 – *U.S. Environmental Protection Agency, Office of Pesticide Programs, Deputy Office Director* The Office of Pesticide Programs is the organization under OPPTS that implements the federal pesticide laws. In this position I worked extensively on establishing the legal, policy, scientific and administrative framework necessary for FQPA implementation.

June 1994 to September 1997 – *U.S. Environmental Protection Agency, Office of Pesticide Programs, Division Director, Registration Division* – This division within the Office of Pesticide Programs is responsible for evaluating new pesticides to determine if they meet the health and safety requirements for registration. I worked extensively with the regulated and the scientific community to ensure rigorous scientific data, coupled with an extensive evaluation, supported the registration of new pesticides. During my tenure in this office, I made significant administrative improvements that lead to faster and more predictable review periods for new pesticides.

December 1988 to June 1994 – *U.S. Environmental Protection Agency, Office of Pesticide Programs, Division Director, Field Operations Division* In this position I was responsible for the outreach and communications functions in the Office of Pesticide Programs. This position required substantial coordination with our stakeholders, including our State partners. Our office worked on a wide variety of state and local issues, including pesticide re-registration; endangered species, worker protection and groundwater.

April 1984 to December 1988 – *U.S. Environmental Protection Agency, Office of Pesticide Programs, Deputy Director, Hazard Evaluation Division; Served as Executive Secretary, Scientific Advisory Panel* – In these position I worked with and helped manage a scientific staff responsible for conducting health and safety evaluation on pesticides. I was also responsible for managing the scientific peer review function in the Office of Pesticide Programs. Duties included writing technical documents, and organizing and managing scientific peer review meetings.

February 1982 to March 1984 – *Hazelton Laboratories America, Inc., Vienna, Virginia, Director of Operations* – Duties included overseeing laboratory operations, including toxicological evaluation of chemicals.

July 1981 to February 1982 – *U.S. Environmental Protection Agency, Office of Research and Development, Senior Advisory for Chemical Testing and Science Policy* – Served as science and policy advisor in the office to research and develop a variety of new technical and toxicology programs for chemicals and pesticides.

Employment Record (Continued)

September 1979 to July 1981 -- *Environmental Protection Agency, Office of Pesticides and Toxic Substances, Oncology Branch, Pathologist* – Evaluated scientific data on potential toxic effects from industrial chemicals. Helped coordinate testing and evaluation activities to improve the toxicity testing methods.

June 1976 to September 1979 – *Litton Bionetics, Inc. Kensignton, Maryland, Acting Director, Department of Pathology* – Responsible for the technical and administrative management in the pathology department to support commercial scientific testing.

Honors and awards:

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

Special Act Award, 01/91
Annual Performance Award (12/91; 11/93; 11/94; 11/95; 11/96; 12/98; 12/99; 12/00
Meritorious Presidential Rank Award, 09/97
Nominated for the Distinguished Presidential Rank Award, 2001

Memberships:

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

Organization	Office held (if any)	Dates
Fredericktown Baptist Church	Member	1972 - present
Taylor University	Parent's Cabinet - Volunteer member	1999 - present
United States Tennis Assoc.		
- Maryland District	Board of Directors, Volunteer member	01/94 - 12/00
- Mid Atlantic Section	Board of Directors, Volunteer member	01/96 - 12/00
Frederick Tennis Patrons	Board of Directors, Volunteer member	1990 - 2000

Qualifications:

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

I have over 25 years of direct experience, with a solid track record, that will contribute to serving successfully as the Assistant Administrator. In this section, I will describe my education, scientific, policy, management, and communication qualifications.

I have a Bachelors degree in Biology and a Masters degree in Pathology. This scientific background allows me to fully understand and appreciate the science underlying our decisions in regulating pesticides and industrial chemicals. This scientific education, as well as working directly within various scientific disciplines at EPA, helps ensure that science is the foundation of all our regulatory decisions. Our modern risk assessments on pesticides and industrial chemicals are very complex and rely on a variety of scientific disciplines. I believe my scientific training and scientific work experience, will allow the us to continue to strengthen the science in Office of Prevention, Pesticides, and Toxic Substances (OPPTS).

Serving in OPPTS and the Office of Pesticide Programs (OPP) for 15 years, and being intimately involved at a senior level on a variety of significant policy issues, has provided me with broad knowledge and first-hand policy experience. This experience has given me an in-depth understanding of the many complex policy challenges we face. I have successfully participated in the policy making process with the government, as well as with our stakeholders – that has led to balanced and reasonable policy decisions.

In the area of management, I now successfully oversee a staff of approximately 1,450 people, with a budget of around $250 million. During my 12 years in the Senior Executive Service, I have managed many people and significant resources. I have successfully worked on budget formulation, resource allocation, and sound financial management of OPPTS. In the area of personnel management, I come with a wealth of managerial experience and an exceptional strong commitment to support equal, diverse and fair employment. My style of leadership is informal, friendly, accessible, fair-minded, reasonable – which I believe all contribute to an exceptionally motivated and productive staff.

One of my strengths is effective and clear communication. I have had the opportunity to manage complex and controversial risk management issues on pesticides, biotechnology, food safety, and a variety of other issues. I am frequently tapped to be the Agency's spokesperson to address public health and other crisis in a credible and articulate manner. I believe open and effective communication is a vital part of managing a successful program.

Given the unique challenges we face, I believe I am highly qualified to lead OPPTS. To summarize, my qualifications include: a strong scientific background, a successful record of resolving difficult and demanding policy issues, exemplary financial and personnel management experience, and an exceptional ability to communicate highly technical and controversial subjects is a clear and concise way. I have established solid and trusting relationships with our stakeholders – that has allowed me to help resolve many complex scientific, legal and policy issues.

Future employment relationships:

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

No - currently member of the Senior Executive Service, U.S. E.P.A.

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

Return to Senior Executive Service, U.S. E.P.A.

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

No

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

Does not apply.

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

No

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

No

Financial Statement:

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

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

None

2. Are any assets pledged?

No

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

No

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

Yes

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

No

Potential conflicts of interest:

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

None

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

None

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

None

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

None

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

[See attached Form SF-278]

Political affiliation and activities:

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

None

Published writings:

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

[See attached speeches.]

Additional Matters:

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

None

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

Yes

3. Having completed this form, are there any additional questions which you believe the Committee should ask of future nominees?

None

AFFIDAVIT

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

Subscribed and sworn before me this 2ND day of MAY , 2001.

Notary Public
FRANCIS P BONDS
NOTARY PUBLIC, DISTRICT OF COLUMBIA
My Commission Expires 31 August 2001

NOTARY PUBLIC DISTRICT OF COLUMBIA

Dates, Sponsoring Organizations of Speeches Delivered by
Stephen L. Johnson
Acting Assistant Administrator
Office of Prevention, Pesticides and Toxic Substances
U.S. Environmental Protection Agency
January 1999 - April 2001

April 18, 2001, National Food Processors Association, Washington, D.C. Update on Food Quality Protection Act (FQPA).

April 6, 2001, American Crop Protection Association's Spring Meeting, Washington, D.C. Update on FQPA.

April 3, 2001, American Bar Association Section on Environment and Energy Committee's Meeting of the Special Committee on Pesticides and Chemical Regulation and Right-to-Know, Washington, D.C. Update on FQPA and chemical regulation.

March 30, 2001, Apple Processors Association's 1999 Annual Pre-Growing Season Briefing, FQPA Implementation, Washington, D.C.

March 12, 2001, "Living with TSCA 2001 -- Global Chemical Regulations Conference" keynote speaker, organized by the American Chemistry Council and the Synthetic Organic Chemical Manufacturers Association, Baltimore, MD. Transition news, update on High Production Volume Voluntary Chemical Testing Program, Voluntary Children's Chemical Testing Program, International Chemical Safety Issues.

August 23, 2000, American Cotton Producers and Cotton Foundation Joint Meeting, Cary, N.C. Update on FQPA and biotech.

March 2, 2000, U.S.-Japan Joint Planning and Cooperation Committee Meetings, Washington, D.C. Overview of the work of the Office of Prevention, Pesticides and Toxic Substances, discussion of global chemical safety issues, including harmonization, chemical testing, and chemical right-to-know.

February 15, 2000, Chemical Producers and Distributors Association 2000 Annual Meeting, Washington, D.C. Update on FQPA.

January 14, 2000, Fourth Annual Ag Partnership Meeting, sponsored by EPA's Region 8 for the Region's State Ag Commissioners, Denver, CO. Update on FQPA, biotech.

January 11, 2000, American Farm Bureau National Convention, Houston TX, Update on FQPA.

October 14, 1999, Food Quality Protection Act Conference, sponsored by the Texas Farm Bureau, Texas A&M University System Agriculture Program, Texas Department of Agriculture and others, Lubbock, Texas. Update on FQPA as it affects Texas crops.

October 4, 1999, American Nursery and Landscape Association's Fifth Biennial Leadership Council, Washington, D.C. Update on FQPA, particularly in regard to minor crops, nursery crops.

September 9, 1999, Meeting of the Local Government Advisory Committee and the Small Government Advisory Committee, Alexandria, VA. Pesticides, chemicals, lead, right-to-know and pollution prevention regulatory issues affecting local and small governments.

February 16, 1999, Wisconsin Potato and Vegetable Growers Association/University of Wisconsin Integrated Pest Management Team Annual Growers Education Meeting, Stevens Point Wisconsin. Recognition of this partnership's innovative IPM program and update on FQPA.

Prior to serving in the Office of the Assistant Administrator, Steve Johnson held top leadership positions for more than a decade in the Office of Pesticides, including the deputy director job. During that time, he gave hundreds of speeches to groups associated with agribusiness, including the American Crop Protection Association, the American Farm Bureau, the Chemical Producers and Distributors Association, the American Cotton Producers Association, and the National Food Processors Association, as well as state and local organizations and NGOs.

Mr. Johnson has given no speeches in a non-governmental capacity.

United States
Office of Government Ethics
1201 New York Avenue, NW., Suite 500
Washington, DC 20005-3917

April 30, 2001

The Honorable Frank H. Murkowski
Chairman
Committee on Energy and Natural Resources
United States Senate
Washington, DC 20510-6150

Dear Mr. Chairman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by Stephen L. Johnson, who has been nominated by President Bush for the position of Assistant Administrator, Office of Prevention, Pesticides, and Toxic Substances, Environmental Protection Agency.

We have reviewed the report and have also obtained advice from the Environmental Protection Agency concerning any possible conflict in light of its functions and the nominee's proposed duties.

Based thereon, we believe that Mr. Johnson is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

Marilyn L. Glynn
General Counsel

Enclosure

OGE - 106
August 1992

RESPONSES OF STEPHEN L. JOHNSON TO ADDITIONAL QUESTIONS FROM SENATORS SMITH AND REID

Question 1. We would like to ensure that all relevant stakeholders are included in the initial planning stages of chemical testing programs by Federal agencies, including the animal protection community and pediatric health professionals. In your new role, what will you do to ensure that the EPA consults with pediatric health professionals and the animal protection community prior to the development of all chemical testing programs and invites them to participate in their development?

Response. I agree that it is vitally important to include a range of stakeholders including the animal protection community and pediatric health professionals—in the planning stages of chemical testing programs, as well as the development of our regulations and other initiatives that we have underway. I can assure you that my

Office will make every effort to conduct our business in an open, transparent atmosphere that allows all of our stakeholders to be a part of the process.

For example, the Agency is establishing a Federal Advisory Committee (FACA) to help direct our efforts on the Endocrine Disruptor program. We recently conducted a pre-FACA meeting with a wide range of stakeholders to ensure that they are a part of this process. Similarly, we held a series of open stakeholder meetings to gather input into the development of our new Voluntary Childrens' Chemical Evaluation Program. These examples are models of how we will interact with our stakeholders now and in the future.

Question 2. Non-animal test methods can be more economical, more reliable, more relevant than animal tests, and are also more humane. In your new role, what will you do to promote the research, development, validation, and acceptance of non-animal test methods?

Response. I am personally committed to ensuring that non-animal tests are developed and validated as quickly as possible. My Office, along with EPA's Office of Research and Development, are active participants in the National Institutes of Health's Interagency Coordinating Committee on Alternative Methodologies (ICCVAM), the Federal entity responsible for the development and validation of non-animal test methods. We are committed to the development and integration of alternative methods that have been scientifically validated and peer reviewed via ICCVAM and other recognized authorities. Validation consists of ensuring that a new method is both reliable and relevant for its proposed use. Such methodologies provide both high quality data that are responsive to the Agency's needs for protecting human health and the environment, and address animal welfare concerns.

We are also committed to ensuring that when tests that include animals must be used, that these tests are conducted in a way to reduce the number of animals that must be used, reduce the pain and suffering of the animals, and, whenever possible, replace animals in testing with validated non-animal test systems. I will continue to follow the principles of notification as implemented in the High Production Volume Challenge program. . EPA reiterated these principles in an October 2000 letter to program participants which also indicated the commitment by EPA's Office of Research and Development and the NIH to pursue research that would lead to further protocols for non-animal tests.

You may also be aware that there have been a number of recent developments on this subject, including the October 2000 EPA and NIH sponsored "International Workshop on In Vitro Methods for Assessing Acute Systemic Toxicity." This workshop developed a number of recommendations that range from in vitro protocols for possible use in the near-term, to short-term research priorities, to long-term research all aimed at reducing the number of animals used to assess acute systemic toxicity. Recommendations coming out of this workshop include an in vitro protocol that should allow fewer animals to be used in in vivo acute toxicity tests. These recommendations will be put forward by ICCVAM for all Agencies, including EPA, to consider in late May or early June.

We are encouraged by the progress that is being made in this area and will continue to work with animal protection groups as we move forward in this very important endeavor. In fact, I have designated Sherry Sterling from the OPPTS' Office of Science Coordination and Policy to serve as liaison with animal protection groups to ensure that their issues and concerns are considered.

RESPONSES OF STEPHEN L. JOHNSON TO ADDITIONAL QUESTIONS FROM SENATOR SMITH

In 1996 Congress passed the Food Quality Protection Act (FQPA), which modified the Federal Food, Drug, and Cosmetic Act (FFDCA) and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) with respect to regulation of pesticides.

The FQPA amendments of 1996 introduced several major new concepts to pesticide regulation, namely, Aggregate Exposure and Cumulative Risk and also set definitive timetables to re-evaluate all existing product registrations with respect to these concepts.

Question 1. Could you provide an overview of the policies the Agency developed in implementing the decisionmaking process using aggregate exposure and cumulative risk and the process of developing that policy?

Response. As Assistant Administrator, I am committed to FQPA implementation that is led by sound science supporting decisions; open, fair, and predictable regulatory processes; workable transitions for pesticide users to new pest management strategies; and a process that engages all stakeholders, including the U.S. Department of Agriculture, farmers, and other pesticide users.

The development and implementation of aggregate and cumulative risk assessments have closely followed these principles. EPA has used the Scientific Advisory Panel (SAP) to ensure that these policies are guided by sound science. The SAP, an independent scientific peer committee, has met numerous times to invite peer review on both the aggregate and cumulative risk assessment methodologies. I will continue to use the SAP to conduct rigorous scientific peer review on these policies.

EPA has also formed and received valuable counsel from several advisory committees, including the Food Safety Advisory Committee, the Tolerance Reassessment Advisory Committee (TRAC), and the Committee to Advise on Reassessment and Transition (CARAT). The advisory committees have brought together and continue to bring together a wide range of stakeholders interested in pesticide policy and their discussions and suggestions have played an important role in shaping both our public participation process and EPA's approach to developing science policies to address the scientific analysis as required by FQPA. As Governor Whitman expressed in March 19, 2001, directive to OPPTS, it is the goal for the Agency to conduct reregistration and reassessment activities in an open and transparent manner, with ample opportunities for public participation, and to make all regulatory decisions based upon principles of sound science.

Question 2. What is the status of the re-evaluation of the existing product registrations?

Response. EPA's pesticide reregistration and tolerance reassessment are critical parts of EPA's mission to safeguard public health and the environment. Since the enactment of FQPA in 1996, EPA has reassessed more than one-third of the 9,721 existing tolerances to ensure they meet the standards in FQPA. In addition, EPA is now more than 70 percent complete with re-registering older pesticides. EPA remains on schedule to meet the next statutory deadline to reassess 66 percent of existing tolerances by August 3, 2002.

Question 3. Do you expect to review that policy or make any changes to the policy?

Response. I intend to use a variety of means to engage the public, USDA, Congress, and the scientific community in discussing the decisionmaking process in development of important policies such as use of aggregate exposure and cumulative risk. These will include working with CARAT, either in full sessions or in workgroups, the Pesticide Programs Dialogue Committee, the Scientific Advisory Panel, and other affected stakeholders. Co-chaired by EPA's Deputy Administrator and USDA's Deputy Secretary, CARAT is made up of stakeholders representing a broad range of interests and backgrounds from across the country, and provides a forum for these parties to advise EPA and USDA regarding strategic approaches for pest management planning and tolerance reassessment for pesticides as required by FQPA.

In addition, I will continue to bring science policy issues to the Science Advisory Panel, an independent scientific peer review committee, to ensure that rigorous, objective science continues to guide EPA's decisionmaking. Further, EPA will continue to provide transparent and predictable public review periods on all of EPA's pesticide regulatory decisionmaking, through the Federal Register, EPA's website, and all other available public fora.

Question 4. How will you work to involve the USDA more closely and integrally in the EPA's regulatory activities that affect crop protection?

Response. While EPA has primary responsibility for implementing the Food Quality Protection Act, the U.S. Department of Agriculture (USDA) is a key player, especially in interacting with the agriculture community. USDA provides critical support to obtain data that improve EPA's risk assessments, assist pesticide users adjust to changes regarding pesticide uses, and share information on alternative pest management strategies. In addition, USDA generates important food consumption and pesticide residue data. We also coordinate extensively to improve the scientific foundation for pesticide risk assessment.

As Assistant Administrator, I will work extensively with USDA on a variety of pesticide issues, including during proceedings of the committee to Advise on Reassessment and Transition (CARAT), which is helping to enhance interaction with stakeholders on key FQPA issues. I want to emphasize that EPA will continue its efforts with USDA to strengthen the communication with minor-use growers to identify vulnerable crop-pest combinations and to coordinate efforts to involve stakeholders in risk management decisions. I am especially looking forward to working with EPA's new Counselor on Agriculture Policy, Jean-Mari Peltier. I am confident that she will strengthen our working relationship with USDA.

Question 5. Governor Whitman has announced creation of the position of Counselor to the Administrator on Agriculture Policy. What role do you see the Counselor on Agriculture Policy playing with your office?

Response. U.S. agriculture is directly affected by a wide range of EPA issues, from the use of pesticides to handling of animal waste. The Counselor to the Administrator on Agriculture Policy will act as an ombudsman for the agriculture community and to strengthen interaction with the agricultural community. This agriculture advisor, Ms. Jean-Mari Peltier, will work closely with my office and throughout EPA to assure that agricultural concerns are considered during EPA deliberations; improve transparency of EPA activities with agriculture and other affected parties; foster coordination between EPA and USDA; and, maintain an awareness of congressional activities related to agriculture and environmental protection.

RESPONSES OF STEPHEN L. JOHNSON TO ADDITIONAL QUESTIONS FROM SENATOR REID

Question 1. As Assistant Administrator for the office responsible for toxic substances, would you place a high priority on taking a hard look at whether and how improvements can be made in the current approach to protecting public health from exposure to toxic chemicals?

Response. I take seriously the responsibility to ensure that the citizens of this country are protected from the potential hazards associated with chemicals. Be assured that the Agency stands ready to assist this committee if it is the will of Congress to consider improvements to existing laws.

Question 2. As you know, I wrote to Administrator Whitman on March 15 urging her to sign a consent decree to put EPA on a schedule to comply with critical pesticide protections for children. I was very pleased when the Administrator signed the decree. Time and time again since then, President Bush has reminded us of that action, highlighting the pesticide settlement as great environmental achievement.

That achievement is only as good as the dollars the President is willing to put behind it. This year, maintenance fees authorized under the Federal Insecticides, Fungicide, and Rodenticide Act (FIFRA) which support reregistration of pesticides will expire. The administration has not requested an extension of that authorization. At the same time, your budget also shows a cut of 50 percent from last year's level for the pesticide tolerance reassessment program.

Together the lack of a reauthorization of these FIFRA fees and the cut in appropriated dollars for the pesticide tolerance program would, by your own estimation, result in the loss of 200 employees who perform this important work—25 percent of the pesticide program office. I understand that the Administration doesn't view this as a cut because it plans to finalize a proposed Clinton Administration rule to raise the fees charged pesticide companies to do this work.

In view of the Administration's strong commitment to advancing critical pesticide protections for children, and its reliance upon the tolerance fee rule to effect that goal:

Question 2a. Will you oppose legislative riders seeking to limit or prohibit EPA from finalizing or implementing the tolerance fee rule?

Response. EPA will work to secure to passage of the President's budget that calls for implementation of the tolerance fee rule.

Question 2b. Will you recommend that the President veto legislation that contains a rider to block the imposition of the tolerance rule? Please provide a yes or no answer to this question.

Response. It is not possible to provide a yes or no answer at this time, because I cannot speculate on the Administration's future position on appropriations legislation. It is critical, however, that a stable funding mechanism be identified.

Question 2c. In the event that the rule is blocked either by congressional or judicial action, will you commit to fully implementing the consent decree signed on March 19, 2001 in NRDC v. Whitman?

Response. Yes, EPA is committed to seeing that work go forward. Currently the Consent Decree is undergoing public comment, and EPA will review these comments.

Question 2d. In the event that the rule is blocked by either congressional or judicial action, will you commit to fully implementing the programs contained in your budget request including, but not limited to: reassessing 9,721 pesticide standards to protect children; priority reassessment for high risk pesticides on foods commonly eaten by children; health effects research to measure the effects of pesticides on children; exposure research to measure pathways of pesticide exposure to children; and research to assess the cumulative risks pesticides pose to children?

Response. EPA does not intend to implement any reductions-in-force. The Agency is committed to implementing the tolerance reassessment program on schedule.

If the tolerance fee as mandated by FQPA is not, in the opinion of Congress, the best method of funding these critical pesticide tolerance reassessment programs, we welcome the opportunity to work with the Congress to explore other approaches to providing full, stable funding for the program.

Question 2e. In the event that the rule is blocked by either congressional or judicial action, will you seek additional appropriated dollars or fees to support the above-mentioned programs rather than institute cuts to other EPA programs?

Response. EPA does not plan to implement any reductions-in-force, and it is important that a stable funding mechanism be identified.

Question 3. Would you support legislation to reauthorize the maintenance fees FIFRA?

Response. EPA fully supports the President's budget, and such legislation would be inconsistent with the current statutory mandate to collect tolerance fees that is reflected in the President's Budget. The important work of the tolerance reassessment program must continue, and the tolerance fee rule provides for full, stable funding for the life of the program. Any alternatives would need to offer similarly stable and adequate funds.

Question 4. Soon industry will begin screening tests of high production volume chemicals, under the voluntary program worked out by EPA, Environmental Defense and the chemical industry. This is long overdue. I think the public would be shocked to learn how little is known about the potential dangers of chemicals before they are allowed into commerce. My question is about the need for action beyond the HPV program. Simply comparing requirements of TSCA with those under the Food Quality Protection Act raises some seemingly obvious deficiencies in TSCA. Has EPA prioritized chemicals for testing, so that those that, based on current information, pose the greatest threat to health or high risk of exposure will promptly be subject to analyses beyond HPV screening? What about chemicals that new biomonitoring data reveals are pervasive in the general population?

Response. As you likely know, the HPV Challenge Program, launched in October 1998, will provide EPA and the public with Internet access to screening level health and environmental effects data on over 2,100 widely used chemicals. The data made publicly available through this collaborative effort will allow a diverse set of stakeholders, including Federal, State and local governments and other interested parties to set priorities for the collection of additional information. This program will help the Agency prioritize higher order testing and exposure analyses to ensure that risk assessment and management activities focus on chemicals which may present the greatest risks. In addition, EPA has established a Master Testing List (MTL) which serves as an agenda to prioritize industrial chemical testing needs of EPA and other Federal agencies. EPA also participates in the Organization for Economic Cooperation and Development's (OECDs) HPV Screening Information Data Set (SIDS) Program, which screens HPV chemicals to evaluate the need for followup action from a global perspective. The OECD process provides a platform harmonize chemical testing protocol and laboratory testing, as well as opportunities for international collaboration to share costs.

In December, 2000, EPA launched a pilot of the Voluntary Children's Chemical Evaluation Program (VCCEP)that specifically used biomonitoring data as a key parameter to identify and focus on chemicals to which children would have the highest likelihood of exposure. EPA selected chemicals for the first tier pilot which were found to be present according to available biomonitoring data to be present in the human body (adipose tissue/blood/breast milk and breath) and found by existing environmental data to be present in a person's environment(in food, drinking water, breast milk, air). The VCCEP was developed through an extensive stakeholder involvement process. The program is designed to ensure that health effects and exposure data are made available in a phased (tiered) process. Development of such data will allow EPA and others to evaluate potential health risks to children associated with certain chemical exposures so that appropriate mitigation measures may be taken. EPA will use available biomonitoring data in setting chemical risk assessment priorities.

Question 5. Shouldn't the Congress and EPA be taking a hard look at issues under TSCA beyond HPV testing, such as (1) whether there's a need to more effectively set priorities to ensure prompt focus on additional testing of chemicals that pose the greatest risk of exposure or adverse health effects, and (2) whether the current standard and mechanisms under TSCA for testing and restricting chemicals promote timely and effective action necessary to ensure basic protections to public health?

Response. As you know, TSCA was passed 25 years ago this year and has not been reauthorized since that time. However, it does provide the Agency with the au-

thority necessary to assess new chemicals coming into the marketplace, gather information on chemicals currently produced and circulated in commerce, identify and require further testing on chemicals that may pose risks, and control production and commercial distribution of those chemicals which may pose an unreasonable risk to health or the environment. In addition, TSCA requires chemical companies to provide the Agency with all available scientific information regarding health and safety concerns on the chemicals that they produce.

Since the 1970's, EPA has implemented TSCA to ensure that new chemicals are screened prior to their introduction into the marketplace. Currently, EPA is reviewing about 1,200 new chemical submissions a year. Last year, 700 were permitted to be sold in the U.S. To address the most widely used chemicals in this country, EPA launched the High Production Volume (HPV) Challenge program in 1998, which asked the U.S. chemical industry to voluntarily provide health and safety data to the public on the almost 2,800 HPV chemicals. In addition, the Agency established a voluntary initiative to gather critical data on those chemicals that may pose a risk to children.

You may also be aware that the Agency has significant efforts underway to reduce chemical emissions, to prevent pollution from the outset, to design and provide safer chemicals from the start, and to work with the chemical industry to find safer chemical substitutes.

The Agency appreciates the interest that this committee has in our ability to ensure that chemicals are used safely in this country, and we stand ready to work with you in addressing some of the challenges in implementing TSCA.

RESPONSES OF STEPHEN L. JOHNSON TO ADDITIONAL QUESTIONS FROM SENATOR BAUCUS

Mr. Johnson, as you know, price discrepancies exist between the United States and Canada when it comes to farm pesticides. The price charged to US farmers is sometimes almost twice as much as what the Canadian farmer pays. Generally, the Canadian and US pesticides are almost identical and are manufactured by the same company, or related companies. Recent surveys have placed prices in the US from 117 percent to 193 percent higher than those in Canada for virtually the same products.

Last year, the Environmental Protection Agency was placed in the position of being an accessory to this scheme because of the laws governing the importation of farm pesticides. Although the EPA knew there was not an environmental or health risk, the Agency had to stop financially strapped farmers from buying a less expensive, but identical, product from Canada. Montana farmers have been losing between 10 to 40 million dollars per.

Question 1. First, what does pesticide harmonization mean to you?

Response. Pesticide harmonization means working with our international trading partners to promote consistency in the various regulatory and scientific requirements. These efforts help improve trade, regulatory efforts, and avoid unnecessary duplication of efforts. Harmonization examines the methods and practices used to regulate pesticides in various countries, while working toward converging the various approaches as appropriate. The purposes are to minimize potential disruptions to trade, develop consistent regulatory and scientific requirements, support the principles of sustainable pest management, and maintain high levels of protection for public health and the environment.

Specifically, a current example is the Technical Working Group (TWG) on Pesticides under the North American Free Trade Agreement (NAFTA). The TWG has been successful in minimizing regulatory hurdles/impediments and creating a level playing field among NAFTA countries. This work has helped jointly register pesticide products in both countries by minimizing regulatory burdens and promoting consistent regulatory requirements, consequently eliminating potential barriers to trade. The work under the TWG has resulted in successful collaboration to jointly register seven new pesticide products between Canada and the U.S.

Question 2. What actions need to be taken to have cross border availability of pesticides and what would the timeline look like?

Response. As you know, EPA's legal authority over pesticides is to ensure they can be safely used; its authority does not cover pricing. The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) requires the registration of a pesticide before it can be sold and distributed in the United States.

EPA has worked very closely with Congress, U.S. Department of Agriculture, State officials, registrants, and growers, to help solve the problems U.S. farmers may be experiencing as a result of pricing differences. Over the years the Agency

has explored a variety of administrative actions to help solve this potential problem. While these administrative action are helpful, they have not resolved this issues, and EPA will continue to work within our current authorities. One example that the TWG is working to develop is a NAFTA label. This label could help ensure equal access to pesticide products in the different countries.

However, to fully and effectively address this problem, I believe that legislation is needed because there does not appear to be adequate administrative or regulatory solutions. I will continue to work with Congress, U.S. Department of Agriculture, State officials, registrants, and growers, in order to resolve this problem, and to assure protection of human health and the environment.

Question 3. Legislation was introduced—legislation that was drafted with the technical help of the EPA I might add—to prevent the agency from being used in this manner again. Unfortunately, the legislation was not passed. Thus, the Agency, and our farmers, are going to be in the same position again this year, and the Agency will be once again be used to fix the prices our farmers pay. Legislation to solve this problem has been introduced again this year.

Do you support this type of legislation?

Response. I understand there have been various legislative proposals introduced in the Congress to solve this problem. EPA stands ready to work with Congress on possible legislative solutions that effectively address this potential problem.

Question 3a. If legislation fails to pass Congress again this year, how would you solve this problem?

Response. There are no apparent administrative or regulatory remedies. Nonetheless, EPA will continue to work with all stakeholders to use our current expertise to help address the situation.

RESPONSES OF STEPHEN L. JOHNSON TO ADDITIONAL QUESTIONS FROM SENATOR WYDEN

In Oregon, my pear producers are facing record low prices—in part due to the importation of pears from Chile. I am concerned about the health quality of fruits and vegetables imported into the U.S. As you may know, I began my career in public life as an advocate for the elderly when I helped found the Oregon Gray Panthers, and I currently serve on the Senate Special Committee on Aging. The reason I bring this up is because contaminated fruits and vegetables affect those with weak or impaired immune systems, usually Seniors and children, more readily than they affect you or me.

Question 1. What work can you do with the FDA and APHIS to assure that imported fruits and vegetables are meeting the strict standards you, in the EPA, have set for pesticide use for our own crops? I believe that it is very important for you all to be working closely together and I would like your assurance that you will make a concerted effort to coordinate your office with those others so the American people can be assured that their food is safe.

Response. I am will continue to support the very important work of the EPA, FDA and USDA in overseeing the integrity of imported fruits and vegetables and other treated foods. As you may know, EPA licenses pesticides and establishes a legal residue limit on foods and feed, and provides FDA and USDA with the analytical methods used for monitoring these residue limits on imported fruits and vegetables. I also believe that regulatory harmonization plays an important role to ensure safe food and a level playing-field with our trading partners. I expect to encourage our current collaborative work with FDA and USDA, expanding them where they need it. I will work with both to see that we communicate clearly, and I will encourage the important monitoring efforts that need to be done to assure that imported food is safe.

Question 2. I am concerned that the EPA budget favors the re-registration of pesticides, which is good if you are a large chemical company, but decreases funding for tolerance reassessment work, the kind of scientific work needed to protect the seniors I just referred to. This is exactly the sort of bad budgeting that will lead to a break down in the implementation of the Food Quality Protection Act. I need your assurance that as Administrator of this important program you will do everything you can to make sure that the science is done so that people are protected and farmers have fair warning as to the pesticides they will be able to use.

Response. I hope to build on the concrete steps with USDA and the agricultural community to ensure our decisions are sensitive to the special needs of farmers. I believe important work remains with USDA to involve people throughout agriculture in the decisionmaking process so there are not any surprises as we imple-

ment FQPA. When there are risks that must be addressed, EPA will work with USDA to get the message out so that farmers can plan accordingly to develop a successful transition to safer pest control techniques. The ingenuity and talent in agriculture should continue making strides toward using safer pesticides, fostering Integrated Pest Management (IPM) techniques, and reducing the use of high-risk pesticides. Together, we can develop smarter solutions that protect human health and the environment, while maintaining the strength of the U.S. agricultural industry which allows us to enjoy the safest and most abundant food supply in the world.

RESPONSES OF STEPHEN L. JOHNSON TO ADDITIONAL QUESTIONS FROM SENATOR CLINTON

Question 1. In your testimony, you mentioned a commitment to strengthening partnerships with USDA and FDA. I am interested in EPA strengthening its partnerships with other agencies as well, including CDC and NIH. I am concerned about the increasing occurrence of disease clusters around the country, and the potential links between these clusters and certain environmental factors. If you are confirmed, would you work to help build stronger partnerships among EPA, CDC, and NIH—and with industry, public health advocates, environmental interests, and other stakeholders—to help improve our understanding about how certain environmental factors may impact human health?

Response. Yes, as stressed in my testimony, I will place a high priority to strengthen our partnership with our stakeholders, including our Federal partners and all our stakeholders. I believe that working together with everyone at the table, providing input and advice, is critical to help effectively address the public health and environmental challenges we face. I agree that it is important to improve our partnerships that will further the understanding of environmental factors and public health. I know that there are a large number of research projects already underway to investigate possible health or environmental problems possibly linked to environmental factors. This work is coordinated by the Agency's Office of Research and Development, but regularly help shape priorities and direction. I am committed to seeing that our partnership with these research agencies are strong and fruitful.

Question 2. I am pleased that EPA is working to ensure that our food supply is safe, that the pesticides, insecticides and other chemicals we use to grow an abundant food supply are safe, effective, and used appropriately. But I am also concerned that U.S. farmers not be inappropriately burdened and put at a disadvantage when it comes to farmers overseas who may not be held to the same, high standards as U.S. farmers and whose produce and commodities, as a result, may not be of the same quality and safety. If confirmed, will you work to strengthen partnerships with the Office of the U.S. Trade Representative, the Commerce Department, and others that are involved in agricultural trade issues?

Response. As global trade continues to expand, it is critical for EPA to strengthen its relationship with other Federal agencies, including USTR and Commerce, and continue its participation in international pesticide fora that promote the harmonization of regulatory requirements and procedures for scientific assessments. For many years, EPA has supported a substantial program on harmonization of pesticide regulatory systems with our NAFTA trading partners. This involves close collaboration with other U.S. Government agencies, including USTR, USDA, and FDA. In addition, EPA participates in other international arena that promote regulatory harmonization as well as the establishment of international limits for pesticides on food.

I consider international regulatory harmonization to be an important way to enhance international trade. Our ability to promote fair trade through maintaining health and environmental standards will benefit U.S. farmers, consumers, and will require effective coordination with all agencies concerned.

STATEMENT OF JAMES L. CONNAUGHTON, NOMINATED TO BE A MEMBER OF THE COUNCIL ON ENVIRONMENTAL QUALITY

Thank you Mr. Chairman. It is an honor to appear before you and the distinguished members of the committee. I am both grateful and honored that President Bush has nominated me to be a Member of the Council on Environmental Quality ("CEQ") and, if confirmed, to appoint me as chairman.

When it enacted the National Environmental Policy Act ("NEPA") and created CEQ over 30 years ago, Congress declared that it is the "continuing policy of the Federal Government, in cooperation with State and local governments, and other

concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans."

Senator John Chafee, one of the greatest environmental statesmen of the Senate, described this as a "tall order, but an important one." I agree, and fully embrace NEPA's broad policy objective. It is why I joined the environmental profession. It is why I have focused my legal practice on the most challenging matters of environmental policy and the promotion of innovative approaches to environmental protection. The commitment to responsible environmental stewardship is a family matter in my household. My wife Susanna and I are constantly amazed by our daughter Grace's budding passion for nature and conservation. Every day my son Spencer says "O.K. Daddy, give me an environmental issue," and then earnestly and confidently discusses how to address it. Their passion and concern reinforces my own commitment.

I therefore look forward with great enthusiasm to leading CEQ in its core mission. First, to provide objective, well-informed, and realistic advice to the President, his advisers, and the Cabinet about the future direction of environmental policy. Second, to coordinate the implementation of environmental programs and resolve policy disputes among Federal agencies, State, tribal, and local government, and private citizens. Third, to promote a balanced decisionmaking process that accounts for the views of all affected parties.

I would like to highlight three aspects of my background that are particularly relevant to this nomination. The first is the strength of my commitment to serving the public interest. I have exceptional role models, beginning with my father. With the unflagging support of my mother, he spent over 30 years as a clinical professor of child psychiatry working to improve the lot of children and families, often in the most desperate of circumstances, in Baltimore's inner city. I will count myself fortunate if I can bring to government service even a fraction of the decency and dedication to the public good that my father demonstrated every day of his career. I also will be guided by the high standards of public service set by my mentors at the firm who previously served both Republican and Democratic presidents and Governors with distinction.

Second, I am a strong proponent of searching for and harnessing the power of consensus in meeting shared environmental goals. I have had the privilege of traveling the world helping to create what is known as the ISO–14000 series of international environmental standards. These standards promote effective, results-oriented environmental management and responsible environmental communication. They reflect the consensus of hundreds of dedicated professionals from industry, environmental organizations, consumer organizations, government and academia, from the United States and over 50 other countries. Tens of thousands of organizations around the world already are quietly and efficiently adopting these standards to address the environmental consequences of their operations. Remarkably, participation in this process and implementation of these standards is entirely voluntary. I have seen first hand the dramatic results that such voluntary, market-driven action can achieve. It is faster, it is cheaper, and it works.

Third, I am a forceful advocate and practitioner of environmental stewardship where it matters most at the source. I have spent much of the last 4 years traveling the country helping companies implement "ISO–14001," the international environmental management system standard. From Oklahoma City, Oklahoma to Ocala, Florida, from Detroit Michigan to East Liberty, Ohio, from Windfall, Pennsylvania to Kingstree, South Carolina, I have worked with business managers and operators on the factory floor, showing them how to integrate environmental obligations into their day-to-day operational practices and long term business planning. Their efforts are predicated on three fundamental commitments: compliance, prevention of pollution, and continual improvement. These hard-working people are the nation's front line in environmental protection. We must do what we can to capitalize on their energy, unleash their creativity, and remove obstacles to their success.

President Bush has encouraged Americans to join him in renewing our commitment to protecting the environment and leaving our children and grandchildren with a legacy of clean water, clean air, and natural beauty. Embarking on the 21st century of environmental quality requires not only reinforcement of what is working, but also the zealous application of new ideas and methods.

Mr. Chairman, if confirmed, I look forward to advancing NEPA's goal of ensuring productive harmony between man and nature, through a constructive dialog with Congress, with Federal, State, tribal and local government agencies, and most important, with the public whose trust we all hold.

UNITED STATES SENATE

COMMITTEE ON ENVIRONMENT
AND PUBLIC WORKS

ROOM 410 DIRKSEN BUILDING WASHINGTON, DC 20510

INFORMATION

REQUESTED OF PRESIDENTIAL NOMINEES

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

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

Name of Nominee: James L. Connaughton

Business Address: 1722 Eye Street, N.W.

Washington, DC 20006

Business Phone: (202) 736-8364

Home Address: 3930 Livingston Street, N.W.

Washington, DC 20015

Home Phone: (202) 244-3147

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

Name: Connaughton (Last) James (First) Laurence (Middle)

Position to which nominated: Member of the Council on Environmental Quality

Date of Nomination: April 30, 2001

Date of birth: 5/15/61 (Day) (Month) (Year) **Place of birth:** Baltimore, Maryland

Marital status: Married **Full name of spouse:** Susanna Bolten Connaughton

Name and ages of children: Spencer Connaughton (9)
Grace Connaughton (6)

Education:

Institution	Dates attended	Degrees received	Dates of degrees
Northwestern University School of Law	8/86-6/89	J.D.	6/89
Yale University	9/79-5/83	B.A.	5/83
Loyola High School, Towson, MD	9/75-6/79	Diploma	6/79

Employment record:

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

Sidley Austin Brown & Wood, Washington, DC
Partner, Environmental Group, 8/91-Present

Honorable Marvin E. Aspen, U.S. District Court, Northern District of Illinois, Chicago, IL
Judicial Law Clerk, 8/89-8/91

Jenner & Block, Chicago, IL
Summer Associate, Environmental Group, 6/89-8/89

Wilmer Cutler & Pickering, Washington, DC
Summer Associate, Environmental Group, 6/88-8/88

Employment record—continued

Isham, Lincoln & Beale, Chicago, IL
Summer Associate, 6/87-8/87

Sklarz & Early (now Early, Ludwig & Sweeney), New Haven, CT
Legal Assistant, 11/83-8/86

Honors and awards:

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

Northwestern University School of Law:

Magna Cum Laude, Order of Coif, Austin Scholarship, Coordinating Articles Editor, *Northwestern University Law Review*

U.S. Technical Advisory Group to ISO Technical Committee 207:

Outstanding Service Award

Memberships:

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

Organization	Office held (if any)	Dates
Council on Foreign Relations		1996-Present
Multi-State Work Group on Environmental Management Systems		1996-Present
American Bar Association		1991-Present
S.P.E.B.S.Q.S.A. (Barbershop Quartet Society)		1989-Present

Qualifications:

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

I am a Partner in the law firm Sidley Austin Brown & Wood's Environmental Practice Group. I have experience in a wide-range of environmental policy issues including environmental management and compliance assurance systems, legislation, regulation, international trade and standards, and natural resource damages assessment.

I have served for the last seven years as one of the lead U.S. negotiators of the ISO 14000 series of international environmental standards established by the International Organization for Standardization based in Geneva. These voluntary consensus standards address environmental management, environmental auditing, environmental performance evaluation, environmental marketing claims, life cycle assessment, and environmental aspects of product design. The standards are being implemented in the U.S. and around the world at a rapidly increasing rate. Federal and state agencies, as well as governments throughout the world, are also looking to these standards in developing national and international environmental policies.

The standards development effort involved a significant multi-stakeholder national consensus process comprising several hundred parties from federal and state government, industry, academia, environmental groups, and consulting. I and a team of others then represented the national consensus in forging international consensus among more than 50 countries from both developed and developing economies and numerous international liaison bodies representing governmental, environmental, consumer, and industrial interests. Among my more significant roles: served on the Chairman's Advisory Group (essentially the executive committee of the U.S. group); chaired the U.S. delegation negotiating the series of standards on environmental marketing claims; chaired an international task force on environmental standards and trade; appointed U.S. delegate to ISO's high-level task force examining the potential role of international standards in monitoring, measuring and verifying climate change emissions and advancing technologies relevant to climate change.

I have significant hands on experience helping companies implement effective environmental management and compliance assurance systems, with an emphasis on integrating improved environmental performance and compliance into business strategies and operations. This work has included system design, implementation, management and employee training, and auditing, working with personnel from the CEO to operators on the plant floor. Work has addressed business planning and practical measures for identifying and assuring compliance with the full range of federal, state and local environmental laws and regulations. I have assisted dozens of plants from the very large (>10,000 employees) to the very small (<100 employees), in the U.S., Canada, Mexico, and Asia, spanning the electronics, automotive, consumer product, home improvement, energy management, and mining sectors. Many of these plants have obtained third-party certification to the ISO 14001 international environmental management systems standard.

I worked with officials from U.S. EPA, California EPA, and the Environmental Law Institute to help form the Multi-State Work Group on Environmental Management Systems ("MSWG"). MSWG, which now counts all 50 state environmental agencies as members, convenes government, non-government, business and academic interests to conduct research, promote dialogue, create networks and establish partnerships that improve the environment, economy and community through systems-based public and private policy innovation. This initiative is primarily driven by state governments. I was closely involved in the flagship effort spearheaded by about a dozen states, U.S. EPA, ELI and the University of North Carolina to establish a pilot project and research program to evaluate the ability of environmental management systems to improve the environment and contribute to related public policy objectives such as regulatory innovation and efficiency.

I have analyzed and provided counsel on the development and national implementation of treaties governing topics such as climate change, stratospheric ozone depletion, and maritime transport of hazardous and noxious substances. I also provide strategic advice on new regulations impacting product development, distribution, and marketing of products around the world. This work has included a focus on policy development, implementation, and interpretation of the WTO, NAFTA, and the U.S. National Technology Transfer and Advancement Act of 1996.

I have substantial experience with the complex and unsettled areas of ecological risk and natural resource damages assessment, including legislation and regulatory implementation of the various state, federal, and international eco-risk and natural resource damages liability schemes.

I have written and lectured extensively in the U.S., Latin America, Europe, and Central Asia on international environmental standards, environment and trade, environmental management systems implementation, environmental product regulation, and natural resource damages.

Future employment relationships:

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

I will.

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

I have no such plans.

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

No.

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

N/A

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

None

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

N/A

Financial Statement:

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

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

Pursuant to my law firm's partnership agreement and shortly after withdrawal from the firm, I will receive a lump sum payment of my capital account (Asset: $30,000) and my partnership share calculated on service performed through the date of my withdrawal from the partnership (Income: <$50,000).

2. Are any assets pledged?

No.

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

No.

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

Yes.

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

No.

Potential conflicts of interest:

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

N/A

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

N/A

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

I have represented several clients in particular matters involving litigation or potential litigation with the Federal Government. Although it is unlikely CEQ would play a role in such litigation, I have made the commitments referenced in question 4 below.

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

Please see my ethics agreement letter dated May 3, 2001, which the Office of Government Ethics will provide to you.

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

I intend to maintain the highest standards of ethical conduct. In this regard, I will read and comply with the relevant provisions of the Ethics in Government Act and the federal government ethics regulations. I will abide by commitments made in the ethics agreement I provided to the Office of Government Ethics and make the required financial disclosures in consultation with my designated agency ethics officer. I will also receive ethics training upon my employment in the federal government, and update this training as required and as needed. Please see Attachment #1.

Political affiliation and activities:

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

Provided advice to Bush-Cheney Campaign 2000.

Served as unpaid Environmental Policy Coordinator for Bush-Cheney Presidential Transition.

Published writings:

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

Books:

Natural Resource Damages
R. Stewart, J. Connaughton, & S. Steel, eds. and contributors. National Legal Center for the Public Interest (Fall 1995).

Articles:

Institutional and Legal Issues of Greenhouse Gas Emissions Trading
Richard B. Stewart, James L. Connaughton & Leslie Foxhall, 15 ABA Journal on Natural Resources and Environment (Winter 2001).

International Environmental Standards
C. Bell & J. Connaughton, 2 J. Env. Law & Prac. 39 (January/February 1995).

The Dilemma of Natural Resource Damages
R. Stewart, J. Connaughton, S. Steel, Chem. W. Litig. Rep. (December 1994).

The "Civil" Implications of Environmental Crimes
D. Buente, J. Connaughton, T. Echikson, 23 Env. L. Rep. 10589 (October 1993).

Recovery for Risk Comes of Age: Asbestos in the Schools
J. Connaughton, 83 Nw. Univ. L. Rev. 512 (Fall 1988/Winter 1989)

Selected Lectures And Seminars:

United Stated Council on International Business. Montreaux, Switzerland (2000)
International Symposium on Environmental Labeling & Consumer Informations
Standards and Certification in the Global Marketplace

United Nations. New York, New York (1999)
International Symposium on Environment and Consumer Deception
International Standards, National Regulation, and Trade

Asia Development Bank: Islamabad, Lahore, and Karachi, Pakistan (1997)
Government and Industry Workshops, *International Environmental Standards and Trade*

Forum For Environmental Law, Science, Engineering, and Finance, Washington, D.C. (1996)
International Environmental Standards, WTO, and the Technology Transfer Act of 1996

International Business Conference on ISO 14000, Chicago, Illinois (1996)
ISO 14000: Environmental Marketing Claims

International Congress on ISO 14000 Implementation, Puebla, Mexico (1996)
Strategic Business Issues Concerning International Standards on Environmental Marketing Claims and Life Cycle Assessment

American Chamber of Commerce Mexico, Guadelahara, Mexico (1996)
ISO 14000: What Does it Mean for Mexico and NAFTA?

University of Maryland Graduate School: U.S.EPA Masters Program (1996, 1999)
Guest Lecturer on ISO 14001 Environmental Management Standards

American Society of Testing and Materials (1996)
ISO 14000 Management Systems Course of Study for Managers and Auditors

Georgetown Business School (1995)
Guest Lecturer on ISO 14001 Environmental Management Standards

George Washington University School of Law (1994, 1995, 1997, 1999)
Guest Lecturer on Natural Resource Damages Law

Additional Matters:

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

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

Yes.

3. Having completed this form, are there any additional questions which you believe the Committee should ask of future nominees?

AFFIDAVIT

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

Subscribed and sworn before me this 7th day of May, 2001.

Angela Stewart
Notary Public

My Commission expires: 11/14/02

Attachment 1

EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
WASHINGTON, D.C. 20500

CONFLICT OF INTEREST LAWS AND REGULATIONS APPLICABLE TO THE CHAIRMAN OF THE COUNCIL ON ENVIRONMENTAL QUALITY

The CEQ Chairman is subject to the relevant provisions of the Ethics in Government Act of 1978, as amended and modified, and the Government Ethics regulations at 5 C.F.R. Part 2634. Accordingly, Mr. Connaughton has submitted in a timely manner a Public Financial Disclosure Form (SF-278) to CEQ's Designated Agency Ethics Officer, which was reviewed and approved along with the attached ethics agreement setting forth certain matters from which Mr. Connaughton will recuse himself, if confirmed. Mr. Connaughton will submit the 278 form on an annual basis.

Mr. Connaughton will receive ethics training upon his employment in the federal government, on an annual basis, and on a "as needed" basis. He has expressed his commitment to maintain the highest standards of ethical conduct.

Dinah Bear 5-4-01
Dinah Bear
Designated Agency Ethics Officer

DATE: May 3, 2001

United States
Office of Government Ethics
1201 New York Avenue, NW., Suite 500
Washington, DC 20005-3917

May 8, 2001

The Honorable Robert C. Smith
Chairman
Committee on Environment and Public Works
United States Senate
Washington, DC 20510-6175

Dear Mr. Chairman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by James L. Connaughton, who has been nominated by President Bush for the position of Member of the Council on Environmental Quality.

We have reviewed the report and have also obtained advice from the Council on Environmental Quality concerning any possible conflict in light of its functions and the nominee's proposed duties. Attached to the report is a letter dated May 4, 2001, from Mr. Connaughton to the agency's ethics official, outlining the steps which he will take to avoid conflicts of interest. Unless a specific date has been agreed to, the nominee must fully comply within three months of his confirmation date with the actions he agreed to take in his ethics agreement.

Based thereon, we believe that Mr. Connaughton is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

Amy L. Comstock
Director

Enclosure

RESPONSES OF JAMES L. CONNAUGHTON TO ADDITIONAL QUESTIONS FROM SENATOR BAUCUS

Question 1. What are you views on Natural Resource Damages? What are some of the positions you've taken in the past on this issue? (Given the number of Superfund sites in Montana, and how much they cost, this is relevant.)

Response. Some of my personal, essentially academic views on natural resource damages are set out in Evaluating the Present Natural Resource Damages Regime: The Lawyer's Perspective, in Natural Resource Damages R. Stewart, J. Connaughton & S. Steel, eds. and contributors, National Legal Center for the Public Interest (Fall 1995).

Apart from this, I have not taken personal positions, but have represented the views of various clients in:

- discussions with Congress, the Clinton Administration, and representatives of State natural resource trustees, as part of Congress' consideration of legislative reform of certain aspects of CERCLA's natural resource damages liability regime mainly during the 104th and 105th Congresses;
- comments to the Department of Interior and the National Oceanographic Administration on proposed natural resource damages assessment rulemakings; some of these comments were addressed in the final rulemakings, others were not addressed;
- petitions for review before the D.C. Circuit Court of Appeals supporting certain aspects of natural resource damages assessment rulemakings and opposing other aspects of such rulemakings; some of these arguments were accepted by the court, others rejected in General Electric Co. v. United States Department of Commerce, 128 F. 3d 767 (D.C. Cir. 1997) and Kennecott Utah Copper Corp. v. United States Department of the Interior, 88 F.3d 1191 (D.C. Cir. 1996)

My guiding philosophy in all of these matters has been to refocus the liability and damages assessment process in a manner that promotes settlements that achieve reasonable restoration in a timely manner, while retaining fundamental due process rights of the parties involved.

Question 2. Mr. Connaughton, what are your views on the NEPA process?

Response. As indicated in my written and oral statements to this committee, I strongly support the objectives of NEPA. NEPA has served the American people and the environment well. However, through my discussions with committee members and conversations with various people who deal with NEPA, I am aware that concerns have been raised about certain NEPA processes or certain aspects of NEPA's implementation. I would be interested? in learning more about the concerns that have been raised and work toward continual improvement of NEPA implementation.

Question 3. Are you supportive of reinstating categorical exclusions for small projects, particularly small timber sales and stewardship projects in our National Forests? Will you be helpful in making this happen?

Response. I am not familiar with the details of this proposal. If I am confirmed, I would be happy to review this subject and discuss it with you further.

RESPONSES OF JAMES L. CONNAUGHTON TO ADDITIONAL QUESTIONS FROM SENATOR REID

Question 1. As a member President Bush's transition team at the EPA, you were involved in distributing a questionnaire to organizations and individuals interested in the work of the EPA. Who received those questionnaires? What information was gained by the transition team from the questionnaires? How was the information used? How will you use that information if you become a member of CEQ?

Response. The creation and distribution of the questionnaire was handled by an advisory group coordinator who worked in a different part of the transition operation. I was indirectly involved with respect to reviewing a draft of the questionnaire and suggesting the names of individuals for the outside advisory group to whom the questionnaire would be sent. I do not have either a copy of the questionnaire or the list of individuals ultimately selected for the advisory group, but I believe both were published during the transition. As I recall, the questionnaire included a short, fairly open-ended set of questions eliciting advice from advisory group members to the new EPA Administrator concerning management and policy issues that she may encounter during her time in office. The advisory group members submitted their responses to the advisory group coordinator, who then compiled the responses into binders and provided them to Governor Whitman for her reference upon officially taking office after inauguration. I have made no decision at this time whether or how to use the information from the questionnaires, if I become a member of CEQ.

Question 2. Could you provide details on what you and this Administration see as CEQ's role in advising and forming environmental policy?

Response. As indicated in my written and oral statements to this committee, I expect CEQ to continue to fulfill the statutory responsibilities established for CEQ by the National Environmental Policy Act ("NEPA"). These include three core functions: First, to provide objective, well-informed, and realistic advice to the President, his advisors, and the Cabinet about the future direction of environmental policy. Second, to coordinate the implementation of environmental programs and resolve policy disputes among Federal agencies, State, tribal, and local government, and private citizens. Third, to promote a balanced decisionmaking process that accounts for the views of all affected parties. I am also aware that Congress has given CEQ a

variety of specific responsibilities established by various statutes and that CEQ also has a variety of specific responsibilities established by Executive Orders. As I have not been confirmed, I am not in a position to articulate further detail concerning the Administration's plans for CEQ. I understand that key aspects of this planning await CEQ having a confirmed chairman in place.

Question 3. How will the Council deal with other agencies within the Administration?

Response. If confirmed as a member of CEQ, I look forward to the Council working quite constructively with the other agencies within the Administration. The specific mechanics of such interactions will be established when CEQ professional staff have been hired and key sub-Cabinet positions have been filled in the other Departments.

Question 4. During her confirmation hearing then-Governor Whitman testified that Federal facilities should be subject to the same environmental requirements as the private sector. What are your views on CEQ's role in ensuring that Federal agencies actually do comply with the letter and spirit of environmental laws? As you know, there are a number of Federal facilities in Nevada, and in neighboring States which impact Nevada, and there are very real concerns about whether agencies are disclosing emissions that may effect surrounding communities, and potential health effects associated with releases from those facilities. EPA and other Federal agencies, DOD for one, do not always agree on what is required, or whether requirements have been met. How can CEQ ensure that all Federal agencies are responsible environmental stewards?

Response. NEPA's broad mandate contemplates a general role for CEQ with respect to contributing to Federal facility compliance. The nature and extent of CEQ'S role, however, is a matter for decision within the Administration. If confirmed, I would expect to be closely involved in such a decision. I will bring to those discussions my prior experience in environmental management, compliance assurance, prevention of pollution, and resource optimization. I will also bring my experience with incentives and disincentives to improved environmental performance and responsible stewardship.

NOMINATIONS OF THE 107th CONGRESS, FIRST SESSION

WEDNESDAY, JULY 25, 2001

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

The committee met, pursuant to other business, at 9:54 a.m. in room 406, Dirksen Senate Office Building, Hon. James M. Jeffords (chairman of the committee) presiding.

CONSIDERATION OF THE NOMINATIONS OF DAVID A. SAMPSON, ROBERT E. FABRICANT, GEORGE TRACY MEHAN III, JUDITH ELIZABETH AYRES, AND DONALD R. SCHREGARDUS

Present: Senators Jeffords, Smith, Inhofe, Bond, Voinovich, and Chafee.

Also present: Senator Kay Bailey Hutchison and Congressman Martin Frost.

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

Senator JEFFORDS. We will now open the nominations hearing.

Welcome to all the nominees and their families. I am sure you are very proud to be here this morning.

Before recognizing members for opening statements, I would like to ask each of you to introduce your families who are here today as you come to the forefront here.

First, we have Mr. Sampson. Mr. Sampson, do you have members of your family with you?

Mr. SAMPSON. Yes, I do. I have my wife, Karen, and my twin 8 year-old sons, John David and Matthew Nicholas, my parents, Paul and Joy Willis, and my sister Cheryl, and her son Jacob.

Senator JEFFORDS. Senator, welcome.

STATEMENT OF HON. KAY BAILEY HUTCHISON, U.S. SENATOR FROM THE STATE OF TEXAS

Senator HUTCHINSON. Thank you. Mr. Chairman, we also have the Congressman who represents Mr. Sampson's district, Congressman Frost.

Senator JEFFORDS. Fine. Yes. Please be seated.

Senator PLEASE PROCEED.

Senator HUTCHINSON. Thank you, Mr. Chairman, very much for recognizing me to introduce my constituent from Texas for the Assistant Secretary of Commerce for Economic Development position.

I have known Mr. Sampson for a long time. My husband and I have both worked with him in different capacities, and I cannot think of anyone more qualified for this position than he is.

He is president of the Arlington Chamber of Commerce. Arlington is one of our fastest growing suburban areas in Texas. It is located between Dallas and Fort Worth, and it has been one of our fastest up and coming cities for a long time. It is also the home of the Texas Rangers.

I want to say that Governor Bush appointed Mr. Sampson to be vice chairman of the Texas Strategic Economic Development Planning Commission in Texas because he wanted someone who would look at all the regions of Texas and help them achieve their highest economic potential. He did accomplish this by putting forward a 10-year economic development plan for Texas. He subsequently chaired the Texas Council on Workforce and Economic Competitiveness. This experience gave him the understanding of the need to integrate economic and work force development efforts, a more efficient use of both sets of resources.

He is certainly a hard worker, but he has one added advantage that I have assured him he will draw on in addition to his economic development experience, and that is he is an ordained minister. Now I told him in Washington he might need that more than all of the other experience that he has had.

But seriously, I think that his breadth of knowledge and experience will bring his skills to the United States that he has used so effectively for Texas. And I am pleased to be here for him today.

Senator JEFFORDS. Congressman Frost?

STATEMENT OF HON. MARTIN FROST, U.S. REPRESENTATIVE FROM THE STATE OF TEXAS

Mr. FROST. Thank you, Senator, and other members of the committee. It is my pleasure to be here with David Sampson and to lend my support to him for this very important position.

Arlington, Texas is the largest population center in my congressional district. David served as the president of the Arlington Chamber of Commerce for 7 years. I worked very closely with him on economic development issues. Arlington is represented by two Members of Congress, one Republican, Joe Barton, and myself, a Democrat. I can tell you that David Sampson was extraordinarily good to work with. He always approached matters of economic development on a bipartisan basis, was extremely effective, extremely cooperative, and I cannot think of any better person in the country for this particular position than the nominee that is sitting to my right and is appearing before this committee today.

Senator JEFFORDS. I thank you for your excellent statements and excellent recommendations. I appreciate your being here.

Senator HUTCHINSON. Thank you.

Senator JEFFORDS. We will move on to the other nominees who will be before us.

Mr. Fabricant, welcome. Do you have members of your family that you would wish to introduce?

Mr. FABRICANT. Yes, I do. I would just like to introduce my wife, Amelia, and my three children, my daughter, Enrica, she is 5 years old, and my youngest son——

[Laughter.]

Senator JEFFORDS. I see them waiving back there. They have got good political waves. They are going to go a long way.

[Laughter.]

Mr. FABRICANT. I would also like to thank my parents for coming here, Robert Fabricant and Jacqueline Fabricant. And I thank you for the opportunity to speak with you today.

Senator JEFFORDS. Mr. Mehan, welcome to the committee. Please introduce any members of your family that may be present.

Mr. MEHAN. Thank you, Senator. I am happy to have here representing all seven of my children and my wife, my oldest, Meg, Margaret Elizabeth, who is up from Charlotte. We are under strength today, but I think she will handle the duties.

Senator JEFFORDS. Thank you. We welcome you to the committee.

Ms. Ayres?

Ms. AYRES. Good morning.

Senator JEFFORDS. Good morning. We are pleased to have you here. Do you have anyone you would like to introduce?

Ms. AYRES. I do. My family was able to come in from California. My husband, Jack Burke, and our daughter, Coventry Ayres Burke. And then I am fortunate to have extended family here able to come; Julie and Joe Nisonger, Dr. Steve Peters, and Robert Phiffer.

Senator JEFFORDS. Thank you. Pleasant to have you with us.

Mr. Schregardus, welcome.

Mr. SCHREGARDUS. Good morning, Chairman. Thank you for this opportunity. I have brought with me today my daughter, Sarah Schregardus, back here. I look forward to the opportunity to speak with you this morning.

Senator JEFFORDS. Fine. Well thank you all. I welcome you to the committee. We want to be expeditious and try to make sure that all of you get to your working stations as soon as possible. However, we would of course like to have your opening statements.

We will go back and start with Mr. Sampson.

STATEMENT OF DAVID A. SAMPSON, NOMINATED TO BE ASSISTANT SECRETARY FOR ECONOMIC DEVELOPMENT, DEPARTMENT OF COMMERCE

Mr. SAMPSON. Mr. Chairman, Senator Smith, and members of the committee, thank you for the opportunity to appear before you this morning. I am very grateful to Senator Kay Bailey Hutchinson and Congressman Frost for their kind introductions, and to you for the warm welcome you have given me and my family. My family is very excited about the prospect of moving to Washington. It may interest you to know that when the President first announced his intent to nominate me, my son, John David, was excitedly telling his classmates about the fact that we had been asked to come up here, but he made sure to let his classmates know that it was not for certain that we were moving yet. He said, "My Dad still has to be confused by the U.S. Senate."

[Laughter.]

Mr. SAMPSON. I hope that he was not being prophetic but merely had a slip of the tongue.

Senator JEFFORDS. Let me interrupt you. I think some of my members would like to make some statements before we get moving. I am sure they have other things that may have to take them away. So why not start with Senator Smith, do you have a statement, or you can recognize as you see fit.

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

Senator SMITH. Thank you, Mr. Chairman. First of all, let me thank you for bringing these nominations up promptly. In the years during my tenure as chairman with a different Administration, we brought the nominations through promptly, and I think, given the disruptions that occur as people wait and anticipate these positions, it is a disruption if there is a delay. And so I appreciate your promptness here.

There is one who is not here, Jeff Holmstead, who is the President's nominee to head EPA's Air Office. He has been considered by the full committee and his nomination is still languishing. I would encourage you to do what you can to move that forward.

I want to apologize to the witnesses because I will have to leave at around 10:30. One of the problems of this place is they try to have us in two or three places at the same time. None of us have been able to figure out how to do that yet.

But I just want to take a few seconds, Mr. Chairman, just to welcome each and every one of you, especially Judith Ayres, because she was married in Squam Lake which is just a few miles from my house. So she has good judgment, I know that right up front. So I am looking forward to hearing the testimony of the nominees, and appreciate again, Mr. Chairman, your bringing them forward.

Senator JEFFORDS. Anyone else desire time? Senator Bond.

OPENING STATEMENT OF HON. CHRISTOPHER S. BOND, U.S. SENATOR FROM THE STATE OF MISSOURI

Senator BOND. Thank you, Mr. Chairman. No. 1, thank you for holding these hearings. As Senator Smith has pointed out, with all the difficult problems that we face, the Administrator absolutely has to have her team in place, the Bush Administration must have this team in place. We cannot expect progress to occur, questions to be answered until they are. So I thank you for holding the hearing. I look forward to working with you to make sure that these and all the others who have been cleared by the committee are confirmed prior to the August recess so there will not be any confusion, so that families will know where to start school in September, and that is vitally important.

I have to apologize. With appropriations bills on the floor, I am going to have to leave. One of those bills may be coming up today on EPA, which probably my participation on the floor may be more important than here.

I want to express a special welcome to Tracy Mehan, who claims to come from Michigan, but really we all know that he was the director of the Missouri Department of Natural Resources from 1989 to 1992. We are always happy to share experience with other States in need, like Michigan. And in this instance, he can use that expertise developed there to help the nation's water problems. I

think that this experience and with his midwestern perspective, the EPA's Office of Water will be very important.

I have had the opportunity to talk to the nominee. I hope that they will be getting back to us with an agency recommendation on the fishable waters measure, a bipartisan measure which I have now sponsored in this second session of Congress, to have locally led, incentive-based, voluntary solutions to assure healthy watersheds and fishable waters. This is something that we ought to be able to do as we have much work to do in the contentious areas of clean water.

This office is going to have to work with this committee, and I believe that from our previous discussions you understand how critical the water project funding is and the backlog is very significant. This is something that is a huge insolvable problem for the EPA Appropriations Subcommittee. And I appreciate very much your amending the agenda to say that we would take a look at these water infrastructure problems, because they are huge.

We look forward to working with Mr. Schregardus on assuring compliance assistance and compliance incentives, fixing environmental problems. We look forward to hearing from the EPA a comprehensive plan to assure that the proposed transformation of environmental enforcement or the transmogrification from Federal enforcement to State enforcement will work. As you probably know, the report coming out of the appropriations committee does not make that transfer. We did not feel that there was sufficient information on how State enforcement would take over for Federal enforcement, and that is why we do not have the bipartisan support that we need to make that transfer. But we will look forward to working with the Administrator and Mr. Schregardus.

Mr. Fabricant, being the Office of General Counsel, I will not even comment on that. You have got a full plate, and more than that.

And I just had the opportunity to mention to Ms. Ayres that in the international activities area we have the potential to make a significant contribution to improving the quality of life, even preserving life in emerging nations around the world if we export the technology that developing in the United States that is regulated by the EPA in addition to the FDA and the USDA. I am talking about biotechnology, genetically modified organisms. Under proper regulation, we can reduce the amount of chemical pesticides used not only in this country, but around the world. And some of the problems in countries I have visited have been extreme because they have over-used and misused harmful chemicals that can be replaced by genetically modified organisms with the BT DNA included to kill pests, for example, the genetic modifications that can stop the viruses. We can help African farmers produce crops that will feed their country. We can promote things like the golden rice that will stop deaths of children from malnutrition and blindness. But we need the informed leadership of our EPA as well as FDA and USDA to help stop the hysterical, unscientific, anti-GMO attitudes that Europe has tried to foist on the world. This is going to be an exciting challenge, and I look forward to working with Ms. Ayres.

And I apologize for the length of my statement. We have a lot of work to do in cooperation with these people and between the appropriations subcommittee and this committee. Mr. Chairman, I assure you that we look forward to working with you.

Senator JEFFORDS. You articulated very well the problems that we have. I appreciate your interest and explanations. You are a valuable asset.

Senator BOND. We cannot solve them in appropriations by ourselves, so we look forward to working with you and these distinguished nominees. I thank the Chair, and I thank the nominees.

Senator JEFFORDS. I look forward to working with you, Senator. Senator Voinovich?

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

Senator VOINOVICH. First of all, I would like to thank you, Mr. Chairman, for the speedy hearing on these nominations. I know that the Administrator and Secretary are anxious to have them on board so they can get on with their work.

I would like to take a brief moment to thank my colleague, Senator Carper, for speaking in favor of legislation we introduced jointly earlier this month at yesterday's Government Affairs Committee on Senator Boxer's legislation to create the EPA as a cabinet status agency. I also appreciate his offer yesterday to Administrator Whitman to try and help her get her nominees confirmed before the August recess. I hope this committee will quickly approve these nominees early next week, and hopefully the full Senate will consider them before the recess.

Senator JEFFORDS. That is my intention and we are working toward that direction.

Senator VOINOVICH. And it is my pleasure to welcome all the nominees before the committee today, Mr. Sampson, Mr. Fabricant, Mr. Mehan, Ms. Ayres, and especially Mr. Schregardus. I did have a chance to work with Mr. Mehan when he was with Governor Engler in Michigan while I was Governor of Ohio.

I would like to say, Mr. Chairman, that I have had the distinct pleasure of working with Don Schregardus for many years. I was pleased on June 28th that President Bush nominated him to be the Assistant Administrator for the Office of Enforcement and Compliance Assurance at the EPA. I strongly believe that he is the right individual for this important position. I respectfully request that you support his nomination in the committee.

Don has spent his entire career, this is really interesting, working for environmental improvement. He was trained as an environmental engineer and began his career with the Environmental Protection Agency in 1974 as an inspector and compliance officer in the Water Division. He worked in Region 5 of EPA for 16 years, rising to be the chief of the compliance section.

In 1980, then Governor Dick Celeste recruited Mr. Schregardus to be deputy director of Water Programs for the Ohio Environmental Protection Agency. Two years later, when I was elected Governor, I was pleased to appoint him to my cabinet as director of the Ohio Environmental Protection Agency because I was impressed with his long career and his service as a professional in en-

vironmental protection. I was lucky to have him serve in my cabinet for my entire term.

He successfully managed a department which is responsible for implementing laws and regulations regarding air and water quality standards, solid hazardous and infectious waste disposal, water quality planning, supervision of sewage treatment and public drinking water supplies, and cleanup of unregulated hazardous waste sites. He took an agency which had been poorly managed and made it into one of the most effective in my administration. We doubled funding for the Ohio EPA at the expense of our polluters. Ohio's air and water quality were improved. Ohio became the first State in the midwest to receive Federal approval for a massive new industrial air permitting program. We created voluntary incentives that led to real cleanups. Under Mr. Schregardus' leadership, Ohio EPA increased enforcement inspections and the total amount of civil penalties collected substantially.

Moreover, Don Schregardus is a fair person. In light of the Federal Government's pressing need for effective environmental enforcement, I can think of few individuals more experienced or qualified to assume this role at the EPA than Mr. Schregardus. Originally, given his background in EPA's regional office and heading a State agency, I recommended Mr. Schregardus to be administrator for Region 5. I later learned he did not receive the appointment; somebody else got it. I was surprised later to learn that Administrator Whitman had selected Mr. Schregardus to be Assistant Administrator based on his strong record and career in the Federal and State environmental enforcement. So, Mr. Schregardus, I want you to know that your nomination had nothing to do with me. Somebody looked at your resume and decided this person would make a good person for the job that you are being nominated for. So I am pleased that the Bush Administration has selected an individual of integrity and professional experience and has given him the opportunity to rise.

He is going to be, I think this is important, in charge of an agency where he started out as an inspector. Too often I think in government today we bring in people from outside, maybe sometimes from the private sector, and that is not to say anything against that, but to have somebody work their way up through the ranks I think will be an especially good thing for the EPA, where people who work in that agency will say, hey, there is somebody that started out as an inspector and now is heading up this particular agency. So it does happen. Thank you, Mr. Chairman.

Senator JEFFORDS. I thank you, and thank you for that excellent recommendation. I agree with you that those that have sometimes had the opportunity to be at the lower levels in the sense of the hierarchy end up as to the most knowledgeable in how to solve the problems.

Senator Inhofe?

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

Senator INHOFE. Yes, Mr. Chairman, I do want to have a brief opening statement in order to bring out two very significant things

where I am going to be asking each one of you for a firm commitment.

First of all, the prior Administration by-passed the safeguards of the Administrative Procedures Act which required Federal agencies to provide opportunities to informed, meaningful public participation as a result of regulatory rulemaking process. Now, we set up the APA to force the bureaucracy to go in and get the opinions, get the ideas, have a system whereby comments can be heard. But the last Administration avoided that by making liberal use of interim final rules, guidance documents, and policy statements which did not require the public comment. For example, in April of 2000, the U.S. Court of Appeals in Appalachian Power v. EPA actually had to strike down an abusive EPA guidance document. The court found: (1) EPA was creating broad new authority through the guidance document; (2) the EPA did intend the guidance document to have binding effect; and (3) the guidance document was illegally issued outside the APA rulemaking procedures.

So I would ask each one of you if you will give a commitment to this committee at this time to stop this practice. Would any of you not commit to do that at this time?

[No response.]

Senator JEFFORDS. That is a better way to ask it.

Senator INHOFE. Thank you very much.

The second thing, I have told this story so many times and I know that Administrator Browner did not want to hear it anymore, and she is not hearing it unless she is tuned in right now, and that is the story—I am sure every one of us up here has had phone calls from people that received almost terrorist type of demands from the EPA. And these are going to the people who are paying for all this fun that we are having up here. The story I told was the Jimmy Dunn story, a third generation owner of a lumber company, he received a notice in 1994 and called me up and said the EPA has just put me out of business. That notice was very carefully worded to inflict terror in this individual to make him think that they were going to fine him $5,000 a day because for the past 10 years he had disposed of used crankcase oil that eventually made its way to a Superfund site. But he had done so legally, selling it to people who had licenses to dispose of it. Anyway, that turned out that everything is fine with him. However, I have often wondered what about those hundreds of people out there that do not call their Congressman or their Senator.

So what I would like to ask of you, and probably, Mr. Schregardus, you particularly, and I have talked to you about this in my office, because you are going to be dealing with this type of thing, but would all five of you make a commitment to work with citizens and not harass them and not terrorize them. Yes. Yes. OK. Thank you very much.

Mr. Chairman, Senator Smith and I both have the Senate Armed Services Committee, a very significant hearing, and that is the reason we have to leave early. But I wanted to get those two things in.

Senator JEFFORDS. I understand. I would say that this may expedite things a bit too.

[Laughter.]

Senator JEFFORDS. Senator Chafee?

OPENING STATEMENT OF HON. LINCOLN CHAFEE, U.S. SENATOR FROM THE STATE OF RHODE ISLAND

Senator CHAFEE. Thank you, Mr. Chairman. Welcome to the nominees. Mr. Sampson was saying in his opening statement that his young son had said that he is not the Assistant Secretary yet because he still has to be "confused" by the Senate. So, welcome here, and probably prophetic.

Senator JEFFORDS. All right. I guess we will go right back to where we started and allow you to make your statements.

Mr. Sampson, please proceed.

STATEMENT OF DAVID SAMPSON—CONTINUED

Mr. SAMPSON. Thank you, Mr. Chairman. I do wish to thank the President for nominating me for this position, and express my gratitude to the committee members that I have had the opportunity to visit with as well as the staff members. I also extend my gratitude to Secretary of Commerce Don Evans and his staff and to the staff of EDA for all their support and assistance that they have provided me since I have arrived here.

I have submitted testimony for the record, but would like to summarize my background in economic development philosophy for you. I was born and raised in rural southern Indiana, so I was exposed firsthand to the economic challenges that confront many of our communities even today. I witnessed the economic dislocation caused by vast swings in farm commodity prices, outmigration of manufacturing facilities.

I am passionate about economic development. I believe that it is an important public policy goal to maximize wealth and minimize poverty. The public sector cannot do that. It is the private sector, through the investment of capital, that creates wealth and minimizes poverty in communities. But the role of the public sector plays a very important role in creating the kind of environment where the private sector will risk making capital investment that creates the kind of jobs that we want for all of our citizens. And so I am excited about this opportunity. I believe that my past experiences in Texas in economic development, both at the State and local level, will prepare me well for this position should I be fortunate enough to be confirmed by the Senate.

My long term goal is to lead EDA to become the premier standard bearer for economic developers across the country. I believe that EDA's programs provide an appropriate and critically needed service to America's distressed communities. But I am equally committed to the belief that Government is accountable for the funds its spends and the programs it carries out. As the premier economic development partner, EDA must set the standard for excellence in its own operations and management.

My view of management is that an organization functions best on the basis of teamwork and partnerships. We can move EDA forward as long as we do it as a team. And I look forward to working with the staff members of EDA should I be confirmed as well as economic development partners at the local, State, and Federal

level, and certainly, most importantly, working with this committee and the Congress and its staff.

A recent work force analysis study performed by Booz Allen highlighted that in EDA the commitment to facilitate economic development and provide superior customer service is pervasive. I think that speaks well of the current staff of EDA. I look forward to having the opportunity to join them should I be confirmed.

In closing, I would like to thank my family for allowing me to uproot them from Texas. I consider it a great honor to have the opportunity of serving President Bush and my country in this position. I appreciate the opportunity to appear before you today, and look forward to answering any questions you may have.

Senator JEFFORDS. Thank you very much for your statement. I have just two questions for you. Recently, the Economic Development Administration, EDA, finished a comprehensive year review of the agency's work force and organizational structure. Their review recommended that the EDA work to improve communications between the regional offices and the headquarters in an effort to better serve economically distressed communities. Can you please discuss how these improvements can help the EDA effectively and efficiently help small rural States such as Vermont.

Mr. SAMPSON. Yes, sir. The Booz Allen study, I compliment my predecessor for authorizing that study. I think it is very helpful. The regional offices are the front line interaction between EDA and the States and local communities. It will be our goal to ensure that the regional administrators are very plugged in to what we are discussing at the headquarters level. But more importantly, I think the most important thing we can do is to align our existing resources appropriately. And by that, I mean making sure that our regional offices have the kind of staff that they need to be able to adequately cover all of the territories. We need to make sure that our EDRs, Economic Development Representatives, are strategically placed to adequately cover the geographic and demographic distribution of those territories.

I think the recent legislation which expands our ability to work with communities through qualifying under Special Needs categories will be very helpful in States like Vermont where the overall unemployment rate is low but you do have areas of significant under-employment. One of the things that we will work to do is to expand our planning grants and our infrastructure grants to the broad range of communities, and I think the Special Need qualification that you have authorized us to utilize will be very helpful.

Senator JEFFORDS. While the economic distress in Vermont may be not country-wide, there are many small towns and villages that are in need of Federal economic development assistance. Can you discuss how the EDA allocates its economic development resources, and more specifically, discuss how EDA works to ensure that small towns, like in Vermont, St. Albans or Randolph, are not left behind when it comes to the Federal development dollars.

Mr. SAMPSON. Yes, sir. Those funds are apportioned on a pro rata share to the six regional offices around the country. All grants must be consistent with a comprehensive economic development strategy that is produced at the local level, and then those local communities advance a proposed project to the regional office for

review and approval. I think it is vitally important that we expand the coverage and the reach of our economic development representatives in working with those small and rural communities to ensure that (1) they do have a comprehensive economic development strategy by providing adequate and expanded planning grants to them; and (2) work with them to advance specific projects that fit within their comprehensive economic development strategy to the regional office.

Senator JEFFORDS. Mr. Fabricant, please proceed with your statement.

STATEMENT OF ROBERT FABRICANT, NOMINATED TO BE GENERAL COUNSEL, ENVIRONMENTAL PROTECTION AGENCY

Mr. FABRICANT. Mr. Chairman, members of the committee, thank you for providing me with the opportunity to appear before you today. It is a great honor and privilege to be here as the President's nominee to be General Counsel of the Environmental Protection Agency. I want to express to you and your staff my appreciation for the many courtesies extended to me in preparing for this hearing.

When Governor Whitman asked me if I would consider serving as General Counsel of EPA, it took me but a second to say yes. I have spent virtually my entire career in the public sector, most recently as Governor Whitman's chief counsel. Prior to that, I served in positions in the Governor's office that specialized in environment matters, and I have also served in the capacity as a deputy attorney general for the State of New Jersey with litigation and counseling advice to our New Jersey Department of Environmental Protection. Since being admitted to the bar, my primary focus has been a career in environmental law.

Given that professional experience in this area, the opportunity to serve at EPA in this capacity is a truly humbling thing for me. I am grateful to Governor Whitman, to the President, and to you for this opportunity. Should you do me the honor of recommending my confirmation to the Senate, and should I be confirmed, I will devote all my efforts and energies to doing a good job.

Senator JEFFORDS. Thank you. Mr. Fabricant, you have spent much of your career with Administrator Whitman as her advisor while she was Governor of New Jersey. Now you are looking at being her legal adviser of EPA. What do you see as the biggest challenge in taking the step from State government to the General Counsel for a Federal agency?

Mr. FABRICANT. The largest step I believe is the complexity of the issues and the broad range of State issues that will arising and reconciling the different regional aspects of the larger Federal EPA versus a State like New Jersey, which has many of the same issues that are nationwide but not at the level and complexity that you need to reconcile them at the Federal level.

Senator JEFFORDS. Thank you.

Mr. MEHAN.

STATEMENT OF GEORGE TRACY MEHAN, III, NOMINATED TO BE ASSISTANT ADMINISTRATOR FOR THE OFFICE OF WATER, ENVIRONMENTAL PROTECTION AGENCY

Mr. MEHAN. Thank you, Mr. Chairman, members of the committee, for the privilege to address you as President Bush's nominee for Assistant Administrator for Water at EPA.

I am very grateful to the President, Governor Whitman, and this committee for being considered for this tremendous responsibility to protect the waters of the United States. I look forward to working with you all to ensure that our children continue to enjoy the fruits of America's bounty, particularly the lakes, rivers, wetlands, and oceans.

I grew up on the Mississippi River and had the good fortune to marry a resident of the Lake Michigan shores. My wife and children, even as we speak, are enjoying a summer's respite on a lake in Wisconsin. And my parents are on their way to the coast of South Carolina for a well-deserved vacation. My family, just as most American families, realize that water defines much of their lives, at least the most enjoyable aspects. But for many other Americans, many more Americans, it is even more important in that it is the basis of making a living, supporting a business, or even feeding themselves.

Given the importance of water in the lives and occupations of our citizens, it is understandable that starting in the 1970's the nation began the hard work of restoring its water quality with very great, albeit limited, success. The strength of our economy in the postwar era, no doubt created both the desire and the means of cleaning up the waters, and I believe that has a lot to do with our success. But it was not just the money. It was the love of our country and its beautiful waters.

Many commentators have noted the evolving nature of the challenges to further improvements in water quality. We need to look beyond the traditional discharge pipe in the water to more generalized sources of runoff, polluted runoff. There is also the need to look at the entire watershed to assess the most cost-effective means of intervention and reduction of a target pollutant. These and other challenges, such as restoring contaminated sediments and preventing air deposition of pollutants to our waters, will require new and creative ways of meeting our responsibilities of stewardship in this new century.

I hope to contribute to the search for solutions to the water quality challenges of the day, working with the White House, Governor Whitman, and of course this committee to involve stakeholders from the public and private sectors, from State and local government, and from people inside and outside of government.

Working together, I believe we can identify and implement successful strategies to maintain and restore the chemical, physical, and biological integrity of our waters. No doubt many of these strategies will be tailored to specific problems in specific communities. Hence, the importance of the watershed as both a social and hydrological reality. Here is where communities, neighbor to neighbor, can engage one another, educate each other, persuade one another in a mutual quest for shared goals.

There are, of course, other problems national in scope where the Federal role is a significant if not a paramount one. This committee has developed legislation directed EPA to work with States, tribes, and other Federal agencies to help finance water infrastructure, to set national drinking water standards, to protect wetlands, to control discharges from industry and sewage treatment plants, and, of course, to reduce nonpoint source pollution through various methods. The impact of air pollutants, such as mercury or nitrogen, on water quality also requires national attention. This is a classic cross-media problem and we will need a coordinated approach to addressing pollutants which are a threat both to air and water.

Americans view conservation and environmental protection as important elements of the public agenda. They look to public officials to harmonize these priorities with social and economic objectives. This is a task of great difficulty, but one that is well worth the effort.

I will strive to meet these challenges while relying on the best available science and economic analysis with due regard for the statutory directives of Congress.

I will be honored to work with this committee, Mr. Chairman, to accomplish the hard work of protecting and restoring our nation's water quality. Again, I thank you for your time and consideration today.

Senator JEFFORDS. Thank you, Mr. Mehan. As you well know, there are indications that there is a crisis of rather large proportions with respect to the wastewater and drinking waters in this nation. In fact, it has been estimated that over the next 20 years communities will need between $600 billion and $2 trillion to upgrade their water infrastructure. I have several questions for you related to this issue. What do you see as the Federal Government's role in funding water infrastructure?

Mr. MEHAN. Let me say, first of all, there is a role and I think we are at the front end of what has to be a very sustained dialog in fleshing out and defining what that role is. Clearly, historically, most of the resources that have gone into our infrastructure have come from municipalities, local governments, and other sources. But there has been a clear Federal role. And certainly when you look at interstate bodies of water, when you look at communities in distress, smaller communities running into affordability issues, there is clearly I think an opportunity to explore what that role is and to what degree.

Again, I am very pleased that Governor Whitman has listed this infrastructure issue as one of her top priorities. I am very pleased to begin working with her and the Administration and this committee to flesh out and give some direction and specificity to what that role is. Again, I will be one voice among many in the Administration, but I can tell you there is a Federal role, it is a significant one, but it does need some refinement, some direction as to what is the legitimate and appropriate targeting of that Federal role and involvement.

Senator JEFFORDS. As you know, this is going to be a very critical issue and finding the funding, with all the other priorities that we have, is going to be very difficult, especially in looking at the limits that were placed on EPA's funding by the recent budget agreement.

So this committee is going to be dedicated to trying to work with you to make sure that we do all we can to help the States and local communities.

I am also interested in your views on the State Revolving Fund programs for supporting drinking water and wastewater infrastructure. Are these SRF programs working well? Or do they need to have changes, and if so, what changes would you suggest?

Mr. MEHAN. Generally, I would say yes. At least from the standpoint of a State official and most of the State officials I have interacted with, the SRF program has been an effective one. It is one that I think both EPA and the States have been comfortable with. Generally, that is a good model and a good mechanism that has been in place these many years.

However, in this age of continuous improvement, there is always room for more improvement and to what extent it can carry the load necessary for all these new challenges, especially as we look at grants versus loans. But in the main, it is a good program and it is one of the successes of the last couple of decades. So I think it is a question of fine tuning and refining it. I think it has worked and it provides a lot of lessons for the future.

Senator JEFFORDS. Senator Voinovich?

Senator VOINOVICH. Do you think that the current Federal program to help communities in terms of their water and waste treatment facilities is adequate?

Mr. MEHAN. If you view that question in terms of what the objective need is, there is a huge need, a huge need, and there may never be enough resources from the Federal Treasury to deal with that. However, I think we need to think comprehensively, not just on the money side, but on the technical assistance side, on the asset management side, and look at a way to optimize whatever Federal resources are ultimately available.

Again, the needs, as the Chairman indicated, are large across the board, whether we are talking wastewater or drinking water, in terms of infrastructure, in terms of just operating expenses. So in an objective sense, no. But I think the question we are going to have to face at some point, whatever role the Federal Government has will no doubt be a limited one, and the question will be how to optimize and fully leverage and effectively use whatever resources are eventually available through Federal sources.

Senator VOINOVICH. One of the things that I am concerned about, and you must have experiences, we do have an aging infrastructure in both water and in sewers. If you are candid and intellectually honest, you have to look back and find that we made major improvements in waste treatment when the Federal Government instituted the 75–25 program, which went off I think in the middle of the 1980's. That problem is still there.

In addition to that, I think you are familiar with a lot of the new requirements that are coming out of the Environmental Protection Agency particularly in the area of CSOs and stormwater overflows. I would think it would be incumbent upon the next individual that has this job to review those new requirements that are coming out to make sure that they make sense from a common sense point of view. And if they do, to recognize that the local people are not able to handle that by themselves. I have got a bill in this year to in-

crease the SRF from $1.5 billion to $3 billion a year over 5 years, $15 billion. Right now, we are trying to get a little paltry sum of money, Mr. Chairman, we had the Wet Weather Program last year, we asked for $1.5 billion, $750 million in this budget just does not provide for it. And then the WIN organization has come up with a proposal over a 5-year period of looking at spending about $57 billion to deal with the problem.

I would hope that the director of the agency and you would be forthright and candid with Congress in terms of what the needs are, and to understand that there is more of a role for the Federal Government to play currently than is now being played. Some of these new things coming out of the EPA are unfunded mandates and somehow we have got to grapple with this situation and we have to get it on the table if we are going to deal with it.

Unfortunately, we have these unmet Federal needs and we are going off in new directions and new programs and just ignoring the fact that these need to be addressed. I would like to hear from you. Would you be willing to be an advocate there in terms of bringing these things to our attention?

Senator JEFFORDS. I share the Senator's feelings there.

Mr. MEHAN. As I have said, I hope I have been direct and responsive, infrastructure is a huge issue and there is a significant Federal role. Beyond that, I intend to work very hard, based on the priorities the Administrator has set out, to formulate policy that I think comprehensively addresses all the issues you have raised, both in terms of the resources side, the money side, but also what are the legitimate mandates. Are we looking at these rules in a way where we are getting value-added, we are getting the biggest bang for the buck. On top of that, as I say, I think a third thing which I am hearing from the career staff is the whole issue of asset management. Are we managing the existing capital infrastructure in a way that prolongs its life.

So, again, that issue, as well as defining what is the appropriate extent of the Federal involvement, are all the kinds of issues that I intend to weigh in on and, hopefully, be a robust participant in those discussions within the Administration, and as we move out to the next concentric circle, that is the Senate and the House, to weigh in heavily on those issues.

Senator VOINOVICH. Thank you.

Senator JEFFORDS. Mrs. Ayres, please proceed with your statement.

STATEMENT OF JUDITH ELIZABETH AYRES, NOMINATED TO BE ASSISTANT ADMINISTRATOR FOR THE OFFICE OF INTERNATIONAL ACTIVITIES, ENVIRONMENTAL PROTECTION AGENCY

Ms. AYRES. Good morning. I am honored to have the opportunity to appear before this committee to see your confirmation to serve as EPA's Assistant Administrator for the Office of International Activities. It is a distinct honor to have been nominated by the President and to have the support of Governor Christine Todd Whitman. If the Senate confirms my nomination, I also look forward to working closely with members of this committee, and other members of the Senate and the House of Representatives.

I believe the Office of International Activities in EPA is a place where a common understanding and approach can be developed to address the many global environmental problems that confront us. If confirmed, I pledge to use my experience and talented staff to promote a spirit of environmental stewardship which reflects Administration priorities.

Today, in seeking the committee's confirmation, I offer as qualifications my academic background, my public and private sector environmental experience, and my record in both venues as a proven and fair manager committed to doing the public's business in a public way to pursue high environmental priorities.

Environmental protection and gain are at the very heart of EPA's major program areas. Each program carries an essential international dimension; addressing pollution of air, water, solid and hazardous waste, toxic chemicals, and also emergency response functions, and pesticides. The international dimension is important because we know what goes on in backyards halfway around the world may also end up in our own.

I would also offer comments on the people of the Office of International Activities. This is an exceptionally talented, dedicated, and professional group of public servants who seek a well-managed office with challenging and interesting work, the resources to get it done, and a work environment that is fair and equitable. Mr. Chairman, President Bush, Governor Whitman, and I commit both to the committee and to the Office of International Activities that going forward, the office will be well-managed, all managers and employees will be held accountable, the world will be challenging, and the work environment will be fair and equitable.

In closing, I have chosen to seek confirmation and to re-enter public service because I believe public service is the noblest of professions and I believe protection of the environment, in all its many dimensions, to be the most vital of endeavors.

Thank you. I shall be pleased to answer any questions you might have.

Senator JEFFORDS. Thank you for an excellent statement. If confirmed, you will be the head of an office within EPA that has responsibility for international activities. Given the Administration's position on Kyoto and climate change, our international relations on these issues is very important right now. How do you see the role you will play within the Agency, the Administration, and the international community on these issues? What is your role?

Ms. AYRES. I would ask for some clarification, Mr. Chairman. Are you referring specifically to Kyoto or to all international activities?

Senator JEFFORDS. Either way. Your choice.

Ms. AYRES. Then thank you, I will take the broader approach.

[Laughter.]

Ms. AYRES. And that would be, the Office of International Activities at EPA works collaboratively with other entities within the Federal Government and certainly with other entities within EPA itself, the program offices. So International Activities will be working with Water, certainly the General Counsel's Office, we are not doing much in the Enforcement, but all of the areas internally, and then working closely with the State Department, Treasury, with the Trade Representative. So there is a real collaborative effort. On

a few issues, EPA Office of International Activities has the distinct lead. Certainly, one of those areas has to do with a very vital program going on on the Mexican-U.S. border.

Senator JEFFORDS. Let us just focus for just a second on Kyoto. What are your views or your expectations with regard to the international impacts?

Ms. AYRES. Kyoto, certainly an issue in the new. Certainly an issue of great interest to you, I am aware, and certainly the Agency is aware, the Administration is aware. At this time, the Administration has chosen to not have our country be a party to Kyoto. The two issues there essentially are issues of equity regarding the numbers of countries who are participating and who will be, so it would be an equity issue, and then it would also be an issue of how it would affect our economy. The feeling of the Administration is that these control mechanisms would have deleterious effect on our economy.

The Administration, as you know, is conducting a cabinet level review of climate change policy. They are working on a product, I do not know what that product is, when that product will be available, but I do know that the Administration is committed to looking at this issue at the cabinet level, and that is happening regularly.

Senator JEFFORDS. Just let me pass information on to you. I met recently with a number of different countries that are leaders in the environment and they expressed deep concern over the attitude of the United States with respect to Kyoto. I just want to pass that on because I think we have a responsibility to understand the reactions of the world community when we take a position which is discouraging with respect to our cooperation in Kyoto. I just want to pass that on to you.

Ms. AYRES. Thank you, Senator. In response, let me say that should I be confirmed, both I and the Office of International Activities look forward to working with you and the entire Congress to the extent that we are involved in this issue as the process moves forward.

Senator JEFFORDS. Senator Voinovich?

Senator VOINOVICH. On Kyoto, if this country is unhappy with the current Kyoto treaty, do you think it is incumbent on us to come back with an alternative?

Ms. AYRES. I think it is incumbent upon us to work in the interest of the greater good for the global environment, for the community of nations. I believe that first steps have been taken in that the Administration believes that the climate change is a problem, believes that there is a man-induced component of that. And from my perspective, having been at the Agency for some 12 nonconsecutive days, in my capacity as a consultant, I am prohibited from attending any meetings outside of the EPA itself. So I am not a principal in this issue at this time. However, I believe that the Administration has strong feelings that they are wanting to be value-added, and if that is in fact bringing forward a plan, possibly domestically and internationally, that will be done.

Senator VOINOVICH. Well, I would suggest that is what the position should be. We have strong feelings and I concur with some of the reservations the President has about it. I have had hearings on

the issue of global warming and there certainly is a difference of opinion among the scientists. But the fact of the matter is that there is a problem and it seems to me we should be part of the solution and not part of the problem.

This issue has even larger implications than just the issue of the environment. It has large implications in terms of our relationships with our allies around the world. I can tell you, this year I attended the NATO meeting in Vilnius and I was at the OSCE meeting in France, our parliamentarians from those nations are very, very upset. They basically feel that the United States is just stiff-arming this whole thing and walking away from it. It is bad, bad public relations.

If we are not happy with the situation, then we have an obligation to come back and say here is what our problems are and can we work on some other alternatives. But we do know there is a problem and we are willing to participate in working with you to do something practical about it even though we may not agree with some of the scientists that say we are the main cause of this global warming problem. But it is out there and we ought to be doing something constructive about it. And I would hope that is going to be your attitude and the attitude of the Administration.

Ms. AYRES. Senator, the Agency and the Administration look forward to working with you toward a solution that helps solve the problem and is an equitable solution to our nation's economy, which is basically two of the underpinning principles that are being looked at and being included in any plan the Administration may come forward with at the cabinet level at this time.

Senator VOINOVICH. Thank you.

Senator JEFFORDS. Some years ago, I started what is now referred to as the Alliance to Save Energy with industries in this country to try to work together to find ways to conserve energy. Three years ago, I was in China and met some of the experts in this country who were over looking at China's coal consumption, and they came back with a staggering understanding that with efficiency improvements they could almost reduce the consumption of coal up to 60 percent between the user and the provider.

It seems to me this nation has an opportunity to try and be a leader in how to help other nations to do the efficient things that we have learned to do here, because if you look at China, as you know, and India, and other areas, inefficiencies are very serious. I would hope that we would take a leadership role in trying to help those nations find ways to be more efficient, which would reduce the problems certainly by magnitudes of great numbers if those experts are correct.

So I would hope you would take an interest in seeing what we could do to try to work in that area.

Ms. AYRES. Thank you, Senator. What you have just mentioned is really at the very heart of what the International Office at EPA is all about, the phrase used is "capacity building." Through these capacity building projects, which are truly around the world, with lesser developed countries or other countries, often the same countries who are grappling with the most devastating environmental problem of all, poverty, which is one of the reasons why these inefficiencies exist, the sharing of technologies, the sharing of expertise

from our country and oftentimes from the professionals at EPA to these other countries in helping them learn new ways of doing things that will make them simply more efficient and thus, in many instances, less polluting.

Senator JEFFORDS. Thank you. I look forward to working with you.

Ms. AYRES. And I look forward to working with you. Thank you.

Senator JEFFORDS. Mr. Schregardus?

STATEMENT OF DONALD R. SCHREGARDUS, NOMINATED TO BE ASSISTANT ADMINISTRATOR FOR THE OFFICE OF ENFORCEMENT AND COMPLIANCE ASSURANCE, ENVIRONMENTAL PROTECTION AGENCY

Mr. SCHREGARDUS. Mr. Chairman, Senator Voinovich, and distinguished members of the committee, it is an honor and a pleasure to appear before you this morning as the nominee to be EPA's Assistant Administrator for the Office of Enforcement and Compliance Assurance. I am honored and excited that President Bush and Governor Whitman have invited me to join the Administration to improve public health and the environment in this great nation. I am especially pleased to be joined here today by my daughter Sarah who flew in from Ohio this morning.

Compliance and enforcement have always been fundamental components of our national environmental program. Governor Whitman has expressed her commitment to a strong Federal enforcement program, and so do I. Compliance and enforcement has been a cornerstone of EPA's programs to improve public health and the environment from its beginning. The American people trust and rely on EPA to protect the land, air, and water where they live. I understand this important responsibility and, if confirmed, will do everything in my power to meet this responsibility.

To this end, I believe my 25 years of experience in Federal and State environmental regulatory agencies would provide a valuable benefit to the Administration. I started my career at EPA at a field office conducting environmental studies and investigations. While developing permits and enforcement cases I learned first-hand the importance of good science in environmental decisionmaking. As chief of the Water Division Compliance Section in Region 5, I managed one of the most successful efforts to bring municipalities into compliance with the Clean Water Act. We set records for the most penalties and civil actions as compared to previous periods in the Region. As a result, water quality improved across the region.

As director of Ohio EPA, I developed or expanded programs in pollution prevention, technical assistance and environmental education. I improved the scientific basis for environmental decisionmaking. We implemented a program to evaluate the quality of all 6,000 public water supplies in Ohio, we placed inspectors at each of Ohio's commercial hazardous waste disposal facilities, and we tripled the size of Ohio's landfill inspection program. With the support of then-Governor Voinovich, we added nearly 400 new people to the Agency, half of which were placed in the Ohio EPA's district offices where they conducted inspections and monitoring. We developed new programs to clean up Brownfields, manage and cleanup tire dumps, ensure the safety of underground injection wells.

Senator Jeffords, I was pleased to hear you are interested in energy conservation. Ohio was one of the first midwest States to join EPA as an active participant in their Green Light Program to help reduce energy in buildings across the State.

Throughout my service as director, I recognized the importance of public involvement. I expanded public involvement in the rulemaking and program development processes, and started and supported 25 community-based groups to assist the Agency in studying and improving water quality.

However, the real measure of success in these programs is not in the outputs but in the outcomes. During my tenure as director of Ohio EPA, one of the top manufacturing and energy producing States in the country, air emissions of sulfur dioxide, particulate, carbon monoxide, and lead were reduced substantially, and for the first time all 88 counties in Ohio met the national air quality standards. We had a 50 percent reduction in toxic releases to the environment from 1988 levels, and we realized a 50 percent increase in stream miles fully achieving fishable/swimmable Clean Water Act goals. I am proud of these accomplishments, but more still needs to be done. I look forward to bringing the knowledge gained from these successes to apply to the Office of Enforcement and Compliance Assurance.

One area I believe is especially important for the compliance and enforcement program is to focus on coordination with the other offices in the Agency to ensure the Administration has a clear, consistent national approach to environmental protection. A clear unified approach to environmental protection helps ensure there are no surprises and no excuses to environmental compliance. Finally, I will seek the involvement of the States and the public as we improve and develop new programs.

From my career in enforcement, I have learned an effective compliance and enforcement program involves far more than just enforcement orders and lawsuits. Compliance starts with a clear understanding of regulatory requirements and timeframes in which they must be met. Education and compliance assistance are needed to get the word out clearly and uniformly across the country. Incentives and voluntary programs can assist communities and businesses to achieve environmental controls in a cost effective manner. Plans, goals, tracking, and accountability are essential to follow progress. States, where delegated the national programs, must take the lead. But if requirements are not met, then the full range of administrative, civil, and criminal enforcement actions must be considered. If you should honor me by your confirmation, I will work to improve each one of these elements and thereby improve public health and the environment in a cost effective manner.

I look forward to working with you, Governor Whitman, and President Bush to make the environment better for all Americans. Thank you for the opportunity to speak with you this morning.

Senator JEFFORDS. Thank you. You are going to have a tough job.

Mr. SCHREGARDUS. Yes, sir.

Senator JEFFORDS. I am concerned when I look at the budget with respect to your role. The Administration's budget for 2002 cuts 270 EPA enforcement personnel from the office that you will be heading while providing $25 million for grants to States for en-

forcement programs. I would like you to tell the committee what impact the personnel cuts will have on EPA's ability to enforce our environmental laws, and what the State Enforcement Grants Program will be designed to do.

Mr. SCHREGARDUS. Mr. Chairman, if confirmed by the Senate, I will have the responsibility to support the President and the President's budget, and I am committed to do that. I recognize the issues that are being considered by the Congress at this time on the issue of the President's budget related to moving essentially $25 million from the Federal enforcement program to the State enforcement program. You have accurately described the Office of Enforcement and Compliance Assurance is scheduled to be reduced by a total of 270 work year, 205 of those will be applied to the Agency reduction to achieve 17,500 FTEs and 65 FTEs will be moved to other programs.

With respect to this, Senator, I have worked at both the State and national level and I recognize the importance and the leadership role that the States have in enforcing the national laws. I believe the $25 million proposed to be added to the State Grants Program can be an effective, important tool in improving State enforcement programs.

I also recognize that a reduction of $25 million from the Federal side will have a real impact on the enforcement program. But I certainly believe, and I believe strongly, that the resources that remain in the Office of Enforcement and Compliance Assurance are substantial and we will carry out a vigorous enforcement program based on meeting the priorities of the office.

And so, yes, I do believe that we can carry out a vigorous program. We will take actions against facilities that have multiple facilities in multiple States. We will take action when there is cross-boundary issues. We will take actions where the States have not been delegated the program. And we certainly will take actions where the States are either unwilling or unable to take actions within their States. But I also believe, as well as Governor Whitman, that the $25 million will substantially help the States carry out their very important role in the environmental compliance and enforcement. They currently take over 90 percent of the actions, both inspections and enforcement, and we think through setting up a grants program that requires accountability, a focus on environmental priorities, we will see a measured improvement in enforcement by the States.

Senator JEFFORDS. Well thank you. That is somewhat reassuring, but I want to let you know that I intend to be watching very carefully over what the impact is. I have full faith in the Administrator. I believe she is a wonderful woman and I have respected what she has done. But I want to make sure she has all those tools necessary and available to her that she must have in order to do the job. So I am going to be watching like a hawk soaring above there to make sure that she has the ability and no hinderance placed in her way to do the job she is supposed to do.

Well thank you all.

I turn now to Senator Voinovich for any questions he may have.

Senator VOINOVICH. I just was handed a note that said that Senator Bond said this morning the Senate Appropriations will not be

cutting EPA's enforcement budget. So, one of the things that the Administration proposes and the Congress disposes.

[Laughter.]

Senator JEFFORDS. Of course, we are right.

[Laughter.]

Senator JEFFORDS. Thank you all.

Senator VOINOVICH. Mr. Chairman, I would like to just say one thing. I would like to thank all of you for responding to the nomination of the Administration to take on these responsibilities. It is a major sacrifice. I know it is disruptive to your families. They are making a sacrifice right now while you are in this limbo period. Hopefully, you will all be appointed, and they will continue to make sacrifices as you serve our country. I just want to thank you so much for your willingness to step forward and to serve our nation. We need outstanding people in our Federal Government, and your willingness to serve is very much appreciated by your country. Senator Jeffords. I have two obligatory questions that I have to ask you. If I do not ask them, you cannot have your job, so I think I better ask them.

Are you willing, and this is for all of you, at the request of any duly constituted committee of the Congress to appear in front of it as a witness? All nod your heads aye, I hope.

[Witnesses answered in the affirmative.]

Senator JEFFORDS. OK. Fine.

No. 2, do you know of any matters which you may or may not have thus far disclosed which might place you in any conflict of interest if you are confirmed in your position?

[Witnesses answered in the negative.]

Senator JEFFORDS. Everybody is shaking their head no.

Thank you. Now you are on your way. We have to have a vote on confirmation, but you are ready to go before that vote. So thank you very much for appearing before us today. We look forward to working with you.

[Whereupon, at 11:09 a.m., the committee adjourned, to reconvene at the call of the Chair.]

[Additional statements submitted for the record follow:]

STATEMENT OF DAVID SAMPSON, NOMINEE TO BE ASSISTANT SECRETARY OF COMMERCE FOR ECONOMIC DEVELOPMENT

Mr. Chairman, Senator Smith and members of the committee, Thank you for the opportunity to appear before you this morning. I am grateful to Senator Kay Bailey Hutchison and Congressman Martin Frost for their kind introductions, and to you for the warm welcome you have given me and my family. Speaking of my family, I would like to take this opportunity to introduce my wife, Karen, and my twin sons, John David and Matthew Nicholas.

I also wish to thank the President for nominating me to this position, and express my gratitude to committee members and their staffs for the many courtesies extended to me during my visits with you over the last month. In addition, I extend my gratitude to Secretary of Commerce Don Evans and his staff and to the staff at EDA for the support and assistance they have given me since my arrival here in Washington.

I was born and raised in a rural farm community in southern Indiana, so I was exposed firsthand at a young age to the economic challenges that confront many of our nation's communities even today. I witnessed the economic dislocation caused by significant swings in farm commodity prices, drought and flood, the relocation of manufacturing facilities outside of the Midwest, and the loss of population due to lack of economic opportunity.

I am passionate about economic development. I believe economic development is of critical importance because it supports two important public policy objectives: creating wealth and minimizing poverty. The creation of wealth enables people to be economically self-sufficient and provides the resources needed for building safe, healthy, convenient and attractive communities in which people want to live and raise their families. Minimizing poverty is important because poverty is not only dehumanizing, it is extremely costly in terms of underutilized human and capital resources, welfare transfer payments, soaring public health care costs, crime, and declining neighborhoods that lose their value. Thus, the public sector has a legitimate interest in supporting those efforts to bring economic opportunity to all segments of our society. As President Bush said last week in a speech before the World Bank, "A world where some live in comfort and plenty, while half of the human race lives on less than $2 a day is neither just, nor stable."

But while I am passionate about economic development, I also realize it is not the public sector that creates wealth and minimizes poverty, but the private sector. Therefore, the public sector role is to foster a positive environment where the private sector will risk capital investment to produce goods and services and increase productivity, thereby providing the high-skill/high-wage jobs that offer opportunity for all Americans.

I have come to understand the nature and importance of economic development over the past decade, during which I was actively involved in addressing economic development issues at the local level. First as a staff member and later as President and CEO of the Arlington, Texas, Chamber of Commerce, I was directly involved in local economic development efforts because the Chamber functions as the city of Arlington's economic development department under a public-private partnership agreement that has brought significant growth and opportunity to the City.

Arlington, Texas, is an interesting blend of old and new economy with a significant amount of tourism-based economic activity mixed in for good measure. In addition, the City has an economically diverse work force and population, and faces most of the economic development challenges confronting the nation's cities. During my tenure as President and CEO, the Chamber's economic development efforts on behalf of the city of Arlington resulted in the investment of $2.4 billion in private capital and the creation or retention of 28,465 jobs. This level of achievement was possible because of an effective public-private partnership, a bi-partisan working relationship with local, State and national officials, the outstanding team of professionals we had working on economic development in Arlington, and the strong performance-based management system the Chamber and City established to guide the economic development program.

I have also been involved in a number of economic development activities at the State level in Texas at the appointment of then Governor, now President, Bush. I served as the Vice Chairman of the Texas Strategic Economic Development Planning Commission when we developed a 10-year strategic economic development plan for Texas. That effort was charged by then Governor Bush to ensure the plan developed would help all regions of Texas achieve their highest economic potential and share in the economic prosperity of the State. I subsequently chaired the Texas Council on Workforce and Economic Competitiveness where we worked to implement the State's plan to integrate its economic development and work force development efforts. This experience provided me a greater understanding of the need to integrate economic and work force development efforts in order to support more efficient use of both sets of resources. It also provided me with an appreciation of the potential and promise of the Workforce Investment Act and the role it can play in bringing increased opportunity to Americans.

I believe these experiences and my prior experience with community-based organizations have prepared me to take on the duties of the position of Assistant Secretary for Economic Development. I am committed to leading EDA to become the premier standard bearer for economic developers across the country. I believe that EDA's programs provide an appropriate and critically needed service to America's distressed communities. But, I am equally committed to the belief that the Government is accountable for the funds it spends and the programs it carries out. I believe that EDA must be able to demonstrate, through tangible outcomes and measures, how it is performing and the value of its programs. And, as the premier economic development partner, EDA must set the standard for excellence with its own operations and management.

Integration of mission, organization, budget, and performance form the basic loop that drives success. EDA must reestablish its strategic context and focus by re-affirming the mission and vision of the Agency. We will work with a broad cross-section of experts, private and public, in the field of economic development, to analyze trends and developments. We will work with our partners to develop a coherent and

comprehensive vision and strategy to meet the challenges of the 21st century, and we will be poised to address economic development issues as they begin to emerge. EDA will be pro-active in addressing economic development in the future, not reactive.

The strategic vision and mission of EDA will, in turn, dictate the organization necessary to achieve that vision. EDA commissioned a work force analysis study at the end of fiscal year 2000 so the Agency could plan strategically for long range human resource requirements, to effectively align the work force with organization goals and objectives, and to provide a foundation for focused cross-organizational placement, training, retraining and recruitment.

The study identified key work functions and activities, analyzed gaps between workload and work force, detailed managerial, technical and core competencies, and specified the competencies in which deficiencies exist. The study also found that 60 percent of EDA's work force is eligible for retirement. Three key recommendations were made. First, analyze work processes in greater detail, from a qualitative and redundancy perspective, to streamline for greater efficiency and effectiveness. Second, reestablish the strategic context and focus for EDA by re-affirming the mission and vision of the Agency. Third, implement a competency-based Human Resource System to tie employees' competency and behaviors to the mission and strategic goals. Such a competency model incorporates succession planning, recruitment, selection and training and development.

If I am fortunate enough to be confirmed for the position of Assistant Secretary, EDA will aggressively move forward to implement the recommendations of the study. Let me assure you, however, that the findings of the study will not be used to support requests for additional staff resources, but rather will help us make optimum use of available staff within current personnel ceilings. We will assess EDA structure to ensure that we flatten management structures so there are fewer layers between customers and senior policymakers. We will define the role of headquarters and align and deploy resources to best serve the needs of communities. We will streamline our processes, align competencies with activities, and explore new opportunities for technological solutions.

After vision and organization comes budget and performance. EDA will derive its budget requests from the outcomes it hopes to achieve, and I assure you that if we can't demonstrate the value of an EDA program's investments, we will not seek funding for that program. I am convinced of the importance of performance-based management systems and that program budget requests should be supported by documented results. Whatever activities we are going to undertake with public dollars must be able to demonstrate benefit for the funds expended through measurable, quantifiable performance measures. EDA is assessing its performance measures, and is focusing resources to develop and define tangible outcomes and performance measures for our capacity building programs, planning and technical assistance. It is fundamental that solid, substantive planning is a prerequisite for sustainable economic development, but it is incumbent upon EDA to tangibly document specific outcomes to be achieved, and then to measure our achievements.

The final recommendation from the work force analysis study addressed the need for a competency based Human Resource System that ties employees' competency and performance to the Agency mission and goals and performance. A competency based Human Resource system develops succession planning, recruiting, selection and performance measurement around a competency model. I am a strong proponent of The Balanced Scorecard, which is a performance management approach that assesses customer satisfaction, financial results, and internal processes in a way that is practical and measurable and that reinforces the organization's critical competencies, goals and objectives.

Lastly, my view of management is that an organization functions best on the basis of teamwork and partnerships. We can move EDA forward as long as we do it as a team, and it would be my intention to work in a collegial manner with EDA's staff. Let me say that in the short time I have been serving as the Secretary's Senior Advisor, I have been most impressed by the competence and dedication of the EDA staff, and I look forward to joining them should I be honored by being confirmed as Assistant Secretary. The work force analysis study highlighted that, "The commitment to facilitate economic development and provide superior customer service is pervasive throughout EDA." It is important that the EDA team work in partnership with local, regional, State and Federal economic development organizations, along with Members of Congress and their staffs, in order to maximize the benefit derived from all our efforts. No one program, Agency, private non-profit, or governmental organization has all the resources or knowledge needed to meet the nation's distressed areas' economic development needs. By working cooperatively, however, we can make efficient use of all our resources to leverage greater private sector in-

vestment and more businesses and jobs for those Americans who have not been full partners in the nation's economic growth.

In closing, I would like to thank my family for allowing me to uproot them from Texas. I consider it a great honor having the opportunity to serve President Bush and my country in this position. I appreciate the opportunity to appear before you today and the courtesies you have shown me, and will be pleased to answer any questions you may have.

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

Name: Sampson David Allan

Position to which Nominated: Assistant Secretary for Economic Development, Department of Commerce

Date of Nomination:

Date of Birth: 2nd June 1957 **Place of Birth:** Washington, Indiana Davis County

Marital Status: Married **Full name of Spouse:** Karen Ann Sampson

Name and Ages of Children:
John David Sampson 8 years
Matthew Nicolas Sampson 8 years

Education:

Institution	Dates attended	Degrees received	Dates of degrees
Abilene Christian University	6/87-5/90	Doctor of Ministry	5/90
New Orleans Baptist Theological Seminary	8/79-5/82	Masters of Divinity	5/82
David Lipscomb University	9/75-12/78	Bachelors of Arts Political Science	12/78

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

Arlington Chamber of Commerce 505 East Border Street Arlington, Texas 76010	President and CEO	3/92 to present
Park Row Church of Christ 915 West Park Row Arlington, Texas 76013	Senior Minister	8/82 to 8/99
Westchurch Church of Christ 1202 West Church Street Hammond, Louisiana 70401	Minister	12/78 to 8/82
Parkview Hospital, Parthanon Pavilion Unknown believed to be closed	Mental Health Associate	8/77 to 12/78
Sater's Men's Clothing Store No longer in business North Park Shopping Center Evansville, Indiana	Sales Associate	11/73 to 8/75

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

Air Force Commendation Medal
Paul Harris Fellow of Rotary International

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

Organization	Office held (if any)	Dates
North Texas Commission	Board Member	2000-2001 (present)
Tarrant County Workforce Board	Board Member	1997 to present
Texas Strategic Economic Planning Commission	Vice Chair	1997-1999
Texas Council on Workforce and Economic Competitiveness	Chair	1999 to present
American Heart Association-Arlington	Board Member	1992-1993
Medical Ethics Review Board of Arlington Memorial Hospital	Board Member	1985-1987
YMCA - Arlington	Board Member	1996-1998

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

For the past decade I have had extensive responsibility for designing, leading, and executing economic development initiatives at both the state and local level. This experience involves both strategic planning and evaluation, having been appointed Vice-Chair of the Texas Strategic Economic Development Planning Commission in 1997 and Chair of the Texas Council on Workforce and Economic Competitiveness in 1999 by then Governor Bush; as well as strategic planning and implementation at the local level as President and CEO of the Arlington Chamber of Commerce since 1995.

The Arlington Chamber of Commerce has been the full service economic development contractor for the City of Arlington, Texas (population 339,000) since 1989. The Chamber provides economic and demographic data and research, national marketing to attract targeted industry clusters; local business retention and expansion, small and minority business development initiatives and redevelopment initiatives for the central core of Arlington, and workforce development initiatives.

Since 1995, the City of Arlington Economic Development Services contract with the Chamber has more than tripled in scope and budget. The contract is matched by private sector pledges to form a true public/private partnership to promote economic development. In FY 2000-2001 that partnership reflects 51% private funding vs. 49% public sector funding.

Over the past 6½ years, the Arlington Chamber of Commerce's Economic Development clients have announced $2.06 billion in new capital investment and 26,955 new and retained jobs in Arlington.

Future employment relationships:

1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.
   Yes –It is my understanding that you have received a copy of SF 278 from the Office of Government Ethics. The only anticipated benefit I expect to receive is a severance payment which is described on Schedule C Part II of the Financial Disclosure Report and my share of the proceeds of the dissolution of the Cattle Partnership which is described in letters to the Chairman and Ranking Members of the Committee from the Department of Commerce's Ethics Official concerning my nomination.

2. As far as can be foreseen, state whether you have any plans after completing government service to resume employment, affiliation or practice with your current or any previous employer, business firm, association or organization.
   No – I have no such plans.

3. Has anybody made a commitment to you for a job after you leave government?
   No – no one has made a commitment to me for employment.

4. (a) If you have been appointment for a fixed term, do you expect to serve the full term?
   Not applicable

   (b) If you have been appointed for an indefinite term, do you have any known limitations on your willingness or ability to serve for the foreseeable future?
   None

   (c) If you have previously held any Schedule C or other appointive position in the Executive branch, irrespective of whether the position required Congressional confirmation, please state the circumstances of your departure and its timing.
   Not applicable

Financial statement:

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

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

2. Are any assets pledged?
   No

3. Are you currently party to any legal action?
   None

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

   Yes – a Federal Income tax return has been filed by me every year for the past 10 years.

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

   No

Potential conflicts of interest:

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

   Yes –It is my understanding that you have received a copy of SF 278 from the Office of Government Ethics. The only anticipated benefit I expect to receive is a severance payment which is described on Schedule C Part II of the Financial Disclosure Report and my share of the proceeds of the dissolution of the Cattle Partnership which is described in letters to the Chairman and Ranking Members of the Committee from the Department of Commerce's Ethics Official concerning my nomination.

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

   It is my understanding that you have received a letter from Barbara Fredericks, Assistant General Counsel for Administration at Department of Commerce which provides that information.

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

   None

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

   None disclosed however, should a conflict arise I will consult with the Department of Commerce Ethics Officials and if appropriate divest myself of the conflicting interest, recuse myself, or obtain a conflict of interest waiver.

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

Political affiliation and activities:

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

No contributions have been made in excess of $1,000 nor have I held a position in a political party or election committee.

Published writings:

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

Please find attached David A. Sampson Articles and Other Writings document for your review.

Additional matters:

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

   I have a passionate commitment to economic development that grows out of my many years of ministry and pastoral care. Economic development is ultimately about creating opportunity for people to achieve their highest economic potential, provide for their families and build strong communities.

   Economic development is the intentional process of finding, sustaining, and capitalizing upon locational advantage to create wealth and minimize poverty.

   The public sector, while it cannot create wealth, has a vital interest in fostering a positive environment where the private sector can do so. The creation of wealth in a society provides available capital and revenue for the kind of public infrastructure and services that build safe, healthy, convenient, and aesthetically attractive communities in which people want to live and raise their families.

   Further, the creation of wealth enables people to be economically self-sufficient. When the private sector invests capital to produce goods and services and increase productivity, the demand for high-skill/high-wage jobs goes up as well.

   The other side of that coin is that the public sector has a keen interest in minimizing poverty. Poverty is not only de-humanizing, it is extremely costly in terms of welfare transfer payments, soaring public health care costs, crime and declining neighborhoods that lose their value. Thus, the public sector has a legitimate interest in continued private sector investment that creates an "advancement track" for people at every level of employment.

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

3. Having completed this form, are there any additional questions which you believe the Committee should ask for future nominees?
   None at this time.

AFFIDAVIT

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

Subscribed and sworn before me this 8th day of May ,2001

_____ (Notary Public

6

RESPONSES OF DAVID SAMPSON TO ADDITIONAL QUESTIONS FROM SENATOR BOB SMITH

Question 1. In my State of New Hampshire, the town of Londonderry has an Ecological Industrial Park. The park's natural gas power plant uses 4 million gallons of treated waste water from the city of Manchester to cool the plant. This voluntary

agreement is an excellent example of two industries joining forces to reduce waste and improve our environment. The EDA has been very supportive of these projects and provided a grant to assist in the development of the National Center for EcoIndustrial Development. How do you intend to continue developing projects like those in Londonderry?

Response. In the few weeks I have served as Senior Advisor to the Secretary, I have learned that EDA has been one of the leaders in the implementation of the ecoindustrial development concept in the United States. I was pleased to participate in the ecoindustrial development briefing you hosted last week and to see EDA's leadership role recognized by many of the speakers. EDA staff report that the agency has been involved in ecoindustrial development projects based on the model of the Londonderry, New Hampshire EcoPark, i.e., projects at which energy generation is the basis for industrial exchanges in support of job creation and development in economically distressed areas. Two examples they mention are:

- the Riverside EcoIndustrial Park and Business Incubator, located in Burlington, Vermont, where EDA provided $1,020,000 in funding for the construction of a bioshelter greenhouse and infrastructure for capturing and using waste heat from an electrical generating station through biomass gasification; and
- the Red Hills EcoPlex Industrial Park, located in Choctaw County, Mississippi where EDA awarded a $1,500,000 grant for construction of infrastructure to facilitate heat exchanges between the anchor tenant (the Red Hills Power Plant: a cleancoal lignitefueled electric generating facility) and the various industrial park tenants.

Should I be confirmed as Assistant Secretary, EDA will continue to work in partnership with communities to fund similar projects where demand for such assistance has been identified by the communities and is consistent with the region's economic development priorities, as articulated in the area's Comprehensive Economic Development Strategy (CEDS). I am convinced of the value of the ecoindustrial development approach. I also believe the agency's support for the National Center for EcoIndustrial Development will help disseminate information about the success and value of these initiatives to local economic development officials throughout the country, thereby encouraging development of more such projects.

Question 2. Further, ecoindustrial development is not only relevant to economic development strategies but also efforts to promote resource conservation and environmental protection. As such, other Federal agencies including the Department of Energy and the Environmental Protection agency have a role to play in the advancement of this exciting new concept. How do you intend to integrate the work of EDA with that of these other agencies to establish a coordinated approach for the advancement of ecoindustrial development?

Response. During the time I have served as Senior Advisor to the Secretary, I have been informed that EDA has already begun working with other Federal agencies in support of ecoindustrial development. While EDA is the lead funding source for the National Center for EcoIndustrial Development you mentioned, the agency was joined in that effort by both the National Oceanic and Atmospheric Administration (NOAA) here at Commerce and the Environmental Protection Agency (EPA). EDA also invited other Federal agencies to join in support of the Center, but was not successful in obtaining their support. The agency is currently in the process of working with EPA to revise the existing Brownfields Memorandum of Understanding (MOU) to incorporate efforts to cooperate on ecoindustrial development initiatives, and EDA has an MOU with NOAA for cooperation on ecoindustrial development. In order to further advance interagency cooperation and coordination, if I am confirmed as Assistant Secretary we will work with NOAA and EPA to invite other appropriate Federal agencies to join us in moving the ecoindustrial concept ahead.

I have been informed by agency staff that EDA and the EPA also have collaborated in the past to support local communities in their efforts to redevelop brownfield sites as ecoindustrial parks. Examples they have identified include:

- the Port of Cape Charles Sustainable Technologies Industrial Park, located in Northampton County, Virginia where EDA awarded a $400,000 grant for the construction of infrastructure (roadways, storm sewer lines, water mains, a pumping station, and other assorted improvements) to allow for the development of Phase 1 of the ecopark; on a former brownfield site (town dump) assessed by the EPA; and
- the Ft. Devens Army Base Reuse, located in Massachusetts, where EDA awarded $2.1 million to the base redevelopment authority for infrastructure enhancements in support of brownfields redevelopment activities. Ft. Devens has developed a reuse plan that incorporates industrial ecology principles.

The agency anticipates continued cooperation with EPA, NOAA and if confirmed, I will actively seek the participation of other Federal agencies on the development of additional ecoindustrial development projects.

STATEMENT OF ROBERT FABRICANT, NOMINEE TO BE GENERAL COUNSEL, ENVIRONMENTAL PROTECTION AGENCY

Mr. Chairman, Senator Smith, members of the committee: Thank you for providing me with the opportunity to appear before you today. It is a great honor and privilege to be here as the President's nominee to be General Counsel of the Environmental Protection Agency. I want to express to you and your staff my appreciation for the many courtesies extended to me in the preparation for this hearing. I look forward to the opportunity, should I be confirmed, of working with all of you and your staffs.

When Governor Whitman asked me if I would consider serving as General Counsel of the EPA, it took me but a moment to say yes. I have spent virtually my entire professional career in the public sector, most recently as Governor Whitman's chief counsel in New Jersey. Prior to that, I served in several other positions in the Governor's Counsel's Office specializing in environmental matters. I have also served as a deputy attorney general in New Jersey, providing advice and counsel to New Jersey's Department of Environmental Protection. Since being admitted to the bar, the primary focus of my career has been environmental law.

Given my professional experience in this area, the opportunity to serve the nation at the EPA is a truly humbling thing. I am grateful to Governor Whitman, to the President, and to you for this opportunity. Should you do me the honor of recommending my confirmation to the Senate, and should I be confirmed, I want you to know that I will devote all of my energy and effort to doing the kind of job that merits the confidence that has been placed in me for this very important position at the EPA.

When Governor Whitman appeared before this committee as the President's nominee for administrator, she spoke of the great goals to which the Bush Administration and the EPA are committed, goals that I believe the vast majority of the American people share. She spoke about making America's air cleaner, its water purer, and its land better protected. These are clear and simple concepts that are rarely matched by clear and simple solutions. No one knows that better than environmental attorneys.

During the years I had the honor to serve as a member of Governor Whitman's administration, I had the opportunity to work on many of the most vexing environmental legal issues facing the State of New Jersey. Someone once said that New Jersey is America writ small, and it's true especially when it comes to environmental challenges. So I believe that my service in New Jersey has been good preparation for the job to which I have been nominated.

That being said, however, I come to this position with no illusions. I know that the broad array of legal issues confronting the EPA are more than just complicated legal questions. They are, at their root, questions that speak to our government's stewardship of the nation's air, water, and land. Being true to our legal responsibilities requires that we be equally true to our moral responsibilities as environmental stewards.

I have often heard Governor Whitman say that every dollar the EPA spends on litigation is a dollar that can't be spent cleaning up the environment. While talk like that isn't necessarily music to a lawyer's ears, I do think it is an important touchstone for a potential general counsel to keep in mind. I am a strong supporter of the effort both the President and the Administrator are making to build new partnerships among all environmental stakeholders and across some longstanding traditional divides.

I believe the Office of General Counsel is well equipped to help the Administrator build those partnerships. I have found in my years as an attorney that some of the most constructive lawyering isn't done in a courtroom, it's done in a conference room, where smart, committed lawyers bring all parties together and avoid the need for litigation. Providing good, solid, legal advice and counsel to EPA's senior staff will, I hope, help my Agency colleagues do their jobs and meet their goals for America's environmental progress.

The EPA is most fortunate to have a very dedicated, extremely capable staff of lawyers in the Office of General Counsel. They not only work very hard, they care very much about what they are doing. They adhere to the highest ethical standards and embody the best of what the legal profession has to offer. They are results-oriented public servants, who not only know everything there is to know about envi-

ronmental law, they also know the importance of keeping one's attention on the ultimate goal and that's environmental progress.

Mr. Chairman and members of the committee: as the committee with primary jurisdiction for writing the laws that the EPA is charged with enforcing, I know that, should I be confirmed, I will have the opportunity to work very closely with you and your staff. That's an opportunity to which I eagerly look forward. But before I let that eagerness run away with itself, I would like to pause here to again thank you for welcoming me here today and to address any questions you may have for me.

Thank you, Mr. Chairman.

UNITED STATES SENATE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

ROOM 410 DIRKSEN BUILDING WASHINGTON, DC 20510

INFORMATION

REQUESTED OF PRESIDENTIAL NOMINEES

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

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

Name of Nominee: Robert Edmund Fabricant

Business Address: 1200 Pennsylvania Avenue, NW

Washington, DC 20460

Business Phone: (202) 564-8040

Home Address: 247 Oakridge Avenue

Summit, NJ 07901

Home Phone: (908) 608-0803

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

Name: Fabricant (Last) Robert (First) Edmund (Middle) Jr.

Position to which nominated: General Counsel, U.S. Environmental Protection Agency

Date of Nomination: May 17, 2001

Date of birth: 09 (Day) 07 (Month) 63 (Year) **Place of birth:** New York, NY

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

Name and ages of children:
Enrica Fabricant, Age 4
Robert Fabricant, Age 2
Ethan Fabricant, Age 1

Education:

Institution	Dates attended	Degrees received	Dates of degrees
Catholic University, Columbus School of Law	9/87-6/90	JD	6/90
Drew University	9/81-6/85	BA	6/85
University of Hawaii at Manoa	9/83-1/84		

Employment record:

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

Advisor to the Administrator, U.S. Environmental Protection Agency, Washington, DC (03/01 - present)

Chief Counsel to the Governor, State of New Jersey, Office of the Governor, Trenton, NJ (05/00 - 03/01)

Deputy Chief Counsel, State of New Jersey, Office of the Governor, Trenton, NJ (01/99 - 05/00)

Employment record—continued

Senior Associate Counsel, State of New Jersey, Office of the Governor, Trenton, NJ	(03/98 - 01/99)
Attorney at Law/Sole Proprietor, Trenton, NJ	(01/97 - 03/98)
Associate Attorney, Stanley & Fischer, Morristown, NJ	(12/96 - 12/96)
Assistant Counsel, State of New Jersey, Office of the Governor, Trenton, NJ	(09/94 - 12/96)
Deputy Attorney General, State of New Jersey, Department of Law and Public Safety, Trenton, NJ	(04/92 - 09/94)
Law Clerk, State of New Jersey, Superior Court, Appellate Division, Springfield, NJ	(09/90 - 09/91)

Honors and awards:

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

Memberships:

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

Organization	Office held (if any)	Dates
New Jersey Solid Waste Advisory Board	Chairman	2/97 - 2/98
Catholic University Environmental Law Society	President	1988 -1990

Qualifications:

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

I believe my education and work experience qualify me to effectively perform the duties of the General Counsel to the U.S. Environmental Protection Agency. I possess undergraduate training in the sciences that should enhance my understanding of the science-based decisions before the Agency. In addition, my legal background combines training and experience in litigation, counseling, administrative practice and environmental law that well prepares me for the duties of the General Counsel. Finally, my executive branch experience and managerial duties as Chief Counsel to the Governor should prove valuable for executing the duties of the General Counsel.

Future employment relationships:

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

I am currently employed by the U.S. Environmental Protection Agency.

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

None.

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

No.

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

N/A.

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

None.

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

N/A.

Financial Statement:

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

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

None, except potential State pension benefit as described on Form SF-278, Schedule D.

2. Are any assets pledged?

No.

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

No.

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

Yes.

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

No.

Potential conflicts of interest:

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

None, except potential State pension benefit as described on Form SF-278.

Schedule D.

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

See ethics agreement.

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

None.

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

See ethics agreement.

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

See ethics agreement.

Political affiliation and activities:

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

None.

Published writings:

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

Note, "TSCA Liability in Court: Is Ignorance Bliss or will a Strict Liability Standard be the Result?", Catholic University Journal of Contemporary Health Law and Policy (1990)

Additional Matters:

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

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

Yes.

3. Having completed this form, are there any additional questions which you believe the Committee should ask of future nominees?

No.

AFFIDAVIT

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

Subscribed and sworn before me this 22ND day of MAY , 2001.

Notary Public
FRANCIS P. BONDS
NOTARY PUBLIC, DISTRICT OF COLUMBIA
My Commission Expires: 31 August 2001

STATEMENT OF G. TRACY MEHAN III, NOMINATED TO BE ASSISTANT ADMINISTRATOR FOR WATER, ENVIRONMENTAL PROTECTION AGENCY

Thank you, Mr. Chairman, and members of the committee, for the privilege to address you as President Bush's nominee for the position of Assistant Administrator for Water at the United States Environmental Protection Agency.

I am very grateful to the President, Governor Whitman and this committee for being considered for this tremendous responsibility to protect the waters of the United States. I look forward to working with you all to insure that our children continue to enjoy the fruits of America's bounty, most especially its lakes, rivers, wetlands and oceans.

I grew up on the Mississippi River and married a resident of the Lake Michigan shores. My wife and children, even as we speak, are enjoying a summer's respite on a lake in northern Wisconsin. My parents are on their way to the coast of South

Carolina for a well-deserved vacation. For my family, as for most American families, water defines much of our lives, certainly the more enjoyable aspects. For many Americans, water is even more important—it is the means by which they earn a living, support a business, or feed themselves.

Given the importance of water in the lives and occupations of our citizens, it is understandable that, starting in the 1970's the nation began the work of restoring its water quality with such great, albeit incomplete, success. The strength of our economy in the postwar era, creating both the desire and the means of cleaning up our waters, had a lot to do with it. But it wasn't just the money. It was the love of our country and its beautiful waters.

Many commentators have noted the evolving nature of the challenges to further improvements in water quality. We need to look beyond the traditional discharge pipe to more generalized, diffuse runoff. There is also the need to look at the entire watershed to assess the most cost-effective means of reducing a target pollutant. These and other challenges, such as restoring contaminated sediments and preventing air deposition of pollutants to water, will require new and creative ways of meeting our responsibilities of stewardship.

I hope to contribute to the search for solutions to the water quality challenges of the day, working closely with the White House, Governor Whitman and this committee to involve stakeholders from the public and private sectors, from State and local government, and from inside and outside of government.

Working together, I believe we can identify and implement successful strategies to maintain and restore the chemical, physical and biological integrity of our waters. No doubt, many of these strategies will be tailored to specific problems in specific communities. Hence, the importance of the watershed as a social and hydrological reality. Here is where communities, neighbor to neighbor, can engage, educate and persuade one another in a mutual quest for shared goals.

There are, of course, other problems, national in scope, where the Federal role is a significant one. This committee has developed legislation directing the Environmental Protection Agency to work with States, tribes and other Federal agencies to help finance water infrastructure, to set national drinking water standards, to protect wetlands, to control discharges from industries and sewage treatment plants, and to reduce nonpoint pollution. The impact of air pollutants, such as mercury or nitrogen, on water quality also requires national attention. This is a classic, cross-media problem, and we will need a coordinated approach to addressing pollutants which are a threat to both air and water.

Americans view conservation and environmental protection as important elements of the public agenda. They look to public officials to harmonize these priorities with social and economic objectives. This is a task of great difficulty, but one well worth the effort.

I will strive to meet these challenges while relying on the best available science and economic analysis with due regard for the statutory directives of the Congress.

I would be honored to work with this committee to accomplish the hard work of protecting and restoring our nation's water quality. Thank you for your time and consideration.

UNITED STATES SENATE

COMMITTEE ON ENVIRONMENT
AND PUBLIC WORKS

ROOM 410 DIRKSEN BUILDING WASHINGTON, DC 20510

INFORMATION

REQUESTED OF PRESIDENTIAL NOMINEES

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

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

Name of Nominee: George Tracy Mehan, III

Business Address: Office of the Great Lakes, MI Dept. of Environmental Quality
Hollister Building, P.O. Box 30473
Lansing, MI 48909-7973

Business Phone: (517) 335-4056

Home Address: 4777 Mohican Lane
Okemos, Michigan 48864

Home Phone: (517) 337-8061

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

Name: Mehan, III (Last) George (First) Tracy (Middle)

Position to which nominated: Assistant Administrator for Water, U.S. Environmental Protection Agency

Date of Nomination:

Date of birth: 8/6/49 (Day) (Month) (Year) **Place of birth:** Richmond Heights, Missouri(St. Louis County)

Marital status: Married **Full name of spouse:** Mary Suzanne Falk Mehan

Name and ages of children:

Margaret Elizabeth(24)	Elizabeth Terese(13)
Matthew Tracy(22)	Joseph Andrew(11)
Clare Marie(21)	
Mary Kathleen(17)	
Monica Ann(15)	

Education:

Institution	Dates attended	Degrees received	Dates of degrees
St. Louis University	1967-1971	A.B.,History	1971
St. Louis University Law School	1971-1974	J.D.	1974

Employment record:

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

See attached listing.

Employment record—continued

See attached listing.

Honors and awards:

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

Scholarship, Summer School, International Institute of Education for the British Universities, University of Edinburgh, Scotland, 1971

Danforth Fellow, Program for Senior Executives in State and Local Government, John F. Kennedy School of Government, Harvard University, 1990

Missouri Governor's Award for Distinguished Resource Stewardship, 1992

Friend of the Stream Award, Ozark Fly Fishers, 1992

Memberships:

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

Organization	Office held (if any)	Dates
Missouri Bar Association		1974-present
Bar Association of Metro. St. Louis		1974-present
The Repertory Theatre of St. Louis	Board member	mid-1980s
St. Louis County Library	Board member	mid-1980s
Great Lakes ProtectionFund	Board Member	1996-2001
Great Lakes Commission	Executive Committee	1995-2001
Right to Life of Greater Lansing	Board member	1998-2001

cations:

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

For the past thirteen years, I have served in cabinet level positions in state government(MO and MI) working on a wide variety of environmental and natural resources issues, including but not limited to the Clean Water Act, the Safe Drinking Water Act and their state counterparts. Moreover, my brief experience working at EPA, along with my service as an adjunct professor of environmental law have rounded out this experience with delegated programs at the state level.

More recently, my extended work on interstate and binational issues relating to the Great Lakes have provided me with a unique perspectives on watershed approaches, cross-media pollution and non-chemical threats to the ecosystem.

I have extensive experience in dealing with EPA regions as well as headquarters and will bring a perspective of a customer and a state agency partner in the work of environmental protection.

Finally, I have extensive professional relationships with industry, municipalities, environmental and conservation organizations.

Future employment relationships:

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

Yes.

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

No.

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

No.

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

(b) If you have been appointed for an indefinite term, do you have any known limitations on your

willingness or ability to serve for the foreseeable future?

No.

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

I served as Associate Deputy Administrator at U.S. Environmental Protection Agency, July 1992-January 1993. I left the position with the change of administrations.

Financial Statement:

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

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

See my Form SF-278, Schedule A which I incorporate by reference as if fully set out.

2. Are any assets pledged?

No.

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

No.

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

Yes.

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

No.

Potential conflicts of interest:

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

Michigan Department of Environmental Quality, State of Michigan; Great Lakes Protection Fund; and the Great Lakes Commission may, possibly, be affected by policies subject to my influence.

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

Michigan state 457 and 401k deferred compensation plans.

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

As director of the Michigan Office of the Great Lakes, I have managed grants received from EPA(Great Lakes National Program Office) and U.S. Fish and Wildlife Service.

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

I will use the Ethics Agreement to be entered into with EPA as well as appropriate resignations and recusals where necessary.

5. Explain how you will comply with conflict of interest laws and regulations applicable to the

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

I will use the Ethics Agreement to be entered into with EPA as well as appropriate resignations and recusals as necessary.

Political affiliation and activities:

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

Michigan Republican Party, member
Ingham Co.(MI) Republican Party, member
Governor's Club(MI), member
Ashcroft for Senate, donor

Published writings:

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

See attached listings.

Additional Matters:

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

I would be happy to supplement, expand upon or clarify any of the information provided in these forms. Moreover, I look forward to meeting with each of the Members individually at their convenience.

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

Yes.

3. Having completed this form, are there any additional questions which you believe the Committee should ask of future nominees?

No.

George Tracy Mehan, III

George Tracy Mehan, III

AFFIDAVIT

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

Subscribed and sworn before me this 7th day of MAY , 2001.

Janice M. Adams

Notary Public

Acting in Ingham County, MI

JANICE M. ADAMS
Notary Public, Jackson County, MI
My Comm. Expires July 21, 2004

Employment Record

George Tracy Mehan, III

Law Clerk, Missouri Court of Appeals, St. Louis District, 1974-1975

Associate, Fordyce & Mayne, St. Louis, MO, 1976-1977(involuntary termination due to differences with supervising partner as to billable hours, amount of)

Associate, Mathis & Weber, P.C., St. Louis, MO, 1977-1978

Campaign Manager, Dittmeier for Prosecutor, St. Louis County, MO, 1978

Staff Attorney, St. Louis County Counselor's Office, St. Louis, MO,1978-1980

Staff Director, McNary for Senator Committee, St. Louis, MO, 1980

Associate, Leritz, Reinert & Duree, P.C., St. Louis, MO, 1980-1987

Political Director, McNary for Governor Committee, St. Louis, MO, 1984

Partner, Anderson, Gilbert and Garvin(orginally, Garvin, Steiner, Cavanagh & Mehan), 1987-1988

Director, Missouri Department of Natural Resources, Jefferson City, MO, 1989-1992

Associate Deputy Administrator, U.S. Environmental Protection Agency, Washington, D.C., 1992-1993

Director, Office of the Great Lakes, Michigan Department of Environmental Quality, Lansing, MI 1993-2001

In addition, I have served as an Adjunct Professor of Enviromental Law at both The Thomas Cooley Law School, Lansing, MI(1999-2001) and Michigan State University Detroit College of Law, East Lansing, MI(2000-2001).

George Tracy Mehan, III
SSN: 489-54-6982

LIST OF BOOKS, ARTICLES, COLUMNS,OR PUBLICATIONS

"Restore the Greatness," Remarks to the Great Lakes Congressional Breakfast, March 15, 2001

"Lakes policy is improving. Governors working to protect Resources," Detroit Free Press, January 30, 2001

"Great Lakes: New Challenges For the Millenium," co-authored with Emily Bankard, Michigan Out-of_Doors, January 2001, p. 61

"Great Lakes Water Management: Governors Work Toward Common Standard," Michigan Forward, December 2000, p. 7

"Great Lakes: An Ecosystem Approach," co-authored with Emily Bankard, The Michigan Riparian, August 2000, p. 9

"Making University Research More Useful for Resource Policy: A User's Perspective," Keynote Address to Workshop, Columbus, Ohio, April 12, 2000

"Strengthening Our Maritime Infrastructure: Appropriations For A New Lock at Sault Ste. Marie," Remarks to the Great Lakes Issues Briefing, Washington, D.C., March 23, 2000

"State of the Great Lakes," Detroit Free Press, December 30, 1999, p. 9A

"Mercury in the Environment: States Respond to the Challenge," Ecostates, Fall 1999, p. 22

Keynote Address to the Great Lakes Communicators Workshop, Ann Arbor, MI, March 10, 1999

"Growth helps environment in Michigan," The Detroit News, December 14, 1998, p. 11A

"EPA's Select Steel Ruling: Is a Clearer Picture of 'Environmental Justice' Emerging?", Washington Legal Foundation Legal Backgrounder, December 4, 1998.(with Russel Harding)

"Furthering 'Beyond Compliance' Programs," co-authored with Linnett, Hartig, Wise, Tosine and Gulezian, Water Environment & Technology, November 1998, p. 63

"A Cleaner Michigan. Healthy economy allows state to address polluted runoff," Detroit Free Press, March 11, 1998, p. 11A

George Tracy Mehan, III
SSN: 489-54-6982

LIST

"Study shows it's time to re-evaluate, reform pollution laws," The Detroit News, February 26, 1998, p. 14A

"Some gains in environmental wars," St. Louis Post-Dispatch, January 2, 1998, p. D15

"State's fish advisories should rely on science," Lansing State Journal, June 2, 1997, p. 5A

"Great Lakes: it isn't only toxins that hurt native species," Detroit Free Press, November 22, 1996, p. 11A

"Project cuts print toxins at source," The Ann Arbor News, September 22, 1996, p. B7

"Reducing Mercury in the Environment," co-authored with Tim Eder, Michigan Out-of-Doors, September 1996, p. 52

"Michigan's mercury. It's still a hazard, but we can all work to reduce it," Detroit Free Press, April 22, 1996, p. 9A

"Ecosystem Management in the Great Lakes Basin," Fisheries, April 1995, p. 12

"Biological pollution is a growing concern in the Great Lakes Basin," Seaway Review, October-December 1995, p. 43

"No excuses. Illinois is draining too much water from Lake Michigan," The Ann Arbor News, September 3, 1995, p. C5

"Pollution Prevention and Quality Management Principles in the Great Lakes Region," Speech to The Upjohn Company Pollution Prevention Program 1995 Annual Meeting, June 16, 1995

"Air quality focus essential in applying an ecosystem approach," Great Lakes Commission Advisor, May/June 1995, p. 1

"A risk-based paradigm for regulators," The Detroit News, February 10, 1995, p. 11A

"Controlling exotics and toxics are top priorities for lakes," Detroit Free Press, January 1, 1995, p. 3F

"The States: The National Laboratory for the Risk-BAsed Paradigm?" in Worst Things First?(Resources for the Future, Washington, D.C. 1994)

"The Great Lakes Initiative," co-authored with James Grant, Michigan Natural REsources, March/April 1994, p. 6

George Tracy Mehan, III
SSN: 489-54-6982

LIST

"Regulatory Reform: Options for Reducing the Cost of Complying with Environmental Regulation," in Enhancing Environmental Quality through Economic Growth(American Council for Capital Formation, Washington, D.C. 1993)

"Goodwill must guide Great Lakes policy," Detroit Free Press, November 19, 1993

"Unfunded mandates: Congress passes the buck," The Detroit News, November 8, 1993, p. 9A

"The Buck's Passed Here": Unfunded Mandates for State and Local Governments," Lecture 467, The Heritage Foundation, September 22, 1993

"Environmental Protection: How Much Can We Afford?", a Keynote Address, World Ecology Day, International Center For Tropical Ecology, University of Missouri-St. Louis, November 18, 1992

"An Abuse of Power," ST. Louis Post-Dispatch, June 22, 1992,

"Ethics, The Environment and Business," Address to the Emerson Electric Center for Business Ethics Conference on Market Enforcement of Environmental Ethics, St. Louis University, April 10, 1992

"Green Tax Incentive for Clean Industry," St. Louis Post-Dispatch, June 7, 1991, p. 3B

Address to the Awards Dinner, Missouri Coalition for the Environment, May 29, 1991

"Wetlands have finally come up in the world," Columbia Tribune, March 12, 1991

"A Plea To Recycle," St. Louis Post-Dispatch, December 11, 1989

"The Future Of The Nation's Great River Systems," Address to the Interstate Conference on Water Policy, St. Louis, MO, August 21, 1989

"Beyond Regulation," Address to the Missouri Waste Control Coalition, July 17, 1989

"The Environmental Movement Comes of Age," Address for Earth Day, Southwest Missouri State University, April 22, 1989

GEORGE TRACY MEHAN, III
SSN: 489-54-6982

SUPPLEMENTAL LIST OF BOOKS, ARTICLES, COLUMNS, OR PUBLICATIONS

"Keep Washington's nose out of Great Lakes," The Detroit News, April 4, 2000, p. 10A

"Keep control of Great Lakes in region," Lansing State Journal, April 4, 2000, p. 9A

"The States' Experience Managing the Waters of the Great Lakes," presentation to the Great Lakes Water Law Conference, CLE International, Milwaukee, Wisconsin, February 24-25, 2000

"Clean Michigan deserves state vote," Detroit Free Press, August 24, 1998, p. 10A

"Governor John Engler's Clean Michigan Initiative: What does it mean for Areas of Concern?", Michigan Areas of Concern News, Summer 1998, p. 4

Review, "Regulating Pollution: Does the U.S. System Work?", Enterprise, December 1997, p. 13

"Climate Change Activities of State 7 Local Governments," Address to the Second Roundtable on North American Energy Policy, sponsored by the Council of Great Lakes Industries, Wheaton, Illinois, April 7-8, 1997

Statement on Fish Advisories, March 5, 1997

"Governors protect Great Lakes," State Government News, November 1996, p. 20

"Watershed Initiative Partners Define the Meaning of Stewardship," Stewardship Quarterly, November 8, 1996, p. 5

"Task force got to root of mercury poisoning," The Grand Rapids Press, May 9, 1996, p. A19

"The Great Divide in American Environmental Policy," Address to the 1992 Missouri Department of Natural Resources Commissioners Conference, March 9-10, 1992

"The Environment," in St. Louis Currents, ed. James E. O'Donnell (The Leadership Center of Greater St. Louis, 1992)

"Waste minimization plan for business," St. Louis Business Journal, November 11-17, 1991, p. 23A

"Implementing the new Clean Air Act," Address to the St. Louis

GEORGE TRACY MEHAN, III PAGE 2
SSN: . 489-54-6982

SUPPLEMENTAL LIST OF BOOKS, ARTICLES, COLUMNS, OR PUBLICATIONS

Regional Commerce and Growth Association's 5th Annual Environmental Conference, November 5, 1991

Remarks at the Dedication of the Scott Joplin House State Historic Site, "A Testimony To Determination," October 6, 1991

Address at the Dedication of the Fort Davidson State Historic Site Visitor Center, Pilot Knob, MO, July 14, 1991

"Making a Difference in Missouri's Solid Waste Management. We All Have a Role to Play," Remarks to the Solid Waste Solutions Conference, University of Missouri-Rolla, January 26, 1991

Address to the Missouri Department of Natural Resources 1990 Commissioners Conference, October 23, 1990

Address to the Missouri Department of Natural Resources 1989 Commissioners Conference, October 19, 1989

Statement on Appointment as Director, Missouri Department of Natural Resources, January 3, 1989

"Reflections on a Hundred Years," Speech at the Centennial and Dedication Ceremony, Division of Geology and Land Survey, Missouri Department of Natural Resources, October 13, 1989

"GOP leaders need to cultivate two facets of Reagan Coalition," St. Louis Globe-Democrat, October 7, 1986, p. 9A

"Human Life Is Still The Issue," St. Louis Post-Dispatch, January 22, 1986, p. 3B

"A flat tax is better than a tax increase," St. Louis Globe-Democrat, June 21, 1985, p. 11A

"The Moral Imperative of Star Wars," St. Louis Post-Dispatch, April 8, 1985, p. 3B

"The moral imperative behind 'Star Wars'," St. Louis Globe-Democrat, March 28, 1985, p. 8A

ADDITIONAL HONOR: SENATE RESOLUTION NO. 60, MICHIGAN SENATE, 91 LEGISLATURE (20

No. 39
STATE OF MICHIGAN

Journal of the Senate

91st Legislature
REGULAR SESSION OF 2001

Senate Chamber, Lansing, Wednesday, May 9, 2001.

10:00 a.m.

The Senate was called to order by the President, Lieutenant Governor Dick Posthumus.

The roll was called by the Secretary of the Senate, who announced that a quorum was present.

Bennett—present
Bullard—present
Byrum—present
Cherry—present
DeBeaussaert—present
DeGrow—present
Dingell—present
Dunaskiss—excused
Emerson—present
Emmons—present
Garcia—present
Gast—present
Goschka—present
Gougeon—present
Hammerstrom—present
Hart—present
Hoffman—present
Jaye—present
Johnson—present
Koivisto—present
Leland—present
McCotter—excused
McManus—present
Miller—present
Murphy—present
North—present
Peters—present
Schuette—excused
Schwarz—present
Scott—present
Shugars—present
Sikkema—present
Smith—present
Steil—present
Stille—present
Van Regenmorter—present
Vaughn—excused
Young—present

Resolved by the Senate, That the members of this legislative body express our sincere appreciation at the exemplary season earned by the 2000-01 Michigan State University Men's Hockey Team. We salute the work of the team and Coach Ron Mason who made these achievements possible; and be it further

Resolved, That a copy of this resolution be transmitted to the Michigan State University Men's Hockey Team and Coach Ron Mason as a token of our continued support and congratulations.

Senator Young was named co-sponsor of the resolution.

Senator Byrum offered the following resolution:

Senate Resolution No. 59.

A resolution honoring the 2000-01 season of the Michigan State University Men's Basketball Team.

Whereas, This year's Michigan State University Men's Basketball Team accumulated the nation's longest home-game winning streak by winning 44 straight games, starting with the first game of the 1998-99 season; and

Whereas, Several team members earned individual honors, including three All-American selections in Charlie Bell, Jason Richardson, and Andre Hutson; and

Whereas, The Spartan men's basketball team has distinguished itself as one of the nation's premier teams by winning four straight Big Ten titles, two Big Ten Tournament Championships, three straight Final Four appearances, and the NCAA 2000 National Championship; and

Whereas, The team has set high standards off the court by stressing the importance of academics and the importance of a college education. These standards have been exemplified through the team's five graduating seniors: Charlie Bell, Andre Hutson, David Thomas, Mike Chappell, and Brandon Smith; and

Whereas, Coach Tom Izzo has illuminated the Spartan men's basketball program with his unequivocal character and personality both on and off the court; now, therefore, be it

Resolved by the Senate, That the members of this legislative body express our sincere appreciation for the performance of the 2000-01 Michigan State University Men's Basketball Team on their Big Ten championship season and their visit to the NCAA Final Four. We salute the work of the team and Coach Tom Izzo who made these achievements possible; and be it further

Resolved, That a copy of this resolution be transmitted to the Michigan State University Men's Basketball Team and Coach Izzo as a token of our esteem and congratulations.

Senator Young was named co-sponsor of the resolution.

Senator Sikkema offered the following resolution:

Senate Resolution No. 60.

A resolution honoring G. Tracy Mehan, Director of the Office of the Great Lakes, Michigan Department of Environmental Quality.

Whereas, G. Tracy Mehan was appointed by Governor John Engler in February 1993 as director of the Office of the Great Lakes and member of his Cabinet. Governor Engler appointed Tracy to the Great Lakes Commission, the regional interstate compact body, and its Executive Committee, in which capacity he serves as chair of the Michigan delegation. Tracy also represents the Governor on the board of the regional Great Lakes Protection Fund; and

Whereas, Tracy is Michigan's representative in matters pertaining to the International Joint Commission (IJC), a binational organization established under the Boundary Waters Treaty for the protection of the Great Lakes. He also serves on the Water Quality Board of the IJC. His responsibilities include administering the Michigan Great Lakes Protection Fund and the State Management Plan for the control of aquatic nuisance species (exotics). He represents the state on all matters relating to proposed diversions of water from the Great Lakes. Tracy recently served as chair of the Michigan Mercury Pollution Prevention Task Force; and

Whereas, Mr. Mehan was formerly associate deputy administrator of the U.S. Environmental Protection Agency, where he coordinated policy issues for the agency and represented the deputy administrator in interactions with federal, state, and local agencies. From 1989 to 1992, Tracy was director of the Missouri Department of Natural Resources, which includes divisions of environmental quality; parks, recreation, and historic preservation; energy; geology; and land survey. He represented the state in the Missouri Basin States Association, the Upper Mississippi River Basin Association, and the Midwest Interstate Low-Level Radioactive Waste Compact Commission; and

Whereas, Tracy holds a bachelor's degree in history from St. Louis University, Missouri, and juris doctorate degree from the St. Louis University Law School. He is a member of the Missouri Bar Association and the Bar Association of Metropolitan St. Louis. As a practicing attorney for many years, he concentrated in the area of civil litigation; and

Whereas, Tracy is an adjunct professor at the Thomas M. Cooley Law School and an adjunct instructor at Michigan State University Detroit College of Law in environmental law. He has authored several articles relating to the environment and regulatory reform issues and was the recipient of both the Missouri Governor's Award for Distinguished Resource Stewardship and the Ozark Fly Fishers' Friend of the Stream Award. He and his wife Mary have seven children; now, therefore, be it

Resolved the Senate, That all honor and respect be shown to G. Tracy Mehan as he departs the Great Lakes state for his new position with the U.S. Environmental Protection Agency, as assistant administrator for water. We shall miss his enduring commitment to the people and the natural resources of this, the Great Lakes state; and be it further

Resolved, That a copy of this resolution be transmitted to G. Tracy Mehan as a symbol of our appreciation for his efforts on behalf of the citizens of the state of Michigan.

Introduction and Referral of Bills

Senators Gast and Schwarz introduced

Senate Bill No. 463, entitled

A bill to amend 1984 PA 431, entitled "The management and budget act," by amending section 353c (MCL 18.1353c), as added by 1995 PA 195.

The bill was read a first and second time by title and referred to the Committee on Appropriations.

Senators Johnson, Garcia, Steil, Shugars, Miller and Scott introduced

Senate Bill No. 464, entitled

A bill to amend 1925 PA 285, entitled "An act to provide for the organization, operation, and supervision of credit unions; to provide for the conversion of a state credit union into a federal credit union or a credit union organized and supervised under the laws of any other state or territory of the United States and for the conversion of a federal credit union or a credit union organized and supervised under the laws of any other state or territory of the United States into a state credit union; and to provide for the merger of credit unions organized and supervised under the laws of this state, credit unions organized and supervised under the laws of any other state or territory of the United States, and federal credit unions," by amending the title and sections 1a, 6, 6c, 25, and 26 (MCL 490.1a, 490.6, 490.6c, 490.25, and 490.26), the title as amended and section 6c as added by 1986 PA 278, section 1a as amended by 1995 PA 163, section 6 as amended by 1993 PA 246, and sections 25 and 26 as amended by 1992 PA 246, and by adding sections 25a, 25b, and 25c.

The bill was read a first and second time by title and referred to the Committee on Financial Services.

Senator Van Regenmorter introduced

Senate Bill No. 465, entitled

A bill to amend 1974 PA 258, entitled "Mental health code," (MCL 330.1001 to 330.2106) by adding chapter 10A.

The bill was read a first and second time by title and referred to the Committee on Families, Mental Health and Human Services.

Senators Garcia, Dunaskiss, Shugars, Dingell, Bennett and Sikkema introduced

Senate Bill No. 466, entitled

A bill to amend 1949 PA 300, entitled "Michigan vehicle code," (MCL 257.1 to 257.923) by adding section 217i.

The bill was read a first and second time by title and referred to the Committee on Transportation and Tourism.

Senator Van Regenmorter introduced

Senate Bill No. 467, entitled

A bill to amend 1953 PA 232, entitled "An act to revise, consolidate, and codify the laws relating to probationers and probation officers, to pardons, reprieves, commutations, and paroles, to the administration of correctional institutions, correctional farms, and probation recovery camps, to prisoner labor and correctional industries, and to the supervision and inspection of local jails and houses of correction; to provide for the siting of correctional facilities; to create a state department of corrections, and to prescribe its powers and duties; to provide for the transfer to and vesting in said department of powers and duties vested by law in certain other state boards, commissions, and officers, and to abolish certain boards, commissions, and offices the powers and duties of which are transferred by this act; to allow for the operation of certain facilities by private entities; to prescribe the powers and duties of certain other state departments and agencies; to provide for the creation of a local lockup advisory board; to prescribe penalties for the violation of the provisions of this act; to make certain appropriations; to repeal certain parts of this act on specific dates; and to repeal all acts and parts of acts inconsistent with the provisions of this act," by amending section 35 (MCL 791.235), as amended by 1998 PA 315.

The bill was read a first and second time by title and referred to the Committee on Judiciary.

RESPONSES BY G. TRACY MEHAN III TO ADDITIONAL QUESTIONS FROM SENATOR SMITH

Question 1. Water infrastructure was a priority when I was chairman and will continue to be my priority because of the great need this country currently faces. In the initial hearings it became clear that we are faced with a great economic need in the area of drinking and wastewater infrastructure. How do you see the role of the Federal Government in addressing the $1 trillion need that exists for drinking and wastewater infrastructure over the next 20 years? What role do you see the States, rate-payers, and the private sector playing in the goal of revitalizing our water infrastructure?

Response. The Administrator has invited all interested parties to engage in a national dialog to address future needs for water and wastewater infrastructure. As

a first step, we are conducting an analysis to make sure we understand the challenge facing us as clearly as possible.

I would prefer to wait until I see the results of that analysis before offering specific policy recommendations. However, as a general principle, I believe all stakeholders, including the Federal Government, will have to do their share I further believe that increased funding, by itself, is not the entire answer. We also need to consider technological and management innovations to reduce costs and to assure that the available funding is used efficiently to meet the most important priorities.

Question 2. Do you feel the State Revolving Fund should be the source of financing for both drinking and wastewater infrastructure? What role do you see grants playing?

Response. The Clean Water and Safe Water State Revolving Funds have been highly successful mechanisms for financing wastewater and drinking water infrastructure. In terms of the Environmental Protection Agency (EPA), I think the State Revolving Funds should be the vehicles for delivering infrastructure financial assistance. I would note that several other Federal agencies, for example, the Departments of Agriculture and Housing and Urban Development, also have significant programs that provide financial assistance for infrastructure construction. I look forward to working with Congress and the Administration to delineate the right balance of grants, loans, and other funding mechanisms.

Question 3. Many of the current problems facing the water community fundamentally come down to a lack of resources. CSOs, SSOs, infrastructure, nutrient management all required huge financial commitments. One of the greatest challenges we face is how to ensure clean, safe water with very limited budgets and without forcing large increases on ratepayers. Therefore a certain amount of flexibility must be worked into the system and new, more cost-effective technologies found. How can we provide both flexibility and resources without heavily impacting small towns and disadvantaged communities?

Response. I agree that a potential increase in user charges is a significant issue. I think technological and management innovations to reduce costs and increase efficiencies are a necessary part of addressing future investment, as well as operation and maintenance, needs. I also think that we should explore improvements in the State Revolving Funds, for example, reduced or negative interest rates or principal forgiveness, that would enable States to tailor more flexible funding packages for small and disadvantaged communities.

Question 4. There has been a backlog of NPDES permits for quite some time and now with the CAFO rule, Tulloch-fix rule, wetland NWP rule and others the States and EPA will have even more permits to issue or reissue. How will you address this problem?

Response. Eliminating the permit backlog will require intense management focus to accomplish. This was the lesson learned in Michigan where the backlog was eliminated. I hope to bring the same intensity to the challenge at EPA. EPA began an aggressive effort to reduce the existing backlog of expired NPDES permits in late 1998. In 1999, the Office of Wastewater Management formed a workgroup to assess the problem and to develop a national strategy in cooperation with its NPDES State partners.

In addition to the national strategy, each EPA Region has developed State-specific plans to describe how each State in the Region would meet the backlog reduction targets. As new rules are finalized, the Agency will evaluate the adequacy of State grant programs during its annual budget review. Overall, the Agency will continue to rely on general permits where possible, rather than individual ones, to meet its responsibilities under the law.

The Agency will continue to actively track and manage permit issuance efforts, and will work closely with our State partners to implement the national and State-specific backlog reduction strategies.

RESPONSES BY G. TRACY MEHAN III TO ADDITIONAL QUESTIONS FROM SENATOR GRAHAM

Question 1. For many years we have focused on wastewater when we talk about water infrastructure. I am concerned that we have not paid appropriate attention to water supply. Last year there was a provision in the Estuaries bill which authorized an EPA pilot program for alternative water supply projects. What is the status of developing regulations to administer this program?

Response. The Agency currently has general grant regulations that could be applied in the administration of this program should the program receive a direct ap-

propriation from Congress. Many of the types of alternative water source projects envisioned by this program are currently eligible, at the discretion of the States, under the Clean Water State Revolving Fund program. These include water conservation, wastewater treatment, and wastewater reclamation and reuse.

Question 2. What do you think is the role of the Federal Government, specifically EPA, in ensuring adequate water supply to communities?

A. is EPA the best agency to deal with water supply?

B. Are other agencies better equipped to manage water supply projects?

Response. The Federal Government has provided substantial resources to ensure adequate water supplies to communities. These resources have been provided by the Bureau of Reclamation, the United States Army Corps of Engineers, the Rural Utility Service and in limited cases of water contamination, through EPA's Superfund program. I am willing to begin a dialog with you to explore what the future role for the Federal Government is in ensuring adequate water supplies for communities.

RESPONSES BY G. TRACY MEHAN III TO ADDITIONAL QUESTIONS FROM SENATOR VOINOVICH

Question 1. Currently, the EPA is considering publishing a proposed regulation on sanitary sewer overflows. It is my understanding that the regulation as currently drafted will place all municipalities in the United States in immediate noncompliance, and thus will face significant opposition and legal challenges from the regulated community, flow would you work with groups such as the Association of Metropolitan Sewerage Agencies and other associations to develop a sound and effective proposal?

Response. Sanitary sewer overflows (SSOs) are a serious environmental concern in some parts of the country. They can release pathogens in places where people may be directly exposed to disease-causing microorganisms. I am interested in working with all interested parties to craft approaches that will address this problem. The current draft of the proposed rule is consistent with, but adds more specifics to, current requirements for control of SSOs. It resulted from numerous discussions from 1995 to 1999 with a Federal Advisory Subcommittee that EPA formed to provide insights into potential regulatory approaches for SSOs. The Subcommittee. which included several municipal groups in its membership, including the Association of Metropolitan Sewerage Agencies (AMSA), endorsed the above approach unanimously.

EPA is currently considering how best to proceed with the proposed rule. EPA staff has discussed several alternatives with AMSA and other interested parties and I will discuss options with these stakeholders before recommending to the Administrator how best to proceed.

Question 2. Publicly owned treatment works (POTWs) should not be at risk of enforcement where reasonable water quality standards, including appropriate wet weather standards, are attained. As you know, many POTWs, whether in a separate or a combined sewer system, use recombination of treated and partially treated effluent to protect water quality standards cost-effectively. Full secondary treatment in all flow conditions is not necessary. Will you provide flexibility in the recombination policy to ensure that the EPA does not require costly construction for treatment that goes beyond reasonable water quality standards?

Response. NPDES authorities have considerable flexibility through the permitting process to account for different peak flow scenarios that provide adequate capacity consistent with generally accepted good engineering practices and criteria for long-term design. I believe that peak wet weather discharges from POTWs could be approved in an NPDES permit as long as the unique design considerations are clearly outlined during permit development and where the permit ensures compliance with the secondary treatment regulation (40 CFR Part 133) and/or any more stringent limitations necessary to meet water quality standards.

STATEMENT OF JUDITH E. AYRES, NOMINATED TO BE ASSISTANT ADMINISTRATOR OF THE OFFICE OF INTERNATIONAL ACTIVITIES, ENVIRONMENTAL PROTECTION AGENCY

Good Morning Mr. Chairman and members of the committee. I am honored to have the opportunity to appear before this committee to seek your confirmation to serve as the Environmental Protection Agency's (EPA) Assistant Administrator for the Office of International Activities. It is a distinct honor to have been nominated by President George Bush and to have the support of Governor Christine Todd Whitman. If the Senate confirms my nomination, I also look forward to working

closely with the members of this committee, and other members of the Senate and the House of Representatives.

I believe that the Office of International Activities in EPA is a place where a common understanding and approach can be developed to address the many global environmental problems that confront us. If confirmed, I pledge to use my experience and talented staff to promote a spirit of environmental stewardship which reflects Administration priorities.

Regarding my experience, with an academic background in the biological sciences and public administration, I have worked in the environmental area, both in the public and private sectors, since the 1970's. My work has spanned from Washington, DC. to Alaska and the Pacific Rim, and into Central Europe, Mexico and Central America. The issues addressed have been numerous and varied, from the preservation of sea turtles and bird habitat to cholera outbreaks and Superfund. I have been privileged to work both at the U.S. Department of Interior and the Environmental Protection Agency. As Regional Administrator for EPA Region IX (1983–88), I managed a staff of some 950 career civil servants and a budget of $350 million, heading an office that was responsible for regulating air and water pollution and hazardous waste in Arizona, California, Hawaii, Nevada, Native American Tribes under U.S. law, and the American Protectorates in the Pacific. The Regional Administrator's office also managed international programs with Mexico.

Today, in seeking the committee's confirmation, I offer as qualifications my academic background, my public and private sector environmental experience, and my record in both venues as a proven and fair manager committed to doing the public's business in a public way in pursuit of the Administration's environmental priorities.

Environmental protection and gain are at the heart of EPA's major program areas. Each program carries an essential international dimension: addressing air pollution, water pollution, solid and hazardous waste, toxic chemicals, emergency response and pesticides. The international dimension is important because we know that what goes on in backyards half-way around the world may also end up in our own. For example, transboundary air pollution emanating from Asia can affect air quality on our western shores;

- protection of the Rio Grande and the Great Lakes requires cooperation with Mexico and Canada;
- disposal of hazardous waste is governed by our agreements with industrialized countries around the world;
- the new treaty on Persistent Organic Pollutants (POPs), which Governor Whitman recently signed in Stockholm, addresses health and environmental problems of pesticides, industrial chemicals and industrial by-products;
- imported food consumed by children and other vulnerable populations can be contaminated by pesticides banned in the United States for health reasons but are still in use in other food-producing countries; and
- international trade and investment rules and environmental rules will require careful attention to assure that they are mutually supportive.

In short, it is increasingly difficult to protect human health and the environment in the United States without simultaneously engaging with other countries to do the same.

As a nation, we have learned that solving global environmental problems related to the atmosphere, the oceans, and the earth's biological wealth requires concentrated international efforts. For the International Office at EPA, environmental gain is sought in the international arena outside our country's boundaries through the Agency's collaboration with the Congress, other Federal agencies, scientists, the financial and business communities, NGO's, and philanthropic leaders.

I would also offer comments on the people of the Office of International Activities. This is an exceptionally talented, dedicated and professional group of public servants who seek a well-managed office with challenging and interesting work, the resources to get it done, and a work environment that is fair and equitable. President Bush, Governor Whitman, and I commit both to the committee and to the Office of International Activities that going forward, the office will be well-managed, all managers and employees will be held accountable, the work will be challenging, and the work environment will be fair and equitable.

In closing, I have chosen to seek confirmation and re-enter public service because I believe public service to be the noblest of professions and I believe protection of the environment, in all its many dimensions, to be the most vital of endeavors.

Thank you. I shall be pleased to answer any questions you may have.

UNITED STATES SENATE

COMMITTEE ON ENVIRONMENT
AND PUBLIC WORKS

ROOM 410 DIRKSEN BUILDING WASHINGTON, DC 20510

INFORMATION

REQUESTED OF PRESIDENTIAL NOMINEES

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

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

Name of Nominee: JUDITH E. AYRES

Business Address: 1300 Pennsylvania Ave., NW
Washington, DC 20004

Business Phone: (202) 564-6600

Home Address: 6107 Orchard Station Rd
Sebastopol, California 95472

Home Phone: (707) 824-1999

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

Name: Ayres (Last) Judith (First) Elizabeth (Middle)

Position to which nominated: Assistant Administrator of EPA for International Activities

Date of Nomination: 07/06/01

Date of birth: 09/03/44 (Day) (Month) (Year) **Place of birth:** Akron, Ohio

Marital status: Married **Full name of spouse:** John Woolfolk Burke, III

Name and ages of children: E. Coventry Ayres Burke Age: 20

Education:

Institution	Dates attended	Degrees received	Dates of degrees
Holton-Arms School		Diploma	1962
Miami University	1962-66	BA	1966
International Christian University Mitaka, Japan	1967		
John F. Kennedy School of Government Harvard University	1980	MPA	1980

Employment record:

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

Hillsdale School Biology, Physiology, and English Teacher 1966-69

Aspen, Colorado Photographer/Ski Instructor/Conservation Biologist 1969-70

Secretary Rogers Morton - Department of The Interior Speechwriter 1971-73

Employment record—continued

Alaska Joint Federal State Land Use Planning Commission	Communication Director	1973-75
National Park Service	Public Information Officer Legislative Liaison	1975-79
Natural Resource Consultant		1980-83
US EPA Region IX Administrator		1983-88
William D. Ruckelshaus Associates	Vice-President	1989-1990
The Environmental Group	Environmental Consulting Principal	1990-2001

Honors and awards:

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

Holton-Arms School	Alumnae Award
Hillside School	Japan Study Fellowship
USEPA	Various Commendations

Commendations from numerous public sector entities working with USEPA, Region IX

Memberships:

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

Organization	Office held (if any)	Dates
North Pacific Fisherice Management Advisory Council	Member	1973
San Francisco Bay Conservation and Development Commission	EPA Member	1983-88
Reidel Corporation	Environmental Advisory Board Member	1990-96
National Energy Associate	Advisor	1990-93
Women's Leadership Committee Of Harvard University	Member	1990-91
Mid American Energy Holdings Company	Director	1990-99

ESCO Corporation	Director	1996-2001
State of California Unified Environmental Statute Commission	Member	1995-95
Global Asset Management Fund Advisory Board	Member	1999-2001

Qualifications:

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

With an academic background in the biological sciences and public administration, I have worked in the environmental area, both in the private and public sectors, since the 1970's. My work has spanned from Washington, DC to Alaska, the Pacific Rim, Mexico, Central American, and Central Europe. The issues have been numerous and varied. I have worked both at the US Department of Interior and the US Environmental Protection Agency. As Regional Administrator for USEPA Region IX, (1983-88) I managed a staff of 950 and a budget of 350 million and was responsible for regulating air and water pollution and hazardous waste in Arizona, California, Hawaii, Nevada and the American Protectorates in the Pacific. My office also managed international programs with Mexico. I offer my academic background, public and private sector international environmental experience, the record of proven and successful management as qualifications for this position. (Please see attached resume for additional information.)

Future employment relationships:

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

All connections will be severed.

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

No

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

No

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

I plan to serve the full term of President Bush.

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

I have no known limitations.

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

Position: US EPA Regional Administrator, Region IX

- to have a break from government service -

Financial Statement:

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

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

SF-278 attached

2. Are any assets pledged?

No

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

See Attached

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

Yes

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

Yes - Audited for 1980. Result, the IRS determined a larger refund was in order.

Potential conflicts of interest:

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

None

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

None

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

None

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

I shall work through any issues with the Office of Government Ethics and the EPA Ethics Official.

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

Please see attached letter to Designated Agency Ethics Official.

Political affiliation and activities:

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

Member of Republican Party

No contributions in excess of $1,000.

Published writings:

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

Numerous speeches given while Regional Administrator of EPA, Region IX (1983-88)

Additional Matters:

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

No

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

Yes

3. Having completed this form, are there any additional questions which you believe the Committee should ask of future nominees?

None

AFFIDAVIT

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

current, accurate, and complete.

Subscribed and sworn before me this 19th day of July, 2001.

June K. Tooks
Notary Public

JUNE K. TOOKS
Notary Public, District of Columbia
My Commission Expires January 1, 2002

THE ENVIRONMENTAL GROUP

JUDITH E. AYRES

TELEPHONE
415-397-4040

Biography

Judith E. Ayres, Principal of the Environmental Group, an environmental and management consulting firm, is the former Regional Administrator for the United States Environmental Protection Agency, Region 9. Appointed by Administrator William D. Ruckelshaus, she served in the post from 1983 to 1988. She managed a staff of 950 and a budget of $350 million and was responsible for regulating air and water pollution and hazardous waste in Arizona, California, Hawaii, Nevada and the American protectorates in the Pacific. Her office also managed international programs with Mexico.

Upon leaving EPA, Ms. Ayres joined William D. Ruckelshaus Associates, an environmental consulting firm, as a Vice President/Principal. She now heads The Environmental Group whose clients include domestic and international institutions and corporations. She also lectures nationally and internationally on environmental and natural resource issues.

Ms. Ayres previously served on the personal staff of former Secretary of the Interior Rogers C.B. Morton, headed major communications offices for the U.S. Department of the Interior in Alaska and served as a legislative liaison in Washington, D.C. She has also served on the North Pacific Fisheries Management Council Advisory Committee, the San Francisco Bay Conservation Development Commission and the State of California Unified Environmental Statute Commission as appointee of then Governor Pete Wilson.

She serves on the boards of several corporations and institutions which include MidAmerican Energy Holdings Company Inc. [NYSE], ESCO Corporation of Portland Oregon, California Environmental Trust, Global Asset Management Fund, and Pacific Forest Trust. She has served on the advisory boards of Reidel Corporation, National Energy Associates and the Women's Leadership Committee of Harvard University.

Ms. Ayres is a member of the California Republican Party, was a delegate to the 1988 Republican National Convention, and served as an energy and environmental policy advisor to both the Ronald Reagan and George H.W. Bush campaigns. She co-headed California Conservationists for Bush in 1988.

Ms. Ayres earned her undergraduate degree in zoology and physiology at Miami University in Oxford, Ohio, pursued graduate study in England and Japan and holds a Master of Public Administration degree from the John F. Kennedy School of Government at Harvard University. She has been the recipient of numerous commendations for leadership and management.

Ms. Ayres lives with her family in Sonoma County.

POST OFFICE BOX 561, SEBASTOPOL, CALIFORNIA 95473
FACSIMILE: 707-824-1996
EMAIL: JEAYRES1@AOL.COM

April 25, 2001

Ms. Judith E. Ayres
6107 Orchard Station Road
Sebastopol, CA 95472

Dear Judith:

The purpose of this letter is to respond to your recent inquiry regarding the status of the *Cohen v. MidAmerican Energy Holdings Company, et.al.* lawsuit in which you were named as a defendant due to your service as a member of the Board of Directors of MidAmerican ("director defendants") at the time that it approved a going private transaction pursuant to an Agreement and Plan of Merger dated as of October 24, 1999.

On December 21, 1999 a class action lawsuit was filed by the plaintiff in the District Court for Polk County, Iowa, complaining as to the fairness of the merger price and claiming that Berkshire Hathaway, Inc. and the other purchasers of MidAmerican and the director defendants breached their fiduciary duties in connection with approving the merger agreement. The defendants have filed a motion for summary judgment which is currently pending before the court.

Unfortunately, legal challenges to the terms of large corporate transactions are commonplace today. As you know, a special independent committee of the Board of Directors, which was advised by two widely recognized financial advisory firms, recommended in favor of the Board of Directors approving the merger agreement. We believe plaintiff's claims are without merit and that the director defendants fulfilled all their responsibilities as required by applicable law. The Company has retained counsel to represent both the Company and the Board of Directors and is vigorously defending the lawsuit. In the unlikely event that any obligations are determined to be owing to the plaintiff, such obligations are expected to be fully covered by MidAmerican's director and officer liability insurance.

If you have any questions or need additional information, please feel free to contact me.

Sincerely,

Steven A. McArthur
Senior Vice President and General Counsel

cc: Paul J. Leighton, Esq.
Assistant General Counsel

MIDAMERICAN ENERGY HOLDINGS COMPANY
666 GRAND AVENUE • P.O. BOX 657 • DES MOINES, IOWA 50303-0657 • 515-242-4300

STATEMENT OF DONALD R. SCHREGARDUS, NOMINEE FOR ASSISTANT ADMINISTRATOR FOR ENFORCEMENT AND COMPLIANCE ASSURANCE, ENVIRONMENTAL PROTECTION AGENCY

Mr. Chairman, and distinguished members of this committee; it is an honor and pleasure to appear before you this morning as the nominee to be EPA's Assistant Administrator for the Office of Enforcement and Compliance Assurance. I am honored and excited that President Bush and Governor Whitman have invited me to

join the Administration to improve public health and the environment in this great nation. I am especially pleased to be joined today by my daughter Sarah.

Compliance and enforcement have, and always will be, fundamental components of our national environmental program. Governor Whitman has expressed her commitment to a strong Federal enforcement program and so do I. Compliance and enforcement has been a cornerstone of EPA programs to improve public health and the environment from its beginning. The American people trust and rely on EPA to protect the land, air, and water where they live. I understand this important responsibility and if confirmed will do everything in my power to meet this responsibility.

To this end, I believe my 25 years of experience in Federal and State environmental regulatory agencies would prove a valuable benefit to the Administration. I started my career at EPA at a field office conducting environmental studies and investigations. While developing permits and enforcement cases I learned first hand the importance of good science in environmental decisionmaking. As Chief of the Water Division Compliance Section in EPA Region 5, I managed one of the most successful efforts to bring municipalities into compliance with the Clean Water Act. We set records for the most penalties and civil actions as compared to previous periods at the Region. As a result, water quality improved across the Region. The keys to this success were a clear, consistent, well publicized goal; accurate tracking of the universe of facilities; and close planning and cooperation with States and the Department of Justice.

As Director of Ohio EPA, I developed or expanded programs in pollution prevention, technical assistance and environmental education. I improved the scientific basis for environmental decisionmaking by establishing a program to evaluate the safety of sport-caught fish, implementing a program to evaluate the quality of all 6000 public water supplies in Ohio, placing inspectors at each of Ohio's commercial hazardous waste disposal facilities, tripling the size of Ohio's landfill inspection program and developing new protocols for monitoring the quality of wetlands. With the support of then-Governor Voinovich, we added nearly 400 new people to the Agency, half of which were placed in Ohio EPA's district offices where they conduct inspections and monitoring. We developed new programs to clean up Brownfields, manage and cleanup tire dumps, and ensure the safety of underground injection wells. On the management side, I implemented a quality management program throughout the Agency which improved processes, performance and customer satisfaction. The program received unanimous endorsement by a public advisory group established by the general assembly. Throughout my service as Director I recognized the importance of public involvement. I expanded public involvement in the rulemaking and program development processes and started or supported 25 community based groups to assist the Agency in studying and improving water quality.

The real measure of success of these programs is not in the outputs but in the outcomes. During my tenure as Director, Ohio, one of the top manufacturing and energy producing States in the country, for the first time met all national air quality standards, saw a 50 percent reduction in toxic releases to the environment and realized a 50 percent increase in stream miles fully achieving fishable/swimmable Clean Water Act goals. I am proud of these accomplishments, but more still needs to be done. I look forward to bringing the knowledge gained from these successes to apply to the Office of Enforcement and Compliance Assurance.

One area I believe is especially important for the compliance and enforcement program to focus is on the coordination with the other offices in the Agency to ensure the Administration has a clear, consistent national approach to environmental protection. A clear unified approach to environmental protection helps ensure there are no surprises and no excuses to environmental compliance. Finally, I will actively seek the involvement of the States and the public as we improve and develop new programs.

From my experience, an effective compliance and enforcement program involves far more than just enforcement orders and lawsuits. Compliance starts with a clear understanding of regulatory requirements and the timeframes in which they must be met. Education and compliance assistance is needed to get the word out clearly and uniformly across the country. Incentives and voluntary programs can assist communities and businesses to achieve environmental goals in a cost effective manner. Plans, goals, tracking and accountability are essential to follow progress. States, where delegated the national program, must take the lead. But if requirements are not met, than the full range of administrative, civil, and criminal enforcement actions must be considered. If you should honor me by your confirmation, I will work to improve each of these elements and thereby improve public health and the environment in a cost effective manner.

I look forward to working with you, Governor Whitman and President Bush to make the environment better for all Americans. Thank you for the opportunity to appear before you today. I will be happy to answer any questions.

UNITED STATES SENATE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

ROOM 410 DIRKSEN BUILDING WASHINGTON, DC 20510

INFORMATION

REQUESTED OF PRESIDENTIAL NOMINEES

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

Name of Nominee: Donald R.Schregardus

Business Address: 1200 Pennsylvania Avenue, NW Mail Code 2201A

Washington, DC 20460

Business Phone: (202)564-2440

Home Address: 351 Pocono Road

Columbus, Ohio 43235

Home Phone: (614) 847-0380

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

Name: Schregardus (Last) Donald (First) Robert (Middle)

Position to which nominated: Assistant Administrator for Enforcement and Compliance Assurance

Date of Nomination:

Date of birth: 20 08 50 (Day) (Month) (Year) **Place of birth:** Philadelphia, PA

Marital status: Married **Full name of spouse:** Sue Mizell Schregardus

Name and ages of children: Katharine Anne (Schregardus) Zubelik - 23

Sarah Marie Schregardus - 21

Education:

Institution	Dates attended	Degrees received	Dates of degrees
Miami University	9/72-1/73	M.E.S.	3/1974
Miami University	9/68-6/72	B.S.	6/1972

Employment record:

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

Environmental Principal, environmental consulting, ms consultants inc. Columbus, Oh 3/99-7/01

Director, head of state agency, Ohio Environmental Protection Agency, Columbus, Oh 5/91-1/99

Deputy Director Water Programs, program manager, Ohio EPA, Columbus, Oh, 9/89-5/91

Chief Compliance Section, wastewater enforcement manager, Water Division, US EPA Region V, Chicago, Il, 9/85-9/89

Employment record—continued

Water Quality Modeling Expert/Environmental Engineer, water quality studies and facility inspections, US EPA Region V, Westlake, Oh 12/74-9/85

Environmental Systems Engineer, air and water quality modeling, Argonne National Laboratory, Argonne, Il 7/73-12/74

Honors and awards:

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

Special Recognition Award, US EPA Region V, 1998

Excellent in Leadership Award, Governor George V. Voinovich, 1998

Excellence in Public Service Award, Ohio Chemical Council, 1997

Honorary 100, The Ohio State University School of Natural Resources, 1991

Bronze Medal, US EPA, 1989

Memberships:

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

Organization	Office held (if any)	Dates
Leatherlips Yacht Club	Rear Commodore	11/00-7/01
Leatherlips Yacht Club	Fleet Captain	11/99-11/00
Christopher Woods Civic Assoc.	Treasurer	97,98
Chistopher Woods Civic Assoc.	Vice President	95,96
Ohio District, International Lightning Class Assoc. (ILCS)	Commodore	00/01
Ohio District, ILCA	Secretary/Treasurer	99/00

Qualifications:

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

I have twenty-six years of experience as an environmental professional and senior manager in state and federal government and recently as an Environmental Principal with a major Midwest consulting firm. I have a broad range of experience with environmental enforcement, including studies and inspections, preparation and negotiation of administrative orders, managing environmental enforcement, and managing a state environmental agency. I have proven leadership skills coupled with the ability to develop and implement effective, large-scale programs. I have strong management and interpersonal skills as well as the ability to solve complex technical problems.

Future employment relationships:

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

Yes, I resigned from ms consultants effective July 14, 2001.

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

I have no plans for employment after government service.

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

No

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

Not applicable

(b) If you have been appointed for an indefinite term, do you have any known limitations on your

willingness or ability to serve for the foreseeable future?

No

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

Not applicable

Financial Statement:

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

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

Ohio Public Employee Retirement System (Defined benefit Plan), will receive about $15k per year at age 65

2. Are any assets pledged?

No

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

No

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

Yes

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

No

Potential conflicts of interest:

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

None

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

None

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

As Director of Ohio EPA from 1991 to 1999, I had a professional working relationship with the US EPA.

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

I will seek and follow the advice of the EPA's ethics counsel.

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

For any matters that have the potential or appearance of a conflict of interest I will consult with the EPA ethics counsel and take whatever steps are needed.

Political affiliation and activities:

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

None

Published writings:

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

Black River Wasteload Allocation Study, US EPA, 1979

Mahoning River Wasteload Allocation Report, US EPA, 1976

Additional Matters:

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

No

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

Yes

3. Having completed this form, are there any additional questions which you believe the Committee should ask of future nominees?

No

Donald R Schregardus

AFFIDAVIT

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

Subscribed and sworn before me this 18th day of July, 20 01.

Mary E. King

Notary Public

MARY E. KING
NOTARY PUBLIC DISTRICT OF COLUMBIA
My Commission Expires July 31, 2001

7

RESPONSES OF DONALD R. SCHREGARDUS TO ADDITIONAL QUESTIONS FROM SENATOR BOXER

Question 1. U.S. EPA was petitioned in 1997 to withdraw Ohio's authority to administer the Clean Air Act, the Resource Conservation and Recovery Act and the Clean Water Act. I understand the matter may be decided later this year. This petition raises questions about the past administration of the Ohio Environmental Protection Agency (OEPA) program.

Will you ensure if confirmed as Assistant Administrator for Enforcement that the environmental laws are fully enforced, even if you disagree with them or believe they should be changed?

Response. Yes, I will vigorously enforce all Federal laws and regulations.

Question 2. What specific steps will you take to assure Federal environmental laws are properly enforced throughout the United States?

Response. To ensure Federal laws are properly and consistently enforced throughout the country, I will follow the steps discussed in my testimony. Basically, I will ensure that OECA helps implement all of the following:

- Assist the regulated community, States, Tribes and EPA Regional offices as necessary, to clearly define national priorities and requirements through development and issuance of guidance, permits, training and technical assistance;
- Develop, implement and track compliance monitoring programs, including self-monitoring and reporting; EPA and State inspections; and compliance followup and investigation;
- Provide compliance assistance and incentives to encourage compliance with regulatory programs, especially for small communities and businesses. This includes training, speeches, guidance material, financial assistance, and individual assistance;
- Ensure consistent application of Federal laws where States have been authorized to administer and enforce the Federal program. This role will include regular tracking and evaluation of State programs, along with technical assistance, training and financial support;
- Make regular visits to the Regional Offices to evaluate performance and resolve issues. Develop guidance to assist new programs or address critical issues;
- Initiate Federal enforcement actions whenever necessary to support national priorities, interstate or multi-State compliance problems, or where States have failed to take timely and appropriate enforcement action.

Question 3. As you know, there is a Georgia Pacific Company plant (GP) located in the south side of Columbus, Ohio. This plant has bad a history of problems-most notably that it has exploded twice-first in 1984 (before you assumed the directorship at OEPA) and again in 1997 (during your tenure as director). In between these two explosions, the plant released tons of chemicals in spills and other un-permitted releases in numerous major incidents.

Please explain the circumstances surrounding chemical spills and other unpermitted chemical releases from the GP plant and indicate when and how the situation was rectified by OEPA. If the situation was not rectified, please explain why OEPA did not rectify the situation.

Response. See below.

Question 4. Were the people of the south side of Columbus properly notified regarding these incidents at GP. If not, was OEPA aware of this deficiency and was the situation rectified? lithe situation was rectified, please describe when and how. In particular, what specific stops did OEPA take to ensure that the community was informed of what steps OEPA would take to ensure that GP would operate safely?

Responses to Questions 3 and 4. At OEPA these types of activities are typically handled at the Division level. For example, spills are routinely handled by the Division of Emergency and Remedial Response (DERR), and unpermitted air releases would be monitored by the Air Office, and would be reported in the Toxics Release inventory (TRI). While as Director I was not involved on a daily basis with the facility, my understanding of the facts regarding the issues you raised are as follows:

- In May 1991 (I was Director of Ohio EPA at this time), Georgia Pacific was under orders from Ohio EPA to clean up a pipe line spill which had occurred in 1990 including pumping and treating groundwater to drinking water standards. Another spill occurred in August 1991 which required continuation of the pump and treat system. The treatment and cleanup ended in December 1991 and a letter stating the company fulfilled its terms of the 1990 consent order was sent to the company in February 1992. OEPA subsequently tested 5 nearby residential wells in March 1992 and verified all wells were below drinking water standards. The results of all samples were sent to the residents and the company in July 1992.
- In December 1994, OEPA issued an Administrative Order to Georgia Pacific to perform a complete a remedial investigation/feasibility study of the Columbus Plant, based upon 8 known spills at the facility between 1976 and 1991. OEPA issued a press release at that time that summarized the site's operating history and the terms of the orders. Interim results of the site investigation were sent from OEPA in March 1997 to residents explaining the study and groundwater data collected to date. The second phase of the site assessment was temporarily interrupted in September 1997 when the second explosion occurred at the plant.
- Regarding air emissions and odors, which were the major complaint received by Ohio EPA from the neighbors, Georgia Pacific had unpermitted releases in March 1994, May 1995 and April 1996. As a result in May 1996, at the request of OEPA, the Ohio Attorney General entered into a consent agreement with Georgia. Pacific

that required them to test and upgrade their air pollution control equipment and leak detection systems. Georgia Pacific was fined $86,250, of which up to $66,250 could be suspended for quick installation and testing of the pollution control equipment Ohio EPA explained the settlement and the status of the pollution control improvements at the site at an October 1996 meeting of the Marion Franklin Civil Association.

• With respect to the September 1997 explosion of the reactor at the GP plant, OEPA attended several public meetings on the matter, and regularly provided information to the public, through monthly meetings, on the explosion, the cleanup, and the company's regulatory responsibilities for restarting the facility. OEPA held a public hearing on the permits-to-operate for the repaired kettles; public hearings were not typical, but because of the level of community interest, we felt they were appropriate in this instance. Also, based upon the recommendation of my staff, I required GP to apply for a new permit for the rebuilding of the reactor that was destroyed in the explosion. There was significant public interest in the facility at the time, and the permit application process provides for additional public involvement opportunities and a public hearing. When I left OEPA, GP had not yet submitted a permit application to rebuild the damaged unit.

Question 5. Last October, a Federal Labor Department administrative law judge that found that officials from the OBPA had "unlawfully retaliated" against an OEPA employee, Paul Jayko, who was involved in the investigation of a high incidence of leukemia in Marion, OH.

In his decision, Judge Thomas Phalen, Jr. found that OEPA had limited the investigation into whether several contaminated sites in the community could be the cause of the health problems, and retaliated against Mr. Jayko by coercing and restraining him in the course of his conducting an environmental investigation protected under the "whistleblower" portions of seven Federal environmental laws.

Please fully describe your involvement in any decisions to limit the scope of the OEPA's investigation into the potential environmental causes of the health concerns in Marion.

Response. I had no direct involvement and limited indirect involvement in decisions to address the scope of the Marion investigation. Governor Voinovich placed the Ohio Department of Health in charge of a multi-agency task force to investigate the causes of higher leukemia rates among students graduating from Marion High School. Based on the recommendations of the District Officer Chief Ed Hannett, Paul Steers, Assistant Chief of the OEPA Northwest District Office, was placed in charge of Ohio EPA's team of scientists and investigators who worked with the Department of Health. Decisions on the scope and steps of the investigation were discussed and made at regular joint agency team meetings. The Department of Health made the recommendation and the team concurred with the decision to focus the investigation on chemicals suspected of causing leukemia (i.e. radiation and various organic chemicals).

On one occasion, before a public meeting where potential pathways of exposure were to be discussed, I directed Ohio EPA's field team to collect drinking water samples at the school and in the community, and have them analyzed on a priority basis for possible contamination. The results, which showed no chemical contamination of the drinking water, were given to the public.

Question 6. Please fully describe your involvement in the decisions to discipline Paul Jayko and remove him from his position as coordinator for the Marion site.

Response. Upon learning of allegations that Mr. Jayko consumed alcoholic drinks while on duty for the State and had improperly charged the State for food and alcohol, I instructed the, employee's manager to follow State personnel practices, investigate the incident and make recommendations based on the facts.

An incident report was prepared by Jeff Steers, OEPA Assistant District Chief, and submitted to OBPA's Human Resources Office. The Director of Personnel investigated the incident and held a predisciplinary hearing with Mr. Jayko. Immediately after the hearing, Mr. Jayko announced to the newspapers that he was a whistleblower. Human Resources Office Chief, Bill Kirk, subsequently submitted a recommendation to me for disciplinary action against Mr. Jayko, based on his behavior pertaining to the purchase and consumption of alcohol while on duty for the State, I signed and approved the recommendation after obtaining continuation from OEPA's legal office that the recommendation was consistent with disciplinary responses for similar incidents and that whistle blower standards did not apply.

Question 7. Do you agree with the whistleblower protection provision of Federal environmental laws?

Response. I agree with the Federal whistle blower protection provisions.

RESPONSES OF DONALD R. SCHREGARDUS TO ADDITIONAL QUESTIONS FROM SENATOR CHAFEE

Question 1a. Congress added the Innocent Landowner defense to CERCLA over 14 years ago. The purpose was to remove from liability purchasers of real estate who, among other things, at the time of the purchase did not know or have reason to know that, the property was contaminated. It is my understanding that EPA has rarely, if ever, officially determined that a purchaser of contaminated real estate was not liable under CERCLA because it qualified for the Innocent Landowner defense. In addition, no commercial real estate developer has ever qualified for the Innocent Landowner defense. Do you believe that the Innocent Landowner defense can apply to a commercial real estate developer?

Response. The innocent landowner defense can apply to a commercial real estate developer. If a commercial real estate developer acquires contaminated property, after having made all appropriate inquiry, then they would qualify for the defense to liability. In fact, EPA is aware of several cases in which a commercial entity has qualified for the defense.

Question 1b. Under section 101(35)(B) of CERCLA, a purchaser of land establishes that he had no reason to know that there were hazardous substances on the property if, at the time of the acquisition, he made "all appropriate inquiry into the previous ownership and uses of the property, "consistent with good commercial or customary practice" at the time of transfer. What factors do you believe EPA should use to determine "good commercial or customary practice" at the time of transfer?

Response. Under current law, EPA evaluates all facts and circumstances surrounding a person's inquiry into the property. In 1989 EPA published guidance concerning the Innocent Landowner defense. The guidance describes the statutory factors relevant to "good commercial or customary practice," for example specialized knowledge or experience, the relationship of the purchase price to the value of the property if uncontaminated, commonly known or reasonably ascertainable information about the property, the obviousness of the presence or likely presence of contamination, and the ability to detect such contamination by appropriate inspection.

Question 2. Do you believe that a real estate developer who, at the time of purchase, does not know and has no reason to know of the presence of hazardous substances on the property and then unknowingly moves during construction soil that later is found to be contaminated, is liable under CERCLA as a "generator?"

Response. It is difficult to fully evaluate the liability of a person from a brief hypothetical example. Therefore, I am unable to draw any conclusions about a person's liability if he or she" . . . unknowingly moves during construction soil that later is found to be contaminated . . ." As a general matter, however, CERCLA requires a person to exercise "due care" with respect to hazardous substances on their property.

RESPONSES OF DONALD R. SCHREGARDUS TO ADDITIONAL QUESTIONS FROM SENATOR CORZINE

Question 1a. In a November 7, 1998 letter to the Columbus Dispatch, you commented extensively on the "NOx SIP call" that the U.S. EPA had recently finalized. You stated in that letter that "There are several fundamental flaws in the U.S. EPA's plan. The science is faulty. The Federal plan is based on the notion that air pollutants from the Midwest cause ground-level ozone to form in the Northeastern States." Do you still consider the notion that air pollutants from the Midwest cause ground to form in the Northeastern States to be faulty science?

Response. Regarding the impacts of air pollutants from the Midwest on ground-level ozone in Northeastern States, Ohio utilized the same models agreed to and accepted by the 26-State committee called the Ozone Transport Assessment Group. This model showed Ohio's emissions bad a relatively small impact on ground-level ozone in the Northeast. I do not know of any better air-quality modeling tool.

Question 1b. In that same letter, you stated that "Ohio industrial and utility emissions contribute less than 4 percent to smog formation along the eastern seaboard." Do you still believe this to be the case? If not, what do you believe the contribution of Ohio sources to eastern seaboard smog formation to be?

Response. I have not been involved with this issue since December 1998. However, I am not aware that U.S. EPA ever directly disputed Ohio's relative contribution to Northeast air quality.

Question 1c. You also speculated in that letter that "it appears that the U.S. EPA intentionally set an unreachable deadline so that the Federal Government can come in and usurp the States' rights under the Federal Clean Air Act and enforce the

U.S. EPA plan." You further referred to the plan as "draconian," and stated that it "lacks both common sense and sound science." Do you still hold these views?

Response. I still believe the time given to the States to develop a control program was too short to adequately consider control options, develop rules, including potentially an emission-trading program and to provide adequate public involvement in the rulemaking process.

Question 1d. Earlier this year, the Supreme Court decided in EPA's favor on the NOx SIP call. Not all of the States have submitted revisions for their State Implementation Plans, and the deadline is approaching. Are you committed to enforcing the plan by ensuring that U.S. EPA prepares and implements a Federal Implementation Plan for States that fail to submit their own plans?

Response. Initially, U.S. EPA's Office of Air and Radiation will have the lead in preparing Federal Implementation Plans (FIPs). OECA will support the Office Of Air and Radiation as needed in preparing FIPs. OECA monitors compliance with the FIP and if necessary, enforces the requirements of the FIP. I am fully committed to carry out OECA's responsibility under the Clean Air Act.

Question 2a. U.S. EPA was petitioned in 1997 to withdraw Ohio's authority to administer the Clean Air Act, the Resource Conservation and Recovery Act and Clean Water Act. Region 5 has been investigating this matter and plans to conclude its review later this year. If you were confirmed as Assistant Administrator, would you recuse yourself from any discussions regarding this issue?

Response. I have not worked for the State of Ohio for over 2 years and I have never had any direct involvement in this review. While there appears to be no legal reason to recuse myself; to avoid any appearance of impropriety, if confirmed, I will recuse myself from any discussions on this matter.

Question 2b. If the U.S. EPA were to withdraw any of these authorities, would you move in aggressively to enforce these laws in Ohio?

Response. I would make every effort to vigorously enforce those laws in Ohio.

Question 3. During your tenure as director of Ohio EPA, you moved staff from enforcement to the State's Voluntary Action Program for brownfields. If confirmed as Assistant Administrator, would you seek to make similar changes at OECA (i.e., moving staff from enforcement to compliance assurance)?

Response. I have not yet reviewed and evaluated the resources within OECA. Based on a recent GAO report, however, one of my early priorities will be to evaluate resource allocations based upon national priorities and regional needs. I will seek to make the best use of public funds. At this time, I have no plan to move resources from Superfund enforcement to brownfields.

Question 4a. When you testified before the U.S. House of Representatives on February 14, 1997, you stated that Superfund should be changed to "eliminate the duplicative oversight by both the Federal and State governments" and that "Superfund's efficiency suffers from the current overlapping statutory roles for the Federal and State governments." With respect to the so-called "finality" issue at non-Superfund sites, you further stated that "we would need to be satisfied that the Federal Government would not be dictating the administrative process States choose to achieve protective cleanups." In light of these statements, what are your views of S. 350, the Brownfields Revitalization and Environmental Restoration Act of 2001, which has been endorsed by Administrator Whitman?

Response. I support S. 350, and share Governor Whitman's desire and the President's desire to see brownfields legislation enacted this year. With respect to the process that States use to ensure protective cleanups, S. 350 would allow the States the flexibility to use their own procedures for cleaning up brownfields sites, provided the State program is designed to protect public health and the environment.

Question 4b. Notwithstanding the above-referenced statements from your 1997 House testimony, do you commit to using Federal authorities at brownfields sites under the conditions outlined in S. 350 if you are confirmed and S. 350 becomes law?

Response. If I am confirmed, I commit to fully enforce all environmental laws, including S. 350 if enacted. As for the Federal authorities reserved in S. 350, I commit to using them in all appropriate circumstances.

Question 5a. As the Director of the Ohio EPA, you had the U.S. EPA behind you as an enforcement "backstop." As the Assistant Administrator at OECA, you would be in charge of this Federal backstop. How would this fundamentally different role affect your view of the proper balance between enforcement and compliance assistance? Do you believe that State environmental agencies and the U.S. EPA should have the same approach in this regard?

Response. As you point out in your question, U.S. EPA has a key enforcement role of backing up the States when they are unwilling or unable to enforce Federal law Regarding compliance assistance, I believe OECA has an important role in developing technical materials and training to assist the States with providing compliance assistance. EPA needs to recognize and support States' compliance assistance programs and to provide direct assistance in States that are not delegated the Federal program. OECA focuses compliance assistance on priority sectors and environmental issues while encouraging States to provide most of the direct assistance.

Question 6. The U.S. EPA took New Source Review enforcement actions against 32 power plants last year. As Assistant Administrator, would you advocate continuing these actions? Would you advocate bringing similar actions in the future?

Response. I have had no prior involvement with this issue, however, I am aware that EPA has been enforcing the New Source Review (NSR) requirements in a number of industry sectors, including power plants. The U.S. EPA, led by the Office of Air and Radiation, and the U.S. Department of Justice are currently reviewing the NSR program, therefore, it is premature to advocate any position regarding future actions until the reviews are complete and I can assess them.

Question 7. As Director of Ohio EPA, you opposed the 1997 U.S. EPA standards for ozone and particulate matter and supported Ohio's efforts to overturn these standards in court. As the head of OECA, will you aggressively enforce the implementation of these standards?

Response. f confirmed, I will vigorously enforce all Federal regulatory requirements.

Question 8. Under your leadership at Ohio EPA, the Ohio EPA Small Business Assistance Office developed a written confidentiality policy that states: "Recognizing the importance of helping businesses feel comfortable about using the services of the SBAO, written confidentiality procedures for the office were finalized in 1996. The SBAO's internal confidentiality procedures means that information provided to the office is not turned over to agency inspectors or enforcement staff:" As Assistant Administrator, would you advocate development of a similar policy at the U.S. EPA?

Response. EPA offers many resources—which small businesses may use anonymously—to assist small businesses comply with environmental laws. For example, EPA's existing Small Business Ombudsman (SBO) is a well-known resource in the small business community which small businesses may access anonymously. EPA's SBO administers a free hotline answering fast-specific compliance questions; callers may remain anonymous at their own discretion. EPA's Small Business Policy also allows a small business to obtain anonymous government-sponsored compliance assistance, or confidential compliance assistance from an independent State compliance assistance provider, and still get penalty reductions or even complete waivers if the small business discloses and corrects their violations. I would want to consult with the Agency and review the success of these programs before advocating any specific changes to the program.

Question 9. As director of Ohio EPA you supported Ohio's audit privilege law, which allows polluters to decide if certain information about pollution can be kept from Ohio EPA; it also gives companies immunity for certain violations As Assistant Administrator, would you advocate development of a similar law at the Federal level?

Response. I support incentives that encourage companies to evaluate their own compliance and take necessary actions to return to compliance if problems are identified. I also understand the Federal Government's responsibility to ensure that delegated State programs have the necessary authorities to enforce those delegated programs. I do not believe that Federal audit legislation is necessary. Most States are already operating under an audit policy or law that is consistent with the minimum requirements for authorization of Federal environmental programs.

Question 10. As Assistant Administrator, how would you handle enforcement issues that arise in States that have immunity and/or audit privilege? If a State grants immunity to a violator, what criteria would you use to decide whether US EPA should take an enforcement action against the violator?

Response. Under current Federal law, States must have adequate authority to enforce the requirements of any Federal program they are authorized to administer. EPA retains its independent authority to enforce environmental protection law in States with audit privilege and immunity laws. If a State grants immunity to a violator, I would support EPA taking into consideration whether that action is consistent with the program requirement as authorized under Federal law. I would use the criteria that are provided in current EPA regulations, which specify' the requirements for compliance evaluations and enforcement authority for specific programs, for example, 40 C.F.R. 271.15–16 (RCRA). If these criteria are not met, EPA has

the authority, and I would certainly consider, taking an. independent enforcement action against the violator. In all instances, I would ensure that EPA continues to work closely with any State where this issue arises, to reach a workable solution.

Question 11. Last October, U.S. Administrative Law Judge Phalen found that you and other Ohio EPA officials had improperly removed Paul Jayko from his job after Mr. Jayko undertook an investigation into a leukemia cancer cluster in Marion, Ohio. In his ruling, Judge Phalen stated that OEPA issued public statements that "constitute a misrepresentation of possible threats to human health. . ." and that "It is clear . . . that OEPA held him {Jayko} in. particular disfavor for reasons that may only be attributed to his vigorous prosecution of the Marion Investigation . . . while OEPA management wanted to do something graduated and far less effective." Do you agree with these findings? How would you handle similar situations as OECA Assistant Administrator?

Response. I do not agree with the Judge's statement that OEPA misrepresented possible threats to human health. . I believe that OEPA's investigation into the leukemia cluster, under the direction of the Ohio Department of Health (ODH), was appropriately carried out. Governor Voinovich placed the Ohio Department of Health in charge of a multi-agency task force to investigate the causes of higher leukemia rates among students graduating from Marion High School. Based on the recommendations of the District Officer Chief Ed Hannett, Paul Steers, Assistant Chief of the OEPA Northwest District Office, was placed in charge of Ohio EPA's tam of scientists and investigators who worked with the Department of Health. Decisions on the scope and steps of the investigation were discussed and made at regular joint agency team meetings. The Department of Health made the recommendation and the team concurred with the decision to focus the investigation on chemicals suspected of causing leukemia (i.e. radiation and various organic chemicals).

It is my understanding that last week the Ohio Department of Health concluded their 4-year study of leukemia in Marion and did not find a scientific link between the contamination at the school football field and the occurrence of leukemia in the students. Direct or second-hand exposure to tobacco smoke was the most common factor linking the leukemia victims.

Regarding the findings pertaining to Mr. Jayko, if presented with similar facts as the OECA Assistant Administrator I would act similarly. In other words, I would request a fact-based inquiry, consult legal counsel regarding external factors (such as the whistleblower protection provisions), follow appropriate personnel disciplinary procedures, and weigh the recommended course of action against the particular facts of the case, before making a final decision.

NOMINATIONS OF THE 107th CONGRESS, FIRST SESSION

THURSDAY, SEPTEMBER 21, 2001

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

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

CONSIDERATION OF THE NOMINATIONS OF BRIG. GEN. EDWIN J. ARNOLD, BRIG. GEN. CARL A. STROCK, NILS J. DIAZ, MARY E. PETERS, MICHAEL PARKER, PATRICK HAYES JOHNSON, CRAIG MANSON, AND MARIANNE LAMONT HORINKO

Present: Senators Jeffords, Cochran and Carper.

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

Senator JEFFORDS. The committee will come to order.

I want to welcome our witnesses this morning.

This is an important day as we move forward in this unusual time. This is the first time the committee has met since the attack on our country last week, an attack that has changed us all. In these days ahead, we are going to have to stand together to show the strength of this country and our people.

We are having this hearing today to get on with the work of the committee, the Congress and the country. I want each of you to know that your commitment to public service which is being demonstrated here today is admirable.

I would like to let everyone know how we are going to proceed this morning and then I will recognize my fellow committee members for opening statements. We have two panels. The first panel will come to the table, each nominee will be recognized for 5 minutes to give their statement and your full written statement will be included in the record.

Before you begin, if you could recognize those members of your family that are with us today, I would have appreciate it. Do you have members of your family here with you today? Please introduce them.

Mr. JOHNSON. My name is Pete Johnson. I'm from Mississippi. I am the nominee for the Federal Co-Chairman of the Delta Regional Authority. I have with me my wife of 31 years, Margaret; I have my daughter, Mary Margaret; and my youngest daughter,

Ann Clark, Ann Clark Downing who was married 3 weeks ago. Three weeks ago, Mary Margaret announced she would be getting married as well, so we are really excited. There is a lot going on in our family.

Thank you.

General ARNOLD. Mr. Chairman, I don't have any family members here, though I know my wife, Margaret, would love to be here. She is currently in Mississippi. My oldest daughter is home taking care of my granddaughter who was born a month ago, so they are not with us today.

General STROCK. I am Brigadier General Carl Strock, Director of Military Programs of the Corps of Engineers. I do not have any family here with me except for my brother in arms, Ed Arnold. My wife is unpacking boxes as we have recently moved to the D.C. area.

Mr. DIAZ. Mr. Chairman, I am by myself. My wife decided to stay in Florida to take care of the kids and send me in harms way on an airplane on Wednesday night so I could do my duty. I thank you for the opportunity.

Senator JEFFORDS. I would recognize my fellow colleague, Senator Cochran.

STATEMENT OF HON. THAD COCHRAN, U.S. SENATOR FROM THE STATE OF MISSISSIPPI

Senator COCHRAN. I am glad to be here this morning to introduce to the committee two of my good friends who have been nominated for important positions in the Administration. Pete Jackson is in this first panel and the other nominee, Mike Parker, who will be in the second panel.

Pete has been nominated to be the Federal Co-Chair of the Delta Regional Authority. As you recall, this was an Agency established by Congress 2 years ago when President Clinton signed the legislation. It provides an opportunity for economic development in the lower Mississippi River Valley. The Delta region has substantial problems of poverty and infrastructure requirements that this Authority is charged with addressing.

I am delighted to let the committee know of my high regard for Pete Johnson. I have known him a long time, he is a close personal friend. He is very well qualified, in my opinion, for this important position. He will be working with the Governors of all of the States in the region and with local development districts, and other elected officials at the local level throughout that region in order to identify ways to move this region forward economically.

It is a big challenge but he has the background, experience, the intellectual capacity and the determination to make this succeed that will ensure that this Authority will be a very important contributor to the economic growth and development of that region.

Pete has served in local responsibilities at the Chamber of Commerce in his hometown of Clarksdale in Coahoma County; he has been head of the Industrial Foundation; he was also named as chairman of the Mississippi Marketing Council. He has served our State in an elected capacity winning a statewide election as State Auditor. During that period of time, he served with distinction, he reflected credit on all of his friends who supported his election and

he has been someone has been looked to for leadership at the State and local level for sometime in our State. He is a lawyer. He has had experience as a banker.

With that and his public experience, I think he is equipped to do a wonderful job in this new and challenging office.

Let me mention also my high regard for Mike Parker who is nominated by the President to be Assistant Secretary of the Army for Civil Works.

Mike is a former Congressman, served 10 years in the House of Representatives. He is also a good friend of mine and I have known him for a long time. I think he would be a fine choice in this job. He has the practical experience of a landowner, a farmer, a businessman who understands the practicality of government responsibilities in this area. He is a conservationist. He is someone who has served on committees with responsibilities for oversight of the activities of the Corps of Engineers and other Federal agencies with whom he will be working closely in this capacity.

He is a person who has a lot of determination to succeed, to do a good job in whatever he is asked to do. He is well educated. I just think he would be one of the best in this job that I can think of in my history of serving in the Congress.

Without qualification or hesitation, I recommend him highly to the committee and hope the committee will look with favor on his nomination and be able to report him to the Senate for confirmation at an early date.

Senator JEFFORDS. Thank you. I want to thank you all.

We will interrupt temporarily for the two votes. As soon as I get back, we will go right at it. Sorry for this interruption.

[Recess.]

Senator JEFFORDS. We will go through the formal process now of listening to you. After each of you has given your statement, I will ask you two obligatory questions, then members will be recognized to ask questions. When questions have been completed, we will call the second panel to the table.

There may be members who are unable to be here today who may want to submit questions to you, to answer for the record. I would like to have all questions from the members by the end of the day so that each of you can answer them as soon as possible and we can move things along as expeditiously as possible.

The committee ha scheduled a business meeting for next Tuesday. If we have received your answers by then, we will consider your nomination at that time.

Before us today, we have Brigadier General Edwin J. Arnold to be a member and President of the Mississippi River Commission; Nils J. Diaz to be a member of the Nuclear Regulatory Commission; Patrick Hayes Johnson to be Federal Co-Chairperson of the Delta Regional Authority; and Brigadier General Carl A. Strock to be a member of the Mississippi River Commission.

I will start first with General Arnold.

STATEMENT OF BRIGADIER GENERAL EDWIN J. ARNOLD, NOMINATED TO BE A MEMBER AND PRESIDENT OF THE MISSISSIPPI RIVER COMMISSION

General ARNOLD. I have a statement I would like to submit for the record and I would like to make some brief remarks.

Senator JEFFORDS. Your statement will be accepted as part of the record. Please proceed.

General ARNOLD. Let me begin by saying I am extremely honored to be here and I would like to thank the committee for conducting these hearings in these very troublesome times.

I would also like to state that I am extremely proud to be an American and doubly proud to be able to wear this uniform in the service of our country. I have worn the uniform for 29½ years and I feel the training I have received in the military has made me very qualified not only to lead but to also analyze situations and to act decisively and confidently in times of emergency.

I have learned through my military experience how to keep focused, how to review problems, seek input, build consensus, but most importantly how to serve the people of this great nation. These traits that I have learned in my military training have well prepared me to assume division command in the U.S. Army Corps of Engineers, first, in 1998 in the Southwestern Division in Dallas, Texas serving the people of Texas, Oklahoma, Arkansas and Louisiana.

In 2000, a year ago, I moved over to the Mississippi Valley Division in Vicksburg, Mississippi where my responsibilities require me to watch over the Mississippi River and the entire valley. I will tell you in that year I have learned quite a bit about the Mississippi River, but more importantly I have learned there is much more to be learned. It is an extremely challenging environment that the Mississippi River Commission has been charged to work in and to try to understand.

Some of the significant challenges we face are that the Mississippi River has been declared both a nationally significant ecosystem and a nationally significant navigation system. Those two designations can very often be competing.

Our challenge and what we believe is our mission is how to make those two aspects work in harmony so that we can preserve them both, not only for ourselves but for the people who follow us. We are not necessarily talking about balance or compromise in that harmony but developing synergy so that we have a win-win situation.

Trying to do that development is especially critical now as we look at the economic stability of the nation and the value of waterborne transportation to that stability through the center part of the country. I believe the Mississippi River Commission is well suited to help us achieve that balance. The Commission conducts public meetings twice annually at major cities along the river where people come to tell us what they believe the needs of the valley are. Seeking that public input and getting stakeholders to the table are extremely important as we manage this important resource for the nation. It helps develop those win-win alternatives. If I am confirmed as the President of the Mississippi River Commission, I will

pursue those goals and work diligently to keep that resource viable for the nation.

Once again, thank you for this opportunity to speak with you today and I would be glad to answer any of your questions at this time.

Senator JEFFORDS. Thank you.

Mr. Diaz?

STATEMENT OF NILS J. DIAZ, NOMINATED TO BE A MEMBER OF THE NUCLEAR REGULATORY COMMISSION

Mr. DIAZ. Thank you, Mr. Chairman.

I too appreciate the opportunity to appear before you at this difficult and taxing time for our nation. Continuing government functions is one of the many ways of showing the strength of America.

Ten days ago seems like a long time. I provided a written statement summarizing my qualifications as well as a few pertinent views. I would respectfully request that it be entered into the record.

Senator JEFFORDS. It will be done.

Mr. DIAZ. Mr. Chairman, I believe I have the experience and I am committed to fulfill the responsibilities of the office of Commissioner of the United States Nuclear Regulatory Commission. I am prepared to face both the existing and the new challenges with the requisite accountability and transparency. There are many important issues with which the Commission will be dealing in the coming months. In particular, although I have not been a member of the Commission since June 30, I recognize that the recent terrorist attacks on our country affect all of us and affect all we do. I am certain the Commission is and will be giving its utmost attention to assessing implications for the Commission's programs. I believe the safeguarding of nuclear facilities and material is of vital concern to the nation and is a key component of the Agency's mission to protect public health and safety and the common defense and security.

I stand ready to serve the nation and if confirmed, I can assure you that I will be devoted to addressing the complex and emerging issues before the Commission. I will be available, as I have always been, to members of the committee.

Again, thank you. I would be pleased to answer any questions you may have for me.

Senator JEFFORDS. Mr. Johnson?

STATEMENT OF PATRICK HAYES JOHNSON, NOMINATED TO BE FEDERAL COCHAIRPERSON, DELTA REGIONAL AUTHORITY

Mr. JOHNSON. Thank you, Mr. Chairman.

I have some prepared remarks as well that I would like to submit for the record and I would like to make some other comments if I may.

Senator JEFFORDS. They will be accepted.

Mr. JOHNSON. Mr. Chairman and members of the committee, I want to join with my fellow panelists in saying how truly proud I am to be an American on this day and of our President and this Congress as we meet the challenges ahead of us as a nation and a people.

I appear before you, Mr. Chairman, and this committee, as the nominee of the President to be the Federal Co-Chairman of the Delta Regional Authority, a newly created Agency which is charged with jump starting the economy of the Mississippi Delta region. There are some eight States involved in our region. I have spent almost three decades in that region participating in business activities, practicing law, as a part of State government and as a part of the USDA Farm and Home Administration.

I know the region very well. I know its people and I know its challenges. This indeed will be the challenge of a lifetime. Too, it is the opportunity of a lifetime to impact the lives of so many for so many generations to come. I welcome that opportunity. I believe that I am up to the occasion and I hope, should the committee see fit to recommend me and should the Senate confirm me, that I will live up to the expectations of those who have encouraged my nomination and that of the President.

Thank you.

Senator JEFFORDS. Thank you, Mr. Johnson.

General Strock?

STATEMENT OF BRIGADIER GENERAL CARL A. STROCK, NOMINATED TO BE A MEMBER OF THE MISSISSIPPI RIVER COMMISSION

General STROCK. Mr. Chairman, I too am deeply honored to appear before the committee this morning. As a soldier, engineer and lifelong public servant, I am truly excited about this opportunity to serve the nation in this capacity.

I have also prepared a written statement that lays out my understanding of the Mississippi River Commission and its mission, the significance of the Commission to the people of the Valley and the nation and also my role in that Commission. It also lays out my qualifications. With your permission, I will submit that for the record and confine my remarks to my qualifications.

Before I begin, I would like to take this opportunity to express my appreciation on behalf of the Army and the other Services for the support that this Congress has given to the nation's armed forces. In this time, as we react and respond to this attack on our nation, we are truly going to need your assistance. The assistance is not only the legislative assistance you have offered, but the moral support you have demonstrated through your personal presence at the site of the Pentagon incident as well as in New York City.

I can tell you firsthand that the responders out there deeply appreciate your being there and they know the significance of your presence. Thank you very much for that, sir.

As for my qualifications, in terms of education, professional qualifications, experience and commitment to public service, I have everything necessary for this important position. I have Bachelor's and Master's degrees in Civil Engineering; I am a registered professional engineer and a member of numerous engineering societies.

It is my experience in the Army and the Corps of Engineers that has prepared me for this position. I have been in the Army for 30 years and during that time I have had extensive experience in com-

bat engineer units but I have also had the opportunity to serve on three different occasions for the Army Corps of Engineers in its domestic support. These assignments include from 1980–83 in the Mobile District where I was the Project Engineer on the Tennessee Tombigbee Waterway and projects associated with that project in Mississippi and Alabama.

It is my service as a senior officer in the Corps of Engineers that has benefited me most and I think will benefit the Commission. In the last 4 years, I have served as Division Commander both in the Pacific Ocean Division with responsibilities for the Far East and the States of Hawaii and Alaska as well as the Northwestern Division in Portland, Oregon with responsibility for engineer support in 14 States from the Mississippi River to the Pacific Ocean.

In that capacity, I have developed relationships with leaders and agencies at the local, State and national level, nongovernmental organizations and many private citizens. I have a very deep knowledge of the authorities and legislative processes that guide our work and I believe these relationships and knowledge will enable me to really contribute in a balanced way to resolving the complex problems of the people, the nation and the region.

It is my experience in the Northwestern Division where I had responsibility for operation and maintenance of the Missouri River Project that will best help here. The Missouri River contributes at times up to 70 percent of the water in the Mississippi River between St. Louis and Cairo, so the interaction between the two rivers is very important.

If confirmed for this position, I look forward to playing a key role in enhancing the economic vitality and the environmental quality of this great river and its tributaries.

Thank you and I am prepared to answer any questions you may have.

Senator JEFFORDS. Thank you very much. I want to thank all of you for your fine statements and to commend you all. This past week has been a very memorable and very disturbing week. I was never more proud of the United States than I was working with the Army Corps and all of the people involved from the other emergency agencies in making sure we faced our difficulties as best we could. I'm proud to say we have come a long way in this past week. I want to thank you all and all of your men for exemplary service.

Mr. Diaz, the nuclear regulatory area is of great concern to all of us as to the security and safety of our lives. In Vermont, we have our own nuclear plant which I was involved with when it started up and I know a number of people have raised deep concerns about the safety and what would happen and how are we as far as being able to protect those plants. I would appreciate any comments you might have.

Mr. DIAZ. I think the Commission has always been concerned about the security in the plants. This is not a new issue for us. It is an issue we have been dealing with for many years and I'm sure we are going to be dealing with it in the years to come. I believe that we have in the past, when I was in the Commission, upgraded the security of local power plants to make it more and more difficult for any terrorist or intruder to cause damage. That doesn't mean the systems are perfect, and I believe the present cir-

cumstances would require the Commission to take a completely new look at what these security requirements are and how can we work better with our licensees and with our government and the designated agencies to ensure that the plants are at the appropriate level.

I do believe we have plans in place that actually address this. I know in the last week all nuclear power plants in the country have been put on maximum alert. We have a series of plans to deal with emergencies and incident response coordination for emergencies that I believe provide a very good backbone for what we need to do. I'm sure those things will be improved and I can assure you if I am confirmed, I will make this issue one of my top priorities.

Senator JEFFORDS. I would like comments from all of you on any concerns you have after this past week as to observations of available manpower, training and whatever else. Do you have anything of note that you would like to report to this committee?

General ARNOLD. As you know, the Corps of Engineers operates many very important facilities across the nation. We have quite a few inside the Mississippi Valley that are critical to us. After the events of the past week, we have done security reviews of those to make sure they are safe. Some were very difficult for us. You can't just block them off from the public because as a lock and dam, it may have a Federal highway that runs across the top of it or a State highway. We believe we have taken prudent security measures without denying those facilities the access the public needs as we pass through them.

We will continue to analyze the facilities in the Valley that we are charged to maintain and preserve to make sure we are doing the right things so that the benefits derived from those facilities will not be denied to the nation.

General STROCK. In a similar fashion, at this very moment, we are convening a forum of construction and engineering industry to talk about the implications of this disaster, not only on our military and civil works missions but on our construction and engineering profession throughout the United States. We are trying to assess where we go from here.

On the military side, every one of our installations has done a very detailed threat assessment and vulnerability analysis and we're putting into place actions and structures that will protect us better in the future. We will certainly be providing the details of the requirements. This will come as a resource requirement for the military forces and we will be providing that to Congress very shortly.

Senator JEFFORDS. For Generals Arnold and Strock, the Mississippi River Commission has been around a long time. Much has changed in that time including our focus on balancing navigation and flood control needs with environmental protection and restoration. How does the Commission strike that delicate balance?

General ARNOLD. As I mentioned earlier, one of the ways we try to do that is constantly seeking public input and very open discussion and discourse with various stakeholders. As we look at challenges along the river, we need to develop ways, as you try to optimize environmental effects or navigation effects, that you don't do damage to one of the other aspects of the river. There are many

people in the Valley and across the nation at large who have expertise and knowledge about the different aspects for environmental restoration, navigation and/or flood protection. The Commission facilitates the discussion in bringing that expertise to the table in the process of the public meetings. We do those semiannually in a very, very open process right in the river itself, which is a great natural workshop. That is what the Commission brings to the table, setting the forum for public discourse where we can get competing interests talking, take advantage of their expertise and then develop the win-win solutions to the problems we face.

General STROCK. The Mississippi River Commission when it was founded in 1879 was really focused on development of the Mississippi River as a transportation corridor. Since that time our mission has evolved. The Commission has been called upon to readjust priorities. With the great floods in the early part of the 20th century, the Commission was called upon to institute flood control. We did that very successfully.

Currently, as I see it, the nation is calling on us to have more involvement in environmental quality and to integrate that more into how we operate this river. It's an evolutionary process and I feel very comfortable with how it's working. As an example, on a recent inspection tour of the river, we hosted all the EPA regional directors who have any responsibility in the area aboard the Motor Vessel Mississippi to discuss how we will work with the Environmental Protection Agency as we put our engineering works into the river. I am very confident we are addressing the evolving needs of the nation in the Mississippi Valley in a very effective way.

Senator JEFFORDS. Now I am going to ask you all the obligatory questions. First, are you willing at the request of any duly constituted committee of the Congress to appear in front of it as a witness?

General ARNOLD. Yes.

Mr. DIAZ. Yes.

Mr. JOHNSON. Yes.

General STROCK. Yes.

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

General ARNOLD. No.

Mr. DIAZ. No.

Mr. JOHNSON. No.

General STROCK. No.

Senator JEFFORDS. We have another panel, but thank you very much.

[Recess.]

Senator JEFFORDS. The committee will come to order.

I want to welcome you all before the committee. I believe you were probably here through the first part of our hearing, so you understand what we will be doing.

First of all, I want to welcome you before the committee. The positions to which you desire to ascend are very important ones and thus we take our job very seriously to make sure that you have an opportunity to let us know how well you can perform. We want to

help make sure you understand we are available to try and help you in any way we can.

Again, if you have members of your family here whose presence you would like to announce, please do.

Mr. Manson?

Mr. MANSON. Mr. Chairman, my wife Penny is back in Sacramento today and was unable to be here. She is with our dog and our two cats.

Ms. HORINKO. Mr. Chairman, I am especially proud to introduce my husband, Tim Horinko; my two children, Catlin and Hunter; my parents, John and Joanna Mascini; and my in-laws, Larry and Terry Horinko. I further have many friends and colleagues here I would also like to recognize and thank for their support.

Senator JEFFORDS. Fine.

Mr. Parker?

Mr. PARKER. Mr. Chairman, I have my wife, Rosemary, of 31 years here.

Senator JEFFORDS. Pleased to meet you.

Ms. Peters?

Ms. PETERS. Mr. Chairman, due to recent events, I did not ask my family to travel here from Arizona for today's hearing as important as that hearing is. Please know, while they are not here with me in person, they certainly are in my heart and I am very blessed to have their love and support as I am considered for this position.

Senator JEFFORDS. I am sure of that.

I want to welcome you all. It is a pleasure to have you with us. We want to allow you to make your statements and we will then ask a few questions. We will proceed as before. Mr. Manson?

STATEMENT OF HAROLD CRAIG MANSON, NOMINATED TO BE ASSISTANT SECRETARY FOR FISH, WILDLIFE, AND PARKS, DEPARTMENT OF THE INTERIOR

Mr. MANSON. Mr. Chairman, I am honored and humbled to appear before you as the President's nominee to be Assistant Secretary of the Interior for Fish, Wildlife and Parks. I am deeply grateful for the confidence shown in me by the President and Secretary Norton. I also want to say a word of thanks to Secretary of Agriculture, Ann Venneman, who is a colleague from Sacramento and who has supported and encouraged me in this process.

I appreciate that the committee has taken the time to hold this hearing in this time of great national crisis. You may know that the Department of Interior's personnel, including the U.S. Park Police and law enforcement elements of the U.S. Fish and Wildlife Service have played roles in responding to the current crisis.

Most regrettably a U.S. Fish and Wildlife Service employee, Richard Guadagno, lost his life in the crash of the jet in Pennsylvania. Mr. Guadagno was a native of New Jersey, a refuge manager of the Humboldt Bay National Wildlife Refuge in my home State of California. He was highly regarded by all who knew him and he embodied the very best attributes of the talented people in the U.S. Fish and Wildlife Service and the National Park Service. I ask that everyone's prayers be with his family as they are with the families of all who have been affected by this great tragedy.

Senator JEFFORDS. We will take a moment to provide everyone an opportunity to have some thoughts. Let me express my special thanks from Members of Congress and all of us who know that if not for the heroic efforts to bring that plane down, we might all have been affected more dramatically.

Mr. MANSON. I want to tell you that as a proud American, I am a descendant of Africans, Europeans and Native Americans. I was born in Missouri and have resided in the western part of the United States for most of my life.

I received my undergraduate education at the United States Air Force Academy and following graduation there, I served 2 years as a Minuteman Missile launch officer. The Air Force then sent me to law school at the University of the Pacific, McGeorge School of Law in Sacramento. After that, I served in various Air Force Judge Advocate positions in the United States and overseas, including a tour in the Department of Law at the United States Air Force Academy. During that tour, I was assigned with other faculty members to report to the Secretary of the Air Force concerning the state of Air Force compliance with environmental laws on its overseas bases.

After I left active duty in 1989, I practiced with a major Sacramento law firm and then I was appointed by California Governor Pete Wilson to the then newly created position of General Counsel of the California Department of Fish and Game. I held that position for 5 years after which the Governor appointed me to be a judge. I've served on the Superior Court in Sacramento since 1998. I have also been a faculty member of the McGeorge School of Law since 1992 and I have continued my military service in the Air National Guard and I hold the current rank of Colonel.

Apart from the unmitigated enthusiasm I have for what I think is the best job in Washington, I offer my experience in natural resources law and policy, an ability to build consensus across diverse interest groups and a judicial approach to decisionmaking. During my tenure with California's Department of Fish and Game, we conserved hundreds of thousands of acres of wildlife habitat in an innovative multispecies planning program in southern California's Coastal Sage Scrub Habitat. That Habitat is the home to hundreds of potentially at risk plant and animal species. It stretches across the five counties in California where growth and development pressures are the most intense.

Our natural community's conservation program had bipartisan support as well as the support of landowners, resource users, local governments and environmental groups and also had the assistance of the U.S. Fish and Wildlife Service.

As to the largest plans under that program, the San Diego Multiple Species Conservation Plan, the Los Angeles Times said on March 19, 1997, "A committee composed of local businesses, including Bank of America and Greater San Diego Chamber of Commerce, concluded the cost to the public is modest given the benefits."

In addition to the large scale programs during my tenure at California Fish and Game, we pioneered habitat conservation plans under our State Endangered Species Act. At one point during the 1990's, we had more habitat conservation plans under State law

than existed in the entire rest of the country under Federal law. These plans, based upon the scientific judgments of our biologists, involved the cooperation of landowners and again, hundreds of thousands of acres of habitat were conserved while allowing economic activities to proceed.

I have spent most of my adult life in public service and during that time I've had no prouder moment than when Governor Pete Wilson in 1997 signed amendments to the California Endangered Species Act. I had been entrusted with the Wilson Administration's negotiating portfolio on that and we worked for 4 years to build a consensus among environmental groups, landowners, local governments and agricultural interests. We listened to everybody and eventually our legislation conceived by a Republican administration was introduced by three Democratic State legislators and won bipartisan support.

I mention my experiences in California to illustrate my commitment to work through environmental and natural resource public policy issues on a consensus basis wherever possible. In that regard, I am completely committed to what Secretary Norton describes as the four Cs, communication, consultation and cooperation, all in the service of conservation. I strongly support Secretary Norton's philosophy that the Federal Government must be a partner with State and local governments, individuals and non-governmental organizations.

If I am confirmed, I will apply my judicial experience to the issues involving natural resources and natural parks. Every interested party will get a fair hearing—environmental groups, landowners, farmers, ranchers, sportsmen, State and local government. Second, any decisions or recommendations I give to the Secretary will be based on the weight of the evidence.

One of the aspects I most look forward to if I am confirmed is the opportunity to work with the talented and dedicated employees of the U.S. Fish and Wildlife Service and the National Park Service. I have great respect for these professionals who ensure the preservation of our treasures every day.

Mr. Chairman, I love our great country and the physical resources with which we have been blessed. If I am confirmed, I will do my best to ensure these resources remain a perpetual resource of enjoyment for the American people.

Thank you and I will be pleased to answer any questions.

Senator JEFFORDS. Thank you, Mr. Manson. I will leave the questions until last.

Ms. Horinko, please proceed.

STATEMENT OF MARIANNE LAMONT HORINKO, NOMINATED TO BE ASSISTANT ADMINISTRATOR, OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE, ENVIRONMENTAL PROTECTION AGENCY

Ms. HORINKO. Thank you for the privilege of coming before you and the distinguished members of the committee today. I am honored that President Bush nominated me to be Assistant Administrator for the Office of Solid Waste and Emergency Response at the U.S. Environmental Protection Agency. I believe that all the public and private sector positions that I have been fortunate enough to

hold in the past have set the stage for this opportunity to serve our country. If confirmed, you have my word that I will bring thoughtful deliberation, integrity and enthusiasm to the challenges that loom ahead.

I am particularly attracted to this opportunity to serve EPA because thanks to my father, I probably have some groundwater running in my veins. My dad is a geologist who worked for many years as a university professor and a career civil servant at the National Science Foundation. He taught me to love science and by example showed me that public service was not merely a job but a higher calling. My mother provided strong support and reinforcement of our love of science and curiosity about our natural environment. Their great respect for the natural treasures of our lands impressed me deeply and it is because of their early influence that I chose the protection of the environment as my calling.

In my statement today, I would like to share some of the key themes and approaches I would bring to this position if confirmed. They include innovation, information sharing and partnership. One of my principal observations is that there has been a sea change in Federal attitudes and approaches to managing waste. The old command and control method has been supplemented in some measure by partnerships and consensus building as the means of cooperative problemsolving.

An example of that innovation is the emerging linkage between environmental cleanup and community revitalization. The brownfields story is all about a new way of doing the government's business. Like Governor Whitman and President Bush, I wholeheartedly support passage of brownfields legislation during this session of Congress. With a strong brownfields bill and working in tandem with our State and local brownfields efforts, there is no limit to what we can accomplish.

Significant challenges face the EPA work force. Much as been made about the baby boomer retirement outflow and the need for a newly energized and well equipped work force to address the challenges of the future.

I think there is also great opportunity on the information side of the equation. More emphasis needs to be placed on ensuring that all stakeholders have access to clear and understandable information about the health and environmental risks they face. Policymaking cannot and should not exist in a vacuum. I believe the people who create Federal regulations should be required to meet face to face with the citizens whose lives they affect. What better way to experience firsthand how the policies we make here in Washington can affect the comfort and quality of life in our towns and cities across the United States.

If confirmed, I plan to work closely with our State and tribal partners to ensure that all cleanups are both protective of human health and the environment as well as implemented with an eye toward community revitalization.

Finally, given the tragic events of September 11, I feel I must take a moment to talk about a key role for the Office for Assistant Administrator as EPA's lead on counter terrorism. I spent virtually all of that fateful day with Governor Whitman and the outstanding staff at the Emergency Operations Center on Pennsylvania Avenue.

Amid an ocean of chaos, we observed with wonder and awe an island of calm, steady professionals who make up EPA's emergency response team. These individuals are not only technically and substantively competent but have pulled together an organized approach to dealing with the horror of chemical, biological or nuclear attacks on our citizens. When terror struck on Tuesday, they sprung into action and made certain that the public health and safety of our people were protected and ensured. They are truly the unsung heroes of our Agency. If confirmed, I pledge to give our counter terrorism activities the highest priority and to do all that I can to make their jobs easier.

I realize that I've not even scraped the surface of all the issues and challenges that await me but I can assure this committee that if confirmed, I will tackle each one with enthusiasm and equanimity. I will work hard to meet these challenges in a fair, balanced, open and honorable fashion. I look forward to working closely with the Congress and especially the members of this committee on the stewardship of our environment.

Thank you for considering me for this position.

Senator JEFFORDS. Thank you for an excellent statement.

Mike, I guess you came to the House the hear I left.

Mr. PARKER. I took over when you left.

[Laughter.]

Senator JEFFORDS. Pleased to have you with us. Please proceed.

STATEMENT OF PAUL MICHAEL PARKER, NOMINATED TO BE ASSISTANT SECRETARY OF THE ARMY FOR CIVIL WORKS, DEPARTMENT OF DEFENSE

Mr. PARKER. It is a great honor and privilege to appear before this committee as the nominee to be the Assistant Secretary of the Army for Civil Works. I am very grateful to the President, the Secretary of Defense and the Secretary of the Army for the trust and confidence they have placed in me.

If confirmed, I pledge that I will work as hard as I possibly can to serve the soldiers, civilians and families that make the United States Army, the most powerful and professional army in the world.

I especially want to also publicly thank Senator Cochran for his kind words in introducing me earlier.

Senator JEFFORDS. I know Senator Lott was hoping to be here but he asked me to express his regrets. He was unable to be here.

Mr. PARKER. Thank you.

The Corps of Engineers has a proud history stretching back to the beginning of the country. Over the years, the Corps has evolved to emphasize its major civil works responsibilities of today, conservation and development of the nation's water resources which include flood control, navigation, shore protection and environmental restoration. All of these tasks are important. All are complex and demanding and all require significant resources. With competing demands for limited dollars, fulfilling these requirements becomes more and more challenging. However, I am committed that should I be confirmed, environmental considerations will remain a key factor in determining our civil works stance for the nation.

The dedicated and able staff of military and civilian employees who make up the Corps of Engineers has risen to every challenge in the past and I am sure will continue to carry out their responsibilities to the people of this country in these vital areas.

In the last week, you can see the value of the Corps to this nation and the dedication of its people as we recover from the recent tragedies at the World Trade Center and at the Pentagon. The Corps is heavily involved in determining structural integrity and debris management in both locations and continues to serve as the nation's premiere engineers during this time of crisis. Should I be confirmed, I will be proud to work alongside these ultimate professionals.

In the 10-years during which I had the honor of representing the Fourth District of Mississippi in the U.S. House of Representatives, I applied my commitment to finding practical, realistic solutions to problems and issues of importance to my constituents. Having served on various House committees which deal with a range of issues I can expect to face as Assistant Secretary, I understand both the civil works and the military program aspects of the Corps of Engineers and appreciate the challenges facing the Corps. Should I be confirmed, I look forward to serving with the Army and the Corps during this landmark era of change and transformation. I look forward to serving with the Army team of active, reserve and National Guard soldiers who distinguish themselves every day by their dedication and hard work. I am prepared to undertake the important responsibilities of this post and am enthusiastic about the opportunities it presents to me to continue to serve this great country.

I am committed to working closely with and consulting with the various stakeholders in the ongoing Corps projects, including the Members of Congress who represent the American people. If confirmed, I look forward to a strong working relationship with you and this committee.

I would be pleased to answer any questions at the appropriate time.

Senator JEFFORDS. Thank you, Mr. Parker.

Ms. Peters, Senator McCain wanted to be here and he has given me glowing remarks on your capacity, so that will be made a part of the record, but he was disappointed he could not be here. Please proceed.

STATEMENT OF MARY E. PETERS, NOMINATED TO BE ADMINISTRATOR OF THE FEDERAL HIGHWAY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

Ms. PETERS. Mr. Chairman, Senator Carper and members of the committee, I do very much appreciate the opportunity to appear before you today as you consider my nomination for Administrator of the Federal Highway Administration. I do recognize the many competing demands on your time at this time in our country and I appreciate that you have carved out this time today.

I too am honored to have been nominated by President Bush and with the concurrence of Secretary Mineta, who I think has demonstrated in this past week his tremendous capacity as Secretary of the Department of Transportation.

Should you choose to confirm me, I look forward to working with this committee, with each of you, with your very capable staffs and many other stakeholders to administer the Federal Highway Program.

Transportation affects everyone in our country. Each one, every man, every woman, every child has the right to expect a safe, accessible, affordable and reliable transportation system. Transportation that is responsive to the citizens and the businesses we serve is vitally important to our nation's economic health, quality of life and the safety and security of every American. The tragedy of September 11 graphically demonstrated this very important point.

There are a number of factors to be considered in ensuring that transportation meets these requirements. To respond to these factors, if I am confirmed, I would immediately focus on several priority areas. Among these are highway safety and security, environmental stewardship and streamlining processes, the stewardship of public funds to ensure that every dollar that is entrusted to the Federal Highway Administration is used appropriately in the diligent performance of our duties, relieving congestion and bottlenecks, and finally, the very important reauthorization of the Transportation Act.

I have spent more than 15 years in the transportation field. I have had the opportunity to be involved in a number of local, regional and national transportation issues as State Director of Transportation in Arizona. In that capacity, I had responsibility for highway, transit, rail and aviation transportation functions as well as motor carrier programs, driver licensing, vehicle registration, tax collection and tax distribution.

This experience afforded me the opportunity to recognize the importance of dealing systemically and inclusively with these issues, remaining mindful of the integration of the various modal functions in arriving at solutions that meet transportation demand. I bring this experience to the position for which I have been nominated, as well as knowledge of the technical aspects of planning, building, operating and maintaining transportation systems, the use of technology in arriving at solutions, and a background in the finance and economics of those systems.

Recognizing the many demands on your time, I will make my statement very short today. I have submitted for the record a longer statement and again, I sincerely appreciate the opportunity you have given me to appear before you today and would be pleased to answer questions at the appropriate time.

Senator JEFFORDS. All of you, your entire statements will be made a part of the record.

I have just a question or two to ask of each of you and then we also have obligatory questions we have to ask before we can go on to confirmation.

Mr. Manson, with the possible exception of phosphorous pollution, nonendemic nuisance species are the biggest problem facing Lake Champlain in Vermont. Sea lampreys have decimated the fishery there. Milfoil and water chestnuts have made much of the Lake inaccessible and zebra mussels are beginning to flourish. The USFWS' Lake Champlain office is working to address these prob-

lems but needs more resources. What do you see as the role of USFWS in working on nuisance species issues?

Mr. MANSON. I'm not familiar with the specific Lake Champlain issues but I am aware from my prior experience that invasive mutant species issues exist throughout the country in various ecosystems and the Fish and Wildlife Service has a very important role to play in that arena. If I am confirmed, I will certainly a close look at the allocation of resources to deal with those types of problems across the board.

Senator JEFFORDS. That is one of the advantages. As chairman, I get to get a little of my own personal problems involved here.

[Laughter.]

Senator JEFFORDS. How do you feel about this role for USFWS being formally authorized during the upcoming reauthorization of the Lake Champlain Special Designation Act?

Mr. MANSON. Again, I am not familiar with that particular piece of legislation but I will look into that and I would certainly be happy to provide you an answer for the record about that issue.

Senator JEFFORDS. I just want to raise your awareness of it and hopefully you will remember that.

Ms. Horinko, I understand that at least 50 percent of the Superfund sites in New England are slowed down by the lack of either total or partial funding. How much funding should Congress appropriate annually to meet the timely cleanup needs of the Superfund Program, the whole program?

Ms. HORINKO. You are touching upon one of the most important issues the Agency is facing as the Superfund Program matures. If I am confirmed, I will be taking a hard look at the Superfund budget and engaging in a dialog with you and your colleagues on the future of the program and how should we prioritize these sites so that they get cleaned up as quickly as we possible can, especially including sites in the New England region.

Senator JEFFORDS. Mr. Parker, you are sitting on a panel today with many of the people you will be working with in order to carry out the commitment you made in your statement that environmental considerations will remain a key factor in determining our civil works stance. Will that commitment involve consulting with your counterparts at the Department of Interior on endangered species and the Department of Transportation on highway projects impact on our waterways and wetlands, and the Environmental Protection Agency?

Mr. PARKER. Yes, it will. As a matter of fact, before the hearing started, Mr. Manson and I were talking about getting together if we are both confirmed. We have to sit down and talk because one of the problems that we have had—and everyone is guilty of this to some degree—are these turf battles where they sit around and worry about their own turf so much sometimes they forget to consult or they consult in a very shallow way with other agencies. They worry so much about turf that they don't really solve the problem.

Especially in this time of national distress of being under attack as we have been and are, I think it becomes even more imperative that all agencies, especially the Corps, not create a situation for themselves where they just sit back and say this is our turf, we're

the only ones that can control it and we're going to make the decisions. They have to truly reach out, truly have others involved and everybody have a part in the solutions that we have to find.

Senator JEFFORDS. Ms. Peters, we need to balance the surface transportation system in this country with highways, transit and rail, all providing service. ISTEA and T20 through their flexibility problems have allowed States to begin to create this balance. Do you support these flexibility provisions and will you work to retain and strengthen the flexibility in the upcoming reauthorization process?

Ms. PETERS. I have discussed this very issue with Secretary Mineta and other members of the Department of Transportation, including my colleagues who are administrators of transit, rail and other modes. We do intend very much to work together to preserve and enhance the flexibility provisions of the law so the communities can use the best tools available to them to respond to transportation issues and not be driven by money or silos.

Senator JEFFORDS. Senator Carper, do you have any comments or questions you want to ask?

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

Senator CARPER. To our witnesses, our nominees, welcome. We are delighted you are here and congratulations on your nominations.

I am especially pleased to welcome Mike Parker, a colleague with whom I was privileged to serve for two terms in the House. I may be the only person on this panel who was fortunate to have been on his data base as a Congressman, as a Democrat, as a Republican.

Mr. PARKER. You contributed when I was a Democrat.

[Laughter.]

Senator CARPER. I understand our witnesses were given the opportunity to introduce their families earlier when they were seated. I missed that portion. There are a couple of kids here, a little boy I can see back there and whose child is that? Ms. Horinko? Would you reintroduce your family for us?

Ms. HORINKO. Thank you, Senator Carper. I am delighted to. There is my husband, Tim Horinko and my two children, Hunter and Caitlin.

Senator CARPER. How old are they?

Ms. HORINKO. Hunter is two and Caitlin is four.

Senator CARPER. They are good kids.

Ms. HORINKO. Yes, they are. Thank you.

Senator CARPER. I don't know that I would be as brave as you. When my boys were two and four I don't now that I would have brought them in here.

Thank you for being here and for your willingness to share your wife and your mother with the rest of our country.

Congressman Parker, do you have anyone from your family here?

Mr. PARKER. My wife, Rosemary.

Senator CARPER. Thanks for sharing Mike with us for a long time.

I have a couple of questions. Ms. Peters, you look familiar. I was Governor of Delaware for the last 8 years and a woman named Ann Canby was our Secretary of Transportation. Do you know her at all?

Ms. PETERS. Mr. Carper, I know her very well.

Senator CARPER. I have a question for you if I could and it relates to the use of congestion mitigation money. States get money for a variety of things in transportation and one of the things we get money for is for congestion mitigation. We can use that money to build roads, intersections, for improving the throughput of traffic and integrated traffic management systems. In our State we use some of the money for bicycle paths or you can use it for freight railroads.

We don't have discretion in our State governments to use the money for passenger rail. In our judgment that seems to make sense to mitigate traffic congestion. Do you have any thoughts at all about whether States should have that kind of flexibility?

Ms. PETERS. I do believe that the States should have the maximum flexibility available to them to use funds so they can meet their transportation demand in the manner which best serves the citizens of their State.

The whole issue of passenger rail funding and the source of that funding, as you are well aware, has been a source of a lot of discussion recently. How this money is collected, the user fees, and how it is spent is something I would look forward to discussing with you further as we go forward. I have had the opportunity to discuss that briefly with the Deputy Secretary and it is something he is interested in, as I am.

Senator CARPER. When Tommy Thompson, now Secretary Tommy Thompson, was Governor of Wisconsin and chairman of the Amtrak Board, he put forth a proposal to earmark half a penny of the gasoline tax to be used to provide the only supplemental appropriation for Amtrak. Any thoughts about that idea? I'm not trying to put you on the spot. Whether you support or not, I'm to support your nomination but I'm interested in your perspective.

Ms. PETERS. I do think passenger rail has to be a very important part of the solution to meet transportation demand. I was involved in several of the policy discussions with regard to allocation of funds to Amtrak. The objection appeared to be the user fee basis of doing that.

As I indicated earlier, I think we need the maximum flexibility we can have to spend on transportation. Demand needs to be met whether it's met with a highway, with passenger rail, with telecommuting or with other programs that disperse the amount of demand we have. I think are all important considerations.

I would look forward to working with you and with the Secretary to determine if that allocation of money would be appropriate.

Senator CARPER. I've just come from a caucus meeting where the legislation is being reviewed with the members of our caucus on the potential cost of assistance for the airline industry in the wake of last week's tragedy. The amount of money we will probably be asked to invest as a country in the airline industry to help them in their time of need is going to be enormous. When we compare the amount of money we put into passenger rail for the whole life

of Amtrak, I think will put that whole issue in a different context going forward.

Senator JEFFORDS. I agree with you on that. I believe very strongly as you do that the rail alternative, especially for transit from DC to New York and places like that makes so much more sense than the airways.

Senator CARPER. One more question, maybe two. Ms. Horinko, what part of EPA has jurisdiction or owns the issue of recycling solid waste?

Ms. HORINKO. That is my part of the Agency.

Senator CARPER. This is kind of a broad question and you can take it where you want. Talk to us a bit about your interest in recycling solid waste? Where do you and your family live, what State?

Ms. HORINKO. We are in Virginia, Centerville, Virginia, right in the D.C. area.

Senator CARPER. How do families recycle in your community?

Ms. HORINKO. In Fairfax County where we live, we have curbside recycling, we source separate and one day a week along with the regular trash, the aluminum, glass and newspaper are picked up.

Senator CARPER. Do you want to share some thoughts with us as a citizen on your take on recycling, what you all do as a family and maybe use that to talk about what we should be doing as a country?

Ms. HORINKO. What I told Governor Whitman when I interviewed with her to take this job was that if you walk into a video arcade that has older video games in Ocean City, Maryland or in Bethany Beach——

Senator CARPER. Have you been to Bethany Beach?

Ms. HORINKO. I am a local to the Washington area and grew up as a child going to Bethany Beach.

Senator CARPER. We love Bethany Beach, Bethany Beach, Delaware, just north of Fenwick Island and south of Rehoboth.

Ms. HORINKO. It is a lovely, idyllic beach town and a wonderful place to go to the beach.

If you put your two quarters into a video game that is more than 7 or 8 years old, up pops the EPA logo and it says "Reduce, reuse, recycle, William K. Riley, Administrator." So I told Governor Whitman, at a minimum, we would get that changed to "Christine Todd Whitman" but while I have Sony and Sega on the phone, perhaps we could talk to them about extending that to playstations, game boys and maybe they would be interested in a cooperative agreement on electronics waste recycling while we are working on that. Maybe there are things we can do to get folks engaged at the schools in recycling.

I think recycling is an important issue, not necessarily in terms of the risk reduction or environmental protection but that it engages consumers at the hands-on level in environmental issues. Once they start thinking about if they are recycling and source reducing, they take the next step and start thinking about what kind of car am I driving, where am I choosing to live and what is the air quality in my area. Recycling is like a gateway issue that engages people at the retail level in environmental protection.

If I am confirmed, you will have my commitment that we will do a number of interesting and fun things to promote recycling and get people thinking about the broader issues as well.

Senator CARPER. I have had the opportunity to talk with Congressman Parker a time or two in the last couple of weeks about an issue near and dear to our hearts in Delaware. There is a canal that was built that cuts the State of Delaware literally in half called the Chesapeake and Delaware Canal which connects the Delaware Bay to the Chesapeake Bay and provides a short cut for ships trying to get from the Atlantic Ocean to Baltimore.

Our State is not very big, a lot smaller than Vermont but this canal cuts our State in half. It uses a big swath of our land and disrupts commerce because we have to figure out how to get over this canal.

The Army Corps of Engineers or the Federal Government took over the canal back in the early part of the twentieth century and has owned and operated it for a number of years. Under Federal law, the Corps has responsibility from time to time to provide adequate crossings over this canal.

For us in Delaware, we'd like to line up and fill the canal in, line up citizens on either side, fill in the canal, give us an appropriation for shovels and we will fill it in and that way ships won't have a short cut to get to Baltimore, they can use the Port of Wilmington. Moreover, we wouldn't have our commerce disrupted and our way of life disrupted as it has been for over 100 years.

The Corps built a new bridge and as you come off 95 to head south you cross that bridge about 10 miles south of I–95. There is a bridge not far away in a little town called St. Georges where the Corps continues to own, maintain and operate the older bridge which is over 50 years old but has refused to take over ownership and operation of the new bridge about 3 or 4 years old.

One concern I expressed to Congressman Parker is to resolve the ownership issue around that bridge as well as the old bridge. Initially, I think the Corps wanted to tear down the old bridge. As it turns out, traffic is increasing so quickly, we will need that capacity from the old bridge as well as the new one and about 10 years we can have another fight to build another bridge or we can leave the one that is there and keep it in some kind of usable capacity so when we need it, it will be there.

I would ask Congressman Parker to share a thought or two on this with us today.

Mr. PARKER. You and I have discussed this. I don't know everything about the issue as far as all the details and legal ramifications, but at the same time, some general statements I think would be good to share with you and the committee.

It is very important that the Corps not put burdens on local municipalities or local States that should not be borne by them. It is also important that the Corps of Engineers follow through with obligations and promises they have made and responsibilities they have taken. From that standpoint, I look forward to working with you to resolve this.

I know this is a longstanding problem that you have had and if confirmed, I look forward to working with you to resolve that in an equitable way and something that will be good for this country and

also good for the citizens of Delaware because the Corps did accept some responsibility that it should follow through with. I can assure you I will work to that end.

Senator CARPER. I appreciate those assurances and look forward to working with you to resolve the issue of ownership and to move forward.

Thank you.

Senator JEFFORDS. Now it comes down to the obligatory questions. Are you willing at the request of any duly constituted committee of the Congress to appear in front of us as a witness?

Mr. MANSON. Yes, I am.

Ms. HORINKO. Yes, I am.

Mr. PARKER. Yes.

Ms. PETERS. Yes, sir.

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

Mr. MANSON. No, sir.

Ms. HORINKO. No.

Mr. PARKER. No.

Ms. PETERS. No, sir.

Senator JEFFORDS. That ends the hearing. We assure you we are going to take up your nominations in a timely process. We know you are all anxious to get to work and we need you at work, so we will be working very rapidly to get you cleared.

Thank you all. The hearing is adjourned.

[Whereupon, at 10:40 a.m., the committee was adjourned, to reconvene at the call of the Chair.]

[Additional statements submitted for the record follow:]

STATEMENT OF HON. JOHN MCCAIN, U.S. SENATOR FROM THE STATE OF ARIZONA

Thank you, Chairman Jeffords, for permitting me to introduce Mary Peters, who has been nominated to serve as the Administrator of the Federal Highway Administration (FHWA).

I am very pleased the President has selected such an experienced and capable individual to fill this important position within the Department of Transportation. Mary is a fourth generation Arizonan and I know that transferring her residency from Peoria to Washington D. C., must come with some trepidations. But while Arizona will miss her, the rest of the Nation will certainly benefit from Mary's leadership and willingness to take on this new challenge.

As you all know, the FHWA Administrator plays a critical role in overseeing our nation's roads and highways, administering the Federal grant programs. These programs provide billions of dollars in funding to the States to construct and improve the National Highway System, urban and rural roads, bridges, as well as funding for roads in to our national parks, Indian reservations and other public lands. Critical to carrying out the administrative responsibilities of these grant programs is the stewardship of high-dollar transportation projects, such as the Big Dig and the Woodrow Wilson Bridge. This must be a top priority for the FHWA Administration and I know Mary is well prepared to carry out such a responsibility.

Mary Peters has first hand knowledge of the highway program having served in the Arizona Department of Transportation (ADOT) for 16 years. She started at ADOT in 1985 and was appointed Director in March 1998. Mary has a long and accomplished record and has often received well deserved recognition for her efforts. For example, she was named the 1994 Women's Transportation Seminar Woman of the Year as well as their 1998 Person of the Year, was profiled by the Arizona Business Journal in 1996, recognized as one of the Top 100 Who's Who of Arizona Women in Business, and as the Most Influential Person in Arizona in Transportation.

One of Mary's big accomplishments has been her success in accelerating Arizona's Regional Freeway System project by 7 years. It was originally scheduled to be com-

pleted in 2014, but through her leadership, it is now projected to be finished in 2007. Under her direction, ADOT has been a successful leader in "design-build" projects, using innovative techniques such as contractual incentives to complete road projects with minimal inconvenience to travelers.

ADOT also has received many awards under Mary's leadership for its attention to the environment and visual impact of construction projects. And of course Mary was very instrumental in getting the Hoover Dam Bypass project underway with the cooperation of Nevada and the Federal Government. Early on she recognized this project as Arizona's No. 1 priority.

On a personal side, Mary is one of the kindest persons you'd ever want to know. She is a great humanitarian and is genuinely interested in the lives of all of her employees. I am told Mary not only knows every ADOT employee by their names, but she also knows the names of their spouses and children. She understands the importance of family and friends and she shows it every day in her care and concern for those around her.

And finally, I cannot resist mentioning an interesting tidbit about Mary's past which is a very good indication that she is definitely the right person for this job.

Before Mary became involved in the transportation field, she was in the butchering business. She made her living by cutting pork. This background should come in very handy for Mary in the months ahead and I urge her to rely heavily on her past porkcutting expertise as she works to carry out her responsibilities. Mary will undoubtedly face unlimited requests to support and fund members pork projects but to the extent of her authority, those projects would more appropriately deserve the same treatment that she mastered as a butcher.

Thank you.

STATEMENT OF HON. BLANCHE L. LINCOLN, U.S. SENATOR FROM THE STATE OF ARKANSAS

As the lead sponsor of S. 1622, the Delta Regional Authority Act, I would like to thank Chairman Jeffords for scheduling this hearing on the nomination of Pete Johnson to serve as Federal co-chair. Installing a Federal co-chair is critical to prompt establishment of the Delta Regional Authority, and I hope the committee will swiftly confirm Mr. Johnson.

While I do not know Mr. Johnson personally, my research indicates that his experience has prepared him well for this job. Working with the Farmers Home Administration, Mr. Johnson became familiar with the needs of the Delta region. And his accounting background gives me confidence that he will ensure that the Delta Regional Authority utilizes the Federal dollars that have been appropriated to it wisely. I look forward to working with Mr. Johnson in the coming months as he convenes Governors of the States in the Delta region to organize the Authority.

As members of this committee may know, the lower Mississippi Delta suffers from a greater measure of poverty and unemployment than any other region of the country. Per capita income in distressed counties of the Delta is only 53 percent of the U.S. average, and over half of the 219 counties and parishes within the Delta Region have had poverty rates above 20 percent for the past four decades. I proposed the Delta Regional Authority to provide long-term coordination among Federal, State and local entities committed to economic development in the Lower Mississippi Delta region.

The creation of jobs, the expansion of existing businesses, and the development of local economies are essential to achieving economic growth in the region. In order to achieve this growth, resources such as an adequate physical infrastructure, a skilled and trained workforce, enhanced local leadership, and greater opportunities for development and entrepreneurship are needed.

The Delta Regional Authority will:

- provide technical assistance to small localities that have only part-time staff to negotiate the complicated application process necessary for acquiring Federal funding for critically important transportation, housing, infrastructure and economic development projects;
- aid needy localities in meeting the matching fund requirements of Federal programs that require such funds; and
- foster cooperation among State, localities, private sector interests and charitable, non-profit groups to determine region-wide solutions to regional problems.

I thank the chairman and I look forward to working with this committee on reauthorization of the Delta Regional Authority next year.

STATEMENT OF BRIGADIER GENERAL EDWIN J. ARNOLD, NOMINATED TO BE A MEMBER AND CHAIRMAN OF THE MISSISSIPPI RIVER COMMISSION

Mr. Chairman and members of the committee: I am honored to appear before you as the nominee for president and member of the Mississippi River Commission.

Mr. Chairman, I would like to make a brief statement about the Mississippi River Commission, the Mississippi River and Tributaries (MR&T) project, and my qualifications for the position for which I have been nominated.

The Mississippi River Commission, established by Act of Congress on June 28, 1879, consists of seven members, all of whom are appointed by the President of the United States subject to confirmation by the Senate. Three members are Corps of Engineers officers, one of whom serves as president; one member is from the National Oceanic and Atmospheric Administration; and three members are from the civilian sector, two of whom must be civil engineers.

From its inception in 1879, the Commission has been charged with the task of planning and implementing a program of flood damage reduction projects and navigation improvements on the Mississippi River. More recently, project purposes have been expanded to include environmental restoration. This task continues to be conducted in concert with the myriad of political institutions, individuals, and public entities which have major interests in seeing that the water resources needs and opportunities of the Mississippi Valley are evaluated, planned, designed, constructed, and maintained.

As established in 1879, the Commissioners were to serve as advisers in planning and implementing water resource projects and programs on the Mississippi River between the Head of Passes below New Orleans to its headwaters. Since 1928, the Commission has focused on the Mississippi River and Tributaries project, authorized by the Flood Control Act of May 15, 1928, to be implemented under oversight of the Commission. The MR&T project extends generally from the confluence of the Ohio River to the Head of Passes below New Orleans and covers portions of seven States. It receives water from all or portions of 31 States and part of two Canadian provinces, or roughly 41 percent of the contiguous United States. Effective planning, design, construction, and operation of the widespread and complex MR&T project have been assisted greatly by the Commission's active consultation with the public, particularly on its semiannual lower Mississippi River inspection trips, and by the high degree of professionalism that has been developed in its staff.

A major flood on the lower Mississippi River would have catastrophic effects on the inhabitants of the Mississippi Valley and the economy of the nation were it not for the protection provided by the levees and other flood control works along the main stem of the Mississippi and Atchafalaya Rivers. Many have noted that the comprehensive project on the lower river provided for passage of major floods in 1973, 1983, 1997, and other years without the extensive damage suffered in the upper river area during the 1993, 1995, and 2001 flood events.

In addition, the navigation features of the project help to maintain the river for shipping import and export commodities between inland ports and world markets.

Reorganization of the Corps of Engineers in April 1997 placed the entire length of the Mississippi River within one Division of the Corps of Engineers. I serve as Commander of this Mississippi Valley Division of the Corps. Command of the Division office traditionally has also included duties as President of the Mississippi River Commission. The reorganization of the Corps now allows management of the Mississippi River as a single and unified system and enables the President and members of the Commission to more effectively serve as advisers to the Chief of Engineers as authorized in the 1879 legislation.

The Commission members have been active as advisers to the Corps on the Upper Mississippi River since the reorganization in 1997. The Commission has conducted inspection trips on the Upper Mississippi River in August 1997–2001, holding a series of public meetings in the St. Paul, Rock Island, and St. Louis Districts each year, in addition to the semiannual inspection trips and public meetings in the Memphis, Vicksburg, and New Orleans Districts.

In regard to my personal qualifications, I am a graduate of the University of Texas at Austin where I was commissioned in 1972 into the U.S. Army Corps of Engineers. I hold both a Bachelor of Science degree in Geology and a Master of Science degree in Civil Engineering from the University of Texas at Austin. I am also a graduate of the U.S. Army Command and General Staff College, School of Advanced Military Studies, and the Army War College.

Since September 2000, I have served as Commander of the Mississippi Valley Division and also as president designee of the Mississippi River Commission. In this position, I have led and managed the Corps' water resources program in the Mississippi River Valley. The boundary of the Mississippi Valley Division extends from

Canada to the Gulf of Mexico, includes portions of 12 States, and encompasses 370,000 square miles. The program and activities overseen by the Mississippi Valley Division and Mississippi River Commission are conducted by district offices located in St. Paul, Rock Island, St. Louis, Memphis, Vicksburg, and New Orleans.

I have served over 29 years in the uniformed military service as an Army Engineer. I have commanded at all levels from platoon through Division. I served as Resident Engineer, U.S. Army Engineer Division, Europe, with duty in Athens, Greece. I was the Battle Lab Director and Deputy Commandant at the U.S. Army Engineer School, Fort Leonard Wood, Missouri, before I assumed command of the Southwestern Division of the U.S. Army Corps of Engineers in Dallas, Texas, my last tour of duty before being assigned to my current command of the Mississippi Valley Division of the Corps of Engineers, with its headquarters located in Vicksburg, Mississippi.

In my role as Commander of the Mississippi Valley Division, I have responsibility for Federal involvement in the areas of flood protection, navigation, and environmental preservation along the Mississippi River. I directly supervise the programming and expenditure of Federal resources through the Army Corps of Engineers Civil Works budget within the Mississippi River Valley. My knowledge of the various programs and my daily involvement with constituent groups throughout the valley make me well qualified for the position of President and member of the Mississippi River Commission.

If confirmed to the position, Mr. Chairman, I would look forward to playing a key role in the continual improvement of the Mississippi River system and the Mississippi River and Tributaries project by applying the most modern practices in water resources engineering. I would also look forward to being the President of a Commission that focuses not only on the traditional roles of safely passing the Mississippi River Basin floodwaters to the Gulf of Mexico, plus providing a safe and dependable navigable waterway, but also incorporates programs and projects for environmental protection and restoration.

Mr. Chairman, for your information, I have attached my complete biography. This completes my prepared statement, and I would be pleased to respond to any questions.

UNITED STATES SENATE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

ROOM 410 DIRKSEN BUILDING WASHINGTON, DC 20510

INFORMATION

REQUESTED OF PRESIDENTIAL NOMINEES

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

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

Name of Nominee: Brigadier General Edwin J. Arnold, Jr.

Business Address: U.S. Army Engineer Division, Mississippi Valley

P.O. Box 80, Vicksburg, Mississippi 39181-0080

Business Phone: (601) 634-5750

Home Address: 1200 Warrenton Road

Vicksburg, Mississippi 39180

Home Phone: (601) 619-9760

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

Name: Arnold, Jr. (Last) Edwin (First) J. (Middle)

Position to which nominated: President, Mississippi River Commission

Date of Nomination:

Date of birth: 2 August 1949 (Day) (Month) (Year) **Place of birth:** Bay City, Texas

Marital status: Married **Full name of spouse:** Margaret Kathryn Stallings Arnold

Name and ages of children:

Angela Kaye Arnold Holcomb	26
Michelle Marie Arnold	21

Education:

Institution	Dates attended	Degrees received	Dates of degrees
Univ of Texas at Austin	Sep 67-May 72	BS (Geo Sci)	May 72
Univ of Texas at Austin	Aug 76-May 78	MS (Civ Eng)	Aug 81
U.S. Army School of Advanced Military Studies, Fort Leonard Wood, MO	Jul 85-Jun 86	Master of Mil Arts & Sci	Jun 86
U.S. Army War College	Jul 92-Jun 93		

Employment record:

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

May 1970 - Graduation from Univ of Texas at Austin, Commissioned 2LT in U.S. Army Corps of Engineers
May 1970 - Jun 1975 - 2LT/1LT. Platoon Leader/Construction Officer, 92d Engineer Battalion; Fort Gordon, GA
Jul 1975 - Jul 1976 - 1LT/CPT. Student, U.S. Army Engineer School, Fort Belvoir, VA

Aug 1976 - May 1978 - CPT. Student, University of Texas, Austin, Texas

Employment record—continued

Jul 1978 - Dec 1980 - CPT. Resident Engineer, U.S. Army Engineer Division, Europe; Frankfurt, Germany with duty in Athens, Greece

Jan 1981 - Jun 1984 - CPT/MAJ. Company Commander/Battalion Staff Officer; 299th Engineer Battlion; Fort Sill, Oklahoma

Jul 1984 - Jun 1986 - MAJ. Student; U.S. Army Command and General Staff College/U.S. Army School of Advanced Military Studies; Fort Leavenworth, KS

Jun 1986 - Jun 1989 - MAJ. Plans Officer/Div Staff Officer; 2d Armored Div; Ft. Hood, Texas

Jul 1989 - Jul 1991 - LTC. Commander; 10th Engineer Battalion; Kitzingen, Germany

Aug 1991 - Jul 1992 - LTC. Executive Officer; Engineer Brigade, 3d Infantry Div; Wurbzurg, Germany

Aug 1992 - Jun 1993 - LTC. Student. U.S. Army War College; Carlisle Barracks, PA

Jul 1993 - Aug 1995 - COL. Commander; Engineer Brigade, 1st Armored Div; Bad Breuznach, Germany

Aug 1995 - Aug 1998 - COL/BG. Battle Lab Director/Deputy Commandant; U.S. Army Engineer School; Fort Leonard Wood, MO

Sep 1998 - Sep 2000 - BG. Commander, U.S. Army Engineer Division, Southwestern; Dallas, Texas

Sep 2000 - Present - BG. Commander, U.S. Army Engineer Division, Mississippi Valley; Vicksburg, Mississippi

Honors and awards:

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

Army ROTC Scholarship	Army Achievement Medal
Getty Oil Fellowship	National Defense Service Medal (2)
Distinguished Service Medal	Army Service Ribbon
Legion of Merit (3)	Overseas Service Ribbon (3)
Meritorious Service Medal	Humanitarian Service Medal
Army Commendation Medal (2)	German Cross of Honor in Silver

Memberships:

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

Organization	Office held (if any)	Dates
Society of American Military Engineers	Regional Vice President	Sep 2000 - Present
Association of the United States Army	Member	1987 - Present
Army Engineer Regiment	Member	1989 - Present
Haven House Shelter	Board Member	2000 - Present

Qualifications:

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

The Mississippi River Commission is charged with oversight and review for all matters concerning flood protection, navigation, and environmental preservation along the Mississippi River. As the Commander of the U.S. Army Corps of Engineers Mississippi Valley Division, I have responsibility for Federal involvement in these same areas. I directly supervise the programming and expenditure of Federal resources through the Army Corps of Engineers Civil Works budget within the Mississippi River valley. My knowledge of the various programs and my daily involvement with constituent groups throughout the valley make we well qualified for this position.

Future employment relationships:

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

No. It is because of my current status with the U.S. Army Corps of Engineers as Commander of the Mississippi Valley Division that I am being nominated for this position.

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

I fully intend to remain with the U.S. Army Corps of Engineers after this appointment until my normal retirement from active duty in the U.S. Army.

3. Has anybody made a commitment to you for a job after you leave government?
No.

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

NA - Not a fixed term.

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

No.

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

NA - I have not previously held such a position.

Financial Statement:

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

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

None.

2. Are any assets pledged?

No.

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

No.

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

Yes, except CY 2000 tax return is in development at this time.

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

No.

Potential conflicts of interest:

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

None.

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

None.

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

None.

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

NA.

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

Political affiliation and activities:

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

I have been on Active Duty in the U.S. Army as a commissioned officer for the past 29 years. I, therefore, have had no memberships, offices, or financial contributions (in excess of $1,000.00) with any political party or election committee.

Published writings:

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

"Moving the Heavy Division," *Military Review*, July 1988.

"The Use of Military Power in the Pursuit of National Interests," *Parameters*, Spring 1994.

"Professional Military Education: Its Historical Development and Future Challenges," U.S. Army War College Study Project, April 1993.

Additional Matters:

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

I have served the Army and the Nation faithfully for 29+ years and have risen to the rank of Brigadier General. As such, I have been previously confirmed by the Senate for advancement. This nomination is an extension of my current assignment as Commanding General of the U.S. Army Corps of Engineers, Mississippi Valley Division.

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

Yes.

3. Having completed this form, are there any additional questions which you believe the Committee should ask of future nominees?

No.

AFFIDAVIT

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

Subscribed and sworn before me this 7th day of September, 2001.

Notary Public

My Commission Expires February 27, 2003

STATEMENT OF NILS J. DIAZ, NOMINATED TO BE A COMMISSIONER, NUCLEAR REGULATORY COMMISSION

Mr. Chairman, members of the committee: It is a pleasure to appear before you today. I am honored by President Bush's nomination and by the Senate's consideration of my qualifications for a second term as Commissioner, U.S. Nuclear Regulatory Commission (NRC). I also appreciate that this complex and thorough process was started and continues with bipartisan support.

You may be aware of my credentials from previous appearances before you, so rather than take your time, I will briefly state that I am a nuclear scientist and engineer by profession. Before coming to the NRC in 1996, I was Professor of Nuclear Engineering Sciences at the University of Florida, Director of the Innovative Nuclear Space Power Institute (INSPI)—a national consortium of industries, universities and national laboratories—and President and Principal Engineer of Florida Nuclear Associates, Inc. My experience includes thirty-four years designing, researching, teaching, training, evaluating and managing the engineering, technology

and economics of the peaceful uses of atomic energy. I have been formally trained in and have practiced nuclear medicine in both academic and clinical environments and have also owned and operated a few small businesses.

To the above, I have added 5 years of regulatory experience, participating in the exercise and direction of the Commission's licensing and regulatory functions. The mission of the Nuclear Regulatory Commission is to ensure adequate protection of the public health and safety, the common defense and security, and the environment in the use of nuclear materials in the United States of America. This mission is carried out by an exclusively regulatory mandate. If confirmed, I pledge to continue to carry out this mandate and to work for a consistently more effective and efficient regulatory framework. There is no doubt that the people of the United States want and must benefit from effective regulatory operations that assure safe nuclear power, radiological and medical industry activities.

The issue of effective regulation touches every American in our increasingly technological society. The effects of a safety-focused, efficient NRC regulatory framework are applicable across the board, to nuclear power reactors, to fuel manufacturing facilities, to nuclear medicine and the radiological industry, to the safe handling, transportation and storage of radioactive wastes, and to the NRC itself.

During my first term as Commissioner, many of NRC's activities were centered on the safe operation and license renewal of existing nuclear power plants. The NRC established initiatives to increasingly focus the prescriptive, deterministic regulatory regime on the most safety-significant matters, employing a more risk-informed and performance-based approach. By focusing on the most safety-significant matters, through a risk-informed approach, the NRC has developed a more effective licensing, inspection and enforcement process. Now, it appears that the challenge of new power reactor applications could be added to the Commission's deliberations. I am prepared to face both the existing and the new challenges with the requisite accountability and transparency.

The Commission is also responsible for assuring that the people of the United States, and the Congress as their representatives, are fully informed of how its responsibilities are discharged, and for maintaining its decisionmaking process fully accessible to all concerns. I have been, and will continue to be, especially attentive to this responsibility.

I would be honored by the opportunity to help the Commission address these issues in a manner consistent with the responsibilities assigned by the Congress to the Agency. If confirmed, I will assume the Office of Commissioner of the Nuclear Regulatory Commission fully cognizant of these obligations and pledging to discharge them to the best of my ability.

Mr. Chairman, Senators, thank you. I am prepared to answer any questions that the committee might have.

UNITED STATES SENATE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

ROOM 410 DIRKSEN BUILDING WASHINGTON, DC 20510

INFORMATION

REQUESTED OF PRESIDENTIAL NOMINEES

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

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

Name of Nominee: Nils J. Diaz

Business Address: U.S. NRC

Washington, D.C. 20555

Business Phone: (301) 415-8420

Home Address: 5802 Nicholson Lane, #1107

Rockville, MD 20852

Home Phone: (301) 770-0315

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

Name: Diaz (Last) Nils (First) J. (Middle)

Position to which nominated: Commissioner, U.S. NRC

Date of Nomination:

Date of birth: 07-04-38 (Day) (Month) (Year) **Place of birth:** Moron, Cuba

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

Name and ages of children:

Nils M. Diaz	39
Ariadne M. Diaz	38
Allene M. Diaz	37

Education:

Institution	Dates attended	Degrees received	Dates of degrees
U of Villanova, Cuba	1955-1960	BSME	8/1960
U of Florida	1962-1964	MSNE	4/1964
U of Florida	1964-1969	Ph.D., NES	4/1969

Employment record:

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

8/96-6/30/01, Commissioner, US Nuclear Regulatory Commission

8/86-8/96, Professor, Nuc.Engr.Sci., Univ. of Fla. (UF), Gainesville, FL

9/85-8/96, Director, Innovative Nuc. Space Power Propulsion Inst., CSULB/UF

3/76-8/96, President, Fla. Nuclear Asso., Inc., - multiple locations

8/84-8/86, Assoc. Dean for Research, CA State Univ., Long Beach, CA

Employment record—continued

8/81-8/82, Principal Advisor to Spain's Nuc. Req. Com., Madrid, Spain

8/79-8/81, Professor; 8/74-8/79, Asso. Professor; 3/69-8/74, Asst. Professor & Director of Nuclear Facilities, Nuc.Eng.Sci., UF

1/66-3/69, Res. Asso; 1/63-1/66, Grad Asst., Nuc.Eng.Sci., UF

5/62-9/62, Sr. Designer, Maddox Foundry & Machine Works, Archer, FL

Consultant to General Accounting Office and multiple industries

Honors and awards:

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

Fellow, Shell Petroleum Corp.(55-60), Fellow, Org. of Amer. States(63-65)

Meritorious Service Award, Univ. of Florida (1983)

Distinguished Service Award for Minority Eng. Programs, St. of CA (1986)

1989, 1990, 1991 & 1992 Univ. of Fla. Research Achievement Award

1990 Hispanic Engineer National Achievement Award

Memberships:

NOTE: no offices held since 8/96

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

Organization	Office held (if any)	Dates
American Nuclear Soc.	Fellow, multiple offices	69-present
Pan Am Fed. of Eng. Soc.	Chair, Nuc. Committee	87-96
Amer. Asso for Adv of Sci.	Fellow	84-present
Amer. Soc of Mech Engrs.	Fellow	84-present
Amer. Asso. Eng. Soc.	Member	74-present
FL St Comm Hispanic Affairs	Member	92-96

Qualifications:

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

Five years of experience as Commissioner, US NRC, during a period of significant challenges for the regulated industries and the agency.

Qualifications—continued

Fully cognizant of the nuclear regulatory infrastructure, its technical and legal requirements and its role and purpose within our society. Utlized over 25 years of academic, industrial and private business experience to foster significant improvements in nuclear reactors and materials regulations and oversight, focusing on increasing attention and resources on safety issues. Used this expertise to improve accountability and effectiveness of regulatory processes. Advocated improvements in agency's public communications.

Future employment relationships:

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

Will continue with Phased Retirement Program of the State of Florida Retirement System (previous 5 years and presently employed by the USNRC).

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

I will retain status as Professor Emeritus of the University of Florida.

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

No.

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

Yes.

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

Not applicable

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

Completed 5 year term as Commissioner, US NRC, on June 30, 2001.

Financial Statement:

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

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

None.

2. Are any assets pledged?

No.

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

No.

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

Yes.

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

No.

Potential conflicts of interest:

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

None. I have agreed not to participate in any matter involving the State of Florida Retirement System (see attached letter to Ethics Counsel).

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

None. Potential future conflicts with owned stocks have been reviewed with the assistance of OGE and NRC's OGC.

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

None.

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

No potential conflict of interest, or appearance of a conflict of interest exists. In case of doubt, I will consult with the NRC Ethics Office and the OGE, as needed.

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

Please see attached letter of July 24, 2001, to Karen D. Cyr, U.S. NRC General Counsel (Attachment 1).

Political affiliation and activities:

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

Member, Republican Party.

No offices held in any political party or election committee.

Contributions in excess of $1,000: the National Republican Committee; the Republican Inner Circle; Campaign for Senator Connie Mack; Presidential Campaign for George W. Bush; Gubernatorial Campaign for Jeb Bush; Republican Party of Florida; Campaign for Rep. Bill McCollough; Campaign for Senator Bob Graham.

Published writings:

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

Please see attached list(Attachment 2).

Additional Matters:

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

No additional information.

Additional matters—continued

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

Yes.

3. Having completed this form, are there any additional questions which you believe the Committee should ask of future nominees?

No.

AFFIDAVIT

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

7.24.01

Subscribed and sworn before me this 24th day of July, ~~19~~ 2001.

Melinda R. McInsel

Notary Public

My commission expires 12/1/01

Attachment 1

Statement on Potential Conflict of Interest

Attachment 2

List of Published Writings

Attachment 1

July 24, 2001

Ms. Karen D. Cyr
General Counsel and Designated
Agency Ethics Official
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Ms. Cyr:

The purpose of this letter is to describe the steps that I intend to take to avoid any actual or apparent conflict of interest in the event that I am confirmed for the position of Commissioner of the United States Nuclear Regulatory Commission (NRC).

As required by 18 U.S.C. § 208(a), I will not participate personally and substantially in any particular matter that has a direct and predictable effect on my financial interests or those of any other person whose interests are imputed to me, unless I first obtain a written waiver, pursuant to section 208(b)(1), or qualify for a regulatory exemption, pursuant to section 208(b)(2). I understand that the interests of the following persons are imputed to me: my spouse, minor children, or any general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

I also understand that the following stocks which I own present a potential conflict of interest under section 208(a) because these companies have materials licenses from the NRC and the value of my stock holdings in each of them is more than $5,000: BP Amoco PLC, Exxon Mobil, IBM, and Viacom. Although it has been determined that it is not necessary at this time for me to divest these stocks, I will not participate personally and substantially in any particular matter that will have a direct and predictable effect on the financial interests of these companies, unless I first obtain a written waiver or qualify for a regulatory exemption. I also will not participate in any particular matter affecting the financial interests of any of the following materials licensees in which I presently own stock if the value of my stock in that company should exceed $5,000: Bristol Myers Squibb, Medtronics, Merck, Pfizer, and Schlumberger.

Although I retired from the University of Florida on August 23, 1996, I continue to participate in the University's defined benefit plan. Therefore, pursuant to 18 U.S.C. § 208, I will not participate personally and substantially in any particular matter that will have a direct and predictable effect on the ability or willingness of the State of Florida to provide this contractual benefit, unless I first obtain a written waiver or qualify for a regulatory exemption.

Sincerely,

Nils J. Diaz

Attachment 2

Books, Articles, Presentations and Speeches

A. REFERRED PUBLICATIONS

S.P. Keshavmurthy, Y. Watanabe, E.T. Dugan, and N.J. Diaz, "Design Optimization of Nuclear Vapor Thermal Rocket Core - A Thermo-mechanical Study," AIP Conference Proceedings 301 of the 11th Symposium on Space Nuclear Power and Propulsion, Vol. 1, pp. 111-116, Albuquerque, New Mexico, January 1994.

N.J. Diaz, "Ultrahigh Temperature Fuel and Materials Research Program," Transactions of the Specialist Conference on Space Nuclear Power & Propulsion Technologies - Materials and Fuels (NEMF-93), Podolsk, Moscow Region, September 1993.

E.T. Dugan, Y. Watanabe, S. Kuras, N.J. Diaz, J.A. McClanahan, and R.L. Carman, "A Vapor Core Nuclear Reactor Rocket Engine For Space Propulsion", 28th Intersociety Energy Conversion Engineering Conference, Vol. 2, pp. 605-611, Atlanta, Georgia, August 1993.

N.J. Diaz, Y. Watanabe, and E.T. Dugan, "Gas/Vapor Core Reactor Issues", Proceedings of the AICHE National Heat Transfer Conference, No. 295, Vol. 89, pp. 473-479, Atlanta, Georgia, August 1993.

I. Maya, N.J. Diaz, E.T. Dugan, Y. Watanabe, J.A. McClanahan, W-H. Tu, and R.L. Carman, "Nuclear Vapor Thermal Reactor Propulsion Technology", 10th Symposium on Space Nuclear Power and Propulsion, Vol. 3, pp. 1583-1589, Albuquerque, New Mexico, January 1993.

E.T. Dugan, Y. Watanabe, S. Kuras, I. Maya, and N.J. Diaz, "Nuclear Design of A Vapor Core Reactor for Space Nuclear Propulsion," 10th Symposium on Space Nuclear Power Systems, Vol. 2, pp. 655-662, Albuquerque, New Mexico, January 1993.

I. Maya, E.T. Dugan, N.J. Diaz, and S. Anghaie, "Ultrahigh Temperature Vapor Core Reactor - MHD System for Space Electric Power Generation", Journal of Propulsion and Power, Vol. 9, No 1, 7 pages, Jan.-Feb., 1993.

I. Maya, N.J. Diaz, E.T. Dugan, Y. Watanabe, M. Panicker, and S. Kahook, "A Nuclear Vapor Thermal Reactor for Space Nuclear Power and Propulsion" Proceedings of the 27th Intersociety Energy Conversion Engineering Conference, 6 pages, San Diego, California, August, 1992.

I.Maya, N.J. Diaz, and E.T. Dugan, "Nuclear Vapor Thermal Reactor Technology -- A Pathway to Advanced Performance", Nuclear Technologies for Space Exploration Conference, 8 pages, Jackson Hole, Wyoming, August 16-19, 1992.

E.T. Dugan, Y. Watanabe, S. Kuras, I. Maya and N.J. Diaz, "Computational Neutronic Analysis of the Nuclear Vapor Thermal Rocket Engine", ANS Trans., 66(1), pp. 252-253, Chicago, Illinois, November, 1992.

S.D. Howe, S. Borowski, C. Motloch, I. Helms, N.J. Diaz, S. Anghaie, and T. Latham, "Innovative Nuclear Thermal Propulsion Technology Evaluation Results of the NASA/DoE Task Team Study", Proceedings of the 42nd Congress of the International Astronautical Federation, Montreal, IAF 91-235, 12 pages, Canada, October, 1991.

N.J. Diaz, E.T. Dugan, S. Kahook, and I. Maya, "Gas Core Reactor Concepts and Technology: Issues and Baseline Strategy", Proceedings of the AIAA/NASA/OAI Conference on Advanced SEI Technologies, AIAA 91-3582, 8 pages, Cleveland, OH, September, 1991.

Y. Watanabe, J. Appelbaum, N.J. Diaz, and I. Maya, "Heat Transfer Analysis of Fuel Assemblies in A Heterogeneous Gas Core Nuclear Rocket", Proceedings of the AIAA/NASA/OAI Conference on Advanced SEI Technologies, AIAA 91-3517, Cleveland, Ohio, September, 1991.

I. Maya, S. Anghaie, N.J. Diaz and E.T. Dugan, "Ultrahigh Temperature Vapor Core Reactor-MHD System for Space Nuclear Electric Power", Proceedings of

the AIAA/NASA/OAI Conference on Advanced SEI Technologies, AIAA 91-3636, 11 pages, Cleveland, Ohio, September, 1991.

S. Anghaie, L.L. Humphries, and N.J. Diaz, "Material Characterization and Flaw Detection, Sizing, and Location by the Differential Gamma Scattering Spectroscopy (DGSS) Technique Part I: Development of Theoretical Basis", Nuclear Technology Vol. 91, pp. 361-375, August, 1990.

S. Anghaie, L.L. Humphries, and N.J. Diaz, "Material Characterization and Flaw Detection, Sizing, and Location by the Differential Gamma Scattering Spectroscopy (DGSS) Technique Part II: Experiment", Nuclear Technology Vol. 91, pp. 376-387, August, 1990.

I. Maya, A.V. Gomez, E.T. Dugan, G.E. Welch and N.J. Diaz, "Graphic System Code Analysis of the UTVR-MHD Nuclear Space Power System", Proceedings of the 25th Intersociety Energy Conversion Engineering Conference, Reno, NV, August, 1990.

W.E. Lear, Jr., I. Maya, N.J. Diaz, E.T. Dugan, S. Anghaie, G.E. Welch and S. Roychoudhury, "Rankine-Cycle Space Power System with Fissioning Disk MHD Generator", 10th International Conference on MHD Electrical Power Generation, December, 1989.

N.J. Diaz, S. Anghaie, and E.T. Dugan, "Ultrahigh Temperature Vapor Reactor and Magneto Conversion for Multi-Megawatt Space Power Generation," Proceedings of International Astronautical Federation International Conference on Space Power, Vol. 8(1/2), pp. 225-237, Cleveland, Ohio, June, 1989.

I. Maya, N.J. Diaz, S. Anghaie, and E.T. Dugan, "Ultrahigh Temperature Vapor Core Nuclear Reactor-MHD Power Generation and Conversion System for Space Application", Proceedings of 27th Symposium on the Engineering Aspects of Magnetohydrodynamics, Reno, Nevada, June, 1989.

S. Anghaie and N.J. Diaz, "Differential Gamma Scattering Spectrum Characterization of Materials and Flaws", Proc. ASNT 1988 Spring Conference on Characterization of Materials and Flaws, Orlando, FL, April, 1988.

E.T. Dugan, and N.J. Diaz, "Heterogeneous Gas Core Nuclear Reactor for Space Nuclear Power", Proceedings of the International Society for Optical Engineering Symposium on Space Structures, Power and Power Conditioning, Los Angeles, California, January, 1988.

S. Anghaie and N.J. Diaz, "Nondestructive Detection and Sizing of Flaws by Differential Gamma Scattering Spectrum Techniques", ISA Trans., 26, No. 2, pp. 13-33, 1987.

S. Anghaie and N.J. Diaz, "Differential Gamma Scattering Spectrum for Detection, Sizing and Location of Flaws", 86-WA/NDE-5, ASME-WAM, Anaheim, California, December, 1986.

S. Anghaie and N.J. Diaz, "Flaw Detection, Sizing and Location by Differential Gamma Scattering Spectrum Technique", Advances in Test Measurement, Vol. 23, Instrumentation in Aerospace Industry, pp. 351-376, May, 1986.

S. Anghaie and N.J. Diaz, "High Resolution NDE with Differential Gamma Scattering Spectrum Technique", Advances in Test Measurement, Vol. 23, Instrumentation in Aerospace Industry, pp. 385-408, May, 1986.

E.T. Dugan and N.J. Diaz, "Cyclic Gaseous Core Reactors for Space Nuclear Power Systems", Space Nuclear Power Systems, Vol. I, pp. 291-297, Orbit Book Company, 1985.

N.J. Diaz, "Gaseous Core Reactors," Nuclear Technology Vol. 69(2), 129-134, May, 1985.

E.T. Dugan, N.J. Diaz, E.E. Carroll and H.M. Forehand, "Gas Core Reactor Neutronics - Theoretical Modeling and Experimental Verification," Nuclear Technology Vol. 69(2), 134-153, May, 1985.

E.T. Dugan, N.J. Diaz and E.E. Carroll, "Comparison of Experimental Neutronics Results and Theoretical Predictions for a Gas Core Reactor," Atomkernenergie/Kerntechnick Sup. Vol. 45(1), pp. 38-44, Helsinki, Finland, 1984.

S. Anghaie, E.T. Dugan, W.G. Vernetson and N.J. Diaz, "Thermal-Mechanical Safety Margins for Annular Fuel Pins During Overpower Transients," Trans. Am. Nucl. Vol.47, pp. 494, 1984.

E.T. Dugan and N.J. Diaz, "Cyclic Gaseous Core Reactors for Space Nuclear Power Applications," Proceedings of First Symposium on Space Nuclear Power Systems, pp. 291-297, Albuquerque, New Mexico, January, 1984.

E.T. Dugan, and N.J. Diaz, "Thermal Hydraulic Calculations for Modifications of the UFTR from High Enrichment MTR Fuel to Low Enrichment SPERT Fuel", Atomkernenergie/Kerntechnick Sup. Vol. 44, pp. 515-521, 1984.

E.T. Dugan and N.J. Diaz, "Neutronic Calculations for Modification of the UFTR from High Enrichment MTR fuel to Low Enrichment SPERT Fuel", MIT, Atomkernenergie/ Kerntechnick Sup. Vol. 44, pp. 508-514, 1984.

S. Anghaie and N.J. Diaz, "Thermal Mechanical Safety Margins for Annular Fuel Pins During Overpower Transients," Trans. Amer. Nuc. Soc. 44(1), pp. 370, 1983.

N.J. Diaz, E.T. Dugan and W.G. Vernetson, "Transfer of Education Programs to the Nuclear Industry", Trans. Amer. Nucl. Soc. Vol. 42(1), pp. 148, 1982.

E.T. Dugan, G.S. Knieldler and N.J. Diaz, "Neutronic Analysis of UFTR Conversion from HEU to LEU Fuel," 1982 International Meeting on Research

and Test Reactor Core Conversion from HEU to LEU Fuels, Report No. ANL/RERTR/TM-4, pp. 627-653, Argonne, Illinois, November, 1982.

W.G. Vernetson, E.T. Dugan, M.T. McKelvey and N.J. Diaz, "Safety-Related Design and Assessment of Annular Fuel Pins for Pressurized Water Reactors," Trans. Amer. Nucl. Soc. 40(19), pp. 19, April, 1982.

N.J. Diaz, E.T. Dugan and W.G. Vernetson, "Nuclear Power Education and Training Programs for Electric Utility Engineers," Trans. Amer. Nucl. Soc., 42(1), pp. 148, November, 1982.

N.J. Diaz, E.T. Dugan and C.C. Oliver, "Cyclic Gaseous Core Reactors," Trans. Amer. Nucl. Soc. 34(1), pp. 580, June, 1980.

E.T. Dugan, C.C. Oliver and N.J. Diaz, "Cycling Gaseous Core Reactor Power Systems", Atomkernenergie/Kerntechnik 36(3), pp. 191-194, 1980.

N.J. Diaz and E.T. Dugan, "Gaseous Core Reactors for Electrical Power Generation", Atomkernenergie/Kerntechnik 36(3), pp. 188-191, 1980.

N.J. Diaz and E.T. Dugan, "Developments in Gaseous Core Reactor Technology," Proceedings of 2nd Miami International Conference on Alternative Energy Sources, 2289-2317, Miami, Florida, 1979.

S.K. Shenoy and N.J. Diaz, "Performance of 1000 MWe Mixed Fuel Cycle LMFBR's" Trans. Amer. Nucl. Soc. 27(1), pp. 901, 1977.

K.I. Han, E.T. Dugan and N.J. Diaz, "Heterogeneous Gas Core Reactor Power Plants," Trans. Amer. Nucl. Soc., 27(1), pp. 722, November, 1977.

N.J. Diaz, "Process Instrumentation Measurements for Nuclear Engineering Laboratories," Trans. Amer. Nucl. Soc. 26(1), pp. 94, 1977.

N.J. Diaz and R.G. Cockrell, "Nuclear Power Engineering Training Program," Proceedings of the 8th Biennial Topical Conference on Reactor Operating Experience, American Nuclear Society, 1977.

N.J. Diaz and E.T. Dugan, "The Nuclear Piston Engine and Pulsed Gaseous Core Power Generating Systems," Trans. Amer. Nucl. Soc. 24(1), pp. 28, 1976.

N.J. Diaz and E.T. Dugan, "The Nuclear Piston Engine and Pulsed Gaseous Core Power Generating Systems," Proceedings of the Princeton University Conference on Partially Ionized Plasmas Including the Third Symposium on Uranium Plasmas, Princeton, N.J., June, 1976.

E.T. Dugan and N.J. Diaz, "Pulsed Gaseous Core Reactor Power Plants," Trans. Amer. Nucl. Soc. 19(1), pp. 355, 1974.

E. Chenette, N.J. Diaz, et al., "The Effects of Irradiation on the Noise Performance of Silicon JFETs," Proceedings of the IEEE Nuclear Effects Conference, 1974.

N.J. Diaz and M.J. Ohanian, "New Aspects of the Utilization of Argonaut-Type Reactors," Trans. Amer. Nucl. Soc. 15(1), pp. 22, 1972.

N.J. Diaz and M. Dunn, "Neutron Beam Enhancement in the University of Florida Training Reactor," Trans. Amer. Nucl. Soc. 15(1), pp. 445, June, 1972.

J.D. Martin and N.J. Diaz, "Analysis of the Neutron Dynamics of a Large Reactor Core," Trans. Amer. Nucl. Soc. 15(1), pp. 499, June, 1972.

N.J. Diaz, S. Spector, and V.A. Brokeman, "Analysis and Correction of Spatial Distortions Produced by the Gamma Camera," Journal of Nuclear Medicine Vol. 13, No. 5 307, May, 1972.

N.J. Diaz et al., "Correction of Anger-Type Camera Spatial Distortions for Quantitative Image Analysis," Proceedings of the X Interamerican Congress of Radiology, Puerto Rico, 1971.

N.J. Diaz et al., "Analysis and Correction of Spatial Distortions Produced by Gamma Camera," Proceedings of the Annual Meeting of the Society of Nuclear Medicine, Los Angeles, California, 1971.

N.J. Diaz and M.J. Ohanian, "A Novel, High Counting Rate Neutron Detection System," Trans. Amer. Nucl. Soc. 13(2), pp. 792, 1970.

N.J. Diaz and M.J. Ohanian, "Reactor Dynamics Studies in Large Close-to-Critical Systems," Proceedings of the Symposium on Dynamics of Nuclear Systems, University of Arizona, 1970.

M.J. Ohanian and N.J. Diaz, "Spatial Reactivity Measurements in a Large, Close-to-Critical H_2O-UO_2 Assembly," Trans. Amer. Nucl. Soc. 12(2), pp. 676, 1969.

N.J. Diaz and M.J. Ohanian, "The Influence of Small Reactivity Variations in Pulse Propagation Phenomena," Trans. Amer. Nucl. Soc. 12(2), pp. 60, 1969.

M.J. Ohanian and N.J. Diaz, "The Dispersion Law of a Large, Close-to-Critical, H_2O-UO_2 Assembly," Trans. Amer. Nucl. Soc. 12(1), pp. 257, 1969.

N.J. Diaz and M.J. Ohanian, "Space-Time Kinetics Studies in a Large, Close-to-Critical, H_2O-UO_2 Assembly," Trans. Amer. Nucl. Soc. 12(2), pp. 676, 1969.

T.F. Parkinson, R.B. Perez and N.J. Diaz, "Determination of Lattice Parameters of D_2O-Moderated Systems from Pulsed and Static Neutron Measurements," Nuclear Energy Vol. 16(1), 1966.

T.F. Parkinson and N.J. Diaz, "Studies in Heavy Water Moderated Lattices with Static and Pulsed Neutron Sources," Trans. Amer. Nucl. Soc. 9(1), 1966.

T.F. Parkinson and N.J. Diaz, "Extrapolation to Criticality Using the Die-Away Technique in D_2O-Moderate Lattices," Trans. Amer. Nucl. Soc., 7(1), 1964.

R.E. Uhrig, N.J. Diaz, et al., "Pulsed and Static Neutron Measurements in H_2O and D_2O Exponentials," Paper No. SM42/45, Proceedings of the IAEA Symposium on Exponential and Critical Experiments, Amsterdam, September, 1963.

B. MAJOR UNREFEREED REPORTS AND PUBLICATIONS

N.J. Diaz et al., "Ultrahigh Temperature Reactor and Energy Conversion Research Program", Quarterly Reports, 1991-1994.

N.J. Diaz et al., "Ultrahigh Temperature Reactor and Energy Conversion Research Program", 6 Volumes, INSPI-PUB-91-110, Annual Report, Contract No. NAS3-26314, submitted to the National Aeronautics and Space Administration, September, 1991.

N.J. Diaz et al., "Ultrahigh Temperature Reactor and Energy Conversion Research Program", 4 Quarterly Progress Reports, INSPI-PUB-90-101 to 104, Contract No. F33615-89-C-2929, submitted to Wright Patterson Aeronautical Laboratories, U.S. Air Force, September 1990-June 1991.

N.J. Diaz and I. Maya, "Ultrahigh Temperature Energy Transport for Space Power and Propulsion", Final Report to the State of Florida Technological Research and Development Authority under State of Florida Agency No. 107, September, 1990.

N.J. Diaz et al., "Advanced Nuclear Space Power Research Program", 4 Volumes, INSPI-FR-UF-88-001 to 004, Final Report, Contract No. F33615-88-C-2881, submitted to Wright Patterson Aeronautics Laboratories, U.S. Air Force, October, 1989.

N.J. Diaz, "The SDIO Research Program on Plasma Core Reactors", Plasma Physics Workshop, sponsored by the Institute of High Temperatures of the USSR Academy of Sciences, the University of Florida and the Innovative Nuclear Space Power Institute, Gainesville, Florida, October, 1989.

I. Maya, N.J. Diaz, S. Anghaie, E.T. Dugan, "Advanced Nuclear Space Power Reactor and Energy Conversion Research," Florida Space Research and Development Workshop, Orlando, FL, February, 1989.

N.J. Diaz et al., "Innovative Nuclear Space Power Research Program", 17 Volumes, INSPI-FR-88, Final Report, Contract No. DNA001-85-C-0329, submitted to Wright Patterson Aeronautical Laboratories, U.S. Air Force, December, 1988.

S. Anghaie and N.J. Diaz, "Flaw Detection, Sizing and Location by Differential Gamma Spectrometry", Final Report to the National Science Foundation for Grant NSF-ECS8600916, May, 1989.

N.J. Diaz, "Quarterly Progress Reports," INSPI-QR-85-001 through QR-87-009, submitted to the Defense Nuclear Agency, the Department of the Air Force, and the Strategic Defense Initiative Organization in partial fulfillment of Contract DNA 001-85-C-0320, 1985, 1986, 1987.

S. Anghaie and N.J. Diaz, "Flaw Detection, Sizing and Location by Differential Gamma Scattering Spectrum Technique," Final Report to the National Science Foundation for Grant NSF-MEA-84609040, National Science Foundation, August, 1985.

N.J. Diaz et al., "UFTR Annual Summary Reports," reported to the Department of Energy, DOE Reports RFCA 40-1 through 40-14, 14 Reports, 1971 to 1984.

W.G. Vernetson and N.J. Diaz, "Reactor Sharing Program Annual Report," submitted to the Department of Energy, 1984.

S. Anghaie and N.J. Diaz, "Re-evaluation of Post-TMI Criteria: A More Rational Way to Making Regulatory Decisions on Severe Accidents," Report to Consejo de Seguridad Nuclear (Spain's Nuclear Regulatory Commission), Florida Nuclear Associates, Inc., March, 1983.

S. Anghaie and N.J. Diaz, "Key Research Subjects on Reactor Safety and Radiological Protection," Report to Consejo de Seguridad Nuclear (Spain's Nuclear Regulatory Commission), Florida Nuclear Associates, Inc., March, 1983.

S. Anghaie and N.J. Diaz, "Nuclear Power Plant Siting Criteria," Report to Consejo de Seguridad Nuclear (Spain's Nuclear Regulatory Commission), Florida Nuclear Associates, Inc., March, 1983.

S. Anghaie and N.J. Diaz, "Status Report: Low-Level/High-Level Waste and U.S.A. vs. Europe, Canada and Japan," Report to Consejo de Seguridad Nuclear (Spain's Nuclear Regulatory Commission), Florida Nuclear Associates, Inc., March, 1983.

S. Anghaie and N.J. Diaz, "Decommissioning: Safety and Costs," Report to Consejo de Seguridad Nuclear (Spain's Nuclear Regulatory Commission), Florida Nuclear Associates, Inc., March, 1983.

S. Anghaie and N.J. Diaz, "Pressurized Thermal Shock: Material and Thermal-Hydraulic Considerations," Report to Consejo de Seguridad Nuclear (Spain's Nuclear Regulatory Commission), Florida Nuclear Associates, Inc., March, 1983.

S. Anghaie and N.J. Diaz, "Evaluation/Criteria/Controversy Over Utilization of KI for Population During Accident vs. Evacuation," Report to Consejo de Seguridad Nuclear (Spain's Nuclear Regulatory Commission), Florida Nuclear Associates, Inc., March, 1983.

N.J. Diaz, "Final Summary Report on F.A. Hauck Fund Research Activities," University of Florida, April, 1983.

S. Anghaie and N.J. Diaz, "Liquid Effluents Control," Report to Consejo de Seguridad Nuclear Regulatory Commission), Florida Nuclear Associates, Inc., March, 1983.

N.J. Diaz et al., "Basic Feasibility Studies of Pulsed Gaseous Core Nuclear Systems," Final Report, NSF Grant No. ENG-78-28034, University of Florida, Gainesville, Florida, April, 1983.

N.J. Diaz, E.T. Dugan, E.E. Carroll, Jr., C.C. Oliver, and E.D. Whitney, "Basic Feasibility Studies of Pulsed Gaseous Core Nuclear Systems," Final Report, NSF Grant No. ENG 77-28034, 261 pages, University of Florida, Gainesville, Florida, March, 1983.

N.J. Diaz and W.G. Vernetson, "Safety Analysis Report for the University of Florida Training Reactor," FSAR submitted to the U.S. Nuclear Regulatory Commission for the licensing of the UFTR as a Class 104 Reactor, 402 pages, January, 1981.

N.J. Diaz, "Shift Technical Advisor Educational Program," a Final Report to Florida Power Corp. upon completion of formal educational program for engineers at the Crystal River 3 Nuclear Power Plant, 1981.

N.J. Diaz, "LWR Fuel Optimization Studies," Final Research Report to Union Carbide Corp. (Oak Ridge National Laboratory), 1981.

N.J. Diaz et al., "Reactor Operations Training Programs," Final Report submitted to Louisiana Power & Light, Univ. of Florida, Gainesville, FL, 1981.

N.J. Diaz, E.T. Dugan, C.C. Oliver, E.E. Carroll, Jr., and E.D. Whitney, "Basic Feasibility Studies of Pulsed Gaseous Core Nuclear Systems," Annual Report to the National Science Foundation, Grant No. ENG-77-28034, University of Florida, Gainesville, Florida, March, 1980.

N.J. Diaz et al., "Basic Feasibility Studies of Pulsed Gaseous Core Nuclear Systems," Annual Report, NSF Grant No. ENG-77-28034, University of Florida, Gainesville, Florida, March, 1979.

N.J. Diaz, E.T. Dugan, C.C. Oliver, "Neutronics and Energetics of Pulsed Gaseous Core Nuclear Systems," Final Report to the National Science Foundation under Grant No. ENG 74-01437, University of Florida, Gainesville, Florida, April, 1978.

N.J. Diaz et al., "Reactor Operations Training Programs," Final Report submitted to Louisiana Power & Light, Univ. of Florida, Gainesville, FL, 1978.

N.J. Diaz et al., "Heterogeneous Gas Core Reactor and Dual Fluid Closed Cycle Power Conversion System," Final Report, DOE Grant No. EN-77-S-05-5546, University of Florida, Gainesville, Florida, December, 1977.

N.J. Diaz, "Nuclear Power Engineering Program," a report submitted to Florida Power & Light Company on completion of educational/training program for 53 engineers, Univ. of Florida, Gainesville, FL, 1975.

N.J. Diaz, E.T. Dugan, C.C. Oliver, "Neutronics and Energetics of Pulsed Gaseous Core Nuclear Systems", Annual Report to the National Science Foundation under Grant No. ENG 74-01437, University of Florida, Gainesville, Florida, January, 1977.

W.H. Ellis and N.J. Diaz, "Feasibility Determination of Nuclear Analytical Methods in the Identification of Criminals," Final Research Report to the State of Florida, Univ. of Florida, 1975.

N.J. Diaz, "Neutron and Gamma Radiation Damage of Semi-Conductors," a Final Research Report to GTE Sylvania, Electronics Systems Group, 1974.

N.J. Diaz, "ETL Radiation Test," a Final Research Report to Continental Testing Laboratories, Inc., 1973.

N.J. Diaz, "Reactor Engineering Staff Training," a Final Report to Florida Power Corp., on a 3 year training program conducted for FPC engineers on the Crystal River 3 Nuclear Power Plant, 1974.

N.J. Diaz, J.D. Martin, E.T. Dugan and M.J. Ohanian, "Analysis of the Reactor Dynamics of a Large Core Reactor", Research Report to the Department of Energy, University of Florida, Gainesville, Florida, February, 1972.

M.J. Ohanian and N.J. Diaz, "Final Report on Research on Pulse Propagation Measurements on Multiplying Media," submitted to the U.S. Dept. of Energy, Report No. In 1366, 1969.

N.J. Diaz, "Space-Time Kinetics Studies with the University of Florida SPERT Assembly," Ph.D. Dissertation, February, 1969.

M.J. Ohanian and N.J. Diaz, "Design and Hazards Report to the University of Florida SPERT Assembly," presented to the Division of Materials Licensing, AEC, as part of a Special Nuclear Material License application, June, 1967.

T.F. Parkinson and N.J. Diaz, "Pulsed and Static Measurements in D_2O-Moderated Lattices," Summary Report of AEC Contract No. AT(38-1)-374, September, 1965.

C. BOOKS, CONTRIBUTOR OF CHAPTERS

S. Anghaie, L.L. Humphries, N.J. Diaz, "Materials Inspection by the DGSS Technique," NDE Technology, ASME Book, July, 1989.

E.T. Dugan, N.J. Diaz, and R.A. Homerson, "Thermal Hydraulic Calculations for Modification of the UFTR from High Enrichment MTR Fuel to Low Enrichment SPERT Fuel", Use and Development of Low and Medium Flux Research Reactors, Karl Theimig, Graphische Kunstantalt und Buchdruckerer AG, Munich, 1984, pp. 515-521.

E.T. Dugan, N.J. Diaz and G.S. Knieldler, "Neutronic Calculations for Modification of the UFTR from High Enrichment MTR Fuel to Low Enrichment SPERT Fuel", Use and Development of Low and Medium Flux Research Reactors, pp. 508-514, Karl Thiemig, Graphische Kunstantalt und Buchdruckerer AG, Munich, 1984.

N.J. Diaz and M.J. Ohanian, "Reactor Dynamics Studies in Large Close-to-Critical Systems", Dynamics of Nuclear Systems, pp. 87-108, The University of Arizona Press, D.L. Hetric (editor), L.C. No. 73-147251, ISBN N-0-8165-0298-6, 1972.

D. INVITED PRESENTATIONS AND CHAIRMANSHIPS
National and International Meetings
1996-2001

"Relevance of Radiation Protection", invited speaker at the Health Physics Society Conference, Cleveland, Ohio, June 11, 2001.

"Disciplined - Meaningful - Scrutable", invited speaker at the Advisory Committee on Reactor Safeguards Workshop on Advanced Reactors, Rockville, Maryland, June 4, 2001.

"Decommissioning the Uncertainty", invited speaker at NEI/EPRI Decommissioning Forum, New Orleans, Louisiana, April 30, 2001.

"Regulating -- For the People", invited speaker at the Internationale Landerkommission Kerntechnik, Baden-Wurttemberg, Germany, April 26, 2001.

"Regulating for the Common Good", invited speaker at the 2001 US NRC Regulatory Information Conference, Washington, DC, March 14, 2001.

"Future of Nuclear Energy in the Americas", invited speaker at the American Nuclear Energy Symposium, Miami, Florida, December 12, 2000.

"Nuclear Safety: A National Responsibility Inside an International Framework", invited speaker at the Consejo De Seguridad Nuclear (CSN), Madrid, Spain, November 7, 2000.

"You Can't Have One Without the Other", invited speaker at the 28th Water Reactor Safety Meeting, Washington, DC, October 23, 2000.

"It's About Reasonable Radiation Control", invited speaker at the Conference of Radiation Control Program Direction, Tampa, Florida, May 15, 2000.

"On the Compatibility of Safety and Cost", invited speaker at the 15th KAIF/KNS Annual Conference, Seoul, Korea, April 19, 2000.

INVITED PRESENTATIONS AND CHAIRMANSHIPS
National and International Meetings
1996-2001

"Relevance of Radiation Protection", invited speaker at the Health Physics Society Conference, Cleveland, Ohio, June 11, 2001.

"Disciplined - Meaningful - Scrutable", invited speaker at the Advisory Committee on Reactor Safeguards Workshop on Advanced Reactors, Rockville, Maryland, June 4, 2001.

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"Future of Nuclear Energy in the Americas", invited speaker at the American Nuclear Energy Symposium, Miami, Florida, December 12, 2000.

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"On the Compatibility of Safety and Cost", invited speaker at the 15th KAIF/KNS Annual Conference, Seoul, Korea, April 19, 2000.

"Heat and Heat Sinks; Safety and Cost Competitiveness, invited speaker at OECD/CSNI Workshop on Advanced Thermal-Hydraulic and Neutronic Codes, Barcelona, Spain, April 10, 2000.

"Old Questions; New Answers", speaker at ICONE-8, Baltimore, Maryland, April 3, 2000.

"The "Versus"; The "And", speaker at the 2000 US NRC Regulatory Information Conference, Washington, DC, March 28, 2000.

"Heat and Heat Sinks; Safety and Cost Competitiveness, invited speaker at OECD/CSNI Workshop on Advanced Thermal-Hydraulic and Neutronic Codes, Barcelona, Spain, April 10, 2000.

"Old Questions; New Answers", speaker at ICONE-8, Baltimore, Maryland, April 3, 2000.

"The "Versus"; The "And", speaker at the 2000 US NRC Regulatory Information Conference, Washington, DC, March 28, 2000.

"Benefits of Safety-Focused Regulation", invited speaker at the American Nuclear Society Winter Meeting, Long Beach, California, November 15, 1999.

"Regulation, Reliability, and Competition", invited speaker at the International Energy Forum 1999, Washington, DC, November 5, 1999.

"Procedures - Not the Road Less Traveled" invited speaker at the 11th Annual Procedure Symposium, Clearwater Beach, Florida, October 28, 1999.

"Regulating in the National Interest" invited speaker at the Joint Meeting of Latin American Nuclear Societies, Acapulco, Mexico, July, 1999.

"The Role or Risk Information in Nuclear Reactor Regulations", invited speaker at the PSA '99 International Topical Meeting on Probabilistic Safety Assessment, Washington, DC, August 23, 1999.

"A Time for Closure" invited speaker at the 1999 US NRC Regulatory Information Conference, Washington, DC, May, 1999.

"Technology, Skills and Opportunities in America", invited speaker at the Hispanic Engineer National Achievement Awards Conference, Houston, Texas, October 9, 1998.

"Telling Tales of Bells and Whistles, Pumps and Valves, invited speaker at the NRC/ASME Symposium on Valve and Pump Testing, Washington, DC, July 21, 1998.

"Nuclear Regulation: Its Role in the Future of Nuclear Power, invited speaker at the Decision-Makers' Forum on a New Paradigm for Nuclear Energy Senate Nuclear Issues Caucus, Washington, DC, June 19, 1998.

"Globalization, Deregulation, Global Warming: Is Nuclear Electricity the Answer?", invited speaker, ICONE 6 Conference, San Diego, CA, May, 1998.

"A 21st Century Regulatory Technology", invited speaker at TOPSAFE'98, Valencia, Spain, April, 1998.

"To Risk or Not to Risk", speaker at NRC Regulatory Information Conference, Washington, DC, April 1998.

Presentation to American Nuclear Society meeting, Charlotte, N.C., February 1998.

"An NRC Perspective", invited speaker at Florida Nuclear Waste Stakeholders Meeting, Tallahassee, FL., February, 1998.

"The Role of the NRC on Nuclear Technology Regulation", lecture/presentation at Florida International University, Miami, FL., February, 1998.

"An NRC Perspective", invited speaker at Tech Con 23 - GE Nuclear Energy Annual meeting, Monterey, CA., February 1998.

"Technology and Regulations", lecture/presentation at University of California, Berkeley, CA., February, 1998.

"New Initiatives for Nuclear Regulation in the New Competitive Environment", invited speaker at Infocast's Conference on Nuclear Power in the Competitive Era, Washington, DC, January, 1998.

"D & D for the 21st Century: Integrating Technology and Regulation" invited speaker at X-change '97: The Global D & D Marketplace, Miami, FL., December, 1997.

"From Uncertainty To..." invited speaker to Sociedad Nuclear Mexicana, VIII Congreso, Guanajuato, Mexico, November, 1997.

"Nuclear Technology: Global Accomplishments and Opportunities. From Uncertainty To..." presentation at the American Nuclear Society 1997 Winter Meeting, Albuquerque, NM, November, 1997.

Presentation to the American Nuclear Society/Health Physics Society, Washington, DC, September, 1997.

"Procedures: Translating Knowledge Into Action" invited speaker at NUS Ninth Annual Procedure Symposium, Clearwater, FL., October, 1997.

"Power and Non-Power Reactors: Regulatory Differences and Similarities", invited speaker at National Organization of Test, Research, and Training Reactors (TRTR), Newport, OR., October, 1997.

Speaker at NRC Hispanic Heritage Celebration, Rockville, Md., September, 1997.

"Pragmatic Energy Choices for the Americas" invited speaker at Conference of the Americas, Miami, FL., September, 1997.

Washington International Energy Group, invited speaker, Washington, DC, September, 1997.

"NRC's Office of Inspector General - How Can it Better Assist the Commission?", speaker at NRC's OIG Information and Planning Conference, Rockville, MD., September, 1997.

"Rethinking the Dividing Lines: New Approaches for the Post-Cold War Era", invited speaker at Ninth Annual Weapons Complex Monitor Decisionmakers' Forum, Jacksonville, FL., September, 1997.

"Nuclear Technology, Regulation, and Education", invited speaker at 40th Anniversary Colloquium, University of Florida, Gainesville, FL., August, 1997.

"Regulation and Deregulation", presentation at American Nuclear Society 1997 Utility Working Conference, Amelia Island, FL., August 1997.

"Compliance, Safety, and Risk", presentation at American Nuclear Society Annual meeting, Orlando, FL., June, 1997.

Invited speaker at LAS/ANS Symposium on Globalization of Nuclear Activities, Rio de Janeiro, Brazil, June, 1997.

"Nuclear Power and the 21st Century: Establishing A Regulatory Framework for a Mature Industry", invited speaker at Nuclear Energy Institute, Washington, DC, May, 1997.

"Nuclear Advances Through Global Cooperation", invited speaker at ICONE 5, Nice, France, May, 1997.

"An NRC Perspective", invited speaker at BWR Owner's Group Executive Session, Myrtle Beach, SC., April, 1997.

"Nuclear Regulatory Oversight", Speaker at U.S. Nuclear Regulatory Information Conference, Washington, DC, April, 1997.

Regulatory Domain and Perception on Nuclear Research", presentation to American Nuclear Society meeting, Atlanta, GA., April 1997.

Invited speaker at OECD/CSNI Specialist Meeting on Advanced Instrumentation and Measurement Techniques, Santa Barbara, CA., March, 1997.

CHAIRMANSHIPS AND INVITED PRESENTATIONS (1975-1996)
National and International Meetings

Chairman, "Nuclear Power in the Americas", VIII Pan American Energy Congress, Costa Rica, August, 1996.

Co-Chairman, "Energy Technologies for the XXI Century", VII Pan American Energy Congress, Acapulco, Mexico, July, 1994.

"Assessment of Cuba's Energy Scenario", a presentation of the Blue Ribbon Commission for the Reconstruction of Cuba at the U.S. Senate Hart Building, October 1993.

Plenary Speaker, Specialist Conference on Space Nuclear Power and Propulsion Technologies, Podolsk, Moscow Region, Russia, September 1993.

Session Organizer, Space Nuclear Propulsion, National Critical Technologies Meeting, San Diego, CA, June 1993.

"USA Nuclear Space Power and Propulsion, 1993", presentation to the American Nuclear Society, St. Lucie Branch, May 1993.

The Cuban American National Foundation, "Castro's Nuclear Power", lecture/presentation, March 31, Jacksonville University.

Chairman, "Innovative Nuclear Concepts", special session at the 10th Symposium on Space Nuclear Power and Propulsion, Albuquerque, New Mexico, January, 1993.

"The Case for Nuclear Energy Development", invited presentation to SHPE-ANIME VIII USA-MEXICO Technical/Commerce Interchange (NAFTA), Mexico City, Mexico, October, 1992.

"From Star Wars to Star Treks", presentation to IEEE, Daytona Section, September 24, 1992.

"Nuclear Power Planning for the XXI Century", an invited presentation to the VI Pan American Energy Congress, Santo Domingo, Dominican Republic, August, 1992.

"Cuba's Nuclear Program", presentation to a meeting of the Association of Cuban Engineers, Miami, Florida, April, 1992.

Chairman, "Key Issues in Nuclear Power and Propulsion", special session at the 9th Symposium on Space Nuclear Power Systems, Albuquerque, New Mexico, January, 1992.

"International Non-Military Nuclear Reactor Safety: Soviet VVER-440's Technology and the Impending Menace from Cuba's Reactors", testimony given to the U.S. Senate Subcommittee on Nuclear Regulation, Washington, D.C., July, 1991.

"Military and Non-Military Uses of Nuclear Reactors in the Western Hemisphere", testimony given to the U.S. House of Representatives, Foreign Affairs Committee, Washington, D.C., June, 1991.

"Gas Core Reactor: Science and Technology", presentation to the Synthesis Group (Stafford Commission) Workshop, Gainesville, FL, April, 1991.

"Status of Gas Core Reactor Research", presentation to the First Gas Core Nuclear Rocket Workshop, Boulder, CO, April, 1991.

"Nuclear Propulsion Technology Plan: The Gas Core Reactor Option", presentation to NASA's Nuclear Thermal Propulsion/Innovative Concepts Panel, Gainesville, FL, February, 1991.

"From Star Wars to Star Treks", SIGMA XI Lecture, November, 1990.

Chairman, V Pan American Energy Congress, sponsored by the Pan American Federation of Engineering Societies, Washington, D.C., August, 1990.

Rapporteur, Nuclear Energy Forum, XXI Convention of the Pan American Federation of Engineering Societies, Washington, D.C., August, 1990.

"Vapor Core Propulsion Reactors", four presentations to NASA's Nuclear Thermal Propulsion Workshop, Concept Focal Points (CFP) Meeting, NASA Lewis Research Center, Cleveland, OH, July, 1990.

"Vapor Core Reactors for Nuclear Electric Propulsion", four presentations to NASA's Nuclear Electric Propulsion Workshop, Jet Propulsion Lab (JPL), Pasadena, CA, June, 1990.

"Ultrahigh Temperature Reactor and Energy Conversion Research Program", presentation to the Interagency Advanced Power Group Meeting" Gainesville, FL, May, 1990.

"The SDIO Research Program on Plasma Core Reactors", presentation to the Plasma Physics Workshop, sponsored by the Institute of High Temperatures of the USSR Academy of Sciences, the University of Florida and the Innovative Nuclear Space Power Institute, October, 1989.

"Ultrahigh Temperature Reactor and Energy Conversion Research Program for Space Power and Propulsion", presentation to the Plasma Physics Workshop, Gainesville, FL, October, 1989.

"Ultrahigh Temperature Vapor Reactor and Magneto Conversion for Multi-Megawatt Space Power Generation," presentation to the International Conference on Space Power, International Astronautical Federation, Cleveland, Ohio, June, 1989.

Chairman, "First CFD Meeting on Ultrahigh Temperature Space Research Program", sponsored by SDIO for DoD, DoD, and NASA, Washington, D.C., November, 1988.

Chairman, "Power System Concepts," special session at the 5th Symposium on Space Nuclear Power Systems, Albuquerque, New Mexico, January, 1988.

Chairman, "Space Reactors," invited session at the Symposium on Innovative Science & Technology, O-E LASE '88, Los Angeles, CA, January, 1988.

Chairman, "Innovative Space Power Systems", invited session at the Third Pathways to Space Experimentation Workshop, Orlando, Florida, June, 1987.

Session Organizer, "Nuclear Space Power: Research and Development Issues", a special technical session with DoD, DoE, SDIO, and NASA officials, 1987 American Nuclear Society Winter Meeting, Los Angeles, CA, November, 1987.

U.S. Organizer, First European Meeting on Nuclear Space Power, Brussels, Belgium, October, 1987.

"Gas Core Reactor (GCR) Research Program", presentation to the Thermohydraulic Research Planning and Review Meeting, for the Interagency Power Group (DoD/SDIO/DoE), Washington, D.C., May, 1987.

Chairman, "Federal Government Research Program FY88", Engineering Research Council Forum, Washington, D.C., March, 1987.

Chairman, "Novel Nuclear Space Power Concepts," 4th Symposium on Nuclear Space Power, Albuquerque, New Mexico, January, 1987.

Chairman, "Nuclear Energy in Space," Annual Meeting of the American Society for Engineering Education, Cincinnati, Ohio, June, 1986.

Chairman, "Multimegawatt Nuclear Space Power and Energy Conversion Research Programs," II-IWG Meeting, INSPI/ISTD/SDIO, Colorado Springs, Colorado, May, 1986.

"Reporting the Energy Story", a presentation to the Edison Electric Institute Workshop on Electrical Energy, Long Beach, California, March, 1986.

Chairman, Engineering Research Council Forum, sponsored by ASEE, Washington, D.C., March, 1986.

Chairman, "Innovative Nuclear Space Power Systems", Second Pathways to Space Experimentation Workshop, sponsored by SDIO/IST and the Department of the Air Force, Orlando, Florida, June, 1986.

"The Innovative Nuclear Space Power Research Program," a presentation to the 2nd Advisory Council Meeting of the Strategic Defense Initiative, IST, Washington, D.C., March, 1986.

Conference Organizer, "The State of Florida Conference on the Strategic Defense Initiative, Innovative Science and Technology Program", Tampa, Florida, March, 1987.

"Space Nuclear Power Generation, Conversion and Storage for the Nineties and Beyond," testimony to the Subcommittee on Energy Research and Production, Committee on Science and Technology, U.S. House of Representatives, Washington, D.C., October, 1985.

"Nuclear Technology Transfer: Methodology and Role," a presentation to the Closing Plenary Session, 3rd International Conference on Nuclear Technology Transfer, Madrid, Spain, October, 1985.

Co-Chairman, Closing Session, 3rd International Conference on Nuclear Technology Transfer, Madrid, Spain, October, 1985.

"Space Experimentation for Advanced Nuclear and Energy Conversion Concepts," invited presentation to the First Pathways to Space Experimentation Conference, SDIO/IST/AF, Orlando, Florida, June, 1985.

Co-Chairman, "The Conference on Science, Pseudoscience and Antiscience", sponsored by the Board of Regents, University of California, Long Beach, California, April, 1985.

Chairman, "Department of Defense Research at Universities", a plenary session at the Engineering Research Council Forum, Washington, D.C., March, 1985.

"Thermal Hydraulic Calculations for Modifications of the UFTR from High Enrichment MTR Fuel to Low Enrichment SPERT Fuel," presentation to the International Symposium on the Use and Development of Low and Medium Flux Research Reactors, MIT, Boston, MA, October, 1983.

"Neutronic Calculations for Modification of the UFTR from High Enrichment MTR fuel to Low Enrichment SPERT Fuel," a presentation to the International Symposium on the Use and Development of Low and Medium Flux Research Reactors, MIT, October, 1983.

"Comparison of Experimental Neutronics Results and Theoretical Predictions for a Gas Core Reactor", presentation to the Third International Conference on Emerging Nuclear Energy Systems, Helsinki, Finland, June, 1983.

"Energetics: Technical and Economical Issues for the Next Decade," an invited presentation to the XXIII International Conference of Engineers, Madrid, Spain, 1982.

"Gas Core Reactors: Theory and Experimental Validation," invited presentation to the Emerging Nuclear System Conference, Helsinki, Finland, June, 1982.

Co-Chairman, Closing Plenary Session, Second International Conference on Nuclear Technology Transfer, Buenos Aires, Argentina, November, 1982.

Chairman, "Burnable Poisons in the Fuel Cycle" Session, 1982 International ENS/ANS Conference, Brussels, Belgium, April, 1982.

"Cycling Gaseous Core Reactor Power Systems," a presentation to the Second International Conference on Emerging Nuclear Energy Systems, Lausanne, Switzerland, 1980.

"Gaseous Core Reactors for Electrical Power Generation," presentation to the Second International Conference on Emerging Nuclear Energy Systems, Lausanne, Switzerland, 1980.

"Nuclear Power in the '80's", invited presentation to the First Hispanics and Energy Conference, Denver, Colorado, 1980.

"Public Information and Energy Issues," invited presentation to the 1980 American Nuclear Society Annual Meeting, June, 1980.

"Nuclear Power and the Energy Crisis: An International Perspective," a series of conferences presented in Barcelona and Madrid, Spain, April, 1980.

"A Close Look at Nuclear Electrical Generation," an invited presentation at the Annual Meeting for Citizens for Energy and Environment, Jacksonville, Florida, January, 1980.

"Nuclear Power Update," invited presentation to Florida Municipal Utilities Association Annual Conference, Key West, Florida, June, 1979.

"Nuclear and Coal vs. What?," invited presentation to the Florida Engineering Society and American Society Civil Engineering Joint Meeting, Tampa, Florida, February, 1979.

"Nuclear Power: a Socio-Political Issue," key note speech, presented during Spanish Heritage Week for the U.S. NRC and ERDA, Washington, D.C., 1977.

Chairman, "Innovations in Nuclear Education" Session, 1977 American Nuclear Society Winter Meeting, 1977.

"The Nuclear Industry Dilemma," an invited presentation to the 1977 Annual National Symposium on Applied Vacuum Science and Technology (sponsored by ERDA), Los Angeles, CA, 1977.

Panelist, U.S. Energy Policy Plenary Panel, 104th American Public Health Association Annual Meeting, October, 1976.

"The Nuclear Power Issue Today," an invited presentation to the Edison Electric Power Institute Generation Workshop, July, 1976.

"High Technology Options for Electrical Generation," invited presentation to the Florida Electric Energy Winter Institute, February, 1975.

18. No.

19. No.

20. No.

21. No.

22. No.

23. None.

22

RESPONSES OF NILS J. DIAZ TO ADDITIONAL QUESTIONS FROM SENATOR CORZINE

Question 1. The September 11th terrorist attacks have focused attention on the potential vulnerability of U.S. critical infrastructure. As a general matter, how do you assess the vulnerability of U.S. commercial nuclear reactors to terrorist attacks?

Response. Nuclear power plants are designed, constructed, and operated with many safety features for the protection of public health and safety, such as robust containment buildings, redundant safety systems, and highly trained operators. They are among the most hardened industrial structures in the country and are designed to withstand extreme events, such as hurricanes, tornados and earthquakes. All NRC licensees with significant radiological materials have emergency response plans to enable the mitigation of impacts on the public in the event of a radioactivity release. These emergency plans include provisions for the coordination of State, local and Federal actions to enhance the protection of the public. However, the NRC requirements for public protection do not specifically incorporate the consequences of large aircraft impacts such as those used in the September 11, 2001,

terrorist attacks on New York and Washington. Detailed engineering analyses of a deliberate large airliner crash have not yet been performed, but I understand the Commission intends to critically review pertinent information, and I support this effort.

If confirmed, I intend to consider this issue as a priority for review and deliberation.

Question 2. Recent reports have questioned the adequacy of the NRC's Operational Safeguards Response Evaluations. What is your assessment of the adequacy of the OSREs?

Response. The NRC has been considering improvements to its safeguard programs for nuclear power plants. The Operational Safeguards Response Evaluation (OSRE) program, which is performance-based, was designed to improve security inspection efforts by using force-on-force exercises conducted by licensees as a method of evaluating their response capabilities. While licensees are responsible for identifying vulnerabilities in their security programs, their tactical response capability has been enhanced by NRC's OSRE program. This program has been revised and improved over time as new information was learned, and it has proven to be effective in evaluating licensee programs to meet design basis threats. The OSRE program has identified a number of weaknesses in licensee performance. Where weaknesses were identified, NRC ensured that corrective actions were taken.

NRC security and safeguards oversight activities are not limited to the OSREs. The NRC has and will continue to implement the baseline safeguards inspection program conducted by NRC inspectors, which includes reviews of areas such as access authorization, access control measures, audit programs and responses to contingency events.

A reassessment of the adequacy of the OSREs and other elements of NRC's safeguards requirements will be conducted, as discussed in Question 3 below.

Question 3. In July, the NRC announced it was starting a 1-year pilot program of the Safeguard Performance Assessments. It has been reported that the SPA will be used to determine if the SPA has merit as a possible replacement for the OSRE. Do you think that would be a good idea?

Response. It is my understanding that a decision to replace the OSRE with the Safeguards Performance Assessment (SPA) has not been made. Earlier this year, the Commission recognized that improvements could be made to its safeguards activities and, therefore, decided to consider alternative potential improvements to the safeguards evaluation process. One approach that is being pursued is the SPA pilot program, which will be conducted in addition to the ongoing OSRE program. For the year 2002, the Commission approved conducting six OSREs and eight SPAs. At the conclusion of this program, a comprehensive review of the results will be conducted. One aspect of this effort will be an evaluation of the effectiveness of safeguards requirements and the oversight process.

If confirmed, I intend to objectively evaluate the agency's safeguards and security requirements and oversight programs, including the results of the SPA pilot program, OSREs, and the lessons learned from the terrorist attacks on America, and work with the Commission to finalize a decision on our licensees' safeguards and security requirements.

Question 4. One of the ideas currently under consideration in Congress is Federalization of airport and airline security. Do you think that Federalization of security at nuclear reactors is an idea that Congress should consider? Are there any other security-related ideas or additional authorizations that you believe that Congress should consider?

Response. Federalization of security at nuclear reactors has been previously considered as part of the agency's safeguards and security programs. For example, in 1976 the NRC conducted a study, the Security Agency Study, which was transmitted to Congress on August 19, 1976. This study examined whether security forces should continue to be employed by individual licensees with reliance on local law enforcement personnel for emergency assistance or whether a Federal security force should be created within the NRC to perform security functions. The Security Agency Study concluded that the creation of a special security force would not result in a higher degree of guard force effectiveness than that which could be achieved through the use of private guards who have been trained and properly certified. To this day, this conclusion has been in effect.

Recently, the Commission made several legislative proposals to the Congress to provide Federal authority in the safeguards and security area. These recommendations would 1) authorize guards at NRC-licensed facilities to carry and use weapons to protect property of significance to the common defense and security located at facilities owned or operated by a Commission licensee; 2) make it a Federal crime to

introduce dangerous weapons, explosives or other dangerous instruments into facilities subject to NRC's licensing or certification authority; and 3) make it a Federal crime to commit certain acts of sabotage during the construction of a production, utilization, or waste storage facility. I believe it would be appropriate for Congress to consider these recommendations.

Furthermore, even before the September 11th attacks, I had urged that we study how the term "enemies of the state" (10 CFR 50.13 "Attacks and Destructive Acts By Enemies of the United States; and Defense Activities") has been interpreted by the agency. I believe that in light of the terrorist attacks of September 11, 2001, it is appropriate for that interpretation to be reassessed, as well as other ideas regarding Federalization of security.

If confirmed, I am ready to work with my fellow Commissioners and the Congress to consider what is necessary for the common defense and security as applicable to nuclear reactor safeguards.

RESPONSES OF NILS J. DIAZ TO ADDITIONAL QUESTIONS FROM SENATOR REID

Question 1. In your view, what is the role of the Nuclear Regulatory Commission (NRC) with respect to site suitability, licence application, waste acceptance and closure of a geologic repository?

Response. My understanding of the NRC's role for the issues cited above is as follows:

a) Site Suitability: The NRC role is to provide preliminary comments on the sufficiency of DOE's at-depth site characterization and waste form proposal information which could be used to support the License Application. NRC is required by statute to conduct prelicensing actions, including interactions with Department of Energy (DOE) and other stakeholders to provide the basis for any comments. NRC also is required to comment on the required Draft Environmental Impact Statement (DEIS) which accompanies a Site Recommendation. The NRC's initial comments on the DEIS have been provided to DOE and made public.

b) License Application: NRC has established procedures to receive and review license applications for completeness. If an application is submitted, the NRC must determine whether it is complete. If it is complete, NRC would docket it and notify the public. NRC would then conduct a thorough safety review of the application and publish its results in a safety evaluation report. NRC would also determine whether it is practical to adopt DOE's Environmental Impact Statement and would conduct a formal hearing before a licensing Board. Then, the Commission would, after deliberation on the evidence presented, including the findings of the Board, make a decision on the application, with respect to whether or not to authorize construction.

c) Waste Acceptance: NRC review and approval would be required before any waste is authorized to be received at the site. A process similar to the process for a construction authorization discussed above would be followed. DOE would have to update the safety analysis report and the NRC would conduct a new hearing to make a decision as to whether to approve receipt and possession of waste onsite based on compliance with the EPA standard. The NRC would conduct inspections to assure that the waste received was in compliance with the specifications contained in the application.

d) Closure: NRC review and approval of DOE's amendment for closure would also be necessary. NRC would repeat the process discussed above and the DOE's amendment would include an appropriate update with any new information.

If confirmed, I intend to make a fair, open-minded and objective evaluation of the information on the record with respect to site suitability and, if an application for a geologic repository is submitted, and on any decisions on a license application concerning construction, waste acceptance and closure of a geologic repository.

Question 2. Do you believe that the NRC should require full-scale testing of casks used for the transportation of high-level nuclear waste?

Response. The NRC staff believes the current regulatory approach of relying on modeling, analysis and/or physical testing, as well as scale model testing of transportation casks, is adequate to demonstrate the acceptability of the cask design and compliance with the requirements of 10 CFR 71 without requiring that all casks be subjected to full-scale testing. The casks are required to pass the design basis accident testing requirements of 10 CFR 71 which are rigorous and include a 30 foot drop test on an unyielding surface, followed by puncture, fire, and submersion tests.

The staff is also initiating a new study, referred to as the Package Performance Study, which will examine the ability of transportation casks to withstand severe, beyond design basis accidents. This study is planned to include physical testing to

evaluate the cask's performance under accident conditions more severe than the hypothetical accident tests. The staff will use the results of this study to verify and validate the transportation accident modeling and analysis, and will propose any changes in the regulatory approach, as appropriate. In addition, the staff is following closely the examination of the recent Baltimore tunnel train fire to learn any information that should be considered relevant to NRC requirements.

If confirmed, I will review the results of staff analyses to ascertain the adequacy of the approach, and will also assess the results of the tests to ensure that adequate protection of the public is maintained. If I conclude that additional full-scale testing is necessary, I will make such a recommendation to the Commission.

Question 3. If the evidence presented by the Department of Energy in their licence application for Yucca Mountain appears to indicate the health and safety of Nevadans cannot be secured, would you be willing to disapprove a license? What type of evidence do you believe is sufficient to disqualify the site?

Response. I will disapprove a license application for Yucca Mountain if adequate protection of health and safety cannot be secured for Nevadans. The decision to approve or disapprove will be made solely upon an assessment of the safety merits of the application and of all pertinent information.

If confirmed, I will insist that the information provided is comprehensive, valid to state-of-the-art standards, and that DOE has satisfied the burden of proof that EPA's standards will be met.

Question 4. The Environmental Protection Agency's radiation protection standards for the Yucca Mountain site limit the compliance period to 10,000 years. If the maximum exposures are shown to occur after 10,000 and they are larger than the standards set by the EPA for the first 10,000 years of the repository, should the Nuclear Regulatory Commission consider disqualifying the site?

Response. The Energy Policy Act of 1992 required the EPA to establish specific radiation protection standards for a mined geologic repository at Yucca Mountain. The Act requires that the NRC make an assessment of the application to ensure compliance with EPA standards. In June, 2001, the EPA promulgated its standards which established a 10,000 year compliance period. Under the Act, the EPA standards, and NRC's conforming regulations, applicable to a repository at Yucca Mountain, establish the standard for adequate protection of the public health and safety. Presently, the EPA standards, including the 10,000 year compliance period, are being challenged in the courts. It is possible that this could result in changes that would require a new determination of adequacy by the NRC. Also, the U.S. Congress may determine, based on pertinent health and safety information, that a different compliance period is necessary.

If confirmed, I will be bound by the NRC regulations and the EPA standards applicable to Yucca Mountain as they stand at the time of decisionmaking.

Question 5. Reports indicate that the proposed pebble bed modular reactors would be built without a containment structure. In light of the recent terrorist attacks in New York City and Washington, DC, do you think the Nuclear Regulatory Commission should require containment structures for these designs?

Response. The Commission has required that a containment structure be included for all licensed light water reactors (LWRs) as a last physical barrier for protection against the release of radioactivity. As more detailed information is acquired for potential accident scenarios for pebble bed modular reactors (PBMR), decisions about the necessary protective systems and structures will be made. I believe that the protective systems for the PBMRs should be capable of providing an equal or greater level of protection against the release of radioactivity as that provided by LWRs. Additional requirements could be needed based on analyses of the recent terrorist attacks.

Question 6. In light of the recent terrorist attacks and the reported failure of many plants during NRC training exercises, should the NRC reconsider implementing a self-regulated, industry training program?

Response. The NRC has been considering improvements to its safeguards program for nuclear power plants. The Operational Safeguards Response Evaluation (OSRE) safeguards program, which is performance-based, was designed to improve security inspection efforts by using force-on-force exercises conducted by licensees as a method of evaluating their response capabilities. While licensees are responsible for identifying vulnerabilities in their security programs, their tactical response capability has been enhanced by NRC's OSRE program. This program has been revised and improved over time as new information was learned, and it has proven to be effective in evaluating licensee programs to meet design basis threats. The program has identified a number of weaknesses in licensee performance. Where weaknesses were identified, NRC ensured that corrective actions were taken.

It is my understanding that no decision has been made to replace the OSRE with the Safeguards Performance Assessment (SPA). Earlier this year, the Commission recognized that improvements could be made to its safeguards activities and, therefore, decided to consider alternative potential improvements to the safeguards evaluation process. One approach which is being pursued is the SPA pilot program, which will be conducted in addition to the ongoing OSRE program. For the year 2002, the Commission approved conducting six OSREs and eight SPAs. At the conclusion of this program, a comprehensive review of the results will be conducted. One key aspect of this effort will be an evaluation of the effectiveness of safeguards requirements and the oversight process.

NRC security and safeguards oversight activities are not limited to the OSREs and the SPAs. The NRC has and will continue to implement the baseline safeguards inspection program conducted by NRC inspectors which includes reviews of areas such as access authorization, access control measures, audit programs and responses to contingency events.

If confirmed, I intend to objectively evaluate the NRC's safeguards oversight activities including the SPA pilot program and the OSREs, and work with the Commission to finalize a decision on whether to implement a self-regulated, industry training program.

Question 7. If economics will play the greatest role in the decision to license and build new nuclear reactors, what are the most important factors affecting the economic competitiveness of proposed and existing nuclear power plants?

Response. Economics will play a dominant role in the industry decision to build a new nuclear power plant, but the Commission has no statutory role in aiding the industry's economic decision. NRC has the responsibility to license and regulate nuclear power plants, and to maintain a regulatory regime that, first and foremost, protects the public health and safety, and the environment. I believe it must do so in an efficient and effective manner.

Although the intricacies of business decisions are outside our role as a health and safety regulator, I would expect that the factors which are an important part of the business decision associated with a new electricity production facility would include a broad range of issues. One of the most important considerations would logically be the need for electricity in a specific area of the country. Other considerations would likely include the costs associated with planning, construction and operation of the facility; an evaluation of alternatives for electricity production such as natural gas, coal, or purchase agreements with other producers; State, local and Federal license and permit approvals; and the public environment or attitudes related to the primary alternatives being considered.

Question 8. Do you expect the nuclear power industry to apply for a license to construct a new nuclear power plant within the next 10 years? If so, do you expect that this will be a pebble bed modular reactor, a conventional light-water reactor, or another type?

Response. The industry has expressed their intention to explore the addition of new nuclear power plants. There are various possible scenarios, but it appears that a new power plant within the next 10 years is not out of the question. The type of reactor that could be selected would depend on factors such as the need for power, plant economics as well as other industry requirements, including the lead time for plant operation, and NRC's licensing requirements. In the short term, utilizing the existing certified light water designs could expedite bringing a new plant online. On the other hand, applications for new advanced designs, such as the pebble bed modular reactor, could necessitate significant analysis but could offer other advantages.

STATEMENT OF PATRICK HAYES (PETE) JOHNSON, NOMINATED TO BE CO-CHAIRMAN OF THE DELTA REGIONAL COMMISSION

Mr. Chairman and members of the committee: Thank you for the opportunity to appear before you this morning as you consider President George W. Bush's nomination of me as Federal Co-chairman of the newly created Delta Regional Authority. I am especially appreciative and humbled by my long time friends Senator Thad Cochran and Senator Trent Lott being here today in support of my nomination. In fact it is they who recommended me to the President and should this committee choose to recommend me to the full Senate I will work diligently to live up to their expectations and those of the President as well as those of this committee and the entire Congress.

As a point of personal privilege I would like to take this opportunity to introduce to the committee my family who is here with me today. My wife Margaret of 31 years, our daughter Mary Margaret Johnson who currently lives and works in At-

lanta and Anne Clark Downing and her husband of 3 weeks Steve Downing. They too live and work in Atlanta. The weekend Anne Clark and Steve were married Mary Margaret became engaged and we are excited about having another son-in-law.

When I was first approached about this position I said I was not interested but after prayerful consideration and talking with those whose opinions I value it became apparent that I could not pass up the opportunity to make a positive impact on the lives of the people throughout our region for generations to come. When I was a young trust officer of our home town bank I was charged with settling the estate of one of our prominent local elected officials. When I sat at the desk he toiled over for his entire life I noticed a small piece of paper under the glass on top of his desk and on it he had typed "What you do for yourself dies with you and what you do for others lives on." Indeed, as I come before you today hoping you will find favor in my nomination I come with a desire to be part of building an economy in our region that will change the lives of our citizens for generations to come.

Public service in my family is not a casual undertaking. In fact I am the third generation in our family to be involved in public service. My grandfather was a Member of Congress serving the 6th District of Mississippi in 1918 through 1922. He returned home to serve our State as a Judge and later Governor. My uncle served our State as Lt. Governor and Governor and I have served our State as State Auditor and our nation as State Director of USDA's Farmers Home Administration.

I spent the early years of my life on a small farm in south Mississippi. My family was unable to put me through college however I graduated from the University of Mississippi in 1971 after working my way through waiting tables and a variety of other jobs. Law school was no easier. I complete night law school while holding down a full time job with the First National Bank of Jackson, Mississippi. At age 26 I was named to head one of the State's largest trust departments with the Bank of Clarksdale in Clarksdale, Mississippi.

For almost three decades I have been active in trying to make our community, State and region a better place to live. The Delta Regional Authority holds great promise for our region and I believe that with your help we can change the lives of millions of Americans for generations to come.

Again, thank you for the opportunity to appear before you today. I'll be glad to try and answer any questions you may have.

UNITED STATES SENATE

COMMITTEE ON ENVIRONMENT
AND PUBLIC WORKS

ROOM 410 DIRKSEN BUILDING WASHINGTON, DC 20510

INFORMATION

REQUESTED OF PRESIDENTIAL
NOMINEES

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

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

Name of Nominee: Patrick Hayes (Pete) Johnson, Jr.

Business Address: P.O. Drawer 1990, Clarksdale, MS 38614

Business Phone: (662) 624-2425

Home Address: 405 Court Street, Clarksdale, MS 38614

Home Phone: (662) 627-5515

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

Name: Johnson, Jr. (Last) Patrick (First) Hayes (Middle)

Position to which nominated: Federal Co-Chairman of the Delta Regional Authority

Date of Nomination: _____

Date of birth: 12 05 1948 (Day) (Month) (Year) **Place of birth:** Alexandria, Louisiana

Marital status: Married **Full name of spouse:** Margaret Elise Birdsong

Name and ages of children: Mary Margaret Johnson, age 26

Anne Clark Johnson Downing, age 24

Education:

Institution	Dates attended	Degrees received	Dates of degrees
University of MS	1966-1971	BBA	1971
Jackson School of Law	1971-1973	Graduate	1973
LSU School of Banking of the South	1985-1988	Graduate	1988

Employment record:

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

1971 - 1974 First National Bank, Jackson, MS - Management Trainee and Assistant Trust Officer. As a Management Trainee I worked in every department of the Bank. As an Assistant Trust Officer I oversaw the administration of various estates and trusts as well as the investments and other assets in those trusts.

1974 - 1984 United Southern Bank, Clarksdale, MS - Senior Vice-President and Trust Officer, responsible for the Trust Department activities. Later moved into Commercial Lending, which included agricultural lending responsibilities. Additional responsibilities included marketing and

product development. At that time this institution was in the top ten institutions in the State of Mississippi.

1984 - 1986 Barnes Johnson & Associates - Dudley Barnes and I formed a financial planning firm where we provided financial planning services to individuals and corporations. We also provided brokerage services through Raymond James & Associates, a New York Stock Exchange member firm headquartered in St. Petersburg, Florida.

1986 - 1987 Financial Planning and Research, Inc. In 1986 I left my association with Barnes Johnson to form my own financial planning firm where I broadened my financial planning services to include earnings improvement consulting services to medium sized banking institutions around the United States. I operated under contract through a Memphis based company, Banking Consultants of America.

1988 - 1992 State Auditor, State of Mississippi. I was elected State Auditor in 1987 and took office in January of 1988.

1992 - 1993 State Direct of Farmer's Home Administration, Mississippi. After serving as State Auditor, former President George Bush appointed me as State Director, which at the time had farm program responsibilities as well as rural development responsibilities.

1993 - to present - Practice law and develop various business interests.

1994 – to present – I formed Correction Systems of Mississippi, Inc., which renovated a vacant building and leased it to the Mississippi Department of Corrections to be used as a minimum security restitution facility for female offenders.

1997 - 1999 - Luckett Law Firm. I associated with this firm in January, 1997. My practice primarily involved civil litigation, commercial transactions and real estate law.

1999- to present - Johnson Bobo, PLLC - formed with member Fincher G. Jack Bobo. Our firm engages in the general practice of law, which includes civil litigation and commercial transactions.

2000 - to present. South Pines, LLC - This company was formed by me for the purpose of managing a mini storage facility in Hattiesburg, Mississippi as well as developing commercial property interest in that area.

Honors and awards:

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

Goodman, Chaney, Schwerner Award, Presented by Aaron E. Henry, President, Mississippi State Conference, NAACP, November 7, 1987.

Memberships:

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

Organization	Office held (if any)	Dates
Mississippi State Bar Association		1974-Present
Coahoma County Bar Association		1974-Present
Clarksdale Coahoma County Industrial Foundation, Director ('84-'87); Chairman ('84-'85)		
Clarksdale Coahoma County Chamber of Commerce, President		1982
Clarksdale/Coahoma County Airport Board, Chairman		1978-1982 (est.)
Mississippi Bankers Association – Young Bankers Section – Councilman, Treasurer, President		1978-1982
Chuck Cholson Prison Ministry – Coahoma County Treasurer		1978
First Presbyterian Church of Clarksdale, Deacon, Elder and Clerk of the Session		1982-Present
Clarksdale Rotary Club		

Qualifications:

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

For the last 30 years I have been actively involved in the civic, business and governmental affairs of my state and the Mississippi Delta Region. As President of my community's Chamber of Commerce as well as its Industrial Foundation, I have been directly involved with the issues that confront all aspects of our society. I have also served as Chairman of the Mississippi Marketing Counsel, appointed by former Governor Bill Allain. I held a position on the Delta Council's Community and Industrial Development Board and served as an officer in one of the region's largest financial institutions. Serving as Mississippi's State Auditor also provides me unique insight into the workings of local and state government. Additionally, my service as State Director of the Farmers Home Administration when it was responsible for Farm Programs and Rural Development allows me to have a better understanding of the problems facing this region. I currently practice law and have a number of other business interests. I am an avid outdoorsman who has hunted and fished the region for decades.

Future employment relationships:

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

As of the date of this response (August 29, 2001) I have agreed to dissolve the law firm partnership and to sever all connections with it and law partner Fincher G. (Jack) Bobo. In addition, I have agreed to resign as a member of the board of the Clarksdale/Coahoma County Chamber of Commerce and Industrial Foundation.

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

None.

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

No.

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

Yes.

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

No.

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

I have never held any other appointive position that required Congressional confirmation. The position of Farmers Home Administration State Director for Mississippi, held from 1992 to 1993, was a Schedule C position.

Financial Statement:

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

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

I anticipate receiving from Correction Systems of Mississippi over the next three years dividends totaling approximately $78,000.00 per year. In the past, as the sole stockholder of this S corporation I received disbursements from the company in the form of management fees. However, because I will be terminating my active interest in this company future disbursements will be made in the form of dividends.

I anticipate receiving lease payments from South Pines, LLC for many years to come in the amount of $2,000.00 per month; however, it is anticipated that the bulk of this revenue will go to service debt on property leased to the company. I also anticipate receiving payment on a Promissory Note given to me by Johnson Bobo, PLLC, which represents approximately $218,000.00 of my capital account.

I also expect to be receiving monies from the settlement of contingency fee lawsuits, which are currently ongoing. At this point I am unable to estimate the amount of money to be received from these lawsuits.

Payments on Correction Systems of Mississippi, Inc. promissory note to me totaling $5,415.10 per month will also be made. I made this loan to the corporation in order for the corporation to meet its obligations. I borrowed the funds loaned to the corporation from State Bank & Trust Co. (Valley Bank) which requires a monthly payment by me personally of $3,301.70. Therefore, the net amount to me is $2,113.40 per month.

2. Are any assets pledged?

Yes. Stock in Correction Systems of Mississippi, Inc., State Capital Corp., and real estate I own are pledged as collateral on various loans.

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

Yes.

W.O. Jenkins, Jr. vs. Correction Systems of MS, Inc., et al. This is a suit brought in 1995 by W.O. Jenkins, Jr., a contractor regarding a construction contract he had with the defendant corporation. Merchants & Farmers Bank of Kosciusko, MS is a co-defendant.

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

Yes.

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

No.

Potential conflicts of interest:

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

In my response to item "1." of the "Financial Statement" category I have set out the financial aspects of continuing interest I will have in various agreements. They are restated as follows:

I anticipate receiving from Correction Systems of Mississippi over the next three years dividends totaling approximately $78,000.00 per year. In the past, as the sole stockholder of this S corporation I received disbursements from the company in the form of management fees. However, because I will be terminating my active interest in this company future disbursements will be made in the form of dividends.

I anticipate receiving lease payments from South Pines, LLC for many years to come in the amount of $2,000.00 per month; however, it is anticipated that the bulk of this revenue will go to service debt on property leased to the company. I also anticipate receiving payment on a Promissory Note given to me by Johnson Bobo, PLLC, which represents approximately $218,000.00 of my capital account.

I also expect to be receiving monies from the settlement of contingency fee lawsuits, which are currently ongoing. At this point I am unable to estimate the amount of money to be received from these lawsuits.

Payments on Correction Systems of Mississippi, Inc. promissory note to me totaling $5,415.10 per month will also be made. I made this loan to the corporation in order for the corporation to meet its obligations. I borrowed the funds loaned to the corporation from State Bank & Trust Co. (Valley Bank) which requires a monthly payment by me personally of $3,301.70. Therefore, the net amount to me is $2,113.40 per month.

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

I know of no investments, obligations, liabilities, or other relationships which might involve potential conflicts of interest in the position to which I have been nominated.

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

None.

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

If an apparent conflict of interest did develop I would terminate the relationship or take whatever other steps would be necessary to avoid even the appearance of a conflict of interest after consulting with the Office of Governmental Ethics.

5. Explain how you will comply with conflict of interest laws and regulations applicable to the position for which you have been nominated. Attach a statement from the appropriate agency official

indicating what those laws and regulations are and how you will comply with them. For this purpose, you may utilize a statement by the relevant agency Ethics Officer.

Attached is a copy of my letter dated August 9, 2001 to John C. Surina, USDA, Office of Ethics, wherein I set out in detail the action I would take to avoid conflicts of interest.

Political affiliation and activities:

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

Coahoma County Republican Executive Committee
Mississippi Republican State Executive Committee
Alternate Delegate, 2000 National Republican Convention
Co-Chairman, Mississippi Lawyers for Bush, 2000

Published writings:

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

A River Run For Life; Mississippi Outdoors; January - February 1999. Copy enclosed.
Gift of love, life; The Commercial Appeal; February 23, 1997. Copy enclosed.

Additional Matters:

At this time I have no additional information to offer.

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

No.

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

Yes.

3. Having completed this form, are there any additional questions which you believe the Committee should ask of future nominees?

No.

AFFIDAVIT

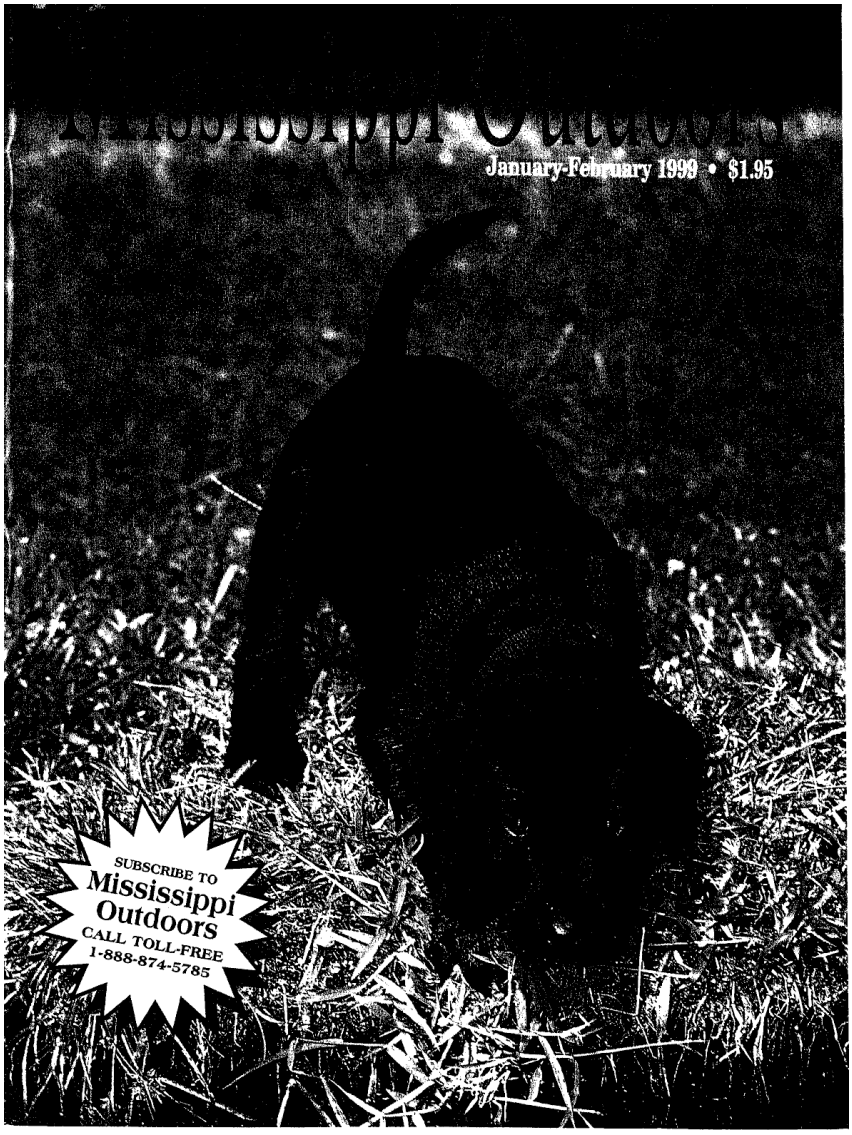
Patrick Hayes (Pete) Johnson, Jr., being duly sworn, hereby states that he has read and signed the foregoing Statement for Completion by Presidential Nominees including the Financial Statement and that the information provided therein is, to the best of his knowledge and belief, current, accurate, and complete.

Subscribed and sworn before me this 29th day of August, 2001.

Cheryl Ashmore

Notary Public

MISSISSIPPI STATEWIDE NOTARY PUBLIC
MY COMMISSION EXPIRES JUNE 23, 2002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Big Island on the Mississippi River. Some say it is the largest and last extensive hardwood stand of timber on the river. This 20,000-acre domain of timber and cane thickets is accessible by boat from the Mississippi side.

When cold Canadian air invades the Mississippi River Valley an eerie fog dominates the landscape. The progress of tow boats on the Mississippi River is reduced. John Duff was familiar with this grand estuary, having hunted, fished, and crossed it hundreds of times. This cool New Year's eve crossing of the river was not unusual, but the events following would forever change his life.

Every New Year's Eve, John and his sons Matthew and Andrew pack up their hunting gear and load horses, dogs, and provisions for two weeks on Big Island. It's the largest and last extensive hardwood stand of timber in the Mississippi River. Bordered by the White River on the north and the Arkansas River on the south, this 20,000-acre wilderness is a sportsman's paradise, accessible only by boat from the Mississippi side. The island's cane thickets and hardwood timber make this remote country. It's ideal for indomitable wild boars that often exceeds 400 pounds and whose tusks can brutally rip through the skin of a careless hunter like a butcher's knife.

Earlier in November, John sent word to the experienced hunters who annually make the hunt to meet at 10 a.m. at Terene Landing west of Rosedale. Here, we would load animals, hay, feed, food, equipment, and hunters to be ferried across by barge. Crossing the river always posed great risks, and the animals and hunters sensed the danger.

As the fog slowly lifted, the expedition got under way. An hour later, the

Pete Johnson of Clarksdale, left at rear, is lucky to be alive today. Some say he might not be if it wasn't for the hard work of John Duff, right at rear, Bubba James, left front, and John Ray Robertson. Pictured is a mount of the 300-pound boar mentioned in the story.

crossing was completed without incident.

On January 2, 1996, I was to join the hunting party after fulfilling a commitment in Tupelo. When I awoke that morning, I noticed I had a slight sore throat. As a precaution, I stopped by a pharmacy for throat lozenges and other over-the-counter medication to ward off anything that might spoil my anticipated hunt. Within the next 24 hours, little did I know of the events that would have me at death's door.

I left Tupelo and picked up a 21-foot river boat at John's farm. I crossed the river and joined the other hunters on the island late that afternoon. As the evening chill settled in the swamps around our camp, my sore throat grew worse. My coughs became deeper and more frequent. The next morning my health was rapidly deteriorating. Each persistent cough brought intense pain.

After saddling my horse, I coughed again. The riveting pain in my chest was unbearable. My temperature was rising, and I decided the morning hunt was not a good idea. So I returned to the cabin and decided to rest for a few hours.

As night fell on Big Island, I had been out of bed only once to look at the 300-pound boar killed earlier in the day. They dressed it and promptly turned it into our evening meal.

At 2 a.m. the following morning, my condition had deteriorated further. I awoke nauseated and coughing. I began throwing up volumes of blood. Quickly I called out for John. I told him that in 1987 I had been diagnosed with Hepatitis C.

"It destroys your liver," I exclaimed. "In the end stages of your liver functioning, the veins in your esophagus may erupt. That's what's happening now. If you don't get me to a hospital within an hour, I will bleed to death in under an hour."

Without hesitation, John dialed 911 on his cellular telephone and spoke with the Sheriff's Office in Bolivar County. They would meet us at Terene Landing.

With no time to spare, John put boots on my feet and wrapped me in warm blankets. He awakened the others and alerted them to my danger.

Quickly, he loaded me in a truck and drove me to the river. The bank was slippery from the winter rains and negotiating the steep slope was difficult. Two companions, Bubba James and John Ray Robertson, helped me down the muddy bank to bring me aboard the boat. As we began the precarious walk down the steep bank, Bubba lost his footing. But the quick hands and strength of John's son, Matthew, caught the three of us, preventing a tragedy that would surely have thrown us all into the swirling river.

John Ray went to the bow with a million candle watt light to scan ahead. Swirling currents capable of taking the boat to the bottom would be difficult to spot this dark night, not to mention the tree trunks floating downstream.

As we crossed the river, I felt my stomach filling with blood. For the first

time, I realized how close to death I was. I began to pray. I asked for courage, for forgiveness, for deliverance. And then I came to that phrase I routinely used – *Let not my will, but thy will be done.*

That prayer took on a whole new dimension. I responded with confidence and the peace that passes all understanding. "Lord, I am ready to die. *Let not my will, but thy will be done*," I prayed. "I see the light of the rescue unit at the landing," Duff suddenly exclaimed.

As they loaded me into the rescue unit, I grabbed Duff by the coat and pulled him close and said, "Don't leave me!" I wanted my trusted friend, to be by my side should I die. I could depend on him to tell my wife and two girls that I loved them, and I was in the Master's hands. Everything was going to be all right. He never left my side.

As we traveled to the nearest hospital 30 miles away, my blood pressure began to drop. I was losing ground fast. Still conscious, I asked John to call my family and also Dr. Don Blackwood, a friend and hunting buddy who practiced internal medicine in the small town where I was being taken.

At the hospital, I began spitting up larger quantities of blood. After six hours of intense efforts, my condition continued to deteriorate. Dr. Blackwood constantly reassured me everything was going to be all right. Unknown to me, the medical team was having no success in stopping the bleeding, and the hospital was running out of blood.

Blackwood telephoned my physician in Jackson and discussed flying me to Jackson or Memphis. No go. I couldn't survive the trip.

Then a call was made to another physician in Greenwood who could perform a procedure that might save my life. The doctors conferred and decided there was no alternative. The chances of my surviving the trip were slim but were better than none.

As they prepared me for the trip, I recall Blackwood counting *one, two, three, four, five*. He was tallying the remaining pints of blood. Already, I had lost one and a half gallons. Would five be enough to get me to Greenwood? When we arrived there, only four ounces remained in the last bag.

I was taken immediately to intensive care where the doctors explained the procedure and its complications. "What choice do I have?" I asked. Hours later I awoke. The bleeding had stopped. I had been given another chance at life.

In 1992 Baylor University Medical Center accepted me as a candidate for a liver transplant. So I went to Dallas for another evaluation. After several days of testing, doctors decided I had only a short time to live.

After being on the transplant list for four years, the team that operated on baseball legend Mickey Mantle found me to be as sick. They moved me to the top of the batting order. Within three weeks, we received a call from Baylor saying they had a donor organ.

At Baylor, we completed the formalities of signing releases and other papers. My wife, our two daughters, and I held hands and prayed. We asked for God's peace. We prayed for the doctors, and we prayed for courage. And we prayed for the family who unselfishly donated the organ of their 15 year old son that I might live. Then the nurse asked me to remove the ring from my finger that had been placed there 26 years before and return it to the girl of my dreams. I kissed them good-bye, and they rolled me away.

The operation was a success, and I have returned to Clarksdale where I practice law. Hardly a day goes by that I don't think of that trip to Big Island.

And I think about the donor family, who in the midst of their great tragedy and sorrow, thought not only of themselves but of others like me. I have never met them but have been allowed to write them anonymously and express my sincere appreciation. Thanks for giving me the gift of life and allowing me to once again cross the Mississippi and make another river run.

Pete Johnson is a former state auditor. He lives in Clarksdale where he practices law.

MEMPHIS, SUNDAY, FEBRUARY 23, 1997

VIEWPOINT

THE COMMERCIAL APPEAL

Gift of love, life

■ The recipient of a donated organ shares with our readers the story of what one family's generosity, even in the depths of their own sorrow, meant for him and his family.

TO The Commercial Appeal:

Like many of your readers, I have been paying close attention to the debate going on in Washington regarding organ donation and allocation. As one whose life was saved by a liver transplant, I feel compelled to offer a different perspective to the problems confronting health care professionals and political leaders as they struggle with deciding who will live and who will die.

The fact of the matter is that no one needs to die for lack of a donated organ and there would be no debate if we had more donors. It is the lack of donors that has created such a shortage that over 3,000 people will die this year waiting for a life-saving organ. According to the United Network for Organ Sharing (UNOS), if there were only a 10 percent increase in the number of donors we would have a surplus of organs and allocation would not be a problem.

Many reject outright the thought of organ donation, while others never give it much thought at all. I practice law in Clarksdale, Miss., and only last week I was preparing a will for a client. I asked if she had considered donating her organs. While shaking her head she said, "No, I have not. I could not do that." I thought, "If only she knew how she could touch the lives of others the way my life has been touched I am sure she would feel differently."

Recently I wrote to my donor family. I don't know who they are and they do not know who I am, yet we are allowed to anonymously communicate by letter through the local donor bank organization. To my suprise, they wrote back. I want to share these letters with you and your readers with hopes that they will serve as an encouragement to those who can donate their organs and make the "Gift of Life." I am convinced that by making everyone aware of how they can wonderfully impact the lives of others, they will freely give so that others may live.

PETE JOHNSON
Clarksdale, Miss.

DEAR precious people,

I am the person who was given a second chance at life because of the love you demonstrated when you unselfishly donated your son's liver.

I am 48 years old, happily married for 26 years and the father of two girls, ages 22 and 19. I am a lawyer who has been active in my church and community for many years.

I contracted hepatitis C while working my way through college. For two summers in the late '60s I worked as an ambulance driver and back then we did not wear gloves to protect us from disease. In 1992 I was put on the transplant list and I waited four long years before being called. My health continued to deteriorate and in April (1996) I was moved to a priority status, which meant that I only had a short time to live. Your decision to donate your child's organs saved my life! I am hopeful that you will find comfort in the fact that your decision to donate his organs has enabled him to impact the lives of others in ways you will never know.

While waiting to be prepared for surgery my family and I held hands and prayed. We thanked the Lord for you and your unselfish love and we prayed that you be comforted and strengthened in the midst of such a great loss. We prayed for your son and his soul. We prayed for courage for you and for us and we prayed for a strong faith. Never before have we been faced with what appeared at the time to be almost insurmountable circumstances.

A short time later a nurse entered the room and began going over what we were about to experience. I was asked to take my wedding band off and give it to my wife. So, for the first time in 26 years I took this simple gold band off and returned it to the girl of my dreams. I didn't know if I would ever see her or our children again but I did know one thing for sure, that if it were not for your son's life and your generosity my life on this earth would be over.

The operation was a complete success. My health began to improve almost immediately after the transplant. I have regained the energy I once enjoyed and will go back to work after the first of the year. But the sobering fact remains that hardly a moment goes by without my thinking of you and your son. Tears come to my eyes when I think of how you blessed my life and my family. I cannot imagine what you are going through this Christmas season. I look at my daughters and think of you. I go shopping and think of you. I wake up and I think of you.

In a day and time when words are tossed around so flippantly, saying thank you seems so inadequate. Yet those two words when spoken with a full measure of gratitude are in fact unequaled. So, thank you. Thank you from the bottom of my heart. Thank you for giving me the "gift of life."

A GRATEFUL RECIPIENT

DEAR Recipient,

Happy New Year to you and your family!

We received your letter just before Christmas and we were very happy to hear that your health is so good. This does make the loss of our son, Wes, easier.

My husband and I have also been married for 25 years. We have a daughter who is 18 and our son would have been 16 in September. Wes was a very loved person, not only by his family but by everyone who knew him. He was a leader, a great athlete in gymnastics and football (he would have started on the high school team). He also set the pole vault record for his team last year. He was also a good student and selected by his teachers to be in the PRIDE program. As we are all proud of our children, my writing this to you seems that I am bragging. I am.

I also thought that you would like to know about him. Wes was a sportsman; he and his dad spent so much of their time hunting and fishing. Even as a mother, I must also tell you that he was very good looking.

When Wes died, our first thought was that he had such a big heart that we needed to share it. With guidance and prayer, this is how we have ended up in each others' thoughts and prayers.

We hope that you will continue to get stronger daily and that you will have a long, healthy life.

Please, ask your daughters to wear their seat belts. This accident happened after school, going the speed limit; he was even in the back seat. There was not a scratch on his body but he was thrown from the car and had a head injury.

Take care and God bless,

YOUR DONOR'S MOTHER

RESPONSES OF PATRICK HAYES (PETE) JOHNSON TO ADDITIONAL QUESTIONS FROM SENATOR JEFFORDS

Question 1. Please explain in detail the operation of Correction Systems of Mississippi, Inc. Please include the explanation your relationship to the corporation before your nomination as Federal Co-Chair of the Delta Regional Authority and how the relationship will change if confirmed to the position.

Please include in your response information on the following:

a) ownership interest in Correction Systems;

b) payment of management fees to you by Correction Systems;

c) dividends received/to be received by you from Correction Systems;

d) promissory notes issued to you by the company; and

e) any other relevant information regarding your relationship with Correction Systems.

Response. As State Auditor of Mississippi from 1988 to 1992 my staff conducted a study concerning the feasibility of privatizing correctional facilities. The conclusion was that there would be substantial savings to the State if privatization was implemented. Two years after leaving office a State Senate committee called and asked me to appear before it and discuss my findings. At that time the State was under a court order to relieve prison overcrowding and a Federal Judge had imposed a penalty on the State of $500 per inmate per day. During conversations with Department of Corrections staff I was asked if I knew of anyone who could provide a restitution correctional facility for female prisoners in the Jackson, Mississippi area. I personally embarked on the task and formed Correction Systems of Mississippi, Inc. Which now leases the facility to the State of Mississippi. I own 100 percent of the company. I am compensated in the form of a management fee which is paid on a monthly basis. Should I be confirmed by the Senate I will withdraw from active participation in the company at which time any compensation received by me from the company will be in the form of dividends. Presently the company owes me funds loaned to it by me which were used by the company to settle contractor claims. The company pays me $5,415.10 per month to service that debt and I in turn pay to Valley Bank $3,301.70 per month. The contract with the State will expire in 3 years unless re-negotiated prior to that time.

Question 2. Please explain your relationship with the Clarksdale Country Club. Please include in your response:

a) any ownership interest you have had or currently have in the organization;

b) your current relationship with the club;

c) a detailed description of the Clarksdale Country Club's policy for voting on new prospective members including past practices and current practices;

d) a detailed description of current or past Clarksdale Country Club by-laws or practices that may have discriminated against persons based on race, creed, color, religion, or sex; and

e) any other relevant information regarding your relationship to or membership in the Clarksdale Country Club.

Response. Over the past 25 years I have been a member of the Clarksdale Country Club. When I left Clarksdale in 1988 to assume the State Auditor post in Jackson, Mississippi I sold my stock. Upon moving back to Clarksdale in 1991 my wife was given stock in the Country Club which is now in her name. Twenty 5 years ago any 3 members could deny anyone membership for any reason and a prominent local accountant was denied membership for what some of us thought was because he was Jewish. I was part of a group that led an effort to change the by-laws so that this would not happen again. The negative votes requirement was raised to 25 and since that time a number of our Jewish friends have become members. Recently an African American physician applied for membership. He received 25 negative votes and was denied membership. Once again I joined an effort to change the by-laws to raise the threshold so that a small group could not thwart the will of the entire membership. Our proposal to raise it to 200 was too ambitious and the membership voted the change down. Since that time I have successfully negotiated a compromise with those opposing the 200 requirement. The compromise included that those opposed to the 200 requirement would recruit, if necessary, sponsor and support an African-American family in the Clarksdale Country Club.

Question 3. Please detail your service as chairman of the Mississippi Marketing Counsel. Please include in your answer your role and responsibilities as chairman.

Was this an appointed position? If so, who appointed you?

Response. I was appointed to this position by Governor Bill Allain. At one time it had the responsibility of marketing and promoting Mississippi products however,

upon assuming the position I realized that it essentially had no power. I convened the counsel on two may be three occasions and concluded that it was not a good use of the Taxpayers money and recommended that it be abolished. To my knowledge my recommendation was eventually followed.

Question 4. Please detail your service as the State Director of the Farmers Home Administration. Please include in your answer your role and responsibilities as State director.

Was this an appointed position? If so, who appointed you?

Response. I was appointed by former President Bush to this position in 1992. I oversaw the farm and rural development programs in Mississippi for USDA. That included loan and project approval. Loans were made for struggling farmers and low income housing and grants were made to rural communities for sewer, water and business and industry development programs. It was one of the largest State offices in the United States at that time. Since serving in that position the responsibilities have been divided into separate agencies.

STATEMENT OF BRIGADIER GENERAL CARL A. STROCK, NOMINATED TO BE A MEMBER OF THE MISSISSIPPI RIVER COMMISSION

Mr. Chairman and members of the committee: I am deeply honored to appear before you as a nominee for membership on the Mississippi River Commission. As a soldier, an engineer, and a life-long public servant I am excited about this opportunity to serve the nation in this important capacity. Mr. Chairman, I would like to make a brief statement about the Mississippi River Commission, the Mississippi River and Tributaries (MR&T) project, and my qualifications for this appointment.

The Mississippi River Commission, established by Act of Congress on June 28, 1879, consists of seven members, all of whom are appointed by the President of the United States subject to confirmation by the Senate. Three members are Corps of Engineers officers, one of whom serves as president; one member is from the National Oceanic and Atmospheric Administration; and three members are from the civilian sector, two of whom must be civil engineers.

From its inception in 1879, the Commission has been charged with the task of planning and implementing a program of flood damage reduction projects and navigation improvements on the Mississippi River. More recently, project purposes have been expanded to include environmental restoration. This task continues to be conducted in concert with the myriad of political institutions, individuals, and public entities which have major interests in seeing that the water resources needs and opportunities of the Mississippi Valley are evaluated, planned, designed, constructed, and maintained.

As established in 1879, the Commissioners were to serve as advisers in planning and implementing water resource projects and programs on the Mississippi River between the Head of Passes below New Orleans to its headwaters. Since 1928, the Commission has focused on the Mississippi River and Tributaries project, authorized by the Flood Control Act of May 15, 1928, to be implemented under oversight of the Commission. The MR&T project extends generally from the confluence of the Ohio River to the Head of Passes below New Orleans and covers portions of seven States. It receives water from all or portions of 31 States and part of two Canadian provinces, or roughly 41 percent of the contiguous United States. Effective planning, design, construction, and operation of the widespread and complex MR&T project have been assisted greatly by the Commission's active consultation with the public, particularly on its semiannual lower Mississippi River inspection trips, and by the high degree of professionalism that has been developed in its staff.

A major flood on the lower Mississippi River would have catastrophic effects on the inhabitants of the Mississippi Valley and the economy of the nation were it not for the protection provided by the levees and other flood control works along the main stem of the Mississippi and Atchafalaya Rivers. Many have noted that the comprehensive project on the lower river provided for passage of major floods in 1973, 1983, 1997, and other years without the extensive damage suffered in the upper river area during the 1993, 1995, and 2001 flood events.

In addition, the navigation features of the project help to maintain the river for shipping import and export commodities between inland ports and world markets.

I am well qualified to serve as a member of the Mississippi River Commission by virtue of my education, professional qualifications, experience, and commitment to public service. I hold a Bachelor of Civil Engineering degree from The Virginia Military Institute and a Master of Civil Engineering degree from Mississippi State University. I belong to a number of engineering societies and am a registered professional engineer in the State of Missouri. I am also a graduate of the Army's Com-

mand and General Staff College and the National War College, institutions that develop leadership, strategic thinking, and decisionmaking in a values-based environment.

In addition to my formal education my 30 years of service in the United States Army have prepared me for the responsibilities I will assume as a member of the Mississippi River Commission. Besides extensive service in combat engineer assignments I have three assignments in the Corps of Engineers and considerable experience in engineering and construction from the project to the corporate level. From 1980 to 1983 I served in Mobile District as a Project Engineer multiple projects on the Tennessee-Tombigbee Waterway in Mississippi and Alabama. I also served as Resident Engineer on Columbus Air Force Base in Mississippi. My service as a senior officer in the U.S. Army Corps of Engineers has provided me with the opportunity to work with leaders and agencies at the local, State, and national level and with non-governmental organizations. These relationships coupled with my sound working knowledge of authorities and legislative processes will enable me to help fashion balanced solutions to complex problems that best serve the interests of the people and the nation.

From 1997 to 1999 I commanded the Pacific Ocean Division in Honolulu, Hawaii. In that capacity I had responsibility for the construction and maintenance of numerous shallow and deep draft harbors, navigation channels, coastal protection structures and flood control ,works—most in environmentally sensitive areas of Alaska and Hawaii.

From 1999 to 2001 I commanded the Northwestern Division in Portland, Oregon. The Northwestern Division covers 14 States and has responsibility for two major drainage basins, the Columbia and the Missouri. While my experience in the Northwest contributed dramatically to my understanding of the economic, engineering, and environmental considerations of major rivers, it is my experience on the Missouri that will be most valuable to the Commission. I have a detailed understanding of the Missouri River and its impact on the Mississippi River. During certain periods of the year the Missouri contributes up to 70 percent of the flow of the Mississippi in the reach between St. Louis and Cairo. This fact illustrates the value of a Commissioner who has an understanding of the interaction between these two great rivers. Over the past 2 years I served on the Commission as a member-designee. During this time I participated in four inspection trips and became very familiar with the Mississippi River and Tributaries project and those works that make the system so effective in flood damage reduction and navigation. I have worked hard to develop a true understanding of the interests of the many groups who use and enjoy the River and depend on the Corps to address their concerns—navigators, farmers, sportsmen, port operators, levee boards and drainage districts, environmental interest groups, and others.

If confirmed for this position, Mr. Chairman, I look forward to playing a key role in enhancing the economic vitality and environmental quality of the Mississippi River and its tributaries.

Mr. Chairman, for your information, I have attached my complete biography. This completes my prepared statement.

Again, thank you for your consideration. I would be pleased to respond to any questions.

UNITED STATES SENATE

COMMITTEE ON ENVIRONMENT
AND PUBLIC WORKS

ROOM 410 DIRKSEN BUILDING WASHINGTON, DC 20510

INFORMATION

REQUESTED OF PRESIDENTIAL NOMINEES

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

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

Name of Nominee: Brigadier General Carl Ames Strock

Business Address: Headquarters, United States Army Corps of Engineers
441 G Street, NW

Business Phone: (202) 761-0379

Home Address: 7306 Outhaul Lane
Burke, Virginia 22015

Home Phone: (703) 455-6759

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

Name: Strock (Last) Carl (First) Ames (Middle)

Position to which nominated: Member, Mississippi River Commission

Date of Nomination: _____

Date of birth: 20 July 1948 (Day) (Month) (Year) **Place of birth:** Fort Benning, Georgia

Marital status: Married **Full name of spouse:** Juliana Moore Strock

Name and ages of children: Christopher Moore Strock, 26

John Ames Strock, 25

Education:

Institution	Dates attended	Degrees received	Dates of degrees
Virginia Military Institute	1966-1970	BS CE	1975
Mississippi State University	1981-1983	MCE	1987

Employment record:

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

United States Army:

1971-1972 – Enlisted Service, Infantryman, Ft. Benning, GA

1972-1975 - Special Forces Detachment Executive Officer and Commander, Ft. Bragg, NC

1975-1976 - Scout Platoon Leader, Ft. Bragg, NC

Employment record—continued

1976-1977 – Student, Infantry Officer Advanced Course

1977-1980 – Assistant Operations Officer, Infantry Company Commander, Germany

1980-1983 – Project Engineer, Mobile District, USACE, Columbus, MS

1983-1986 – Engineer Operations Officer, Assistant Division Engineer, Battalion Executive Officer, Ft. Bragg, NC

1986-1987 – Student, Army Command and General Staff College, Ft. Leavenworth, KS

1987-1989 – Senior Instructor, British Royal School of Military Engineering, Kent, UK

1989-1991 – Engineer Battalion Commander, Ft. Bragg, NC and Saudi Arabia

1991-1992 – Engineer Colonels Assignments Officer, Alexandria, VA

1992-1993 – Student, National War College, Ft. McNair, DC

1993-1994 – Personnel Staff Officer, Department of the Army, Washington, DC

1994-1996 – Engineer Brigade Commander, Ft. Stewart, GA

1996-1997 – Chief of Staff, Ft. Leonard Wood, MO

1997-1999 – Commanding General, Pacific Ocean Division, USACE, Honolulu, HI

1999-2001 – Commanding General, Northwestern Division, USACE, Portland, OR

2001- Director of Military Programs, USACE, Washington, DC

Honors and awards:

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

State Cadetship, Virginia Military Institute

Military Awards: Legion of Merit (2), Bronze Star Medal (2), Meritorious Service Medal (3), Army Commendation Medal (2), Army Achievement Medal, Army Good Conduct Medal, Numerous Campaign Medals and Service Ribbons.

Member, Tau Beta Tau Engineering Honor Society

Memberships:

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

Organization	Office held (if any)	Dates
Army Engineer Association	Past Regional Vice President	1989-Present
Association of the US Army	Member	1972-Present
Soc of Amer Military Engineers	Past Regional Vice President	1981-Present

Qualifications:

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

I am well-qualified to serve as a member of the Mississippi River Commission by virtue of my education and experience. I hold a bachelor's and a master's degree in civil engineering and am a registered professional engineer in the State of Missouri. I have extensive experience in engineering and construction management from the project to the corporate level. With four years in command of two U.S. Army Corps of Engineers Divisions I have a sound working knowledge of authorities and the legislative processes that apply in the Mississippi Valley. I also have broad experience in dealing with environmental issues and agencies – notably the Environmental Protection Agency and the US Fish and Wildlife Service. My service as a senior officer in the Corps of Engineers has also provided me with the opportunity to work with leaders at the local, state, and national level to fashion solutions to complex problems that best serve the interests of the people and the Nation. I also have an extensive understanding of the Mississippi River and its tributaries – from both an historical and an engineering perspective. I have worked hard to develop a true understanding of the interests of the many groups who use and enjoy the River and depend on the Corps to address their concerns - navigators, farmers, sportsmen, port operators, levee

boards and drainage districts, environmental interest groups, and others. This understanding will help me make meaningful contributions to the future of the Mississippi River Valley.

Future employment relationships:

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

No, I will continue to serve as an Army Engineer Officer

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

I have no plans to with respect to my employment following retirement from the Army

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

No

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

I do not think this commission has a fixed term for military officers

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

No I am willing to serve until a replacement is nominated and approved.

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

No

Financial Statement:

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

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

I do not expect to receive any funds from the sources cited

2. Are any assets pledged?

No.

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

No.

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

Yes.

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

No.

Potential conflicts of interest:

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

To the best of my knowledge I do not have any relationships that fit the description

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

I have no financial arrangements that might represent conflict of interest

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

None

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

In the unlikely event that a conflict of interest should arise I would either withdraw from the Commission, break off my interest in the matter, or ask for recusal from any decision-making responsibility.

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

As a military officer I do not foresee any potential for conflict of interest. I will use the ethical

standards applied to all in the U.S. Army as a guide to my personal and professional conduct.

Political affiliation and activities:

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

I have never been a member of a political party and have not made any financial contributions

Published writings:

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

I have not published any serious articles or reports outside the normal requirements of senior military service.

Additional Matters:

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

No

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

Yes.

3. Having completed this form, are there any additional questions which you believe the Committee should ask of future nominees?

No, I think any topical issues can be covered at the hearing

CARL A. STROCK, BG, USA

AFFIDAVIT

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

Subscribed and sworn before me this 19th day of September, 2001.

Notary Public

BARBARA J. DAVIS
Notary Public of District of Columbia
My Commission Expires June 30, 2006

STATEMENT OF MARIANNE LAMONT HORINKO, NOMINATED TO BE ASSISTANT ADMINISTRATOR, OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE, ENVIRONMENTAL PROTECTION AGENCY

Mr. Chairman, Senator Smith, and distinguished members of the committee: Thank you for the privilege of coming before you today. I am honored that President Bush nominated me to be Assistant Administrator for the Office of Solid Waste and Emergency Response (OSWER) at the US Environmental Protection Agency (USEPA). I believe that all of the public and private sector positions that I have been fortunate enough to hold in the past have set the stage for this opportunity

to serve our country. If confirmed, you have my word that I will bring thoughtful deliberation, integrity, and enthusiasm to the challenges that loom ahead.

I am especially proud to introduce my husband, Tim Horinko, my children, Kaitlyn and Hunter, my parents, John and Johanna Maccini, and my in-laws, Terry and Larry Horinko. Finally, I would also like to thank my many colleagues and friends who have given so generously of their support and friendship—not just today, but always.

I am particularly attracted to this opportunity to serve EPA because, thanks to my father, I probably have some groundwater running through my veins. My dad is a geologist who worked for many years as a university professor and career civil servant at the National Science Foundation. He taught me to love science, and by example, showed me that public service was not merely a job, but a higher calling. My mother provided strong support and reinforcement of our love of science and curiosity about our natural environment. Their great respect for the natural treasures of our lands impressed me deeply, and it is because of their early influence that I chose the protection of the environment as my own profession.

In my testimony today, I would like to share some of the key themes and approaches I would bring to this position, if confirmed. They include: innovation, information sharing, and partnerships.

One of my principal observations is that there has been a sea change in Federal attitudes and approaches to managing waste since I left EPA. The old command and control method has been supplemented, in some measure, by partnerships and consensus building as the means of cooperative problem solving.

The expansion of Brownfields approaches to other OSWER programs is a symbol of that new way of thinking, and it carries the message of productive future land uses as determined by local communities to all of our waste efforts.

An example of that innovation is the emerging linkage between environmental cleanup and community revitalization. The Brownfields story is all about a new way of doing the government's business. Like Governor Whitman and President Bush, I wholeheartedly support passage of Brownfields legislation during this session of Congress. With a strong Brownfields bill and working in tandem with State and local brownfields efforts, there is no limit to what we can accomplish.

Significant challenges face the EPA work force. Much has been made about the baby-boomer retirement outflow, and the need for a newly energized and well-equipped work force to address the challenges of the future. We need to build a work force that cherishes diversity, rewards innovative thinking and creates an atmosphere where programmatic risk-taking is encouraged.

I think that there is also great opportunity on the information side of the equation. More emphasis needs to be placed on ensuring that all stakeholders have access to clear and understandable information about the health and environmental risks they face. Policymaking cannot and should not exist in a vacuum. I believe that the people who create Federal regulations should be required to meet face-to-face with the citizens whose lives they impact. What better way to experience, first hand, how the policies we make here in Washington, can affect the comfort and quality of life in our towns and cities across the United States?

People outside the Agency tell me that it's impossible to figure out who does what in government in order to get simple answers to their questions. Through partnerships and collaboration, the sharing of information and practices among our cleanup programs will reduce the inconsistencies that often plague our stakeholders. If confirmed, I plan to work closely with our State and Tribal partners to ensure that all cleanups are both protective of human health and the environment, as well as implemented with an eye toward community revitalization.

Finally, given the tragic events of September 11, I feel that I must take a moment to talk about a key role for the OSWER Assistant Administrator as EPA's lead on counter-terrorism. I spent virtually all of that fateful day with Governor Whitman and the outstanding staff at our Emergency Operations Center on Pennsylvania Avenue. Amid an ocean of chaos, we observed, with wonder and awe, an island of calm, steady professionals who make up EPA's emergency response team. These individuals are not only technically and substantively competent, but have pulled together an organized approach to dealing with the horror of chemical, biological or air attacks on our citizens. When terror struck on Tuesday, they sprung into action and made certain that the public health and safety of our people were protected and assured. They are truly the unsung heroes of our government. If confirmed, I pledge to give our counter-terrorism activities the highest priority, and to do all that I can to make their jobs easier.

UNITED STATES SENATE

COMMITTEE ON ENVIRONMENT
AND PUBLIC WORKS

ROOM 410 DIRKSEN BUILDING WASHINGTON, DC 20510

INFORMATION

REQUESTED OF PRESIDENTIAL NOMINEES

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

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

Name of Nominee: Marianne Lamont Horinko

Business Address: Clay Associates, Inc., 1701 Pennsylvania Ave. NW
Washington, DC 20006

Business Phone: (202) 861-0160

Home Address: 13564 Northbourne Drive
Centreville, VA 20120

Home Phone: (703) 222-1992

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

Name: Horinko (Last) Marianne (First) Lamont (Middle)

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

Date of Nomination: July 25, 2001

Date of birth: 5/10/61 (Day) (Month) (Year) **Place of birth:** Everett, MA (USA)

Marital status: Married **Full name of spouse:** Timothy John Horinko

Name and ages of children: Kaitlyn Anne Horinko (4) Hunter Louis Horinko (2)

Education:

Institution	Dates attended	Degrees received	Dates of degrees
Georgetown Univ. Law	82-86	J.D.	1/86
Univ. of Md. College Park	78-82	B.S.	5/82
Sherwood H.S.	74-78	H.S.	6/78

Employment record:

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

Chemist (performed structure/activity analysis of antitumor agents); National Cancer Institute; Silver Spring, MD; summer 1982

Staff Scientist (performed risk assessments/remedial investigations); ENVIRON Corporation,

Employment record—continued

Arlington, VA (then in Wash., DC); 1983-1985

Law Clerk (researched and wrote on environmental legal issues); Collier, Shannon, Rill & Scott; Washington, DC; 1985-86

Attorney at law (practiced environmental law); Morgan, Lewis & Bockius; Washington, DC; 1986 - 1990

Attorney-Advisor (advised the Assistant Administrator, EPA OSWER on RCRA and Superfund issues), U.S. EPA, Washington, DC; 1990-93

President, Clay Associates, Inc. (consultants on waste policy issues); Washington, DC, 1998-2001 (served as Executive Vice President and Counsel of Don Clay Associates, same corp., 1993-98)

Honors and awards:

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

Merit Award, U.S. EPA, Outstanding Service; 1991

American Chemical Society Award, Analytical Chemistry, U.Md., 1982

Chancellor's Scholar, Univ. of Md, 1978-82

National Merit Scholar, 1978

Memberships:

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

Organization	Office held (if any)	Dates
ABA Section of Envt., Energy	Vice Chair, Special Committee	2000- present
& Resources	On 2nd Gen. Issues	
"	Vice Chair, Govt. Policy	1997-2000

Qualifications:

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

I have devoted my career to issues involving waste regulation, remediation, and revitalization of contaminated sites. I have worked in the private sector, government, and on behalf of communities, non-profits and other institutions to promote the constructive dialogue on waste policy issues that I believe, builds consensus on environmental improvement. I am committed to solving the next generation of environmental issues using tools such as partnerships; empowering states, citizens, and local governments; procedural flexibility; and policy innovation, while ensuring protection of human health and the environment. I look forward to doing so in a bipartisan and cooperative fashion and welcome the Congress' direction, oversight and collaberation.

Future employment relationships:

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

Yes.

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

No.

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

No.

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

N/A

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

No.

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

I was a schedule A attorney advisor to a Schedule C appointee (Don Clay) in Bush I; I left at the end of that Administration to start my current business with Clay

Financial Statement:

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

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

None

2. Are any assets pledged?

No

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

No

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

Yes (except 2000, for which we properly filed an extension while my husband gathered receipts; my husband is a real estate agent and had a very busy year)

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

No

Potential conflicts of interest:

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

None

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

N/A

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

N/A (I am neither practicing law nor engaged in advocacy as a lobbyist)

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

Any conflict or potential conflict that is identified by the Office of Government Ethics will be memorialized in a recusal letter, to which I will strictly adhere

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

See attached

Political affiliation and activities:

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

Member, Republican National Committee

Provided technical assistance to George W. Bush for President Campaign

Published writings:

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

PRP Organization Handbook, Morgan, Lewis & Bockius, 1989

Dynamics of Devolution, National Environmental Policy Institute, How Clean is Clean? Project, 1996

Guidebook for the Transfer of Environmentally-Affected Properties; NEPI, How Clean is Clean?

Project, 1998

Rolling Stewardship: Beyond Institutional Controls, NEPI, How Clean is Clean? Project, 2000

Additional Matters:

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

N/A

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

Yes

3. Having completed this form, are there any additional questions which you believe the Committee should ask of future nominees?

No

AFFIDAVIT

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

Subscribed and sworn before me this 13th day of August, 2001.

Belkis Cueto

Notary Public

BELKIS A. CUETO
Notary Public District of Columbia
My Commission Expires August 31, 2005

United States
Office of Government Ethics
1201 New York Avenue, NW., Suite 500
Washington, DC 20005-3917

Director

August 2, 2001

Ms. Marianne Horinko
Clay Associates, Inc.
1701 Pennsylvania Avenue, NW.
Washington, DC 20006

Dear Ms. Horinko:

Congratulations on your nomination to the position of Assistant Administrator, Office of Solid Waste and Emergency Response in the Environmental Protection Agency. I hope you will find that this position will be both challenging and rewarding.

Enclosed for your information is a copy of the letter sent to the U.S. Senate stating that the Office of Government Ethics has reviewed your financial disclosure report and that you are in compliance with applicable laws and regulations governing conflicts of interest. In addition, as you may already know, all Federal agencies have a Designated Agency Ethics Official (DAEO). If, in the course of the confirmation process, you have any questions about conflicts of interest or other ethics related matters, you should contact your DAEO, Ms. Anna Wolgast, who can be reached at 202-564-8040.

I wish you the best of luck as you proceed through the confirmation process.

Sincerely,

Amy L. Comstock

Amy L. Comstock

Enclosure

United States
Office of Government Ethics
1201 New York Avenue, NW., Suite 500
Washington, DC 20005-3917

August 1, 2001

The Honorable James M. Jeffords
Chairman
Committee on Environment and Public Works
United States Senate
Washington, DC 20510-6175

Dear Mr. Chairman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by Marianne L. Horinko, who has been nominated by President Bush for the position of Assistant Administrator, Office of Solid Waste and Emergency Response, Environmental Protection Agency.

We have reviewed the report and have also obtained advice from the Environmental Protection Agency concerning any possible conflict in light of its functions and the nominee's proposed duties. Also enclosed is a letter dated July 27, 2001, from Ms. Horinko to the agency ethics official, which discusses Ms. Horinko's recusal undertakings and other matters. Unless a specific date has been agreed to, the nominee must fully comply within three months of her confirmation date with the actions she agreed to take in her ethics agreement.

Based thereon, we believe that Ms. Horinko is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

Amy L. Comstock
Director

Enclosures

OGE - 106
August 1992

RESPONSES OF MARIANNE LAMONT HORINKO TO ADDITIONAL QUESTIONS FROM SENATOR JEFFORDS

Question 1. This past July, Resources for the Future released a publication titled "Superfund's Future: What Will It Cost?" One of the major findings is that considerable work remains to be done at sites already on EPA's National Priorities List, and that EPA's Superfund costs will not decline before 2006 at the earliest. These conclusions are contrary to views that the Superfund program is "winding down." I am interested in your understanding of the progress of the Superfund program. What is the current revenue remaining in the Superfund Trust Fund? How many sites will be added to the NPL this year? How many NPL sites will achieve construction complete listing this year? What do you believe is the future of the Superfund Program?

Response. EPA expects that the balance of revenue remaining in the Superfund Trust Fund at the end of fiscal year 2001 will be approximately $955 million.

EPA has proposed listing 45 sites on the National Priorities List (NPL) this fiscal year. EPA has also finalized 29 sites on the NPL this fiscal year. No additional sites will be proposed or listed in fiscal year 2001.

The Agency is working to complete construction, before the fiscal year ends, at as many sites as possible to reach the Agency's goal of 75 construction completions. While the Agency is making much progress on cleaning up these sites, the Agency expects the final number of construction completions, for a variety of reasons, to be lower than the original goal. One key factor affecting the final number of construction completions is that many of the sites with remaining work tend to be more complex, on average, than those already completed. Nonetheless, the Agency is committed to and will continue to work at these and other Superfund sites to ensure that they are cleaned up as quickly as possible.

As I stated in my testimony, my key themes would be innovation, information sharing, and partnerships. These concepts will be applied to the Superfund program through expanding Brownfields, better involving the community in such things as future land use, and ensuring better access to environmental information. If confirmed, I plan to work very closely with this committee, and look forward to our cooperative efforts to speed Superfund cleanups.

Question 2. Under RCRA, EPA has a statutory responsibility, with the Office of Federal Procurement Policy, to ensure that Federal agencies and all political subdivisions using appropriated Federal dollars are purchasing products containing recovered content. In addition, there is still a operative Executive Order (no. 13101), which requires EPA to provide advice to Federal agencies on and require those agencies to buy environmentally preferable products. A recent GAO report was critical of the implementation of the program, including the availability of useful data that Congress can use to effectively oversee the program and determine whether the Agencies are in compliance. Will you support continuation and strengthening of these procurement efforts?

Response. Yes, I support the continuation and strengthening of the procurement efforts of Federal agencies and am committed to working with The Office of Federal Environmental Executive to promote the use and purchase of products made with recycled content and to assist agencies across the Federal Government, to comply with the Executive Order 13101.

I recognize that a recent GAO report was critical of the implementation of this program, and the Agency is reviewing this report carefully. I do know however, EPA is currently developing a secure, internet-based data base with the names of product suppliers and manufacturers that will be accessible by users from any web browser connected to the internet. This project ensures that EPA will be better able to provide procuring agencies with up-to-date information they can use to buy recycled-content products.

Question 3. Recently, EPA issued a Chemical Safety Advisory which said, at this time of heightened alert, the U.S. Environmental Protection Agency (EPA) in coordination with the U.S. Department of Transportation and the Federal Bureau of Investigation (FBI) suggests that those who manufacture, distribute, transport or store hazardous chemicals should be especially vigilant regarding the physical security of those chemicals.

You may be aware of the accident prevention provisions (section 112(r)(7)) of the Clean Air Act, as amended by PL106–40. OSWER has been given the primary responsibility at the Agency for implementing these provisions, which include providing access to information on the offsite consequences of accidents, including those caused by criminal or terrorist acts, to local emergency response personnel, qualified researchers and limited access to the public. That law also requires EPA to assist the Attorney General in preparing and submitting to Congress an overdue report on the vulnerability of the facilities mentioned above to criminal and terrorist activities.

Question 3a. What steps will you take to ensure that the owners and operators of facilities addressed in the Agency's Advisory have acted or are acting to comply with their general duty under section 112(r)(1) to identify hazards, design and maintain safe facilities, prevent releases and to minimize the consequences of releases that do occur?

Response 3a. I look forward to exploring with EPA and other government decisionmakers the policy, resource and legal issues relevant to determining what steps should be taken to safeguard hazardous chemicals from criminal and terrorist acts, and will keep you informed of our progress. To date, EPA has taken prudent steps, including issuance of the Site Security Alert, to warn chemical facilities of the po-

tential for criminally caused releases and to advise them of available measures for increasing site security. The Agency has yet to take an enforcement action against any facility for failure to adequately secure its site.

EPA is also assisting the Department of Justice in its study of the vulnerability of chemical facilities to criminal and terrorist activity and current industry practices regarding site security. From the study, we expect to learn more about possible measures for increasing site security and to communicate those measures to industry.

Question 3b. Will you provide the committee with a regular update on the Agency's efforts to ensure that this general duty requirement is being actively implemented?

Response 3b. If confirmed, I will certainly update the committee on the Agency's efforts to ensure that this general duty requirement is being actively implemented 4. Question: I am pleased by your enthusiasm for recycling. At today's hearing, you spoke of recycling being a "gateway" to engage consumers. I agree and look forward to working with you on this important issue. How can we promote an increase in nationwide recycling efforts? What additional administrative actions can be taken by EPA that are not already in place? What type of legislation is necessary at the Federal level?

Response. To increase recycling nationally, attention must be directed to two fronts simultaneously: fostering the viability of markets for secondary or recycled materials; and helping local governments learn how to reduce the cost burden of collecting and processing recyclable materials. In partnership with government and industry, EPA can foster extended product responsibility and product stewardship, encouraging voluntary efforts by manufacturers to reduce waste, use secondary materials as feedstock, and to take back products at the end of their useful life. Through training and outreach, EPA can help transfer lessons learned from one community to others. EPA can publicize new and expanding recycling technologies. Assistance, outreach, and education can go far to advance recycling across the natin. If confirmed, I look forward to working with the committee to advance the cause of recycling.

Question 4. I am pleased by your enthusiasm for recycling. At today's hearing, you spoke of recycling being a "gateway" to engage consumers. I agree and look forward to working with you on this important issue. How can we promote an increase in nationwide recycling efforts? What additional adminstrative actions can be taken by EPA that are not already in place? What type of legislation is necessary at the Federal level?

Response. To increase recycling nationally, attention must be directed to two fronts simultaneously: fostering the viability of markets for secondary or recycled materials; and helping local governments learn how to reduce the cost burden of collecting and processing recyclable materials. In partnership with government and industry, EPA can foster extended product responsibility and product stewardship, encouraging voluntary efforts by manufacturers to reduce waste, use secondary materials as feedstock, and to take back products at the end of their useful life. Through training and outreach, EPA can help transfer lessons learned from one community to others. EPA can publicize new and expanding recycling technologies. Assistance, outreach, and education can go far to advance recycling across the nation. If confirmed, I look forward to working with the committee to advance the cause of recycling.

RESPONSES OF MARIANNE LAMONT HORINKO TO ADDITIONAL QUESTIONS FROM SENATOR SMITH

Question 1. The Toxic Release Inventory (TRI) data base and public information program has been in place for some time. Recent addition of the waste services industry to the TRI system appears to invite confusion about the entities responsible for reported chemical releases to the environment and where such releases actually occur.

For example, a company shipping waste containing TRI chemicals to an offsite RCRA Subtitle C TSD facility must report this "transfer" to a permitted facility as an "offsite release." This transferred amount is then added to the generator's actual releases to air, land, and water to determine the company's "total releases." In reality, however, the transferred chemicals were managed at a permitted RCRA facility distant from the community (or even State) which must itself report the TRI chemicals as a release to the environment where they are located. EPA later corrects for this double counting in determining overall totals. This raises a number of important questions:

a) Is this an accurate summary of the current TRI reporting requirement for such waste transfers?

b) Is this approach required by statute or regulation? If so, please provide specific citations. If a matter of agency policy, please confirm.

c) Why is a company which transfers TRI chemicals contained in waste shipped to a permitted RCRA Subtitle C facility for final disposition (which may include disposal or recycling) required to report this transfer as a release to the environment?

d) Isn't the current reporting requirement likely to confuse and misinform the local community and other members of the public about releases to the environment in the geographic area where the transfer originated?

e) Wouldn't it be more informative to the public to require the company transferring TRI chemicals in the manner described above to report them as a "transfer" to a permitted offsite management facility (e.g.; a RCRA treatment, storage and disposal facility) rather than as releases to the environment?

e) Wouldn't the alternative approach suggested under Question 5. above improve TRI program administration efficiency by eliminating the need to later correct for double counting by the company and the offsite facility?

f) As Assistant Administrator, will you support an improved approach that improves program efficiency and provides more accurate and informative public reporting?

Response. In answer to (a) through (g), as you know, the Toxics Release Inventory (TRI) is run by EPA's Office of Environmental Information (OEI), and does not fall under the responsibility of the Office of Solid Waste and Emergency Response (OSWER). Pursuant to conversations with your staff, OSWER will work with OIE to provide detailed responses to your questions. If confirmed as Assistant Administrator, you have my commitment that I will work closely with OEI to achieve improved approaches that advance program efficiency and provide more accurate and informative public reporting.

Question 2. In 42 USC 9619 (Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the provision on "response action contractors", provides the following:

"(f) Competition—Response action contractors and subcontractors for program management, construction management, architectural and engineering, surveying and mapping, and related services shall be selected in accordance with title IX of the Federal Property and Administrative Services Act of 1949 [40 U.S.C. 541 et seq.]. The Federal selection procedures shall apply to appropriate contracts negotiated by all Federal Governmental agencies involved in carrying out this chapter. Such procedures shall be followed by response action contractors and subcontractors."

a) Even though this provision was enacted in 1986, it is my information that EPA has issued any guidance or regulation to implement this provision in law. To what extent has EPA implemented this provision, particularly with regard to contracts and subcontracts for mapping services through guidance to private contractors and EPA contracting officers or promulgated an EPA Supplement to the FAR or what will EPA do to assure proper implementation and enforcement of this provision of law?

b) The "Brooks Act" (40 U.S.C. 541 et. seq.) and the Federal Acquisition Regulations (48 C. F. R. 36.601–4 Implementation) specify that a broad range of mapping services, including "Mapping associated with the research, planning, development, design, construction, or alteration of real property is considered to be an architectural and engineering service and is to be procured pursuant to 36.601." This clearly provides for use of the Qualifications Based selection (QBS) process for more than just services related to design and construction. However, there have been numerous instances in which EPA is not using the QBS process for mapping services (See, for example, SOL U41045, PSA#2900 NDN–186–0172–2551–1, RFQ-GA–01–00004, RFQ EPA–039–00, and RFQ-RT–98–00065). What is EPA doing, or what does EPA propose to do, to assure that the law and regulations are properly implemented with regard to using the QBS process for mapping contracts?

Response for Questions 2a and 2b. EPA has followed Federal contracting procedures in awarding response action contracts. In terms of mapping services, the Superfund program of OSWER had an Interagency Agreement with the Federal Emergency Management Agency, and did not procure mapping services directly. If confirmed, I would be happy to work with this committee to address concerns in this area to the extent they involve OSWER programs.

Question 3. Is it the policy of EPA to retain contractors to support regulatory oversight of those same agencies who are contracted to other Federal Agencies—specifi-

cally under CERCLA and/or RCRA corrective action programs? What is EPA policy on potential conflict of interest in similar situations?

Response. EPA contract policies do not allow contractors for responsible parties under CERCLA to perform work for EPA. Contractors can, however, work for multiple Federal agencies, since it is a Federal policy that in a unified Federal Government there is no conflict of interest in this situation. If the committee knows of an issue in this area, if confirmed, I will work with you to address it.

RESPONSES OF MARIANNE LAMONT HORINKO TO ADDITIONAL QUESTIONS FROM SENATOR BOND

Question 1. The Office of Solid Waste (OSW) developed a methodology to assess the potential hazard of organic compounds, which relies upon a criteria of persistence, bioaccumulation and toxicity (PBT). OSW keeps a list of compounds meeting the PBT criteria. EPA offices, and many States, use the PBT list for various regulatory actions, including recently increased reporting requirements for metals.

There is concern in the scientific community over the appropriateness of applying the PBT methodology to metals. Scientific experts, including EPA scientists, described the problems of applying the PBT methodology to metals at an EPA co-sponsored "Experts Workshop" in January 2000. In May 2000, the EPA Science Advisory Board used an Advisory Opinion on risks surrounding smelters to take the opportunity to state that EPA's proposals to classify metals as PBTs was problematic because the methodolgy did not accurately describe metals' environmental characteristics.

In July 2000, the House Science Committee, in a bipartisan letter signed by the Majority and Ranking members of the full committee and appropriate subcommittee, noted the scientific controversy. The committee strongly urged EPA to seek independent peer review and refer the question of the scientific appropriateness of applying the PBT criteria to metals to the SAB before deciding whether to include metals in any of the Agency's PBT programs or lists.

In the fiscal year 2001 VA/HUD Conference Report, I proposed, and the conferees and Congress accepted, language urging EPA to submit the question of PBT and metals to independent peer review. Specifically, we urged EPA to seek independent peer review and refer to the SAB the question of the scientific appropriateness of applying the PBT criteria and methodology to metals before any application of the PBT criteria and methodology to metals.

EPA subsequently disregarded these congressional directives by finalizing increased reporting regulations based upon application of the PBT methodology to metals without ensuring the scientific validity of the action by submitting the issue to independent peer review.

Question 1a. If confirmed, will you support any EPA actions which disregard my VA/HUD language or Congress' bipartisan direction to submit the question of the appropriateness of applying the PBT methodology to metals for independent peer review by the SAB?

Response. If confirmed I have no intention of disregarding the direction you supplied to EPA.

Question 1b. If confirmed, would you support any lesser action by EPA, such as a consultation, which would fail to meet EPA's Independent Peer Review Guidelines?

Response. I would seek to ensure that EPA's peer review guidelines are met.

Question 1c. If EPA is confident of the scientific underpinnings of the application of the PBT methodolgy to metals, what does the Agency have fear by submitting the issue to the SAB for peer review?

Response. The specific charge to the SAB is currently being worked out within the Agency.

Question 1d. If confirmed, what actions will you take to ensure that scientific discussion and debate on this issue within EPA, especially by the Office of Solid Waste, is open, free and fully represented alongside other non-scientific and policy concerns?

Response. If confirmed, I assure you that EPA will have an open and fully representative discussion and debate on all concerns.

Question 1e. If confirmed, will you take steps to discourage EPA regional offices, as well as States and localities, from characterizing metals as PBT substances before EPA completes SAB review? Answer: OSWER is trying to focus the waste minimization program on reducing hazardous constituents of highest concern from the waste streams sent for disposal. In carrying out that program, the Agency will cer-

tainly work to keep regions, States and localities from inappropriately characterizing any substances.

Question 2. This summer, EPA announced its intention to issue an action plan in response to recommendations made by Resources for the Future (RFF) in a study estimating the Federal costs of Superfund from fiscal year 2000 through fiscal year 2009. The RFF study raised some very serious questions about where Superfund dollars are being spent and how much is going to site cleanup. Many other studies of the Superfund program, including those done by the US General Accounting Office, the Congressional Budget Office, and Business Roundtable, have found similar program and fiscal management problems, while also concluding that the program has matured and will not require the same level of funding needed in the past.

Of the four major recommendations made by Resources for the Future, two concerned the need for EPA to get its financial house in order. A third focused on the uncertainty surrounding the nature, number and cost of future NPL sites. Clearly, a number of significant questions remain about current program management as well as the future workload and makeup of the program. A Superfund action plan also presents opportunities for this Administration to revitalize and expand on Superfund Administrative Reforms begun in the past reforms aimed at making Superfund fairer, more efficient, and more cost-effective.

Question 2a. Will you have an opportunity to shape the Superfund action plan before the EPA Administrator approves it?

Response. I have met with the principal author of the Resources for the Future report on Superfund costs and have been briefed on the action plan the Agency is developing. I believe that the action plan will address the key recommendations in the report, as well as address some of the related issues facing the program. If confirmed, I plan to take an active role in refining and implementing the Agency's Superfund action plan, and look forward to working closely with this committee on the future of Superfund.

Question 2b. What are your priorities for Superfund administrative reform?

Response. If confirmed, my key administrative reform themes will be innovation, information sharing, and partnerships. These concepts will be applied to the Superfund program through expanding Brownfields, better involving the community in such things as future land use, and ensuring better access to environmental information. I will also take an active role in implementing the Superfund action plan. I plan to work very closely with this committee to improve the Superfund program.

Question 3. In 1992, Congress directed EPA to revise the Mixture and Derived-From Rule. On May 16, 2001, EPA issued final regulations re-promulgating the original rule with one minor new revision.

In the preamble supporting the rule, the Agency expressed it's intent to "continue to pursue actions to reduce any overregulation of low-risk wastes arising from the mixture and derived-from rules." Specifically, the preamble discusses EPA's intent to develop "two targeted exemptions: one for certain solvents destined for wastewater treatment and discharge under the Clean Water Act, and another for slagged combustion residues from hazardous waste combustors." The preamble also describes other targeted exemptions being assessed for development. Materials supporting EPA's 2002 budget request also discussed the Agency's intent to develop approaches to exempt low-risk wastes from full Subtitle C regulations.

The environmental management world has changed dramatically since waste management regulations were promulgated in the early 1980's. Industry has invested enormous sums in improved waste management infrastructure and commitment to environmental protection. State program capabilities have increased significantly in their ability to manage wastes. Finally, the breadth of other statutory and regulatory programs such as the Clean Air Act, Clean Water Act, and the Superfund program have matured such that many waste streams are also regulated under non-RCRA authorities. We support EPA's intent to revisit RCRA regulations, particularly the mixture and derived-from rules, to tailor them to better reflect current wastes and waste management capacities. However, since these statements were made prior to your nomination as Assistant Administrator:

Question 3a. What are your goals for addressing any over-regulation of low-risk waste by the current RCRA program? Do you have thoughts on a timetable for such proposals?

Response. I am firmly committed to examining possible over-regulation of low-risk waste streams that are subject to the RCRA hazardous waste program, and I am committed to exploring the possibility of regulatory change in this area. I am certainly aware of the concerns industry has expressed, and I know EPA staff have met with industry representatives to better understand their perspective. If confirmed, I plan to continue that dialog. EPA has also invited States to participate

in the discussions, and has also notified waste management industry and environmental groups about planned activities, and will invite a broader participation from these groups as the proposals progress.

Regarding timeframes for proposed rulemakings, EPA expects to propose at least a first round of changes in 2002. One category of wastes high on EPA's list is certain solvents undergoing wastewater treatment under the Clean Water Act. In addition, EPA is also evaluating other possible targeted exemptions. Depending on what preliminary analyses reveal, EPA hopes to develop additional proposals in 2003.

Question 4. When we passed the original Resource Conservation & Recovery Act twenty-five years ago, our goal was "to recover valuable materials and energy from solid waste" as well as to assure that hazardous waste was managed to protect human health and the environment. Since then, EPA has used its authority to greatly improve waste management. In fact, most of the work that RCRA explicitly assigned OSWER in this regard has been accomplished. However, work to encourage the recovery of materials and energy before they become waste has barely begun.

The former Administration, through initiatives such as Project XL and the Common Sense Initiative, demonstrated that there are other ways to obtain desired environmental performance without the inflexibility of command-and-control regulations. These initiative as well as a series of reports and studies, have also demonstrated that in some cases, the very regulations promulgated to manage waste can discourage recycling. Over the last decade the Agency has acknowledged the disincentives to recycling embodied in the RCRA hazardous waste rules, has conducted numerous studies, has evaluated numerous recommendations with broad, bipartisan stakeholder support, and yet has failed to take any meaningful action to remedy the problem. The courts have been very critical of EPA for its overly broad regulation of the recycling of secondary materials as well. No efforts have been made to conform the recycling regulations to these court decisions. At the same time, industry has vastly increased its efficiencies in converting raw materials to products. Technological innovation has led to the ability to reuse and recycle formerly discarded materials and to avoid the generation of wastes.

Based on recent work on material flows conducted by the World Resource Institute, work on life-cycle impacts of recycling, landfilling and incineration conducted by Environmental Defense, and a commentary on overcoming barriers to Waste Utilization prepared by EPA's own Science Advisory Board, it seems there is both a need and opportunity to encourage the recovery of materials and energy before they enter the waste stream, so that material or energy value, that would otherwise be discarded, would be put to higher and better use.

Question 4a. Can you discuss with us your vision for bringing "resource conservation and recovery" into RCRA?

Response. I see RCRA as having two principal goals: (a) protecting human health and the environment and (2) reducing waste and conserving energy and natural resources. Although reducing pollutants at their source is EPA's highest priority for conservation, recycling is a very close second. I am very eager to promote the recycling of solid and hazardous waste because such recycling makes good economic and environmental sense. It can conserve virgin resources, and save time and money as well.

EPA recently has been engaged in an effort to remove or eliminate regulatory disincentives for recycling, while maintaining protection of human health and the environment. EPA's actions include national rulemakings which have streamlined regulations to encourage recycling for several kinds of wastes, including batteries, pesticides, thermostats, mercury-containing lamps, and circuit boards. EPA is preparing to propose in the next few months a rule which would promote recycling of cathode ray tubes from computers and televisions, along with mercury-containing devices. The Agency's Project Excellence and Leadership (Project XL), the State of New Jersey's Goldtrack Program (an XL project), and other projects have allowed State and local governments, businesses and Federal facilities to develop with EPA innovative strategies to test better or more cost-effective ways of achieving environmental and public health protection. I believe there are other innovative ways EPA can increase opportunities for environmentally sound recycling, and look forward to working with this committee in this regard.

Question 4b. Do you believe that the Agency has enough statutory authority to revamp its "definition of solid waste" rules to remove the current impediments to recycling?

Response. Yes, at this point I believe EPA has sufficient statutory authority to revise the definition of solid waste to remove current impediments to waste recy-

cling. I look forward to continuing these efforts and to work closely with States to identify and implement further opportunities.

Question 4c. How do you plan to accommodate the ruling of the DC Circuit in the Association of Battery Recyclers case?

Response. The Association of Battery Recyclers v. U.S. EPA (ABR) decision vacated a portion of an 1998 EPA rule that expanded EPA's jurisdiction over certain types of mineral processing materials stored on the land prior to being reclaimed in production processes. Currently, EPA is finalizing a rule codifying the mineral processing vacatur, as directed in the ABR Decision. In the final rule preamble, EPA also intends to discuss plans for a future rulemaking to revise the definition of solid waste. As discussed above (e.g., XLs), EPA is engaged in a number of efforts to remove or eliminate regulatory disincentives for recycling while maintaining protection of human health and the environment. ABR provides an opportunity to revise EPA's approach to jurisdiction over recycling in a way that will further promote recycling of hazardous secondary materials. If confirmed, I look forward to working with this committee in an effort to implement the ABR decision.

Question 4d. Will these issues be a priority to you?

Response. Yes, I intend to make these issues a priority.

Question 5. Many of the Office of Solid Waste's regulations have a serious impact on small businesses. As Ranking Member on the Small Business Committee, I am always concerned about how EPA handles their obligation to take into account small business concerns during rulemakings under the Small Business Regulatory Enforcement Fairness Act (SBREFA), or what I call the Red Tape Reduction Act. Under this law, EPA is required to convene panels to take comments from small businesses that will be affected by a regulation while the regulation is still in draft form. Although this provision has proven to help EPA formulate more effective and narrowly tailored regulations without sacrificing the objective or the benefits to public health of the regulation, there have been rulemakings where EPA did not do as much as I believed they should.

Question 5a. If confirmed, will you vigorously pursue exploration of small business concerns during rulemakings, as well as, ensure your office's full compliance with SBREFA?

Response. Yes, I will vigorously explore small business concerns during rulemakings, and ensure full compliance with SBREFA. All of OSWER's programs are increasingly reaching out to all stakeholders, including small businesses, to get their input early in the regulatory development process. Many issues can be resolved during this early participation, which can take place through web-based interactive dialogs and other innovative methods of reaching specific stakeholders, and face-to-face meetings and discussions. OSWER will also continue active participation and support of the Deputy Administrator's quarterly meetings with Small Business Trade Association Executives. These roundtable meetings are an important channel of communication for the Agency to clarify regulatory interpretations and obtain early input on activities that impact small businesses.

RESPONSES OF MARIANNE LAMONT HORINKO TO ADDITIONAL QUESTIONS FROM SENATOR BOXER

ENERGY TECHNOLOGY AND ENGINEERING CENTER (ETEC)/SANTA SUSANA FIELD LABORATORY

Question 1. EPA has previously taken the position that Department of Energy nuclear facilities such as ETEC at the Santa Susan Field Laboratory in California are required to clean up contaminated sites to levels consistent with EPA's CERCLA guidance (to a one in a million lifetime cancer risk, unless that level cannot be achieved). EPA may allow a greater risk of up to one in ten thousand, but only if specified criteria are met.

Recently, EPA has reportedly reversed its position, stating that DOE is only required to clean up radio-nuclides at the ETEC site under the far more lax guidance in the Atomic Energy Act.

Can you provide assurance that recent reports are erroneous and that EPA CERCLA guidelines, cleanup levels, and methodology will be strictly applied at the ETEC site?

Response. Although DOE is using its own authorities under the AEA to clean up radionuclides at the Santa Susana Field Lab (SSFL), DOE has publicly agreed to achieving cleanup levels consistent with CERCLA. As you may be aware, EPA has been providing an independent "oversight" role to guide the DOE's activities at

SSFL. EPA's Draft Scoping Document, which has been submitted to the DOE for its review, proposes a conceptual survey plan which will provide for cleanup level determinations consistent with CERCLA. The CERCLA cleanup standard is referenced as a range of 10–6 to 10–4 lifetime cancer risk, where the one-in-a-million risk level is used as a point-of-departure for beginning the determination of site-specific acceptable cleanup levels. If confirmed, I will work closely with this committee to ensure that this cleanup is consistent with CERCLA.

Question 2. EPA has also assured me that EPA's Las Vegas radiation laboratory would conduct a comprehensive independent radiation survey of the Santa Susana Field Laboratory. I was also assured that a broad range of radio-nuclides would be included and that a contractor would not be utilized.

Can you ensure that past commitments will be honored regarding the radiation survey at the Santa Susana Field Laboratory?

Response. Yes, commitments will be honored regarding the radiological survey at the SSFL. The radiological survey at SSFL Area IV will be conducted by an EPA contractor under direct and extensive contract oversight by EPA's Radiation and Indoor Air Environments Lab at Las Vegas, NV. This arrangement is typically how EPA conducts investigations at large and complex sites. The survey in this case will be comprehensive, addressing all radionuclides that may have been used or generated at the site. Based on the magnitude and complexity of the proposed survey, EPA has significantly increased its resources directed to this project, especially from within the Lab.

RESPONSES OF MARIANNE LAMONT HORINKO TO ADDITIONAL QUESTIONS FROM SENATOR CORZINE

Question 1. As you know, Resources For the Future recently completed a major report on Superfund's future for Congress. One of the report's major conclusions was that a ramp-down of the Superfund program is not imminent. The experience of New Jersey in recent years seems to bear this out, in that a handful of New Jersey sites have been added to the NPL each year. As a general question, how do you view the future of the Superfund program and what do you hope to accomplish as Assistant Administrator?

Response. I believe the Superfund program has an important role in addressing the nations worst hazardous waste sites and in responding to emergency situations. If confirmed, my key themes will be innovation, information sharing, and partnerships. These concepts will be applied to the Superfund program through expanding Brownfields, better involving the community in such things as future land use, and ensuring better access to environmental information. I also pledge to give counterterrorism activities the highest priority. I am open to new ideas, and would welcome this committee's input as well.

Question 2. As you know, New Jersey has more Superfund sites than any other State in the natin. As of May of this year, 84 of New Jersey's 111 NPL sites were not yet cleaned up to the "construction complete" stage. So I was concerned to see that the fiscal year 1902 budget request reduced the fiscal year 1902 national target for cleanups to 65. This is well below the 85 cleanups per year that have been accomplished in the last 4 years; it is also below last year's target of 75. When I asked Administrator Whitman about this issue, she explained that the reduced target is due to increased cleanup costs at remaining sites. What is your understanding of why this target has been reduced? Are more funds needed to maintain the pace of cleanups?

Response. I agree with Administrator Whitman's explanation. A key factor affecting the number of construction completions is that many of the sites with remaining work tend to be more complex, on average, than those already completed. Nonetheless, the Agency is committed to and will continue to work at these and other Superfund sites to ensure that they are cleaned up as quickly as possible. If confirmed, I plan to engage this committee very closely on this effort.

Question 3. In light of the dwindling balance of the trust fund, what is your view of the importance of Superfund cost recovery activities?

Response. Cost recovery is obviously very important to the Superfund program. Since its inception, EPA has achieved nearly $7 in private party cleanup commitments and cost recovery for every $1 spent on enforcement. There have been over $3.1 billion in cost recovery settlements alone. It is important to continue aggressive cost recovery efforts. I intend to work closely with EPA's enforcement program to not only preserve the dwindling trust fund balance, but to reinforce EPA's enforcement first policy.

RESPONSES OF MARIANNE LAMONT HORINKO TO ADDITIONAL QUESTIONS FROM SENATOR CLINTON

Question 1. If confirmed, will you work closely with me and other members of the New York delegation with respect to the Agency's emergency response efforts associated with the horrific terrorist attack on the World Trade Center in New York City on September11, 2001?

Response. See answer to number 2.

Question 2. Will you work to ensure that all necessary and appropriate measures are being taken with regard to response efforts at the World Trade Center site to protect human health and the environment?

Responses to Questions 1 and 2. If confirmed, I will continue to work closely with you and the New York delegation as EPA addresses the effects of the September 11 attacks. I join with all Americans in honoring the heroic efforts of New York emergency responders. Their personal dedication and professional expertise deserve every word of praise that has been spoken in their behalf. I also deeply appreciate and am proud of the support provided by EPA's emergency response personnel in Region 2. EPA has been coordinating with State, Federal, and local authorities to provide expertise on cleanup methods for hazardous materials, as well as to detect whether any contaminants are found in ambient air quality monitoring, sampling of drinking water sources and sampling of runoff near the disaster sites. I participate in daily telephone calls with Governor Whitman and other EPA Headquarters and Regional personnel to support and coordinate the responses in New York and Washington. I pledge to work with you and the New York delegation to continue EPA's support.

Question 3. Will you work with the delegation and the committee to ensure that we learn from this experience and make any necessary and appropriate changes to the Agency's emergency response capabilities?

Response. Learning all we can from this tragedy will be a high priority of mine. EPA will perform a complete lessons learned assessment of its operations, and will share that information with both the New York delegation and the committee. EPA has already conducted a preliminary needs assessment of the counter-terrorism preparedness and response program. OMB is reviewing those findings. In the meantime, I assure you that EPA and the Administration are committed to a strong readiness capability that will protect all U.S. citizens, including EPA's own emergency responders, and the environment.

STATEMENT OF HAROLD CRAIG MANSON, NOMINATED TO BE ASSISTANT SECRETARY FOR FISH AND WILDLIFE AND PARKS, DEPARTMENT OF THE INTERIOR

Mr. Chairman, Senator Smith, members of the committee, I am honored and humbled to appear before you as the President's nominee to be Assistant Secretary of the Interior for Fish, Wildlife and Parks, seeking your confirmation vote. I am deeply grateful for the confidence in me shown by the President and Secretary Norton. I also thank Secretary of Agriculture Ann Veneman for her support.

I appreciate that the committee has taken time to hold this hearing in a time of great national crisis. As you know, the Department of the Interior's personnel, including the U.S. Park Police and the law enforcement elements of the U.S. Fish and Wildlife Service and others have played vital roles in responding to the current crisis. Most regrettably, a U.S. Fish and Wildlife Service employee, Richard Guadagno, lost his life in the crash of the jet in Pennsylvania. Mr. Guadagno was the refuge manager of the Humboldt Bay National Wildlife Refuge in my home State of California. He was highly regarded by all who knew him and he embodied the very best attributes of the talented people in both the Fish and Wildlife Service and the National Park Service.

I am a descendant of Africans, Europeans, and Native Americans. Born in Missouri, gateway to the west, I grew up principally in New Mexico and California, where I now reside. I've spent 42 of the last 47 years living in the western United States, including, in addition to New Mexico and California, Arizona, Colorado, and South Dakota.

I received my undergraduate education at the United States Air Force Academy. Following my graduation from the Academy, I served 2 years as a Minuteman missile launch officer. The Air Force then sent me to law school and I received my law degree at the University of the Pacific, McGeorge School of Law in Sacramento. I served in various Air Force judge advocate assignments in the United States and overseas, including 4 years on the Air Force Academy faculty, in the Department of Law. During my faculty tour, I was assigned, with several other faculty members,

to report to the Secretary of the Air Force concerning the state of Air Force compliance with environmental laws on its overseas bases.

After leaving active duty in 1989, I practiced law with a major Sacramento law firm for 3 years. I was then appointed by California Governor Pete Wilson to the newly created position of General Counsel of the California Department of Fish and Game. I held that position for 5 years, after which the Governor appointed me to be a judge. I have served on the Superior Court in Sacramento since 1998. I've also been on the faculty of McGeorge School of Law since 1992. I continue my military service in the Air National Guard, with the current rank of colonel.

Apart from unmitigated enthusiasm for I what think is the best job in Washington, I offer my experience in natural resources law and policy, an ability to build consensus across diverse interest groups, and a judicial approach to decisionmaking.

During my tenure with California's Department of Fish and Game, we conserved hundreds of thousands of acres of wildlife habitat in an innovative multiple species planning program in Southern California's coastal sage scrub habitat. That habitat, home to hundreds of potentially at-risk plant and animal species, stretches across the five counties in which California's most intensive growth and development pressures exist. Our natural communities conservation program had bipartisan support as well as the support of landowners, resource users, local governments and environmental interest groups. As to the largest of the plans under this program, the San Diego Multiple Species Conservation Plan, the Los Angeles Times reported on March 19, 1997:

"A committee composed mainly of local businesses, including Bank of America and the Greater San Diego Chamber of Commerce, concluded >the cost to the public is modest given the benefits.' "

In addition to our large scale multiple species plans, during my tenure at California Fish and Game, we pioneered habitat conservation plans, HCPs, using our State Endangered Species Act. At one point during the 1990's, we had more HCPs in the State of California under State law than existed in the entire rest of the country under Federal law.

Based on the scientific judgments of our biologists, each of our State HCPs involved the cooperation of landowners. Again, hundreds of thousands of acres of habitat were conserved while allowing economic activities to proceed.

I have spent most of my adult life in public service. In all of that time, I have had no prouder moment than in 1997 when Governor Pete Wilson signed into law amendments to the California Endangered Species Act. I had been entrusted with the Wilson administration's negotiating portfolio on that legislation. We worked diligently for 4 years to build a consensus among environmental groups, landowners, local governments, and agricultural interests. We listened to everybody. Eventually, our legislation, conceived by a Republican administration, was introduced by three Democratic State legislators and won bipartisan passage. The legislation placed into the California Endangered Species Act the concepts of landowner incentives and requirements for effective species recovery programs. The legislation also provided for voluntary, locally designed programs to conserve habitat while allowing agricultural activities to proceed without the counterproductive effects of a strict regulatory approach.

I mention my experiences in California to illustrate my commitment to work through environmental and natural resource public policy issues on a consensus basis whenever possible. In that regard, I am completely committed to what Secretary Norton describes as the "4 C's": communication, consultation, and cooperation, all in the service of conservation. I strongly support Secretary Norton's philosophy that the Federal Government must be a partner to State and local governments, individuals and non-governmental organizations affected by or interested in natural resource policy.

If I am confirmed, I will also apply my judicial experience to the issues involving our natural resources and national parks. First, every interested party will get a fair hearing, environmental interest groups, landowners, farmers, ranchers, State and local government, historic preservation interests, and sportsmen. Second, any decisions I make or recommendations I give to the Secretary will be based on the weight of the evidence. I agree with the view expressed by both the President and Secretary Norton that our natural resources public policies must be informed by sound science.

Earlier, I described the position of Assistant Secretary for Fish, Wildlife and Parks as the best job in Washington. One of the aspects of the job I most look forward to, if I am confirmed, is the opportunity to work with the talented and dedicated employees of the U.S. Fish and Wildlife Service and the National Park Service. I have great respect for these professionals who ensure the preservation of America's greatest treasures every day.

Mr. Chairman, I love our great country and the physical resources with which we have been blessed. If confirmed, I will do my best to see that our resources remain a perpetual source of enjoyment for the American people.

I'll be pleased to answer any questions.

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

Name: MANSON (Last) HAROLD (First) CRAIG (Middle)

Position to which nominated: Assistant Secretary (Fish, Wildlife & Parks) of Interior

Date of Nomination: _____

Date of birth: 3 Oct 1954 (Day) (Month) (Year) **Place of birth:** Jefferson City Missouri

Marital status: Married **Full name of spouse:** Margarett Ann Penny Manson

Name and ages of children: NONE

Education:

Institution	Dates attended	Degrees received	Dates of degrees
Golden Gate University	1982-83	None	
UOP McGeorge School of Law	1978-81	J.D.	May 1981
Univ of Northern Colorado	1977-78	None	
US Air Force Academy	1972-76	B.S.	June 1976
Monterey Peninsula College	1971	None	

Employment record:

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

Judge, Superior Court of California, County of Sacramento, Sacramento, California, 1998-Present.

Appointed to Sacramento County Municipal Court January 26, 1998 by Governor Pete Wilson. Oath January 30, 1998. Elevated to Superior Court, June 17, 1998; oath, June 30, 1998.

Adjunct Professor of Law, University of the Pacific, McGeorge School of Law, Sacramento, California, 1993-2001.

Taught Employment Law. Judge, Trial Advocacy Program, Moot Court, and International Moot Court.

General Counsel, California Department of Fish & Game, Sacramento, California, 1993-98.

Appointed by Governor Pete Wilson (December 16, 1992; assumed office January 11, 1993) as first incumbent of this position. Provided legal and policy advice to Director of Fish and Game, Secretary for Resources, and Governor on state and federal Endangered Species Acts, wetlands, water law, California Environmental Quality Act, CERCLA, and other natural resources issues. Supervised natural resources and CEQA litigation as well as administrative law and personnel litigation, in state and federal courts. Represented Department of Fish and Game before state and federal administrative agencies such as State Water Resources Control Board, Fish and Game Commission, Federal Energy Regulatory Commission, and U.S. Forest Service. Drafted Governor's natural resources legislative proposals, and testified before California Legislature on natural resources issues. Represented Wilson Administration on Western Governors' Association staff committee on federal Endangered Species Act reform. Provided legal advice to Fish and Game law enforcement personnel. Member, Legal Committee, International Association of Fish and Wildlife Agencies. Assisted District Attorneys on fish, wildlife, and pollution enforcement. Prosecuted fish and game civil penalty citations. Frequent speaker at environmental and natural resources conferences and continuing legal education conferences. Provided legal advice on administrative law, state fiscal law, and personnel law matters to Deputy Directors and supervisors within Department. Supervised fourteen attorneys and associated support staff in two legal offices. Author, *Natural Communities Conservation Planning: California's New Ecosystem Approach to Biodiversity*, 24 Environmental Law 603 (1994).

Attorney, Downey, Brand, Seymour & Rohwer, Sacramento, California, 1989-93.

Advised corporate clients and other businesses in administrative, regulatory, and environmental matters, state and federal government contract matters, and employment law. Represented clients in state and federal court and before administrative agencies. Retained as outside counsel for California Department of Conservation and California Department of Corrections in administrative law matters. Substantial involvement in drafting of legislation to amend California Litter Reduction and Beverage Container Recycling Act. Provided litigation support for firm's toxics practice group. Also practiced commercial litigation. Typical clients included large and small businesses, national, regional, and local companies. Additional activities in practice: Member, Eastern District Pro Bono Civil Rights Panel. Frequent speaker at seminars for corporate management. Expert in law of outer space (see *"Space Law: A New Frontier--Sacramento Attorney is One of Rare Experts in Field"*, San Francisco Examiner, Thursday, August 16, 1990, page D-1) . Author, *The Impact of International Outer Space Commerce on the Environment*, 26 Texas International Law Journal 541, Summer 1991.

Associate Professor of Law, United States Air Force Academy, Colorado Springs, Colorado, 1985-89.

Taught contracts, constitutional law, criminal law, air and space law, international law, and personal estate planning to cadets. Founding Director of Academy's Air & Space Law program. Provided legal advice to Dean and other academic departments on government contracts, intellectual property and federal administrative law. Provided personal legal assistance to faculty and staff members and cadets on estate planning, consumer law. Legal Advisor to Cadet Honor Code Committee. Hearing officer in administrative proceedings. Frequently served as Investigating Officer under Title 10, United States Code, section 832, to determine probable cause to hold accused individuals for general court-martial trial. Served as Special Counsel (International Law, Treaty Compliance & Arms Control) to Strategic Defense Initiative Organization, Office of the Secretary of Defense, Washington, D.C., 1988. Conducted international environmental law compliance study for Secretary of Air Force at U.S. bases in Europe, 1986. Authored numerous chapters in *The American Legal System* and *Law for Commanders* (Academy's proprietary textbooks).Named Outstanding Military Educator, 1989. Additional duty: Coached Academy's nationally ranked collegiate speech & debate team. Awarded U.S. Meritorious Service Medal.

Adjunct Professor of Space Law & Policy, Webster University, Colorado Springs Graduate Center, Colorado Springs, Colorado, 1987-1989.

Taught space law and space policy to masters degree candidates. Students included future astronauts and military and civilian policymakers.

Area Defense Counsel, United States Air Force Judiciary, RAF Lakenheath, England, 1984-1985.

Military criminal defense attorney representing clients at four U.S. bases in England. Counsel in numerous felony and misdemeanor court-martial trials and adverse administrative proceedings. Practiced before U.S. Court of Military Appeals (now U.S. Court of Appeals for Armed Forces) and Air Force Court of Military Review (now Air Force Court of Criminal Appeals) in Washington, D.C. Speaker at U.S. military criminal defense conferences in Europe. Special expertise in extraordinary writs in military criminal practice. Supervised administrative staff of three. Awarded Air Force Commendation Medal.

Deputy Staff Judge Advocate, RAF Mildenhall, England, 1983-1984.

Chief assistant counsel to commander of main U.S. air base in England. Supervised conduct of all military criminal law, adverse personnel law, and administrative law matters. Prosecutor in several court-martial trials. Reviewed U.S. government procurement contracts and settled international tort claims against the United States. Coordinated law enforcement activities with British authorities. Supervised three other attorneys. Awarded Air Force Achievement Medal.

International Law Advisor, United States/Republic of Korea Combined Forces Command, United Nations Command, Korea, 1983.

Selected for temporary duty as international law advisor in world's largest peacetime combat exercise. Advised U.S./U.N. commanders on international law of armed conflict; trained military personnel on Geneva Conventions and U.S./U.N. policies; evaluated compliance with international law in combat field exercise situations.

Chief, Military Justice Division, Office of Staff Judge Advocate, Davis-Monthan Air Force Base, Tucson, Arizona, 1981-83.

Chief military criminal prosecutor at one of the Air Force's largest bases. Prosecuted numerous felony and misdemeanor offenses in court-martial trials. Advised commanding general on nonjudicial disciplinary actions and administrative personnel law matters. Provided legal advice for joint law enforcement activities with state and local authorities. Appeared in federal court to assist U.S. Attorney in successfully defending federal court challenge to constitutionality of military justice system. Supervised two paralegals and four other prosecutors. Also served briefly as Chief, Preventive Law & Legal Assistance. In this position, was responsible for directing legal aid program for community of about 22,000 military personnel and their family members, and retirees. Drafted wills, advised clients in consumer affairs. Assisted Pima County authorities in uncovering consumer fraud scheme aimed at military personnel and local residents.

Adjunct Professor of Aviation Law, Embry-Riddle Aeronautical University, Tucson, Arizona, 1982-1983.

Taught courses in aviation law and aviation insurance to bachelors and masters degree candidates.

Law Clerk, U.S. Air Force Court of Military Review (now U.S. Air Force Court of Criminal Appeals), Washington, D. C., 1979.

Reviewed felony trial records; drafted memoranda and opinions for judges.

Minuteman Missile Launch Officer, Ellsworth AFB, South Dakota, 1976-78.

Deputy missile combat crew commander in squadron of fifty Minuteman ICBM's. Instructor in the Training Division. Represented Strategic Air Command on NBC's *Today* show, January 26, 1978. Awarded Air Force Commendation Medal.

Honors and awards:

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

LAW SCHOOL AWARDS

Juris Doctor degree awarded with Great Distinction
Order of the Coif
Outstanding Graduating Senior
Editor-in-Chief, Pacific Law Journal
Outstanding Young Men of America
Who's Who in American Colleges and Universities
Emil Gumpert Trial Advocacy Award
Life Member, Traynor Honor Society

MILITARY AWARDS AND DECORATIONS

Meritorious Service Medal (1 oak leaf cluster)
Air Force Commendation Medal (2 oak leaf clusters)
Air Force Achievement Medal
Humanitarian Service Medal
National Defense Service Medal (w/star device)

Outstanding Military Educator Award, U.S. Air Force Academy, 1989

USAF ACADEMY COLLEGIATE HONORS (1972-76)

Dean's List for Academic Excellence
Commandant's List for Military Excellence
Superintendent's List for Overall Excellence
Outstanding Freshman Debater, 1973

CIVIC AWARDS

Business Volunteer of the Year, 1992, Business Volunteers for the Arts-Sacramento

Memberships:

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

Organization	Office held (if any)	Dates
California Judges Association, 1998-Present		

International Association of Fish and Wildlife Agencies, Legal Committee, 1993-1998
American Bar Association (Sections on Litigation, Public Contracts, Labor & Employment Law, Administrative Law, Natural Resources, Environmental and Energy Law, and International Law; Air & Space Law Forum Committee), 1981-1996

State Bar of California Sections on Litigation, Environmental Law, Public Law, Labor and Employment Law (various section memberships between 1981 and 1998)

Sacramento County Bar Association (Administrative Law, Labor & Employment Law, and Environmental Law Sections), 1990-97

Wiley Manuel Bar Association (local bar association for African-American lawyers), various years between 1990 and 1997

Federal Bar Association, Sacramento Chapter (Member, Program Committee, 1991), 1990-93

Sacramento Intellectual Property Law Association (1991-1993)

Milton L. Schwartz American Inn of Court, 1992-1994; Chairman, Membership Committee, 1993-94

Anthony M. Kennedy American Inn of Court, 1998-present

Member, Eastern District Federal Civil Rights Pro Bono Panel, 1990-92

United States Space Foundation, 1989-approx 1996

National Guard Association of The United States, 1990-present
National Guard Association of California, 1990-present
Air Force Association, 1974-present (Life Member)
McGeorge Alumni Association, 1981-present
Board of Directors, Child Abuse Prevention Council of Sacramento (1990-1992)

Board of Directors, League of Women Voters of Sacramento (1991-92)
Business Volunteers for the Arts-Sacramento (1990-93)(Board of Directors, 1993)
Board of Directors, KXPR/KXJZ Public Radio (1992-93)
Air Force Academy Association of Graduates, 1976-present
Young Executives of America, 1992-1994

Advisory Board, Sacramento Fine Arts Center (1990-91)
Member, Republicans of River City (1991-1998) (Board of Directors, 1997-98)
Member, California Congress of Republicans (1991-1998)
Reserve Officers Association (approx. 1992-94)
California Republican Party State Central Committee (1991-1996) (Rules Committee; Natural Resources Committee; Ethnic Outreach Committee)
Sacramento County Republican Central Committee (1992-1996) (Executive Committee; vice chairman; general counsel)
California Republican League (1995-97)
Advisory Committee, Asian American Republican Council of California, 1997-98
Black Republican Council approx. 1995-97
Chinese American Republicans of Sacramento, 1992-96
Federalist Society (present)

Qualifications:

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

Academic Qualifications: Bachelor of Science degree, Political Science with emphasis in American politics; extensive graduate course work in public administration; law degree.

Technical Expertise: Comprehensive and significant experience in executive branch of California state government with responsibility for legal, policy, and legislative matters concerning natural resources including wildlife management, endangered species law and policy, water law, fisheries. See description above of job as General Counsel of California Dept of Fish and Game.

Leadership and Decisionmaking Skills: Trained in judicial decisionmaking, i.e., ability to examine all sides of issues and make decisions on merits of evidence. Skilled in leading diverse interests to consensus in the interest of all.

Future employment relationships:

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

I will sever all connections with my present employer, if confirmed by the Senate.

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

I have no plans after completing government service to resume employment, affiliation, or practice with my current or any previous employer, business firm, association or organization.

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

Nobody has made any commitment to me for a job after I leave government.

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

Not Applicable.

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

NO.

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

Not Applicable.

Financial Statement:

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

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

Downey Brand Seymour & Rohwer Target Benefit Pension Plan, ($1,001-$15,000), retirement plan from former law firm presently fully vested.

2. Are any assets pledged?

No.

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

No.

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

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

No Audits.

Potential conflicts of interest:

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

NONE.

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

NONE

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

which you have been nominated.

NONE

4. Explain how you will resolve any potential conflict of interest, or appearance of a conflict of interest, that may be disclosed by your responses to the above items.
Not Applicable.

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

Political affiliation and activities:

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

Volunteer, Dan Lungren for California Attorney General; Volunteer, Matt Fong for California State Controller; Volunteer, Tom Hayes for California State Treasurer (1990).
Member, California Republican Party State Central Committee (1991-1996) (Rules Committee; Natural Resources Committee; Ethnic Outreach Committee)
Member, Sacramento County Republican Central Committee (also vice chairman & general counsel) (1992-1996).
Member, Steering & Finance Committees, Carol Bass for Sacramento County Supervisor (1992)
Member, Steering & Finance Committees, Carol Bass for California State Assembly (1993)
Volunteer, Matt Fong for California State Treasurer (1994)
Volunteer, Pete Wilson re-election campaign (1994)

Published writings:

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

The Impact of International Outer Space Commerce on the Environment, 26 Texas International Law Journal 541 (1991)

California's Habitat Plan for Biodiversity, 3 California Water Law & Policy Reporter 162 (1993)

Natural Communities Conservation Planning: California's New Ecosystem Approach to Biodiversity, 24 Environmental Law 603 (1994).

"Case Study: California's Coastal Sage Scrub Habitat," panel discussion at National Conference on Habitat Conservation Plans, May 18, 1997, Georgetown University Law Center, Washington, DC

"Reflections on Fish and Game," speech to meeting of Association of California Water Agencies, May, 1998, Lake Tahoe, Nevada

"The Endangered Species Act," presentation to Air National Guard/Air Force Reserve Environmental Law

Symposium, Hanscom Air Force Base, Massachusetts, April 1999

"The Endangered Species Act," presentation to Air National Guard/Air Force Reserve Environmental Law Symposium, Westover Air Reserve Base, Massachusetts, October 2000

Between 1993 and 1998, various other presentations before business, resource user, and legal groups on environmental and natural resources law.

Jury Selection: The Courts, the Constitution, and the Deaf, 11 Pacific Law Journal 967 (1980)

"Take Us to Your Lawyers": The Legal Implications of the Search for Extraterrestrial Intelligence, (April 1989) (paper presented at NEXUS 89-A Conference on Science Fiction and Science Fact, sponsored by the United States Air Force Academy).

"Business Must Get Involved in Fight Against Substance Abuse," Business Forum, *The Sacramento Bee*, April 21, 1991, page D2 (business section Op-Ed piece)

"International Law and Commercialization of Outer Space," speech to Sacramento Intellectual Property Association, May 20, 1991

"Interviewing and Selecting Under the Americans With Disabilities Act," presentation for Council on Education in Management, Sacramento, December 17, 1991

"Reasonable Accommodation Under the Americans With Disabilities Act," presentation for Council on Education in Management, Sacramento, September 1, 1992

"Reasonable Accommodation Under the Americans With Disabilities Act," presentation for Council on Education in Management, Sacramento, December 9, 1992

The Uniformed Services Employment and Re-employment Rights Act, 47 Air Force Law Review 55 (1999)

Between 1993 and 1998, various other presentations before business and legal groups on employment law.

Additional Matters:

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

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

YES

3. Having completed this form, are there any additional questions which you believe the Committee should ask of future nominees?

No.

AFFIDAVIT

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

Subscribed and sworn before me this 12th day of September, 2001.

Terri D. Boulding
Notary Public

TERRI D. BOULDING
Notary Public District of Columbia
My Commission Expires February 14, 2004

1210

RESPONSES OF HAROLD CRAIG MANSON TO ADDITIONAL QUESTIONS FROM SENATOR JEFFORDS

Question 1. The Missisquoi National Wildlife Refuge is moving ahead with long overdue construction of a headquarters building and education center. The potential educational role of this refuge has never been realized. There is currently a significant shortfall in the funds needed to construct a facility that can meet this need. What do you see as the role of the USFWS in education and outreach, and bow can that be met at the Missisquoi Refuge?

Response. I am advised that the facilities to be constructed at the Missisquoi National Wildlife Refuge will include a new headquarters, maintenance facility and vis-

itor contact station with exhibit space and a multi-purpose room to accommodate some of the educational needs of the community in which the refuge is located. The project will replace existing facilities which have exceeded their useful life and are not suitable for repair.

I understand the significant role that national wildlife refuges in the Northeastern United States can play in educating the public about the important fish and wildlife resources that the Service and the Department are charged with protecting and managing. It is my understanding that the Missisquoi Refuge will be better positioned to reach interested citizens and communicate the Service's mission when the project is completed.

The Secretary has targeted improved maintenance of facilities on public lands as a priority. I am advised that replacement of these facilities will help to reduce the maintenance backlog in the National Wildlife Refuge System. If confirmed, I will discuss the funding situation for this facility with Service officials and report back to you.

Question 2. The USFWS has a relatively new 26,000-acre refuge in Northeast Vermont, part of the Conte National Wildlife Refuge. The Refuge Manager is doing a great job, but residents of this area are not yet fully comfortable with the Federal Government as a large landowner. What would be your approach to working with the State and local partners to assure that the refuge is accepted as part of the community?

Response. I understand that the establishment of the Nulhegan Basin Division of the Silvio O. Conte National Fish and Wildlife Refuge was a collaborative effort between the State of Vermont, the U.S. Fish and Wildlife Service; private foundations, and nongovernment conservation groups. This effort resulted in the protection of over 133,000 contiguous acres of former timber company land, with only about 20 percent in Federal ownership as the Refuge. A large portion of the area remains in private ownership as a working forest and the State of Vermont acquired about 22,000 acres of the property.

I am advised that, since the Refuge was established, the State, the Service, local citizens and groups have worked together to inventory and identify the resources present on both areas. In addition, the Service informs me that in January of 2002, a cooperative visitor services plan, covering the State and the Refuge land, will be released for public review. This plan will outline the many ways in which citizens can continue to enjoy the resources of the area, and will hopefully ease concerns over the possible effects of the refuge on public use of the land.

As I noted in my statement to the committee, I am fully committed to communication, consultation and cooperation as the means of conducting our business. If confirmed, I will encourage expanded efforts at all three elements by the Refuge staff.

Question 3. There are now some Atlantic salmon returning to Vermont streams, after being absent for more than a century. The numbers are still not large and it has taken a lot of time and money to get this far. The overall quality of the Connecticut River and other species has been helped in the meantime. The White River National Fish Hatchery in Vermont has been a lynchpin, although the facility is in need of significant upgrades. What is your position concerning USFWS support for Connecticut River salmon restoration?

Response. I am very pleased to hear that the efforts expended so far on the Connecticut River Atlantic salmon restoration program are showing positive and exciting results. From what I have heard, the Connecticut River Atlantic Salmon Commission is an excellent model of the type of State, Federal and private partnership we need throughout the Nation for more effective conservation efforts.

While I have not had an opportunity to become familiar with the details of the Fish and Wildlife Service's budget, the salmon restoration program certainly appears to be the sort of effort which needs our support.

Question 4. The Pittsfield National Fish Hatchery supplies salmonids to Lake Champlain and the Connecticut River. These stockings are critical to maintain populations while threats such as Sea Lampreys are controlled. The hatchery is in need of significant maintenance work, some of which is under way as a result of funding I secured last year, but the reprogramming of funds to complete the job from within the Region has not gone smoothly. How would you ensure that this important Federal facility can be improved as needed to continue its mission?

Response. While, as previously indicated, I have not yet bad an opportunity to become fully familiar with agency budgets, I am advised that there are major maintenance backlogs throughout the National Fish Hatchery and National Wildlife Refuge Systems, as well the better-known backlog confronting the National Park Service. If confirmed, I will be deeply involved in addressing these issues, and will seek to do so through a long-term, systematic approach to reducing all these backlogs.

I would also be glad to look into the status of the reprogramming request for the Pittsfield hatchery and report back to you.

Question 5. The USFWS has been a very strong partner with local watershed groups, State agencies and the U.S. Forest Service in repairing damaged stream banks and restoring Vermont Rivers to a healthy condition. The amount of local support and funding leveraged by the leadership of the USFWS makes this one of our most valuable programs. Do you see this type of partnership as important and how would you support it?

Response. Yes, I consider the development of partnerships and cooperative efforts as the most effective approach to conserving our natural resources, The cooperation and participation of Federal, State and local agencies, organizations and individual citizens generally develops and effectively implements far more innovative and cost-effective solutions to natural resource problems than uniform direction from Washington. A cooperative approach to stream and river restoration is particularly important due to the physical complexity of waterways, which run through multiple jurisdictions and ownerships and serve multiple functions such as transportation, water supply, fish habitat and recreational uses.

I have been advised that the Service's Partners for Fish and Wildlife Program uses this approach across the Nation and that the program has been very successful. The program works with private landowners who wish to voluntarily restore fish and wildlife habitat by providing them with restoration advice, assistance during project construction, and funding support. If confirmed, I will promote this and other Service programs that work cooperatively with citizens and other agencies and organizations.

Question 6. In the Northeast, the Fish and Wildlife Service is involved in several large natural resource restoration projects involving comprehensive partnerships in Rhode Island, New Hampshire, Vermont, Maine and Connecticut. Mr. Manson, what are your plans to increase agency support to these partnership activities in the Northeast?

Response. As I stated in my response to the previous question, I believe these types of cooperative efforts are by far the most effective approach to conservation, and I strongly support them. It is my understanding that many of these particular efforts are being coordinated through the Silvio O. Conte National Wildlife Refuge. It is most encouraging for me to see that multiple elements of the Fish and Wildlife Service have adopted this approach, and if confirmed, I will strongly support the continuation of such cooperative efforts.

Question 7. How will you help increase agency support for Fish and Wildlife Service activities in the Northeast?

Response. As you know, I am currently most familiar with Fish and Wildlife Service activities in California. If confirmed, I will make it a high priority to become fully conversant with the Service's activities throughout the Nation, and specifically in the Northeastern States. I will make an early visit to the Northeast. It appears that the Service has a number of highly successful programs there. It is my belief that we should encourage and reward success.

RESPONSES OF HAROLD CRAIG MANSON TO ADDITIONAL QUESTIONS FROM SENATOR BAUCUS

Question 1. It's pretty clear to me that the Fish and Wildlife Service is operating under a handicap in my State, and that's a staffing and funding handicap. It's my understanding that the Service in Montana has recently done its best to catch up on a substantial backlog of biological opinions, not from a lack of trying, but from a lack of biologists and resources. This problem seriously interferes with the business of my State, and certainly doesn't further the interests of endangered and threatened species;

We have only about 19 biologists doing consultation work in Montana. I think if you look into this issue, and I ask that you do, you'll find that our neighboring States such as Washington and Oregon have considerably more biologists, not only in the State as a whole, but per national forest. Montana has several of the same issues to deal with as those States. Not only that, but we have several endangered and threatened species that cover very large territories. This means that lots of projects all over the State are impacted by the need to consult with the Fish and Wildlife Service before those projects can go forward. The Service must have the resources necessary to allow these projects to move forward efficiently in a reasonable amount of time, with due consideration for the protection of endangered and threatened species.

I have raised this issue with the Administration before. The Assistant Secretary of Interior, Lynn Scarlett, wrote to me, saying she agreed this problem needed further investigation at Interior. I ask that you yourself look into this, and talk to Ms. Scarlett. And please, come to Montana, visit the biologists on the ground, compare their situation to that of Service employees in other States, visit our many fish hatcheries and wildlife refuges. Get a feel for what a very limited staff is struggling to deal with. I can't tell you how important this issue is to Montana. Will you commit to helping me solve this problem?

Response. Yes. If confirmed, I will consult with Assistant Secretary Scarlett and the Fish and Wildlife Service on this issue as a high priority, and report back to you. I will also travel to Montana for an on-the-ground orientation as soon as practicable.

Question 2. I have worked long and hard with other members of Montana's congressional delegation to bring the Fort Peck Interpretative and Visitor Center to Montana. The Interpretative Center will remain a part of Fort Peck Dam, under the jurisdiction of the Army Corps of Engineers. The Visitor Center will be part of the CM Russell National Wildlife Refuge because it will contain interpretive exhibits related to the refuge. This Important wildlife refuge has never bad a visitor center. I was disappointed that the Service did not ask for any funds to pool with the over $6 million already provided through the Army Corps and other sources to help build the Visitors Center. I would like to see the Service take some ownership of this project, because it's important to the refuge and to local residents. And, the Service is going to use the center. Could you look into this and see if there's any way for the Service to participate in this project?

Response. If confirmed, I will certainly look into this situation. I am advised that the bulk of the Fish and Wildlife Service construction budget is currently directed to projects addressing critical health and safety issues, including bridge, dam and seismic safety measures.

RESPONSES OF HAROLD CRAIG MANSON TO ADDITIONAL QUESTIONS FROM SENATOR SMITH

Question 1. Mr. Manson, given that the majority of listed endangered and threatened species occur on private lands, we must be very cognizant of the rights and concerns of private property owners, especially when private land is included in critical habitat, Its my understanding that as General Counsel of the California Department of Fish and Game, you supported State legislation that prevented State biologists from entering private land. While laws like this protect the rights of property owners, it can impact on the ability of the government to recover listed species. How do you suggest we strike the delicate balance between private property rights and species protection?

Also, do you believe that private landowners should be compensated under the takings clause of the Fifth Amendment if protecting listed species on their land infringes on their rights to use the land as they see fit?

Response. Federal, State and local government employees generally have no right to enter private property without either the owners' or occupants' permission or under circumstances when members of the general public would also be able to do so. There are a number of exceptions to this principle, primarily in law enforcement situations, but none that would apply exclusively to the California or the Federal Endangered Species Acts. Accordingly, the California legislation to which you refer was not a question of restricting access previously enjoyed by State employees, to the detriment of listed species, but rather one of clarifying the existing legal situation for the State employees and the public.

I fully and strongly support the Constitution's requirement that no private property may be taken for public use without just compensation. This is one of the keystones of our form of government. It is my understanding that the Administration is committed to administering the Endangered Species Act so that takings of private property do not occur. If confirmed, I will do all that I can to ensure that the program continues to operate in this fashion.

RESPONSES OF HAROLD CRAIG MANSON TO ADDITIONAL QUESTIONS FROM SENATOR BOXER

Question 1. The Klamath Basin has been called the "Western Everglades" because of the great diversity and abundance of fish and wildlife found there. The six national wildlife refuges in the basin are among the most important in the entire Na-

tional Wildlife Refuge System. They are home to millions of migratory birds as well as a sizable population of bald, eagles. Unfortunately, the Klamath Basin suffers from a chronic shortage in water supply. Because of drought conditions, this year proved particularly difficult and has raised tough questions about how best to prioritize water use. In 1998, the U.S. Fish and Wildlife Service adopted a policy. for Tule Lake and Lower Klamath National Wildlife Refuges in California and Oregon that prevents irrigation on commercial farmland on the refuges unless sufficient water is available to sustain the refuges' marshes. Do you support this policy which gives priority to the refuges' ecological resources over commercial farming?

Response. I am advised that the 1998 compatibility determination is still a draft and as such has not become policy. The Fish and Wildlife Service is currently developing a new environmental assessment that addresses this issue and will issue that document later this year for public review and comment. I am further advised that this Environmental Assessment develops alternatives that incorporate new ways for storing and using irrigation water that will seek to minimize conflicts between commercial fanning and wildlife habitat objectives.

As you know, the water uses and priorities in the Klamath Basin are very complex. It is my understanding that the curtailment of commercial farming on the refuge lease lands may not necessarily free up that water for use in refuge wetlands, due to legal priorities for endangered species, tribal trust needs and nonrefuge agriculture. For example, irrigation for commercial farmland was drastically reduced this past summer to avoid jeopardy to endangered species.

This issue is clearly one of the very highest priorities facing the Department and the Fish and Wildlife Service. I believe my prior experience, particularly in negotiating the settlement to the Owens Valley water litigation, could be quite applicable here, and if confirmed look forward to working with you, the other Members of the California and Oregon delegations, and the stakeholders to resolve the situation.

Question 2. The National Wildlife Refuge System Improvement Act of 1997 set new requirements for the management of refuges. In response, the U.S. Fish and Wildlife Service issued regulations establishing procedures for determining what uses are compatible with the missions of the refuge system and mission of each individual refuge. What uses do you deem incompatible with the mission of the national wildlife refuge system?

Response. I have not yet had an opportunity to review the Improvement Act and the Service's implementing regulations in detail. However, I am advised by the Service that it is not possible to list the types of uses that might be incompatible with the statutory mission of the National Wildlife Refuge System, as those are site specific considerations made by individual refuge managers.

However, it is clear that Congress provided this layering of system mission and individual refuge purpose with the compatibility standard in order to ensure that wildlife and wildlife conservation come first within the Refuge System. This provides a very protective standard.

If confirmed, I will be highly supportive of addressing compatibility questions in accordance with the law.

Question 3. Recently, the National Park Service developed a detailed plan for the future management of Yosemite National Park. The plan was developed after considerable input from all of the affected stakeholders and over 10,000 members of the public submitted comments to the agency. Central to this plan is the notion that visitors to the park should be encouraged to leave their personal vehicles outside the park and travel through the park on a park transit system. As Assistant Secretary for Fish, Wildlife, and Parks you will have responsibility for the National Park Service. In this role, will you actively support implementation of the. new Yosemite Valley Management Plan?

Response. I will work closely with the Director of the National Park Service to become familiar with the Yosemite Valley Plan and move forward with the appropriate restoration of Yosemite Valley, while welcoming people to enjoy the park and its resources. I also will work to ensure that the future management of the park is accomplished in partnership with local jurisdictions and others.

Question 4. The Bush Administration has indicated its clear intent to open the Arctic National Wildlife Refuge to oil and gas development. In the past, U.S. Fish and Wildlife Service (Service) biologists have indicated that oil and gas development would do irreparable harm to the wildlife species that depend upon this refuge. As Assistant Secretary of Fish, Wildlife, and Parks it will be your duty to ensure that the concerns of wildlife species are addressed before approval is given to enter a national wildlife refuge. How will you ensure that there is an unbiased assessment of the impacts that oil and gas exploration will have on the Arctic Refuge's irreplaceable wildlife species?

Response. I am familiar with the concerns about the impacts of oil and gas exploration on the wildlife resources of the Arctic National Wildlife Refuge. I have been advised that a great deal of study of the fish, wildlife, and habitats of the Refuge's coastal plain has' been conducted by biologists with the Fish and Wildlife Service and the Biological Resources Division (BRD) of the U.S. Geological Survey. Many of those studies provided the scientific basis for the 1987 Report and Recommendations to the Congress of the United States and Final Legislative Environmental Impact Statement was based. Additionally, some research and monitoring has been conducted since 1987 by the Service and BRD

I am further advised that most of the studies completed to date have been necessarily broad-based. However, if Congress authorizes oil exploration and production in the 1002 Area, there will be the need for further site-specific studies to ensure that these activities are undertaken in an environmentally sound manner. The Fish and Wildlife Service is this Nation's preeminent agency with expertise in management of lands for fish, wildlife and plants. If confirmed, and if Congress acts to open the 1002 Area, I will expect biologists with the Service and BRD to provide the sound science upon which the. Department can base its decisions on where and under what conditions to permit specific activities.

Question 5. While at the California Department of Fish and Game, you supported State legislation would have prevented State biologists from entering private land. As you know, the Federal Endangered Species Act (ESA) applies to both public and private lands, Thus, the U.S. Fish and Wildlife Service is required to enforce the ESA on both public and private lands. As Assistant Secretary of Fish, Wildlife and Parks, will you carry out your statutory duties to apply the ESA on both public and private lands?

Response. If confirmed, I will do so without reservation. The California legislation to which you refer was not a question of restricting access previously enjoyed by State employees, to the detriment of listed species, but rather one of clarifying the existing legal situation for the State employees and the public. Additionally, I believe we need to involve private landowners in recovery planning and solving complex ESA issues.

Question 6. There are now well over 1,000 species that have been federally recognized as threatened or endangered species. The Endangered Species Act compels the Secretary of Interior to identify habitat that is critical to the recovery of those species and protect that habitat from further degradation. Many have alleged that our limited success in recovering species is due to our failure to protect the habitat upon which those species depend. In States like California, where there are a large number of listed species and a great deal of habitat that has been identified as "critical habitat," protection of this habitat has been limited. How would you interpret the Interior Department's obligations to protect and conserve the critical habitat of these threatened and endangered species? If you favor limited protection for critical habitat, what alternatives do you offer for fulfilling Interior's obligations to recover listed species?

Response. The Endangered Species Act requires that critical habitat be designated at the time a species is listed "to the maximum extent prudent and determinable". The ESA works to protect critical habitat through the Section 7 consultation process. The Secretary of the Interior's responsibility is to consult with Federal agencies if their actions may serve to jeopardize endangered species or result in adverse modification of their critical habitat.

If confirmed, I will make it a priority to ensure that the ESA is fully complied with.

At the same time, I would hope that, if given an opportunity to work with you and other interested parties on the ESA, we could increase our focus on efforts to recover species so that they could be delisted. This perhaps could involve continued pursuit of the approach taken in legislation in prior Congresses, in which I was involved on behalf of the Western Governors Association, to make critical habitat designation a part of the recovery process, where it could be designated if a recovery plan found it was needed. There may well be other approaches which also merit consideration. However, absent such a change in the law, if confirmed I will ensure that the law is carried out as it stands.

Question 7. In the fiscal year 2002 budget request, the Bush Administration asked for $8.5 million for the U.S, Fish and Wildlife Service's listing and critical habitat designation budget. This request is far below the funding level that the agency has indicated it needs to sufficiently address the backlog of species that await listing decisions and critical habitat designations. Indeed, in a variety of court cases the USFWS has asserted that is should be exempt from its legal obligations to list and designate critical habitat because the agency lacks adequate funding, Clearly more

funding is needed to address this problem. What will you do to ensure that the President's fiscal year 2003 budget request for the USFWS includes a credible amount of funding for listing and critical habitat designation?

Response. I appreciate your concerns regarding the Service's listing and critical habitat designation budget. I am advised that the Bush Administration's 2002 budget request for listing represented a 15 percent increase over the 2001 amount requested by the prior Administration, and a 34 percent increase over the amount actually appropriated for listing in fiscal year 2001.

In fashioning a 2003 request, I believe the Administration will balance the needs of the Endangered Species program, the Service, and the Department of the Interior with the many other demands and priorities for increased Federal funding, including other aspects of the Endangered Species Act itself As you are aware, there are significant documented needs and backlogs in many Service and Departmental programs. If confirmed, and in time to participate in the development of this request, which I am advised is already well advanced, I will do my best to ensure that funding is requested based on documented needs consistent with the President's priorities.

Question 8. The press has reported of your involvement in a whistleblower case concerning a biologist who was allegedly pressured to approve an illegal permit. Government agencies are entrusted by the public to fully and fairly implement laws. Political pressures on agency staff to break the law, misrepresent an issue, withhold information, etc. is unacceptable. As Assistant Secretary of Fish, Wildlife and Parks, what will you do to ensure that agency staff are not pressured to base policy decisions on political pressure? What will you do to ensure that any staff who are pressured have an opportunity to disclose this information?

Response. My involvement in the case you referenced was limited to my role as a lawyer defending the California Department of Fish and Game and its management in legal actions arising from the alleged incident.

I agree with you that it is unacceptable to subject agency staff to political pressures to break the law, misrepresent an issue, withhold information or otherwise act in a manner that is illegal or unethical. I believe that the best decisions are based on having the best information, and if confirmed I would be vigilant in ensuring that agency staff contribute information in a work environment that values good science and accurate information for the formulation of policy decisions.

STATEMENT OF PAUL MICHAEL PARKER, NOMINATED TO BE ASSISTANT SECRETARY OF THE ARMY FOR CIVIL WORKS

Thank you, Mr. Chairman and distinguished members of the committee. It is a great honor and privilege to appear before this committee as the nominee to be the Assistant Secretary of the Army for Civil Works. I am very grateful to the President, the Secretary of Defense, and the Secretary of the Army for the trust and confidence that-they-have placed in me. If confirmed, I pledge that I will work as hard as I possibly can to serve the soldiers, civilians, and families that make the United States Army the most powerful and professional army in the world.

The Corps of Engineers has a proud history stretching back to the beginning of the country. Over the years the Corps has evolved to emphasize its major civil works responsibilities of today: conservation and development of the nation's water resources, which includes flood control, navigation, shore protection, and environmental restoration. All of these tasks are important; all are complex and demanding; and all require significant resources. With competing demands for limited dollars, fulfilling these requirements becomes more and more challenging; however, I am committed that should I be confirmed, environmental considerations will remain a key factor in determining our Civil Works stance for the nation. The dedicated and able staff of military and civilian employees who make up the Corps of Engineers has risen to every challenge in the past and I'm sure will continue to carry out their responsibilities to the people of this country in these vital areas.

In the last week, you can see the value of the Corps to this nation and the dedication of its people as we recover from the recent tragedies at the World Trade Center and at the Pentagon. The Corps is heavily involved in determining structural integrity and debris management in both locations and continue to serve as the nation's premier engineers during this time of crisis. Should I be confirmed, I will be proud to work alongside these ultimate professionals.

In the 10 years during which I had the honor of representing the Fourth District of Mississippi in the U.S. House of Representatives, I applied my commitment to finding practical, realistic solutions to problems and issues of importance to my constituents. Having served on various House committees which deal with a range of

issues I can expect to face as the Assistant Secretary, I understand both the Civil Works and military programs aspects of the Corps of Engineers and appreciate the challenges. facing the Corps.

Should I be confirmed, I look forward to serving with the Army and the Corps during this landmark era of change and transformation. I look forward to serving with the Army team of Active, Reserve, and National Guard soldiers who distinguish themselves every day by their dedication and hard work. I am prepared to undertake the important responsibilities of this post and am enthusiastic about the opportunities it presents to me to continue to serve this great country. I am committed to working closely with and consulting with the various stakeholders in the ongoing Corps projects, including the Members of Congress who represent the American people. Mr. Chairman, if confirmed, I look forward to a strong working relationship with you and this committee. I would be pleased to answer any questions at this time. Thank you.

UNITED STATES SENATE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

ROOM 410 DIRKSEN BUILDING WASHINGTON, DC 20510

INFORMATION

REQUESTED OF PRESIDENTIAL NOMINEES

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

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

Name of Nominee: Paul Michael (Mike) Parker

Business Address: 50 Creekview Lane, SE
Brookhaven, MS 39601

Business Phone: (601) 835-1341

Home Address: Same as business address

Home Phone: (601) 833-0551

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

Name: **Parker** (Last) **Paul** (First) **Michael** (Middle)

Position to which nominated: Assistant Secretary of the Army for Civil Works

Date of Nomination: June 19, 2001

Date of birth: 31 October 1949 (Day) (Month) (Year) **Place of birth:** Laurel, Mississippi

Marital status: Married **Full name of spouse:** Rosemary Prather Parker

Name and ages of children:

Michael Adrian Parker, 26
Marisa Parker, 20
Thomas Welch Parker, 16

Education:

Institution	Dates attended	Degrees received	Dates of degrees
Franklin High School Meadeville, MS	Jan 1966-May 1967	HS Diploma	May 1967
William Carey College, Hattiesburg, MS	Sep 1967-May 1970	BA	May 1970
Dallas Institute of Mortuary Science Dallas, TX	Sep 1972 Aug 1973	Funeral Director License	August 1973

Employment record:

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

Employment record—continued

Parker-Mulvaney Consulting, Inc., 50 Creekview Lane SE, Brookhave, MS
Position: President/Owner January 2000 to present

Welch Resources, Inc., 50 Creekview Lane SE, Brookhaven, MS
Position: President/Owner October 1997 to present

GFG Farms, Inc., 50 Creekview Lane SE, Brookhaven, MS
Position: President/Owner October 1996 to present

Mississippi Hush Puppy Company, Inc., 50 Creekview Lane SE, Brookhaven, MS
Position: President/Owner January 1996 to December 1999

M&R Services, Inc., 50 Creekview Lane SE, Brookhaven, MS
Position: President/Owner January 1993 to December 2000

US House of Representatives, 2445 Rayburn House Office Building, Wash DC
Position: Member of Congress January 1989 to January 1999

Brookhaven Funeral Home Inc., 230 North Jackson Street, Brookhaven, MS
Position: President/Owner March 1978 to December 1992

Franklin Funeral Home Inc., 230 North Jackson Street, Brookhaven, MS
Position: President/Owner March 1978 to December 1992

Brookhaven Funeral Insurance Company Inc., 230 North Jackson Street, Brookhaven, MS
Position: President/Owner May 1982 to December 1992

Community Life Insurance Company, Inc., 230 North Jackson Street, Brookhaven, MS
Position: President/Owner March 1978 to December 1992

Honors and awards:

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

William Carey College, 498 Tuscan Avenue, Hattiesburg, MS
Honorary Doctor of Humanities Degree, Received 1995

Memberships:

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

Organization	Office held (if any)	Dates
None		

Qualifications:

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

In the ten years during which I had the honor of representing the Fourth District of Mississippi in the United States House of Representatives, I applied my commitment to finding practical, realistic solutions to problems and issues of importance to my constituents. This common-sense approach to issues also stood me in good stead in my role as a member of several House Committees dealing with very difficult issues of national significance. I have served on five different House Committees whose responsibilities span the range of issues I can be expected to face as Assistant Secretary: Budget Committee, Appropriations Committee, Transportation and Infrastructure Committee; Education and Workforce Committee; and Veterans' Affairs Committee. I served on both Energy and Water Development and Military Construction Appropriations Subcommittees, so I know both the Civil Works and military programs aspects of the Corps of Engineers role in the Army.

One of the principal skills I have developed over my career in the public sector is the ability to work effectively with government and industry leaders, non-governmental organizations, Members of both parties in Congress, and with officials in the Executive Branch.

Future employment relationships:

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

Yes

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

No

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

No

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

Yes

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

No

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

N/A

Financial Statement:

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

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

See attached Public Disclosure Report and Ethics Agreement.

2. Are any assets pledged?

See attached Public Disclosure Report and Ethics Agreement.

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

No

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

Yes

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

Yes, nothing was found to be incorrect.

Potential conflicts of interest:

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

See attached Public Disclosure Report.

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

See attached Public Disclosure Report and ethics agreement.

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

See attached Public Disclosure Report and ethics agreement.

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

See attached Public Disclosure Report and ethics agreement.

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

See attached Public Disclosure Report and ethics agreement.

Political affiliation and activities:

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

I served as a Member of the US House of Representatives from January 1989 to January 1999

I have made only one personal contribution to a political candidate. On March 20, 1998, I gave $1,000.00 to my then Chief of Staff, Art Rhodes, a candidate for Congress in the 4th District of Mississippi.

My campaign committee has given the following contributions:

03/29/00	Jim Talent for Governor of Missouri	$1,000.00
10/18/00	The New Century Project	$25,000.00
10/18/00	Rankin County Republican Executive Committee	$10,000.00
02/08/01	Friends of John Roberts	$1,000.00
02/08/01	Lincoln County Republican Executive Committee	$5,000.00
05/15/01	Republican National Committee	$100,000.00
05/16/01	Mississippi Republican Committee	$87,000.00

Published writings:

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

None

Additional Matters:

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

No

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

Yes

3. Having completed this form, are there any additional questions which you believe the Committee should ask of future nominees?

No

AFFIDAVIT

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

Subscribed and sworn before me this 30th day of August, 2001.

Janice L. Reeves
Notary Public

Notary Public State of Mississippi At Large
My Commission Expires July 19, 2002
Bonded Thru Helden, Brooks & Garland, Inc.

RESPONSES OF PAUL MICHAEL (MIKE) PARKER TO ADDITIONAL QUESTIONS FROM SENATOR SMITH

Question 1. As you are well aware, the Army Corps Civil Works Program faces a construction backlog of $40 billion in unfunded, but authorized projects. The Senate Environment and Public Works Committee is currently on schedule to report the next biennial Water Resources Development Act in the year 2002. While the Appropriations Committees have adhered to a "no new starts" policy, this seems to unfairly penalize otherwise meritorious projects. What do you recommend the Congress do to fairly address both the massive construction backlog and the backlog on Operations and Maintenance?

Response. The construction backlog of the Civil Works Program of the Corps of Engineers is real and needs to be addressed. My intention, if confirmed, is to work within the Administration and with Congress to assure that adequate funding is available to address the construction and maintenance backlogs. The Civil Works Program of the Corps of Engineers is a direct contributor to the economic vitality of this country and investing in water infrastructure is a direct way to contribute to the economic vitality and therefore, national security of this country. If confirmed, I will work directly with the Corps of Engineers to review the backlog of currently authorized projects to determine whether it remains in the national interest to pursue those projects. In addition, I will place a very high priority on reducing the Civil Works maintenance backlog.

Question 2. In November of 2000, then-Assistant Secretary Joseph Westphal and Chief of Engineers General Robert Flowers signed a Memorandum of Agreement (MOA) outlining the distribution of responsibilities and reporting authority between the two positions. Is it your intent to honor this MOA?

Response. Yes, I do. If confirmed, I will meet with the Chief of Engineers at the earliest date possible to affirm this agreement.

Question 3. What measures do you recommend the Army Corps take to avoid a recurrence of the situation encountered with the Upper Mississippi River Navigation Study?

Response. It is my understanding that, subsequent to the Army Inspector General report and a review by the National Research Council's National Academy of Sciences, the Chief of Engineers put in place a number of additional measures to receive and incorporate into the planning process the views of other Federal agencies and non-governmental entities with expertise needed for complex studies like the Upper Mississippi River Navigation Study. If I am confirmed, I will work closely with the Chief of Engineers, with others in the Administration and with Members of Congress to strengthen the Corps planning process and the public's confidence in it.

Question 4. Do you consider environmental restoration to be a primary mission of the Army Corps and will you support it to the same extent you do the other missions of the Corps?

Response. Yes, I do. I am committed, if I am confirmed, to seeing that the Corps continues to excel in environmental restoration. I firmly believe that economic development and environmental restoration need not be competing priorities. The most effective projects are those that satisfy both critical objectives. The Civil Works program of the Corps can truly improve the quality of life for all of our citizens through economic prosperity, national security, and environmental protection and restoration.

Question 5. As you may know, on January 15th, 2001, the Air Force issued a Record of Decision (ROD) on redevelopment of Homestead AFB, rejecting the plan to convert the base into a commercial airport and instead approving a plan for mixed use development. The 700 acres of land will be transferred to Miami-Dade County, which prefers the airport alternative. If the county declines the surplus property, the ROD stipulates that the Air Force will consider a request for the property to be transferred instead to the Department of Interior.

Homestead AFB is located approximately 10 miles from Everglades National Park and two miles from Biscayne National Park. Last year, the Environment and Public Works Committee authorized an $8 billion restoration effort in the Everglades. Included in this statute is a Sense of the Congress that any redevelopment of the AFB be consistent with restoration of the Everglades.

Question 6. What is your position regarding the disposal of Homestead AFB?

Response. As I understand it, Hurricane Andrew had a significant impact on Homestead Air Force Base, and the Air Force looked closely at alternatives associated with its future. I am not familiar with the details of those alternatives at this time. If confirmed, I will look into the situation to ensure that any disposal or redevelopment decisions are consistent with the principles in the Corps Comprehensive Everglades Restoration Plan and consult with the appropriate committees of Congress before making any final decision.

Question 7. Do you think that any reforms are needed in the Corps to restore the faith of the public and Congress in this agency?

Response. The Corps of Engineers has provided and continues to provide this Nation with great service that is technically sound, environmentally sensitive and responsive to the needs of the American public, and I don't believe any fundamental changes are needed. However, I do recognize that the Army must be open to opportunities to improve the responsiveness of the Corps of Engineers in meeting national

needs and developing sound project recommendations. If I am confirmed, I plan to actively examine the question of independent review and other reforms, in consultation with the Chief of Engineers and the National Academy of Sciences and, as appropriate, develop a recommendation for consideration by the Congress.

Question 8. Mr. Parker, would you support updating the Principles and Guidelines to reflect recent policy and social changes, such as the inclusion of environmental restoration as a Federal purpose, and advances in analytical techniques and technologies?

Response. I believe that the existing Principles and Guidelines provide a sound basis for evaluating the economic and environmental benefits and costs of proposed projects. It is important, however, that as improved methods of evaluation are developed, the Government's analysis can benefit from them. If I am confirmed, I will review the existing Principles and Guidelines, with particularly attention to the way they are implemented, as I assess whether or not they need to be revised. Before any decisions are final in this matter, I will consult with the Congress.

RESPONSES OF PAUL MICHAEL (MIKE) PARKER TO ADDITIONAL QUESTIONS FROM SENATOR BAUCUS

Question 1. Mr. Parker, would you agree that it's high time that the current Master Manual be changed? It's been around for decades upon decades, and times and river conditions have changed.

Response. I agree that operating procedures for Civil Works projects should reflect current conditions and priorities. The existing Missouri River Master Manual is, as you state, one that has been in place for many years. The Corps has been involved since 1989 in a review of the current Master Manual. This has been and continues to be a long process and will be one of my top priorities if I am confirmed.

Question 2. While the debate over changing the Master Manual has a lot to do with endangered species, it also has a lot to do with the recreation industry in my State and other upstream States. I'll be blunt. We really feel we've been shortchanged over the years as our reservoirs are drained in the summer, particularly during dry years, docks left high and dry, to support downstream interests. What is your view on better balancing the needs of upstream recreation interests with downstream demands, particularly during a drought?

Response. If confirmed, I will act on my commitment to consider the water resource needs of the entire basin in completing the revision of the Master Manual on the Missouri River. The alternatives under consideration in the revised draft Environmental Impact Statement include a conservation plan component for storage in the upper Missouri reservoirs, which would provide more storage in drought conditions. The completion of this process will provide the legal, scientific, and engineering basis for any changes on balancing upstream recreation interests with downstream demands.

Question 3. How do you think the Army Corps should respond to Biological Opinions, in general?

Response. The Corps should and does give great deference to the conclusions of Biological Opinions under the Endangered Species Act. I believe that economic development and environmental restoration do not need to be competing priorities. We must all work to ensure that we avoid impacts to protected species or the critical habitats on which they depend. If I am confirmed, I assure you that all of the actions taken through the Civil Works program will be consistent with the law and will use the coordination and decisionmaking processes provided for in the law.

Question 4. If the Army Corps does not follow the recommendations of the US Fish and Wildlife Service's Biological Opinion in formulating a Record of Decision on the Missouri River Master Manual, what do you think will be the result of that decision?

Response. I am not familiar enough with the details of this extremely complex issue to offer an opinion on the results of any decision. However, you have my commitment that, if I am confirmed, I will give this matter my fullest attention to ensure that, whatever the decision, the outcome has been well thought out and all project purposes and all of the interests in the river basin have been taken fully into consideration. If confirmed, under my leadership the Corps will always implement and follow the law.

Question 5. Can I count on your commitment to support the development of the Fort Peck Fish Hatchery? I've asked for funding for the Corps to get this project off the ground. There's tremendous support for it in the local Corps and in Montana.

It would be a huge boon for recreation, the regional economy and endangered and threatened species a win-win project.

Response. When Congress provides funding for a particular activity, such as the Fort Peck Fish Hatchery, you should be able to expect that the Corps will vigorously apply the funding as appropriated by Congress.

Question 6. Mr. Parker, I would just ask you to familiarize yourself with the Yellowstone River cumulative impacts study, because it is important that the Corps continue to involve the public in the process. The Yellowstone means a lot to an awful lot of people. Managing the river will always be controversial, and I want to be sure that the Corps truly listens to local voices.

Response. You have my commitment that, if I am confirmed, I will familiarize myself with not only the Yellowstone River study, but also with other issues of interest to the residents of Montana.

Question 7. Will you come to Montana?

Response. Yes Senator, if confirmed, I would look forward to visiting the State of Montana.

RESPONSES OF PAUL MICHAEL (MIKE) PARKER TO ADDITIONAL QUESTIONS FROM SENATOR WYDEN

Question 1. If you're confirmed as Assistant Secretary, what will you do to prevent a rerun of this year's attempt to cut the Corps' funding in the budget process?

Response. Senator, I am committed to working within the Administration, as well as with Congress, to ensure that the contributions of the Civil Works program to the Nation are understood and that adequate resources are provided to efficiently and effectively carry out the Civil Works responsibilities of the Corps of Engineers. If confirmed, I intend to meet with senior Administration officials on the challenges facing this country with respect to its water infrastructure. The Administration and Congress need to work together to assure that this program move forward effectively. I look forward to the opportunity to lead this effort.

Question 2. An issue of particular concern to Oregon ports is keeping the Northwest hopper dredges available to keep our navigation channels and our ports open for business. The Northwest ports are not convinced that the private dredge industry has the capability to meet the region's dredging needs in a timely and cost effective way. Our ports want the Corps dredges maintained to ensure safe navigation. What commitments can you make that the Corps dredges will be available to do the work when they're needed?

Response. I am committed to ensuring safe commercial navigation of channels and harbors in the Pacific Northwest and elsewhere in the country with maintenance that is cost effective and efficient and that adequate hopper dredging capacity is available to respond to the needs of Northwest ports. By striking a reasonable balance between industry competition and Government-owned dredges, the Corps can meet this commitment. If I am confirmed, I will work with the Corps to improve actual dredging performance in the Northwest and will not allow the Northwest to left without proper dredging capacity.

Question 3. At a March 1998 hearing before the Subcommittee on Energy and Water Development, you questioned the Corps' environmental missions and in particular Columbia River Salmon Recovery efforts. You've been quoted in the press as saying "I never even thought they were in the scope of the Corps' primary mission." My questions are: Have your views changed since you made those comments and, if so, how? Do you now support salmon restoration efforts in the Northwest as part of the Corps' mission? And will you make salmon recovery funding a priority?

Response. The comments were made in the context of a dialog in a hearing before the Subcommittee on Energy and Water Development that arose because the Corps had reprogrammed money without consulting with the Subcommittee. It was and is my opinion that the Corps should consult with Congress before making any significant reprogramming decisions. I recognize the importance of environmental restoration and the Corps unique capability to provide it. Moreover, I support salmon recovery efforts in the Northwest that represent cost effective application of the best science and engineering available to this complex ecosystem challenge. I am supportive of a broad coalition of States, Tribes, and Federal agencies being involved in recovery efforts and will support the Corps involvement in working within the Northwest Region on this issue. I also recognize that the Bonneville Power Administration provides for a substantial amount of funding for salmon recovery, and I will continue to examine ways that this funding can best be leveraged to support Corps activities. If I am confirmed, I will look for ways to collaborate fully on salmon re-

covery efforts and will support appropriate levels of funding to maintain Civil Works projects to enhance fish survivability.

RESPONSES OF PAUL MICHAEL (MIKE) PARKER TO ADDITIONAL QUESTIONS FROM SENATOR GRAHAM

Question 1. There is a substantial backlog of projects that have been authorized for the Corps to undertake. With current funding levels, it seems unlikely that this backlog will ever be fully funded. There are also several projects that seem to have very little economic benefit and are also environmentally damaging. One example of this is O&M dredging of the Apalachicola River. In an August 2000 letter to me, then Assistant Secretary of the Army, Joseph Westphal wrote: "Based upon our review and conversation with the Corps, I believe that maintaining navigation on the ACF is not economically justified or environmentally defensible. With an economic return that has been estimated at less that 40 cents for each dollar spent, it is difficult to invest nearly $3 million each year on this project in light of the Corps overall backlog for operations and maintenance. Further, deauthorization of navigation would provide the Corps greater flexibility to address important environmental issues along the river."

Do you support deauthorization of outdated, unjustifiable, or unnecessary projects, such as the dredging of the Apalachicola River, as a means of providing more flexibility to the Corps to address its operations and maintenance backlog?

Response. I support the deauthorization of outdated, unjustifiable, or unnecessary projects. A few years ago, Congress authorized a process whereby if authorized projects had not received any fund for five consecutive years, they would be eligible for deauthorization. I believe we need to review this process to determine whether any changes in this process are warranted. If I am confirmed, I look forward to working with the Corps to assure that changes to the deauthorization process are comprehensive, fair to all, and effective in identifying those projects that are no longer in the national interest to pursue.

Question 2. When General Flowers was confirmed, I expressed interest in establishing a process for a regular review of ongoing Corps projects outside of the normal budget process. What is your opinion of such a process?

Response. I agree with the importance of regular review of projects and priorities. If confirmed, I will work with the Corps and the Congress to examine their current procedures and identify other opportunities for review.

Question 3. In recent years, the purpose of many Corps projects has been environmental restoration. There are many such projects in Florida, the largest being the restoration of America's Everglades. There has been substantial concern over statements you made while in Congress that question the primacy of environmental restoration to the overall mission of the Corps. However, in response to advanced questions posed by the Armed Services Committee, you stated: "I believe that projects and programs that protect and restore the natural environment are a priority to the American people and a central mission for the Corps of Engineers."

What do you see as the primary mission of the Corps of Engineers and how do environmental restoration projects, such as the restoration of the Everglades, fit into that mission?

Response. Environmental restoration is most definitely a primary mission of the Corps of Engineers. In recent years, it has been accorded the same priority for resources as the other primary missions of flood damage prevention and commercial navigation.

Question 4. Many Members of Congress have called for significant reforms in the way the Army Corps conducts its business. One issue that has come to my attention is the manner in which Corps district offices interact with other parts of the government as well as with local communities that are the beneficiaries of Corps projects. In handling issues of importance to Florida, I have had many interactions with the Jacksonville district office. They have been helpful, responsive, and eager to provide me with the information I have needed.

Do you plan to conduct an internal review as to the way the district offices interact with outside agencies and the people they serve in order to help all the districts be as helpful and responsive as the Jacksonville district?

Response. If confirmed, I will conduct an internal review of the Corps to review its approaches in dealing with all of its constituents and interested parties as we carry out the Army Civil Works program.

RESPONSES OF PAUL MICHAEL (MIKE) PARKER TO ADDITIONAL QUESTIONS FROM SENATOR BOXER

BUTTONWILLOW/SAFETY-KLEEN

Question 1. I understand the Corp of Engineers has not made any progress since last October on removing Formerly Utilized Sites Remedial Action Program (FUSRAP) waste from the unlicensed Safety-Kleen facility at Buttonwillow, California, and that no further studies are being conducted. I am deeply disappointed by this continued inaction, and that waste continues to sit in an unlicensed California dump when other licensed facilities in other States express willingness to accept it. Will you commit to working with me to remove the waste from my State?

Response. I will work with you and your staff to become fully aware of your concerns regarding the Corps use of the Safety-Kleen facility in California for the disposal of FUSRAP materials. I am also quite willing to work with you to define a potential solution to your concerns.

MISSOURI RIVER MASTER MANUAL

Question 1. Under what circumstances do you believe that the Endangered Species Committee provision of the Endangered Species Act should be utilized?

Response. Senator, As I currently understand it, the Endangered Species Committee process was established by the Endangered Species Act to resolve situations when there is no reasonable and prudent alternative that an agency can pursue to preclude jeopardy.

Question 2. Do you believe that the Endangered Species Committee provision of the Endangered Species Act should be utilized to address the revision of the Missouri River Master Water Control Manual?

Response. Senator, If I am confirmed, I have every expectation of working toward a resolution that not only serves the congressionally authorized project purposes provided by the 1944 Flood Control Act, but also complies with the provisions of the Endangered Species Act. If confirmed, under my leadership, the Corps will follow the law.

Question 3. If a proposal is made to invoke the Endangered Species Committee provision of the Endangered Species Act, will you commit to inform this committee and interested senators at the earliest possible opportunity, and to appear before this committee to provide an explanation for such action?

Response. Yes, I will.

Question 4. The Fish and Wildlife Service has stated in a Biological Opinion that the Missouri River Master Water Control Manual must be revised to adopt a "spring rise" in order to comply with the Endangered Species Act. How do you believe the Corps of Engineers should respond to this direction?

Response. Senator, I understand that this is a complex, controversial project. While I am not in a position to recommend at this point how the Corps of Engineers should respond, you have my commitment that, if I am confirmed, this matter will have my attention and I will work with the Corps of Engineers, other agencies, and Congress to identify a solution. Under my leadership if I am confirmed, the Corps will implement the law.

Question 5. Do you believe that the Corps of Engineers can comply with the Endangered Species Act without adopting a "spring rise" as part of the Missouri River Master Water Control Manual?

Response. Senator, I am not in a position to comment at this point. However, you have my commitment that, if confirmed, I will work to resolve this matter in a manner that takes into consideration all of the various interests in the region.

Question 6. Will you pledge to ensure that the Missouri River Master Water Control Manual is revised in complete accordance with Federal law, including the Endangered Species Act and the Fish and Wildlife Service Biological Opinion?

Response. Yes, Senator, I will. We will make this and all of our decisions within the framework of all applicable laws and regulations.

Question 7. The Corps of Engineers did not recommend a "Preferred Alternative" in its Revised Draft Environmental Impact Statement on the revision of the Missouri River Master Water Control Manual. Do you believe that this was an appropriate step for the Corps to take?

Response. Although I am not yet familiar with all of the considerations that went into this decision, it is my hope that the approach the Corps has taken will encourage a fair and balanced public review of all alternative proposed changes to the Master Manual.

Question 8. The Corps of Engineers is scheduled to release a final Environmental Impact Statement on the revision of the Missouri River Master Water Control Manual in May of 2002. Do you intend to meet this deadline?

Response. If I am confirmed, I have every intention of meeting this deadline.

Question 9. Will you act to ensure that the Corps makes a recommendation for managing the river by May of 2002 that fully complies with Federal law and is based upon sound, scientific research, including the 2000 Fish and Wildlife Service Biological Opinion?

Response. Yes, Senator, I will if confirmed. The considerable body of knowledge gained thus far and expected over the coming months, including the public comments, will be fully considered in making a decision on a Preferred Alternative in 2002.

WETLANDS

Question 10. What are your views on the regulation and protection of wetlands, and how do you intend to carry out your duties as the nation's primary wetlands regulator?

Response. I believe that the Corps of Engineers plays a critical role in protecting the aquatic environment, including wetlands, of this Nation. The Corps has significantly strengthened the protection of wetlands over the past 20 years through its regulatory program. If confirmed, I intend to maintain the level of protection of the aquatic environment, including the Nation's vital wetland resource, and even improve on the protection that currently exists.

Question 11. The National Academy of Sciences has made disturbing findings concerning the Corps' implementation of the wetlands regulatory program. Among other things, the National Academy of Sciences has found that "support for regulatory decisionmaking is inadequate" and that the goal of no net loss of wetlands is not being met for wetland functions by the mitigation program. If confirmed, what steps would you take to address these problems?

Response.

If confirmed, I will strongly advocate a level of resources for the Corps regulatory program that will ensure that proper decisions can be made. I will work to ensure that the Corps focuses on important ecological issues in its regulatory program and works with the States and others to leverage Federal, State and local resources to a common goal of increased protection of the aquatic environment. I am concerned, as I know the Corps is concerned, with the results of the National Academy of Sciences Report. The focus of the report is on the need for the Corps to increase compliance with issued permits. I will work with the Corps to improve compliance with issued permits and to achieve the successful mitigation for wetland impacts, so that we can ensure that the no overall net loss of wetlands goal is attained in the program.

CORPS REFORM

Question 12. In your responses to questions posed by the Armed Services Committee, you stated that in your view the Corps does not need to make fundamental changes in the way it operates. What is your view of the conclusions and recommendations regarding the Corps of Engineers reached by the Army Inspector General, the National Academy of Sciences, and the General Accounting Office in relation to the Upper Mississippi locks and dams study?

Response.

The Corps processes have been evaluated by the national Academy of Sciences and found to be basically sound. At this point I do not believe fundamental changes are necessary. If confirmed, I will work with the Corps to identify changes that would improve the service of the Corps to the Nation.

Question 13. Would you support the establishment of a policy that would allow major Corps decisions to be reviewed independently to ensure that major projects are economically and environmentally sound?

Response. If I am confirmed, I will actively examine the question of independent review, in consultation with the Chief of Engineers, other within the executive branch, and the National Academy of Sciences. Whatever improvements may be made must not appreciably increase the cost or time of the already overly long planning process. I will maintain close communications with Congress throughout this process.

SNAKE RIVER SALMON

Question 14. A Federal court found the four lower Snake River dams in Eastern Washington to be in violation of the Clean Water Act and ordered the U.S. Army Corps of Engineers, as the operators of those dams, to comply with the Act. It is my understanding that the Corps has yet to comply with this order. How do you intend to comply with the water quality standards and what is your timeframe for doing so?

Response. Senator, this is a very important issue and, if I am confirmed, I commit to working closely with the Army General Counsel, the Corps of Engineers, the Environmental Protection Agency, local and State Governments, and the Congress on water quality issues impacting the Snake River Dams.

Question 15. In December of 2000, the National Marine Fisheries Service released a final Biological Opinion on the Federal Columbia River Power System. In that Biological Opinion, the National Marine Fisheries Service states that the removal of the four lower Snake River dams is the surest way to ensure the protection and recovery of salmon in the Snake River. If removing the lower Snake River dams is demonstrated to be the most cost-effective way to comply with both the Clean Water Act and the Endangered Species Act, would you support removal of the dams?

Response. Senator, as I understand it, the National Marine Fisheries Service's Biological Opinion put into place a broad and complex plan of measures to achieve the recovery of the endangered fish species. This plan does not envision a decision on dam removal at this time. There are many unresolved issues associated with the Clean Water Act and how they affect the dams on the Snake River. Given the ongoing efforts on salmon recovery and water quality, I am not in a position to speculate on what conditions would need to exist for me to recommend removal of the dams.

Question 16. Do you believe that the Corps of Engineers currently has authority to remove the dams to comply with Federal laws and treaties?

Response. It is my understanding that they do not.

Question 17. In the US Army Corps of Engineers' most recent Lower Snake River Juvenile Salmon Migration Feasibility Study Newsletter (August 2001), the Corps states that "the only Federal project we could find that has received more public comments than this FR/IS [Feasibility Report/Environmental Impact Statement] is the U.S. Forest Service Roadless Initiative . . . . Interest in the project was dispersed over the entire country . . . It appears that no other project—including the Florida Everglades, the Missouri River Master Manual revision, and the Headwaters Agreement (redwoods)—approached this level of public interest." What is your timeline for completing your feasibility analysis and responding to the public and Congress about this Nation issue?

Response. Senator, it is my understanding that the Corps of Engineers' current schedule calls for completion of a Final Feasibility Report and Environmental Impact Statement with a Preferred alternative in April 2002.

RESPONSES OF PAUL MICHAEL (MIKE) PARKER TO ADDITIONAL QUESTIONS FROM SENATOR CORZINE

Question 1. New Jersey's identity and tourist economy are closely linked to its 127 miles of shoreline and beaches. Through the Corps of Engineers, the Federal Government has played a vital role in keeping our beaches healthy through beach replenishment and shoreline restoration projects. These projects help to protect shore communities from storm damage, and are extremely important to tourism. What is your view of the importance of these projects? Would you give them high priority in your role as Assistant Secretary?

Response. It is my view that shore protection projects play a vital role in the safety and economic well being of coastal areas. If confirmed, I will work within the Administration and with the Congress to increase understanding of the contributions of these projects, which are comparable to the benefits of flood control, commercial navigation, and environmental projects.

Question 2. Earlier this year, the Administration proposed changes to the beach nourishment cost share formulas. I opposed these changes because I think it is unfair to change the rules after projects have been agreed to and local sponsors have committed to contributing their share. Do you believe that it is the Federal Government's responsibility to honor commitments to its non-Federal partners such as have been made in beach nourishment agreements?

Response. I certainly believe the Federal Government should honor it commitments. One of the most difficult aspects of making any change in policy or law is

the need to balance the new benefits to be achieved by the change against the effects on existing government activities.

Question 3. On September 26, 2000, the Assistant Secretary of the Army signed a Memorandum of Agreement (MOA) with the U.S. EPA. The MOA laid out specific actions to address contamination levels in materials that will be placed in the Historic Area Remediation Site (HARS). If confirmed, will you work to expedite completion of the terms of the MOA, which is already behind schedule?

Response. If confirmed as Assistant Secretary of the Army (Civil Works), I will work with EPA to expedite completion of the terms of the MOA concerning materials to be placed in the HARS.

RESPONSES OF PAUL MICHAEL (MIKE) PARKER TO ADDITIONAL QUESTIONS FROM SENATOR DASCHLE

MISSOURI RIVER MASTER MANUAL

Question 1. The revision of the Missouri River Master Water Control Manual has been ongoing for the last 12 years. Last August, the Corps of Engineers released a Revised Draft Environmental Impact Statement that failed to recommend any Preferred Alternative for managing the river. If confirmed, will you commit to revising the master manual in a timely manner and to ensure that the revision fully complies with all Federal laws, including the Endangered Species Act?

Response. Yes, I will. If I am confirmed, I will ensure that all decisions will be made within the framework of applicable laws and regulations, including the Endangered Species Act, and to consult with the Congress before finalizing any decisions.

RESPONSES OF PAUL MICHAEL (MIKE) PARKER TO ADDITIONAL QUESTIONS FROM SENATOR CLINTON

Question 1. If confirmed, will you work closely with me and other members of the New York delegation with respect to the Corps' emergency response efforts associated with the horrific terrorist attack on the World Trade Center in New York City on September11, 2001?

Response. Yes, Senator. The Corps of Engineers has deployed to New York City experts in the fields of urban search and rescue, structural engineering support, and debris removal and management. These experts were on the ground soon after the horrific event occurred. If I am confirmed, my commitment will join that of the Corps that these resources will remain deployed for as long as the citizens of New York need them.

Question 2. Will you work to ensure that all necessary and appropriate measures are being taken with regard to response efforts at the World Trade Center site to protect human health and the environment?

Response. Yes. The Corps has a long and extremely successful track record of incorporating applicable Federal, State, and city health and environmental protection requirements into its activities, including its emergency response and recovery activities. This applies to activities carried out by both Corps personnel and Corps contractors. If I am confirmed, I will work with the Corps, EPA and Health and Human Services as the Federal involvement in response and recovery continues, to ensure all health and environmental issues are addressed.

Question 3. Will you work with the delegation and the committee to ensure that we learn from this experience and make any necessary and appropriate changes to the Corps' emergency response capabilities?

Response. I place a high priority on incorporating lessons learned into ongoing activities and, if I am confirmed, I will work with the Corps and all interested parties to examine the scope of Corps emergency response authorities, and capabilities and to rapidly pursue improvements to these authorities should we determine impediments to effective response exist.

STATEMENT OF MARY E. PETERS, NOMINATED TO BE ADMINISTRATOR, FEDERAL HIGHWAY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

Mr. Chairman, members of the committee, thank you for the opportunity to appear before you today as you consider my nomination for Administrator of the Federal Highway Administration. I am sincerely honored to have been nominated for

this position by President Bush, with the concurrence of Secretary Mineta. Should you choose to confirm me I look forward to working with this committee, each of you, and your staff to administer the Federal highway program. I recognize the historic contributions this committee has made to surface transportation and the key role it has played in shaping national transportation policy.

Transportation affects every person in our country and each one of them, every man, woman and child, has the right to expect a safe, accessible, affordable and reliable transportation system. This expectation should be honored, whether it be that of a child living within tribal Nation boundaries who needs an education; a person with disabilities, like my own brother, who needs access to training services; parents who need to spend less time commuting and more time with their children, or a senior citizen who needs mobility options. It is for these, our ultimate customers, that we provide transportation services.

Transportation that is responsive to the citizens and businesses we serve is vitally important to our nation's economic health and the quality of life of every American. There are a number of factors to be considered in ensuring that transportation meets these needs.

I would like to mention four of them today national security, public safety, quality of life, and commerce. I would normally always mention safety first. However, after the terrorist attacks on September 11, I thought it important not to distinguish between public safety and national security on a priority basis.

The Interstate Highway System met a need identified during World War II, providing a coast-to-coast highway system that would allow this country to efficiently move troops and equipment, and respond to natural disasters. While the system is now complete, it is essential that it be operated and maintained in a manner that continues to enable the safe and efficient mobilization of military forces and deployment of disaster response resources. As last week's tragic events demonstrated, it is essential that our highway system, indeed our entire transportation system, dependably serve public safety, disaster response and recovery, and other national security requirements.

Transportation is important to public safety in a number of aspects, including safety of the infrastructure itself and the ability of police, fire and other emergency response personnel to reach the incidents to which they are responding. Most importantly, we must make our highways safer for all who use them. Too many die or are injured on our roads. In addition, if an ambulance is stuck in traffic, or a fire truck cannot reach the blaze, our public safety needs cannot be met. An efficient, effective transportation system is a crucial component of public safety.

Mobility is a key component to a good quality of life. The ability to safely, efficiently and predictably get to our jobs, our children's activities, our religious services, to obtain medical services, shop for our needs or take a vacation are all affected by our nation's transportation systems.

Economic growth and our ability to compete in a global economy are dependent on transportation systems and services. As Secretary Mineta has mentioned, when he served as Mayor of San Jose, California, he learned that transportation was the most effective tool available to him in fostering economic development. The ability for commerce to move in a seamless, efficient transportation system can position our country to remain a leader in the world economy or inhibit our ability to do so. Building the Interstate Highway System and designating the National Highway System were strong steps toward ensuring viable interstate commerce. Now we must ensure that the operation of that system supports, rather than hinders, commerce.

To respond to these factors, if I am confirmed, I would immediately focus on several priority areas. These are highway safety, environmental streamlining, stewardship of public funds, congestion and bottlenecks, and of course reauthorization.

While progress has been made, more than 40,000 persons lose their lives every year in highway crashes, and more than 3 million are injured. Ninety-four percent of all transportation fatalities occur on highways, and if confirmed I would make it a top priority to improve highway safety. Using the three-pronged approach of engineering, enforcement and education we can improve our safety record and reduce lives lost on the nation's highways. We must ensure that available funds are spent in ways that generate the greatest possible improvements for our investment. Rumble strips, for example, are an excellent, relatively low-cost, way to reduce run-off-the-road crashes that occur predominantly on rural two-lane roadway sections. Another area of emphasis is work zone safety, both for highway workers and the public.

I believe that we can be respectful stewards of the environment while improving review processes so they are more efficient and less duplicative. Secretary Mineta has said that taking longer does not necessarily result in a better project. If con-

firmed, I would work with you, my fellow modal administrators, State and local officials, the environmental community, industry and others to develop methods for streamlining the environmental approval processes while remaining mindful of the critical importance of environmental stewardship.

In my position as Director of the Arizona Department of Transportation, I frequently reminded people in my Agency that the funds we had been entrusted with to accomplish our mission were indeed the public's money. I bring that strong belief to the position for which I have been nominated, and if confirmed will work to further improve and strengthen oversight and accountability of the public funds entrusted to the Federal Highway Administration. This includes the responsibility to accurately and completely estimate and disclose costs at the onset of all projects, as well as to monitor progress and expenditures during the life of projects to ensure we indeed get what we are paying for.

Congestion and bottlenecks have a detrimental effect on air quality, commerce, and our overall quality of life; it is both expensive and aggravating. This growing level of congestion is, of course, the result of demand significantly outpacing capacity; however, the solution is not just to add capacity. Congestion must be approached from a systemic and operational standpoint, using a variety of tools including technology, intermodal and multimodal solutions as well as capacity improvements. In addition, there are a number of options to complete construction projects more quickly once they are approved. If confirmed, I would make relieving congestion a top priority.

The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) and the Transportation Equity Act for the 21st Century (TEA–21) were landmark pieces of legislation. These acts, including firewalls, minimum guarantees and flexibility provided the funding and tools that allowed transportation directors, such as myself, to be significantly more responsive in meeting the State's transportation needs. The upcoming 2003 Transportation Reauthorization provides an opportunity for us collectively to build on these successes as well as to be forward-focused on the transportation challenges and opportunities in the 21st Century. We can take this opportunity to encourage innovation and take advantage of the exponential gains possible when the public and private sectors collaborate to meet these challenges. If confirmed, I look forward to working with you on transportation reauthorization.

I have spent more than 15 years in the transportation field. I have had the opportunity to be involved in a number of local, regional and national transportation issues as State Director of Transportation in Arizona. In that capacity, I had responsibility for highway, transit, rail and aviation transportation functions, as well as motor carrier programs, driver licensing and vehicle registration, and tax collection and distribution. This experience afforded me the opportunity to recognize the importance of dealing systemically and inclusively with issues, remaining mindful of the integration of the various modal functions in arriving at solutions for the many transportation challenges in a rapidly growing State like Arizona.

I bring this experience to the position for which I have been nominated, as well as knowledge in the technical aspects of planning, building and operating transportation systems, the use of technology in arriving at solutions, and a background in the finance and economics of these systems. I have the management and leadership skills to work with Secretary Mineta to lead the Federal Highway Administration in a clear, strategic direction should I be confirmed.

Recognizing the many demands on your time, I sincerely appreciate the opportunity you have afforded me to appear before you today as you consider my nomination. I would be pleased to respond to any questions you may have.

September 20, 2001.

Senator BOB SMITH, *Ranking Member,*
Senate Environment and Public Works Committee,
Dirksen Senate Office Building,
Washington, DC 20510–6175.

DEAR SENATOR SMITH: It is with a great deal of pleasure that I contact you on behalf of my friend, constituent and fellow Arizonan, Mary Peters. I had hoped to be with Mary this morning as the committee considers her nomination to be Administrator of the Federal Highway Administration. However, we have not yet eompleted our work on the National Defense Authorization Act.

President Bush could not have picked a better candidate to head the Federal Highway Administration, nor could the Senate consider a better nomination to administer the Department of Transportation's highway transportation programs. As head of the Arizona Department of Transportation (ADOT) Mary was known

throughout the State as someone who was willing to listen to all sides of an issue and work toward building both a consensus and a solution. Her fair and balanced approach to the diverse transportation problems of Arizona has won her bipartisan respect and praise throughout the state. I have no doubt that you will also be impressed with her fairness, her lmowledge and her commitment to our nation's highway transportation needs.

Sincerely,

BOB STUMP,
Member of Congress.

UNITED STATES SENATE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

ROOM 410 DIRKSEN BUILDING WASHINGTON, DC 20510

INFORMATION

REQUESTED OF PRESIDENTIAL NOMINEES

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

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

Name of Nominee: Mary Elizabeth Peters

Business Address: Arizona Department of Transportation
206 S. 17th Avenue, Room 135A
Phoenix, AZ 85007

Business Phone: (602) 712-7227

Home Address: 8323 W. Via Montoya Drive
Peoria, AZ 85382-2019

Home Phone: (623) 362-0120

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

Name: Peters (Last) Mary (First) Elizabeth (Middle)

Position to which nominated: Federal Highway Administrator

Date of Nomination:

Date of birth: 12/04/48 (Day) (Month) (Year) **Place of birth:** Phoenix, AZ

Marital status: Married **Full name of spouse:** Terryl Gene Peters Sr.

Name and ages of children:

Tamara Marie Cleavenger	33
Terryl Gene Peters Jr.	29
Christina Rose Peters	22

Education:

Institution	Dates attended	Degrees received	Dates of degrees
University of Phoenix	02/92 to 09/94	BA Mgmt	09/94
Paradise Valley C.C.	09/87 to 12/91	N/A	
Glendale C.C.	05/88 to 05/91	N/A	
Harvard Univ.,JFK School Of Government, State & Local Executives Program	07/00 to 07/00	N/A	

Employment record:

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

Arizona Department of Transportation, Director of Agency, 03/98 to present, Phoenix, AZ Governor Jane D. Hull (currently on leave of absence)

Arizona Department of Transportation, Deputy Director of Agency, 07/95 to 03/98, Phoenix AZ, Larry S. Bonine, Director

Employment record—continued

Arizona Department of Transportation, Deputy Director for Administration for Agency, 09/92 to 07/95, Larry S. Bonine, Director

Arizona Department of Transportation, Contract Administrator (professional engineering and architectural contract officer), 01/92 to 09/92, David L. Schmitt, Executive Staff Assistant to State Engineer

Arizona Department of Transportation, Contract Manager (professional engineering and Architectural contract manager), 07/88 to 01/92, Robert Gustafson, Contract Mgr.

Honors and awards:

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

Harvard University, John F. Kennedy School of Government, State and Local Government Executives Program, fellowship, July 2000

Most Influential Person in AZ in transportation, Arizona Business Journal, 2000

Women's Transportation Seminar, Person of the Year, 1998

Who's Who in Arizona Women, 1997

Top 25 Most Influential Business Women, Greater Phoenix Area, 1995

Memberships:

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

Organization	Office held (if any)	Dates
American Assn. of State Highway & Transportation Officials (AASHTO)	Chair, Standing Comm. On Planning	03/00 – Present
	Chair, Asset Mgmt. Task Force	12/99 - Present
	Chair, NCHRP 20-24 Panel	09/00 – Present
Western Assn. of State Highway & Transportation Officials (WASHTO)	Highway Transport Comm.	03/98 – Present
Arizona State University College of Extended Education, Deans Council	N/A	05/98 – Present
Women Executives in State Gov't.	Treasurer	07/00 - Present
University of Phoenix, Alumni Advisory Council	Member	09/94 – 09/97

Grand Canyon State Employees Federal Credit Union	Past President	06/93 – 01/98
Arizona Quality Alliance	Exec. Committee Member Former Senior Judge	01/93 – Present
Women's Transportation Society	Member	03/99 – Present
Arrowhead Republican Women	Member	01/98 – Present
Intelligent Transportation Society of America	Board Member	03/99 – Present
Project Challenge of Arizona	Board Member	03/99 – Present
Arizona Clean & Beautiful	Advisory Council Member Past Board Member	03/93 – 03/97
Arizona Town Hall	Member/Participant	04/97 – 09/00
Girl Scouts of America Cactus Pine Council	Troop Leader	09/86 – 05/87

Qualifications:

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

I have been the Director of a State Department of Transportation for more than three years, and served as Deputy Director and Deputy Director for Administration prior to that position. In this capacity I was responsible for the operation of an agency responsible for the 6,000 plus mile state highway system, the $4.8 billion Five Year Construction Program, and an overall budget of approximately $3 billion annually.

These responsibilities included all vehicle registration and driver license functions, motor carrier licensing, titling, and tax collection functions, as well as aviation and transit responsibilities.

I have participated in numerous state and national transportation policy issues through organizations such as the American Association of State Highway and Transportation Officials, Western States Association of Transportation Officials, and the Intelligent Transportation Society of America. As part of these efforts, I have been involved with environmental and social interests, land use planning considerations, air quality conformity, and provisions of the Clean Water Act.

I have worked with the Governor of Arizona and the Arizona State Legislature to develop innovative programs to facilitate the timely and efficient delivery of transportation programs on an expedited schedule, and have worked closely with tribal governments, regional councils of government and metropolitan planning associations to ensure the participation of local elected officials in transportation planning functions.

I have established on-going communication with a number of transportation stakeholder groups, including the trucking industry, consultants and contractors, public safety, business and industry, citizen and public interest groups to ensure their interests are considered in defining transportation solutions. Among the skills and experience I bring to the position of Federal Highway Administrator is the ability to bring diverse interests together to collaboratively reach consensus.

I have participated in numerous executive level task forces and advisory councils related to transportation policy and issues, and implemented a multi-agency effort to improve highway safety and reduce injuries and fatalities on Arizona's surface transportation system.

Future employment relationships:

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

I will sever all connections with my present employer if confirmed by the Senate.

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

none

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

No.

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

Not applicable.

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

I am aware of no limitations that would affect my willingness or ability to serve as Federal Highway Administrator for the foreseeable future.

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

I have held no prior Schedule C or other appointive position in the Executive Branch.

Financial Statement:

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

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

Arizona State Retirement System Defined Benefit Plan, State of Arizona, $3,330/month at age 65

Arizona Deferred Compensation Plan, all assets are listed on Schedule A. State of Arizona would not make further contributions to the plan after resignation from Arizona DOT.

2. Are any assets pledged?

No.

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

As part of my official duties as Director of the Arizona Department of Transportation, I have been named in a number of legal actions against the agency as a result of the legal and necessary performance of duties associated with the agency. These actions have not been the result of my personal activities or actions.

I, nor my spouse, are a party to any legal actions other than those mentioned above.

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

Yes.

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

No.

Potential conflicts of interest:

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

As defined in the ethics agreement, I would recuse myself from any decisions involving the Arizona Department of Transportation or Arizona State Government for one year.

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

My spouse, Terryl Gene Peters, Sr., is a current employee of the Arizona Department of Transportation. His employment with the agency preceded my employment, and I have signed an ethics agreement recusing me, in accordance with the regulations of the Office of Government Ethics, from issues involving the Arizona DOT in instances where my participation would likely be questioned. He has worked in the transportation field for approximately 17 years with the Arizona Department of Transportation, most recently in the area of constructing intelligent transportation systems in the greater Phoenix, AZ area.

I have no investments, obligations or liabilities that might involve potential conflicts of interest, or the appearance of conflicts of interest with the position to which I have been nominated.

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

I have served in various positions within the Arizona Department of Transportation for the last 10 years, most recently as Director of that agency. In that capacity, Arizona DOT has had both a business and financial relationship with the Federal Highway Administration and US DOT. As a state DOT Director, I have provided testimony before Congress regarding environmental streamlining, and have lobbied members of Congress and committee staff regarding various transportation issues on behalf of Arizona, the Western Association of State Highway & Transportation Officials, American Association of State Highway & Transportation Officials and the Intelligent Transportation Society of America. I have met with representatives of the Federal Communication Commission representing the State of Arizona and the Intelligent Transportation Society of America regarding telecommunication issues related to transportation projects, including a national "511" transportation advisory number and placement of telecommunication cable within highway rights-of-way. I have met with representatives of federal resource agencies, including the U.S. Fish & Wildlife Service, Bureau of Reclamation, Corps of Engineers, U.S. Forest Service and the Environmental Protection Agency regarding various transportation issues on behalf of Arizona, the Western Association of State Highway and Transportation Officials and the American Association of State Highway & Transportation Officials.

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

Please refer to the opinion of the acting General Counsel.

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

Please refer to the opinion of the acting General Counsel.

Political affiliation and activities:

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

Arrowhead Republican Women, member 03/99 to Present

I have made no financial contributions to any specific candidate or political party in excess of $1,000 in the past 10 years.

Published

writings:

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

Testimony before the House Committee on Transportation and Infrastructure, Ground Transportation Subcommittee, US House of Representatives regarding Notice of Proposed Rule Making for Planning and Environmental Processes, September 13, 2000. Testimony was provided in my official capacity as Director of the Arizona Department of Transportation

Speech on Environmental Streamlining, American Highway Users Alliance, May 2000

Article on Reauthorization of Transportation Funding, Associated General Contractors, Arizona Division, 2000

Monthly columns, various topics, Arizona Department of Transportation employee newsletter, continuous since March 1998.

Intelligent Transportation Society of America, article on Arizona's involvement in intelligent transportation, 2000

Additional Matters:

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

I believe the highest priorities of the position for which I have been nominated are as follows in the near term:

Highway Safety – work with the Secretary of Transportation, the National Highway Traffic Safety Administration, Federal Motor Carrier Safety Administration, Congress, state and local officials, and public safety officials to improve the safety of our highway and roadway systems and reduce the incidence of injuries and fatalities associated with vehicular crashes.

Environmental streamlining and stewardship – working with the Secretary of Transportation, other modal administrators, Congress, state and local officials, and industry representatives to develop methods for streamlining environmental approval processes while remaining mindful of the critical importance of environmental stewardship.

Stewardship and accountability regarding the use of federal highway funding – working with the Secretary of Transportation, Congress and state and local officials to ensure projects are appropriately scoped and estimated from both a technical and financial standpoint, and that processes are in place to monitor scope and cost changes to projects and provide accountability regarding the use and expenditure of public funds.

Congestion and bottlenecks – working with the Secretary of Transportation, Congress and state and local officials to develop solutions for relieving congestion and eliminating bottlenecks on the highway system. These solutions should include a broad range of alternatives, including operational improvements, use of technology, multi-modal and inter-modal solutions as well as new capacity.

Reauthorization of TEA-21 – working with the Secretary of Transportation, Congress, state and local officials and industry representatives to develop a framework for proceeding with reauthorization well before the 2003 expiration of the current authorization.

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

Yes.

3. Having completed this form, are there any additional questions, which you believe the Committee should ask of future nominees?

I believe it would be beneficial to the Committee to ask future nominees to list their goals while serving in the position.

AFFIDAVIT

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

Subscribed and sworn before me this 14th day of August, 2001.

Notary Public
Maureen S. Taylor

Maureen S. Taylor
Notary Public, District of Columbia
My Commission Expires August 31, 2002

RESPONSES OF MARY E. PETERS TO ADDITIONAL QUESTIONS FROM SENATOR JEFFORDS

Question 1. Do you support full implementation of the new 8-hour ozone standard, including EPA & DOT guidance to the States on ensuring conformity of transportation plans with that standard? Please give the committee a date certain on when the guidance will be issued.

Response. EPA has the responsibility to develop and implement health based air quality standards. In July 1997, EPA promulgated stricter ozone and new fine particle standards which have redefined clean air and will have widespread impacts on the transportation community in broader regions of the country.

In October 2000, Congress amended the Clean Air Act to provide a 12-month grace period for newly designated nonattainment areas to meet transportation conformity requirements.

The U.S. Court of Appeals had delayed the implementation of these revised standards. On February 27, 2001, the U.S. Supreme Court reversed the Court of Appeals and upheld EPA's authority to promulgate the standards. However, the Court also concluded that EPA must develop a reasonable implementation strategy that would reconcile what the Court considered to be ambiguous provisions of the Clean Air Act.

EPA is developing the implementation plan for the 8-hour ozone standard to address the Court decision. State and local implementation guidance, including conformity guidance will be developed once details of the implementation plan are known.

DOT and EPA have been working on new conformity guidance. As with the setting of the air quality standards, EPA has primary responsibility for developing the conformity guidance. I will continue to work with the EPA to ensure that appropriate guidance is developed and that State and local transportation agencies will have enough lead time and flexibility to address the conformity requirements.

Question 2. Increasing evidence from studies done in California and elsewhere indicate that the health and cancer risks associated with mobile source air toxics increase significantly above a certain volume of traffic, levels usually associated with multi-lane highways. How should this information be incorporated into the NEPA analysis done by DOT?

Response. In just March of this year, EPA identified 21 Mobile Source Air Toxics (MSATs). It is important to note that in the Final Rule, EPA stated that they had not found that all of these 21 MSATs to present a risk to public health. EPA will evaluate the need for and appropriateness of additional mobile source air toxics controls for on-highway and nonroad sources, and their fuels. EPA has established a Technical Analysis Plan to conduct research and analysis on MSATs. EPA has stated that they will conduct a future rulemaking by July 1, 2004, in which they will revisit the feasibility and need for additional controls.

I will work closely with EPA to research mobile source air toxics to analyze the feasibility and need for additional controls of highway engines and vehicles and their fuels, and the need for additional project-level analysis conducted as part of the NEPA review. As research results on air toxics emerge, FHWA will factor these into its scoping process to determine how to address air toxics and the appropriate methodology to employ.

Question 3. In the June 2000 article you submitted to the Arizona Chapter of the Associated General Contractors, you state that Federal highway funding "should not come with strings attached that tell us where and how to spend those dollars. Washington should not be allowed to dictate funding requirements to States in the new authorization act." Do you still believe that Congress should not send any requirements for highway funds distributed to States?

Response. I believe that, for the most part, the goals of the Federal Government for the Federal-aid highway program and those of the State Departments of Transportation are mutually supportive. In my June 2000 article, I expressed the position Arizona, like many States, holds that the Nation will better achieve its goals if State and local governments have the flexibility and are accountable for addressing their particular needs and issues. I presented the viewpoint of our Governor and the Arizona State Legislature. If my nomination is confirmed as Federal Highway Administrator, I will support and implement the laws of the United States.

Question 4. One program that comes with strings attached is the CMAQ program which is provided to States with clean air conformity problems. The CMAQ program prohibits funding for projects "which will result in the construction of new capacity available to single occupant vehicles unless the project consists of a high occupancy vehicle facility available to single occupant vehicles only at other than peak travel times." The purpose of the program is to encourage States to look at non-highway solutions to road congestion. Examples include transit, better operation of existing roadways, intelligent transportation systems, high occupancy vehicle lanes, etc. Do you believe that we should eliminate the CMAQ program or significantly rewrite it to allow funds to be used on new road construction?

Response. No, the CMAQ program should not be eliminated. When viewed in a national context, the CMAQ program provides just the type of flexibility the States need. In practice, it is Title 23's most flexible program.

CMAQ program eligibility should not be expanded to include new road construction projects available to single occupant vehicles at other than peak travel times. The strength of the CMAQ program is its inherent focus on improving the efficiency

of the transportation network, including roads and transit, and assisting clean air goals.

Question 5. Necessary transportation projects should go forward, and should advance in an efficient and timely way. But efficiency should not come at the expense of environmental protection and enhancement. So-called "environmental streamlining" needs to address improvements to the decisionmaking process but it should not involve a retreat from resource protection. How will you proceed with environmental streamlining?

Response. Through Section 1309 of TEA–21, the Congress gave strong direction to streamline the environmental review process. I see this environmental streamlining mandate as having two parts: the need to reduce transportation project delays and the need to continue to protect and enhance the environment. I believe that substantial improvements can be made in delivering transportation projects in a timely fashion while continuing to be good environmental stewards.

If confirmed, I will work with the Congress, the environmental community, and others as I pursue environmental streamlining.

FHWA can and must take action. For example, as the lead Federal agency on transportation projects, FHWA is uniquely positioned to bring together the various agencies that participate in the development of transportation projects and programs. FHWA should build on prior efforts to do this at various scales, from the national program to specific projects.

We should enhance cooperation with the State and local transportation agencies. FHWA can do a better job of coordinating the Federal Government's involvement in those projects. FHWA should work with State and local agencies to improve their understanding of legitimate Federal needs that stem from multiple Federal environmental statutes.

We should build on longstanding relationships with other Federal agencies that have statutory responsibilities to review or approve transportation projects. One promising area is the development of dispute resolution capabilities, to institutionalize in all agencies the skills needed to identify and address conflicts in a timely manner.

Question 6. TEA–21 directed the Secretary to develop a memorandum of understanding with Federal resource agencies to achieve environmental streamlining. Such an MOU was executed in July 1999. Will you use this agreement as the basis for continuing compliance with TEA–21 directives? Will you seek any additional statutory measures to facilitate environmental streamlining?

Response. I would continue to use the July 1999 MOU. While I see the MOU as setting the right framework, I believe that its main benefit will come from efforts to implement it among the signatory agencies in offices around the country.

I have reached no firm conclusions about the need for statutory changes. I will continue to evaluate this issue, and welcome the opportunity to work with the committee on this issue if I am confirmed.

Question 7. Local governments have been waiting for over 3 years since TEA–21 was passed for the Federal Highway Administration to issue final regulations that allow local officials greater authority in the statewide planning process. TEA–21 made clear that there should be a substantially greater role for rural local officials in the planning and funding allocation of Federal highway and transit funds. The goal of this change in the law was to give rural officials more authority and to close the gap between urban and rural officials in regard to participation in the planning process. The comment period on these regulations closed in September 2000 and FHWA has had more than enough time to issue a final rule. When can I expect a final rule to be issued?

Response. I know the leadership of this committee wrote to Secretary Mineta in March of this year asking the Department to withdraw its proposed rules and to craft new proposals. However, I am aware of how important this issue is to both State DOTs and local officials. The FHWA and FTA have advised State DOTS that the TEA–21 requirements for consultation are in effect as statutory mandates, even without any rulemaking changes.

I am very supportive of a variety of efforts to develop training and technical assistance and to develop and share best practices.

In Arizona, we successfully developed a new regionally based planning and programming process by bringing together the State DOT with regional planning agencies. They came to agreement on what is called the "Casa Grande Resolves." One of its guiding principles is that the planning process must include early and regular dialog and interaction at the State and regional levels; and recognize the needs of State, local and tribal governments, and regional organizations.

I would work closely with the Secretary and other modal Administrators to foster local official consultation.

Question 8. As you know, I believe that transportation and air quality planning must go hand in hand. The conformity requirements of the Clean Air Act have stimulated smart growth efforts and protect future air quality. Will you support and make sure that there is a constant and tight linkage between transportation planning and air quality goals?

Response. I will support the linkage between transportation planning and air quality goals as defined in the Clean Air Act.

The CAA's transportation provisions have been instrumental in reducing air pollution. Emissions reductions from motor vehicles have accounted for 84 percent of the total emissions reductions of the six criteria pollutants since 1970. Technological advancements driven by the Clean Air Act and EPA's motor vehicle emission and fuel standards have substantially reduced emissions, and these reductions are projected to continue well into the future.

RESPONSES OF MARY E. PETERS TO ADDITIONAL QUESTIONS FROM SENATOR LIEBERMAN

Question 1. In the June 2000 article that you submitted to the Arizona Chapter of the Associated General Contractors you state, ". . . preventing States from moving forward with critical congestion relief projects due to not achieving air-quality goals that have no basis in science actually worsens the situation rather than betters it. These counterproductive measures, intended to punish States that do not comply with sometimes unachievable and unnecessary Federal mandates should be erased from future authorization acts."

As you are aware, I am strongly committed to improving our nation's air quality and, because mobile sources are a significant contributor of air pollutants, I played an instrumental role in formulating the conformity standards in the Clean Air Act. Do you still believe, as your recent article would suggest, that these Federal mandates are "unnecessary" and "counterproductive?"

Response. As FHWA Administrator I will do everything possible to help States comply with the Clean Air Act, without the need for invoking sanctions, through transportation programs that reduce congestion and reduce emissions. If sanctions are triggered, I will ensure the law is carried out.

Question 2. A 2-year study released last year by the South Coast Air Quality Management District in California concluded that the highest community cancer risks, as high as one cancer in every 300 to 400 people, were found in neighborhoods located within 2 kilometers on major freeway corridors. Will you require that the Administration perform a cancer risk analysis and provide a comprehensive review of alternative for large urban highway expansions? Doesn't NEPA require that alternatives capable of mitigating an effect as serious as cancer be considered?

Response. In just March of this year, EPA identified 21 Mobile Source Air Toxics (MSATs). It is important to note that in the Final Rule, EPA stated that they had not found that all of these 21 MSATs to present a risk to public health. EPA will evaluate the need for and appropriateness of additional mobile source air toxics controls for on-highway and nonroad sources, and their fuels. EPA has established a Technical Analysis Plan to conduct research and analysis on MSATs. EPA has stated that they will conduct a future rulemaking by July 1, 2004, in which they will revisit the feasibility and need for additional controls.

I will work closely with EPA to research mobile source air toxics to analyze the feasibility and need for additional controls of highway engines and vehicles and their fuels, and the need for additional project-level analysis conducted as part of the NEPA review. As research results on air toxics emerge, FHWA will factor these into its scoping process to determine how to address air toxics and the appropriate methodology to employ.

NOMINATIONS OF THE 107th CONGRESS, FIRST SESSION

WEDNESDAY, OCTOBER 17, 2001

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

The committee met, pursuant to notice, at 9:33 a.m. in room 406, Senate Dirksen Building, Hon. James Jeffords (chairman of the committee) presiding.

CONSIDERATION OF THE NOMINATIONS OF WILLIAM W. BAXTER, KIMBERLY THERESE NELSON, AND STEVEN A. WILLIAMS

Present: Senator Jeffords.
Also present: Senators Roberts and Thompson.

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

Senator JEFFORDS. The hearing will come to order.

Good morning to everyone. It is a pleasure to have you with us. Given the events of the past 5 weeks, I want each of the nominees to know that your continued willingness to be a public servant is admirable and I appreciate that. The positions that you have been nominated to fill will help the country remain strong and committed to people during these threatening times.

I would like to let everyone know how we are going to proceed this morning. I will recognize first Senator Thompson and then Senator Frist if he arrives for Mr. Baxter, and I understand Senator Thompson has another hearing on bioterrorism that he needs to get to. So we will let you go on your way whenever you desire.

Then I think we'll just go right ahead and proceed. I would like to recognize Senator Thompson to introduce our nominee.

STATEMENT OF HON. FRED THOMPSON, U.S. SENATOR FROM THE STATE OF TENNESSEE

Senator THOMPSON. Thank you very much, Mr. Chairman. I am very pleased to be here today to introduce a fellow Tennesseean and a good friend of mine, Bill Baxter, who has been nominated by the president to serve on the board of directors for the Tennessee Valley Authority. I want to thank you, Mr. Chairman, for so expeditiously scheduling this hearing so we might consider Mr. Baxter's nomination before we adjourn. I want to thank you for inviting me here today and to be able to speak and participate with Senator Lieberman on our hearing on bioterrorism, which has just started.

Mr. Chairman, as you know, the Tennessee Valley Authority is the nation's largest public power system. It serves 158 local power distributors and 62 industrial customers, the majority of whom are located in Tennessee. TVA also manages the Tennessee River system, our nation's fifth largest, providing flood control and navigation on over 800 miles of commercially navigable waterway. And TVA is headquartered in Knoxville, the hometown of the nominee that you are here to consider today, Bill Baxter.

Bill is a long-time friend who has had a distinguished record of service in both the public and private sectors in Tennessee. He is chairman of a family owned business, Holston Gases, Inc., a distributor of propane, industrial, medical and laboratory gases. From December 1997 to January of 2001, he served as Commissioner of the Tennessee Department of Economic and Community Development. During his tenure, the State of Tennessee attracted an impressive level of private investment, as well as numerous new jobs. This extensive experience in both the public and private sectors will benefit Bill, as well as TVA should he be confirmed for this position.

I agree with my colleague Senator Frist that TVA needs a new management structure to better prepare it to meet the challenges that it faces today, from electricity restructuring to curbing air pollution in the Great Smoky Mountain National Park, and continuing to reduce its level of debt. The job will not be easy. TVA needs leaders who have business experience, management experience and leadership ability. Bill Baxter has all three.

So I am pleased that Bill's nomination, if confirmed by the Senate, will ensure that Tennessee continues to be represented on the TVA Board. The majority of TVA's operations is located in Tennessee, and Tennessee should have a prominent voice in how TVA is managed. I'm confident that Bill Baxter will be a strong voice for the entire Tennessee Valley region if he is confirmed to serve on this board.

So it is with great pleasure that I have the opportunity to be here to introduce to you Bill Baxter of Tennessee.

Senator JEFFORDS. Thank you very much, Senator.

Mr. Baxter, do you have members of your family here that you would like to introduce?

Mr. BAXTER. I do, Mr. Chairman. My wife, Ginger Baxter, is here.

Senator JEFFORDS. We are pleased to have you with us.

Mr. BAXTER. Thank you, Senator.

Senator THOMPSON. Thank you.

Senator JEFFORDS. You now have 5 minutes to give your statement, and if it's longer than that, we will put it in the record for you. And so, go ahead.

STATEMENT OF WILLIAM W. BAXTER, NOMINATED TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE TENNESSEE VALLEY AUTHORITY

Mr. BAXTER. Thank you very much. I will take less than 5 minutes, I can assure you.

I am honored to be here today as President Bush's nominee as a Director of the Tennessee Valley Authority, and I am personally

very grateful for the support and encouragement of Senator Thompson and Senator Frist from my home State. I appreciate, Mr. Chairman, you and the committee expediting this hearing so that we can answer any questions you might have and get to work if you see fit to put me to work.

I look forward to joining Glenn McCullough and Skila Harris who have come before this committee on the TVA Board and working with them as well.

As the Senator mentioned, I am a life-long resident of Knoxville, which is the home of the headquarters of Tennessee Valley Authority. My family and my business have been users of TVA power for five decades. And so I appreciate the critical importance of TVA to our area.

For the last 3 years as Commissioner of Economic Development for the State of Tennessee, I have come to understand more fully the crucial role that TVA plays in the economic prosperity of the entire seven-State region that it serves. And as the nation's largest public power producer and steward of the nation's fifth largest river system, TVA has and will continue to play a pivotal role in the economic future of our region.

Several challenges lay immediately, however, in TVA's future. First and foremost is the job of continuing to provide reliable, low-cost electricity to the Tennessee Valley, a region that has been growing at a rate of 3 to 4 percent annually, exceeding the national average considerably. To support this growth, a primary effort of TVA in the immediate future will be considering increasing its base generating capacity. We want to make sure that the lights don't go out in the Tennessee Valley for lack of prudent planning or wise, forward-looking investment.

Second, TVA should be a leader in addressing air pollution issues that come with fossil fuel power plants. TVA's record investments thus far in pollution abatement measures, along with its recent announcements of significant new investments over the next few years will continue. Today, we know that the users of electricity want both reliable, affordable power and responsible environmental conduct of business. TVA and all other power producers must strive to achieve both.

I grew up in the Smoky Mountains, Mr. Chairman, and I still hike there on a regular basis with my family and friends, and I'm as interested as anyone in that region in the long-term health of these mountains and the preservation of their beauty.

Third, the restructuring of the electric production and transmission industry in our country will continue, with lessons learned from California and elsewhere. TVA must continue its earnest efforts to prepare for this restructuring. Significant progress has already been made. Senator Frist, Senator Thompson, Senator Cochran, Congressman Ed Bryant from Tennessee and many others have been working on this very complex issue. I'm happy to have developed a working relationship with many of TVA's major customers during my 3 years in economic development with the State of Tennessee, and I for one believe that listening to your customers is a good place to start when talking about restructuring.

Likewise, constructive dialog with the investor-owned utilities can be very beneficial to all of our understanding of the proper role

of TVA in the restructured environment. And I would look forward to productive conversations with the executives of those investor-owned utilities as we move forward thoughtfully to the restructured marketplace.

Fourth, the prudent management and stewardship of the Tennessee River system is one of the fundamental missions of TVA. In fact, it was the original mission of TVA, and from my perspective TVA has done a superlative job in this area and improvements continue to be made every year. Successfully performing this core responsibility will continue to be a high priority at TVA and, again, listening to our customers, all the users of the Tennessee River system, will be the key to making those continuous improvements.

I grew up on Norris Lake, which is the first lake created by the first TVA-built dam, and my family's business has been located on the Tennessee River for the last four decades, so I know first-hand the importance of TVA's river stewardship.

And fifth, TVA is a $7 billion a year business, and it must be run with best business practices. I look forward to bringing my 20 years of experience in the private sector to the TVA organization, and doing everything I can to ensure that best business practices are employed and the best possible financial results are produced.

As you know, TVA has a very large debt, but the good news is that this debt is being paid down in a steady, responsible manner. In fact, today TVA's interest expense as a percent of its revenues is at the lowest rate in the past 20 years. Real progress is being made on this critical issue. The stimulating business challenge at TVA is to continue to reduce that debt, while at the same time investing prudently in additional generating capacity, meeting our environmental responsibilities, promoting economic development in the Valley, and managing the Tennessee River system in a professional manner, all the while maintaining rates as low and steady and predictable as possible for the families and businesses of the Tennessee Valley.

This is a business challenge of the highest order, and I look forward to being fully involved in ensuring TVA's performance in these areas.

Once again, I would like to thank the Chairman and the committee for expediting this process, as I know you have many important issues to deal with today as we speak. And if I could on a personal note as an American citizen and as a father of four, I want to express my appreciation to each of the members of this committee for all you're doing to make our country strong and to preserve our liberties for the next generation.

Thank you very much.

Senator JEFFORDS. Thank you for an excellent statement.

We have two other nominees this morning. I would like Ms. Nelson and Mr. Williams to come forward please.

First, I will ask each of you, do you have members of your family with you, and if you do, would you like to introduce them?

Ms. NELSON. I do, Senator. I have my husband, Kevin Cadden, my father, George Nelson, my aunt Florence Bojack, and my two girls Kelsey and Mackenzie.

Senator JEFFORDS. Mr. Williams?

Mr. WILLIAMS. Thank you, Mr. Chairman. I have my wife Beth behind me, my daughter Heidi, my mother Mary Jane Williams, my in-laws Elson and Jane Grim, and my sister Wendy and her husband, John Kelsey.

Senator JEFFORDS. Well, that's an excellent representation.

Ms. Nelson, why don't you proceed? You have 5 minutes.

STATEMENT OF KIMBERLY TERESE NELSON, NOMINATED TO BE ASSISTANT ADMINISTRATOR, OFFICE OF ENVIRONMENTAL INFORMATION, U.S. ENVIRONMENTAL PROTECTION AGENCY

Ms. NELSON. Thank you, Senator.

Good morning. It is certainly a privilege for me to appear before you as the nominee to be the Assistant Administrator for Environmental Information and the Chief Information Officer for the United States Environmental Protection Agency. I am honored that President Bush has nominated me to serve with Administrator Whitman in this Administration.

As the former Chief Information Officer for the Commonwealth of Pennsylvania's Department of Environmental Protection, I understand first-hand the critical role that environmental information plays in sound environmental decisionmaking. I also understand how rapid, sweeping and profound information technology advancements are creating expectations for government to keep pace with the private sector.

The need for strong public administrators has never been more evident than during the past month, when our country experienced such devastating loss—and you alluded to that. The events on September 11 have crystallized the nation's understanding of its reliance on technology for very basic operations, for human communications and comprehension of the disaster that we all experienced. This reliance now causes all public administrators, and particularly those in the technology and information arena, to reexamine and strengthen our programs, our security systems and the quality of our information. I am both honored and challenged to contribute to our nation's preparedness in these areas.

I believe it is the obligation of all government officials to create and manage organizations that allow our citizens to access information and services with minimal bureaucratic barriers. The information that we provide must be of exceptional quality and supported with the analytical tools which facilitate its use for assessing and managing risk, and for measuring our environmental improvements. The services that we provide must be fast and error-free, and most importantly these services must be convenient to the public, even if that means crossing traditional bureaucratic lines.

Today, EPA and the States are working hard to provide consistently high environmental information. We know that the challenges we face in the 21st century cannot be solved by EPA alone, but require the Agency to partner and cooperate with many others. We must join with States, tribes, local governments, businesses and communities to design and disseminate the kind of information products that provide a clear understanding of environmental conditions and solutions.

If confirmed, I intend to promote the President's principles for government reform. I will assist Administrator Whitman in this effort by helping to sharpen the focus of EPA's environmental information strategies, reduce the burden on industries, promote intergovernmental cooperation and apply some of the best practices to achieve internal efficiencies. I am fortunate that EPA has begun this process. I hope to use many of the solid efforts already underway as a springboard to accomplish some lasting change.

It is my vision that one day EPA's staff, the Agency's partners and the general public will be able to easily access all relevant nonsensitive environmental information about our regulated facilities and our natural resources; that we will be able to improve the interaction we have and the understanding of the regulating community, including the way they report to us; that we more effectively measure environmental conditions; and finally that we can enhance the understanding of the interrelationship between our activities at EPA, the compliance behavior of companies, pollution prevention strategies and environmental improvements.

I believe these activities will contribute significantly toward the burden reduction, the improved data quality and security, and more informed environmental decisionmaking. And I believe we can do this while continuing to meet the public's demand for better environmental information in a more secure environment.

I am a strong believer in the commitment to work in government service. My family has a long history of public service. My father, who is here today, retired from the Navy Department with 40 years. My younger brother just retired from the Air Force with 20 years of service. And I have two older brothers who both served during the Vietnam Conflict. After 28 years in State government, my husband now is here in Washington as Director of External Affairs for the Federal Energy Regulatory Commission.

I, too, have served in government—22 years with the Commonwealth of Pennsylvania. More than half of that time I spent with the Department of Environmental Protection. During that time, I helped develop and implement a blueprint for integrating our program-specific information systems. I managed several process improvement teams that significantly changed both the permitting and the compliance activities of the Agency, and made that information publicly available in an award-winning information system. And finally, I created for the first time in that Department their Office of Information Technology, which was the first executive-level CIO in the Department.

I am now both ready and enthusiastic to join public service here at the Federal level as the Assistant Administrator at EPA. I am confident I can bring the necessary vision, leadership and experience to work with our partners to achieve those things I have addressed today.

Should I be confirmed by the Senate, I look forward to working with you, Chairman Jeffords and other members of the committee and Congress, Administrator Whitman and the entire Administration to make the environment better for all Americans and to be responsive to the citizens we serve.

Thank you and I would be happy to answer any questions you or other members may have.

Senator JEFFORDS. Thank you very much.

We have Senator Pat Roberts with us, and I understand that you probably have a reason for being here.

STATEMENT OF HON. PAT ROBERTS, U.S. SENATOR FROM THE STATE OF KANSAS

Senator ROBERTS. Yes—the gentleman in the middle with the smile on his face, who has been a good friend for years. Is it appropriate that I say my remarks now, sir?

Senator JEFFORDS. Yes, it is very appropriate. He is going to speak with either before or after option.

Senator ROBERTS. Steve, what do you think?

[Laughter.]

Mr. WILLIAMS. I think you are a tough act to follow, but I would like to try.

Senator ROBERTS. I apologize for being late, Mr. Chairman. The Wilson Bridge was really not very cooperative. It isn't like it is at home, Steve, as you well know.

Mr. Chairman, Ranking Member and distinguished committee colleagues, it is with great pleasure to introduce to the committee Mr. Steve Williams, nominated to become the next Fish and Wildlife Service Director. Steve is professionally qualified for this important conservation position. During his 6-year tenure as Secretary of Kansas Wildlife and Parks, he reinvigorated our State, Mr. Chairman, and all of Kansans interests by fulfilling the Department's mission of conserving and enhancing the natural heritage of Kansas, its wildlife and its habitats. He's a biologist. He's an outdoorsman, so he understands the unique duties the Director has in really balancing the conservation requirements with recreation opportunities.

What impresses me about Steve is that he is not a desk-bound manager. He visits all of our State parks; has done that. He listens to park employees and to local officials. And he coordinates with them their improvements to their operations. He talks with producers. He talked with landowners about working with him on improving water quality and wildlife habitat. I have been there. I have heard him. I have worked with him in that respect.

He listens to the recreationists, working to improve access for hiking and camping and bird-watching. I am sure he will continue this practice in visiting Fish and Wildlife Service operations all across our country. He has proven to work with all environmental stakeholders. Our Kansas hunters, our fishermen really appreciate his very innovative programs to open up the fishing and hunting opportunities to Kansans on private lands. The Walk and Hunting Area opens up private lands for public use. This program, his program is popular, with 700,000 acres that have been enrolled. For fishermen, he has created the Fishing Impoundment and Stream Habitats, opening up farm ponds to public fishing.

I hope the committee is also aware that Steve's work and communications with the environmental organizations is appreciated. Charles Benjamin of the Kansas Sierra Club actually commented on Steve's nomination, "I can't think of a better person for that job."

With Steve's success in Kansas, I am confident that he will make very popular improvements to the National Wildlife Refuge System, and fairly administrate the Federal wildlife laws and the Endangered Species Act. Therefore, I hope the committee will approve his nomination so the entire Senate can confirm him as soon as possible.

Mr. Chairman, that is the end of the prepared remarks that I helped write, by the way, but I would say that knowing Steve as I have known him back through the years, production agriculture and some in the environmental community have had what I call a rather meaningful dialog in past decades. I won't call is a sheep and cattle war, but I think you can get the drift of my conservation, and also conversation. And so if there was one man that was the oil-can person in all of this, it was Steve. Steve could talk with those who were the landowners, the farmers, the ranchers and the environmentalists and the conservationists, and somehow bring that together to where today in Kansas we don't have a problem. We don't have controversy.

And so this is again the oil-can person who did that job. I think he's a natural for the job on a national scale, and I am just delighted to be here to testify in his behalf, not only for the job he's going to do, but as a personal friend. And I thank the Chair for indulging me.

Senator JEFFORDS. Thank you. As always whenever you speak, you enlighten everybody's day and make it a little bit better, and it's good to have you here. Stick around.

[Laughter.]

Senator JEFFORDS. Mr. Williams, please proceed.

STATEMENT OF STEVEN A. WILLIAMS, NOMINATED TO BE DIRECTOR, UNITED STATES FISH AND WILDLIFE SERVICE, U.S. DEPARTMENT OF THE INTERIOR

Mr. WILLIAMS. Thank you.

Thank you very much, Senator Roberts, for those kind words.

If I could just indulge the chairman for a second, when I was introducing folks, I didn't introduce my son. He is at Kansas State University, probably should be in class, but he may be watching over the Internet, and it is his birthday today.

Senator JEFFORDS. All right. We will allow you to do that.

Senator WILLIAMS. Thank you, Mr. Chairman.

Senator ROBERTS. Mr. Chairman, that is the home of the ever-optimistic, but not so successful lately Wildcats, but hope springs eternal, Mr. Chairman.

[Laughter.]

Mr. WILLIAMS. Mr. Chairman and members of the committee, it is a great honor for me to be nominated by President Bush as the Director of the Fish and Wildlife Service. I appreciate the confidence expressed by Secretary Gale Norton in my qualifications and ability to lead this Agency, and also Senator Roberts' confidence.

It really is an honor to be here today and to have the committee consider my qualifications to lead our nation's fish and wildlife conservation agency. Should I be confirmed by the Senate, I assure you that I will eagerly assume the awesome responsibility of pre-

serving and promoting our nation's fish and wildlife conservation heritage.

I sit before you today as the nominee, and also as the Secretary of the Kansas Department of Wildlife and Parks. I have served as Director of this agency for the last six and a half years. My colleagues in the other 49 States have praised President Bush's decision to nominate a State Director to this important Federal position. As a State fish and wildlife agency Director, I believe that I bring certain qualifications, experience and perspective to this position that will benefit constituents in each of your States.

During the 44 years of my life, I have had the opportunity to travel throughout much of this country. I was born in Bellows Falls, Vermont while my family farmed in Westminster.

Senator JEFFORDS. I knew there was something really good about you.

[Laughter.]

Mr. WILLIAMS. At that time, my family was farming in Westminster for markets in Boston and small towns in southern Vermont. I grew up in rural areas of the northeast where I enjoyed fishing, hiking, exploring fields and forests. I've spent the last 16 years working in State fish and wildlife agencies in three different States. I started as a wildlife biologist and have been promoted to administrative positions of ever-increasing responsibility.

I have managed State programs from a centralized location, relying on widely distributed geographic offices and personnel. I believe that communicating and cooperating with individuals in organizations is the only effective means to accomplish positive fish and wildlife management. This approach includes consideration of all interested parties, partners and technical expertise. I believe that common sense approaches to difficult resource issues are always in the best interest of those involved. Under my leadership, as Senator Roberts alluded to, the Kansas Department of Wildlife and Parks has initiated new partnerships with State agencies, agricultural organizations, conservation organizations and private individuals.

One of these was the walk-in hunting area program, again that Senator Roberts mentioned. This program is a voluntary incentive-based program that has increased recreational opportunity, improved local economies and provided private landowners with income, all financed with the revenue from Kansas hunters. In just 6 years, the program has grown to somewhere around 10,000 acres and Senator, this year we're over 800,000 acres. We've just finished up our sign-ups.

This and many other examples of private-public partnerships are being practiced by State and Federal agencies across the country. I hope to expand on such opportunities if I am confirmed in this position.

The Fish and Wildlife Service is facing challenging times. Lawsuits concerning the listing of threatened and endangered species and critical habitat designation has consumed much of the time and financial resources of the agency. Fish hatcheries and refuges require considerable attention and investment to maintain the existing infrastructure. Our law enforcement officers are stretched thin as they attempt to deal with illegal trade in importation of

wildlife. Ecological Services Offices face mounting project reviews and additional demands on their time. The research component of the Service has been somewhat diminished, and managers are forced to make decisions sometimes without all the desired information.

Finally, relationships between the Service and States, sportsmen and—women, the fishing and hunting industry, and private citizens I believe are strained. If confirmed as director, I will work tirelessly to improve relationships, forge new partnerships and solve issues confronting the agency. I have experienced some success by working cooperatively with disparate interest groups, by challenging existing assumptions, by communicating a vision, and by encouraging novel approaches to solve problems.

The mission of the Fish and Wildlife Service has expanded dramatically over the past few decades. However, two things remain constant. The sportsmen and—women of the country have been the primary financiers of fish and wildlife conservation. I would like to take steps to shore up what was once a powerful relationship between the Service and our nation's hunters and anglers. Second, private landowners provide habitat for the majority of fish and wildlife resources. I respect these landowners' rights and I will work cooperatively in their interest and in the interest of wildlife.

I will strive to strike a balance between the important issues of endangered species protection, and the issues associated with preserving and promoting fishing and hunting in this country.

The list of issues confronting the new Director of the Fish and Wildlife Service is considerable. However, with the support of this Administration, Congress, States organizations and individuals, the Service will rise to the challenge and improve our nation's fish and wildlife resources. Americans care deeply about fish and wildlife. If confirmed as Director, I will approach the responsibilities of that position with a passion to deliver programs, opportunities and a vision for the Service that includes protection and conservation for the American public's use and enjoyment.

I pledge to work cooperatively, collaboratively and through communication with all members of the U.S. Congress to assure that we meet the needs and desires of the American public. We have an impressive conservation heritage in this country. We must continue the progress made by previous generations to assure that future generations share in the wonderful blessings that we all enjoy.

Thank you, Mr. Chairman. I think my time is up.

[Laughter.]

Senator JEFFORDS. Right on the button, sir.

Mr. WILLIAMS. I appreciate your considering my qualifications. Thank you.

Senator JEFFORDS. I am going to ask Mr. Williams a question first, so that Senator Roberts can hear your I know very erudite answer. But endangered species, both plants and animals—sea lampreys, zebra mussels, water chestnut et cetera—are one of the greatest threats to Lake Champlain and encroaching in other areas. The U.S. Fish and Wildlife Service Lake Champlain Office has helped coordinate their response in Vermont and New York State and local agencies, and having just completed an environmental impact statement, is now ready to launch a full-scale sea

lamprey control program. The Lake Champlain Office, however, lacks the personnel and resources needed to complete this work.

How would you support the work of the Service's in this partnership in protecting the native species that inhabit Lake Champlain?

Mr. WILLIAMS. Well, I would start out by saying that I've had the opportunity over the past 2 years to serve on the Invasive Species Advisory Committee, which advises the National Invasive Species Council. I don't pretend to be an expert on invasive species, but I have had I believe a good exposure to those issues. And you are correct, they are some of the most critical issues facing the country in terms of environmental issues.

With respect to Lake Champlain, I can assure you that if I am confirmed I will take a very close look at that and look at how resources are divided amongst the facilities in the Service. And I can assure you that both Secretary Norton and myself and other folks in the Department of Interior recognize this problem and are prepared to go to work to do our best to control where we can and solve invasive species issues in other parts of the country.

Senator JEFFORDS. In the Silvio Conte National Fish and Wildlife Refuge in the Nulhegan Basin, the Service works with Vermont, New Hampshire and other States, nongovernment organizations, local governments and citizens to protect and enhance fish and wildlife resources within the Connecticut River Valley, using seed money from the Service to facilitate the partnership—a major success in the protection of the thousands of acres of former Champion Paper Company lands in northeastern Vermont through a partnership of Federal, State and private timber company efforts. Another is the multi-year Invasive Species Management Agreement with the USDA and local universities to facilitate control of invasive species across State lines. The partnership efforts involved allowed the government to do more with less and increase its interaction with the American public. How will you increase agency support for these kind of activities?

Mr. WILLIAMS. I've had considerable experience with pulling together partnerhips in Kansas, and recognize that that really is the model for the future. The old command and control approach to conservation just is inappropriate in these times. And Senator Roberts spent one beautiful afternoon in McPherson, Kansas on just such a partnership, bringing together Federal agencies, our State agency and many private partners.

I think in response to your question, the best thing I can do is to provide that as part of a vision for all folks in the Service to search out those partnerships, to bring together local conservation organizations, other NGO's, to work with communities in areas, to show them the benefits, both economic and environmental benefits, of investing in our natural resources.

I am somewhat familiar with that area. In fact, just at the end of this month a year ago, I spent some time hunting woodcock just south of the area in northeastern Vermont, and I think folks in that area will, as time goes by and that refuge continues to develop, will really appreciate again not just the environmental benefits of it, but also the economic benefits of the refuge.

Senator JEFFORDS. The Mississquoi National Wildlife Refuge is moving toward a long overdue replacement of its headquarters

building. I have worked to support this project for a number of years and helped to secure the $2 million to $3 million needed to complete the project. Full funding of this project at the $3 million level will be critical to the public outreach and educational function of the Mississquoi Refuge. This is for Senator Roberts, as well, who knows how important this is.

I see that the U.S. Fish and Wildlife Service, especially through accessible refuges like the Mississquoi, filling an increasingly important role in providing public information on fish, wildlife, natural resource issues. How will you ensure that this role is fulfilled in the Mississquoi Refuge, especially through the headquarters project?

Mr. WILLIAMS. I'm not fully briefed on all the details of that particular project. I can assure you that I think that public outreach, public education is a critical component of the Service's mission. Again, should I be confirmed, I would be happy to meet with you and your staff and the staff of the Service and see what we can do to move the project along.

Senator JEFFORDS. Good answer.

[Laughter.]

Mr. WILLIAMS. Thank you.

Senator JEFFORDS. The U.S. Fish and Wildlife Foundation has supported several important wildlife conservation projects in Vermont in recent years. They have worked with a broad range of groups, including Orbis Company and the Ruptagrao Society, and the Lake Champlain Lands Trust. Their flexible and collaborative approach is ideally suited to our approach to conservation in Vermont. How would you support the mission of the Foundation, especially in Vermont and the Northeast?

Mr. WILLIAMS. I'm familiar with the National Fish and Wildlife Foundation through their partnership with the Kansas Department of Wildlife and Parks on about a $5 million wetland restoration project near Milford—north of Milford Lake. And I should back up and say again, these partnerships that can leverage State money or Federal money or private money are really the model for the future. And I would again urge, cajole, set as part of the daily activities of Service employees to look for opportunities to work with a number of partners, including landowners, to pull together resource projects that make sense for those areas.

I have fairly good experience in—well, I've had a great experience in the Northeast. I shouldn't say fairly good experience, but a fair amount of experience having worked in Massachusetts for 7 years with the Division of Fish and Wildlife, and of course born in Vermont. I know folks in that area and have relationships with them, and I would do my best to . . .

Senator JEFFORDS. Well, thank you. That's my final question.

Other members will have an opportunity to submit questions in writing to all three of you. I will give them 24 hours, so if you don't get any by then, that will be too late. But anyway, just to let you know.

Thank you, Mr. Williams.

Mr. WILLIAMS. Thank you, Mr. Chairman.

Senator JEFFORDS. Mr. Baxter?

Mr. BAXTER. Yes.

Senator JEFFORDS. Last May, I introduced S. 933, the Combined Heat and Power Advancement Act, which would encourage the development of distributed generation and combined heat and power projects by standardizing the interconnection process. Do you think this legislation should apply to the TVA?

Mr. BAXTER. I think the TVA should be a leader in any of these new technologies that are being explored in our country. I think that's one avenue that TVA perhaps has not taken full advantage of that it should. There are opportunities there to be a leader in research in new ways to generate electricity, to conserve electricity and to co-gen electricity and heat. So I would certainly be in favor of TVA pursuing those kinds of opportunities.

Senator JEFFORDS. Would you support the TVA electing to voluntarily adopt such a process which would encourage the development of energy-efficient projects and increase the supply of electricity in the region?

Mr. BAXTER. Yes, I would. And I would emphasize, again coming from the private sector, I would emphasize the economic benefits to the users of electricity of those conservation efforts. And I think if that case can be made more clearly, we will have a greater success in encouraging people with these efforts.

Senator JEFFORDS. Would you commit to voluntarily complying with FERC regulations as they apply to interconnection to transmission systems?

Mr. BAXTER. I shouldn't make a commitment today because I don't fully understand all the complexities of that issue. I do know that in the TVA title language that has been worked out between many of the stakeholders with TVA, that FERC jurisdiction over the transmission system has been an issue that's been discussed and favorably considered. So to the extent it fits within that TVA title negotiated language, I would support it. And if not, I would be open to entertaining and understanding what all the pros and cons are of that issue.

Senator JEFFORDS. Do you think that TVA, which is already over $26 billion in debt, should take on additional debt to finance new power plants when private industry is willing to accept the financial risk of constructing new plants?

Mr. BAXTER. If you look at the needs of electric power in the Valley in the next few years, it's very likely that TVA will need to add base-generating capacity to meet the growth opportunities there in that seven-State region. There are many possibilities of financing such an addition to generating capacity, and certainly partnering with private sector companies should be one of those options that we look at. It seems to me that long term, again, there is a real opportunity for TVA there as we restructure the market to find private sector partners for some of these projects, and I believe they are actively considering that now.

Senator JEFFORDS. Shouldn't the TVA at least institute some kind of competitive bidding for new projects to ensure that the taxpayers of the Tennessee Valley region are paying the lowest possible price for their power, and that new generation is constructed in a cost-effective manner?

Mr. BAXTER. Yes, sir.

Senator JEFFORDS. Good answer.

[Laughter.]

Mr. BAXTER. Right.

Senator JEFFORDS. Thank you again. There may be questions from other members.

Ms. Nelson, in light of the events of the past 5 weeks, the sensitivity of sharing information has come under increased scrutiny. Security concerns have now been added to the debate over the public's right to know and confidentiality of companies' trade secrets. Can you tell the committee how you intend to balance these needs, especially in light of the increased security concern?

Ms. NELSON. I think I have always been a very, very staunch advocate for public access to information. I like to believe that that's one of the reasons I was selected for this job. Back in Pennsylvania, we were very aggressive about making information publicly available on our web site and through other sources.

However, September 11 did change some things. Our lives are all different as a result of what happened. When I come into the garage every day, the trunk of my car is inspected, the back seat of my car is inspected. My girls can't take a tour of the Capitol as a visitor. And in fact, EPA has taken some information off of its web site, as have many other government organizations. They are not the kind of things we like to see.

Personally, with my own background, it's my own personal desire to see as much information publicly available as possible, because I think that's how we energize and leverage our citizens to help us protect the environment, so that they can make the right decisions.

But I think in light of what has happened, we all have to balance more carefully the decisions that we have to make in terms of public access and security, and the integrity of the information that we provide, to make sure that we're providing the right information at the right time to the right people.

Right now, there are people in the agency that are looking and doing an inventory of our web site. I hope in the future that we can apply the best analytical minds to make the sound and reasonable decisions about the kinds of information we supply and how we supply it. But we do I think have to strike that balance, which is very different today than it was 2 months ago. And that will be a difficult job we all have in terms of striking that balance to ensure that we're protecting all of the people of the country.

Senator JEFFORDS. Thank you. Again, other members will have an opportunity, but I'll give them just a short time to submit questions.

I want to move you along just as fast as I can, but there are two obligatory questions that I have to ask everyone who is seeking such offices, and a nod of the head will do or a shout or whatever else you want.

Are you willing at the request of any duly constituted committee of the Congress to appear in front of it as a witness?

Mr. BAXTER. Yes.

Mr. WILLIAMS. Yes.

Ms. NELSON. Yes.

Senator JEFFORDS. Everyone says yes.

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

Mr. BAXTER. No, sir.

Mr. WILLIAMS. No, sir.

Ms. NELSON. No, sir.

Senator JEFFORDS. Good answers.

Thank you very much. That is the end of this morning's process. We have another meeting I have to go to in view of the circumstances in the Senate today. So thank you all, and we will move forward just as soon as we can to make sure that you get there as fast as possible.

Mr. BAXTER. Thank you, Mr. Chairman.

Mr. WILLIAMS. Thank you, Mr. Chairman.

Ms. NELSON. Thank you.

[Whereupon, at 10:15 a.m., the committee adjourned, to reconvene at the call of the Chair.]

[Additional statements submitted for the record follow:]

STATEMENT BY HON. BILL FRIST, U.S. SENATOR FROM THE STATE OF TENNESSEE

I thank the chairman and members of this committee for holding this hearing in a timely manner.

The Tennessee Valley Authority has played and will continue to play a critical role in the future of Tennessee and the entire TVA region. TVA is the nation's largest public power producer serving over 8.3 million customers thorough its 158 distributors with a revenue of $7 billion annually. In addition, TVA manages the fifth largest river system in the country.

Over the last 7 years as a Senator from Tennessee, I have come to realize that TVA is more than a power public company, more than steward of a river system, it is an integral part of the Valley's economy and community.

An organization of this size with such an important role must have the very best leadership and management team in place. The board must be able to lead the organization into a future which presents many challenges including inevitable restructuring of the electric industry, addressing air quality issues, and managing TVA's debt.

I am pleased that President Bush has nominated an individual who has the experience and the skills to help lead TVA into this dynamic future. Simply put, Bill Baxter is the right man for the job.

I have known Bill for most of the last decade and can personally attest to his intelligence, integrity and ability.

In addition, I've had the opportunity to spend time at his home in Knoxville. As a young man, Bill cut the lawn of this home, came to love the property and the expansive view it offered of the Great Smoky Mountains. Even at a young age, he vowed to himself that someday he would return to this property, not just to cut the lawn, but as its owner. And today, he shares this wonderful home with his wife, Ginger, also a native of Knoxville, who is here with him today.

I should add the Baxter's have four outstanding children, the two oldest, both girls, are pursuing their college careers at Harvard and Morehead State, while the two youngest, both boys, are completing their high school years at Central High School in Knoxville.

A TVA Director must fill three needs for the agency that Bill Baxter fits exceptionally well:

- business acumen
- a commitment to public service
- and leadership skills that will benefit the entire Valley.

I'd like to elaborate briefly on each of these.

Bill is a business man—and a good one—who for over 20 years has shown he knows how to manage a company and meet a bottom line. He is chairman of Holston Gases, Inc. a distributor of propane, industrial, medical and laboratory gases. Holston Gases, Inc. has eight distribution facilities throughout middle and east Tennessee.

Bill is a public servant who knows the importance of economic development. He served as commissioner of the Tennessee Department of Economic and Community Development for 2 years, returning to his family business early this year. During his tenure in State government, Tennessee achieved three consecutive years of record private capital investment and job creation, shattering all previous records and winning national acclaim.

Bill is also a community leader who knows that a successful community must have citizens who are willing to give of themselves. That's why Bill has served as United Way Chairman, board chairman for the Knoxville Zoo, and in a variety of other civic and philanthropic roles. He's also extremely loyal to his college alma mater, Duke University, where you'll find him in the stands during basketball season.

Bill's energy knows no bounds; his ability to assess a situation and make good business decisions is second to none; and as a life-long Tennessean, he deeply cares about the Tennessee Valley. For Bill Baxter, the opportunity to serve on the TVA Board is a life-time dream come true.

Mr. Chairman, Bill's background in business, government and as a community leader will be a great addition to TVA's board, and I know he is looking forward to joining Chairman Glenn McCullough and Director Skila Harris as quickly as possible. Mr. Baxter comes before you with my full confidence and highest recommendation.

Thank you.

STATEMENT OF WILLIAM W. BAXTER, NOMINATED TO BE MEMBER OF THE BOARD OF DIRECTORS, TENNESSEE VALLEY AUTHORITY

I'm honored to be here today as President Bush's nominee as a Director of the Tennessee Valley Authority. And I am personally very grateful for the support and encouragement of Senator Bill Frist and Senator Fred Thompson from my home State of Tennessee. I appreciate very much the committee expediting this hearing, and I look forward to answering any questions you might have today. If the committee and the full Senate see fit to confirm my nomination, I look forward to joining Glenn McCullough and Skila Harris on the TVA Board and joining them in the work at hand.

As a lifelong resident of Knoxville, the home of the headquarters of the Tennessee Valley Authority, my family and my business have been users of TVA power for nearly five decades, and I appreciate the critical importance of TVA to our area. For the last 3 years, as Commissioner of Economic Development for the State of Tennessee, I've come to understand even more fully the crucial role that TVA plays in the economic prosperity of the seven-State region it serves. As the nation's largest public power producer as well as the steward of the nation's fifth largest river system, TVA has and will continue to play a pivotal role in the future of the region.

Several challenges lay immediately in TVA's future:

(1) First and foremost is the job of continuing to provide reliable, low cost electricity to the Tennessee Valley, a region that has been growing at a rate of 3–4 percent annually exceeding the national average considerably. To support this growth, a primary effort of TVA in the immediate future will be increasing base and peak generating capacity. We want to make sure that the lights don't go out in the Tennessee Valley for lack of prudent planning or wise, forward looking investment.

(2) TVA should be a leader in addressing air pollution issues that come with fossil fuel power plants. TVA's record investments thus far in pollution abatement measures, along with its recent announcements of significant new investments over the next few years, will continue. Today we know that the users of electricity want both reliable, affordable power and responsible environmental conduct of business. TVA, and all other power producers, must strive to achieve both. I grew up in the Smoky Mountains and I still hike there on a regular basis with my family and friends, and I am as interested as anyone in the long-term health of these mountains and the preservation of their beauty.

(3) The restructuring of the electric production and transmission industry in our country will continue with lessons learned from California and elsewhere. TVA must continue its earnest efforts to prepare for this restructuring. Significant progress has been made on the complex issues of how TVA will fit in the larger scheme of this restructured market. Excellent work has already been done by Senators Frist and Thompson from my home State, Senator Cochran of Mississippi, Congressman Ed Bryant from Tennessee, and many others. I'm happy to have developed a working relationship with many of TVA's distributor customers during my 3 years in economic development in the State of Tennessee, and I believe listening to these cus-

tomers is good business, especially on the issue of deregulation. Likewise, constructive dialog with investor owned utilities can be very beneficial to understanding the proper posture of TVA after restructuring, and I look forward to productive conversations with the executives of these companies as we move forward thoughtfully into the restructured electric market place.

(4) The prudent management and stewardship of the Tennessee River system is one of the fundamental missions of TVA; in fact, it was the original mission of TVA. From my perspective, TVA has done a superlative job in this area, and improvements continue to be made every year. Successfully performing this core responsibility will continue to be a high priority at TVA, and listening to our customers, all the various users of the Tennessee River system, will the key to making those continuous improvements. I grew up on Norris Lake, the lake created by the first TVA built dam, and my family's business has been located on the Tennessee River for four decades. I know first hand the importance of TVA's river system stewardship.

(5) TVA is a $7 billion business, and it must be run with the best business practices. I look forward to bringing my 20 years of private sector business experience to the TVA organization and doing everything I can to ensure that best business practices are employed and the best possible financial results are produced. As you know, TVA has a very large debt, but the good news is this debt is being paid down in a steady, responsible manner. In fact, today TVA's interest expense as a percent of revenues is at its lowest level in 20 years. Real progress is being made on this critical issue. The stimulating business challenge at TVA is to continue to reduce this debt in a disciplined fashion, while at the same time investing prudently in additional generating capacity, meeting our environmental responsibilities, promoting economic development in the valley, and managing the Tennessee River system in a professional manner, all the while maintaining rates as low and steady and predictable as possible for both home and business use. This is a business challenge of the highest order, and I look forward to being fully involved in ensuring TVA's performance in all these areas.

Once again, I want to thank the chairman and the members of the committee for expediting this process, as I know you and the other members of the Senate have critically important issues to deal with today. As an American citizen and as a father of four, I want to express my appreciation to each of you for all that you are doing to make our country strong and to secure our liberties for the next generation.

Thank you very much.

UNITED STATES SENATE

COMMITTEE ON ENVIRONMENT
AND PUBLIC WORKS

ROOM 410 DIRKSEN BUILDING WASHINGTON, DC 20510

INFORMATION

REQUESTED OF PRESIDENTIAL NOMINEES

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

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

Name of Nominee: William (Bill) Wright Baxter

Business Address: PO Box 27248
Knoxville, TN 37920

Business Phone: (865) 573-1917

Home Address: 3901 Sam Cooper Road
Knoxville, TN 37918

Home Phone: (865) 688-4551

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

Name: Baxter (Last) William (Bill) (First) Wright (Middle)

Position to which nominated: Director, Tennessee Valley Authority

Date of Nomination: 7/11/01

Date of birth: 8/1/53 (Day) (Month) (Year) **Place of birth:** Memphis, Tennessee

Marital status: Married **Full name of spouse:** Virginia Jo Baxter

Name and ages of children:
Elizabeth Baxter (21)
Jennifer Baxter (19)
JoeBaxter (17)
John Baxter (15)

Education:

Institution	Dates attended	Degrees received	Dates of degrees
Duke University	9/71-8/75	B.A.	8/75
University of Tennessee	6/76-12/78	J.D.	12/78

Employment record:

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

Independent Law Practice, 4/79-4/81

Holston Gases, Inc., Miscellaneous Positions 4/81-4/83

Holston Gases, Inc., Sales Manager 4/83-4/85

Holston Gases, Inc., President & CEO 3/85-10/97

Employment record—continued

TN. Department of Economic & Community Development, Commissioner 12/97-1/1/01

Holston Gases, Inc., Chairman 12/97-Present

Honors and awards:

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

Fred H. Harris Award

Memberships:

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

Organization	Office held (if any)	Dates
TN. Board for Economic Growth	Board Member	1995-2000
The Trust Company	Director	1999-Present
The Keller Group	Director	1998-Present
Baptist Health System	Director	1994-1997
United Way of Knoxville	Campaign Chairman	1997
Knoxville Zoo	Chairman	1995-1997

Qualifications:

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

Twenty years private business experience in East Tennessee; three years as Commissioner of Economic and Community Development for the State of Tennessee; twenty years experience in business and civic leadership in East Tennessee; existing relationships with current TVA board members; existing relationships with major TVA customers in Tennessee; existing relationships with Congressional delegation from Tennessee; lifelong resident of the TVA region; member, Friends of the Smokies; avid hiker, member, American Solar Energy Society.

Future employment relationships:

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

Yes

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

I would expect to return to my family business after completing my public service.

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

No

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

At this time, yes.

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

N/A

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

N/A

Financial Statement:

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

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

Holston Gases, Inc. Dividends, Amount less than $5,000 Annually; Various mutual funds (cf. Form SF-278 Schedule A)

2. Are any assets pledged?

Residence is pledged as security for a Home Equity Line of Credit.

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

No

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

Yes

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

No

Potential conflicts of interest:

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

No continuing interest will constitute conflicts. I will be divesting myself of the small part of Holston Gases which constitutes propane gas sales.

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

None that I am aware of.

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

Our family's company, Holston Gases, Inc., has done negligible business with various federal entities in East Tennessee during the company's existence. Holston Gases will cease doing any business with TVA if I am confirmed.

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

Divestiture of personal interest in small propane portion of Holston Gases' business; see attached proposal recommended and approved by various Ethics officials and Counsel.

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

Whatever negligible business might be currently in place between our family's company Holston Gases, Inc. and TVA will be terminated immediately upon confirmation; also see attachment from Question 4 from Ethics Officer.

Political affiliation

and activities:

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

Tennessee Republican Party; Thompson for Senate 1994; Thompson for Senate 1996; Frist for Senate 1994; Frist 2000; Warnp for Congress; Alexander for President, 1994 & 2000; Bush for President 2000; Guiliani for Senate; KOMPAC.

Published writings:

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

Volunteer Valley Annual Report 2000 "Bill Baxter's Thoughts on Tennessee's Past Year and Future"; Commercial Appeal 2/27/00 'Record Investment Finds Tennessee Ready"; First Tennessee Business Review, Winter 2000, "Investments, Jobs Set Records in 1999"; HER Business News, Jan. 1999, "State of Tennessee: Economic Development Outlook"; Nashville Business Journal, 8/98, "Record Growth Keeps State on the Right Path"; Memphis Business Journal, 9/98, "Cooperation is Key to Success for Economic Growth in State"; Johnson City Business, May-June 1998 Editorial; Business Nashville, 9/2000, "Successfully State: Tennessee Named State of the Year"; Business Nashville, "Dell-ivering Jobs: Dell and Tennessee Partners in Progress"; Business Nashville, 2/2000, 'Tech is the Future"; Business Nashville, 3/2000, "Capital Returns"; Business Nashville, 12/99, "Growing Diversity"; Business Nashville, 8/99, "Going Global"; Business Nashville, 10/99, "Making Destiny"; Business Nashville, 11/99, "Taxing Decisions"

Additional Matters:

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

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

Yes

3. Having completed this form, are there any additional questions which you believe the Committee should ask of future nominees?

No

AFFIDAVIT

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

5

RESPONSES OF WILLIAM W. BAXTER TO ADDITIONAL QUESTIONS FROM SENATOR JEFFORDS

Question 1. About 3 years ago, the Environmental Protection Agency issued administrative actions against several TVA power plants for violating the New Source Review requirements of the Clean Air Act. Apparently, TVA made significant modifications to these plants without getting the necessary air quality permits. Now, TVA is fighting these actions in court. Shouldn't TVA, a quasi-Federal agency, be a leader in complying with the law and adopting state-of-the-art pollution prevention and control technology, rather than wasting its resources fighting another Federal agency?

Response. It is my understanding that there is a legal disagreement between TVA and EPA concerning the types of repairs and maintenance work done to the TVA

plants which should or should not require air quality permits, and I'm sure reasonable people can disagree about a certain technical legal matters. However, I think it is important to note that through this very process of repair and maintenance, TVA has continuously made their fossil plants more efficient and cleaner burning. Additionally, TVA has invested over $1 billion in improved pollution control equipment over the years and just recently announced several hundred million additional dollars of investment for the same purpose.

I agree with you, Senator Jeffords, that TVA should be a leader in pollution control efforts, and it would be my intention, if confirmed by the Senate, to advocate this position on the board. The challenge at TVA, as well as with any power producer, is to properly balance the need for the production of ample and affordable electricity for the families and businesses in our service area while at the same time investing aggressively in pollution control technology.

I believe TVA should work cooperatively with the EPA on these matters. I agree with you that lawsuits between Federal agencies are a waste of resources, and every effort should be made between Federal entities to compromise and negotiate mutually beneficial agreements so that progress is made for those citizens affected.

Question 2. What will you do to ensure that TVA aggressively reduces air pollution and aims to achieve at least 1990 levels of carbon dioxide emissions?

Response. The first order of business at TVA is to ensure that it is being operated as a very efficient business so that financial resources are available to continue its investments in state-of-the-art air pollution control technology. Without such financial health, TVA will not have the resources necessary to invest in these very expensive but very worthwhile improvements in air pollution control. As to the setting of targets for levels of reduction of specific pollutants, I again would advocate TVA working cooperatively and regularly with the EPA to establish mutually agreed upon goals and monitor satisfactory progress in this very important area.

Question 3. What portion of TVA's generation base should come from renewable energy sources?

Response. Currently, if hydropower is included, TVA produces approximately 12 percent of its power from renewable sources, which also include solar, wind and biomass. This is an area in which I have particular interest, and it is my intention to become personally involved in TVA's efforts in increasing the generation base that comes from renewable energy sources. TVA has a very good record of continuously improving the generating capacity from its hydroelectric dams, and as technology becomes available to further increase this productivity, I would advocate implementing that technology in the TVA system. Further, TVA has now established the largest wind farm in the southeastern United States, and I look forward to learning more about the potential for growing this generation base into a feasible part of our future. TVA is also involved in demonstration projects in solar and biomass, and I will be personally involved in investigating the feasible technologies that are available today that could be put to use in the TVA system as soon as possible. Finally, I support TVA's Green Power Switch program, which allows families and companies to voluntarily accept a small surcharge on their monthly bill in order to purchase blocks of electricity generated from renewable sources. In fact, my business and my home have purchased such blocks of green energy.

RESPONSES OF WILLIAM W. BAXTER TO ADDITIONAL QUESTIONS FROM SENATOR BUNNING

Question 1. TVA announced plans in 1997 to cut its debt in half by 2007 and increased rates for its distributors specifically in order to reduce its debt. TVA has now acknowledged that it will not meet its debt reduction targets and is only on track to make a small dent in its overall debt. As part of the TVA board, do you plan to meet the original plan of cutting TVA's budget in half by 2007? If not, can you provide a justification for Kentucky's TVA customers paying higher rates to help TVA drastically decrease its debt when it appears that TVA has no plans to do so?

Response. It is my understanding that in 1997 TVA increased its rates for the first time in 10 years in order to more aggressively reduce its large debt. The original announced goal was to cut TVA's debt in half in 10 years. Since that announcement, significant additional capital investments have been required for pollution control equipment as well as added generating capacity to ensure ample power availability in our growing region. TVA's debt will be significantly reduced by the year 2007, but it will not be half of its 1997 level.

There is no question that TVA's large debt load is a major financial challenge for the agency, and if confirmed by the Senate, it would be my intention as a businessman to focus intently on maximizing the schedule of debt reduction for TVA. This

is critically important to the financial health of the agency which will enable it to continue investments in air pollution efforts and adding generating capacity where required for the continued economic growth of the region.

The business challenge facing TVA is to properly balance the multiple goals and responsibilities of the agency at the same time: power generating capacity, responsible pollution control, and aggressive debt reduction, all the while keeping rates as low as possible for TVA's customers. I would advocate TVA adopting a realistic but aggressive debt reduction schedule and communicating regularly with the Congress about TVA's progress in meeting these goals.

Question 2. TVA's Fiscal Year 2001 earnings are a record $6.9 billion and its projected earnings in Fiscal Year 2002 are to be over $7 billion. TVA charges higher electricity rates to its Kentucky customers compared to rates charged by other Kentucky utility companies. The recent downturn in the economy in Kentucky has made increased energy costs even more painful. Would you, as a member of the TVA Board, reduce Kentucky TVA customers' rates so that they compare to other Kentucky energy customer's rates given the record revenues that TVA has earned?

Response. TVA's gross revenues have increased as the economy of the TVA region has grown. Fortunately, our region has grown at a faster rate than the Nation over the last 10 years, and the attendant demand for electricity has grown along with it. TVA's rates should be based on its costs and a prudent return to provide for continued investment in the necessary infrastructure to produce and transmit power throughout the region.

The potential for deregulation and restructuring of the power production industry presents the possibility of the favorable impacts of competition. Through this process of deregulation and restructuring of the industry, a fair and equitable way for TVA's customers to have the option to purchase power from sources other than TVA should be one of the important results. Coming from the private sector, I believe that competition makes us all better, competition will make TVA better, and competition will give the customer the choices it deserves.

Question 3. TVA has admitted that it has a continued desire to build new generation facilities. Many of the new generation facilities may not even be needed and would likely increase TVA's huge debt threatening its financial viability and health. A significant portion of TVA's debt is linked to construction of power plants that currently are not running. Would you support allowing distributors to build new generation for their increased needs which would allow TVA to focus its financial resources on rate relief for its current customers and long term debt reduction?

Response. Based on the limited information I have available to me at this time, I certainly do not oppose the option of allowing distributors to build new generation if they so choose. This would be a business decision on their part requiring a large capital investment and a confidence in an ultimate return on that investment. Of course, TVA should not build new generating facilities that are not needed, but through close communication and collaboration with its customers, TVA has an obligation to make prudent investments in generating capacity that will be clearly needed as our region continues to grow economically.

[*Omission*] an annual and ongoing basis as part of good long-term planning. The key to success in making these important business decisions is accurate knowledge of your customers' needs. Additionally, TVA should study closely the private sector's research on future growth in demand for electric power. These investment decisions must be made in the context of the entire industry and not in isolation.

As a government entity, TVA is not subject to the Federal Energy Regulatory Commission (FERC) jurisdiction over its power sales like private utility companies. Therefore, its rates, charges, terms and conditions are not subject to FERC regulatory requirements. TVA's competitor electricity companies, which are subject to FERC, are at a disadvantage in trying to compete with TVA. Would you support putting TVA on a level playing field with private utility companies and placing TVA under FERC regulation?

It is my understanding that consensus language has been developed in the "TVA Title" which has been drafted after many months of negotiations with TVA customers and many other interested parties. This language is sponsored by Senators Frist and Thompson from Tennessee and Senator Cochran from Mississippi, and I believe Congressman Bryant from Tennessee has been instrumental in this effort as well. It is my understanding that there are important steps taken toward FERC jurisdiction over some aspects of TVA's operations although control of TVA rates is not one of them. Developing this consensus language among all the affected parties was a very difficult task and I would have strong confidence in that consensus language as we take our first steps into the deregulated environment.

I recognize that this is a very complex area, and I have much to learn about it, if confirmed by the Senate. If I am confirmed to the TVA board, I will dedicate myself to studying thoroughly this very important area, and I can assure you that my 20 years of private business experience will inform my values and my views on the results which deregulation and restructuring should achieve for the customer. I would intend to have regular, open and constructive dialog with the executives of privately owned utilities throughout the region to ensure a complete mutual understanding of where we need to come out at the end restructuring and the steps that need to be taken along the way. If TVA listens intently to its customers and learns from other power producers throughout the region, we will get the right result.

RESPONSES OF WILLIAM W. BAXTER TO ADDITIONAL QUESTIONS FROM SENATOR WYDEN

Question 1. Are you aware that the Federal Energy Regulatory Commission (FERC) has taken steps, in part through issuance of Order No. 2000, to encourage participation of transmission owning utilities, including non-FERC jurisdictional ones like TVA, to participate in regional transmission organizations (RTOs)?

Response. Yes. I have received a preliminary briefing from TVA on this subject and have done some general research in the financial press.

Question 2. Do you believe it would be good policy for TVA to participate in an RTO in the southeast formed according to FERC's RTO standards?

Response. My honest answer is I do not have enough information at this time to state an opinion on TVA's participation in an RTO in the southeastern United States. However, I do believe that as the deregulation and restructuring of the power production industry takes place, the transmission system will be equally as important as our regional and national generating capacity. Currently, our transmission system throughout the United States is not designed to "seamlessly" transmit power from region to region. There are technical challenges which will need to be met, and major capital investments to improve the transmission system will be necessary.

It is my view that TVA should participate in some form in the regional transmission of power in the southeast, whether this be an RTO or some other mutually agreed upon structure. It is my understanding that extensive discussions are already underway among the power producers as well as distributor customers in the southeast. The guiding principle for TVA as well as FERC should be what is best for the customer: the most efficient transmission system possible that will lend itself to the most affordable electric power rates possible.

One final general comment: it is my view that TVA's communications with other Federal agencies should improve dramatically. This would include FERC, the Department of Energy, EPA, and others. I have found in business that stronger efforts at communication usually show the way to better relations and to solutions that work for everyone.

STATEMENT OF KIMBERLY TERESE NELSON, NOMINATED TO BE ASSISTANT ADMINISTRATOR FOR ENVIRONMENTAL INFORMATION, ENVIRONMENTAL PROTECTION AGENCY

Good morning, Mr. Chairman and members of the committee. It is a privilege and a pleasure to appear before you as the nominee to be the Assistant Administrator for Environmental Information and Chief Information Officer for the United States Environmental Protection Agency (EPA). I am honored that President Bush has nominated me to serve with Administrator Whitman in this Administration. I am pleased to be joined today by my husband, Kevin Cadden, two daughters, Kelsey and Mackenzie, my father, George Nelson, and my aunt, Florence Bodziak.

As the former first Chief Information Officer for the Commonwealth of Pennsylvania's Department of Environmental Protection (DEP), I understand firsthand the critical role that environmental information plays in sound environmental decision-making. I also understand how rapid, sweeping, and profound information technology advancements are creating expectations for government to keep pace with the private sector.

The need for strong public administrators has never been more evident than during the past month, when our country experienced such devastating loss. The events since September 11 have crystallized the nation's understanding of its reliance on technology for basic operations, human communications, and comprehension of the disaster experienced. This reliance now causes all public administrators, and particularly those in the technology and information arena, to reexamine and strength-

en our programs, our security systems, and the quality of our information. I am both honored and challenged to contribute to our nation's preparedness in these areas.

I believe it is the obligation of all government officials to create and manage organizations that allow our citizens to access information and services with minimal bureaucratic barriers. The information that we provide must be of exceptional quality and supported with analytical tools which facilitate its use for assessing and managing risk, and for measuring our environmental improvements. The services that we provide must be fast and error free. Most important, these services must be convenient for the public, even if that means crossing traditional organizational lines.

Today, EPA and the States are working hard to provide consistently high quality environmental information. EPA's strong commitment to public access must always be balanced by the need to protect privacy and maintain the integrity and security of our information policies. The events of September 11 also underline that our commitment to public access carries the responsibility to review carefully our publicly available products to ensure that, while benefiting the public, they do not contribute to compromising sensitive or vulnerable resources or facilities.

We know that the environmental challenges of the 21st century cannot be solved by EPA alone—they will require us to partner and cooperate with many others. We must join with States, Tribes, local governments, businesses, and communities to design and disseminate user-focused information products that provide a clear understanding of environmental conditions and solutions.

If confirmed, I intend to promote the President's principles for government reform to make EPA more citizen-centered, results-oriented, and market-based. I will assist Administrator Whitman in this effort by helping to sharpen the focus of EPA's environmental information strategies, reduce burden on industries, promote intergovernmental cooperation, and apply best practices to achieve internal efficiencies.

I am fortunate that EPA has many important building blocks in place. I hope to use these solid efforts as a springboard to accomplish lasting change. And, by continuing to build partnerships between the Federal Government and those concerned with environmental protection, I believe we can achieve a goal that we all share B to leave the air cleaner, the water purer, and the land better protected than we found it.

I will work to lead the Agency to make technology investments that will provide long-term value for the Agency, investments that will be good for all EPA programs. However, I recognize that the application of technology is the easy part. Far more important is achieving transformation using technology as the enabler for meeting the needs of citizens and employees alike, and using information as a strategic resource for environmental decisions at all levels.

It is my vision that one day EPA staff, the Agency's partners, and the general public will be able to:

- easily access all relevant non-sensitive environmental information about regulated entities regardless of program or regulating agency;
- easily access all relevant non-sensitive environmental information about a physical location, even when that information is gathered by different government agencies;
- improve interaction with, and understanding of, the regulated community including changing the way information is reported;
- more effectively measure environmental conditions; and
- enhance understanding of the interrelationship between EPA activities, compliance behavior, pollution prevention, and environmental improvements.

Of course, achieving this vision will require extensive collaboration with my fellow Assistant Administrators, Federal agencies and departments, State and tribal partners, the regulated community, and others.

I believe these activities will contribute significantly toward burden reduction, improved data quality and security, more informed environmental decisionmaking, and greater flexibility for States to manage environmental programs. And we can do this while continuing to meet the public's demands for better environmental information in a more secure environment.

I am a strong believer in the commitment it takes to work in government service. My family has a long history of government service. My father retired from the Navy Department with 40 years of service. Earlier this year, my younger brother retired from the Air Force with 20 years of service, and my two older brothers served during the Vietnam conflict. After 28 years in State government, my husband is now Director of External Affairs at the Federal Energy Regulatory Commission.

I, too, have served in government—22 years with the Commonwealth of Pennsylvania. More than half of my career has been spent in a State environmental protection department. During that time I helped develop and implement a blueprint for integrating DEP's program-specific computer systems. I managed several Process Improvement Teams that significantly changed the department's permitting and compliance processes and made information about these activities available to the public in an award-winning system. Finally, I created the first Office of Information Technology, the first executive level CIO in the department.

I am now both ready and enthusiastic to join public service at the Federal level as the Assistant Administrator for Environmental Information and the Chief Information Officer for the U.S. Environmental Protection Agency. I am confident that I can bring the necessary vision, leadership, and experience to work with our partners to achieve those things I have addressed today.

Should I be confirmed by the Senate, I look forward to working with this committee, Members of Congress, Administrator Whitman, and the entire Administration to make the environment better for all Americans and to be responsive to the citizens we serve.

Thank you for the opportunity to appear before you today. I would be happy to answer any questions you may have.

UNITED STATES SENATE

COMMITTEE ON ENVIRONMENT
AND PUBLIC WORKS

ROOM 410 DIRKSEN BUILDING WASHINGTON, DC 20510

INFORMATION

REQUESTED OF PRESIDENTIAL NOMINEES

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

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

Name of Nominee: Kimberly Terese Nelson

Business Address: 1200 Pennsylvania Ave.
Suite 5000 AR
Washington, DC 20460

Business Phone: **(202)564-6665**

Home Address: 1602 Aerie Lane
McLean, VA 22101-4657

Home Phone: **() 506-9006**

UNITED STATES SENATE
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

Name: Nelson (Last) Kimberly (First) Terese (Middle)

Position to which nominated: Assistant Administrator - Office of Environmental Information - United States Environmental Protection Agency

Date of Nomination: 9/21/01

Date of birth: 15 - 07 - 56 (Day) (Month) (Year) **Place of birth:** Philadelphia, PA

Marital status: Married **Full name of spouse:** Kevin Francis Cadden

Name and ages of children:
Kelsey Terese Nelson Cadden - 11
Mackenzie Leigh Nelson Cadden - 9

Education:

Institution	Dates attended	Degrees received	Dates of degrees
Shippensburg University of PA	9/74 - 5/78	B.S. - Secondary Ed	1978
University of Pennsylvania	9/81 - 5/87	Master of Public Admin.	1987

Employment record:

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

Senate of Pennsylvania - Harrisburg, PA - Legislative Assistant - constituent inquiries and legislative analysis 9/78 -12/79

Pennsylvania Public Utility Commission - Harrisburg, PA - Executive Assistant to the Chairman - analyzed cases, responded to citizen inquiries 1/80 - 1/84

Sue Shanaman for Auditor General Campaign - Harrisburg, PA - Campaign Manager - general duties associated with managing a small campaign, scheduling 1/84 - 10/84

Employment record—continued

PA Department of Aging - Harrisburg, PA - Special Assistant to the Secretary - coordinated legislative and press activities, represented the Secretary at various meetings 1/85 - 8/87

PA Department of Environmental Resources (later called Department of Environmental Protection) - Harrisburg, PA - 8/87 - 9/01

Special Assistant to the Deputy Secretary for Administration - managed special projects

Special Assistant to the Deputy Secretary for Field Operations - coordinated water issues with central office programs, managed Process Improvement Projects

Special Assistant for Permitting to the Secretary - managed permitting related Process Improvement Projects, coordinated the standardization of permitting process

Director, Program Integration and Effectiveness Office - managed departmentwide, multi-media projects, developed data standards and recommended process improvements.

Chief Information Officer - first executive level CIO appointed within DEP; managed technical issues, data standards, systems development projects and quality programs.

Executive Deputy Secretary for Policy and Communications - second-in-command in the agency and managed communications and policy functions, coordinated and managed activities of the agency's various deputy secretaries.

Honors and awards:

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

Secretary's Award for Excellence - three time recipient

Secretary's Special Award for Excellence

Council of State Government's Innovations Award - 1999 (to DEP for project I managed)

Memberships:

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

Organization	Office held (if any)	Dates
Junior League of Harrisburg	Board Member	1986-87
United Way of Harrisburg	Allocations Panel	1988-89
Allied Arts Association	Allocations Panel	1989
Londonderry Private School	Board Member	1999-01

Qualifications:

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

I have 22 years of government experience including time in the Pennsylvania Senate, the Public Utility Commission and most recently, 14 years in the Pennsylvania Department of Environmental Protection. In 1987, I began my environmental career as a Special Assistant to the Deputy Secretary for Administration where my responsibilities included working on a team responsible for the development of the first blueprint for departmentwide information systems. This was the beginning of a career that focused almost entirely on re-invention – reinventing and standardizing permitting and compliance processes across many programs to better serve the public; reinventing the way in which the agency used data to manage its programs and measure success; and reinventing the delivery of useful information to the public and those we served.

During my years in DEP, I held progressively more responsible positions. Two years ago, I was named DEP's first Chief Information Officer and earlier this year, assumed the position of Executive Deputy Secretary when, David Hess, the incumbent was named DEP Secretary.

Clearly, there are many people with the technical expertise needed for a good CIO. However, in today's environment, a CIO must bring to the job more than hardware, software and network experience. A good CIO must have a vision for how the organization must evolve; a good CIO must build relationships and partnerships to make that vision a reality; and a good CIO must energize the staff to start and maintain the necessary momentum required for constant change.

I believe I have demonstrated these traits in my career. The Pennsylvania Department of Environmental Protection is widely regarded as a leader in the nation for the ways it uses the Internet, information systems and technology to communicate both internally and externally. I believe I played an important role in many of these areas. My record of defining a vision, creating the teams to design and build the necessary products and ultimately delivering on the creation of the vision, combined with fourteen years of environmental experience, make me well qualified for this position.

employment relationships:

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

I have already severed all connections with previous employer.

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

I do not have any plans at this time to resume employment with the Commonwealth of Pennsylvania.

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

No

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

Not applicable

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

I know of no limitations on my ability to serve in the future.

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

Financial Statement:

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

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

Assets and Income - Pennsylvania Retirement System Defined Benefit Plan- I do not expect

any payments as I have vested with the state rather than retiring.

Agreements or Arrangements - Pennsylvania Deferred Compensation Plan - approximately $25,000 which I plan to roll over into another plan

2. Are any assets pledged?

No

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

No

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

Yes

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

Once. It was for tax year 1984. Minor adjustment was made since I was self-employed that year.

Potential conflicts of interest:

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

None, other than those listed above with the Commonwealth of Pennsylvania.

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

None

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

For the last ten years I was employed by the Commonwealth of Pennsylvania, Department of Environmental Protection.

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

I would work with the appropriate Ethics Officers to address and resolve andy and all potential conflicts of interest.

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

See attached letter

Political affiliation and activities:

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

None

Published writings:

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

I have not published a book, article or report. I have given many speeches and presentations over the last 10 years. Generally, these were related to work being performed at the DER/DEP related to reengineering projects, process improvement projects, data management and integration projects, electronic commerce and web services. I would be happy to provide sample copies of Power point Presentations, but I do not have a complete listing of these. Some of the higher profile presentations include:
ESRI User's Conference - San Diego, CA - June 2000
Government On-Line Conference - Singapore - August 1998

Additional Matters:

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

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

Yes

3. Having completed this form, are there any additional questions which you believe the Committee should ask of future nominees?

I don't think additional questions are necessary. However, in keeping with the Government Paperwork Elimination Act, the committee may want to consider eliminating this form and asking nominees to submit an updated copy of SF 278.

AFFIDAVIT

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

Subscribed and sworn before me this 25th day of, 2001.

_____
Notary Public

BERNARD G. FORD
NOTARY PUBLIC DISTRICT OF COLUMBIA
My Commission Expires 11-14-2005

RESPONSES OF KIMBERLY TERESE NELSON TO ADDITIONAL QUESTIONS FROM SENATOR SMITH

Ms. Nelson, I have submitted some questions regarding the way the OEI administers the Toxic Release Inventory (TRI) program. I would appreciate if you would give this issue your personal attention because the way the program is currently being run it has created confusion among the entities responsible for reporting chemical releases and the public at large who are greatly mislead by the way the information is being reported.

The Toxic Release Inventory (TRI) data base and public information program has been in place for some time. Recent addition of the waste services industry to the TRI system appears to invite confusion about the entities responsible for reported chemical releases to the environment and where such releases actually occur.

For example, a company shipping waste containing TRI chemicals to an offsite RCRA Subtitle C TSD facility must report this "transfer" to a permitted facility as an "offsite release." This transferred amount is then added to the generator's actual releases to air, land, and water to determine the company's "total releases." In reality, however, the transferred chemicals were managed at a permitted RCRA facility distant from the community (or even State) which must itself report the TRI chemicals as a release to the environment where they are located. EPA later corrects for this double counting in determining overall totals. This raises a number of important questions:

Question 1. Is this an accurate summary of the current TRI reporting requirement for such waste transfers?

Response. Because EPCRA requires facilities to report on all releases (the EPCRA definition of release includes disposal), including those that are sent to-offsite RCRA subtitle C facilities for disposal, the reporting requirement does not involve double counting. Only when, When EPA aggregates the TRI data to determine total releases, however, does the issue of double counting becomes relevant.

Question 2. Is this approach required by statute or regulation? If so, please provide specific citations. If a matter of agency policy, please confirm.

Response. EPCRA Section 313 (g)(1)(C)(iv) requires reporting on the annual quantity of the toxic chemical entering each environmental medium. P. 298 of the conference report states "reporting on releases to each environmental medium under subsection (g)(1)(C)(iv) of the conference substitute shall include, at a minimum, releases to the air, water (surface water and groundwater), and land (surface and subsurface), and waste treatment and storage facilities." (U.S. Congress, House of Representatives. "Conference Report No. 962," 99th Cong. 2d Session (1986),. EPA believes that the The "quantity of the toxic chemical entering each environmental medium" includes all releases. and EPCRA section 329(8) defines release to include disposal.

Question 3. Why is a company which transfers TRI chemicals contained in waste shipped to a permitted RCRA Subtitle C facility for final disposition (which may include disposal or recycling) required to report this transfer as a release to the environment?

Response. As discussed previously, EPA believes that the statute requires the reporting of disposal as a release. Off-site transfers to another facility for recycling are not reported as releases to the environment, but rather as offsite transfers for recycling.

Question 4. Isn't the current reporting requirement likely to confuse and misinform the local community and other members of the public about releases to the environment in the geographic area where the transfer originated?

Response. The reporting requirement should not confuse or misinform the public since the data regarding the specific types of releases is made readily available. In the data EPA makes available to the public, the Agency clearly distinguishes between onsite and offsite releases.

Question 5. Wouldn't it be more informative to the public to require the company transferring TRI chemicals in the manner described above to report them as a "transfer" to a permitted offsite management facility (e.g.; a RCRA treatment, storage and disposal facility) rather than as releases to the environment?

Response. Facilities do report such transfers as transfers to offsite management facilities. Section 6 of the TRI Form R is titled "Transfers of the Toxic Chemical in Wastes to Off-Site Locations." On the form, among other things, the facility designates the type of waste management activity (treatment, disposal, recycling, or energy recovery) being performed at the offsite location.

Question 6. Wouldn't the alternative approach suggested under Question 5. above improve TRI program administration efficiency by eliminating the need to later correct for double counting by the company and the offsite facility?

Response. Not all offsite facilities receiving waste will meet the TRI reporting criteria and need to file reporting forms, therefore, if EPA did not require transferring facilities to report transfers for disposal as releases these releases could go unreported.

Question 7. As Assistant Administrator, will you support an improved approach that improves program efficiency and provides more accurate and informative public reporting?

Response. The Toxics Release Inventory has been, and continues to be a valuable resource for communities, citizen groups, academics, investment companies, and industry. The program has been very successful to date. I will continue to look for opportunities to streamline reporting and otherwise improve the usefulness of the information.

Question 8. EPA has described the Cross-Media Electronic Reporting and Recordkeeping Rule (CROMERRR) as voluntary, and thus having little cost impact on regulated facilities. Yet I am hearing that industry regards the electronic recordkeeping provisions as essentially mandatory, in that they would apply to almost any use of computers to meet EPA recordkeeping requirements. Accordingly, the costs involved would seem to be huge on the order of Y2K. Would you be willing to consider withdrawing the electronic recordkeeping provisions from the rest of CROMERRR for further analysis and discussion with interested parties?

Response. EPA's current regulations do not require electronic recordkeeping. CROMERRR would not require companies to switch from paper recordkeeping to electronic recordkeeping; accordingly, electronic recordkeeping would be voluntary under CROMERRR. In response to EPA's proposal of CROMERRR, some members of the regulated community have asserted that, for them, compliance with the recordkeeping criteria in CROMERRR would not, as a practical matter, be entirely "voluntary" because they already maintain electronic records.

In light of the comments provided in response to the proposal, EPA has decided to conduct further analysis of the impact of the recordkeeping provisions of CROMERRR. This analysis will, as a matter of practical necessity, entail further discussions with interested parties. Of course, until the comment period closes on November 29 and EPA has had an opportunity to evaluate all comments and to conduct such additional analysis as may be required, it would be premature to commit to any particular procedural course of action or substantive revision of the rule. By the same token, it would also be premature to rule out procedural steps, like withdrawing the recordkeeping provisions of the rule, or substantive changes to the recordkeeping criteria themselves. In considering comments received on the proposed rule, EPA will consider all options and alternatives, including limiting the scope of the recordkeeping provisions, adjusting the provisions themselves, identifying classes of cases that can be treated less stringently, and providing for the

"grandfathering" of existing company systems. EPA hopes to go forward with the recordkeeping component of CROMERRR, but will do so only if the agency can find an approach that does not impose unwarranted costs on the regulated community.

Question 9. I understand that today many companies use computers to help meet EPA recordkeeping requirements. Are you aware of any significant problems that EPA or State enforcement officials have actually encountered with accessing or verifying these electronic records? I would appreciate it if you would look into this matter and report back to the committee.

Response. State and Federal enforcement communities have expressed concern about their ability to use electronic records as evidence for compliance and enforcement purposes. There is little case law available in this area, and EPA has been cautious in dealing with this issue. I understand that the EPA Office of Environmental Information recently asked the EPA Office of Enforcement and Compliance Assistance to provide additional information on problems encountered when using electronic records. When that information is available, if confirmed, I will be happy to provide it to the committee.

RESPONSES OF KIMBERLY TERESE NELSON TO ADDITIONAL QUESTIONS FROM SENATOR BOND

There is concern in the scientific community over the appropriateness of applying EPA's persistent, bioaccumulative, and toxicity (PBT) methodology to metals. Scientific experts, including EPA scientists, discussed the problems of applying the PBT methodology to metals at an EPA co-sponsored "Experts Workshop" in January 2000. In May 2000, the EPA Science Advisory Board used an Advisory Opinion on risks surrounding smelters to take the opportunity to state that EPA's proposals to classify metals as PBTs were problematic because the methodology did not accurately describe metals' characteristics in the environment.

In July 2000, the House Science Committee, in a bipartisan letter signed by the Majority and Ranking members of the full committee and relevant subcommittee, noted the scientific controversy. The committee strongly urged EPA to seek independent peer review and refer the question of the scientific appropriateness of applying the PBT criteria to metals to the SAB before deciding whether to include metals in any of the Agency's PBT programs or lists.

In the fiscal year 2001 VA/HUD Conference Report, I proposed, and the conferees and Congress accepted, language urging EPA to submit the question of PBT and metals to independent peer review. Specifically, we urged EPA to seek independent peer review and refer to the SAB the question of the scientific appropriateness of applying the PBT criteria and methodology to metals before any application of the PBT criteria and methodology to metals.

EPA subsequently disregarded these congressional directives by finalizing increased reporting regulations based upon application of the PBT methodology to metals without ensuring the scientific validity of the action by submitting the issue to independent peer review. In its January 2001 Federal Register notice, EPA committed to seeking external peer review of the scientific appropriateness of applying the Agency's PBT criteria to metals generally and to the specific issue of whether lead and lead compounds should be considered bioaccumulative or highly bioaccumulative. EPA stated it would send this issue for review to its SAB in June 2001.

However, in its September response to questions this committee sent to EPA in June of this year, EPA appears to have changed its position. Instead of addressing this related set of scientific questions as a single, cohesive matter, the Agency now seems intent on dividing the promised inquiry into two separate reviews, the narrower part of which will be sent to the SAB this fall, with the broader inquiry on PBT-metals generally to be deferred to some unspecified later time, even though the answer to the broader question may obviate or inform consideration of the narrower question. There are also indications the Agency now plans to downgrade the metals-PBT issue to a "consultation" rather than a full review.

Questions. If confirmed, will you support any EPA actions which disregard my VA/HUD language or Congress' bipartisan direction to submit the question of the appropriateness of applying the PBT methodology to metals for independent peer review by the SAB?

The Agency is still trying to decide whether to submit the issues to the SAB as a single package addressing both the broader PBT-metals question and the narrower bioaccumulative/highly bioaccumulative issue. The Office of Environmental Information is playing a key, some would say domineering, role in this process. If confirmed, will you take steps to ensure that the full set of issues in the broader

review—consistent with my VA/HUD language and Congress' bipartisan direction—is referred to the SAB together with the narrower issue relating to bioaccumulation?

Why is the Agency considering asking the SAB to undertake two separate reviews instead of a single, comprehensive review? Are the Agency's deliberations on this issue based on policy or scientific considerations? If they are based on policy considerations, specifically what are they? If they are based on scientific considerations, specifically what are they?

Has the Agency consulted with the SAB about whether it makes sense to bifurcate the review with the narrow, subsidiary question being considered before the broader, more fundamental question? If not, why not? If so, what position has the SAB taken on bifurcating the review?

If confirmed, would you take steps to ensure that the referral of this issue to the SAB is expedited?

If confirmed, would you support any lesser action by EPA, such as an SAB consultation, which would fail to meet EPA's Independent Peer Review Guidelines?

If confirmed, what steps will you take to ensure free and open scientific debate and discussion (1) among EPA's various program Offices with an interest in this subject (including the Office of Environmental Information), and (2) between EPA and outside groups with expertise and interest in this matter?

Response. EPA is currently considering how to submit the PBT issues both the broader PBT metals question and the narrower bioaccumulation question to the Science Advisory Board, and has not yet made a final decision. Regarding peer review in general, I recognize the importance of conducting independent peer review of key science policy issues. I plan to assure that this type of peer review be undertaken on policy issues my office addresses.

STATEMENT OF STEVEN A. WILLIAMS, NOMINATED TO BE DIRECTOR, U.S. FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

Mr. Chairman and members of the committee, it is a great honor for me to be nominated by President Bush as the Director of the Fish and Wildlife Service. I appreciate the confidence expressed by Secretary Gale Norton in my qualifications and ability to lead the agency. It is also an honor to be present here today and to have this committee consider my qualifications to lead our nation's fish and wildlife conservation agency. Should I be confirmed by the Senate, I assure you that I will eagerly assume the awesome responsibility of preserving and promoting our nation's fish and wildlife conservation heritage.

I sit before you today as the nominee and as the Secretary of the Kansas Department of Wildlife and Parks. I have served as director of this agency for the last six and a half years. My colleagues in the other 49 States have praised President Bush's decision to nominate a State director to this important Federal position. As a State fish and wildlife agency director, I believe that I bring certain qualifications, experience, and perspective to this position that will benefit constituents in each of your States.

During the 44 years of my life, I have had opportunities to travel and live throughout much of the United States. I was born in Bellows Falls, Vermont while my family farmed in Westminster for markets in Boston and small towns in southern Vermont. While growing up in rural areas of the northeast, I enjoyed fishing, hiking, and exploring fields and forests. I developed a deep appreciation for conservation as practiced by my friends and neighbors.

I received a B.S. in Environmental Resource Management from The Pennsylvania State University, an M.S. in Biology from the University of North Dakota, and a Ph.D. in Forest Resources also from Penn State. While going to college, I worked seven summers in Jackson Hole, Wyoming within Grand Teton National Park. During this time, college provided knowledge and honed my analytical skills but summers fed my passion for working with the nation's people and their natural resources.

I have spent the past 16 years working in State fish and wildlife agencies in three States. I started as a wildlife biologist and have been promoted to administrative positions of ever-increasing responsibility. I have managed State programs from a centralized location relying on widely distributed geographic offices and personnel.

I believe that communicating and cooperating with individuals and organizations is the only effective means to accomplishing positive fish and wildlife management. This approach includes the consideration of all interested parties, partners, and technical expertise. I believe that common sense approaches to difficult resource issues are in the best interest of all involved.

Under my leadership, the Kansas Department of Wildlife and Parks has initiated new partnerships with State agencies, agricultural organizations, conservation organizations, and private individuals. One of these partnerships has opened more than 830,000 acres of private land for public hunting. This program is a voluntary, incentive-based program that has increased recreational opportunity, improved local economies, and provided private landowners with income, all financed with revenue from Kansas hunters. In just 6 years, this program has grown from 10,000 acres to more than 830,000 acres. This and many other examples of private-public partnerships are being practiced by State and Federal agencies across the country. I hope to expand on such opportunities if I am confirmed in this position.

The U.S. Fish and Wildlife Service is facing challenging times ahead. Lawsuits concerning the listing of threatened and endangered species and critical habitat designation has consumed much of the time and financial resources of the agency. Fish hatcheries and refuges require considerable attention and investment to maintain existing infrastructure. Law enforcement officers are stretched thin as they attempt to deal with illegal trade and importation of wildlife. Ecological Services' offices face mounting project reviews and additional demands on their time. The research component of the Service has been diminished and managers are forced to make decisions, sometimes without desired information. Relationships between the Service and States, sportsmen and women, the fishing and hunting industry, and private citizens are strained.

To face these challenges, the Service is staffed by dedicated and talented people with a deep commitment to fish and wildlife conservation. They endeavor each day to meet the demands and issues confronting them in the best interest of the resources and the nation. The nation is better off because of the work of Service employees.

If confirmed as Director, I will work tirelessly to improve relationships, forge new partnerships, and solve issues confronting the agency. I have experienced success by working cooperatively with disparate interest groups, by challenging existing assumptions, by communicating a vision, and by encouraging novel approaches to solve problems.

The mission of the U.S. Fish and Wildlife Service has expanded dramatically over the past few decades. However, two things remain constant, sportsmen and women of the country have been the primary financiers of fish and wildlife conservation. I would like to take steps to shore up what was once a powerful relationship between the Service and our nation's hunters and anglers. Second, private landowners provide habitat for the majority of fish and wildlife resources. I respect these landowner's rights and will work cooperatively with them in their interest and in the interest of wildlife. I will strive to strike a balance between the important issues of endangered species protection and the issues associated with preserving and promoting fishing and hunting in this country.

As America becomes more urbanized and our citizens become generations removed from the land, it is important to maintain a collective connection to the natural world. Hunters, anglers, trappers, and wildlife observers maintain that connection. The Service should partner with State agencies, private organizations, and individuals to promote wildlife-associated activities for our citizens.

The list of issues confronting the new Director of the Fish and Wildlife Service is considerable; however, with the support of this Administration, Congress, States, organizations, and individuals, the Service will rise to the challenge and improve our nation's fish and wildlife resources. Americans care deeply about fish and wildlife resources. If confirmed as Director, I will approach the responsibilities of that position with a passion to deliver programs, opportunities, and a vision for the Service that includes protection and conservation of our resources for the American public's use and enjoyment.

I pledge to work cooperatively, collaboratively, and through communication with all members of the U.S. Congress to assure that we meet the needs and desires of the American public and its fish and wildlife resources. We have an impressive conservation heritage in this country. We must continue the progress made by previous generations to assure that future generations share in the wonderful blessings that we all enjoy.

Thank you Mr. Chairman and members of the committee for considering my qualifications for this position.

UNITED STATES SENATE

COMMITTEE ON ENVIRONMENT
AND PUBLIC WORKS

ROOM 410 DIRKSEN BUILDING WASHINGTON, DC 20510

INFORMATION

REQUESTED OF PRESIDENTIAL NOMINEES

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

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

Name of Nominee: Steven Alan Williams

Business Address: Kansas Department of Wildlife and Parks

900 SW Jackson, Topeka, KS 66612

Business Phone: (785) 296-2281

Home Address: 8097 Butler Road

Meriden, KS 66512

Home Phone: (785) 484-2101

Home Phone: ( ) _____

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

Name: Williams, Steven Alan
(Last) (First) (Middle)

Position to which nominated: Director, United States Fish and Wildlife Service

Date of Nomination: September 25, 2001

Date of birth: 4/29/57 (Day) (Month) (Year) **Place of birth:** Bellows Falls, VT

Marital status: Married (22 yrs.) **Full name of spouse:** Beth Grim Williams

Name and ages of children: Matthew Steven Williams (19 yrs.)
Heidi Jane Williams (17 yrs.)

Education:

Institution	Dates attended	Degrees received	Dates of degrees
Pennsylvania State University	9/75-5/79	B.S.	5/79
University of North Dakota	9/79-5/81	M.S.	8/81
Pennsylvania State University	9/81-8/85	Ph.D.	8/86

Employment record:

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

Wildlife Biologist, Massachusetts Division of Fisheries and Wildlife, Westboro, MA

2/85-6/89 - statewide, White-tailed Deer Project Leader

Assistant Director for Wildlife, MA Division of Fisheries and Wildlife, Westboro, MA

6/89-2/92 - administered statewide, wildlife research and management programs

Employment record—continued

Deputy Executive Director, Pennsylvania Game Commission, Harrisburg, PA

2/92-1/95 - administered statewide, wildlife research and management programs

(see attached)

Staff, International Association of Fish and Wildlife Agencies, Washington, DC

4/95 - development of public outreach materials

Secretary, Kansas Department of Wildlife and Parks, Topeka, KS

5/95-present - administer fish, wildlife, boat, and state park programs

Honors and awards:

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

Roger Latham Scholarship, Pennsylvania State University (1985)

Phi Kappa Phi Honorary Fraternity (1985)

Sigma Xi Honorary Fraternity (1981)

Memberships:

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

Organization	Office held (if any)	Dates
Kansas Wildscape Foundation	Board Member	5/95-present
Kansas Water Authority	Ex-officio Member	5/95-present
Intl. Asso. of Fish and Wildlife		
Agencies	Executive Committee	9/97-present

Qualifications:

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

I have a B.S., M.S. and Ph.D. with degrees and course work focused on wildlife management. I have 16 years of professional experience in positions of ever-expanding responsibility in three states. I have managed fish and wildlife research and management programs on statewide basis involving de-centralized offices and employees. As a state employee and administrator, I have had extensive interaction with the U.S. Fish and Wildlife Service. As a member of the Executive Committee of the International Association of Fish and Wildlife Agencies, I have been exposed to and involved with a variety of national resource issues. I have a deep and abiding dedication and commitment to our nation, its natural resources, and our hunting and fishing heritage.

Future employment relationships:

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

I intend to sever all connections.

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

I have no plans to resume any connection with current employers, etc.

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

No.

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

Yes.

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

No.

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

N/A

Financial Statement:

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

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

I do not anticipate any receipts during my tenure. Current mutual funds are being held for retirement. Our tenants are moving in September 2001.

2. Are any assets pledged?

No.

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

(see attached)

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

Yes.

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

No.

Potential conflicts of interest:

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

None.

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

None.

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

None.

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

If, in the future, I am confronted by a situation that may create an actual or apparent conflict of interest, I will seek the advice and guidance of my servicing ethics counselor before proceeding.

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

I will contact my servicing ethics counselor for advice and guidance in connection with any ethics situation or issue before me. Attached is a copy of the analysis letter issued by the Department of the Interior's Designated Agency Ethics Official to the Director, U.S. Office of Government Ethics with regard to my reported financial interests

Political affiliation and activities:

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

None.

Published writings:

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

(see attached)

Steven A. Williams
SSN: 182-44-4706

Additional information regarding my termination from Pennsylvania Game Commission (PGC) -

I was hired as the PGC Deputy Executive Director for Administration in February 1992. My responsibilities included administering the six bureaus of the agency. An immediate subordinate, the Director of the Bureau of Administration, was an older man who made no secret of the fact that he was upset by being passed over for promotion for a second time when the PGC hired me rather than him. My first day on the job, I found a pile of dog feces at the door of my new office. Shortly after this incident, the Director of the Bureau of Administration confronted me about his views on why he should have been selected rather than me.

Sometime in February 1993, the Personnel Director, who worked for the aforementioned Director of the Bureau of Administration, informed me that new employees were not eligible for annual salary increases for a period of seven years. I commented that that seemed to be a strange practice for a state agency. He asked me if I wanted him to look into the issue and see if there was a way to be approved for a salary increase. I told him that seemed appropriate. The Personnel Director, the Director of the Bureau of Administration, and the Deputy Executive Director for Operations told me that it was routine to request salary increases through the Office of Administration. Collectively, these three individuals had more than 75 years of experience with the Pennsylvania administrative system. I trusted their judgment. I was and am aware that requests are often submitted to administrative agencies for review and approval or disapproval. I did not sign any request or authorization form to direct the Personnel Director to process such a request. A few weeks later, I received a paycheck with an additional amount of $55.50. At that time, I assumed that the Office of Administration approved the salary increase request submitted by the Personnel Director and presumably approved by his supervisor, the Director of the Bureau of Administration.

Shortly after receiving the salary increase, the Office of Administration informed me that I was not eligible for the increase and would have to return the overpayment to the state. I promptly sent a check for the full amount to the Office of Administration. When I questioned the Personnel Director, he told me that he had instructed a clerk to submit a change to personnel records through the computer for myself and another employee under his supervision. This change apparently affected the starting dates of employment. Although the action was inappropriate, neither the Office of Administration, the Executive Director, nor the Director of the Bureau of Administration took any disciplinary action towards anyone involved in the situation. At that time (spring of 1993), I considered the issue closed.

In July 1994, the aforementioned Director of the Bureau of Administration retired from the PGC. After his retirement, he wrote a letter to the Commission (an eight member citizen board) making various allegations about the Executive Director, myself, and the Personnel Director (and perhaps others). Although I requested a copy of the letter, the Commission denied my request. To this day, I do not know exactly what allegations were made. However, the Commission requested an investigation of the allegations contained in the letter. I willingly cooperated with

the Inspector General's Office and the Attorney General's office in their investigations.

Without publicly commenting on their rationale, the Commission terminated the Executive Director on or about October 1994. This termination was probably based as much on differing wildlife management philosophies as it was on any information in the disgruntled retiree's allegations. At a January 1995 Commission executive session, from which I was denied access, the Commission directed the new Executive Director to ask for my resignation. That evening, I received a call at home from the new Executive Director (who was the Deputy Executive Director for Operations in 1993) asking for my resignation. I responded that I did not do, nor would I admit doing, anything that would prompt my resignation. I also stated that I did not receive any due process in the proceedings, I was not presented with allegations nor was I allowed to respond to any allegations. The Executive Director stated that he would have to terminate me. He did so during that telephone call.

I was not provided any opportunity to appeal this decision. I was employed as an unclassified employee, serving at the will of the Commission and Executive Director. I discussed options with an attorney in Harrisburg, PA and he told me that I had no legal or administrative recourse. Further, I had no personal desire to return to employment with the PGC. I turned my efforts toward looking for new employment.

In May 1995, I started my current position as Secretary of the Kansas Department of Wildlife and Parks. As part of the background investigation required for serving on Governor Bill Graves' cabinet, I discussed this incident with the search committee, the Governor, and the Kansas Bureau of Investigation. During the summer of 1995, the Pennsylvania Attorney General's (AG) Office was investigating the situation focusing on the actions of the PGC Personnel Director. I was asked to interview with investigators from the AG's Office. I willingly met with them in July or August of 1995 and provided honest answers to all their questions. I was never presented with allegations nor charged with any violations by the AG's Office. I have not been contacted by the Pennsylvania AG's Office since that time.

In a letter dated January 25, 1996 (see attached), the PGC Executive Director informed Governor Graves that I was exonerated from any wrongdoing. This was based on information received by the PGC Executive Director from the Pennsylvania's AG's Office.

Additional Matters:

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

N/A

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

Yes

3. Having completed this form, are there any additional questions which you believe the Committee should ask of future nominees?

No

AFFIDAVIT

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

Subscribed and sworn before me this 26th day of September, 2001.

Mason Tsai

Notary Public

Mason Tsai
Notary Public District of Columbia
My Commission Expires April 30, 2005

RESPONSES OF STEVEN A. WILLIAMS TO ADDITIONAL QUESTIONS FROM SENATOR SMITH

Question 1. Mr. Williams, in June, I introduced S. 990, the American Wildlife Enhancement Act, which encourages conservation efforts by promoting local control and State partnerships through flexible, incentive driven conservation programs and increased partnerships with local land owners. Two of the titles would provide money to the States to protect wildlife and areas that they determine to be in need of protection. What is your position on programs such as this? As Director of the

Fish and Wildlife Service, would you support programs that give the States the Flexibility to fund the conservation priorities they have identified?

Response. While I have not yet had an opportunity to become familiar with the provisions of your bill S. 990, I am a strong supporter of the approaches you describe, particularly ensuring that States can exercise flexibility to pursue their conservation priorities. If confirmed, I will look forward to working with you on these issues.

Question 2. The other title of S. 990 would provide money to small, private landowners who would like to enter into species recovery agreements to protect endangered and threatened species on their land. Given that the majority of listed species occur on private lands, I feel that we must always be aware of the rights of private property owners and work with them in a collaborative process to protect listed species. If confirmed, how will you attempt to balance the rights of property owners and the protection of endangered and threatened species?

Response. It is my understanding that the Administration requested and received funding in the Interior Appropriation bill for a new program to provide incentives to landowners for protection of endangered species on their lands. I strongly support this approach to conservation.

It is also my understanding that the Administration is committed to administering the Endangered Species Act so that takings of private property do not occur. If confirmed, I will do all that I can to ensure that the program continues to operate in this fashion.

RESPONSES OF STEVEN A. WILLIAMS TO ADDITIONAL QUESTIONS FROM SENATOR CHAFEE

Question 1. Due to high property values and small total acreages available for protection, many areas in the Northeast are under severe threat as development encroaches on the region's last remaining open spaces. In Rhode Island, coastal properties continue to be lost to development at a great pace, including valuable wildlife areas in close proximity to the State's five National Wildlife Refuges. Over the past 2 years, I have worked to secure Land and Water Conservation Fund earmarks to ensure that the FWS has the necessary resources to purchase expensive coastal habitats. As Director, how will you ensure strong Agency support for critical Fish and Wildlife Service activities in Rhode Island and the Northeastern region?

Response. As you know, I am currently most familiar with Fish and Wildlife Service activities in Kansas. However, I have also worked in State wildlife agencies in Massachusetts and Pennsylvania, and have lived in Vermont and other New England States. If confirmed, I will make it a high priority to become fully conversant with the Service's activities throughout the Nation, and I look forward to renewing my acquaintance with the people and issues in the Northeastern States.

Question 2. Further land acquisition by the Fish and Wildlife Service in Rhode Island depends upon the completion of a Land Protection Plan for the Rhode Island Complex. In particular, a 250-acre project contiguous to the Ninigret NWR is being jeopardized due to the delay in getting this Plan approved. As Director, will you see that the Land Protection Plan for Rhode Island is approved as expeditiously as possible?

Response. I am not familiar with the status of this or other Land Protection Plans. If confirmed, I will look into this and report back to you at an early date.

Question 3. During our meeting on October 16, you referred to the importance of partnerships in meeting the Agency's mission of protecting natural resources and animal species. Please elaborate on how you envision partnerships strengthening Service activities in the Northeastern region and across the country.

Response. I consider the development of partnerships and cooperative efforts the most effective approach to conserving our natural resources. The cooperation and participation of Federal, State and local agencies, organizations and individual citizens generally develops and effectively implements far more innovative and cost-effective solutions to natural resource problems than uniform direction from Washington. While in Kansas, I initiated a number of new partnership activities between conservation and agricultural interests generally, and between hunters, anglers and farmers and ranchers specifically. If confirmed I will place a high priority on bringing that approach to the activities of the Service.

RESPONSES OF STEVEN A. WILLIAMS TO ADDITIONAL QUESTIONS FROM SENATOR BAUCUS

Question 1. Mr. Williams, I would just like to secure your commitment to come out to Montana if you are confirmed as Director of the U.S. Fish and Wildlife Service. I know you will have many significant challenges to deal with as Director, but Montana is also facing significant challenges when it comes to how the Service is funded, and how those funds are distributed among Regions. I know I've said this many times in this committee, but the Service in Montana is understaffed and overworked. It would be very helpful, I think, if you could see for yourself the conditions under which the Montana staff are working, and the effect it has on the Service's ability to fulfill its mission in Montana. Will you come to Montana, Mr. Williams?

Response. If confirmed, I will travel to Montana at an early date, and will consult with you prior to the visit.

Question 2. Mr. Williams, do you think that the Fish and Wildlife Service is implementing the Endangered Species Act in an effective manner? If not, what changes would you make in how the Service does its job? How would those changes further the purpose of the Endangered Species Act?

Response. I have not yet had an opportunity to be fully briefed on how the Service administers the Endangered Species Act, and therefore have no specific plans or proposals for any changes at this time. However, it appears that the Service has for several years been moving toward a cooperative and (where possible) incentive-based approach to the conservation and recovery of listed species, and for promoting the conservation of at-risk species so that their listing is not necessary. I understand that the Administration has proposed new programs, funded in the Interior Appropriation bill, which further advance this approach. I am a strong advocate of proceeding in this fashion, while addressing the specific legal requirements for the protection of listed species, and consider this by far the most effective way to recover listed species and to avoid the need to list others.

Question 3. Do you have any thoughts on how the Service can do a better job of partnering with private landowners to preserve and protect endangered and threatened species? Along those same lines, what would you do to combat the negative image many associate with the Endangered Species Act and its effect on private property?

Response. In addition to the approach indicated in my response to your previous question, it seems clear to me that there is a great deal of misunderstanding about the ESA, and particularly its effect on landowners. While I have not had an opportunity to become familiar with how the Service currently addresses this issue, I am sure there is room for improvement both in how the agency cooperates directly with property owners and in how it explains its activities and requirements to the public, including landowners. If confirmed, I will make addressing this a high priority.

RESPONSES OF STEVEN A. WILLIAMS TO ADDITIONAL QUESTIONS FROM SENATOR BOXER

ENDANGERED SPECIES

Question 1. The citizen suit provision of the Endangered Species Act (ESA) has been used by citizens to ensure that the U.S. Fish and Wildlife Service (FWS) fulfills its mandate to prevent species extinction and recover listed species. For example, 92 percent of all the California listings in the past 10 years were initiated by citizen petitions. In several ways, this Administration has expressed hostility toward citizen participation in the ESA process.

Question 1a. Do you agree that citizens have a valid role to play in the petitioning and enforcement provisions of the Endangered Species Act (ESA)?

Response. Yes, I believe citizen involvement is a key element in making the ESA work.

Question 1b. Do you support the Administration's failed effort to substantially restrict the ability of citizens to secure the listing of imperiled species under the ESA?

Response. While I am not familiar in detail with this proposal, I am advised that it was a good-faith effort to address a real and continuing problem. If confirmed, I will look forward to working with you and other interested parties to address this issue in a way which commands wide support.

Question 2. Inadequate funding of the Endangered Species Act has been a major hurdle to effective implementation of the statute. For several years the Service has argued in court that it could not list more species because it lacked the funding to process the petitions. FWS has stated that it would need at least $120 million must

to address the existing listing and critical habitat backlog Yet, the Administration's funding request for these programs was anemic.

Question 2a. What will you do to ensure that the Service has adequate funding for listing and other elements of the endangered species program?

Response. I am advised that the Bush Administration's 2002 budget request for listing represented a 15 percent increase over the 2001 amount requested by the prior Administration, and a 34 percent increase over the amount actually appropriated for listing in fiscal year 2001.

In fashioning a 2003 request, I believe the Administration will need to balance the needs of the Endangered Species program, the Service, and the Department of the Interior with the many other demands and priorities for increased Federal funding, including other aspects of the Endangered Species Act itself. There are significant documented needs and backlogs in many Service and Departmental programs. If confirmed in time to participate in the development of this request, which I am advised is already very well advanced, I will do my best to ensure that funding is requested based on documented needs consistent with the President's priorities.

Question 2b. What other measures will you take to deal with the substantial backlog of listing, critical habitat designations, and Section 7 consultations?

Response. I will if confirmed undertake as a priority an examination of the Service's current management practices, including for the ESA, to determine if there are ways to more effectively utilize the resources and personnel available to the program. I would also explore whether a greater emphasis on a cooperative approach with all interested parties might permit the agency to devote a greater percentage of available resources toward on-the-ground conservation efforts.

Question 3. Do you believe that the regulatory definition of "harm" in the ESA, which prohibits certain kinds of habitat modification without a permit, needs modification? Are you committed to enforcing all of the ESA's habitat protections, including those that apply to private lands?

Response. Because I returned to my position in Kansas following the confirmation hearing, I have not yet had an opportunity to become familiar with the Service's administration of the ESA in sufficient detail to address regulatory definitions. However, I can assure you that if confirmed, I will enforce all of the provisions of the ESA, including those applicable to private lands.

Question 4. Do you believe that the ESA is a fundamentally sound statute, or do you believe that it needs to be legislatively amended? If you believe it needs to be amended, please indicate the kind of changes you believe are necessary. Similarly, do you anticipate pushing forward with any major Administrative reforms relating to ESA implementation? If so, what are they?

Response. As indicated in my response to your question 3, I have not yet had an opportunity to become sufficiently familiar with the Service's administration of the ESA to have developed any general or specific plans or proposals for changes, whether relating to internal management, regulations or legislation. I do believe that the ESA is one of our Nation's most important conservation statutes, and as with any major program, there may be ways in which it can be made more effective. If confirmed, I can assure you that any changes I might propose would be aimed at greater effectiveness in accomplishing the purposes of the Act.

GRIZZLY BEARS

Question 5. As you undoubtedly know, FWS finalized a plan last year to recover grizzly bears by reintroducing them to their historic range through "citizen management" a plan that was developed collaboratively by the timber industry, labor and conservation groups. The Bush Administration recently announced that it would not continue with these efforts. Will collaborative efforts to engage local people in species recover receive support from this Administration in the future?

Response. While I cannot speak for the Administration at this time, I am a strong advocate of State and local involvement in all types of conservation efforts, including the recovery of listed species. If confirmed, I will continue this advocacy within the Administration.

LANDOWNER INCENTIVES

Question 6. The FY02 Interior appropriations conference report contains a total of $50M for two new endangered and threatened species landowner incentive programs proposed by the Administration. Could you explain specifically how you intend to spend the new endangered and threatened species landowner incentives money?

Response. I am advised that the Administration's request for these funds provided that they would be used for competitive grants to individuals and groups engaged in private, voluntary conservation efforts benefiting listed and at-risk species, and to States, Tribes and territories for development of such programs by these entities. These programs can help recover listed species and help ensure that other species never need to be candidates for listing.

I have not yet had an opportunity to explore with the Service any details on how the programs might best be implemented. However, if confirmed, ensuring that these new programs are placed in operation as quickly as possible will be one of my highest priorities.

Question 7. I fully support landowner incentives; they are the best way to Make the ESA work effectively on private lands. However, I cannot support programs that pay landowners to comply with the law (i.e., programs that fund activities a private landowner is already obligated to do to comply with the law). Do you agree with this position?

Response. I agree that we should not pay landowners to comply with the law. I would draw a distinction, however, between this and programs which provide financial assistance for such conservation actions as development of Habitat Conservation Plans. This is particularly valuable where done by local governments in cooperation with landowners, as I am advised is the case in Southern California.

I also believe it is valuable and appropriate to offer financial incentives to landowners to improve habitat or otherwise contribute to the conservation and recovery of listed species, which they otherwise have no obligation to undertake.

Question 8. The USDA has a number of successful habitat conservation programs that are popular with farmers and other private landowners (e.g., Wetlands Reserve Program, Conservation Reserve Program, etc.). I have long thought a similar landowner program with a specific focus on habitat that benefits listed species should be developed. Do you agree that such a program makes sense? If so, will you work with me to explore the possibility of developing such a program?

Response. If confirmed, I would be pleased to work with you in exploring such an approach. I have considerable experience in Kansas working with both conservation and agricultural interests and programs, and would be quite interested in seeing whether the approach taken with the Wetlands and Conservation Reserve programs could be applied to our ESA recovery efforts.

UNLISTED SPECIES

Question 9. What priority do you place on the conservation and recovery of endangered and non-game species, in comparison to game species, in fulfilling the Fish and Wildlife Service's mission of "conserving, protecting and enhancing the nation's fish and wildlife and their habitats for the continuing benefit of the American people?"

Response. I believe the conservation and recovery of endangered and non-game species, in cooperation with States, private landowners and others, is and must continue to be a major element of the Service's mission.

Question 10. As the Secretary for the Kansas Department of Wildlife and parks you supported the Conservation and Reinvestment Act that would provide dedicated conservation funding for the proactive management of wildlife species before they become listed as threatened or endangered.

Question 10a. What is the Administration's position on permanent conservation funding?

Response. I am advised that the Administration has not yet taken a position on the Conservation and Reinvestment Act.

Question 10b. What will you do as the director of the Fish and Wildlife Service to ensure that there is a reliable revenue stream for these unlisted species?

Response. If confirmed, I will be an advocate within the Administration for funding for non-listed species, both for the Service and through cooperative efforts with the States.

WETLANDS HABITAT

Question 11. The Fish and Wildlife Service under Acting Director Marshall Jones filed comments on the Corps of Engineers' proposed changes to the nationwide wetlands permit program that raised a series of concerns with the proposal. It is my understanding, however, that the Secretary of the Interior has decided not to submit the comments. As Director, what would you do to ensure that the release of scientific comments or scientific information is not blocked or delayed by political interference?

Response. While I am not familiar with the details, I am advised that the Secretary is still reviewing the comments received on this issue from the various bureaus and offices within the Department, with a view toward submitting a unified Departmental comment.

If confirmed, I am committed to working with the Secretary and other policymakers within the Department to ensure consideration of the best available scientific information in the Department's decisionmaking process.

WILDLIFE REFUGES

Question 12. The National Wildlife Refuge System Improvement Act of 1997 set new requirements for the management of refuges. In response, the U.S. Fish and Wildlife Service issued regulations establishing procedures for determining what uses are compatible with the mission of the refuge system and the mission of each individual refuge. What uses would you deem to be incompatible with the mission of the national wildlife refuge system?

Response. I have not yet had an opportunity to be fully briefed on the Improvement Act and the Service's implementing regulations. However, it is my understanding that the Act provides that decisions as to what activities may be compatible are to be site specific determinations made in accordance with the requirements of the Act. It accordingly is not possible to provide a list of activities or uses which are generically incompatible.

ARCTIC NATIONAL WILDLIFE REFUGE

Question 13. The Bush Administration has indicated its clear intent to open the Arctic National Wildlife Refuge to oil and gas development. Yet, FWS biologists have said in the past that oil and gas development would do irreparable harm to the wildlife species that depend upon this refuge. More recently, there was evidence that the Secretary suppressed, and possibly even altered, information the Service provided regarding the biological impacts of drilling.

Question 13a. How will you ensure that there is a unbiased assessment of the impacts that oil and gas exploration will have on the Arctic Refuge's irreplaceable wildlife species?

Response. As indicated previously, I am committed to open dialog and reliance upon the best science in making decisions. If confirmed, and if Congress acts to open the 1002 Area, I will expect U.S. Fish and Wildlife Service biologists to assemble the sound science upon which the Department can base its decisions on where and under what conditions to permit specific activities.

Question 13b. How will you ensure that all of the relevant information is provided to Congress in a timely way?

Response. If confirmed, it will be my priority to ensure that Congress receives information it requests from the Fish and Wildlife Service on this and any other issue.

ARCTIC NATIONAL WILDLIFE REFUGE

Question 14. Will you protect the professionals in your agency from any repercussions that might result from public disclosure of scientific information, whether through the press or other means?

Response. As I have stated in response to prior questions, I am fully committed to the use of the best science in making decisions. I am also committed to protecting the professionals in the U.S. Fish and Wildlife Service from any adverse repercussions that result from their acting in a legal and professional manner. As a trained scientist and manager I am aware that any scientific agency, which the Service is, must have policies to ensure that information disseminated in its name is in fact valid. I have not had an opportunity to become familiar with the Service's policies in this regard.

Question 15. Are there any restrictions on agency scientists about communicating with congressional staff, outside interest groups, the media, or other interested parties?

Response. I have not yet had an opportunity to become familiar with how the Federal process to coordinate and review information released in an agency's name operates. If confirmed, I expect to become knowledgeable about this process very quickly.

Question 16. The fiscal year 2000 Interior Appropriations bill did not provide funds for lease sale preparation in the Arctic Refuge coastal plain as the Administration had originally requested. Are you aware of any plans that are underway to draft regulations or otherwise plan for leasing in the coastal plain?

Response. No, I am not.

MANAGEMENT OF OUTER CONTINENTAL SHELF

Question 17. While the Minerals Management Service has the lead role on Outer Continental Shelf leasing issues, the U.S. fish and Wildlife Service has a responsibility to consider the impacts that leasing will have on listed species, migratory birds, polar bears, sea otters, wildlife refuges, and other resources under the Service's jurisdiction. I am deeply concerned about the impacts of offshore leasing activities in California, Alaska, and other sensitive ecosystems. Will you ensure that the U.S. Fish and Wildlife Service continues to provide scientific expertise regarding the impacts of offshore development activities?

Response. I believe the Fish and Wildlife Service has a significant role to play, in conjunction with other agencies, in the assessments of the effects of Federal activities on fish and wildlife resources, and I anticipate that this important role will continue.

RESPONSES OF STEVEN A. WILLIAMS TO ADDITIONAL QUESTIONS FROM SENATOR LIEBERMAN

Question 1. How will you ensure that the integrity of the National Wildlife Refuge System is maintained, including ensuring that the purposes of each refuge are upheld?

Response. It is my understanding that through the National Wildlife Refuge System Administration Act, as amended by the National Wildlife Refuge System Improvement Act of 1997, the Congress has charged the Secretary, and, by delegation of authority, the Director, with maintaining the biological integrity of the System and with ensuring that the mission of the Refuge System and the individual refuges are upheld. It is my further understanding that the Congress set forth in the Act a process by which determination are to be made as to whether proposed uses of a refuge would comply with these requirements. If confirmed, I will strongly support these provisions.

Question 2. The laws governing National Wildlife Refuges mandate that any uses be compatible with their purposes. For example, the purposes of the Arctic National Wildlife Refuge are to conserve fish and wildlife populations and habitats in their natural diversity, to fulfill international treaty obligations, to provide for continued subsistence uses and to ensure water quality and quantity. Will you support protecting the purposes for which all refuges, including the Arctic Refuge, were established?

Response. If confirmed, I will strongly support carrying out the law by protecting the purposes for which all refuges, including the Arctic National Wildlife Refuge, were established, in accordance with the procedures established by law. I will also carry out any addition direction which Congress may provide for management of Arctic or any other refuge.

Question 3. The congressional Research Service found that the House passed bill (H.R. 4) and Senator Murkowski's S. 388 appear to reduce the authority of the U.S. Fish and Wildlife Service over the Arctic Refuge coastal plain, including to "eliminate the usual compatibility determination processes."

Question 3a. Could you support legislation that would reduce your authority over refuge management of fish, wildlife and their habitats and other purposes?

Response. From a general standpoint, I cannot say what my position would be on any piece of legislation until I have had an opportunity to review it.

Question 3b. Given the U.S. Fish and Wildlife Refuge's conclusions that the Arctic Refuge coastal plain is the center of wildlife activity for the refuge, how could you support the Administration's endorsement of legislation that would allow oil development activities that would not be found compatible with the refuge's purposes?

Response. It is my understanding that the President has stated that this issue is a priority for him, and I support him on this. The President's plan emphasizes that Congress should require the use of the best available technology and ensure that energy production activities protect the environment of the refuge. Ultimately, a decision to allow oil development in the coastal plain of the refuge is reserved to Congress, and if confirmed I would consider it my responsibility to provide the best available information to address this matter.

Question 4. In light of the recent news that the Interior Secretary appeared to omit scientific information provided by the U.S. Fish and Wildlife Service, in response to questions from a congressional committee chairman, how will you give the public confidence that the full information provided by your professional scientific

staff is used to base management and policy decisions of the USFWS and the Department of the Interior?

Response. If confirmed, I am committed to working with the Secretary and other policymakers within the Department to ensure consideration of the best available scientific information in the Department's decisionmaking process. This is a responsibility I would take very seriously.

Question 5. The U.S. Fish and Wildlife Service with its professional biologists and as the land manager of the Arctic National Wildlife Refuge provides scientific information to the public through its web site, publications, and presentations to the National Research Council and the media. Will you support the continued distribution of this scientific information by the professional scientists and land managers of the U.S. Fish and Wildlife Service?

Response. Yes.

Question 6. Will you support the professionals in your agency from any repercussions that might result from public disclosure of scientific information, whether through the press or other means? Are there any restrictions on agency scientists from being contacted by the media?

Response. As I have stated in response to a prior question, I am fully committed to the use of the best science in making decisions. I am also committed to protecting the professionals in the U.S. Fish and Wildlife Service from any adverse repercussions that result from their acting in a legal and professional manner. As a trained scientist and manager I am aware that any scientific agency, which the Service is, must have policies to ensure that information disseminated in its name is in fact valid. I have not had an opportunity to become familiar with the Service's policies in this regard, nor with how the Federal process to coordinate and review information released in an agency's name operates. If confirmed, I expect to become knowledgeable about this process very quickly.

Question 7. Existing law prohibits leasing, development and production of oil and gas from the Coastal Plain of the Arctic National Wildlife Refuge (in Section 1003 of the Alaska National Interest Lands Conservation Act). Can you commit to us that the U.S. Fish and Wildlife Service will not engage in planning for 3-D seismic exploration or lease sales for the Arctic Refuge coastal plain activities that are not allowed under current law, nor will it work on such plans if done by the Interior Department or BLM?

Response. If confirmed, I will not engage in activities prohibited by law, nor would I cooperate with others in doing so. I am not sufficiently familiar with the applicable statutes to know if planning for activities, and contributing environmental expertise to planning, is allowable, and if confirmed my actions would be carried out with full respect for the law.

Question 8. The fiscal year 2002 Interior Appropriations bill did not provide funds for lease sale preparation in the Arctic Refuge coastal plain as the Administration had originally requested. Are you aware of any plans that are underway to draft regulations or otherwise plan for leasing in the coastal plain?

Response. No, I am not aware of any such plans.

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