

**HEARING ON THE NOMINATIONS OF COLIN  
FULTON TO BE GENERAL COUNSEL OF THE  
EPA AND PAUL ANASTAS TO BE ASSISTANT  
ADMINISTRATOR, OFFICE OF RESEARCH AND  
DEVELOPMENT, OF THE EPA**

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**HEARING**  
BEFORE THE  
**COMMITTEE ON**  
**ENVIRONMENT AND PUBLIC WORKS**  
**UNITED STATES SENATE**  
ONE HUNDRED ELEVENTH CONGRESS  
FIRST SESSION

—————  
JUNE 24, 2009  
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Printed for the use of the Committee on Environment and Public Works



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COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

ONE HUNDRED ELEVENTH CONGRESS  
FIRST SESSION

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**JUNE 24, 2009**

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**WEDNESDAY, JUNE 24, 2009**

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

The full Committee met, pursuant to notice, at 10:45 a.m. in room 406, Dirksen Senate Office Building, Hon. Barbara Boxer (chairman of the full Committee) presiding.

Present: Senators Boxer and Inhofe.

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

Senator BOXER. The hearing will come to order.

I hear that Colin Fulton prefers to be addressed as Scott. Is that correct?

Mr. FULTON. That is correct.

Senator BOXER. All right. I will do it exactly right. I understand that.

So I would like to begin today's Environment and Public Works Committee hearing by welcoming two individuals who are nominated to head key offices at the U.S. EPA. The way we are going to handle this, Senator Inhofe and I are going to make very brief opening statements, and then we are going to get right to you both. If we have any questions, we will ask. If others have questions, and we have a vote on the floor momentarily, so this could be a very enjoyable and quick time for you.

We do hope you will, however, take a minute to introduce your families who are here.

Scott Fulton is President Obama's nominee to head the Office of General Counsel. He comes to us with a long record of service at the Department of Justice U.S. Attorney's Office and most recently 20 years at the U.S. EPA. The Office of General Counsel is the legal conscience of EPA, providing indispensable legal advice to the Administrator and EPA staff. They work with the Department of Justice to represent EPA in court, including before the Supreme Court.

The Office of General Counsel plays a vital role in making sure EPA is on solid legal ground as the agency moves forward to address serious public health and environmental challenges.

We have noted that over the past years, EPA has lost many cases in the courts, which I believe has delayed our efforts to clean up our air and water, putting the health of our communities at risk.

If confirmed, Mr. Fulton's decades of experience will be an asset as he works to follow the law and ensure that EPA follows the law and that they protect the public health and make decisions that will stand up in the highest court in the land.

Paul Anastas is the President's nominee to be Assistant Administrator of EPA's Office of Research and Development. We all agree on this Committee that unbiased science is the key. The Office of Research and Development plays a pivotal role in ensuring the agency's decisions are free from conflicts of interest, they're transparent, and held to the highest science.

Dr. Anastas has an extensive record of achievement at EPA and academia and the private sector. He has been called the Father of Green Chemistry for his groundbreaking work to reduce waste and negative environmental impacts by changing the way chemical products are designed, manufactured and used.

Most recently, he has been Director of the Center for Green Chemistry and Green Engineering at Yale.

I believe both of today's nominees are eminently qualified to provide crucial leadership and expertise at EPA as EPA develops and implements policies that will protect our public health, and I believe in doing so will build a stronger economy.

So I look forward to hearing from them today.  
Senator Inhofe.

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

Senator INHOFE. Thank you, and I will abbreviate my statement.

First of all, we do want to talk about, and I have a couple of questions on transparency. Certainly, Administrator Jackson has talked about this and I think that we need to maximize also public participation.

I have tried to get information to reanalyze the economic impacts of the Waxman-Markey. I still am waiting for that to come back.

And I hope that you folks, both of you coming from—it seems like everyone is coming from—I don't know what's wrong with the West Coast, do you? They all come from the East Coast, and not middle America. But I would like to have you keep in mind that we all want to be considered and our viewpoints are never always the same in different parts of the Country.

I have specific questions I want to ask, and rather than to take time now to do that, to finish my statement, I ask that it be considered in the record in its entirety, and then as soon as we get to questions, I would like to do that.

[The prepared statement of Senator Inhofe follows:]

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

Good morning. We are here today to consider two nominations for the Environmental Protection Agency: Colin Scott Fulton to be General Counsel and Paul Anastas to be Assistant Administrator for the Office of Research and Development. I want to welcome both of you and your families here today.

I am looking forward to working with you. There are many challenges ahead for EPA, and I am confident that both of you possess the knowledge and experience to address them with balance, competence, and, just as important, transparency.

On that last point, transparency, I would hope that each of you will treat requests for information from the minority of this committee the same as those from the majority. And I hope that you will fulfill Administrator Jackson's commitment to maximize public participation and input on the decisions you make.

Thus far, I think the Agency has more work to do to meet Administrator Jackson's commitment. I have sent several requests for information, including, most recently, a request that EPA re-analyze the economic impacts of Waxman-Markey. I sit here today wondering whether EPA will provide me and my staff with this and other information. This state of affairs does not conform to the stated pledges of Administrator Jackson and other nominees who have appeared before this committee.

In addition to transparency, I hope that you will consider all viewpoints so that your decisionmaking reflects a truly national perspective, accounting for regional differences. One thing that concerns me is that, though the Obama EPA has highly competent and experienced nominees, they tend to hail from one part of the country. I do not see much, if any, regional diversity at the Obama EPA. I have said this at prior nominations hearings and I am growing more concerned. Not only are most EPA appointees from the East Coast, most, if not all, are from urban centers. I am deeply concerned that we have an EPA team with little direct knowledge of the middle of the country. What is good for the East Coast is not necessarily good for the rest of the United States.

EPA is grappling with policy decisions that could have serious impacts on rural America—though I don't believe rural America has a voice in the current Obama EPA. I hope the nominees will assure me today that they will reach out to rural communities for their perspective on the important issues facing the agency. What you do at EPA is important to Oklahomans, Ohioans, Tennesseans, Minnesotans, and to other States and regions of the country. To be successful in formulating policy, to make it work for everyone, you must factor these viewpoints into your decisionmaking.

Finally, I want to repeat a simple principle that I have been advocating for my entire political career: we need to balance environmental protection with concern for how decisions affect the economy—and the people who run this great machine called America. Achieving this balance, as well as broadening the agency's geographical focus in decisionmaking, will be essential to achieving the mission of EPA.

Senator BOXER. I ask unanimous consent that the statements in support of the nomination of Dr. Anastas from Senators Kennedy, Kerry and Lieberman and from Senator Mikulski on behalf of Mr. Fulton be entered into the record.

Hearing no objection, it is so ordered.

[The referenced documents follow:]

Testimony of Sen. Edward M. Kennedy

**ENVIRONMENT & PUBLIC WORKS COMMITTEE HEARING**

On the Nomination of Paul Anastas

*Wednesday, June 24, 2009*

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I'm grateful to Senator Boxer for this opportunity to express my strong support for Paul Anastas to be Assistant Administrator for the Office of Research and Development at EPA.

Mr. Anastas is currently the Director of the Center for Green Chemistry and Green Engineering at Yale University, and I believe he's an outstanding choice for this important position. His strong background in environmental research and policy in the Executive Branch and academia has given him an impressive understanding of the importance of cooperation at all levels of government, the private sector, and NGOs in pursuing national policies.

Such cooperation will be especially important at a time when the Administration and this Committee, under the leadership of Senator Boxer, are developing a major initiative to control greenhouse gas emissions and prevent climate change.

The challenge we face on these issues is urgent, and we have delayed too long already in meeting it. I'm proud that a leader from Massachusetts will be at the forefront of this effort in the Obama Administration, especially since coastal states such as ours are facing an increasingly grave threat from rising sea levels.

As the lead division for EPA's scientific mission, the Office of Research and Development is especially important in pursuing the technological advances and data collection needed to improve environmental health. The expertise of Mr. Anastas in "green chemistry" will be particularly valuable in preventing dangers from toxic chemicals.

I urge the Committee to approve the nomination of Mr. Anastas, and I look forward to working with him and the Committee on these fundamental issues in the coming weeks.

**U.S. Senate Committee on Environment and Public Works  
Statement of Senator John F. Kerry  
Nomination Hearing for Dr. Paul Anastas to be Assistant Administrator,  
Office of Research and Development, of the Environmental Protection Agency  
Wednesday, June 24, 2009**

As a candidate, President Obama pledged to restore the role of science to its proper place in government. He began to do so by appointing a Nobel prize winning physicist as Secretary of Energy and installing Dr. John Holdren as his chief science advisor. In nominating Dr. Paul Anastas, President Obama has scored the trifecta and chosen someone of impeccable scientific qualifications to help pioneer a new, sustainable path forward as Assistant Administrator for Office of Research and Development, Environmental Protection Agency (EPA).

Dubbed the “father of green chemistry,” Dr. Anastas is credited with founding a field that relies on scientific innovation to address issues of efficiency, environmental protection, energy conservation, and economic competitiveness.

In returning to the EPA, Dr. Anastas brings with him years of experience and expertise in both science and government. He is the former chief of the Industrial Chemistry Branch of the EPA, where he is recognized for establishing the Green Chemistry Program. He went on to serve in the White House Office of Science and Technology Policy under both President Bill Clinton and President George W. Bush from 1999-2004, demonstrating that science remains fact regardless of politics.

Most recently, Dr. Anastas was the Heinz Professor in the Practice of Chemistry for the Environment at Yale University and also the Director of the Yale Center for Green Chemistry and Green Engineering. He has been praised and honored nationally and internationally for his achievements and was listed on the ICIS Top 40 Power Players – the most influential people impacting the global chemical industry.

I am proud that this Massachusetts native and product of North Quincy High School has also been recognized by President Obama for this a deserving honor. Studying at the University of Massachusetts, Boston and Brandeis, it clear that he values and truly captures the pioneering spirit of our state.

Twenty years ago, “green chemistry” wasn’t on many people’s radar. It is today in large measure because of Dr. Anastas. I believe that this independent thinking has the brains, creativity, and leadership to help guide our nations down a new, perhaps not yet known, pathways to a sustainable future. I look forward to working with Dr. Anastas at the EPA and encourage his prompt confirmation.

**Statement of Senator Joseph I. Lieberman  
Supporting the Confirmation of Dr. Paul Anastas**

**June 24, 2009**

Thank you, Chairwoman Boxer.

I strongly support the confirmation of Dr. Paul Anastas to head the Office of Research and Development at the Environmental Protection Agency.

Dr. Anastas has distinguished himself as an exemplary professor at Yale, teaching courses within the School of Forestry and Environmental Studies, the Department of Chemistry, and the Department of Chemical Engineering. In addition, he has been an outstanding Director of Yale's Center for Green Chemistry and Green Engineering.

Dr. Anastas also has an impressive list of credentials. He helped found the Green Chemistry Institute back in 1997, and from 1999 until 2004, he was the Assistant Director for the Environment in the White House Office of Science and Technology Policy. Between 2004 and 2006, Dr. Anastas served as Director of the Green Chemistry Institute.

His list of awards and recognitions is as impressive as it is indicative of the outstanding contribution Dr. Anastas has made to his field. He has received multiple medals from EPA for his work and has accumulated nearly a dozen other awards for his transformative work in Green Chemistry over the past decade. In addition, he has been honored as a leading academic all over the world with a series of honorary degrees and professorships.

In 2006, Dr. Anastas was awarded the prestigious Heinz Award in the Environment for his work to advance the "green chemistry" movement, which has improved the health of our planet dramatically by helping to significantly reduce, and in many cases prevent, industrial waste. The contributions he has made to global efforts to minimize waste and save our resources have been undeniably impactful and environmentally valuable.

At the Office of Research and Development, Dr. Anastas will be EPA's head scientific researcher. I have great faith that his work will help EPA prevent pollution, protect human health, and improve our air, water and soil quality. I look forward to watching Dr. Anastas and Gina McCarthy, another leading environmentalist from Connecticut, excel in their new roles at EPA. I wish them both all the best.

Thank you.

**Senator Barbara A. Mikulski**  
**Testimony to the Senate Committee on Environment and Public Works**  
**June 23, 2009**

Mr. Chairman – I appreciate the opportunity to express my strong support for President Obama’s nominee for General Counsel of the Environmental Protection Agency – Colin Scott Fulton.

I have three criteria that I use to evaluate all executive branch nominees: competence, integrity, and commitment to the core mission of the Department. Based on these criteria, I wholeheartedly support Mr. Fulton to be the General Counsel of the Environmental Protection Agency.

Mr. Fulton has proven himself throughout a long career in environmental policy and law. In his current position as Acting Assistant Administrator, Office of International Affairs at the Environmental Protection Agency, he has gained extensive experience in international policy development and implementation. Mr. Fulton has represented the United States Environmental Protection Agency within the United States government and before the foreign governments and international organizations on matters relating to environmental foreign affairs. Mr. Fulton has received two awards recognizing his excellence – The Meritorious Presidential Rank Award and the Distinguished Presidential Rank Award – the highest award for federal Senior Executives.

Mr. Fulton will effectively facilitate the implementation President Obama’s priorities for the EPA of reducing greenhouse gas emissions, improve air quality, managing chemical risks, cleaning up hazardous waste sites and protecting America’s water. He has the unique combination experience and leadership skills needed to be an effective and respected General

Council of the Environmental Protection Agency.

Mr. Fulton would bring his knowledge and vision to the position of General Council of the Environmental Protection. I wholeheartedly support him for this important position.

Senator BOXER. So Scott, why don't you begin?

**STATEMENT OF COLIN SCOTT FULTON, NOMINATED TO BE  
GENERAL COUNSEL, U.S. ENVIRONMENTAL PROTECTION  
AGENCY**

Mr. FULTON. Thank you, Madam Chairman.

I just want to begin by thanking both of you for holding this hearing today. If I might also start by introducing some important people in my life who are here with me this morning: my daughters Keri and Krista over here, my brother Kent Fulton who is an Administrative Law Judge in Missouri, and my father, Robert Fulton who is retired living in Missouri also, which is, by the way where my family roots are. So we do have that Midwestern connection here.

It is a special treat for me to have my dad here in particular as he himself once held a presidentially appointed, Senate-confirmed position, having served as the Administrator of Social and Rehabilitation Services in the 1970s.

Without a doubt, my father's lifelong commitment to public service and the integrity and resolve with which he approached his work served as a model and powerful instruction for me in my own life and career.

I am honored to have been nominated by President Obama to serve as EPA's General Counsel, and feel privileged to be speaking before you today. I am also deeply thankful to Administrator Lisa Jackson for inviting me to be part of her team at EPA during this time of great challenge, but also great promise.

Although I have worn a number of different hats along the way, I have spent my career as an attorney and public servant in two principal institutions: the Department of Justice and EPA, with environmental law as my focal point in both of those settings.

The bulk of my time in these organizations has been invested in leading and managing law offices and working through complex legal issues.

I have been blessed with a wonderful career that has, among other things, offered me the opportunity to both witness and participate in an evolution of environmental law that spans nearly three decades and five Administrations.

My hope is that, if confirmed, the perspectives and understandings that flow from this experience will be of value to the Obama administration and my Country.

Having served as EPA's Principal Deputy General Counsel from 1995 to 1999, including a stint as Acting General Counsel, I am well acquainted with the role for which I have been nominated, and my experience overall has left me familiar with the demands inherent in positions at this level of the Federal Government and the imperative of constructive engagement with the Congress, within the executive branch and with stakeholders in the general public.

I have been substantially involved in environmental litigation along the way, at various points enforcing environmental requirements, defending challenges to administrative decisions, and serving as a judge in administrative environmental cases. As a result, I feel grounded in the judicial process for resolution of environmental disputes and bear deep respect for the vitally important

role of the judiciary as the guarantor of the rule of law in the environmental arena.

If confirmed, I will do my utmost to ensure the faithful implementation of the laws of the United States as specified by the Constitution, expressed by the Congress, and interpreted by the courts. The bedrock role of the General Counsel, as I see it, is to provide legal advice and direction grounded in the rule of law and working closely with our colleagues at the Department of Justice to defend the agency's actions in court.

In this regard, if confirmed, I am committed to maximizing through the counsel that I offer, the defensibility of the agency's regulatory decisions, and I look forward to working with the dedicated career lawyers in the Office of General Counsel to this end.

The rule of law would be the fundamental principle that would guide my actions, both as lawyer and manager, and inform my counsel to the Administrator and the agency.

I would not have pursued the career path that I have chosen without a deep and abiding commitment to the integrity and efficacy of this Nation's environmental protection program. This is the work that I went to the Justice Department to do at the beginning of my career, and the pursuit that has carried me in the years since. I am excited by the prospect of participating in the Obama administration's effort to chart a course that secures public health and environmental quality for this generation and those generations yet to come.

If confirmed, I will work tirelessly to provide legal counsel to the Administrator and other members of the Administrator's team in furtherance of this goal.

Thank you for your consideration.

[The prepared statement of Mr. Fulton follows:]

**STATEMENT OF C. SCOTT FULTON  
HEARING ON NOMINATIONS  
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS  
UNITED STATES SENATE  
June 24, 2009**

Thank you Madam Chairman.

I first want to thank you and Ranking Member Inhofe for holding this hearing, as well as all the Committee members who have taken the time to express their thoughts today and those who met and spoke with me in anticipation of this hearing.

If I may, I would like to begin by introducing some important people in my life who are with me this morning -- my daughters, Keri and Krista Fulton, my brother Kent Fulton and my father Robert Fulton. It is a special treat to have my Dad here, as he himself held a Presidentially appointed, Senate confirmed position, serving as the Administrator of Social and Rehabilitation Services in the 1970s. Without a doubt, my father's life-long commitment to public service and the integrity and resolve with which he approached his work served as a model and powerful instruction for me in my own life and career.

I am honored to have been nominated by President Obama to serve as the Environmental Protection Agency's General Counsel and feel privileged to be speaking before you today. I am also deeply thankful to the Administrator Lisa Jackson for inviting me to be part of her team at EPA during this time of great challenge, but also great promise.

Although I have worn a number of different hats along the way, I have spent my career as an attorney and public servant in two principal institutions, the Department of Justice and EPA, with environmental law as my focal point in both of these settings. The bulk of my time in these organizations has been invested in leading and managing law organizations and working through complex legal issues. I have been blessed with a wonderful career that has, among other things, offered me the opportunity to witness and participate in an evolution of environmental law that spans nearly three decades and five Administrations. My hope is that, if confirmed, the perspectives and understandings that flow from this experience will be of value to the Obama Administration and to my country.

Having served as EPA's Principal Deputy General Counsel from 1995 to 1999, including a stint as EPA's Acting General Counsel, I am well acquainted with the role for which I have been nominated. And my experience overall has left me familiar with the demands inherent in positions at this level of the federal government and the imperative of constructive engagement with the Congress, within the Executive Branch, and with stakeholders and the general public. I have been substantially involved in environmental litigation, at various points enforcing environmental requirements, defending challenges to administrative decisions, and serving as a judge in administrative environmental cases. As a result, I feel grounded in the judicial process for resolution of environmental disputes and bear a deep respect for the vitally important role of the judiciary as the guarantor of the rule of law in the environmental arena.

If confirmed, I will do my utmost to ensure the faithful implementation of the laws of the United States as specified by the Constitution, expressed by the Congress, and interpreted by the courts. The bedrock role of the General Counsel, as I see it, is to provide legal advice and direction grounded in the rule of law and, working closely with our colleagues at the Department of Justice, to defend the Agency's actions in court. In this regard, if confirmed, I am committed to maximizing – through the counsel that I offer – the defensibility of the Agency's regulatory decisions, and I look forward to working with the dedicated career lawyers in the Office of General Counsel to this end. The rule of law would be the fundamental principle that will guide my actions, both as lawyer and manager, and inform my counsel to Administrator Jackson and the Agency.

I would not have taken the career path that I have taken without a deep and abiding commitment to the integrity and efficacy of this Nation's environmental protection program. This is the work that I went to Justice Department to do at the beginning of my career and the pursuit that has carried me in the years since. I am excited by the prospect of participating in the Obama Administration's effort to chart a course that secures public health and environmental quality for this generation and those generations yet to come. If confirmed, I will work tirelessly to provide legal counsel to the Administrator and the other members of the Administrator's team in furtherance of this goal.

Thank you for your consideration.

**Environment and Public Works Committee Hearing  
June 24, 2009  
Responses to Follow-Up Questions for Written Submission**

Questions for Fulton

Questions from: Senator James M. Inhofe

Question 1

We discussed briefly the legal and regulatory complexities involved in EPA's endangerment finding for greenhouse gases. You mentioned that you need to analyze and study the various legal arguments involved in avoiding a cascade of regulations that could burden schools, hospitals, nursing homes, and farms. This leads me to several questions:

- Are agency attorneys currently reviewing the legal options involved in protecting small businesses and other small sources from regulation?
- Can you give me an idea of what those options are?
- In the interest of transparency and openness, can you commit to me that you will provide my staff with a briefing on the agency's legal thinking on this very important issue?

Response

Agency attorneys are engaged in reviewing legal options for avoiding or alleviating the impacts of potential regulations on small businesses. In the Advanced Notice of Proposed Rulemaking, the Agency solicited comment on a number of options for avoiding impacts on small businesses. See, e.g., 73 Fed. Reg. 44,354, 44,503-12 (July 30, 2008). Agency attorneys are in the process of further evaluating these options in light of the comments received on the ANPR. If confirmed, I will also commit to arranging briefings with your staff to discuss the rationale for EPA's regulatory proposals on this issue.

Question 2

The word "navigable" has been used to limit federal authority in every clean water bill since 1972. With almost 40 years of legislative history and interpretive case law based on this legislative language, is it reasonable to assume that litigation will increase if the word "navigable" is removed from the Clean Water Act? Is the best way to avoid future litigation to simply grant EPA authority over "all waters" within the United States? And can you provide me with your ideas as to how we can reduce Clean Water Act litigation in the future?

Response

In its May 20, 2009, letter to Chairman Boxer, the Administration laid out four principles for legislative action to address the scope of Clean Water Act jurisdiction: 1) Broad protection for the Nation's waters; 2) A manageable and predictable definition of covered waters; 3) Consistency between the Clean Water Act and agricultural wetlands programs; and 4) Recognition of long-standing practices. If confirmed, I will support achieving those principles through legislative action. My sense is that legislative clarification to these ends will go a long way towards addressing current difficulties with Clean Water Act implementation in the wake of the Supreme Court's decisions in *SWANCC* and *Rapanos* and should serve to reduce litigation in this area. Specifically, I do not believe that removing the term "navigable" from the Act will necessarily result in increased litigation.

**Question 3**

I have had a long-standing interest in maintaining the integrity of the grants system at EPA. I've held hearings on the matter and asked the Agency numerous times for assurance that grants management is being given high-level attention. I was very pleased that last year, after a decade of efforts, EPA was finally able to remove grants management as an agency weakness. During that time, there were several OGC attorneys physically located in the Office of Grants and Debarment to make sure the reforms were being implemented correctly. But last year, the Acting General Counsel moved those attorneys to another building. I've heard that the grants professionals at EPA were very concerned that the hard-won progress they've made will be jeopardized by this action. Frankly, so am I. I won't micromanage your allocation of OGC resources, but will you please look into this and assure me that EPA won't go back to the bad old days when grants management was badly mismanaged?

**Response**

My understanding is that the Office of General Counsel has not moved any of its grants attorneys, who have been based with the rest of OGC attorneys in Ariel Rios North building since EPA's move from Waterside Mall in the late 1990s. Recently, OGC did relocate two contracts attorneys from the Ronald Reagan building to Ariel Rios North, where their managers, team leader, and another contract attorney were located. Both the Ariel Rios Building and the Ronald Reagan Building are part of the EPA Federal Triangle complex. The contract attorneys maintain office hours in their previous location to ensure a high-level of service. I believe both the OGC grants lawyers and the contracts attorneys have excellent working relationships with the Office of Grants and Debarment's and the Office of Acquisition Management's staff and managers. If confirmed, I will commit to ensuring that OGC continues to provide the highest level of legal support to EPA's grants program.

**Question 4**

EPA is changing the way it will conduct its IRIS (Integrated Risk Information System) assessments. This change was announced while you were in your current capacity as Acting Deputy Administrator, so I have to assume you were part of that decision. One of the things the new review process does is to reduce reviews by EPA's international partners. Before you were Acting Deputy Administrator, you were in acting head of EPA's Office of International

Affairs, so I would assume you have a particular appreciation for how important those international partnerships are. How does reducing input from other countries about risk assessments help produce a better product for EPA?

**Response**

I am aware, as is Administrator Jackson, that there were strong concerns regarding scientific integrity at EPA in recent years. Making environmental decisions that are based on the best available scientific information, including international research, consistent with our various statutory and legal requirements, is vital to ensuring public confidence in EPA's programs and to enhancing the defensibility of Agency decisions. I think the new process Administrator Jackson announced should serve to significantly improve the transparency and integrity of the IRIS process, which the Government Accountability Office had identified as concerns, without diminishing beneficial collaboration. This process was developed by the Administrator after careful consideration and considerable input from career staff, whose work I respect. If confirmed, I will work with Administrator Jackson to ensure that EPA takes a leadership role in promoting scientific integrity.

**Question 5**

I have some questions about the National Ambient Air Quality Standards (NAAQS) process:

- What is the role of the Clean Air Science Advisory Committee (CASAC) in the NAAQS-setting process and how does CASAC's recommendation influence the Administrator's final decision?
- How does the removal of the Advanced Notice of Proposed Rulemaking which informed the public of options under consideration by the Administrator and invited comment - increase transparency in the NAAQS-setting process?
- How does EPA intend to respond to Information Quality Act petitions that are submitted outside of a rulemaking's notice and comment period?

**Response**

The National Ambient Air Quality Standards (NAAQS) play a central role in enabling EPA to fulfill its mission to protect the nation's public health and the environment, and it is critical that these standards are grounded in science. The Clean Air Scientific Advisory Committee's (CASAC) has an advisory role assigned to it under the Clean Air Act, and it provides advice to EPA on the science involved with the NAAQS air pollutants and on potential revisions or changes to the NAAQS. CASAC develops this advice through a public process that provides an opportunity for input from all stakeholders.

The most recent changes to the NAAQS process announced by Administrator Jackson in May 2009 are intended to ensure that this review process meets the highest standards of scientific integrity, transparency and timeliness. The Administrator retained several of the earlier changes

to the process, such as the kickoff workshop, the integrated review plan, and more concise, policy-relevant assessments of science, and risk and exposure. Many of these changes were based on CASAC's recommendations. However, the Administrator elected to discontinue the use of an advance notice of proposed rulemaking, which was the subject of strong concerns on the part of CASAC and others. In its place, she has reinstated the use of a policy assessment document prepared by EPA staff. This will ensure that both the public and CASAC will once again be able to see and comment on a transparent staff analysis of the science underlying key policy alternatives under consideration.

Where EPA has provided a structured opportunity for public comment on information in a draft or proposed document, EPA generally expects to treat requests for correction under the Information Quality Act procedurally like other public comments, addressing them in the response to comments rather than through a separate response mechanism. EPA believes that the thorough consideration provided by the public comment process serves the purposes of the Information Quality Guidelines, provides an opportunity for correction of any information that does not comply with the Guidelines, and does not duplicate or interfere with the orderly conduct of the action. If EPA cannot address a request for correction in the response to comments for the action (for example, because the request/comment is submitted too late to be considered and could not have been timely submitted, or because the request is not germane to the action), EPA will consider whether a separate response is appropriate.

#### **Question 6**

A recent decision by the U.S. Court of Appeals for the District of Columbia, *Sierra Club v. EPA*, (December 19, 2008), would vacate provisions in current regulations that exempt equipment from meeting the numerical emission limits established for steady state operations during startup, shutdown, and malfunction events. Given your background, I am sure you understand that emission limitations established for periods of steady state operations with data from only such periods cannot be met in a non-steady state operating environment such as often occurs during startup or shutdown of processes or that may occur during malfunctions of control or process equipment. Absent a quick action by the EPA, hundreds if not thousands of companies across the country may be placed in the difficult position of knowingly violating a regulation if they shut down or restart a plant operation. Some may simply choose not to restart - an outcome that would be bad given the state of our economy. Absent EPA action to provide interim relief that provides facilities a mechanism to meet alternative standards during startup, shutdown, and malfunction events, and sufficient time to implement these new standards, industry will be forced to challenge every standard that is impacted. Will you commit to immediately reviewing this EPA's reaction to D.C. Circuit's decision on startup, shutdown, and malfunction if confirmed?

#### **Response**

I recognize this is an important issue that raises complicated legal and policy issues that also involve EPA's Air and Enforcement programs. If confirmed, I will commit to reviewing this decision and to working with EPA's enforcement and program offices to identify the range of legal options available to address this kind of issue in an appropriate manner.

**Question 7**

If confirmed, what kind of processes do you envision putting in place to ensure that EPA review of the environmental impact statements and environmental assessments of other federal agencies does not create delays for the other agencies? In other words, how will you make sure that EPA moves quickly in its responsibilities with regard to the National Environmental Policy Act work of other agencies?

**Response**

If confirmed, I will commit to working with the Administrator's Office, the Office of Federal Activities, which oversees EPA's compliance with the National Environmental Policy Act (NEPA) within the Office of Enforcement and Compliance Assurance (OECA), and regional offices to ensure that EPA is meeting its legal obligations under NEPA and section 309 of the Clean Air Act in an efficient and timely manner and will, to this end, review, in conjunction with the Assistant Administrator for OECA, the current decisionmaking procedures in this area.

**Question 8**

What is your opinion of the Endangerment Proposal, and is it appropriate for EPA to act in light of the climate change legislation Congress is now considering?

**Response**

EPA was required to respond to the Supreme Court's decision in *Massachusetts v. EPA* and has begun to do so by developing a proposed finding concerning whether greenhouse gas emissions from new motor vehicles cause or contribute to air pollution that may endanger public health or welfare within the meaning of the Clean Air Act. I believe this is an appropriate response to the Supreme Court's ruling. EPA has solicited public comment on that proposal and will carefully consider those comments before taking further action under the Clean Air Act. However, as both the President and Administrator Jackson have stated, new legislation would be the preferred option for addressing climate change. As General Counsel I would assist the Administrator in applying the applicable law whether or not new legislation is passed.

**Question 9**

What impact has the Supreme Court's *Rapanos* decision had on agency guidance, permitting and jurisdictional decisions, and what specific direction and steps will you take, if confirmed, to streamline the historically backlogged permitting process?

**Response**

If confirmed as General Counsel, I would be committed to helping ensure effective implementation of Clean Water Act programs. Protection of our nation's waters, including wetlands protection, is a fundamental responsibility of EPA and the Army Corps of Engineers.

EPA shares statutory and regulatory obligations to avoid, reduce and mitigate wetlands impacts from various activities throughout the country, and also has a statutory and regulatory obligation to ensure the physical, chemical and biological integrity of the nation's waters. Additionally, EPA has an obligation to assure compliance with the law. In a post-*SWANCC* and *Rapanos* environment, EPA is devoting considerable resources to determine and establish jurisdiction. My understanding is that EPA has encountered difficulty with jurisdictional questions in both permitting and enforcement contexts. I would expect to review the 2008 *Rapanos* Guidance closely, working with my colleagues, including those at the Army Corps, the Department of Justice, and the Council on Environmental Quality, to ensure that implementation of the *Rapanos* decision is as workable, consistent, and transparent as possible. As detailed in the Administration's May 20, 2009, letter to Chairman Boxer, the Administration supports a clear statement of Congressional intent to respond to the regulatory confusion created by the recent Supreme Court decisions.

**Question 10**

A goal of the EPA's Office of Research & Development is to improve the tools to estimate the human health risk from chemical exposure as accurately as possible. Achieving that goal is unlikely if the risk assessment has to rely on numerous default assumptions. Efforts to identify and eliminate the default assumptions used in a risk assessment can be a difficult effort. Recently, there was a successful collaboration between the EPA and industry to have an independent third party organize a symposium to review the state of the science on naphthalene. The published results of that symposium have led to a focused research effort to replace critical default assumptions with real data. Does EPA plan to increase this type of collaborative and successful approach to improve the accuracy of their risk assessments?

**Response**

If confirmed, I would work with the Office of Research and Development (ORD) and other EPA program offices to ensure that EPA's decisions are based on the rule of law and sound science and will discuss with the Assistant Administrator for ORD how best to achieve the sound science objective.

**Question 11**

EPA is changing the way it will conduct its IRIS (Integrated Risk Information System) assessments. This change was announced while you were in your current capacity as Acting Deputy Administrator, so I have to assume you were part of that decision. One of the things the new review process does is to reduce reviews by EPA's international partners. Before you were Acting Deputy Administrator, you were in acting head of EPA's Office of International Affairs, so I would assume you have a particular appreciation for how important those international partnerships are. How does reducing input from other countries about risk assessments help produce a better product for EPA?

**Response**

I am aware, as is Administrator Jackson, that there were strong concerns regarding scientific integrity at EPA in recent years. Making environmental decisions that are based on the best available scientific information, including international research, consistent with our various statutory and legal requirements, is vital to ensuring public confidence in EPA's programs and to enhancing the defensibility of Agency decisions. I think the new process Administrator Jackson announced significantly improves the transparency and integrity of the IRIS process, which the Government Accountability Office had identified as concerns, without diminishing beneficial collaboration. This process was developed by the Administrator after careful consideration and considerable input from career staff, whose work I respect. If confirmed, I will work with Administrator Jackson to ensure that EPA takes a leadership role in promoting scientific integrity.

**Question 12**

One of the issues before the Agency that I am most concerned about is the endangerment finding for CO<sub>2</sub> and other greenhouse gases. We have heard statements from Administrator Jackson that she has no intention of regulating small sources; however there is concern from the regulated community that activists' lawsuits can trigger unintended consequences that could result in regulations under the Clean Air Act of farms, hospitals, churches, and other small sources. With the Court's recent strict construction of the Clean Air Act in the CAIR and mercury decisions, do you believe the Act gives you the flexibility to defend against such lawsuits? If so, how?

**Response**

I believe that the Clean Air Act gives EPA the ability to regulate pollutants, including greenhouse gases, in ways that make sense and can be implemented in a cost-effective manner. As EPA explained in the Advance Notice of Proposed Rulemaking (ANPR) on potential CAA regulation of greenhouse gases, many CAA provisions provide EPA with discretion regarding the content and timing of regulations. Examples of such flexible authorities include section 111, under which EPA establishes new source performance standards, and Title II, which generally provides EPA with substantial discretion in the design of transportation controls. The ANPR also considered the potential applicability of a number of judicial rulings as means of providing flexibility in terms of the scope of CAA permitting programs for greenhouse gases. If confirmed, I will work with EPA experts and legal staff to review the public comments on these issues and to recommend approaches that are sensible and legally defensible, utilizing the discretion that EPA has been afforded.

**Question 13**

Do you believe the recent D.C. Circuit court decisions remanding CAIR and the Clean Air Mercury Rule have affected the ability of EPA to propose a flexible rule to allow interstate trading under the Clean Air Act?

**Response**

EPA has begun working on several regulations that will affect the electric power generating industry. One of these is a regulation to reduce NOx and SO2 emissions from power plants that will replace the Clean Air Interstate Rule (CAIR) in response to the U.S. Court of Appeals for the D.C. Circuit's decision remanding the CAIR back to EPA. In response to the court's decision on the CAIR, EPA has an obligation to revisit and revise that rule consistent with the court's opinion. The court's decision did limit EPA's ability to use unrestricted interstate trading to address the Act's interstate transport provisions, and the Agency is taking those limitations into account in exploring options for crafting a transport rule consistent with the opinion.

As a result of the vacatur of the Clean Air Mercury Rule (CAMR) the Agency is currently in the process of developing a new regulation for toxic air pollutant emissions from electric utilities. The court's opinion in the CAMR case did not address the legality of interstate trading. These standards will be proposed pursuant to section 112(d) of the Act.

If confirmed, I will work to ensure that EPA promulgates these rules consistent with the Clean Air Act and the court's decisions in these two cases.

**Question 14**

The ongoing dispute between one EPA region and the Desert Rock coal facility regarding PSD permitting for CO2 exemplifies the often contentious nature of the position that you are seeking to fill. With your past Agency experience, what do you believe to be the proper role and interaction of political appointees with the general counsel in resolving both regional and major policy disputes?

**Response**

If confirmed, I will support Administrator Jackson's commitment to making decisions based on sound science and the rule of law. My role would be to provide legal advice and counsel that will inform the Agency's policy judgments. Interaction between counsel and policy-makers regarding the range of policy discretion afforded by the law is a natural part of the decisionmaking process. I will strongly defend agency action that is within the bounds of law and discourage approaches that raise defensibility concerns. As a long-time career employee with experience at the Department of Justice, EPA's Office of General Counsel, Office of Enforcement and Compliance Assurance, and the Environmental Appeals Board, I have a strong appreciation for the work and expertise of EPA's career staff and would look forward to their assistance in the function that I would serve. If I am confirmed, I will work to ensure OGC provides the Agency with legal options that are fully and fairly vetted to ensure that the agency adheres to the rule of law.

Senator BOXER. Thank you so much, Mr. Fulton.  
And of course, now our final witness, Paul Anastas.  
Sir, proceed.

**STATEMENT OF PAUL ANASTAS, NOMINATED TO BE ASSISTANT ADMINISTRATOR FOR THE OFFICE OF RESEARCH AND DEVELOPMENT, U.S. ENVIRONMENTAL PROTECTION AGENCY**

Mr. ANASTAS. Thank you, Chairman Boxer. Thank you, Ranking Member.

It is a pleasure to be with you here today. I would like to introduce to you my wife, Julie Zimmerman, and our 22-month-old daughter Kennedy, one of my most vocal supporters.

[Laughter.]

Mr. ANASTAS. I am also lucky to have my extended family with me here today: Sam, Shelley and Nancy Zimmerman, and Nancy's two children, Ally and Harrison Brown.

Senator BOXER. Welcome, everybody.

Mr. ANASTAS. I am honored to be nominated to serve as Assistant Administrator in the Office of Research and Development at the U.S. EPA. When I was a boy growing up in the small town of Quincy, Massachusetts, I grew up overlooking an idyllic wetland. When that wetland was replaced by an office park, I was nearly inconsolable. My father, Nick Anastas, who was a biology teacher, took me aside to explain to me that it is not enough to merely care about the environment, but you have to learn about the environment and understand it deeply. Like he did so many times in my life, he put me on the right track to being an environmentalist and a scientist.

So I became a synthetic organic chemist, which means I make molecules and study chemicals. But long before I became a faculty member at Yale, where I am today, I was a GS-11 chemist at the U.S. EPA. Nearly 20 years ago today, I began my first day on the job. I was fortunate enough to have the best mentor that a 27-year-old could hope for in the late Dr. Roger Garrett. He taught me some of the most important lessons of my career, and I built those into my career as bedrock principles.

The first is integrity—integrity in all things, and especially science. I believe that we can all agree it is essential to the very foundations of our efforts in protecting human health and the environment, to be based on science that is sound, unbiased, uncompromised, and apolitical. Integrity has been at the center of what I have dedicated my career to and it will be a value that I will bring to the Office of Research and Development if confirmed.

Second, innovation. The challenges we face of clean air, clean water, and trying to ensure sustainable civilization are serious and daunting. If we are to meet these challenges, it will require that we pursue approaches that bring about economic, as well as environmental prosperity simultaneously, and it will require the best of the innovative spirit of this Nation.

I believe the excellent scientists of the Office of Research and Development have that innovative spirit that will help them approach new challenges in new ways, and be even more creative in developing our environmental solutions.

Third, interdisciplinarity. While our core traditional disciplines remain the backbone of our scientific endeavors, the opportunities we face in doing things more creatively and more effectively require an interdisciplinary approach. By working across disciplinary and organizational boundaries, we can expect a renaissance in environmental protection.

Finally, inspiration. The story goes that an old man was walking down the street and passed by two workers on the side of the road cutting stones. The first stonecutter was cursing and grouching, and the old man asked what he was doing. And he grumbled, I am chipping away at these stones with a dull old chisel and I am hitting my thumb with a hammer.

The old man then asked the second worker what he was doing while he was singing and whistling to himself, and he said, I am building a cathedral.

To be inspired by the work that you do is not merely a luxury. It is often essential to the effectiveness of getting that work done. I can think of few more inspiring missions than that of the Office of Research and Development at the U.S. EPA.

With these values as pillars, if confirmed, I will work to provide Administrator Jackson with the highest quality scientific information as the basis of her policy decisions. I will make openness and transparency the hallmark of the work we do at ORD. I will seek out new approaches, perspectives and methods to advance our knowledge and understanding of environmental and health problems, as well as to generate solutions to these problems.

In closing, I just want to say I have a near-perfect life in the little town of Guilford, Connecticut right now. I am fortunate to have a nice home, a wonderful family, dedicated students and wonderful colleagues at Yale. Yet I am so eager to come here to Washington to begin my duties at EPA if confirmed. The reason is simple. It is because I view this work of using science to protect human health and the environment as an extension of my love for my daughter. It is also because I view it as an extension of my dedication to my students and letting them know that their work is as challenging as it is important.

I thank the Committee for the chance to be with you today, and I would be happy to answer any questions.

[The prepared statement of Mr. Anastas follows:]

**STATEMENT OF PAUL ANASTAS  
HEARING ON NOMINATIONS  
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS  
UNITED STATES SENATE  
June 24, 2009**

Thank you Chairman Boxer, Ranking Member Inhofe, and the members of the committee. It is a pleasure to be with you here today and would like to introduce you to my wife, Julie, and our 22 month-old daughter, Kennedy.

I am honored to be nominated to serve as the Assistant Administrator for the Office of Research and Development of the U.S. Environmental Protection Agency. When I was a boy growing up in Quincy, MA just south of Boston, I lived on an idyllic wetland. When it was replaced with an office park, I was inconsolable. My father, a biology teacher, took me aside to explain to me that if you really wanted to protect the environment, it was important not only to care about it, you also had to learn about it and understand it. As he did with so many things in life, my father put me on the right track to being a scientist and an environmentalist.

Long before I became a faculty member at Yale University where I am today, I was a GS-11 level chemist at EPA. Nearly 20 years ago to this day, I began my first day on the job. I was fortunate to have some of the best mentors any 27 year old could hope for that taught me some of the most important lessons of my career.

1. Integrity, in all things and especially in science. I believe we would all agree that it is essential to the very foundations of our efforts to protect human health and the

environment that it be based on science that is sound, uncompromised, unbiased, and apolitical. This has been at the center of what I have pursued in my career and will be a value I bring to the Office of Research and Development if confirmed.

2. Innovation. The challenges we face of clean air, water, land, and ensuring a sustainable civilization are serious. If we are to meet these challenges in a way where economic prosperity and environmental prosperity are achieved simultaneously, it will require the best of the innovative spirit of this nation. I believe the excellent scientists at the Office of Research and Development have that innovative spirit and can look at new challenges in new ways to be even more creative in our environmental solutions.

3. Interdisciplinary. While our core traditional disciplines remain the backbone of our scientific endeavors, the opportunities we face of doing things more creatively and effectively will require an interdisciplinary approach. By working across disciplinary and organizational boundaries, we can expect a renaissance in environmental protection.

4. Inspiration. The old story goes that an old man passed by two men working on the side of the road cutting stones. The first was cursing and grouching and the old man asked what he was doing and he replied "I'm chipping at these stones with a dull chisel and hitting my thumb with my hammer." The old man asked the second worker who was singing and whistling, what he was doing and he replied, "I'm

building a cathedral!" To be inspired by your work is not merely a luxury, it is often essential to the effectiveness of the work getting done. I can think of few more inspiring missions than that of the U.S. EPA and especially the Office of Research and Development.

With these values as pillars, if confirmed, I will work to provide Administrator Jackson with the highest quality scientific information as a basis for her policy decisions. I will make openness and transparency a hallmark of the work of ORD. I will seek out new approaches, perspectives, and methods to advance our knowledge and understanding of environmental and health problems as well as to our generation of solutions to those problems.

In closing, I am very fortunate that I have a near perfect life in my small town of Guilford, CT – wonderful family, nice home, wonderful students and colleagues at Yale – and yet I am tremendously eager to begin my duties here at EPA, if confirmed. The reason is simple. I consider the work that I would be doing – to use science to advance the protection of human health and the environment - as an extension of my love for my daughter in trying to give her a better future and of my dedication to my students in showing them that the work they are doing is as important as it is difficult.

I thank the committee for the chance to meet with you today and I'll be happy to answer any questions.

**Environment and Public Works Committee Hearing  
June 24, 2009  
Follow-Up Questions for Written Submission**

**Questions for Anastas**

**Senator Barbara Boxer**

**Question 1: Enhancing Quality of EPA's Work**

Dr. Anastas, you were a member on a recent National Advisory Council for Environmental Policy and Technology that made significant recommendations to EPA on a variety of issues. One recommendation was that EPA "[e]nhance and maintain the quality of the EPA work force by encouraging unfettered presentation of their work and interaction with the scientific community..."

Could you please describe how you will implement these types of measures at the EPA if you are confirmed?

Answer: In her memo of May 9, 2009, to all EPA employees, Administrator Jackson "pledged to uphold values of scientific integrity every day." If confirmed as the Assistant Administrator of ORD, I too pledge to uphold these principles every day.

Adhering to these principles means ensuring the selection and retention of science and technology positions is based on a candidate's knowledge, credentials, experience, and integrity. In addition, it means allowing scientists to share their scientific or technological findings in ways that are not compromised by political interference.

I am committed to making sure that it's scientific process and findings are of the highest quality and based on what the science tells us. I also am committed to assuring that our scientific work is free of political influence and will encourage EPA scientists to have open scientific interactions with the scientific community and publish their work.

**Question 2: Recent National Academy of Sciences Reports**

Dr. Anastas, the National Academy of Sciences recently produced two groundbreaking reports that describe how EPA can modernize safeguards when conducting risk assessments, including for vulnerable populations, such as children.

If confirmed, will you commit to review these documents and report back to this Committee as soon as possible with a plan to integrate their recommendations into the Office of Research and Development's risk assessment practices?

Answer: Yes

**Senator Frank R. Lautenberg**

Question 1: You were recently quoted in the press saying that you have "never seen a regulation that catalyzed innovation."

That statement seems to fly in the face of decades of environmental laws that have spurred new technologies. Those new technologies have saved lives and saved billions of dollars through energy efficiency.

Do you really believe that regulation cannot encourage innovation?

Answer: I believe that regulation plays an essential role in our efforts to protect human health and the environment. I also believe that regulation alone is not sufficient to bring about innovation and that science, technology, educational, and economic capacity is required as well.

2. Do you believe that the Toxic Substances Control Act needs to be reformed?

Answer: I agree that the Toxic Substances Control Act (TSCA) needs to be reformed. Administrator Jackson has made it clear that chemical management is one of her highest priorities as it is mine. Thoughtful reform of TSCA is an issue that I look forward to engaging with my colleagues in OPPTS and the rest of the EPA, if confirmed.

**Senator James M. Inhofe**

Question 1: I discussed with you my concerns about the impact of EPA's increasingly stringent arsenic regulations on rural water systems. The EPA Office of Research and Development (ORD) has been working on an update to the IRIS evaluation of inorganic arsenic. EPA's Science Advisory Board (SAB) reviewed portions of EPA's work in 2005. Since the 2005 review, new data have been gathered on how inorganic arsenic may or may not cause cancer. I understand the Agency has a proposal that would significantly increase what is called the "cancer slope factor" for arsenic. Yet the proposal doesn't seem to have taken into account the SAB's 2005 advice nor the availability of new data, and it has not been reviewed by the SAB.

- Given the enormous and enduring consequences of any changes in the assessment of arsenic, if you are confirmed, will you commit to reviewing the IRIS update for inorganic arsenic?

Answer: Yes

- Once you have reviewed the draft evaluation, will you ensure that all comments by the SAB review of the Agency's work in 2005 are fully and completely addressed?

Answer: Yes. I will work with the ORD staff to ensure each SAB comment has been carefully considered and fully addressed.

- And, in view of the new scientific information that has been accumulated in the four years since the last SAB review, will you commit to an external peer review and public comment of the document prior to its being finalized?

Answer: Prior to making a decision about further external peer review, I commit to reviewing EPA's approach to update its IRIS arsenic assessment, including how EPA has addressed the SAB comments.

2. On several occasions, Administrator Jackson has professed a commitment to transparency and openness at EPA. I would hope this commitment extends to the models EPA uses for regulatory decision-making and evaluation.

- First, will you commit to releasing to the public the models EPA uses for decision-making, including all of the models and tile model validation data relied upon by EPA for the proposed Endangerment Finding?

Answer: I am aware that EPA works every day to provide the public with unfettered access to information about the environment and the regulatory process, including data and models used in EPA's decision-making process, as provided under EPA's Information Quality Guidelines. It is my understanding that while EPA did not conduct new modeling

for the proposed endangerment finding, the models and data sources that EPA referenced in the finding are documented in the public record.

- Second, in the ANPR on greenhouse gas regulation under the Clean Air Act, EPA referenced economic impact models that were works in progress. Can you confirm for me that EPA has not and will not use models that are not publicly available and have not been subjected to full review under the EPA's Information Quality Guidelines?

Answer: Data sources and documentation for economic models that EPA may use will be available to the public and will fully comply with EPA's Information Quality Guidelines. EPA is committed to ensuring the quality and objectivity of the economic analyses developed under our programs.

- Third, can you confirm that no proprietary models are used by EPA for regulatory decision-making?

Answer: I am aware that EPA often uses open source models for regulatory decision-making. It is my understanding, however, as stated in EPA's Information Quality Guidelines, EPA may choose to use non-open source models "based on feasibility and cost considerations (e.g., it may be more cost-effective and time efficient for the Agency to use a non-open source model in some situations than to develop its own model). In cases where the Agency relies on non-open source models, these model applications are still subject to our Peer Review Policy....These steps, along with transparency about the sources of data used, various assumptions employed, analytic methods applied, and statistical procedures employed should assure that analytic results are "capable of being substantially reproduced.""

3. EPA is removing some of the steps in the Integrated Risk Information System (IRIS) review process. Specifically, it reduces internal EPA review, peer review, OMS review, and international partner review. And yet, when EPA's assessments under the existing system undergo outside peer review, they are consistently criticized. In at least three major instances, the National Academy of Sciences has found serious problems with EPA's assessments (dioxin, perchlorate, and trichloroethylene). Do you believe the new IRIS process meets generally-recognized definitions of scientific peer review?

Answer: Yes. The new IRIS process, recently announced by Administrator Jackson provides multiple opportunities for the involvement of scientists in other federal agencies, the scientific community, and the public, while also streamlining the process so that the Agency can provide the high quality health information needed by EPA's Programs and Regional offices. These opportunities include the interagency science consultation, public review and comment period, public listening session, public external peer review meeting, and the interagency science discussion.

4. Under the IRIS process, comments by peer review scientists come back to EPA for a response. The previous administration proposed sending those EPA responses back to

the peer review scientists, in a kind of "active listening," to let them see if EPA adequately addressed their concerns. Otherwise, it might appear that EPA was simply picking and choosing the comments it wanted to address while ignoring the rest. In fact, this is one of the criticisms about IRIS raised by the National Academy of Sciences and others. What is your position on the removal of this quality control step? How would you increase scientific integrity and better assure the public about the independence of EPA's chemical assessments?

Answer: If confirmed, I commit to working with ORD staff to ensure that the comments of the NAS, SAB, and others have been carefully considered and addressed.

5. The EPA Office of Research and Development (ORD) has been working on an update to the IRIS evaluation of inorganic arsenic. EPA's Science Advisory Board (SAB) reviewed portions of EPA's work in 2005. Since the 2005 review, new data have been gathered on how inorganic arsenic may or may not cause cancer. I understand the Agency has a proposal that would significantly increase what is called the "cancer slope factor" for arsenic, but it doesn't seem to have taken into account the SAB's 2005 advice nor the availability of new data, and has not been reviewed by the SAB. Given the enormous and enduring consequences of any changes in the assessment of arsenic, if you are confirmed, will you commit to reviewing the IRIS update for inorganic arsenic? Once you have reviewed the draft evaluation, will you ensure that all comments by the SAB review of the Agency's work in 2005 are fully and completely addressed? And, in view of the new scientific information that has been accumulated in the four years since the last SAB review, will you commit to an external peer review and public comment of the document prior to its being finalized?

Answer: Prior to making a decision about further external peer review, I commit to reviewing EPA's approach to update its IRIS arsenic assessment, including how EPA has addressed the SAB comments.

6. Infants and children are exposed to a large number of environmental contaminants, yet scientists recognize that our current knowledge about this exposure is often inadequate to make informed policy decisions. This can only be addressed if we understand what doses cause effects and what doses children actually receive. Of course, we want to protect children, but the truth is that the most appropriate scientific method of determining exposures and health hazards is to perform observational studies of children in their daily environment. That means collecting samples, data, and information from participating volunteers in their everyday environments as they go about their normal activities, but under very strict rules and regulations including expert review and approval of all human research studies. In October 2007, ORD presented a draft document entitled "Scientific and Ethical Approaches for Observational Exposure Studies" to the Human Studies Review Board (HSRB) for advice. The HSRB review expressed support for the ORD document, clearly indicating the Agency's own advisory board on the conduct of human subject studies did not object to observational studies involving children. Will you support the conduct of scientifically valid observational exposure studies conducted by ORD that conform to internationally recognized ethical guidelines?

Answer: Yes

7. Occupational exposure studies involve monitoring the exposure of individuals engaged in their normal work activities, such as mixing, loading or applying registered crop protection products on their farms. Typically, these occupational studies are considered non-observational human studies. Individuals aged 16 or 17 years can legally be employed in agriculture and apply crop protection products as part of their normal work routine. Under the final rule for the protection of human subjects, the EPA is prohibited from using data from any study that involved individuals under the age of 18, defined as children, if the study was not observational. Because there is a significant cohort of workers legally employed under the age of 18, would you support rescinding the current exclusion of data from studies involving legally employed workers under the age of 18?

Answer: You raise an interesting question. I am aware that the agency has a rule regarding human studies that has been litigated and that discussions are ongoing. This issue is a regulatory policy decision. While I certainly support using the best scientific data to assure that we are protecting all individuals, independent of age, I am not familiar with the specifics surrounding this issue.

8. Do you believe current EPA policies and procedures adequately protect human subjects in studies in which they are intentionally exposed to registered crop protection products? If not, what changes are needed to provide adequate protections to subjects of such studies? Or if so, how can they be made more efficient without being made less effective?

Answer: EPA's policies and procedures to adequately protect human exposure to registered pesticide products are developed by the Office of Prevention, Pesticides and Pollution Toxic Substances. If confirmed, I look forward to working with them on this and other issues.

9. EPA's proposed \$10.5 billion budget for FY10 -- a 34 percent increase over FY09 enacted funding of roughly \$7.5 billion -- includes \$587.2 million for ORD, a boost over the FY09 figure of \$562.7 million. According to a presentation by ORD Deputy Assistant Administrator Kevin Teichman, an increasingly large portion of the office's budget will go to personnel compensation and benefits. Do you plan to keep the proposed fiscal year 2010 budget for Office of Research and Development priorities the same?

Answer: The President's 2010 Budget Request for ORD reflects the Administration's priorities for the office. If confirmed, I will work to ensure the effective and efficient use of the FY 2010 funds appropriated by the Congress to ORD.

10. In regard to sustainable product design and production, in these tough economic

times, how would you prevent greater use of regulatory approaches while working on sustainable product design?

**Answer:** Sustainable design of products and processes through methods such as green chemistry and green engineering has the goal of ensuring that economic and environmental prosperity are achieved simultaneously. Leaders in the field of sustainable design have achieved protections of human health and the environment that far exceed our regulatory requirements. While our regulatory framework is essential in ensuring that unacceptable risk is not incurred by the public or the environment, the innovations through sustainable design have shown that it is possible to have environmental and human health protection as part of profitability and good business.

Senator BOXER. Well, I want to thank you both for very inspiring statements, and we are very fortunate. I think Senator Inhofe, I speak for him as well, that both of you stepped up to the call of service to Country.

I am going to ask you three very technical questions that we have to ask everybody. It just requires a yes or no. I will look to each of you. The record will reflect that. I will put off my substantive questions until after Senator Inhofe goes because he has a pressing matter on the floor of the Senate.

So I will ask first, do you agree, if confirmed by the Senate to appear before this Committee or designated Members of this Committee and other appropriate committees of the Congress, and I am talking about on both sides of the aisle, Republican and Democratic, and provide information, subject to appropriate and necessary security protection, with respect to your responsibilities at the Environmental Protection Agency?

Mr. Fulton.

Mr. FULTON. Yes.

Senator BOXER. Mr. Anastas.

Mr. ANASTAS. I do.

Senator BOXER. Second, do you agree to ensure that testimony, briefings, documents and electronic and other forms of communications are provided to this Committee, both sides of the aisle and its staff and other appropriate committees, in a timely fashion?

Mr. Fulton.

Mr. FULTON. Yes.

Senator BOXER. Mr. Anastas.

Mr. ANASTAS. Yes.

Senator BOXER. And three, do you know of any matters which you may or may not have disclosed that might place you in any conflict of interest if you are confirmed?

Mr. Fulton.

Mr. FULTON. No.

Senator BOXER. And Mr. Anastas.

Mr. ANASTAS. No.

Senator BOXER. OK.

Senator Inhofe.

Senator INHOFE. Thank you, Madam Chairman.

And I am going to make this real quick.

First of all, let me say that I appreciate both of you taking the time to come to my office and I will be supporting your nomination. In fact, I will go one step further, Madam Chairman. I know we have a three legislative day waiting period that I might be in a position to consent to so that we could get it done before we go into the recess.

However, it would be conditioned upon getting back some documents that I will ask you about, and also the document that has a deadline of this coming Friday that comes from Administrator Jackson. I will make sure that is in the record so we will know what it is.

What I would want to, as I mentioned in the opening statement, which I was going to mention, but we submitted it for the record, is the transparency thing. The EPA's increasingly stringent arsenic regulations on rural water systems are a real challenge, as I told

you when you were in my office. You know, I come from the background of being the Mayor of a major city and unfunded mandates are the worst enemy we have. So we want to be sure that we get the information, that we know that all things are considered as you develop your new regulations. The IRIS, I think the evaluation needs to be looked at.

And I have some specific things which I will put in the record that I will be requesting from you, Mr. Anastas, and also from Mr. Fulton.

But given the consequences of any changes in the assessment of arsenic, if you are confirmed will you commit to reviewing the IRIS update for inorganic arsenic? That would be for you, Mr. Anastas.

Mr. ANASTAS. Yes, I will review the inorganic arsenic update and will be happy to work with you and this Committee.

Senator INHOFE. All right. And it has been 4 years since the Science Advisory Board. Consequently, a lot of that is older information, but do you commit to an external peer review and public comment of the document prior to its being finalized?

Mr. ANASTAS. This is an issue that I will be happy to, if confirmed, work with the staff of the EPA and ORD to understand where it is in the process. I will be happy to work with you and this Committee in finding out what stage it is at in getting peer review.

Senator INHOFE. And all the information. Yes, you know, I mentioned to both of you, I want your assurances at this meeting that you will treat the minority the same as you treat the majority in responding in a timely fashion to the requests that we had. OK?

Mr. ANASTAS. Yes.

Mr. FULTON. Yes.

Senator INHOFE. And finally, let's see, will you commit to releasing to the public the models that the EPA uses for decisionmaking, including all the models in the model validation data relied upon by EPA for the proposed endangerment finding?

Mr. ANASTAS. I take very seriously the memo that was released by the President and Administrator Jackson's directive on scientific integrity. It stresses openness and transparency and wherever possible materials should be released and made publicly available.

Senator INHOFE. Well, or available to us if we request it. We are talking about models. Do you think there is some reason that we should not have access to any of these models?

Mr. ANASTAS. Not being a member of the agency, I know of no reason, but I will be happy to look into it, if confirmed.

Senator INHOFE. OK.

Mr. Fulton, in our office we talked about giving some protection to some of the small—and I am going back now to the issue that we were discussing—to some of the small businesses, the schools and all of that. And I think you agreed and you quoted the President as saying those aren't the ones that we are going to be going after. Are you committed now to try to put something together where we will have some assurance that we are protecting small businesses and entities from some of the very difficult requirements that would be imposed upon them?

Mr. FULTON. Yes, Senator. This would be certainly a point of focus, as we discussed in your office, in relation to forward move-

ment in dealing with the greenhouse gas challenge. I have observed, as has the Administrator and the President, that the Administration's focus would be on significant contributors of greenhouse gases, and that whatever is brought forward from a regulatory standpoint in the event that legislation does not fully speak to this issue, would be centered in that manner and would be common sense based and focused on the most significant actors.

Senator INHOFE. All right.

And then last, I would only mention that back when we were a majority, we made quite an issue and some real progress in grants management. And I think it has slipped a little bit, and I expressed to you in our office the significance that I put on this, and I would hope that you would commit to going back to how we were handling that and the successes that we have had in the past.

Mr. FULTON. Yes, Senator, the agency is very much committed to that. We appreciate you keeping this as a matter of focus. It took many years to move grants management out of the material weakness category and we are anxious to maintain its steady status, something that is a positive part of the agency's operations.

Senator INHOFE. Very good.

Madam Chairman, I thank you. I am going to give you the copies. Really about the only thing we need is just an elaboration on the questions that I have asked you, and I will submit that in writing, along with resubmitting the letter that goes to Administrator Jackson, and hopefully we can get it back soon enough that we can dispose of this process before we go into recess. I think it would work to everyone's benefit.

Senator BOXER. OK. We have 7 minutes left on the vote, but they add another few minutes on. So I am going to ask just a couple of brief questions.

Mr. Fulton, an '05 Government Accountability report stated, "EPA has limited ability to publicly share the information it receives from chemical companies under the Toxic Substances Control Act." This Federal law regulates the use of toxic chemicals. The GAO said the use of confidential business information claims was the reason for this lack of disclosure.

If confirmed, would you please review EPA's confidential business information rules and recommend ways to increase information disclosure to the public?

Mr. FULTON. Yes, Madam Chairman. I can commit to doing that and I think that would be very much in alignment with the Administrator's commitment to transparency.

Senator BOXER. And Dr. Anastas, the Committee has received testimony on conflicts of interest that impact the quality of information agencies use. For example, in May '07, Professor David Michaels testified before the Committee. He authored a book titled *Doubt Is Their Product*, which describes conflict of interest impacting the quality of information used by Federal agencies.

If confirmed, would you please review your office's conflict of interest guidelines, including for advisory panels, and recommend ways to improve safeguards against people with conflicts being named as decisionmakers?

Mr. ANASTAS. I think you have identified a very important issue and the answer is yes, I will commit to reviewing that.

Senator BOXER. Thank you.

Mr. Fulton, EPA Inspector General reports in '04 and '06 cited a need for the EPA to more effectively implement the Executive Order on Environmental Justice. The '04 report said concerns raised by the General Counsel were a reason for EPA not adequately implementing the order.

If confirmed, will you please review EPA's agency-wide implementation of the Executive Order on Environmental Justice and help to recommend ways that EPA can better implement this order?

Mr. FULTON. Yes, Madam Chairman. If confirmed, I will do so.

Senator BOXER. Thank you.

Mr. Fulton, this Committee has received testimony on conflicts of interest that impact the quality of information that agencies use. It is the same question I asked Mr. Anastas.

If confirmed, will you review EPA's conflict of interest guidelines, including for advisory panels, and recommend ways to improve safeguard against people with conflicts serving on these boards?

Mr. FULTON. Yes, Madam Chairman.

Senator BOXER. OK.

And let's see, we asked that one.

Dr. Anastas, this Committee has worked to ensure that EPA uses the best available science in its integrated risk information system, which is used to set exposure levels to toxic chemicals. EPA recently changed the IRIS process to help restore its scientific integrity, but agencies with potential conflicts of interest still have opportunities to impact EPA's work.

If confirmed, will you produce an immediate report on the role of Federal agencies and the White House in reviewing IRIS assessments and let us know how we can better handle these problems?

Mr. ANASTAS. The issue of IRIS is one of the most important issues that EPA's Office of Research and Development faces. Yes, I can commit to reviewing that. If confirmed, I would hope to work with the Committee to assure that the timeframe and the nature of the report that you have requested are appropriate.

Senator BOXER. All right.

I have just three other questions I am going to submit for the record. Would you be sure to get these back to us by the end of today? They are not complex, and Arvin, I think you can handle that.

OK. That would be excellent because we are trying to work with Senator Inhofe to get you both on the job sooner rather than later, because we have that week break. So we will work with the minority in trying to get whatever papers they have requested. Hopefully, we can do it. If we can, we will. If we can't, we will do this confirmation as soon as possible.

I want to again say to the two of you, you really both presented such heartwarming statements to the Committee and we are very grateful.

And we stand adjourned.

[Whereupon, at 11:15 a.m. the Committee was adjourned.]