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A REVIEW OF THE PRESIDENT'S FISCAL YEAR 2013 BUDGET REQUEST FOR THE ENVIRONMENTAL PROTECTION AGENCY

(112–80)

HEARING

BEFORE THE

SUBCOMMITTEE ON
WATER RESOURCES AND ENVIRONMENT

OF THE

COMMITTEE ON
TRANSPORTATION AND
INFRASTRUCTURE
HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

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U.S. House of Representatives
Committee on Transportation and Infrastructure

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March 23, 2012

MEMORANDUM

TO: Members of the Subcommittee on Water Resources and Environment

FR: Bob Gibbs
Subcommittee Chairman

RE: A Review of the President's Fiscal Year 2013 Budget Request for the United States Army Corps of Engineers and United States Environmental Protection Agency.

PURPOSE OF HEARING

The Water Resources and Environment Subcommittee is scheduled to meet on Tuesday, March 27, 2012 and Wednesday, March 28, 2012 at 10:00 a.m. in 2167 Rayburn House Office Building, to receive testimony from the Army Corps of Engineers (Tuesday) on their proposed budget and program priorities for FY 2013 and from the Environmental Protection Agency (EPA) (Wednesday) on their proposed budget and program priorities for FY 2013.

Similar to other budget hearings held by the Subcommittee, this hearing is intended to provide Members with an opportunity to review the agencies' FY 2013 budget requests, as well as Administration priorities for consideration in the Subcommittee's legislative and oversight agenda for the Second Session of the 112th Congress.

BACKGROUND

ARMY CORPS OF ENGINEERS

General – The Corps of Engineers provides water resources development projects for the nation, usually through cost-sharing partnerships with nonfederal sponsors. Activities include navigation, flood damage reduction, shoreline protection, hydropower, dam safety, water supply,

recreation, environmental restoration and protection, and disaster response and recovery. The appropriation request in the Administration's FY 2013 budget submittal for the Corps of Engineers is **$4.731** billion, 5.4% below the FY 2012 appropriations of **$5.002** billion.

There is a proposed reduction in most of the major accounts that fund Corps projects and activities. Major accounts and initiatives are described below.

Investigations – The President's budget requests **$102** million for the Investigations account. This is $23 million less than the FY 2012 appropriations of **$125** million. These funds are used for the study of potential projects related to river and harbor navigation, flood damage reduction, shore protection, environmental restoration, and related purposes. They also cover restudy of authorized projects, miscellaneous investigations, and plans and specifications of projects prior to construction. Under this proposed budget, while 6 new studies are funded, the focus is on completing existing studies.

Construction – The President's budget requests **$1.471** billion for the Construction account. This is **$223** million less than the FY 2012 appropriations of **$1.694** billion. These funds are used for the construction of river and harbor, flood damage reduction, shore protection, environmental restoration, and related projects specifically authorized or made available for selection by law. The budget proposes 3 new construction starts, and funds for 8 construction completions. Generally, the reduced construction budget gives priority to completing on-going projects with a remaining benefit-cost ratio greater than 1.0. Continuing on-going projects with a benefit-cost ratio between 2.5 and 1.0 receive some level of funding.

Operation and Maintenance – The President requests **$2.398** billion for expenses necessary for the preservation, operation, maintenance, and care of existing river and harbor, flood control, and related projects. This is **$14** million less than the FY 2012 appropriations of **$2.412** billion.

The constrained budget for operation and maintenance in the past few fiscal years is already beginning to affect the navigability of certain waterways. Needed maintenance dredging continues to be delayed. For example, parts of the Lower Mississippi River have been closed to commercial navigation due to lack of maintenance dredging. The President's budget request for operation and maintenance in FY 2013, will continue to exacerbate this situation. Underfunding the Operations and Maintenance account and seeking subsequent supplemental appropriations when outages occur complicates effective planning and creates inefficiencies.

Regulatory Program – The President's budget requests **$205** million for the regulatory program. This is **$12** million more than the FY 2012 appropriations of **$193** million. The requested funding provides for costs incurred to administer laws pertaining to regulation of activities affecting U.S. waters, including wetlands, in accordance with the Rivers and Harbors Act of 1899, the Clean Water Act, and the Marine Protection, Research and Sanctuaries Act of 1972.

Formerly Utilized Sites Remedial Action Program (FUSRAP) - The President's budget requests **$104** million for FUSRAP for FY 2013. This is $5 million less than the enacted

level of **$109** million for FY 2012. FUSRAP provides for the cleanup of certain low-level radioactive materials and mixed wastes, which are located mostly at sites contaminated as a result of the nation's early atomic weapons development program. This program was transferred from the Department of Energy to the Corps in the FY 1998 Energy and Water Development Appropriations Act.

Mississippi River and Tributaries - The President's budget requests **$234** million for FY 2013 for planning, construction, and operation and maintenance activities associated with Mississippi River and Tributaries water resources projects located in the lower Mississippi River Valley from Cape Girardeau, Missouri to the Gulf of Mexico. This is **$18** million less than the FY 2012 appropriations of **$252** million.

Water Trust Funds – The Harbor Maintenance Trust Fund is supported by an ad valorem tax paid by the shippers (not including exporters) of cargo loaded or unloaded at a U.S. port. The funds are used to do maintenance dredging of harbors and to provide for disposal facilities for dredged material. The budget would use only **$778.8** million from the fund resulting in an increase in the estimated balance to **$7.11** billion at the end of FY 2013. Only one-third of the nation's federal navigation projects are currently at their authorized depths and widths, and 8 out of the nation's 10 largest ports are not at their authorized depths and widths.

According to the American Association of Port Authorities (AAPA), seaports themselves provide for $200 billion in federal, state, and local tax revenue each year. Thirty million jobs are directly related to international trade, with the U.S. maritime industry alone providing 13 million jobs throughout the country. According to the United States Department of Agriculture (USDA), U.S. agricultural exports, which in FY 2009 reached $96.6 billion, generate an additional $135 billion in supporting business activity in the transportation, distribution, food processing and manufacturing sectors. The Economic Research Service of the USDA notes that for every dollar of goods exported, this creates another $1.36 in supporting activities. Overall, the AAPA research finds that maritime trade creates $2 trillion of commerce annually in the United States.

The Inland Waterways Trust Fund is supported by a tax on commercial fuel used on specified inland waterways. The fund is used to pay for half of the federal cost of constructing navigation improvements on those waterways; the remaining half is paid from general revenues. The budget calls for using **$94.78** million from the fund in FY 2013.

Aging infrastructure along the Inland Waterway Transportation System presents a growing challenge. More than 57% of these facilities have been in service for longer than 50 years and almost 40% are more than 70 years old. Reliability of transportation networks is critical to the nation's economy. While this infrastructure has served the nation well, operation and maintenance expenditures will only slightly prolong the life of a depreciating asset that will continue to diminish in performance. And, as the asset gets older, its operation and maintenance requirements will grow.

The Administration has proposed legislation to reform the laws governing the Inland Waterways Trust Fund, including increasing the revenue paid by commercial navigation users to meet their share of the costs of activities financed from the Inland Waterways Trust Fund. To

date, no legislative proposal has been shared with the House of Representatives. The Inland Waterways Trust Fund balance by the end of fiscal year 2013 is estimated to be **$146** million if Congress authorizes the Administration-proposed user tax and **$66** million if Congress does not.

Flood Control and Coastal Emergencies – The Administration's budget request proposes **$30** million for the Corps of Engineers' Flood Control and Coastal Emergencies (FCCE) account. The Corps has authority under P.L. 84-99 for emergency management activities, including disaster preparedness, emergency operations (flood response and post flood response), rehabilitation of flood control works threatened or destroyed by flood, protection or repair of federally authorized shore protective works threatened or damaged by coastal storms, and the provision of emergency water due to drought or contaminated sources. This includes $2.5 million in support of the Silver Jackets, an interagency group that creates federal support teams for communities experiencing local flood emergencies and prevents emergencies through flood risk management solutions. Funds for the Corps' FCCE account are typically provided on an emergency basis through supplemental appropriations acts.

ENVIRONMENTAL PROTECTION AGENCY

The President's budget request for the Environmental Protection Agency is $8.3445 billion, $104.9 million less than the FY 2012 enacted level of $8.4493 billion.

Clean Water Act

The Federal Water Pollution Control Act (commonly known as the Clean Water Act), as amended in 1972 by P.L. 92-500, in 1977 by P.L. 95-217, in 1981 by P.L. 97-117, and in 1987 by P.L. 100-4, provides for a major federal/state program to protect, restore, and maintain the quality of the nation's waters. The EPA has the primary responsibility for carrying out the Act but significant parts of the program may be administered by the states if approved by EPA.

Clean Water State Revolving Loan Funds – The Clean Water State Revolving Loan Fund (SRF) program is a highly successful program administered by states to provide capital, including low interest loans, to local communities around the country to make wastewater infrastructure improvements and to address other water quality needs. To date, Congress has provided $32 billion in grants to help capitalize 51 Clean Water SRFs. With the 20 percent state match and the fact these funds earn interest, receive loan repayments, and are used to secure state bonds, the return on this Federal investment has been greater than 2 to 1. These federal capitalization grants have resulted in SRFs funding over $89.5 billion in loans to date for wastewater infrastructure projects.

For FY 2013, the President's budget is requesting $1.175 billion to further capitalize these funds. This is $291 million less than the FY 2012 enacted level of $1.466 billion.

During the current Congress and preceding Congresses, the Subcommittee has held numerous hearings on financing water infrastructure projects. The hearings examined how our nation can bridge the large funding gap that now exists between water infrastructure needs and

current levels of spending, how we should fund water infrastructure projects in the future, and who should pay for it. The Subcommittee looked at various mechanisms for funding wastewater infrastructure projects, including creating a national clean water trust fund, continued support of SRFs and advancing other innovative debt financing techniques, establishing a state clean water fund and an associated fee system, and private financing through private activity bonds and other means. In addition, the Subcommittee heard about reducing infrastructure needs and costs through the use of decentralized and nonstructural approaches for managing wastewater.

Special Purpose Infrastructure Grants –Special purpose infrastructure grants are funds made available to address unique clean water regional needs. This total includes $10 million for US/Mexico Border wastewater infrastructure projects, which is $5 million more than the FY 2012 enacted level. The total additionally includes $10 million for Alaska Rural and Native Villages, slightly more than the FY 2012 enacted level of $9.9 million.

Nonpoint Source Funding –The Administration's budget request proposes $164.8 million for the Clean Water Act's non-point source grants program (section 319), which is $300,000 more than the FY2012 enacted level for this program. Section 319 of the Clean Water Act is the primary source of EPA grant funding to states for the control of non-point sources of pollution – which is now the single largest source of impairment to the nation's rivers, lakes, and near-coastal waters.

Regional Programs – The President's Budget requests $300 million for the Great Lakes Restoration Initiative, which is $480,000 more than the FY 2012 enacted level of $299.52 million.

The Chesapeake Bay Program request is $72.6 million, $15.3 million more than the enacted level of $57.3 million.

The Long Island Sound program request is $2.96, $1 million less than the FY 2012 enacted level of $3.96 million.

The Lake Champlain request is $1.4 million, $1 million less than the FY 2012 enacted level of $2.4 million.

The San Francisco Bay request is $4.86 million, $980,000 less than the FY2012 enacted level of $5.84 million.

The Puget Sound request is $19.3 million, $10.65 million less than the FY2012 enacted level of $29.95 million.

The South Florida request is $1.7 million, $360,000 less than the FY2012 enacted level of $2.06 million.

The Gulf of Mexico request is $4.44 million, $1.06 million less than the FY2012 enacted level of $5.5 million.

The Lake Pontchartrain request is $955,000, $995,000 less than the FY2012 enacted level of $1.95 million.

Requested funding for the National Estuary Program is $27.3 million, $300,000 more than the FY 2012 enacted level of $27 million.

State Management Programs – The Administration's budget request proposes $265.3 million for State and tribal pollution control programs under section 106 of the Clean Water Act. The section 106 program generally supports State and tribal water quality improvement and monitoring programs. The enacted level for this program in FY 2012 is $238.4 million.

The budget requests $15.2 million for state wetlands program development, a slight increase over the FY 2012 enacted level of $15.14 million.

The budget requests no funding for beaches protection monitoring grants, $9.9 million less than the FY 2012 enacted level.

Community Challenges – Communities face numerous regulatory requirements related to the Clean Water Act. Although there are a number of federal programs to assist communities in meeting their clean water responsibilities, many struggle to afford the Clean Water Act's numerous requirements being imposed on them by EPA. While schedules for compliance can sometimes be negotiated with the EPA, these are sometimes undone by other enforcement actions or judicial actions initiated by citizen suits. The result is that often communities are faced with a variety of overlapping clean water requirements and have difficulty affording the competing regulatory requirements and controlling the schedule of when work can be carried out to meet these requirements. Communities would like to have more flexibility to move forward in a cost-effective manner.

Superfund

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, commonly referred to as "Superfund," was enacted to develop a comprehensive program to clean up the nation's worst abandoned or uncontrolled hazardous waste sites. The EPA has the major responsibility for carrying out this Act. The law makes designated responsible parties pay for hazardous waste cleanups wherever possible and provides for a hazardous substances trust fund, the Superfund, to pay for remedial cleanups in cases where responsible parties cannot be found or otherwise be held accountable. Superfund is also available for responding to emergency situations involving releases of hazardous substances. In addition, the law was intended to advance scientific and technological capabilities in all aspects of hazardous waste remediation.

The total Superfund request is $1.176 billion. This is $38 million less than the FY 2012 enacted level of $1.214 billion. Under the President's budget request, all of this funding will be derived from a payment from general revenues into the Superfund Trust Fund. Though Superfund is a cost recovery statute, as it did last year, the Administrations' budget requests the reinstatement of the taxes that historically funded the Superfund Trust Fund, including taxes on

oil, gas, and chemical feedstocks, and the corporate environmental tax which funded the Superfund program between 1980 through 1995.

Superfund Response Actions – The President's budget requests the following amounts for Superfund response actions: $531.77 million for Superfund remedial actions, $33.23 million less than the FY 2012 enacted level of $565 million; and $188.5 million for Superfund emergency response and removal actions, $1.1 million less than the FY 2012 enacted level of $189.6 million.

Superfund Enforcement – The President's budget requests $184.41 million for Superfund enforcement activities. This is $2.33 million less than the FY 2012 enacted level of $186.74 million. The budget also includes $8.6 million for Superfund enforcement activities at federal facilities, $1.7 million less than the FY 2012 enacted level.

Brownfields

Brownfields are former industrial sites that contain contaminated soil that must be cleaned before land can be returned to productive use. The Administration's budget request proposes $166.58 million for the brownfields program, including $93.29 million, $1.6 million less than FY 2012 enacted levels, for grants to localities to assess and/or cleanup brownfields, and $47.6 million, $1.75 million less than FY 2012 enacted levels for States and Tribes to establish or enhance their response programs. In addition, $25.685 million ($2.043 million increase) is requested out of the Environmental Program and Management Account to fund contracts and requisite full-time equivalent Agency employees (FTEs).

Oil Spill Response

The Oil Spill Response program funds EPA's Clean Water/Oil Pollution responsibilities. The President's budget requests $19.3 million, $4.6 million more than the FY 2012 enacted level of $14.7 million. This revenue is derived from the Oil Spill Response Trust Fund.

Witnesses:

(March 27th, 2012)

United States Army, Assistant Secretary of the Army (Civil Works) Jo Ellen Darcy

United States Army Corps of Engineers,
Acting Chief of Engineers, Major General Merdith "Bo" Temple

(March 28th, 2012)

Ms. Nancy Stoner
Acting Assistant Administrator, Office of Water
United States Environmental Protection Agency

Mr. Mathy Stanislaus
Assistant Administrator, Office of Solid Waste and Emergency Response
United States Environmental Protection Agency

A REVIEW OF THE PRESIDENT'S FISCAL YEAR 2013 BUDGET REQUEST FOR THE ENVIRONMENTAL PROTECTION AGENCY

WEDNESDAY, MARCH 28, 2012

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON WATER RESOURCES AND ENVIRONMENT,
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:09 a.m. in Room 2167, Rayburn House Office Building, Hon. Bob Gibbs (Chairman of the subcommittee) presiding.

Mr. GIBBS. Good morning. At this time, we will convene the Subcommittee on Water Resources and Environment.

Our hearing today is on the review of the fiscal year 2013 budget and priorities of the Environmental Protection Agency.

I will start with my opening statement.

In the last year, I have become alarmed at the overreach of the Environmental Protection Agency.

The budget put forth from the administration for fiscal year 2013 does nothing to alleviate my concerns. Starting with the proliferation of so-called "guidance" coming out of the EPA on an exponential increase in regulations being proposed and finalized by the Agency, these are attempts to short circuit the process for changing a law without following a proper, transparent rulemaking process or the consent of Congress.

These actions being carried out by the EPA are often based on questionable science at best, and stand to substantially increase the regulatory burdens for States, local governments and businesses, especially small businesses.

At a minimum since my arrival in Congress, the EPA has sought to arbitrarily expand the scope of jurisdiction of the Clean Water Act, halt the issuance of permits for legitimate economic development activities, and revoke already issued permits, expand regulation of stormwater, including post-construction site runoff, new development and redevelopment, and existing development through retrofitting.

Inflicts "one size fits all" numerical water quality standards on States and river basins, usurps State authority by taking over watershed implementation plans for the Chesapeake Bay and other watersheds, subjects Appalachia to unequal treatment under the law by enforcing illegal so-called "enhancement coordination activities" related to coal mining.

Places States in the unenviable position of having to break Federal law or break State law when EPA issues guidance or draft guidance in the field.

These actions among many others mean more unfunded mandates to burden our cities and towns at a time when they need relief from these types of injustices.

The EPA has taken these actions with little regard to economic consequences, with little regard to national security, and most importantly, with little regard to the law.

This is a Government agency that believes there is no limit to its power.

I am pleased to see that the Federal Courts, including the Supreme Court in the *Sackett* case, and the U.S. District Court for the District of Columbia in the *Mingo Logan* case are recognizing EPA's power grab and are starting to push back against the EPA.

Last week, the Supreme Court reigned in on EPA on the Agency's aggressive use of enforcement orders to strong arm property owners, and the U.S. District Court in DC reeled in EPA's overreach with the Agency's after-the-fact revocation of a 404 permit that had been issued to a West Virginia coal company.

I am concerned that while the President is imposing more rate authority burdens on communities, businesses and citizens, he is at the same time calling for eliminating compliance and assistance of those same communities, businesses and citizens.

The President's budget also calls for the reinstatement of an old and arbitrary Superfund tax on chemical companies, financial institutions, and other business sectors that may have nothing to do with creating the environmental problems associated with the Superfund site.

What we have here is a Federal agency that will add to the burden of rules and regulations and eliminate programs to help communities come into compliance, but will also put more boots on the ground to track down those who cannot come into compliance with little or no benefit to the environment.

This is Government at its worst, an agency cutting facilitators but increasing regulators.

I want clean water as much as everyone, but I recognize that we have to have a strong economy so we can be able to afford to invest in new programs that new regulations require.

Today is not the day to put more burdens on the American people. We need to make significant progress in creating long-term jobs and a stronger economy before we can tolerate more expansive regulations.

I now recognize the ranking member, Mr. Bishop, for any comments you may have.

Mr. BISHOP. Thank you very much, Mr. Chairman, and thanks to you, Ms. Stoner and Mr. Stanislaus, for being here today for this hearing on the administration's proposed fiscal year 2013 budget for the Environmental Protection Agency.

There is no question that the Federal Government faces difficult decisions as we seek to reduce our deficit and promote the growth of the economy and jobs at the same time.

While I agree the deficit reduction is critical, I also feel strongly that the American economy needs jobs, and this Congress has a responsibility to support programs that create jobs.

As we look to cut Federal investment, we also must remember that by investing in programs such as water infrastructure development and Superfund cleanups, we will actually create jobs.

For every $1 billion we invest in wastewater infrastructure, for example, we can create as many as 33,000 jobs in communities across America while improving public health and the environment.

To that end, I believe the administration has tried to balance the need to reduce spending with the notion that infrastructure investment will benefit our economic growth.

While both the State Revolving Funds and Superfund investment are slated for modest cuts, which in general, I do not support, I recognize that this budget request reflects a recognition that these programs are important job creators that provide economic and environmental benefits to local communities.

Apparently, the Majority of this committee also believes you have achieved a successful balance with respect to your proposed budget.

The 2013 view and estimates reported by the committee earlier this month repeatedly quotes "supports the President's request" with respect to the EPA budget. This is truly a noteworthy occurrence.

However, with respect to the State Revolving Fund program, the proposed cuts to Federal spending contained in this budget highlight the importance of bipartisan action on addressing our Nation's crumbling wastewater infrastructure.

This budget request further emphasizes the importance of long-term funding alternatives necessary to address the backlog of water infrastructure projects that await financing in my district and districts throughout the country.

That is why I and more than 30 of my colleagues are sponsoring H.R. 3145, bipartisan legislation to not only authorize the Clean Water SRFs, but that also authorizes several new forms of financing for these projects, including a loan guarantee program, direct loans, and a Clean Water Trust Fund.

If we truly want to provide the $15 billion a year, we need to address our crumbling infrastructure needs and create jobs, and an "all of the above" financing effort will be required.

I know the Chairman is also interested in this issue, and I look forward to working with him on this effort.

I also want to note that with respect to Superfund cleanup needs, the current Trust Fund is woefully inadequate to address the myriad of sites around the Nation that need to be remediated.

In my district alone, there are four sites that are awaiting clean up, and we need to find the resources to address them.

That is why I am an original co-sponsor of H.R. 1596 that would reinstate the Superfund tax and use the monies for their intended purposes, to pay for the clean up of Superfund sites.

If we do not reinstate this fee on the businesses that create this pollution and the burden falls to the taxpayers and to the communities where the sites are located.

I do not think that is fair and I do not think that makes sense.

Therefore, I strongly support H.R. 1596 and the administration's proposal that the polluter pays principle be reaffirmed.

Ms. Stoner and Mr. Stanislaus, you have a difficult job in protecting public health and the environment and ensuring clean and safe water for all Americans.

That task is made all the more difficult in a constrained budgetary environment such that we have today.

Some of my colleagues may present this committee with a false choice. We either have a robust economy or we protect public health and have a clean environment. They will argue you cannot do both.

In my view, the health of the environment directly impacts the health of the economy and the two cannot be separated.

With that, I look forward to hearing from you today, and I yield back the balance of my time.

Thanks, Mr. Chairman.

Mr. GIBBS. Mr. Bucshon, do you have an opening statement?

Dr. BUCSHON. Thank you, Mr. Chairman. Just briefly.

Looking over the budget, it is a welcome thing that the budget request from the President is actually less for the Environmental Protection Agency.

The reason I believe that is because of the ongoing activism of the EPA under this President, we see more of that in the papers today as the proposed CO2 regulations that will affect coal fired power plants, that could not pass Congress even under total Democratic control, and now this EPA feels like they can unilaterally under the administration put these types of regulations in place against the will of the American people, against the elected officials in this country.

The EPA also used billions of dollars in stimulus money, and in hearings previously in this Congress, I asked for an itemization of where the money went, and I receive a piece of paper with about five lines on it, with general categories.

That is also concerning because taxpayers' dollars were spent, in my view, for activism on the part of the EPA.

We held a hearing here that showed that the EPA is setting water quality standards that are higher than a bottle of Evian or a bottle of Dasani water, things that cannot with current technology be met but are based on an ideological position and not on scientific fact.

The budget request today that is less than last year is welcome, but my main concern coming from this Congress is where does the EPA stop, when will the EPA under this administration use scientific fact and not ideology.

My fear is that probably is not going to happen. Taxpayer dollars that we do appropriate to the EPA are going to be continued to be used for the type of things that the administration wants, again, reminding everyone that most of these regulations could not pass Congress even under complete Democrat control.

As a member of the Legislative Branch, I have serious concerns about that. I will be interested in hearing your comments. Thank you. I yield back.

Mr. GIBBS. Mr. Rahall, do you have comments?

Mr. RAHALL. Thank you, Mr. Chairman. I commend you for calling today's hearings and thank the witnesses for being with us.

Some time ago, it had long been my belief that the EPA could be a positive force in the permitting process for surface coal mining in West Virginia.

After years of battles in courtrooms that left coal miners and coal communities in a long tenuous limbo, this EPA had an opportunity to help achieve a center point that would provide for both energy development and environmental preservation.

It has utterly failed. Instead, the EPA took an extra legal approach, choosing to step over the bounds of the law to promote an ideological agenda, and in so doing, to push opposing parties even further from the balance we have all sought for so long.

Ironically, it is now the courts again that are stepping into the void to preserve the law.

It was a Federal District Court, as you have referenced, Mr. Chairman, last year, which found that the EPA had overreached in implementing an enhanced coordinating and review process for consideration of 404 permits for coal mining in Appalachian States.

The court ruled that EPA grabbed for itself authorities never granted to it in the Clean Water Act, and the court said in that process that EPA also breached the Administrative Procedure Act.

This last week, another Federal District Court ruled that this EPA went beyond the law when it reached back into time to veto a permit for mining that had been issued years earlier by the Army Corps, without formal objection from the EPA at the time.

The court ruled and I quote "That EPA exceeded its authority under the Clean Water Act by wrongfully taking for itself powers the law places in the Army Corps."

In fact, the court noted that the EPA's interpretation of the law "fails because it is illogical and impractical."

It is not just politicians and not just coal miners and coal executives. Now it is the courts who are saying with its treatment of coal mining in the Appalachian States, the EPA has twisted the law, circumvented the Congress, and trampled on the right of the people to know what their Government is doing.

In America, no agency can hide its actions under some veil of secrecy, but the EPA sure has tried.

In February, the EPA's own Inspector General issued a report criticizing the Agency for its failure to keep a public record of its activities and decisions regarding coal mining permitting in Appalachia.

As a result of its recordkeeping lapse, no one, not other agencies, not the States, not permitees, and not even EPA itself knows with any certainty the status of pending permits or what it takes to gain a permit.

The IG suggested that the Agency may be in violation of the Federal Records Act, and went on to warn that because of its failure to keep records, the EPA cannot even discern whether a decision it claims to be making protects the environment or even acts actually resulting in environmental improvements.

This Nation is ill-served by an Agency that is so driven by ideology that it cannot even follow the law.

It is disconcerting that we are here in this committee once again appealing to the EPA to work with the Congress, our State regulatory agencies, and other Federal agencies.

It is absurd that for the sake of the environment, the economy and our national energy needs, we are calling on this Agency to simply adhere to the law.

Thank you, Mr. Chairman.

Mr. GIBBS. Thank you. Mr. Miller?

Mr. MILLER OF CALIFORNIA. Thank you, Mr. Chairman. I am glad you held this hearing today.

We need to examine the budget request for fiscal year 2013 for the Office of Water. It is important to discuss in light of the recent judicial decisions on the way in which the Agency, and in particular, the Office of Water, implements the statutory obligations.

It is important because we know that the resources available to carry out these programs have become increasingly constrained as we try to reduce an annual deficit and address the national debt.

I am particularly interested in learning how the Office of Water can implement its responsibilities that will ensure that the most talented individuals can lend their expertise to the process of developing and approving NPDES permits and other elements of the Clean Water Act.

I note this is a concern because it appears that the Office of Water continues to rely on an antiquated framework on who can be nominated and selected to sit on the Regional Water Quality Board in my own State of California.

That is why I introduced the Sunshine on Conflicts Act. Since enactment of the Clean Water Act, the Office of Water has enforced a regulation that denies any individual that receives significant income from an NPDES permit or holder or applicant from consideration or selection to sit on the Water Board.

"Significant income" is defined as 10 percent or more in a given year. In 1972, that Act might have been reasonable at that point in time, but since then, it has changed.

Since 1972, the Act has evolved into a technically complex and hydroheaded regulatory program that requires a technical sophistication of well informed, experienced individuals.

Unfortunately, the law and the regulation the Office of Water relies upon has not been amended or updated to take into account those changes.

Today, we have a regulation program that presumes a conflict of interest based on one's income. The important point I want to emphasize is this rule applies to the individual and their immediate family.

In my own region, we have seen a lunacy of this standard. An elected city official with extensive expertise in the water quality policy was rejected in as an attempt to be appointed to the Regulatory Water Quality Board because of the income restriction.

The reason cited was his wife received income from a permit holder in violation of the rule.

The problem was the wife worked as an elementary school teacher. Her school district holds a general water storm permit and pays her an annual salary. That was the total reason the individual was disqualified, because she worked for a group that holds a permit.

Not only does this example scream credulity, it plainly illustrates the fact that we are denying qualified officials from sitting on important policymaking boards when there is no real or perceived conflict of interest.

I am really interested to learn from the witnesses why the Agency has not taken aggressive action to remedy this clear violation in the step or direction you have taken in the past.

The rules are vital. We should be careful to make sure there is not conflict of interest, but why can we not place the same standards we apply to judges or other elected officials instead of something like this?

If I wanted to be on the Board and my wife was an elementary school teacher, that should not disqualify me from sitting on the Board.

I am really interested to see why you have not changed those requirements and rules and if there is some way that kind of a rule can be overturned by the individual applicant.

To this date, that individual was turned down solely because his wife was an elementary school teacher.

I hope during the hearing you will address that, and I yield back the balance of my time.

Mr. GIBBS. Thank you. Representative Napolitano?

Mrs. NAPOLITANO. Thank you, Mr. Chairman. Thank you to my friends in EPA.

I was listening to some of the opening remarks. I am hearing that we want to throw the baby out with the bath water. We want to relax more regulations. We want to create more cleanup sites for the future generations to clean up.

We want to endanger the public health by cutting back the funding for some of the tribal, the Clean Water Act, the Drinking Water Act, the Superfund, and then we do not go after the potential responsible parties.

In California, we have the higher standards than most of the rest of the States that have made our State the cleanest and most attractive to business, et cetera.

Yet, we are saying it is OK, we can deal with the resulting illnesses that come out of the contamination in the water and others.

EPA does not really have to be going after those PRPs, the potential responsible parties. I disagree.

I thank you, Nancy and Mathy, for testifying. You have protected disenfranchised communities, the tribes, and I understand you are reducing the tribes who always traditionally and historically have been underserved and less supported in our efforts to assist them in clean drinking water.

I can remember being in the Subcommittee on Water and Power and having the Navajos come in with a drawing from the children on where the water came from. It was a water truck. That is irresponsible and that is intolerable.

We need to ensure that the small underrepresented communities have the same access to safe, clean water and infrastructure investment options.

We need to ensure protection of our clean water sources and the importance of working with our neighbors to protect water sources in communities along our international borders.

I include in that some of the ponds left by the fracking, the hydrofracking, the fact that those may not only endanger the aquifers but also the streams and rivers adjacent to communities that rely on that clean water that normally comes to them.

We also thank you for the assistance in preventing the spread of invasive species, the quagga mussels, that are really costing our businesses and our water agencies millions upon millions of dollars to try to find out how to prevent them from gluing themselves onto the metals that prevent the water from going into the intake valves.

We support the Superfund cleanup efforts. Mr. Stanislaus' testimony discusses the Pemaco Superfund site in Maywood, which is a city that is not adjacent to me but it is within 20 minutes.

It is a minority community, and the cleanup site, the effort put into it, has become an asset to the community. That is what we look forward to, being able to have park areas, involve the community in that effort and ensure they understand and have transparency in what really is affecting their community, and have the potential responsible party own up and be part of that effort.

It is critical that we continue to protect and invest in environmental protection programs to ensure Americans have continued access to reliable safe and clean water sources.

We cannot afford to let the regs relax in areas—I can understand there may be a little bit more of asserted efforts in some areas, but that should not preclude us from continuing to support EPA's effort to provide our communities, all our communities, with safe, reliable drinking water, and enforcing those folks that think they can get away with it for the almighty dollar.

Thank you, and I yield back.

Mr. GIBBS. Thank you. I would like to welcome our two witnesses. They are both from the United States Environmental Protection Agency.

Our first witness is Ms. Nancy Stoner. She is Acting Assistant Administrator for the Office of Water, and our second witness is Mr. Stanislaus, Assistant Administrator of the Office of Solid Waste and Emergency Response of the U.S. EPA.

Welcome, Ms. Stoner. The floor is yours.

TESTIMONY OF NANCY STONER, ACTING ASSISTANT ADMINISTRATOR, OFFICE OF WATER, U.S. ENVIRONMENTAL PROTECTION AGENCY; AND MATHY STANISLAUS, ASSISTANT ADMINISTRATOR, OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE, U.S. ENVIRONMENTAL PROTECTION AGENCY

Ms. STONER. Good morning, Chairman Gibbs, Ranking Member Bishop, and members of the subcommittee. It is nice to see all of you again.

I am Nancy Stoner, Acting Assistant Administrator for the Office of Water at U.S. EPA. Thank you for the opportunity to speak about the President's fiscal year 2013 budget request for EPA's National Water Program.

The President's budget provides the resources necessary for EPA to continue our work in collaboration with States, municipalities, industry and the public, to ensure safe and clean water for all Americans.

As Administrator Jackson has testified, this budget focuses on our core mission and sets priorities to make the best use of available resources.

Clean water is not only a resource and asset to be passed on to our children, it is also a necessary part of life. Clean water is essential to public health, drinking water supplies, recreation, quality of life, and the welfare of families and communities, whether in large cities, small towns, or rural America.

Clean water is also vital to the U.S. economy, an impressive variety of American businesses depend on clean water supply, including energy generation, tourism, farming, development, fishing, manufacturing, food processing, and beverage production.

The EPA's request for the National Water Program is $3.41 billion, a 9-percent reduction from 2012 enacted levels.

Our request reflects the kinds of tough economic choices facing American families every day, eliminating extras, trimming everywhere, and focusing on essentials.

The cuts are significant, but we intend to work effectively with less to continue to improve public health, water quality, and environmental protections, on which American communities and businesses depend.

The Clean Water and Drinking Water State Revolving Funds provide capitalization grants to States which when combined with State resources use the funds to make affordable loans to local communities to finance drinking water and wastewater systems and other water quality projects that protect public health and vital water resources.

We are requesting a little more than $1.1 billion for the Clean Water SRF, and $850 million for the Drinking Water SRF, enabling States and tribes to begin approximately 500 clean water and approximately 400 drinking water projects nationally.

EPA will work with States to target assistance to small and underserved communities with limited ability to repay loans, while maintaining State program integrity.

This budget proposes to eliminate the Beach Grant Program, with a reduction of $9.9 million in 2013. While beach water monitoring continues to be important, we believe most State and local government programs have developed the technical expertise and procedures to continue beach monitoring without additional Federal support.

This budget request includes $72.6 million for the Chesapeake Bay program. The budget provides States with an additional $14.4 million in grants to make further progress on implementing the watershed implementation plans they developed to meet the Chesapeake Bay pollution reduction goals.

In addition, EPA is requesting $300 million to continue robust funding for the Great Lakes restoration initiative, to reduce toxic substances, restore habitat, combat invasive species, and improve coastal health.

Our request also includes $265.3 million for water pollution control grants. The EPA is requesting $15 million of the $26.9 million increase for States to strengthen their nutrient management efforts consistent with the Office of Water guidance issued in March 2011.

Nitrogen and phosphorus pollution causes algal blooms, dead zones, fish kills, and increased drinking water filtration expenses.

We believe that these additional funds will help ensure that States' clean water programs are effective in implementing their Clean Water Act responsibilities, protecting the environment, and supporting our economy.

In conclusion, I would like to thank you, Mr. Chairman, and members of the subcommittee, for this opportunity to discuss the President's 2013 budget request for EPA's National Water Program.

The President's budget reflects the EPA's ongoing efforts to carefully consider potential cost savings and reductions while continuing our commitment to core environmental and public health protections.

Thank you again, and I will be happy to answer any questions you may have.

Mr. GIBBS. Thank you.

Mr. Stanislaus, the floor is yours. Welcome.

Mr. STANISLAUS. Good morning, Chairman Gibbs, Ranking Member Bishop, and members of the subcommittee.

I am Mathy Stanislaus, Assistant Administrator for the Office of Solid Waste and Emergency Response.

Thank you for the opportunity to appear today to discuss EPA's proposed budget for OSWER's programs.

I will summarize my statement but ask that my entire written statement be submitted for the record.

EPA's budget request focuses on fulfilling the Agency's core mission of protecting public health and the environment. The budget request fully reflects the President's commitment to reducing Government spending and finding cost savings in a responsible manner while supporting clean air, clean water, and clean land.

To help clean up our communities, the President is proposing investments that clean up contamination and promote economic development and job creation.

The President's 2013 budget proposes $164.7 million for OSWER's Brownfields Program. EPA's Brownfields Program uses its funding to successfully leverage economic investments.

On average, more than $18 of private and public investment is leveraged for every public dollar that is expended through EPA's Brownfields Program.

More than 75,000 jobs have been leveraged through Brownfields project funding since the inception of the Brownfields Program.

In fiscal year 2013, Brownfields Program grantees are projected to assess more than 1,200 properties, clean up more than 120 properties, help create at least 5,000 cleanup and redevelopment jobs, and leverage more than $1.2 billion in cleanup and redevelopment funding.

The Brownfields Program also provides funds for job training. EPA's Job Training Program has sought to ensure that the economic benefits derived from Brownfields redevelopment remain with local residents.

As of January 2012, approximately 10,275 individuals have completed training, and approximately 7,155 obtained employment in the environmental field.

These numbers indicate a cumulative placement rate of approximately 70 percent since the program was initiated.

The fiscal year 2013 budget requests $1.176 billion for Superfund cleanup efforts across the country, which represents a $37 million reduction from the fiscal year 2012 enacted levels, and reflects the hard budget choices that are being made.

Superfund Removal and Homeland Security Program funding levels are maintained with focused reductions associated with Superfund's remedial program.

We expect a reduction to the Superfund Remedial Program will result in no new EPA led construction project starts in fiscal year 2013.

EPA will balance the Superfund remedial pipeline by focusing on the completion of ongoing projects rather than new starts.

We are committed to continuing the Superfund Program's success in protecting human health and the environment and providing local communities the opportunity for economic development by cleaning up the Nation's worst hazardous waste sites.

For example, a January 2012 study completed by researchers at Duke University found localized benefits from the cleanup of Superfund sites across the country from the initiation of cleanup activities to the delisting of sites.

Specifically, unoccupied housing within 3 miles of the site found its property values increasing from 18.6 percent to 24.5 percent after the delisting of a site from Superfund's National Priorities List.

Regarding our enforcement efforts, EPA has been particularly successful in leveraging appropriated funding through the use of responsible party settlements to establish site specific special accounts.

Through the end of fiscal year 2011, EPA collected more than $4 billion including interest in more than 1,000 site specific special accounts.

Of this amount, EPA has dispersed or obligated $2.2 billion for site specific response actions and developed multiyear plans for nearly 100 percent of the remaining funds in the special accounts.

In total, through fiscal year 2011, EPA has secured more than $36 billion in responsible party commitments for site clean up and reimbursement of past costs.

In addition, EPA's Emergency Response Program will continue to maintain its capability to respond to imminent threats to human health, including incidents of national significance.

The EPA's Chemical Accident and Oil Prevention Programs play an important role in assessing and reducing risk of chemical accidents and oil spills.

EPA's Risk Management Program works with the State and local prevention and preparedness programs to help protect communities from catastrophic releases of hazardous substances from facilities. The fiscal year 2013 budget request requests an additional $1.5 million to increase inspection of high-risk facilities.

With that, I will close, and look forward to responding to your questions.

Mr. GIBBS. Thank you. I will start off with the first questions.

Ms. Stoner, in the budget, it appears when you talk about the cuts, we know there is a total cut, but it appears to me that there are more significant cuts to the States, like in the State Revolving Fund and other grant programs.

Can you expound a little bit on what the cuts at the Federal level compare to? It appears the bulk of the cuts might be cuts to State monies. Is that correct?

Ms. STONER. The increases are actually for State programs. The State grant programs under the 106 Program for the Clean Water Act, the State drinking water program, an increase in what is called "SDWIS," which helps to create the data systems, the Chesapeake Bay Program, to help the implementation by the States of the watershed implementation plans, that is actually where we saw an increase.

Mr. GIBBS. Let me just stop you there. The programs you just mentioned, for the Chesapeake and other programs you mentioned, those are more like earmarks, but the programs that the States administer are being cut, like the SRF?

Ms. STONER. There are cuts that are proposed to the State Revolving Funds, that is correct, Mr. Chairman.

I am talking about the programs that enable the States to run their programs. That is what the 106 Funds do under the Clean Water Act. That is what the Public Water System Program does under the Safe Drinking Water Act. We give that money to the States. They run their programs with those increased funds that we provide.

Mr. GIBBS. How about 319?

Ms. STONER. 319, I think, is flat. Let me just check. That is a very important program. It does hugely important work on the ground, particularly to reduce nutrients.

We have sought no cut to that, I believe, and we are also working very closely with USDA to align the funding under that program with their conservation funds to make sure every dollar goes further.

Mr. GIBBS. How about cuts at the Federal level, administrative level, and DC level?

Ms. STONER. There are some cuts there. As I said, the increases are primarily to those State programs.

Mr. GIBBS. OK. Moving on, recent court decisions withheld that the EPA acted unlawfully when engaging in enhanced coordination activities with Section 404 permits, and acted unlawfully when revoking an already issued 404 permit. I think you are well aware what that is.

What is the Agency doing to change the culture of their unlawful behavior and repeated abuse of power after these court decisions issued recently?

Ms. STONER. Both of those matters, of course, are in litigation and we will be discussing them and our approach moving forward with the Justice Department and Office of General Counsel, Mr. Chairman.

Mr. GIBBS. We are not talking about changing our processes? You cannot appeal because it was actually a Supreme Court decision.

Ms. STONER. We have already eliminated the enhanced coordination procedures/process that we had working with the Army Corps of Engineers as a result of that decision.

We are also discussing with the Justice Department——

Mr. GIBBS. What has happened to the permits that were hanging in limbo from the enhanced coordination process?

Ms. STONER. Well, we have eliminated that process. We are continuing to review current permits under 404 with the Corps of Engineers under our statutory and regulatory authorities.

Mr. GIBBS. Another concern of mine is there has been a lot of discussion about EPA essentially working around "navigatable waters" to change it to "waters of the United States." I think that would also tie in a little bit with the connectivity study.

I am wondering if you could share your thoughts on what EPA's intention is with that issue, the connectivity study, versus "waters of the U.S." versus "navigatable."

Ms. STONER. Yes, Mr. Chairman. The study to which you refer is one being done by the Office of Research and Development. It is not new research but rather gathering peer reviewed literature on the connections between water bodies, to understand the science better to inform our thinking. That is what that study is about.

On the "waters of the U.S.," as I believe you know, we put out a draft guidance for public comment last spring. We got about 230,000 comments on that, about 90 percent of them were in favor of clarifying the scope of the Clean Water Act.

Mr. GIBBS. Just to interrupt you there. My understanding is the first guidance went out as a proposal draft and what came out earlier this month, there was not much change.

Did you really incorporate much of the 230,000 comments that were in the Federal Register?

Ms. STONER. We reviewed very closely those comments and have made some proposed modifications to reflect what we heard. That document is currently in interagency review.

Mr. GIBBS. I will probably come back on the next round for some specifics on that.

Mr. Bishop?

Mr. BISHOP. Thank you, Mr. Chairman. Thanks to both of you for your service and for your testimony.

I want to focus in a little bit more on the SRF. This committee has had a series of hearings on the need to increase the amounts of money available from all sources to address approximately a $300 billion backlog in wastewater infrastructure projects over the span of our country.

Because of our focus on the SRF and because of my particular interest in the SRF, I am worried about the President's budget that would propose a $291 million cut in the Clean Water SRF and a $67 million cut in the Drinking Water SRF. All total, $360 million and some.

We understand that the Federal Government—we are looking to reduce our expenditures in all areas.

One of the things that we are talking about is taking a tool box approach. We are talking about different methods of financing. We are talking about a WIFIA approach. We are talking about a Clean Water Trust Fund.

The question to you, Ms. Stoner, is to what extent have you viewed both the Clean Water SRF as an essential tool in addressing wastewater infrastructure needs in the past and to what extent do you see it remaining an essential tool in addressing wastewater infrastructure needs?

Ms. STONER. The Clean Water SRF has been a great tool that has provided wastewater services to communities across the United States, and has been very important to helping finance that in many communities, large and small, including some very small and disadvantaged communities that have difficulty in funding that work without the assistance of the lower interest rates in the SRF.

It has been a very successful program. It is a very popular program.

Mr. BISHOP. Would you agree it has been particularly helpful to small and medium sized communities?

Ms. STONER. It has been very helpful to those.

Mr. BISHOP. Thank you. One of the things I am worried about, this budget, as I said, is one that gives me great pause in certain areas, but I am worried, tomorrow we will be voting on Chairman Ryan's budget.

It does not specify EPA, but the function, Function 300, that EPA is under in the budget is cut by some 18.8 percent over a 5-year period.

Added on top of that is the potential implication of the sequester, if we move to a sequester, that would add another 9 percent in cuts.

If we move as Chairman Ryan's budget proposes to turn off the sequester on defense and load all the sequester onto non-defense discretionary, that presumably would take that 9 percent and make it 18 percent.

We could be looking at some pretty big cuts, on the order of 30 to 40 percent, on EPA funding.

How would the EPA accommodate that? I mean the mantra of this committee is "do more with less." How much more would you be able to do with a 30-percent cut in funding?

Ms. STONER. Well, obviously, it would be very difficult. I must say I was surprised a little bit to hear the opening statements in terms of ideology.

I think what we are talking about here is something that is very popular with Americans from all political and religious backgrounds, all kinds of backgrounds, all geography, we are talking about protection of water resources for future generations.

We are talking about having safe tap water that Americans can go anywhere in the U.S. and know they can drink it.

This is actually something that has been a bipartisan issue historically, is a bipartisan issue out in the countryside where I visit. Americans everywhere love clean water.

We need to support it and work to support it here together, working together in Washington.

Mr. BISHOP. As you just said, that certainly reflects the view of my constituents on both sides of the aisle.

I have a district that has water on three sides, and is enormously dependent on travel and tourism and seasonal homes as the foundation of our economy.

One of the reasons that our area is attractive is because of clean water. I would agree with you.

Mr. Stanislaus, there is a backlog in Superfund site cleanups right now of somewhere between 25 and 35 sites. Is that correct?

Mr. STANISLAUS. I believe that is correct.

Mr. BISHOP. If we were to carry forward with a budget—the President's budget proposes a $37 million cut, but $33 million of that $37 million is in the remediation portion of the budget. Big hit to the remediation portion.

Again, same question to Ms. Stoner, if we were to carry forward with an 18.5-percent cut to Function 300, that would be evenly distributed? By the way, we do not know that. It is a reasonable assumption.

Evenly distributed among the programs that are covered in Function 300 if we were to load on top of that either 9 percent sequester or 18 percent sequester, what would that do to the ability of the EPA to continue with the Superfund program, by how much would the backlog grow, we are at 25 to 35 now? Would we be able to address the backlog? Would more sites be added to the backlog?

Mr. STANISLAUS. Clearly, any further cuts will result in an increase in the backlog. I cannot give you an exact number.

With respect to the President's proposed budget, we are recognizing in tough budget times that we will continue to do the work on existing sites, but beginning clean up of new EPA funded sites, we will not be able to do it with the fiscal year 2013 budget. Any further cuts would mean additions to the backlog.

Mr. BISHOP. Thank you very much. I have exceeded my time. I yield back, Mr. Chairman.

Mr. GIBBS. Mr. Bucshon?

Dr. BUCSHON. Thank you, Mr. Chairman.

Ms. Stoner, can you remind me how much stimulus money EPA received? Do you remember how much that was in 2009, I think it was?

Ms. STONER. I think it was $6 billion.

Dr. BUCSHON. $6 billion. Has that money all been used? Have you spent all the $6 billion that you were given through the stimulus program?

Ms. STONER. Not all of it has been used yet because a lot of it funds construction projects that were begun but have not yet been completed.

Dr. BUCSHON. If you would take that $6 billion in addition to your annual budget, let's say over 10 years, that would be what, $600 million a year over 10 years? Approximately.

Ms. STONER. Right.

Dr. BUCSHON. If you added that number to 8.3445, that would make the budget really over the next 10 years that you are actually going to receive after the stimulus, let's say over $9 billion, not actually the $8.3 billion, which would be a significant increase over what the budget was previously, say the budget in 2008, which I think was about $8.3 billion.

Would you agree with that?

Ms. STONER. I am assuming your math is correct, yes, Congressman.

Dr. BUCSHON. I guess my point is this, I am hearing today how this is dramatically going to decrease the ability of the EPA to have clean water and clean air across this country because of a $104.9 million decrease from the enacted level.

In actual fact, if you factor in stimulus money that was given to the EPA in 2009, I believe, overall, the EPA is flush with money compared to previous budgets in my view. Would you agree or disagree with that?

Ms. STONER. Well, the cuts you are talking about are not the cuts that are in the President's budget.

We are not saying that the President's budget would result in those severe consequences that you are reflecting.

Dr. BUCSHON. Which cuts are you talking about? If it is not the ones in his budget proposal, his proposal proposes to decrease your budget by $104.9 million less than the enacted level in 2012.

Ms. STONER. Right. That is correct.

Dr. BUCSHON. OK.

Ms. STONER. We are not saying that the President's budget would—what we are saying the President's budget does is focus on the priorities and ensuring that the dollars are spent as effectively as possible, and some tough cuts were made.

We are not saying that those would have a dire impact. I thought that is what you——

Dr. BUCSHON. That was the impression I was getting from hearing some of the questioning. I would hope that every Federal agency is always using the taxpayer dollars as effectively and appropriately, and we would not have to rely on just when a President, regardless of which President's budget comes out, but every agency is always using the taxpayer's dollar as effectively and efficiently as we can.

Ms. STONER. That is our goal.

Dr. BUCSHON. Yes. The $6 billion, I asked a number of months ago where that money is being spent, and I received a piece of paper with about five itemized—do you have an itemization of how you spent an extra $6 billion, the specifics, and what projects are being funded and all that?

If you do, I would like that information.

Ms. STONER. We would be happy to provide additional information.

Dr. BUCSHON. That is my main issue. When I hear the dire straits situation, about clean water and clean air, and then the American people do not really know the facts, that you also had an extra—you are saying $6 billion. My number was over $8 billion in stimulus money.

I would argue that what you are trying to make it out to be is not correct, and that even though it appears, whether it is the Republicans in the House, whether Chairman Ryan's budget comes out, what number they come out with, will result in any significant way impinging on the EPA's ability to make sure all of us have clean water.

By the way, I agree with your statement that everybody across political lines want clean water and clean air.

In the abstract, that is very true. Of course, I want that. I have four kids. I do not want them to turn on the faucet and have dirty water.

On the other hand, you also have to recognize the fact that setting standards to the point where they are not attainable with current technological advances, whatever you want to call it, and wasting the taxpayers' dollars trying to pursue an ideological position is also something that if I told people across the political spectrum, they would not agree with that either.

I yield back.

Mr. GIBBS. Mr. Rahall?

Mr. RAHALL. Thank you, Mr. Chairman. Thank both of you for your testimony this morning.

Ms. Stoner, what you just said earlier about everybody wanting clean water, as the gentleman from Indiana just referenced, certainly, that is a commendable goal, and we all want to see that.

It is always the question of the proverbial pendulum swinging perhaps too far one way in the previous administration and now there is a perception that it is swinging too far the other way in this administration.

We have to find the proper balance, in my opinion. We can have Clean Water. We can have safe drinking water for our children and our grandchildren. Yet, at the same time, we can have jobs. That is certainly the paramount concern of the constituency I represent, jobs.

Indeed, when we passed SMCRA back in 1977, my first year in this body, my first Conference Committee upon which I sat, we had as our goal the dovetailing, the need to protect the environment and the need to provide jobs for our people.

We struck the proper compromises and we were able to meet those twin goals, in my opinion, as established under SMCRA.

I recognize that job creation is not particularly a jurisdiction of the EPA or a consideration of the EPA in decisions that you make. Job protection, I would think, should be some consideration.

You can respond to that if you want. I want to get to a specific question. That is how many 404 permits has EPA given the go ahead on since the April 1, 2010, issuance of your conductivity guidance for coal mining in the Appalachian States?

Ms. STONER. First of all, on the topic of jobs, we certainly view our work on surface coal mining to be directed at ensuring that discharges associated with surface coal mining activity protect public health and the environment, and that those are done in a way to allow the mining company to move forward with that activity and to achieve the goals of the Clean Water Act. That is our goal.

Mr. RAHALL. Not job protection.

Ms. STONER. Our goal is to ensure that the activities can go forward so that people can have those jobs and also have clean water.

Of course, I have been many times to West Virginia, to the beautiful streams that you have there, and they are fabulous resources.

Ensuring that people have those resources and jobs, that is our goal, absolutely.

The number on the 404 permits is more than 110 permits have been issued since 2009, since the beginning of this administration.

Mr. RAHALL. That is the number that has been submitted.

Ms. STONER. No, those are the ones issued by the Army Corps of Engineers in Appalachia.

Mr. RAHALL. Could you submit that to the subcommittee, please?

Ms. STONER. Yes, sir.

Mr. RAHALL. Thank you. It has come to my attention that EPA is now reviewing a majority of coal mining NPDES permits in West Virginia.

As you know, NPDES is an authority delegated to the State. Why is EPA now after all these years respecting delegated authority, now intervening in this area?

Ms. STONER. We are working with the State of West Virginia on improving those permits to ensure that those activities move forward and the discharges associated with them are consistent with the requirements of the Clean Water Act.

Mr. RAHALL. In consultation with the State of West Virginia?

Ms. STONER. Yes, we work very closely in looking at those permits that you just referred to. We work with the State. My Region 3 office, I think, has been making a lot of progress that they are very proud of, working with West Virginia to improve those permits.

Mr. RAHALL. As you know in working with our State, we have worked very hard to try to strike this proper balance. We have tried very hard to work with the EPA over the years.

It is not our intention to just bad mouth you at every turn of the road. We want to work with you. That is our goal in West Virginia, as long as our authority as a State is respected as well.

That is something we established again going back to SMCRA, that we had minimum Federal guidelines so one State could not undercut another State, yet we allowed State authority where those minimum Federal guidelines were met to respect their authority.

That is what I hope we can strike here as well.

Ms. STONER. We agree. We are working closely in partnership with West Virginia on those permits.

Mr. RAHALL. Thank you. Thank you, Mr. Chairman.

Mr. GIBBS. Just for a quick clarification, did you say 110 permits had been issued?

Ms. STONER. Yes, sir. For surface coal mining or coal mining operations in Appalachia since 2009, yes, sir.

Mr. GIBBS. Yesterday Secretary Darcy, Secretary of Civil Works of the Corps, testified 80. So there is just a little difference in numbers. They testified there was 80.

Ms. STONER. We will work with them to reconcile our records.

Mr. GIBBS. OK. Thank you.

Mr. Crawford.

Mr. CRAWFORD. Thank you, Mr. Chairman.

I just want to direct my question to Mr. Stanislaus real quickly. This has to do with the EPA's Spill Containment Compliance and Countermeasure Program.

I understand that the EPA's final rule was delayed last year until May of 2013. Does your 2013 budget request account for the costs associated with implementing the SPCC Program on farms?

Mr. STANISLAUS. Well, yes. Clearly, as part of the budget it incorporates the series of activities affecting spill prevention and con-

tainment countermeasures, which as you know the reason for the delay in the compliance date is because we heard from lots of representatives from the farming industry who said that they needed that additional time. So we granted that additional time.

We have also met with a number of bureaus and trade associations in terms of doing targeted outreach. We are in the middle of doing that. We are also in the middle of scheduling a followup meeting with them in the next few weeks.

Mr. CRAWFORD. OK. Is there any chance that you might consider a further delay until an even later date than May 2013?

Mr. STANISLAUS. No. I mean, that date was selected to give essentially two growing seasons of opportunity to do the outreach and for the farms to prepare the spill prevention and countermeasure plan. And just so that I am clear, for 90 percent of the farms, 95 percent of the farms, it merely means identifying a plan and keeping it at the facility itself. So there is no submission to EPA.

Mr. CRAWFORD. OK. As I understand it, the final SPCC rule required farmers with more than 1,320 gallons of oil or gas storage to comply with the regulations; costs tens of thousands of dollars; and would require the procurement of professional engineers.

The 1,320 gallon threshold would include most farms. Does EPA have any data on farm spillage that justifies such a low exemption amount?

Mr. STANISLAUS. I can provide you that data. And just to be clear with respect to the use of professional engineers, only 5 percent of farms, because of their size, would require professional engineers. The remainder do not require a professional engineer.

Mr. CRAWFORD. OK. I understand historically the facility or entity reporting a spill to the National Response Center is not required to identify that facility as a farm. So the EPA would not have such data available. In fact, a 2005 USDA document states that over 99 percent of the farmers surveyed had not experienced a fuel or oil spill in excess of 1,320 gallons.

Given these facts and your response, I am still trying to wrap my head around what kind of methodology the EPA uses to come up with such an unreasonable number.

Mr. STANISLAUS. Well, again, I will get back to you in terms of the data. The thresholds are really based on the size of the vessel which would cause a release, which would impact, among other things, waterways of the United States.

[Environmental Protection Agency insert for the record follows:]

> The 1,320 gallon threshold quantity, which currently applies to all facilities, was promulgated in the original Spill Prevention, Control and Countermeasure (SPCC) rule in 1974. The Federal Water Pollution Control Act specifies there shall be no oil discharges to waters of the United States (U.S.); therefore, the threshold quantity established was set at an amount which would help prevent spills harmful to waters of the U.S., but not present too great a regulatory burden. The threshold amount was greater than the volume of two of the largest typical home heating oil tanks in use at that time. SPCC applicability is not based on a facility's spill history; rather, it addresses the hazard

associated with the storage of oil and the potential for harm to the aquatic environment in U.S. waters if even a small amount of oil is discharged.

Oil has been spilled into U.S. waters from facilities in every business sector covered by the SPCC rule, including farms. The National Response Center (NRC) annually receives more than 20,000 reports of oil spills from a wide range of sectors. However, specific oil spill data for any one sector is not readily available using the NRC reports because they are intended to determine the need for immediate Federal response action and not for statistical analysis of spill frequency in any one particular sector.

Bulk containers holding oil at a farm are no different than the bulk containers holding oil at any other type of facility. These containers are often used to provide fuel for farm vehicles and they operate the same as containers for vehicle fueling at terminals or construction sites. Consequently, the basic SPCC requirements for a bulk container at a farm are identical to those at other facilities; e.g., provide secondary containment and be ready to respond to ensure spilled oil does not reach U.S. waterways.

However, EPA has recognized there are certain circumstances unique to farms. In the past several years, EPA has amended the SPCC requirements to streamline and reduce the applicability of, and compliance burden for farmers, such as:

- An exemption for all heating oil tanks used for single family residences (e.g., the farmer's home);
- An exemption for application and mix containers holding pesticide adjuvant oils;
- A flexible definition of facility whereby oil storage containers on separate land tracts at a farm do not need to be aggregated toward the threshold quantity;
- An exemption for most milk and milk product containers; and
- A clarification on permanent bulk container closures and nurse tanks specifically written to address farm operations.

Finally, EPA simplified the rule requirements for facilities with smaller oil storage (such as farms) to allow self-certification of their SPCC Plans, and in some cases, to fill out a standard template that serves as the Plan.

Mr. CRAWFORD. OK. I understand 10,000 gallons is a definition that defines a small farmer. Do you think a 10,000 gallon threshold is a more reasonable approach than 1,320?

And further, does the EPA have the capacity within its 2013 budget request to regulate every farm whose storage exceeds 1,320 gallons?

Mr. STANISLAUS. With respect to the thresholds, our thresholds are really based on, again, the size of a tank from which a release

could impact the environment and waterway. So it is based on our evaluation of that.

I am sorry. Your second question was the level of outreach?

Mr. CRAWFORD. Yes. I guess my question is if we raise that level to 10,000 gallons, which is actually the definition of a small farm, 10,000 gallons of fuel storage, would the EPA's budget request be smaller to reflect that if the program had a higher exemption level for farms?

Mr. STANISLAUS. Well, clearly, farms is one of the various sectors that we are going to be conducting outreach to. Spill prevention, the SPCC Program is primarily a self-implementing program. So it is primarily for the regulated entities to develop plans, and we are all going to be doing outreach to various sectors to make sure that they understand their requirements.

The agriculture industry has asked for special outreach. Given the seasonal nature of that, we are in the midst of doing that.

Mr. CRAWFORD. OK. Thank you.

And I thank the chairman for his flexibility and yield back.

Mr. GIBBS. Mr. Miller, questions?

Mr. MILLER OF CALIFORNIA. Yes. Thank you, Mr. Chairman.

You know, I do like your comment on clean water and clean air. We all support that. I mean that is a given. I think it is how we go about doing it in many cases that causes some of us some problems.

I represent between San Bernardino County and Orange County, and they have done some of the best work in the Nation, getting that water back on the aquifer. I mean, Prado Dam is right at the edge of San Bernardino and Orange County, and we provide water for about 2.8 million people from there. When water gets to that dam, it never gets to the ocean.

We have got huge chloride problems, you know, in San Bernardino County above that we are trying to deal with, and I guess one of the problems we are having is on discharge. The housing industry has been devastated in the country, and the amount of water that has got to be retained and detained on site because of regulations placed, you know, on them, and you wonder if there is really a true benefit based on the cost and the impact on the private sector on some of the regulations.

I applaud you in many of the areas we go to and you try to make sure that the rules are in place and they are clearly defined where, you know, we can make sure the water is clean. Nobody wants water running off a copper mine, you know, into the channels and ending up being in the water supply. That is a real problem, and I know members of this committee are concerned about areas they represent in coal and those types of things.

I represent a lot of dairies, and that has been a real problem over the years with detention on site and when you have huge downpours and waters running onto a poor farmer's property and causing a discharge. I have had farmers actually fined by EPA for something that was just actually a flood control district problem rather than their problem.

But we talked earlier in my comments about how we deal with getting Water Quality Authority personnel to be able to apply, and I think it is an antiquated procedure used and a conflict of interest.

Have you started to look at any updating on that and becoming more realistic?

I am not trying to get the Agency to say we should not have conflict of interest rules because we clearly should, but when you have a conflict on a Water Quality Authority that is far more stringent than on judge or other elected officials, it seems like we need to update that.

Could you kind of respond on that?

Ms. STONER. Yes. That actually is an issue I am familiar with, and we are looking at that now in a proposal that we have that is in discussion in interagency review.

Mr. MILLER OF CALIFORNIA. My previous statement was not an attack. It was just to give you an example. We just experienced in our area where an elected official's wife is actually an elementary school teacher, and because the school district holds a permit, that individual who was really qualified could not be appointed to the Water Quality Authority.

Well, give me some idea of what you envision in developing an alternative in the future and some type of timeframe on that. Do you have any idea?

Ms. STONER. Well, at this point we are just looking at the issue and figuring out what we can do to address it, but we are aware of it, and we are giving it consideration right now.

Mr. MILLER OF CALIFORNIA. Would you have somebody respond in writing to me when you have come to some conclusion on what you think could be done so we know where you are going?

Ms. STONER. I think there will be something for the public that we could provide to you. Yes, I appreciate that.

And I did want to comment on the waste water reuse point that you made earlier. The area of the country that you represent really is leading efforts on that, and I think it is something that more communities will be doing, finding that waste water and storm water to be a resource to add to and augment the water supplies, and that that can save energy and save money and is a great thing to do.

So we appreciate the innovation that is occurring in your district on that.

Mr. MILLER OF CALIFORNIA. We have just replaced a brine line out there that was absolutely necessary to deal with the problems. But the source of, I guess, discharges you would have to apply it. The way it is being applied to the housing industry today, it seems like a little heavy handed. I mean, I look at all of the years I have watched houses being built, and they are built throughout this country and those requirements have been replaced. Now they are requiring in many cases on-site detention, which makes it very difficult in a lot of cases to apply to a project. It is not cost effective.

But I am not certain that it is really creating that much of a benefit. Has that really been looked into?

Ms. STONER. We are definitely looking at the benefits associated with those kinds of approaches. The National Research Council has urged us to do that, to look at ways of addressing pollution loading and flooding, as you mentioned, augmenting water supplies, other ways of addressing the storm water in a way that provides multiple benefits for communities and is cost effective.

Mr. MILLER OF CALIFORNIA. It seems like we do have some monsters out there that have discharge problems and truly contaminate, and then we have these little ants that we are adding to it, like the development projects, those types of things. And it just seems like the costs associated with that are just excessive based on the benefit of the actual yield.

So I would hope you would really look at that in a fair perspective and say is there really a benefit to what we are doing based on the costs associated with those sources that truly, truly pollute our water systems and that we do need to look at. I mean, if you could do that, I would appreciate that.

Ms. STONER. Yes. We certainly will be looking at that, and that is another area where there is lots of innovation. Lots of developers are figuring out how to achieve better water protection and also better profits for them in the developments that they put together. So we are talking closely with them and those who can inform us.

Mr. MILLER OF CALIFORNIA. Profits are not my concern. It is the cost associated with is there a true benefit.

Thank you. I yield back.

Ms. STONER. Thank you.

Mr. GIBBS. Mr. Denham.

Mr. DENHAM. Thank you, Mr. Chairman.

Ms. Stoner, we have been talking a lot on this committee about flexibility of current regulations, and as we go forward and pose new regulations, I want to make sure that we continue to have that same type of discussion on flexibility.

In California, obviously we have the strongest environmental policy with CEQA. In this committee we have been talking about NEPA regulations and whether or not you go through the same regulatory process twice or whether or not there are some opportunities to create some efficiencies by combining efforts.

I think the same thing could be said here. The State of California already has a regulatory framework in place for 316(b) which allows for a site specific approach for impingement. So would EPA not support providing States the flexibility to make these important permitting decisions given their longstanding expertise with these unique facilities?

Ms. STONER. Our current proposal does have a lot of flexibility in it with respect to the cooling water intakes, the 316(b) that you are talking about, particularly with respect to the entrainment. We are working right now and it is in interagency review a Notice of Data Availability that would offer some alternatives on impingement as well.

Mr. DENHAM. And when evaluating the cost-benefit ratios associated with the technology requirements of the rule, do you consider site specific external factors, such as ability to comply with regulations on reliability?

Ms. STONER. Again, the current proposal talks about looking at those site specific factors with respect to entrainment. That is already in there for the decisions that would be made at the State level if that proposal were finalized.

Mr. DENHAM. I thank you. No further questions.

Mr. GIBBS. Mr. Shuster.

Mr. SHUSTER. My line of questioning goes along the same line that Mr. Denham was talking about, and I am not sure I quite understand your answer. The closed cycle cooling towers, companies presently are installing them and have installed them, and I believe the EPA agrees that it is the best technology available to minimize the environmental impacts.

Ms. STONER. That is correct.

Mr. SHUSTER. Yet you are also asking EPA's proposed required facilities to spend hundreds of millions of dollars to satisfy additional impingement requirements; is that correct?

Ms. STONER. Closed cycle cooling itself addresses the impingement. So our position in the proposal that we put out is that closed cycle cooling is the best technology, but not available everywhere, but where there is closed cycle cooling being used, that addresses impingement.

Mr. SHUSTER. So you are going to continue to require them to invest additional dollars to deal with the impingement issue?

Ms. STONER. No, not facilities that have closed cycle cooling. The issue that we are seeking to put out additional options on with respect to impingement is for facilities that do not have closed cycle cooling, and also impinge the fish. So we are putting out additional information on that issue.

Mr. SHUSTER. So that I am clear, if you have a cooling tower, you are not going to be required to spend additional monies to satisfy your proposal.

Ms. STONER. Right. Closed cycle cooling addresses impingement, yes, sir.

Mr. SHUSTER. All right. Thank you very much.

Mr. GIBBS. Mr. Lankford.

Mr. LANKFORD. Let's keep going on the 316(b) conversation, trying to get some additional clarity. Finalizing the rule by July 27, are we still on track for that?

Ms. STONER. We do need to get that Notice of Data Availability out in order to meet that deadline.

Mr. LANKFORD. That was the question.

Ms. STONER. But we are working toward that deadline, yes, sir.

Mr. LANKFORD. When that comes, will there be a comment period after that?

Ms. STONER. Yes.

Mr. LANKFORD. OK. So we have got hopefully by July 27th there will be the Notice of Data Availability. There is a comment period, and then it is going to come out.

Can I ask a clarification on just authority in an odd sense? Where does EPA derive the authority to affect fish impingement on the screens?

Ms. STONER. Three, sixteen (b) of the Clean Water Act.

Mr. LANKFORD. Right. I understand, but it is not dealing with a clean water issue. When I go through 316(b) and look at it, dealing with a minnow dying next to a power plant, it seems a stretch to me in that based on what I am reading. Am I missing something on that?

Ms. STONER. I think it is pretty clear that 316(b) applies to it. I am sorry that I do not have the provision in front of me right now.

Mr. LANKFORD. Here is my issue. Fish and wildlife I can understand. One of the lakes in Oklahoma where we have this particular power plant sitting next to it, the lake was built by the power plant. It is a great fishing lake. It is very involved.

I have been to that screen and looked at it. I have seen the data of the fish that are impinged on it. The fish that are being impinged in this particular lake, because of the design of it, are very, very small. They are minnows. They are fishing minnows basically on the bottom of the food chain there. I have a difficult time finding where it affects the clean water availability based on the fact that minnows die in a very large lake, and I think that is where I am reaching out into.

Do you have a perspective on that? Fish and Wildlife, while I understand they might have a concern on that, though you could restock minnows back into a lake and it is not going to affect the life cycle there in the lake, I'm trying to figure out how it affects clean water.

Ms. STONER. I do not think the provision has a requirement that water availability is related to this. This is actually passed by Congress to address the issue of impingement and entrainment. That is my understanding.

Mr. LANKFORD. OK. But there is no restriction as far as the number there. For instance, a new threshold has been set, and I am trying to figure out the arbitrary nature of how many fish can die on it. So the new proposal that I have seen basically decreases the size of the mesh there and says you have got to go from three-eighths of an inch into a much smaller mesh, correct?

Ms. STONER. Meshes are part of the proposal, yes, sir.

Mr. LANKFORD. Correct. So a much smaller mesh on it. So you have fewer number of fish. So let's say there are 5,000 fish a year die on a three-eighths inch. Now you are going to reduce it down. Maybe there will only be 1,000. Is that a better number?

How is EPA deciding how many fish is the appropriate number to be impinged on each site?

Ms. STONER. The requirement of the statute is to apply BTA, which is the best technology available. That is the standard that we are applying.

Mr. LANKFORD. According to what cost-to-benefit ratio?

Ms. STONER. It is available technology. So you look at how well it works. Is it available everywhere? And cost issues, as I mentioned earlier are among the factors that can be considered by States in determining what to do for a particular plant under the entrainment proposed standard that the Agency has put out for public comment.

Mr. LANKFORD. So best technology available on it, let's say there is a ⅜-inch mesh on the screen. They look at it and they say, "OK. There is someone out there that manufactures one that is a quarter inch." So several million dollars, let's say now we have taken it down to 5,000 fish a year that died on this are the minnows. So now we are at 3,500 fish.

Five years from now they say, "You know what? Someone has a slightly smaller mesh that is going to actually reduce it by another 50 fish a year that die on that."

What I am trying to look for is it seems to be an arbitrary standard of saying every time someone invents some new technology to go to a power plant and say, "OK. Now you have to do this," which then passes on to ratepayers and we see no real difference in the environment. We have now reduced the number of minnows that have been impinged, which minnows proliferate in a lake, and I am trying to figure out where does this come from.

Why are we taking this on with the rising cost of electricity that we are also trying to pursue this? To what benefit are we trying to achieve?

Ms. STONER. Three, sixteen (b) of the Clean Water Act mandates the use of technology based standards for cooling water intakes to minimize adverse environmental impact. So what we are doing is applying the law.

Mr. LANKFORD. Right. That is what I am trying to get at. What is the adverse environmental impact?

Ms. STONER. Loss of fish and other creatures that are impinged or entrained in the cooling water structures.

Mr. LANKFORD. OK. So if a company came out and said, "5,000 minnows died on this. I am going to release 5,000 minnows a year back into the lake," would that solve the problem?

We have now solved an adverse environmental impact on it. That is what I am trying to say. There seems to be no scientific evidence that there is an adverse environmental impact in this, only a preference that we want to protect 5,000 minnows.

Ms. STONER. Well, there is science about the data on fish loss associated with these kinds of structures, and so what we are doing is evaluating the best technologies available to address this problem as we were directed to do by Congress.

Mr. LANKFORD. Should there be the possibility of the cheapest technology that accomplishes the purpose? Because if there are 5,000 minnows die and we say, "OK. That is a problem that there have been 5,000 minnows in a giant lake that have died," restock 5,000 minnows a year and clean your filter. That seems to be as efficient, but it is not going to cost millions and millions of dollars to change out screens and dramatically increase the cost to the ratepayer.

Ms. STONER. We have also had some court decisions that have limited our ability to consider the kind of approach that you are talking about.

Mr. LANKFORD. And what role did the EPA have in conversation with the outside entities for those court decisions? Were those settled or did those go through the entire process of litigation?

Ms. STONER. I am talking about a ruling by the court.

Mr. LANKFORD. Were those a sue and settle situation where EPA was involved in the outside litigant as well?

Ms. STONER. Where there is a settlement there usually is not a court decision. I am talking about a court decision, not a settlement.

Mr. LANKFORD. OK. My time has well expired. I yield back.

Mr. GIBBS. Mrs. Capito.

Mrs. CAPITO. Thank you, Mr. Chairman. Thank you.

I wanted to ask and dig a little deeper on my colleague from West Virginia's questioning on the enhanced coordination and the

404 permits. As you know, and I think I have questioned you on this topic before on the jobs issue related to decisions that are made and what kind of considerations, well, I feel EPA should take into consideration, but what they are actually doing, and understanding that your primary goal, of course, is clean water, which we all appreciate and strive for.

I would like to know in the budget, and so subsequent conversations after I have talked with you and actually the President questioned him; we had subsequent conversations with EPA, leading me to believe that at certain thresholds—I think it was $100 million projects that come before the EPA in terms of permitting—that job loss or job preservation is actually taken into consideration and calculated, although I have never seen a calculation.

I would like to know what kind of resources in this budget are devoted to that from the EPA budget, devoted to looking at the economic impacts of the decisions that are being made.

Ms. STONER. We look at the economic impacts of every rule that we do. The nationwide rules that are done out of my office, we do an economic analysis associated with every one of those pursuant to an Executive order by the President.

Mrs. CAPITO. And is that quantified in terms of actual job loss preservation or jobs gained?

Ms. STONER. It is economic impact.

Mrs. CAPITO. So that is a no. It is not quantified by job loss. Specifically, like if this job goes forward, 600 new jobs would be. You do not quantify it like that, correct?

Ms. STONER. So, for example, for effluent guidelines we look at economic achievability. So one of the things we would take into account would be whether some portion of the businesses would close. So it looks at that issue with respect to effluent guidelines in particular.

Mrs. CAPITO. Right. Well, I am asking specifically though. Then I know you look at it as an impact, but then is it quantified by the number of actual individuals that would be affected by that?

Ms. STONER. Economic achievability is a little more general concept.

Mrs. CAPITO. OK, OK. So then you mentioned that the enhanced coordination is no longer going on pursuant to the court judgment. So then would the assumption be that the permitting process that is moving forward would be what was occurring before the enhanced coordination was issued in 2010?

Ms. STONER. That is correct.

Mrs. CAPITO. OK. So that would be where the States and the Corps and the EPA, where the Corps decision is upheld and moved forward. That is correct?

Ms. STONER. EPA comments on Corps permits under the 404 process. States have a role also with the 401 water quality certifications.

Mrs. CAPITO. Right.

Ms. STONER. Under 402, at least in Appalachia, those are all issued by the States, and we have a commenting role with respect to those as well.

Mrs. CAPITO. OK. Let me ask you a question on the difference between guidance and regulations because I know you have been

issuing a lot of guidance. Why does the EPA choose to issue guidance instead of going into formal rulemaking procedures?

Ms. STONER. It varies by the topic and the circumstance. Often we try to do it because we feel like there is a need for greater clarity out there, something that the regulations address, but we feel like providing some additional detail to help individuals know how to comply and ensure that they have the permits that are needed, for example; that it can help to do that kind of thing.

Mrs. CAPITO. Can the guidance be litigated? I mean, can somebody sue the EPA because they feel the guidance is faulty?

Ms. STONER. We do have such suits. Yes, we do.

Mrs. CAPITO. You do. So it is not an evasion of the legal system to go for guidance as opposed to a formal rulemaking?

Ms. STONER. No, it is part of the administrative procedures.

Mrs. CAPITO. Is it a quicker process when you move to guidance?

Ms. STONER. Often it is. We have been putting a number of our guidances out for public comment to ensure that we have good input into those even though they are guidances. That is not required, but we have been doing it.

Mrs. CAPITO. Is guidance optional?

Ms. STONER. Yes, it is.

Mrs. CAPITO. So there is no fining or penalties associated if you don't follow the guidance?

Ms. STONER. Guidance is recommendations. So it is recommendations and clarifications to help the regulated community, our State partners, local entities, and so forth understand what the law is. The law is contained in the statute and the regulations.

Mrs. CAPITO. Thank you. Thank you.

Mr. GIBBS. Before I move on to the next question of Mr. Cravaack, I want to clarify, Ms. Stoner. I do not believe that guidance is defined in the Administrative Procedures Act. Did you misspeak there?

Ms. STONER. I did not mean necessarily it was in the statute, but there is lots of case law on guidance as an element of the administrative—I meant administrative process, that there is lots of case law about it. There are lots of guidances that have been upheld. It is not subject to the requirements of the Administrative Procedures Act, and you are right about that.

Mr. GIBBS. OK. Mr. Cravaack.

Mr. CRAVAACK. Thank you, Mr. Chairman, and thank you for being here today.

But do you realize that the guidance associated with what the EPA puts out has economic ramifications associated with it? You realize that, do you not?

Ms. STONER. It depends on the guidance.

Mr. CRAVAACK. OK. I will tell you that it does, especially in the timber industry. When EPA starts putting out a guidance, there is pressure that is placed upon companies or logging firms from outside sources, environmentalists that say, "You had better start complying with this guidance or we are going to come after you."

So be very careful when you issue out guidance because those guidances become de facto mandates.

I have a question for you, Ms. Stoner. How much is budgeted for your legal defense? How much do you have budgeted for your legal defense?

Ms. STONER. Yes. I do not know the answer to that question. We could attempt to figure out an answer to that question and get back to you.

Mr. CRAVAACK. OK. Let me ask you a question. In your budgeting process, you budget quite a bit for grants, do you not?

Ms. STONER. Yes, we do, particularly grants to State entities that work with us in partnership to implement the Clean Water Act and the Safe Drinking Water Act.

Mr. CRAVAACK. OK. When the EPA gets sued, do you pay for the legal defense of the organizations that sue the EPA?

Ms. STONER. It depends on what happens in the suit. The Clean Water Act does have provisions that allow attorney's fees to be collected by those who win in court.

Mr. CRAVAACK. That win in court. OK. What about giving grants to institutions that have a repetitive nature of suing the EPA?

Ms. STONER. I am not aware of grants that go to entities that sue the EPA.

Mr. CRAVAACK. Have you looked?

Ms. STONER. I would say that I have not looked at every grant, but most of them go to State entities or entities that provide technical assistance or other kinds of support for the Clean Water and Safe Drinking Water Act Programs. I am not aware of grants that are funding litigation.

Now, as I said, attorney's fees sometimes are paid to entities that have sued the EPA successfully.

Mr. CRAVAACK. OK. You know, we have a tremendous opportunity in the Eighth District of Minnesota. We sit on the second richest precious metals in the world in the Eighth District of Minnesota, and we have a couple different companies who are very interested in getting those precious metals out of the earth that we need. They go in everything from our cell phones to our computers, to the weaponry of the United States. We have to have these precious metals whether we import them or we actually extract them domestically.

My question is I am looking at this long process with this one entity within the Eighth District of Minnesota. It has taken well over 6 years now, $35 million. They have already had one EIS. It seems it did not meet the standard, and it seemed like basically the problem was the agencies, Federal and State, were not talking well with one another and telling this entity what to do.

What are you doing to try to ensure that you bring a cooperative agency? I am an airline pilot. One of the worst things you could hear is the FAA come in the cockpit and say, "Hi. I am from the FAA. I am here to help."

You know, we are finding that with the EPA as well. What are you doing to create a partnership with businesses to try to alleviate issues before they become issues?

Like we have just had another delay in this process, and it keeps on pushing out and pushing out to a point where it is almost becoming a political issue more than it is becoming an issue of fact.

So I am asking you, Ms. Stoner: what are you doing as the head, as the lead to ensure that your agencies are working correctly and expeditiously with business so that they can do the right thing, but let's get it done?

Ms. STONER. We have regular meetings with businesses of many different kinds in my office, including regular outreach to small businesses, and a lot of the issues that we talk about are how to ensure that requirements are clear, that they are well understood, that businesses can meet them and achieve whatever the goal is of their business as well. And we have those regular engagements. We have an office that actually does this, along with all the program offices like Mathy's and mine.

Mr. CRAVAACK. Well, I would appreciate very much if you would take interest in this because, quite frankly, we have a great opportunity here. We are going to do the right thing, but we just need to know the right thing to do, and to move it on as expeditiously as possible because this is a national security issue in the aspect of harvesting these precious metals that we all need, and it is also a jobs issue as well.

So with that I am over my time. I thank you for your time, and I yield back.

Mr. GIBBS. Thank you.

Mr. Ribble.

Mr. RIBBLE. Thank you, Mr. Chairman. Ms. Stoner, thank you for being here today.

I want to go back to the issue of impingement and power plant cooling systems. Are you familiar Executive Order 13–563?

Ms. STONER. I am not sure which one that is. If you could remind me I would appreciate it.

Mr. RIBBLE. The President's Executive order deals with basing regulatory approaches and freedom of choice for the public.

The President has been fairly clear that he wants to make sure that the cost-benefit analysis is actually done correctly, but isn't it true that the EPA published a rule in the Federal Register detailing the cost of this proposal? This proposed rule would be around $384 million annually, while the social benefit would only be $18 million.

Ms. STONER. I do not have those numbers, but I assume that you are providing correct information.

Mr. RIBBLE. Yes, I think I am as well. And I am curious. How does that number, $384 million in cost with only $18 million in benefit, how is that consistent with Executive Order 13–563?

If you do not know the answer, I would like you to provide it for me later. That would be acceptable.

Ms. STONER. The Executive orders that I am familiar with talk about analyzing costs and benefits and understanding them. Cost and benefit analysis is part of the regulatory process, but we are not always in a situation where monetized benefits exceed monetized cost, and often that is because it is more difficult to figure out how to monetize benefits. Costs are easier to get data on.

So it is not necessarily inconsistent with that, but the process enables us to think through that with our Federal colleagues.

Mr. RIBBLE. Well, the cost-benefit analyses that I am mostly concerned about are constituents in Wisconsin that may have to

choose between paying for a food bill or paying the electric bill. I look at the combined.

Have you done any analysis to tell me what the combined impact is on coal and nuclear power plants when you add this particular rule as well as some of the area missions rules? Have you done any combined analysis on that? It seems like kind of a pretty big head. I am concerned about power costs really inflating here.

Ms. STONER. We are looking at talking with the Air Office and others to make sure we understand the impact of multiple regulatory requirements, and as I said earlier, we are also very interested in how our work can help support the economy, and that is one of our goals, is to make sure that resource protection can support the economy.

Mr. RIBBLE. Well, it looks like it is pretty much out of whack with the cost of $384 million versus only $18 million social benefit.

There are 690 power plants nationwide, but there were only 3 plants chosen for the data set. Why was that?

Ms. STONER. I will have to get back to you on that.

Mr. RIBBLE. And they were all done in one region of the country; is that correct?

Ms. STONER. I will have to get back to you on where the data came from.

Mr. RIBBLE. I would appreciate it if you would because it appears to me that you are trying to put a one size fits all approach by having such a small data set.

The other question I want to know is if power plants comply with the new rules, the new rules are promulgated and they comply and they spend this roughly $384 million nationally to do it, what assurances do they have that in a year or two from now you will not change the standard again? Will they be grandfathered in if they comply today and you change the rule tomorrow?

Ms. STONER. The rules do not change very rapidly. And also on the one size fits all issue, if you looked at our proposal on 316(b), you will note that the proposal actually does not have a national standard at all for entrainment, but rather a best professional judgment approach that would be determined by States based on a variety of local factors.

Mr. RIBBLE. OK. Thank you for that clarification.

Going back to the underlying question then, what assurances does the industry have that if they meet the standard today, they spend millions and millions and millions of dollars, that in another 2 years you will not change the standard to rather than killing 31 percent of the fish capture per month to 21 percent? What assurances do they have if they do what you ask them that you will not move the bar again?

Ms. STONER. The Effluent Guidelines Program has periodic reviews of the effluent guidelines to update them, and one of the rules of thumb that we use is that we do not look at the effluent guidelines that have been done within the past 6 to 7 years, and it takes several years to update effluent guidelines.

So there actually is a long period of time before effluent guidelines are updated. Most of them actually are from the 1980s that we have in place today, and so technologies actually remain in

place for a very long time, and those standards remain in place for a very long time.

Mr. RIBBLE. I am out of time, and thank you very much, Mr. Chairman.

Mr. GIBBS. We are going to do another round of questions. I am going to start and the Members who came in here, we will get to them in just a minute.

Ms. Stoner, I wanted to go back a little bit and talk about the comments. You said 230,000 comments were recorded in the Federal Register. Are the EPA and the Corps developing a comprehensive response to all those public comments?

And if you can, can you please describe in detail and address each one of those comments, concerns, what they were and be specific with some of the answers?

Ms. STONER. I do not think we have a long enough time for me to describe 230,000 comments, but we did analyze all of them and have looked to make a number of clarifications to the guidance based on misunderstandings of the draft guidance.

Mr. GIBBS. Are you going to do a document going through and explaining that for the record so that we have that?

Ms. STONER. We are preparing a response to the comments, yes, Mr. Chairman.

Mr. GIBBS. What is the timetable on that? You have put out another draft, you know.

Ms. STONER. It will come out with the final guidance.

Mr. GIBBS. OK. Because we would be very interested in seeing that.

I want to talk a little bit more. We have had a lot of discussion in the questions about guidance and the expected timing of the so-called Clean Water Act jurisdiction guidance. We actually had a hearing last year, and we had State EPA people in here, and there was a concern. If you could expound a little bit on guidance, does it affect the rights and responsibilities of the people in the regulated community?

Ms. STONER. It is recommendations. So again, it is intended to help individuals figure out how to comply with the requirement. It is also——

Mr. GIBBS. OK. So it would not be mandatory because people ignore the guidance then?

Ms. STONER. It reflects our understanding of the statutes and the regulations. The statutes and the regulations are what is binding, not a guidance document.

Mr. GIBBS. OK. Because there is a lot of going around in circles. We had State EPA people in here at one hearing, and they were really concerned. So you know that this guidance sometimes was conflicting with State and Federal in their interpretation, and of course, with the courts you go round and round and about.

So I guess we have a concern. Are these guidances kind of circumventing the regular rulemaking process and more of the comments and openings? So, I guess I am just voicing my concern because I have heard that from both sides of the aisle at the State level, that you know, that really does apply and then actually having a de facto law through the guidances.

Ms. STONER. The point of the guidance is to provide greater clarity. That is the point of it, to help people understand what the statutes and the rules are.

Mr. GIBBS. OK. I want to talk a little bit about the American nutrient standards, narrative standards, and as you I am sure know, under the current system of narrative, they take in all account of what is going on in a river or a water body, you know, pH, water flow, the biology, and moving to a numerical standard, you know, I do not know how the science can work. I have just got concerns of that.

So what is the EPA doing? Are you really focusing more going to an American standard especially in the Mississippi River Basin compared to what we have done in the past, a narrative standard?

Ms. STONER. There are a number of States that are working on numeric standards, and then of course, EPA is also working on numeric standards in the State of Florida, and we think that they provide a lot of benefits in terms of, again, clarity, but we are working to make sure that we have good scientific foundation.

I heard you say that you are interested in that, and we are as well and have been working to get peer review of our science to make sure that we have very good——

Mr. GIBBS. On flow through the EPA and States, is there additional financial burden by moving to the numerical standard?

Ms. STONER. No water quality standard is directly applicable. It has to be translated through a permitting process to be directly applicable. A numeric standard is not necessarily more or less stringent than a narrative standard, but it does facilitate implementation.

Mr. GIBBS. Now, would you still be combining the narrative part in that with numerical or are the numerical going to be overriding?

Ms. STONER. Both are important. Narrative standards do a lot of good out there in addressing water quality issues as well as numeric, and sometimes one is appropriate, sometimes another, sometimes both. It is really all designed to meet the designated uses of those water bodies, what the waters are used for to make sure that they are safe for use.

And States set those uses, and the standards are designed to ensure that people know they can use the water safely.

Mr. GIBBS. Just one quick question. I asked this yesterday to Secretary Darcy about the phosphate mining permits in Florida and trying to expedite those because, you know, we are going to lose that. They are bringing in raw material to produce phosphorus fertilizer from Morocco, China, and Saudi Arabia, and can you just comment quickly on what the status is of the EPA on those permits?

Ms. STONER. My guess is that Ms. Darcy knows more about it than I do.

Mr. GIBBS. OK. So you don't have any——

Ms. STONER. I do not have specific information about those permits.

Mr. GIBBS. You do not have any interaction with the EPA at your level with the Corps? The Corps is actually administering that themselves and EPA is not involved in that?

Ms. STONER. I do not know that no one is involved in it, but I am not personally involved, and I am sure Ms. Darcy knows more.

Mr. GIBBS. Can you get back to me on that question?

Ms. STONER. Yes, Mr. Chairman, I would be happy to.

Mr. GIBBS. We can see what EPA's involvement is in that permitting process because I think it is of strategic national importance that we know what is going on there. We are going to lose another industry.

Representative.

Mrs. NAPOLITANO. Thank you, Mr. Chairman, and I am sorry I was absent. I had another hearing somewhere else that I had to go vote on.

But one of the things that I would like to ask either one of you, there is the San Gabriel Valley Superfund that has been ongoing for at least a good 15 years, has probably another 15 to go, and my understanding is the funding has been either reduced or cut, and it is going to take a lot more.

I know the PRPs, the potential responsible parties, have come to the table thanks to EPA, and they are working, and it is a community that services millions of people, probably around 15, 20 cities, and I certainly would like to have a followup and find out when we can count on EPA to continue helping clean up that aquifer.

It gathers at Whittier Narrows Dam and services probably a good 15 cities below the Whittier Narrow and the underground aquifers meet, and it is critical for us to continue. It has shrunk. It is getting better, and apparently they had a failing in one of the pumping plants recently, and they figured out it was an error probably manmade rather than—I am sorry. It was a mechanical failure, not man, and those are things that I would love to have you please report to us and this subcommittee if they are so interested.

But I certainly wanted to tell you that your former Region 9 director, Wayne Nastri, and your current director have been exceedingly helpful to the 77 cities that I put together through the Councils of Government to talk to them and then have them direct the questions that are vital to running the communities directly. These are elected officials, and they have been very exceedingly helpful in addressing some of these issues, and I suggest others try to do the same at the local level because it does take the onus off of us coming here and going after EPA because things are happening in their own backyard.

Another area is those living in small communities, especially those in Texas and the colonias or tribal land specifically do not have the same access to traditional water and waste water supply systems, and I would like to know how EPA will allocate and distribute the 2013 funding for Clean Water Act, Section 106, the Water Pollution Control Program grants.

Now, the colonias do not have sidewalks. They do not have electricity. They do not have running water, and as you can see, they probably have a lot of issues with health services, and I am assuming that tribal lands are very much in the same boat. Have the colonias, their assistance program and the U.S.-Mexican Border Water Infrastructure Program successfully addressed—I think they are working on it—the needs of these disenfranchised communities?

Then there are a couple more questions, but I would like to start with that one.

Ms. STONER. We do have a program, U.S.-Mexico Border Program that is of assistance to many of those communities. We are seeking actually an increase in that program over the fiscal year 2012 enacted budget of $5 million. That is a program that provides first time access to safe water and sanitation.

Mrs. NAPOLITANO. I am sorry, but is $5 million enough? Because you are talking a whole area, a whole border area that has been neglected for decades.

Ms. STONER. Well, it was the best that we could do in terms of request for this budget, but there are great needs in that area, absolutely. It is a very important program and, as I said, provides first time access to many Americans who have not previously had sanitation and safe drinking water.

Mrs. NAPOLITANO. I will add them to my Indian rhetoric on how we are not helping them.

Has EPA's U.S.-Mexico Border 2012 Program been successful in opening the dialogue about the need of environmental protection along our border and what are your goals for the 2020 program? Is there sufficient funding? And you just told me there is not necessarily enough money there.

But I might want to throw in what about the funding for tribal access.

Ms. STONER. Yes, tribal access is a priority in the budget as well. So even though we have a budget cut, we are seeking an increase in that funding, and we view that as a very important program.

Mrs. NAPOLITANO. But what about the border? You are working with the Border Committee that is composed of elected and the Members of Congress?

Ms. STONER. We are working closely with a lot of different entities, and the other important thing about that program is there has been some misunderstanding that it is a foreign aid program. This is actually dollars that go to benefit Americans who live along the border. All of the projects benefit U.S. citizens.

Mrs. NAPOLITANO. Thank you, and I beg your indulgence, Mr. Chairman.

Your testimony stated the 2013 budget requested $1.175 billion for Clean Water State Revolving and $850 million for Drinking Water State Revolving, a reduction of $359 million. But that level will still enable States and tribes to begin approximately 500 clean water and the 400 drinking water programs.

But how are you going to do the outreach and target? How are you going to prioritize and target to small and disenfranchised communities who have limited access, cannot come here and lobby, cannot know what to do and where to go to?

Ms. STONER. That money does go to State entities to redistribute it, but we do encourage funding to small communities and communities that have difficulty getting loans in the outside markets.

We also have a grant out right now for technical assistance to small communities, and so that is something that we are seeking assistance right now to help small communities address their needs.

Mrs. NAPOLITANO. Have you looked at maybe the public-private partnerships, the three Ps, to be able to bring in outside assistance?

Ms. STONER. Well, as I am sure you know, the President has an infrastructure bank proposal that includes water and waste water, and so that is one funding mechanism that the President has indicated his support for and has urged Congress to look at.

Mrs. NAPOLITANO. Well, may I suggest that we look at private investment also? Because they will get paid back. Most of those will be loans that are going to be guaranteed by the Federal Government if we start something, a program that is going to help these entities and not wait for another decade.

Ms. STONER. Thank you for that comment.

Mrs. NAPOLITANO. Thank you.

The last one or Mr. Stanislaus. I am sorry, sir, I was not here for the first round. Is EPA incorporating green technology in Brownfields cleanup programs and the associated job training programs? And underserved and disadvantaged include education and job training and retraining and green technologies, use of solar, wind energy, et cetera.

And you noted that in fiscal year 2013, you plan to award additional 20 areawide Brownfields planning projects.

Are they located in the border region? And if so, where are they?

Mr. STANISLAUS. OK. So let me deal with the areawide planning. It is going to be a national competition. We are going to focus on economically distressed communities as we did in the prior round, and we will do some targeted outreach to smaller communities. A lot of smaller communities ask us to do that. Tribal communities have asked us. So we will be doing some targeted outreach to make sure that smaller communities can compete fairly.

Mrs. NAPOLITANO. But what chance do they have when they may not know the process? They may not be able to afford to have a grant right or they may not afford to be able to do a lot of that. How are you going to address that? What priorities are you going to give the small communities?

Mr. STANISLAUS. That is a very good point. What we did last time, we did a number of targeted outreach efforts to them. In fact, the majority of areawide grants that we gave last time was to smaller communities, and I welcome additional efforts that we can take to make sure we do, in fact, do the outreach.

In fact, we have done workshops on how to prepare the grants themselves because we really appreciate the difference in capacity between large communities and small communities and where to kind of equalize the playing field. So we plan to do that.

Mrs. NAPOLITANO. Are you working with the education institutions to be able to train them to be able to assist these entities in their area?

Mr. STANISLAUS. We have done outreach to educational institutions, and the specific ones that we can do outreach to, please let us know and we will do that.

Mrs. NAPOLITANO. Very much, sir. Thank you so much for your indulgence, Mr. Chair.

Mr. STANISLAUS. And I will just mention I will get back to you on the Superfund site you mentioned.

Mr. GIBBS. Mr. Lankford.

Mr. LANKFORD. Thank you.

Ms. Stoner, just to finish up real quick on the 316(b) issue, I understand that is a court implemented extension of the plain reading of the 316(b). when you read the 316(b), you're not going to get this standard proficient impingement. The court has added that. I get that.

I would propose at some point that we as a committee or others look at trying to clarify from the legislative side the impingement requirements, the best technology available, extension on that, because it seems to be an infinite extension that at any point if you have the possibility of impinging one less fish that is a never-ending cycle, the percentage decrease on impingement.

But with that, the courts have gone through and they have clarified the cost-benefit ratio, and so what Mr. Ribble brought up before seems to be a very pertinent issue if we cannot establish a cost-benefit ration that is consistent or that is rational, we have an issue with that no matter what the best technology available requirements may be.

And so I would continue to press on EPA to say you have to look at the cost-benefit on this. That has been reaffirmed by the courts.

Let me shift over as well. I want to talk a little bit about the frack study that EPA has been doing with hydraulic fracking. What is the status on that study at this point?

Ms. STONER. So that is a study that the Office of Research and Development is leading, and it is a study looking at hydraulic fracturing and a number of aspects, gathering data across the country. One of the issues it is looking at is the relationship between hydraulic fracturing and drinking water. It is my understanding that there will be some information provided at the end of 2012 in terms of the first results of this study.

Mr. LANKFORD. You are talking October, November, December or when you say into 2012?

Ms. STONER. That is the best information I have, the end of 2012 is the schedule for the first installment, and then I believe the overall study will be completed in 2014.

Mr. LANKFORD. OK. What is the status on the peer review on that? The law itself asks for the study that was done by the previous Congress also required a peer review process throughout the course of that. Where is that in standing with this as well?

Ms. STONER. I do not know the details of that, but I do believe there is peer review contemplated for that study.

Mr. LANKFORD. Can you give me some confidence in this? Because here is part of my struggle. There is a requirement for the peer review, but my fear is that EPA is going to release initial findings that have not been peer reviewed and will make a giant media splash and then later a peer review will come back and look at it and say, "Well, maybe that was not exactly right. It was more this." And then there will be a correction by EPA and there will be some conversation on that in years to come, and that will have no media splash, but what will come out initially will be what is not peer reviewed.

Can you give me some confidence EPA will not release any preliminary findings until they have been peer reviewed as required by the study?

Ms. STONER. Do you want to say something?

Mr. STANISLAUS. Well, we will get back to you in terms of the peer review policy. Typically a peer review occurs before there is a public disclosure of the findings.

[Environmental Protection Agency insert for the record follows:]

> EPA's general position is that, we do not expect to release partial findings in advance of the peer review process. However, if EPA finds results of urgent concern regarding public health or environmental impacts, particularly in evaluation of local situations, we will immediately notify the appropriate parties and begin action.

Mr. LANKFORD. Given a leak. Because I just say that. Do we know at any point, at this point in the status any situation where hydraulic fracking has caused contamination in drinking water?

Mr. STANISLAUS. I cannot speak to that. I think the Office of Research and Development is leading that study, is examining that very question at the moment.

Mr. LANKFORD. But at this point we do not know of any that you can point to and say that one is already there? Because we had Administrator Jackson obviously several months ago and asked the same question on that. That has been several months, and I just want to be able to follow up and say, "I heard their response several months ago. Where are we now at this point through the process? Do we know of any situation nationwide where hydraulic fracking has cause contamination in drinking water?"

Mr. STANISLAUS. I do not know specifically the extent of the Office of Research and Development's analysis of that. Clearly, that is something that they will be incorporating as part of their study.

Mr. LANKFORD. OK, and you anticipate the release of all of this somewhere towards the end of this year?

Mr. STANISLAUS. That is my understanding, but we can get back to you on the specific dates.

[Environmental Protection Agency insert for the record follows:]

> A first report on the study will be released for peer review in late 2012. The second report is scheduled for release to peer review in 2014.

Mr. LANKFORD. OK. Ms. Stoner? OK.

With that I yield back.

Mr. GIBBS. Mr. Harris.

Dr. HARRIS. Thank you very much, Mr. Chairman.

Let me just follow up a little bit about that and ask a question. Is there any funding in the EPA Office of Water that is going to go toward that study of hydraulic fracturing? Any resources out of your office?

Ms. STONER. The lead on the study that we were just talking about is the Office of Research and Development. We also have activities with respect to hydraulic fracturing that are part of the Office of Water's budget.

Dr. HARRIS. OK, and to what extent? Because our understanding is that there are now ten different agencies involved, and now it looks like there are actually two areas of the EPA that are involved. So what is the extent of your budget involvement?

Ms. STONER. What we are doing is looking at the applicability of the Clean Water Act and the Safe Drinking Water Act to hydraulic fracturing and to the disposal of the waste water associated with it.

Dr. HARRIS. Right, and that is exactly the same thing the Office of Research is doing as well. So I am confused perhaps, but if you could get back to us and just determine whether there are, you know, line items in the budget or it is just going to come out of general office funds, I would appreciate that because, you know, the gentleman from Oklahoma makes a very good point because the word we get is that, in fact, this will probably be released just like the last one before a peer review study is done.

We think that is a little unusual. So I am very encouraged to hear that your position would actually be that peer review should occur first. And thank you very much because you are absolutely right. You know, despite what you read in the press, there is no cause and effect relationship between hydraulic fracturing and drinking water contamination that has been proven scientifically. You got it right. The press gets it wrong continually.

Let me just ask with regard to the TMDLs, and I would also like an idea with regard to the Chesapeake Bay there is $14.4 million in grants that is in your prepared testimony that goes toward the TMDL implementation. Are there other monies in the Office of Water that is going to help the local jurisdictions implement the TMDLs or is that it?

Ms. STONER. Well, the funding under 106 goes to States including those in the Chesapeake Bay.

Dr. HARRIS. So how much is going to the States in the Chesapeake Bay out of that?

Ms. STONER. I cannot give you that number off——

Dr. HARRIS. Can you get that back to me? Because you know what is striking is that just one county in my congressional district actually has a cost estimate of $2.3 billion placed on that country, $2.3 billion place on that county as a result of TMDL requirements, and I am afraid this is just going to be another huge unfunded EPA mandate, this time not on industry although it also is on industry on the poultry and farm industry as well, but also on our local jurisdiction.

So it appears you are branching out. You know, you are equal opportunity. You do not just pick on the energy companies. You do not just pick on private industry, but now you are actually going after governments as well and causing them to spend money at a time of economic crisis.

I will remind you that our Governor and the general assembly are going to wind up next week, and they are going to have to pass fairly huge tax increases, and that is even before they have to begin complying with huge TMDL costs.

Let me just finish up by asking you about the 316(b). I am sorry I was not here for the first round. Ms. Stoner, about how many plants that met the old EPA's definition of closed cycle cooling do

you think do not meet the new definition? Is there a number of plants?

Because I know there was an estimated cost that you had given to upgrade, but do you have an idea of the number of plants that the new rule would affect?

Ms. STONER. The old rule had to do with new plants, and the current rule that we have proposed and will be finalized has to do with existing structures.

Dr. HARRIS. Correct. That is what I mean. Those, how many of those will it affect? How many will be affected by the change in that rule for old, existing plants?

Ms. STONER. Well, if they do closed cycle cooling again, they are already in compliance.

Dr. HARRIS. Except that the definition of closed cycle cooling kind of changed a little bit. I mean, it became much more specific with regards to how often you have to recycle your water and things like that. Is that right? That is my understanding.

We kind of changed the rules in midstream on these companies that invested hundreds of millions of dollars.

Ms. STONER. Well, first of all, that rule has not been finalized yet. So we have not made any final determination on it.

Dr. HARRIS. All right. Let's assume it is finalized. When you proposed the rule, did you take into consideration how many plants it would affect?

Ms. STONER. We have an economic analysis that goes with our proposed rule, yes.

Dr. HARRIS. OK. If you could forward it to me, I would appreciate that.

You know, I share the concern that was voiced before. You know, you say that rules take a long time to change, but you know, the President just announced a couple of days ago that once he gets reelected there is some flexibility. Now, I am afraid that one of the flexibilities is going to be that now we can actually speed along the rulemaking process, and what used to take 10 or 15 years to change we can change in a year or two with a new rule.

Since this 316(b) rule change is already a change to a rule that was already in place, is it true that, in fact, without legislative definition that, in fact, the EPA could, in a period of new flexibility in a reelected administration, could, in fact, decide 2 years from now to just come up with another rule for 316(b)?

Is that true? In other words, given the current state of the wording, because my understanding of the wording is it gives you fairly broad authority to say, "Well, yes, you have to use the best available, you know, methods to minimize environmental impact," you could decide 2 years that now there are new best available methods to minimize the environmental impact and come out with new rules. Is that theoretically possible in a new flexible era?

Ms. STONER. We have been working on coming up with one rule for approximately 20 years.

Dr. HARRIS. OK. Is it theoretically possible in a new era of flexibility to come up with a rule in another 2 years without separate legislative guidance making it clear, you know, what the limits are at the EPA?

Ms. STONER. I think if you would look at the timeframe that it takes to do rules the answer would be that it will not happen.

Dr. HARRIS. What is the shortest period of time you could do it if you decided tomorrow that that rule was not the best available technology and you wanted to change it? Three years?

Ms. STONER. I think it would take several years.

Dr. HARRIS. Not 20, not 10? Well, within the second administration, the new, flexible administration?

It is possible within 4 years. Let me put it simply. Is it possible within 4 years?

Ms. STONER. I am trying to provide you accurate information about how long it actually takes to do a rule.

Dr. HARRIS. Is it possible within 4 years? Look. I am not the Administrator. You are. Is it possible if you had your mind set on it you could do it within 4 years?

It is a simple question. This is not complicated.

Ms. STONER. What I am trying to reflect is that there is no intention to do another 316(b) rule, and what we are trying to do is finish the 316(b) rules that are required by Congress that we have not yet finished and we have been working on it for approximately two decades.

Dr. HARRIS. Can you submit the answer in writing maybe? Because obviously you are not willing to say whether it can be done in 4 years or not. I mean that is a pretty simple question. I do not understand, you know, the bureaucracy, but I will bet my bottom dollar that if somebody in a new era of flexibility decided they wanted to change this rule, I will bet you it could be done in 4 years even if you are not willing to admit it in front of this committee today.

Thank you, Mr. Chairman, for your indulgence. I yield back.

Mr. GIBBS. Thank you. Mr. Landry.

Mr. LANDRY. Thank you, Mr. Chairman.

Ms. Stoner, where did you grow up? What part of the country?

Ms. STONER. I am from Waynesboro, Virginia.

Mr. LANDRY. Virginia, OK. Well, unfortunately where you grew up you were not like 30 other States in this country that make up the Mississippi River basin, and that when all of those people in the majority of the States, when they flush their toilet, it eventually makes its way down through Louisiana.

And the question I have for you is pretty simple. Why are you imposing on the State of Louisiana the sole responsibility for the effects of everyone else in the country, or at least in 30 other States when they flush their toilet, that we have got to be responsible for what makes its way down the Mississippi River?

Ms. STONER. That is actually not what we are doing, Congressman. So the situation with Louisiana and the dissolved oxygen standard that we listed certain coastal waters in Louisiana as not meeting their dissolved oxygen standard. Oxygen of course being important for fish to be able to breathe, that impairment only needs to be addressed by Louisiana in terms of discharges into the State of Louisiana.

They are not responsible for upstream loads.

Mr. LANDRY. But how are you going to differentiate because those water bodies that you are placing that rule on are impacted by the Mississippi River?

Ms. STONER. Absolutely, the Mississippi River Basin all flows down to Louisiana.

Mr. LANDRY. Are we going to be able to pull a sample and say, "No, this did not come from Louisiana"?

Ms. STONER. There is monitoring that is done, loading analysis that is done.

Mr. LANDRY. You can tell which toilet it comes out of? I am just trying to understand.

Ms. STONER. Yes, the USGS does a really fine job in determining where loads are coming from, and Louisiana is not responsible for addressing loads that come from outside that State in responding to the impairment of dissolved oxygen along its coastal waters that impact its resources.

Mr. LANDRY. But you are agreeing that these water bodies are impaired by pollution coming from the Mississippi River. You are agreeing with those comments, correct?

Ms. STONER. Absolutely, particularly the Dead Zone in the Gulf of Mexico.

Mr. LANDRY. But you proceeded on listing these water bodies.

Ms. STONER. The water bodies are listed not based on where the pollution comes from. A listing has to do with whether or not the water body meets the water quality standards set by the State based on the use of those waters.

Mr. LANDRY. But if other States are impacting the water quality in those water bodies, why are you holding our State solely responsible?

Ms. STONER. Again, we are actually not holding Louisiana responsible.

Mr. LANDRY. Well, that is not what they are telling me in Louisiana. OK? Would you mind sending me a letter to that effect, in that statement stating so I can send it over to my Governor and get it over to our farmers and saying, "Listen. EPA is not going to hold the State of Louisiana solely responsible for the impact in those water bodies"? Because that is exactly what you are saying.

Would you mind giving me that in writing so that I could pass that on?

Ms. STONER. We would be happy to work with you on that.

Mr. LANDRY. No, no, no. I do not want you to work with me. I just want you to send me a letter to that effect. Is that what we are going to have here?

I mean, I know you are good. Let me tell you. Look. If you were a witness, I would want you on my side as a lawyer.

Ms. STONER. Thank you.

Mr. LANDRY. But I am just asking you. The letter to that effect?

Ms. STONER. I think that I have actually signed letters to that effect. So I will look to see what I have and we will make sure your questions are answered.

Mr. LANDRY. Thank you so much, Mr. Chairman. I yield back.

Mrs. NAPOLITANO. Would the gentleman yield? Would the gentleman yield?

Mr. LANDRY. Yes, ma'am.

Mrs. NAPOLITANO. Well, as I suggested, why don't you have EPA go visit with your electeds and find out directly from them what it is that they need to find out? That way you do not have to have a letter because a letter will only explain so much, but if you ask them to come in and explain and show and give you the information, that may help your elected officials.

Mr. LANDRY. What information?

Mrs. NAPOLITANO. Whatever you request in writing from them to come address.

Mr. LANDRY. No, no, no. The problem is that they are listing water bodies, State water bodies, OK, that are impacted from Mississippi runoff, just like the majority of coastal Louisiana is being impacted by runoff from 30 other States, and they are holding us accountable and making sure that we have to develop total maximum daily load levels within the State of Louisiana that are not being addressed by all the other States, but she is telling me that it is different.

And so if she sends us that letter and once we have that letter, when EPA comes in and starts demanding that we meet that particular criteria, I can show them that letter and say that we do not have to.

Ms. STONER. We would welcome the opportunity for dialogue with you about the Gulf of Mexico also and the strategy through the Hypoxia Task Force to address that.

Mr. LANDRY. Well, I certainly do want to address that, but before we get there, which we could have gotten to had you not impacted these three other water bodies, listed these three other water bodies, so I want to get rid of those three other water bodies or address those, and then we are going to address hypoxia in the Dead Zone which has been there for the last 20 years or so. So, I mean, it cannot be that important to you all because we have been having that problem for the last 20 years.

Ms. STONER. I agree that there is more work to be done there. In addressing the loadings from the State of Louisiana is a start, but to address the Dead Zone in the Gulf of Mexico, we do need to address loading——

Mr. LANDRY. But to address that, you have got to address the 32 other States above us.

Ms. STONER. Everyone has a piece of that from the whole watershed, absolutely.

Mr. LANDRY. OK.

The CLERK. OK. Mr. Young just showed up. Mr. Young, go ahead.

Mr. YOUNG. Thank you, sir. I apologize for that.

Ms. Stoner, the rule coming out of EPA would ban the use of urea chemical in de-icing runways, pavement actually. Where is the final rule in the process?

Ms. STONER. It is still over at OMB in interagency review, I believe.

Mr. YOUNG. When is the final rule expected? When do you think it will be published?

Ms. STONER. It should be sometime this spring.

Mr. YOUNG. Did you evaluate the impact of a ban on urea in climates with hearty and high precipitation and rain forests like Juneau? Did you do any studies at all?

Ms. STONER. We did a cost-benefit analysis associated with that rule.

Mr. YOUNG. And what was the decision of cost-benefit? You know, the difference between that, my understanding is $3,000 per airport application versus $30,000; is that right?

Ms. STONER. I do not know those numbers, but——

Mr. YOUNG. OK. Well, what I am saying is in Alaska it is devastating. It is devastating. We have to de-ice. It is not like, you know, Washington, DC, or Phoenix, Arizona, or that place. We have to de-ice a runway. Especially this year we had the coldest year in the last 55 years in Alaska, and it is going to cost, to my understanding if it is $30,000—it is 10 to 1 is what it boils down to.

Was there any consideration given to that or did you study Alaska is what I am saying.

Ms. STONER. I am confident that we looked at different climates.

Mr. YOUNG. I would like to see some of the studies, who did it, and on what basis. Was it actually on field and activity or was it done in a room? I would like to see that.

Ms. STONER. I would be happy to, you know, provide you the information on what we did at the time the rule was finalized.

Mr. YOUNG. OK. Mr. Chairman, with all due respect, I am not mad with you. I am mad at your agency right now. Let's put it that way. You are the most overreaching, self-governing, stick it in your nose agency in the world without looking at what happens to people under the guise of protecting the environment.

But you are not. No one is telling me where this is harmful. I want to know. It is just like you made that decision on high usage of fuels. Never had a study in Alaska. You put all of my ships down, including which delivers freight to my local people, on clean diesel because of stillbirths, no science, never studied it. You studied the Great Lakes.

So I want to know did you actually have people on the ground, what was the report, who they were, what time. I want to see the whole thing. I want to see how you made this brilliant decision in the grand State of Alaska. If you can get that for me I really would appreciate it. And I do not want to wait 6 months.

Go ahead.

Ms. STONER. Well, we did a cost-benefit analysis. We will see what——

Mr. YOUNG. That is all you did, is a cost-benefit analysis?

Ms. STONER. That is what we did. That is what we are required to do and that is what we did, yes, sir.

Mr. YOUNG. You are not required to do anything else? Who is required to do the other studies?

Why was it put in place?

Ms. STONER. I mean there are other requirements of the law, considering best available technologies. Actually you are talking about an effluent guideline. So it is the best available technology economically achievable. We look at each element of those. We gather the best information about what technologies are in place, what airports are already doing, what airlines are already doing,

what can be accommodated to achieve the benefits, and then we also look at what the benefits are, what the pollution reduction will accomplish.

And that information will be available when the rule is finalized which should be this——

Mr. YOUNG. Again, I want to find out how it was done. I want to see people, where they are on the ground, when they were on the ground, what they studied.

This is not a little bubble we are living in, and I bet I will find out there was nobody who went to Alaska to study it. I will find that out, Mr. Chairman, and when that happens, I am going to have you guys back to expose you, how you are running your operation with no science. Most of your decisions are done with no science.

Cost-ratio benefit? Show me where the benefit comes when it is 30,000 versus 1,000.

Ms. STONER. There is science and technology evaluation, as well as cost-benefit analysis that goes along with every rule that we do, and we follow the law. We implement the best science that we can obtain.

Mr. YOUNG. The issue of using this liquid that you want to replace the urea with is a liquid, expensive, hard to store, I mean, all of these things. I want to see all of the results. I want to see the whole study and who did it.

Mr. Chairman, I want to make sure you get it and look at it real closely. I think we can expose you for what you really are and why you should not get any more money.

Thank you, Mr. Chairman.

Mr. GIBBS. Thank you.

That concludes the questions and the hearing. I just wanted to thank you for coming and re-emphasize we had a lot of discussion on guidance and I guess a concern, especially in the hearing we had last year when we had your State counterparts in. It was actually two hearings, the problem with their seeing the guidance, and you know, I think if we are not careful, we are putting a lot of stuff to the courts to decide and causing a lot of litigation.

I hope especially in light of the recent court decisions that we just saw here since last fall, that we are not going to spend a lot of taxpayer money to prolong the inevitable when I think these decisions were good and we need to take heed of that.

So thank you for coming, and this concludes this hearing.

[Whereupon, at 12:25 p.m., the subcommittee was adjourned.]

TESTIMONY OF NANCY STONER
ACTING ASSISTANT ADMINISTRATOR
OFFICE OF WATER
U.S. ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE SUBCOMMITTEE ON WATER RESOURCES AND ENVIRONMENT
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
UNITED STATES HOUSE OF REPRESENTATIVES

March 28, 2012

Good morning, Chairman Gibbs, Ranking Member Bishop, and members of the Subcommittee. I am Nancy Stoner, Acting Assistant Administrator for the Office of Water at the United States Environmental Protection Agency (EPA). Thank you for the opportunity to speak about the President's Fiscal Year 2013 budget request for the EPA's National Water Program. The President's budget provides the resources necessary for the EPA to continue our work, in collaboration with states, municipalities, industry, and the public, to ensure clean and safe water for all Americans. As Administrator Jackson has testified, this budget focuses on our core mission and sets priorities to make the best use of available resources.

Clean water is not only a resource and asset to be passed on to our children; it is also a necessary part of life. Clean water is essential to public health, drinking water supplies, quality of life, and the welfare of families and communities, whether in large cities, small towns, or rural America. Clean water is also vital to the U.S. economy. A wide range of businesses depend on clean water supply including energy generation, tourism, farming, development, fishing, manufacturing, food processing, and beverage production. The Clean Water Act is designed to protect the many uses of water by American businesses, which employ millions of Americans and affect virtually all citizens and communities.

Consider these facts about the value of clean water to the U.S. economy:

- Manufacturing companies use nine trillion gallons of fresh water every year.[1]
- 31 percent of all water withdrawals in the U.S. are for irrigation, highlighting the extent to which the nation's farmers depend on clean water.[2]
- About 40 million anglers spend $45 billion annually to fish all kinds of waters.[3]
- The beverage industry uses more than 12 billion gallons of water annually to produce products valued at $58 billion.[4]

The EPA's request for the National Water Program is for $3.41 billion, a 9 percent reduction from FY 2012 enacted levels. The requested level still allows the National Water Program to maintain its fundamental mission of protecting the quality of the nation's water resources. The reduction in the request is accomplished by a combination of targeted program reductions, including reduced capitalization of State Revolving Loan Funds, and carefully selected investments to address critical needs.

Much progress has been made toward ensuring that America's waters are healthy and safe, but much work remains. There are more than 41,000 impaired waters in the nation, some for more than one pollutant. The primary sources of impairment are pathogens, nutrients, sediment, PCBs and mercury. Despite cleanup efforts, waterbodies are newly identified as impaired each time states assess the quality of their waters.

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[1] Liquid Assets 2000: America's Water Resources at a Turning Point: http://water.epa.gov/lawsregs/lawsguidance/cwa/economics/liquidassets/
[2] Estimated use of water in the United States in 2005: U.S. Geological Survey Circular 1344, p.4 http://pubs.usgs.gov/circ/1344/pdf/c1344.pdf.
[3] American Sportfishing Association: http://www.asafishing.org/newsroom/newspr_092607.html
[4] Liquid Assets 2000: America's Water Resources at a Turning Point: http://water.epa.gov/lawsregs/lawsguidance/cwa/economics/liquidassets/

To continue to make progress towards clean and safe water throughout the country, the agency will build, maintain, and strengthen effective partnerships with states, other federal agencies, communities, and other stakeholders. For example, the FY 2013 budget includes a significant new voluntary effort under which the EPA and U.S. Department of Agriculture (USDA) will work with states, agricultural producer organizations, conservation districts, tribes, NGOs, individual producers, and other local leaders to identify areas where a focused and coordinated approach can reduce nutrient pollution and improve the condition of nearby waters. This coordination will support more effective, targeted investments to ensure continued improvements in water quality during a time of constrained budgets.

Water and Wastewater Infrastructure Investments

The Clean Water State Revolving Fund (CWSRF) and Drinking Water State Revolving Fund (DWSRF) provide capitalization grants to states, which, when combined with state resources, use the funds to make affordable loans to local communities to finance capital improvements to drinking water and wastewater infrastructure and other water quality projects that protect public health and vital water resources. The FY 2013 President's budget request includes $1.175 billion for the CWSRF and $850 million for the DWSRF, a total reduction of $359 million, but a level that will still enable states and tribes to begin approximately 500 clean water and approximately 400 drinking water projects nationally. This request, when combined with enacted appropriations, including the American Recovery and Reinvestment Act, totals approximately $18 billion invested in the SRF's over the last five years. EPA will work with states to target assistance to small and underserved communities with limited ability to repay loans, while maintaining state program integrity.

As part of the Administration's strategy, the EPA continues to implement its Sustainable Water Infrastructure Policy first issued in October 2010.[5] The Policy places significant emphasis on the promotion of planning by utilities that result in infrastructure investments that also support other relevant community goals. The Policy encourages a robust analysis of various infrastructure options, including use of "green infrastructure" techniques and decentralized approaches, and encourages utilities to implement management strategies and rate structures that support a system's water infrastructure investments and operations and maintenance. As part of that strategy, the EPA is working to promote investments of State Revolving Funds that act as a catalyst for efficient system-wide planning, improvements in technical, financial and managerial capacity, and the design, construction and ongoing management of sustainable water infrastructure.

Beach Monitoring

In these difficult economic times with declining budgets, the EPA carefully reviewed its programs to identify cost efficiencies and savings while still funding the nation's most pressing environmental priorities. As a result of this review, the EPA is proposing the elimination of its beach monitoring grant program with a reduction of $9.9 million in FY 2013. While beach monitoring continues to be important, well-understood monitoring guidelines are in place and state and local government programs have the technical expertise and procedures to continue beach monitoring without federal support.

Restoring the Chesapeake Bay and the Great Lakes

The President's budget requests $72.6 million for the Chesapeake Bay Program. The EPA continues to collaborate closely with other federal agencies to restore the health of the Chesapeake Bay and implement the President's Executive Order on the Chesapeake Bay. The EPA also continues to support the ongoing partnership among federal agencies, Chesapeake Bay jurisdictions, and other stakeholders,

[5] http://water.epa.gov/infrastructure/sustain/upload/Sustainability-Policy.pdf

which is essential for ensuring that the diverse activities necessary to restore the Bay, including the waters within the Bay watershed, are being implemented and supported in a strategic manner.

The budget provides state and local governments, within the Bay watershed, with an additional $14.4 million in grants to make further progress on implementing the Watershed Implementation Plans that states and the District of Columbia developed to meet the Chesapeake Bay Total Maximum Daily Load (TMDL). The TMDL, a pollution diet for nutrient and sediment pollution in the Bay, required under the Clean Water Act, defines the reductions in nutrients and sediment needed to alleviate the overabundance of nutrients and high turbidity that robs the Bay of the oxygen and sunlight needed to support blue crabs, rockfish, other fish and wildlife, and important plant life critical to the Bay ecosystem and to support clean water in all watershed communities. The EPA will continue to use its technical and scientific capabilities to support the efforts of the states, District, local governments, farmers, and others to put practices in place to reduce water pollution.

In addition, the EPA is requesting $300 million to continue funding for the Great Lakes Restoration Initiative (GLRI), equal to the FY 2012 enacted level. The GLRI promotes unparalleled interagency coordination across 16 federal agencies to reduce levels of toxic pollutants in the Lakes, restore habitat, combat invasive species, and improve the health of the Lakes. Approximately half of the $ 300 million will be given to other federal agencies to support their restoration activities. Special priority will be placed on cleaning up and de-listing Areas of Concern[6], preventing the introduction of new invasive species, and reducing phosphorus runoff that contributes to harmful algal blooms and other water quality impairments.

[6] http://www.epa.gov/glnpo/aoc/

Strengthening State Programs

The FY 2013 request includes $265.3 million for Water Pollution Control grants to states, tribes and interstate agencies. The $26.9 million increase in these grants will strengthen the base programs, address emerging water quality issues, support expanded water monitoring, and strengthen permitting, compliance, and enforcement efforts. These funds also support state and tribal work to review and update their water quality standards as required by the Clean Water Act. In FY 2013, the EPA will designate $15 million of this increase for states that commit to strengthening their nutrient management efforts consistent with the EPA's March 16th, 2011, memorandum to its regional offices, which lays out a recommended framework for how the agency can work in partnership with states and tribes to achieve near-term reductions in nutrient loadings.[7] Nitrogen and phosphorus pollution causes algal blooms, dead zones, and waters unhealthy for many uses. These additional funds and the March framework, along with state and tribal activities that use nonpoint source grants (Clean Water Act Section 319) and USDA funding, and efforts to improve coordination of these programs, will help ensure that state clean water programs are effective at protecting the environment and supporting our economy.

Strengthening Urban Waters

The President's budget requests $4.9 million to support the Urban Waters program. In this program, the EPA is assisting communities in restoring urban waterways and revitalizing urban areas through partnerships with governmental and non-governmental organizations.

[7] Nancy K. Stoner memorandum *Working in Partnership with States to Address Phosphorus and Nitrogen Pollution through Use of a Framework for State Nutrient Reductions*, March 16, 2011.

Conclusion

I would like to thank you, Mr. Chairman and the members of the Subcommittee for this opportunity to discuss the President's FY 2013 budget request for the EPA's National Water Program. The President's budget reflects the EPA's ongoing efforts to carefully consider potential savings while continuing our commitment to the core mission of protecting water quality and public health. The EPA looks forward to continuing to work with the Subcommittee to ensure clean and safe water for all Americans. Thank you again and I will be happy to answer any questions you may have.

TESTIMONY OF
MATHY STANISLAUS
ASSISTANT ADMINISTRATOR
OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE
U.S. ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE
SUBCOMMITTEE ON WATER RESOURCES AND ENVIRONMENT
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
U.S. HOUSE OF REPRESENTATIVES

March 28, 2012

Good morning Chairman Gibbs, Ranking Member Bishop, and Members of the Subcommittee. I am Mathy Stanislaus, Assistant Administrator for the U.S. Environmental Protection Agency's (EPA) Office of Solid Waste and Emergency Response (OSWER). Thank you for the opportunity to appear today to discuss EPA's proposed budget for OSWER programs falling under the Subcommittee's jurisdiction.

EPA's budget request focuses on fulfilling the agency's core mission of protecting public health and the environment. The budget request fully reflects the President's commitment to reducing government spending and finding cost savings in a responsible manner while supporting clean air, clean water, clean land, and the innovative safeguards that are essential to an America built to last.

To clean up our communities, the President is proposing investments that clean up contamination and promote economic development and job creation. The President's 2013 Budget proposes $164.7 million (not including Smart Growth Program funding) for OSWER's Brownfields program to support State and Tribal cleanup programs and to support planning,

cleanup, job training, and redevelopment of brownfields properties, especially in underserved and disadvantaged communities. Included within the $164.7 million request are the following categories: (1) $47.6 million in categorical grants awarded directly to the states to support their own brownfields programs; (2) $93.3 million for the brownfields projects account supporting competitive grant competitions, revolving loan funds, and job training grants; and (3) $23.8 million in technical assistance, program operations, and sustainable development through OSWER's EPM account.

EPA's Brownfields program uses its funding to successfully leverage economic investment. On average, more than $18 is leveraged for every dollar expended, and more than 75,000 jobs have been leveraged through brownfields projects funding since the inception of the Brownfields program. In FY 2013, Brownfields program grantees are projected to assess more than 1,200 properties, clean up more than 120 properties, help create at least 5,000 cleanup and redevelopment jobs, and leverage more than $1.2 billion in cleanup and redevelopment funding. The assessment and clean up of brownfields properties is essential to community revitalization in economically disadvantaged areas.

The Brownfields program also provides funds for job training. In 2011, one of the successful job training grant applicants was the Zender Environmental Health and Research Group which will use its EPA job training grant funding to serve unemployed residents of rural Alaskan villages. The training will prepare individuals for careers which address solid waste management, leaking above ground storage tanks, and contaminated property cleanup.

EPA launched its Area Wide Planning pilot program in FY 2010. Area wide planning incorporates the surrounding areas associated with brownfields sites to encourage community based involvement and provide for broader revitalization of neighborhoods. By focusing on economically disadvantaged communities suffering from economic disinvestment, brownfields properties can be redeveloped to help meet the needs for jobs, housing, and infrastructure investments that would help rebuild and revitalize these communities, as well as identify opportunities to leverage additional public and private investment. EPA has awarded funding for 23 projects in 18 states which included pilot project grants for local governments in Monaca, Pennsylvania; Ranson, West Virginia; Ogdensburg, New York; Cleveland, Ohio; Goshen, Indiana; Tulsa, Oklahoma; the Pioneer Valley Planning Commission (Chicopee, Massachusetts); the Coleville Confederated Tribes in Washington State; and California nonprofit organizations in Huntington Park and San Diego. In FY 2013, EPA will continue to support the 23 communities who already received brownfields area wide planning awards, and, as part of the Agency's on-going efforts to assist economically disadvantaged communities, plans to award an additional 20 area wide planning projects.

EPA will continue to ensure that the Nation's wide-ranging rural areas benefit from brownfields funding and technical assistance. EPA will also provide funding for assessment and cleanup of underground storage tanks and other types of petroleum contamination on brownfields sites.

This budget requests $1.176 billion for Superfund cleanup efforts across the country, which represents a $37 million reduction from FY 2012 enacted levels and reflects the hard

budget choices that are being made. Superfund Removal and Homeland Security program funding levels are maintained with focused reductions associated with long-term remediation in the Superfund Remedial program. We expect that reductions to the Superfund Remedial program will result in no new EPA-lead construction project starts in FY 2013. EPA will balance the Superfund Remedial pipeline while focusing on the completion of ongoing projects rather than new starts.

We will continue to respond to environmental emergencies, clean up the nation's most contaminated hazardous waste sites, and maximize the participation of liable and viable responsible parties in performing and paying for cleanups. We are committed to continuing the Superfund program's success in protecting human health and the environment and providing local communities opportunities for economic development by cleaning up our Nation's worst hazardous waste sites.

For example, the South Point Plant Superfund site in South Point, Ohio was once the site of facilities that manufactured explosives, industrial chemicals, and fuels. Facility operations had contaminated area soils and ground water. A cleanup remedy addressed the contamination, and enabled the site to be reused for commercial and industrial uses. Today, through the combined efforts of local, state, and federal government partners, and a non-profit economic community development organization, the formerly contaminated site has been redeveloped into The Point, Southern Ohio's premier industrial park encompassing 504 acres with river, rail, and highway access. The industrial park recently received a $3 million grant from the Economic

Development Administration to build a rail spur that will lead to further economic growth in the area.

Another example is the Pemaco Superfund Site in Maywood, California, located in a densely populated minority community outside Los Angeles, is another example of a Superfund site being cleaned up and returned to productive use. A chemical manufacturing plant had contaminated the surrounding soil and groundwater. After soil treatment, and installation of a groundwater pump and treatment system, the site was incorporated into the Los Angeles River Greenway Project. Today the Maywood Riverfront Park offers soccer fields, playground equipment, handball courts, and basketball courts for area residents, and turned the formerly contaminated site into a community asset.

In addition to site-specific cleanup and redevelopment successes, the Superfund program generates other economic benefits. A January 2012 study completed by researchers at Duke University and the University of Pittsburgh examined the localized benefits from the cleanup of Superfund sites across the United States. Using census tract data, the researchers found that deletion of sites from the National Priorities List significantly raises the value of owner-occupied housing within 3 miles of the site by 18.6% to 24.5%. Additionally, there were significant value effects at the site listing and construction completion program milestones.

EPA has initiated a multi-year effort to integrate and leverage our land cleanup authorities to address a greater number of contaminated sites, accelerate cleanups, and put sites back into productive use while protecting human health and the environment. EPA's Integrated

Cleanup Initiative (ICI) represents EPA's commitment to bring more accountability, transparency and progress to contaminated site cleanups. As a first step, EPA developed a publicly reported performance measure in FY 2011 which tracks the number of Superfund Remedial Action Project completions. In FY 2011, we exceeded our target of 103, by completing 132 remedial action projects. EPA has committed to 130 project completions in FY 2012 and 115 project completions in FY 2013. This new measure will augment EPA's site-wide construction completion measure and help improve project management and provide communities with additional and important site progress information.

EPA has completed four site project management pilots as part of our ICI efforts. Lessons learned include methods to expedite settlement negotiations, producing a more effective procurement and management process through project delivery integration, reducing remedial timelines through increased use of agency-based resources, and utilizing pre-placed contracts for remedial design and remedial action work. We plan to apply the cost and time savings lessons learned through these pilots to other site projects planned and underway in the Superfund program.

One of the principal elements of the ICI is to increase the project management focus and manage projects to completion. In FY 2011, EPA controlled unacceptable human exposures from site contamination at an additional 10 sites, meeting the goal of 10, controlled groundwater migration from site contamination at an additional 21 sites exceeding the goal of 15, made ready for site-wide anticipated use an additional 65 sites meeting the goal of 65, and completed remedy construction at 22 sites throughout the country, meeting the goal of 22. Through the end of FY

2011, cleanup construction has been completed at 1,120 NPL sites, which represents 68 percent of sites listed on the NPL. The FY 2013 goal for construction completions is 19. In FY 2013, we will continue to seek ways to conduct our work as efficiently as possible through innovative contracting approaches and working to incorporate project optimization into our cleanup management. Despite these efficiency efforts, EPA anticipates that the budget reductions will have an impact on program outputs, affecting all aspects of the Remedial cleanup pipeline. However, EPA will strive to continue to maintain key public health measures, including 10 sites where human exposures are brought under control and 15 sites where groundwater migration is brought under control.

The Superfund program also continues to prepare for future cleanup efforts, and in FY 2011 the Agency listed 25 new sites on the NPL and proposed an additional 26 new sites. On March 15, 2012, EPA listed another 9 sites on the NPL and proposed an additional 10 sites for the NPL. Finally, EPA has continued its effort to efficiently utilize every dollar and resource available to clean up contaminated sites and to protect human health and the environment. In FY 2011, EPA obligated nearly $535 million for Remedial cleanup activities, including funding from the Superfund program appropriation, state cost-share funding, and potentially responsible party settlement funding for Superfund construction and post-construction projects. EPA used $49 million of this obligated funding to fund 12 new starts on construction projects at 12 NPL sites. In addition, In FY 2011, Superfund remedies were selected in 58 Records of Decision (RODs) and EPA provided oversight for 253 remedial actions at Superfund Federal Facility sites on the NPL.

EPA has been particularly successful in leveraging appropriated funding through the use of responsible party settlements to establish site-specific special accounts. Through the end of FY 2011, EPA had collected more than $4.0 billion (including interest) in more than 1,000 site-specific special accounts. Of this amount, EPA has disbursed or obligated $2.2 billion for site response actions and developed multi-year plans for nearly 100% of the remaining $1.8 billion in special accounts that remains available to fund response actions. In total, through FY 2011, EPA has secured more than $36 billion in responsible party commitments for site cleanup and reimbursement of past costs. Of this amount, approximately $30.5 billion is from settlements for cleanup and approximately $5.8 billion is from settlements for cost recovery.

In addition, the Superfund removal and emergency response program conducted, or provided oversight for 405 EPA-lead and responsible party removal cleanup actions in FY 2011. The FY 2013 target for EPA-lead removal actions is 170, as is the target for responsible party removal actions. EPA's emergency response program will continue to maintain capability to respond to imminent threats to human health, including incidents of national significance, and incidents involving Weapons of Mass Destruction (WMD). EPA is the lead federal agency under the National Response Framework for Emergency Support Function (ESF) 10, which addresses the response to discharges or uncontrolled releases of oil and hazardous materials.

EPA's chemical accident and oil spill prevention programs play an important role in assessing and reducing risks of chemical accidents and oil spills. EPA's Risk Management program works with State and local prevention and preparedness programs to help protect communities from catastrophic releases of hazardous substances from facilities which are

required to submit Risk Management Plans (RMPs). More than 13,000 facilities with Risk Management Plans have been entered into EPA's RMP database. The FY 2013 budget requests an additional $1.5 million to increase inspections at high risk RMP facilities.

EPA's Oil Spill program is designed to protect inland waterways through oil spill prevention, preparedness, and enforcement activities associated with the more than 600,000 non-transportation related oil storage facilities that EPA regulates. Recognizing the importance that this sector has both to our economy and to our environment, the FY 2013 Budget requests a $4.6 million increase for OSWER's Oil Spill program which will fund efforts to broaden and expand prevention and preparedness activities, particularly with respect to the inspection of high risk facilities and the development and implementation of a third party audit program. Approximately 20,000 oil spills are reported each year to the federal government. The severity of these spill reports varies, and EPA evaluates as many as 13,000 spills to determine if its assistance is required. EPA works closely with the U.S. Coast Guard and, on average, either manages the oil spill response or oversees response efforts of private parties at approximately 250 to 300 sites per year. The FY 2013 Budget request for OSWER's Oil Spill prevention, preparedness, and response program is $19.3 million with a total agency Oil Spill appropriation request of $23.5 million which includes funding for oil spill research and enforcement efforts.

The President's 2013 EPA budget request maintains the commitment to protect human health and the environment, protects our communities while promoting economic development and job creation, and reflects tough choices in recognizing the fiscal constraints facing our

Nation. Thank you again for inviting me to testify before the Subcommittee. I would be pleased to answer your questions.

December 13, 2012

Responses to Informal Questions Submitted from the House Committee on Transportation and Infrastructure

QUESTION: In the 2010 appropriations Conference report, Congress' expectation for the Hydraulic Fracturing study states, "The Conferees expect the study to be conducted through a transparent, peer-reviewed process that will ensure the validity and accuracy of the data." How does EPA ensure a study is conducted through a transparent, peer-reviewed process? How will EPA ensure this study is conducted through a transparent, peer-reviewed process?

RESPONSE: For any research product that the EPA determines to be influential, the Agency relies upon mechanisms that are designed to ensure a rigorous and transparent peer review process. One of the primary such mechanisms used by EPA is the Agency's Science Advisory Board (SAB). Congress established the EPA SAB in 1978 and gave it a broad mandate to advise the Agency on technical matters. The SAB is a scientific and technical advisory committee comprised of experts who are appointed as members because they are "qualified by education, training, and experience to evaluate scientific and technical information" 42 U.S.C. § 4365. In general, engagement with the SAB helps the EPA ensure that its science is conducted through a transparent, peer-reviewed process. This process provides an opportunity for public participation.

The EPA's *Study of the Potential Impacts of Hydraulic Fracturing on Drinking Water Resources* has been classified as a Highly Influential Scientific Assessment (HISA).[1] The Agency has developed an approach consistent with the EPA's Peer Review Handbook[2] and the Office of Management and Budget's *Information Quality Bulletin for Peer Review*[3] to ensure that it is conducted through a transparent, peer-reviewed process. This approach has included extensive stakeholder involvement and engagement with the SAB. In March 2010, the EPA submitted a Research Scoping Document for the initial design of the study to the SAB for review. The EPA gave serious consideration to the SAB's feedback while preparing the draft study plan, which was released in February 2011 for peer review by the SAB. EPA revised the draft study plan in response to the SAB's recommendations and is now carrying out the research activities detailed in the final study plan. In December 2012, the EPA will release a progress report that will describe the status of research conducted to date. The progress report will not contain any findings or results. It will be reviewed by the SAB in early 2013, and any changes to the research program that result from the SAB review and stakeholder input will be shared with the public. Finally, the draft report of results will be sent to the SAB for peer review in December 2014, and the public will once again have the opportunity for comment.

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[1] http://cfpub.epa.gov/si/si_public_pra_view.cfm?dirEntryID=244651
[2] "U.S. EPA Peer Review Handbook, 3rd Edition"
http://www.epa.gov/peerreview/pdfs/peer_review_handbook_2012.pdf
[3] "OMB's Final Information Quality Bulletin for Peer Review,"
http://www.whitehouse.gov/sites/default/files/omb/memoranda/fy2005/m05-03.pdf

December 13, 2012

Responses to Informal Questions Submitted from the House Committee on Transportation and Infrastructure

QUESTION: The only way to "ensure the validity and accuracy of the data" from the study is through conducting the peer review process before release of that data. How will the peer review process be carried out so we can be assured of the validity and accuracy of the data before it is released to the public?

RESPONSE: The EPA is conducting its study according to the SAB-reviewed study plan and is adhering to a rigorous application of the Agency's quality assurance principles. This approach will ensure that the results generated are scientifically sound.

The EPA's quality assurance ensures the validity and accuracy of the data. To ensure the validity and accuracy of the data, quality assurance activities and responses will be conducted in a manner consistent with the Agency's Quality Program Policy[4] and Procedure[5] before the report of results is written. The results of the study will then be synthesized in a draft report of results that will also undergo a quality assurance review and will be sent to the SAB in December 2014 for a thorough peer review with a public comment process. Peer review ensures that any conclusions drawn from the data analysis are founded upon sound scientific principles. Consistent with the Office of Management and Budget's *Information Quality Bulletin for Peer Review*[6] the EPA will make the draft report of results available to the public for comment at the same time it is submitted for peer review by the SAB.

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[4] "U.S. EPA Quality Policy,"
http://www.epa.gov/irmpoli8/policies/21060.pdf
[5] "U.S. EPA Procedure for Quality Policy,"
http://www.epa.gov/irmpoli8/policies/2106p01.pdf
[6] "OMB's Final Information Quality Bulletin for Peer Review,"
http://www.whitehouse.gov/sites/default/files/omb/memoranda/fy2005/m05-03.pdf

FOLLOW-UP QUESTIONS:

1) You state that one of EPA's primary peer review mechanisms is the Agency's Science Advisory Board (SAB). How does the agency ensure transparency in the peer review process when the agency exercises authority over the SAB?

As required by the Environmental Research, Development, and Demonstration Authorization Act, the EPA "exercises authority" over the SAB in that the EPA Administrator establishes the SAB and the Board meets "at such times and places as may be designated by the Chairman of the Board in consultation with the Administrator." The SAB is managed administratively in an organizational unit separated from the EPA client offices seeking advice and peer review on their work products.

Beyond those Agency controls, the SAB is subject to meeting the requirements of the Federal Advisory Committee Act (FACA) and its implementing regulations, which ensure, among other things, transparency of the Board's work. FACA is a "government in the sunshine" statute that works to ensure transparency in the development of advice provided to the government by federal advisory committees. The key provisions of the law require that committees are be balanced in terms of the points of view represented and the function the committee is to perform, meetings are announced ahead of time and open to interested members of the public, the public has the opportunity to provide written and, when appropriate, oral comments to the committee on the subject being discussed, detailed meeting minutes are kept of each meeting, and all materials presented to or prepared by or for advisory committees are made available to the public. It is EPA policy that subcommittees-and panels of chartered committees such as the SAB also follow the FACA transparency and openness requirements.

2) You state "EPA will release a progress report that will describe the status of the research conducted to date." But it "will not contain any findings or results." Will Tier 1 data be left out of the progress report? Please provide the draft results of the tier 1 data collected to date.

Response: As you are aware, the EPA released the Study of Potential Impacts of Hydraulic Fracturing on Drinking Water Resources: Progress Report in December 2012. The report is available at http://www2.epa.gov/hfstudy/study-potential-impacts-hydraulic-fracturing-drinking-water-resources-progress-report-0.

This Progress Report provides the public with the latest information on the work being undertaken as part of the EPA's national research study. It provides a summary of the progress made on the research projects currently underway and cannot be used to draw conclusions about the potential impacts of hydraulic fracturing on drinking water resources. The EPA intends to synthesize the available results from the research projects described in the Progress Report with a review of the relevant scientific literature in a draft report, which is expected to be released for peer review and public comment in late 2014.

The Progress Report describes the progress made by EPA scientists in collecting data as part of the retrospective case studies. We intend to make these data available once all data from Tier 2 sampling events have completed a quality assurance review.

3) You state "the EPA will make the draft report of results available to the public for comment at the same time it is submitted for peer review by the SAB." Technically, this means that a draft will be released to the public and media before it is peer reviewed to ensure the results and the science use is sound. When is the data peer reviewed, not just the report? How can an outside peer review occur during the data gathering stage?

The EPA has a plan for releasing major components of the draft study for external peer review prior to the SAB review, with key components receiving public comment. The case studies will undergo an independent, contractor-led panel review with opportunity for public comment. Key research findings will be submitted to scientific journals for external peer review and publication prior to their inclusion in the report to the SAB. Other results will be documented in EPA reports that will undergo contractor-led letter reviews by external technical experts. In these ways, the projects will be peer reviewed before the draft report is released to the public and to the SAB for review.

The EPA plans to transmit the draft report as a whole to the SAB for peer review in December 2014. The Federal Advisory Committee Act requires that federal advisory committees offer the public an opportunity to provide written and oral comment for the SAB's consideration. The EPA will provide the draft report simultaneously to the SAB and the pu*blic.*

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