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THE PRESIDENT'S 2016 FISCAL YEAR BUDGET: ADMINISTRATION PRIORITIES FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY

(114–9)

HEARING

BEFORE THE

SUBCOMMITTEE ON
WATER RESOURCES AND ENVIRONMENT

OF THE

COMMITTEE ON
TRANSPORTATION AND
INFRASTRUCTURE
HOUSE OF REPRESENTATIVES

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U.S. House of Representatives

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March 13, 2015

SUMMARY OF SUBJECT MATTER

TO: Members, Subcommittee on Water Resources and Environment
FROM: Staff, Subcommittee on Water Resources and Environment
RE: Hearing on "The President's Fiscal Year 2016 Budget: Administration Priorities for the U.S. Environmental Protection Agency"

PURPOSE

On Wednesday, March 18, 2015, at 10:30 a.m., in 2167 Rayburn House Office Building, the Water Resources and Environment Subcommittee will meet to receive testimony from the U.S. Environmental Protection Agency (EPA) on the Agency's proposed budget and program priorities for fiscal year (FY) 2016.

Similar to other budget hearings held by the Subcommittee, this hearing is intended to provide Members with an opportunity to review EPA's FY 2016 budget request, as well as Administration priorities for consideration by the Subcommittee as part of its legislative and oversight agenda for the first session of the 114th Congress.

BACKGROUND

The President's budget request for the Environmental Protection Agency is $8.6 billion, $452 million more than the FY 2015 enacted level of funding.

Clean Water Act

The Federal Water Pollution Control Act (commonly known as the Clean Water Act (CWA)), 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 Act generally has two major areas of emphasis. First, regulatory provisions that impose progressively more stringent requirements on industries and municipalities to reduce the discharge of pollutants and that regulate the discharge of dredged or fill materials into wetlands. Second, funding provisions that authorize federal financial assistance for municipal wastewater treatment plant construction. Additional areas

emphasize planning and financial and technical assistance for various geographical regions and issues.

The CWA established a goal of eliminating the discharge of pollutants into navigable waters of the United States by 1985, with an interim goal of attaining water quality that provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water by 1983. "Navigable waters" is defined in the Act as "waters of the United States, including the territorial seas" -- a term that is interpreted to include certain non-navigable tributaries and wetlands.

Considerable controversy exists over the term "navigable waters" and the associated scope of federal jurisdiction of the CWA over waterbodies. Some interests seek to preserve a balance of power and long-term cooperative relationship between the federal government and the states with regard to water management and water quality, and argue for a limited scope of federal jurisdiction over waterbodies. This would allow states to assert jurisdiction over state waters where the federal interest in those waters is limited or nonexistent. On the other hand, other interests argue for an expansive (and some, an unlimited) scope of federal jurisdiction over waterbodies, to include most any wet areas, because of their perceived need for a strong federal, top-down role in regulating activities affecting them. Many view a strong federal, top-down approach as undermining the federal-state partnership that Congress originally envisioned for implementing the CWA.

In April 2014, the EPA, along with the Corps of Engineers (Corps), proposed a rule that would redefine the scope of waters subject to federal jurisdiction under the CWA. The EPA and the Corps assert that this rule "clarifies" the scope of federal CWA jurisdiction over waters in the United States. However, other stakeholders view this rule as going beyond merely clarifying the scope of federal jurisdiction and actually increases the scope of the CWA's jurisdiction over more waters.

EPA has the basic responsibility for administering and enforcing most of the CWA, and is responsible for implementing the National Pollutant Discharge Elimination System (NPDES) permitting program under section 402 of the CWA. Under the NPDES program, it is unlawful for a facility to discharge pollutants into navigable waters, unless the discharge is authorized by and in compliance with an NPDES permit issued by EPA (or by a state, under a comparable approved state program).

EPA shares responsibility with the Corps for implementing the dredge and fill (wetlands) permitting program under section 404 of the CWA. Under the wetlands permitting program, it is unlawful for a facility to discharge dredge or fill materials into navigable waters, unless the discharge is authorized by and in compliance with a dredge or fill (404) permit issued by the Corps.

The CWA does not contemplate a single, federally-led water quality program. Rather, Congress intended the states and EPA to implement the CWA as a federal-state partnership where the states and EPA act as co-regulators. The CWA established a system where states can receive EPA approval to implement water quality programs under state law, in lieu of federal

implementation. These states are called "authorized states". Under the CWA, 46 states currently have EPA-authorized programs.

EPA administers several water quality programs under the CWA, including those whose proposed budgets are discussed below.

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 $36.2 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-issued bonds, the return on this federal investment has been in the order of 2.7 to 1. Over the last two and a half decades, the SRFs have provided over $100 billion, funding more than 33,320 low-interest loans.

For FY 2016, the President's budget is requesting $1.116 billion to further capitalize these funds. This is $332 million less than the FY 2015 enacted level of $1.448 billion.

During prior Congresses, the Subcommittee 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 also looked at reducing infrastructure needs and costs through improved asset management, so-called green infrastructure in appropriate circumstances, and the use of decentralized and nonstructural approaches for managing wastewater and stormwater.

In the 113th Congress, provisions were included in the Water Resources Reform and Development Act of 2014 establishing additional financing mechanisms to supplement the state revolving loan fund programs. The Water Infrastructure Finance and Innovation Act (WIFIA) program provides federal credit assistance in the form of direct loans and loan guarantees to finance significant water infrastructure projects and is governed by the Federal Credit Reform Act of 1990. In FY 2016, the president has requested $5 million to begin developing the information necessary to lay the groundwork for the WIFIA program.

Special Purpose Infrastructure Grants

Special purpose infrastructure grants are funds made available to address unique clean water regional needs. This total includes $5 million for U.S.-Mexico Border wastewater infrastructure projects, which is the same as the FY 2016 enacted level. The budget also proposes $10 million for infrastructure assistance for Alaska Rural and Native Villages, exactly the same as the FY 2015 enacted level.

Nonpoint Source Funding

The Administration's budget request proposes $164.9 million for the Clean Water Act's nonpoint source grants program (section 319), which is $5.6 billion more than the FY 2015 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.

Geographic (Regional) Programs

- The President's budget requests $250 million for the Great Lakes Restoration Initiative, which is $50 million less than the FY 2015 enacted level of $300 million.
- The Chesapeake Bay program request is $70 million, $3 million less than the FY 2015 enacted level of $73 million.
- The Long Island Sound program request is $2.9 million, approximately $1 million less than the FY 2015 enacted level of $3.9 million.
- The Lake Champlain program request is $1.4 million, $3 million less than the FY 2015 enacted level of $4.4 million.
- The San Francisco Bay program request is $3.99 million, $830,000 less than the FY 2015 enacted level of $4.82 million.
- The Puget Sound program request is $29.99 million, $1.99 million more than the FY 2015 enacted level of $28 million.
- The South Florida program request is $1.34 million, $360,000 less than the FY 2015 enacted level of $1.7 million.
- The Gulf of Mexico program request is $3.91 million, approximately $570,000 less than the FY 2015 enacted level of $4.48 million.
- The Lake Pontchartrain program request is $948,000, the same as the FY 2015 enacted level.
- Requested funding for the National Estuary Program is $27.3 million, approximately $600,000 more than the FY 2015 enacted level of $26.7 million.

State Water Quality Management Programs

The Administration's budget request proposes $249.16 million for state and tribal pollution control assistance programs under section 106 of the CWA. The section 106 program generally supports state and tribal water quality improvement and monitoring programs. The enacted level for this program in FY 2015 was $230.81 million.

The budget requests no funding for beach protection monitoring grants in FY 2016, $9.5 million less than the FY 2015 enacted level.

EPA Priorities, Community Challenges, and the Need for Greater Regulatory Flexibility under the Clean Water Act

Communities face numerous regulatory pressures and inadequate infrastructure issues related to the Clean Water Act. The needs of municipalities to address aging and inadequate

water infrastructure are substantial. According to studies by EPA, the Congressional Budget Office, and the Water Infrastructure Network, the cost of addressing our Nation's clean water infrastructure needs over the next 20 years could exceed $400 billion, roughly twice the current level of investment by all levels of government.

The needs are especially urgent for many areas trying to remedy the problem of combined sewer overflows (CSOs) and sanitary sewer overflows (SSOs), often associated with wet weather conditions, and for communities lacking sufficient independent financing ability. In recent years, EPA (and activist groups, through citizens' suits) has stepped up enforcement actions against many municipalities in an effort to force them to eliminate their CSOs and SSOs.

These enforcement actions have resulted in many larger cities and smaller municipalities entering into enforcement settlements, by signing consent agreements with EPA (and activist groups) to implement enforceable plans to eliminate their CSOs and SSOs. Many of these settlements are costly to implement, especially in the face of dwindling EPA infrastructure funds.

The projected total cost to larger municipalities of implementing the terms of each of these settlements could end up being as much as between $1 and 5 billion per city, or even more in some instances. There are approximately 746 communities, located in 31 states and the District of Columbia, with combined sewer systems and CSO issues potentially facing these sorts of costs.

Many more communities have SSO issues. EPA estimates that there are at least between 23,000 and 75,000 SSOs per year (not including sewage backups into buildings), amounting to an estimated three to ten billion gallons a year of untreated releases.

In recent years, other regulatory issues also have become national priorities, which are placing a further demand for resources on municipalities' utilities. For example, while our Nation's wastewater utilities already have removed the vast majority of conventional pollutants from municipal wastewater, looking forward, they face significantly higher costs to remove the next category of pollutants, like pollutants from urban stormwater runoff.

EPA has initiated a national rulemaking to establish a potentially far-reaching program to regulate stormwater discharges from newly developed and redeveloped sites and to add to or make other regulatory requirements more stringent under its stormwater program. This includes possibly expanding the scope of the municipal separate storm sewer systems regulatory program, establishing and implementing a municipal program to regulate stormwater discharges from existing development, imposing specific requirements for transportation facilities, and establishing and implementing stormwater regulations specific to the Chesapeake Bay watershed. This stormwater rulemaking, which EPA may propose in 2015, could cost communities additional billions of dollars in regulatory compliance costs if promulgated, thereby imposing substantial additional regulatory and economic burdens on municipalities to comply.

In addition, EPA has begun zealously pressing the states and local governments to adopt a new framework for managing nutrients pollution, including crafting numerical nutrients criteria, setting strict numerical regulatory requirements, including numerical standards and load

reduction goals for pollutant sources, and adopting stringent numerical nutrient standards and stringent effluent limits for nutrients in NPDES permits for municipal and other dischargers of nutrients. Stringent effluent limits for nutrients in NPDES permits could mean that many municipalities would have to install and operate, at great expense, state-of-the-art nutrient treatment and removal technologies at their wastewater treatment plants. These requirements will add an additional layer of regulatory requirements and economic burdens to communities.

Many communities are struggling 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.

Although there are a number of federal programs to assist communities in meeting their clean water responsibilities, a large portion of these federal regulatory mandates are going unfunded by the federal government. Rather, local governments are being expected to pay for more and more of the costs of these mandates, with the result that local governments have made substantial increases in investments in public water and wastewater infrastructure in recent years and local communities and ratepayers are increasingly paying more. Today, local government provides the majority of the capital required to finance water infrastructure investments through loans, grants, bonds, and user fees.

Communities would like to have more flexibility to move forward in a cost-effective manner. Municipalities are seeking a more collaborative approach where EPA and state water regulators work more like partners than prosecutors with communities to yield better solutions that achieve the goal of eliminating sewer overflows and addressing other water quality issues through the use of best engineering and innovative approaches at the lowest cost, resulting in the greatest environmental benefits.

In 2012, EPA announced a new integrated planning and permitting regulatory prioritization initiative to allow municipalities to prioritize their multitude of water quality requirements and address the huge unfunded costs associated with the growing number of requirements stemming from EPA water rules and enforcement actions. The policy was initially received by some stakeholders with cautious optimism and hope that the framework will be a step forward in dealing with mounting financial obligations facing cities under the CWA. But many have said that it is too early to tell how EPA's integrated planning process will play out.

Some are concerned that EPA is <u>not willing</u> to limit its enforcement efforts against municipalities, which have been driving costly infrastructure upgrades to reduce stormwater and sewer overflows during heavy storm events. They would prefer that EPA provide more compliance assistance and identify pilot project communities to demonstrate how this framework can be successfully applied. They are concerned that a continued emphasis on an enforcement approach will undermine the flexibility EPA is ostensibly seeking to provide. Many also are

concerned that EPA is resisting setting a clearer affordability threshold for determining municipalities' financial capabilities to pay for all of the unfunded mandates.

Superfund

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 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. 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, commonly referred to as 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 is intended to advance scientific and technological capabilities in all aspects of hazardous waste remediation.

The total Superfund request is $1.154 billion, approximately $66 million more than the FY 2015 enacted level of $1.089 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. Even though Superfund is a cost recovery statute, the Administration's budget requests (as it has the past few years) the reinstatement of the taxes that historically funded the Superfund Trust Fund, including taxes on oil, gas, and chemical feedstocks, and a 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: $539.6 million for Superfund remedial actions, $38.6 million more than the FY 2015 enacted level of $501 million; and $190.7 million for Superfund emergency response and removal actions, $9.4 million more than the FY 2015 enacted level of $181.3 million.

Superfund Enforcement

The President's budget requests $156.5 million for Superfund enforcement activities. This is $6.3 million more than the FY 2015 enacted level of $150.2 million. The budget also includes $7.3 million for Superfund enforcement activities at federal facilities, $137,000 more than the FY 2015 enacted level.

Brownfields

Brownfields are former industrial or commercial properties that contain contaminated soil (and possibly groundwater) that must be remediated before the land can be returned to productive use. Cleaning up and reinvesting in these properties encourages redevelopment of existing underutilized urban and suburban areas, reduces blight, protects the environment, and takes development pressures off greenspaces and working lands. The Brownfields Program is designed to empower states, communities, and other stakeholders in economic redevelopment to

work together in a timely manner to prevent, assess, safely clean up, and sustainably reuse brownfield properties.

Congress passed the Small Business Liability Relief and Brownfields Revitalization Act in 2002, which amended CERCLA by: 1.) providing funds to states and local communities to assess and clean up brownfields; 2.) clarifying CERCLA liability protections for potential brownfields property investors; and 3.) providing funds to enhance state cleanup programs.

The Brownfields Program has resulted in numerous accomplishments, including leveraging more than $14 billion in brownfields cleanup and redevelopment funding from the private and public sectors and creating more than 60,000 new jobs. The Brownfields Program has been a major incentive for economic revitalization and urban redevelopment in many communities.

The Administration's budget request proposes $189.6 million for the Brownfields Program, including $110 million ($30 million more than FY 2015 enacted levels) for grants to localities to assess and cleanup brownfields, and $49.5 million ($1.76 million more than FY 2015 enacted levels) for states and tribes to establish or enhance their response programs. In addition, $29.6 million (a more than $4 million increase over FY 2015 enacted levels) is requested to fund contracts and EPA's brownfields program employees.

Oil Spill Response

CWA Section 311 provides EPA and the U.S. Coast Guard (USCG) with the authority to establish a program to prevent, prepare for, and respond to spills that occur in navigable waters of the United States. EPA is primarily responsible for spills in inland waters, and the USCG is primarily responsible for spills in coastal waters.

The Oil Spill Response program funds EPA's program for preventing, preparing for, and responding to oil spills. The President's budget requests $18.5 million, $4.1 million more than the FY 2015 enacted level of $14.4 million. This revenue is derived from the Oil Spill Response Trust Fund.

WITNESSES

Mr. Ken Kopocis
Deputy 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

THE PRESIDENT'S 2016 FISCAL YEAR BUDGET: ADMINISTRATION PRIORITIES FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY

WEDNESDAY, MARCH 18, 2015

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

The subcommittee met, pursuant to notice, at 10:36 a.m. in Room 2167, Rayburn House Office Building, Hon. Bob Gibbs (Chairman of the subcommittee) presiding.

Mr. GIBBS. Good morning. The Subcommittee on Water Resources and Environment of the Committee on Transportation and Infrastructure will come to order.

Unanimous consent request. I ask unanimous consent that the hearing record be kept open for 30 days after this hearing in order to accept other submissions of written testimony for the hearing record.

[No response.]

Mr. GIBBS. Hearing no objection, so ordered.

Today we have the hearing dealing with the President's budget for EPA and water. And we have Mr. Ken Kopocis?

Mr. KOPOCIS. It is Kopocis.

Mr. GIBBS. Kopocis. OK.

Mr. KOPOCIS. Thank you.

Mr. GIBBS. He is the Deputy Assistant Administrator, Office of Water. And I think—congratulations. I think you are fairly new in the position.

Mr. KOPOCIS. In this capacity. Yes, sir. Since last August.

Mr. GIBBS. Congratulations. And then also, Mr. Mathy Stanislaus?

Mr. STANISLAUS. It is Mathy Stanislaus.

Mr. GIBBS. Stanislaus. You guys have to get easier names for me, I will tell you.

[Laughter.]

Mr. GIBBS. He is the Assistant Administrator, the Office of Solid Waste and Emergency Response to the U.S. EPA.

We will start—my opening statement. This is the hearing for "The President's 2016 Fiscal Year Budget: Administration Priorities for the U.S. Environmental Protection Agency." Again, I would like to welcome everyone to the hearing today.

When Congress wrote the Clean Water Act and other Federal environmental statutes some 40 years ago, it envisioned the Federal Government and the States would be equal partners in solving the Nation's environmental problems. For many years the Federal-State partnership has worked well. However, in the past few years, we have seen a change in the approach taken by the Environmental Protection Agency that may undermine the balance between the Federal and State partnership that has long existed.

EPA is now taking away the flexibility that States and local governments need to address their environmental issues. EPA is aggressively moving forward simultaneously on several regulatory fronts, with the result that the States and local governments, as well as the private regulated community, are facing increasing regulatory, enforcement, and financial pressures to address a multitude of burdensome regulatory requirements that recently have become EPA priorities.

I am particularly concerned about EPA's proposed waters of the United States rule. This proposed rule will substantially increase the regulatory burdens for States, local governments, and businesses, especially small businesses. This proposed rule is on top of the other unfunded mandates advanced by the EPA, with the result that many local communities and private entities are now increasingly struggling for how to pay for complying with these mandates. EPA's aggressive actions have created financial pressures and regulatory uncertainty for States, local governments, and the regulated community, and have had a chilling effect on the Nation's economy and job creation.

The EPA budget put forth from the administration for fiscal year 2016 does nothing to alleviate my concerns. While the EPA is imposing more unfunded regulatory burdens on communities, businesses, and citizens, the administration is calling for a reduction in spending for programs that assist communities in their efforts to come into compliance with those regulations, like the Clean Water State Revolving Fund, the SRF program.

Sadly, not only is the EPA adding to the burden of rules and regulations and reducing programs to help State and local government come into compliance, but the EPA is also putting more boots on the ground to track down those who have difficulty coming into compliance, with questionable benefits to the environment.

We all want clean water. However, we also need to have a strong economy so we can make the investments that new regulations require. We need EPA, as the partner agency, to work to restoring its trust with State and local governments. Today is not the day to impose new burdens on the American people. We need to help people come into compliance with the multitude of regulations we already have, and make significant progress in developing and creating long-term jobs and a stronger economy before we can tolerate more expensive regulations.

I now recognize my ranking member, Mrs. Napolitano, for any remarks she may have.

Mrs. NAPOLITANO. Thank you, Mr. Chairman, for calling this first hearing of the Subcommittee on Water Resources and Environment for the 114th Congress. And I would welcome—but he is not here yet—Congressman Jared Huffman, California's Second

Congressional District, the newest Democratic member on the subcommittee—both have background on the Committee on Natural Resources—and is the ranking member of the Subcommittee on Water, Power and Oceans of the Committee on Natural Resources. So we will be working with him on issues that we may overlap. And I do look forward to working together on water issues.

Mr. Chairman, this is my first hearing at the Subcommittee on Water Resources and Environment as ranking member. And thank you for your efforts in welcoming me to the subcommittee, and for your offer to work collaboratively with our side of the aisle on some issues, including those related to infrastructure investment and implementation of WRRDA. While I do not expect that we will always agree—and I say that laughingly—I do look forward to building a strong and transparent working relationship with you and all of the members of this subcommittee. The American people want us to continue the bipartisan traditions of this subcommittee to accomplish tasks that our constituents have sent us here to do, to address the water resources challenges facing our Nation.

One of the greatest challenges facing us today is crumbling infrastructure. Over the years we have spoken to, listened to, countless mayors, city and county officials, stakeholders, on the issues to discuss water-related challenges in all of our communities, and about the lack of attention, or the lack of progress, if you will, in addressing these challenges. Unfortunately, much of the lack of progress can be traced to the slow and steady decline in Federal investment to critical water-related infrastructure, which is a good segue to today's hearing on the Environmental Protection Agency's 2016 budget request.

Very few Federal agencies are as praised or as vilified as EPA. It depends on which side of the fence you are on. Depending on your point of view, this agency—created by a Republican administration, and charged by Congress with safeguarding the health of the public and of the environment—is often portrayed either as the last safeguard of our natural environment, or as an overzealous impediment to unfettered industrial growth.

Well, I tell you, if it is industrial growth versus our people and our environment, I will tell you where I come from.

I suppose the reality is somewhere in the middle, where this agency makes a concerted effort in reaching a sustainable balance between the health of the public, the health of the environment, and the health of the economy, while working with Congress to be effective in attaining these mutual goals. We must agree on the need to balance healthy, economic growth while protecting the health of the public and of the environment for generations to come.

In my own district the health of our communities and our economies is integrally tied to the health and availability of the natural resources, and specifically, the availability of clean, safe drinking water. Unfortunately, ensuring this careful balance will all but be impossible if EPA must face budgetary cuts called for in the recent House Republican budget resolutions.

Back in 2011, Congress approved the Budget Control Act that drastically underfunded the discretionary budget authority of the Federal Government, including EPA. I voted against the Budget

Control Act because of its devastating cuts to both mandatory and discretionary programs relied upon by our Nation's seniors, our cities, our communities, and by our constituency. Yet, last year, the House Republican majority voted to approve a budget which calls for even greater cuts to these programs, jeopardizing our Nation's economic recovery, attacking our Nation's efforts to promote a global economy, and undermining efforts to create additional good-paying jobs in the U.S.

According to a summary of the budget from 2016, this House majority is urging a drastic reduction in nondefense discretionary spending over the next 10 years, cut by $1.3 trillion, or 24 percent below the amount, just to keep pace with the inflation. In fiscal year 2024 alone, the House budget would be 30 percent below the amount necessary simply to keep pace with the fiscal year 2014 spending budget.

Let's not forget these cuts come at a time when we should increase investment in our crumbling infrastructure. For example, according to EPA's most recent assessment, our States need approximately $300 billion—with a B—for wastewater and stormwater systems over the next 20 years. Without question, such a draconian proposal would have a devastating impact on our agency's ability to carry out statutory obligations.

As witnesses later will testify, the agency had to prioritize how to spend its declining resources, and has had to make tough choices in not funding programs and policies that are important to our business, to our industries, to our communities, and to our Nation. If cuts called for in the Budget Control Act are allowed to continue or, worse, to deepen, as proposed in this budget, there will be consequences in the ability of EPA to meet statutory obligations, causing unintended and possibly intended consequences.

If the cuts called for in the 2015 Republican budget are implemented, it will impair EPA's ability to respond to industrial spills and other contamination outbreaks that threaten local drinking water, such as recently occurred in North Carolina and Indiana and Ohio and Montana and West Virginia. It is up to the taxpayer to bear the cost of the cleanup.

In all of these instances, EPA officials will provide critical expertise to minimize the extent of the contamination, and to restore local drinking water supplies as quickly as possible.

Similarly, this subcommittee has heard testimony of a number of businesses and industries that rely on Federal regulatory agencies for Clean Water Act permits, and their concern with the complexity and delays in obtaining these permits. However, under the budget recommended by the House majority, both the regulatory office of the Corps and permits division of EPA would face potential significant budget cuts. Result would be it would take longer, because of the underfunded staff.

Further, if these discretionary spending cuts are implemented uniformly, we would expect continued cuts to other programs with widespread support for our communities, such as the Clean Water and Drinking Water State Revolving Funds, the Superfund cleanup, the Brownfields remediation, and we can go on and on.

And I would just like to say that I have heard others say that cutting the EPA budget will not have an adverse impact on the en-

vironment because decreases in Federal protection of the environment will be more than made up by the States. I got news for you. To the best of my knowledge, not the case. States are asking for more support because of the serious budget cuts they face.

Last Congress, GAO identified several States where cuts to the Federal environmental grant programs will result in reductions to State environmental staffing, cutting less critical programs and increasing State fees. The list goes on.

In conclusion, if Members are planning to question this administration's commitment to addressing the environmental challenges facing our Nation, perhaps we first should look in the mirror and ask whether this Congress is meeting our commitment to the environmental—to our business, in terms of providing critical resources necessary for its protection for the sustained health of our populations and of our future economies.

In short, I believe the answer is no. And I fear that we will soon see the consequences of a lack of physical foresight through continued crumbling water infrastructure, declining environmental quality, and, worse still, handing our children, our great-grandchild, and their progeny, a world of a less—on a less environmental sustainable path than we have inherited.

So, thank you, Mr. Chairman, and I look forward to this hearing.

Mr. GIBBS. Thank you. I also look forward to working with you in the full subcommittee on the implementation of WRRDA. We are going to have some hearings on that. And it is a very strong bipartisan bill. And we need to make sure that works forward.

At this time, Mr. Kopocis, the floor is yours, and we welcome you.

TESTIMONY OF KENNETH J. KOPOCIS, DEPUTY ASSISTANT ADMINISTRATOR, OFFICE OF WATER, U.S. ENVIRONMENTAL PROTECTION AGENCY, AND HON. MATHY STANISLAUS, ASSISTANT ADMINISTRATOR, OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE, U.S. ENVIRONMENTAL PROTECTION AGENCY

Mr. KOPOCIS. Thank you. And good morning, Chairman Gibbs and Ranking Member Napolitano, and all the members of the subcommittee.

As the chairman said, my name is Ken Kopocis, and I am currently serving as the Deputy Assistant Administrator in EPA's Office of Water. Thank you for the opportunity to be here today to discuss the President's 2016 budget request for EPA's National Water Program.

The President's budget request reflects EPA's longstanding efforts to protect the Nation's water, both at the tap and in the environment, and to identify new approaches and partnerships to make and sustain improvements in public health and the environment. The requested level of $3.7 billion allows the National Water Program to continue to support communities, improve infrastructure, drive innovation, spur technology, increase sustainability, and strengthen partnerships, in particular, with our States, tribes, and local governments. In fact, 78 percent of our budget request transfers directly to States and tribes.

A significant way that we do this is through the Clean Water and Drinking Water State Revolving Funds. These funds provide critical support to States to improve their water and wastewater drinking—and drinking water infrastructure, and to reduce water pollution and public health threats. The fiscal year 2016 request is for a total of $2.3 billion for the two SRFs, $1.116 billion for clean water, and $1.1186 billion for the Drinking Water SRF.

Additionally, in fiscal year 2016 we have included $50 million to enhance the capacity of communities and States to plan and finance drinking water and wastewater infrastructure improvements. We will work with States and communities to promote innovative practices that advance water system and community resiliency and sustainability. We want to build technical, managerial, and financial capabilities of systems to promote a healthy and effective network of infrastructure investments.

The Water Infrastructure Finance and Innovation Act of 2014, which this committee, of course, gave us in the Water Resources Reform and Development Act of 2014, authorizes an innovative financing mechanism for water-related infrastructure of national or regional significance, and authorizes us, for the first time, to provide direct Federal credit assistance to eligible entities. Our fiscal year 2016 budget includes a request of $5 million to lay the groundwork to initiate that program, in addition to the existing State Revolving Fund programs WIFIA would provide yet another source of capital to communities to meet their water infrastructure needs.

In January of this year the agency announced a key component of the administration's Build America initiative: the Water Infrastructure and Resiliency Financing Center, which we just call the financing center. Build America is a governmentwide effort to increase infrastructure investment and promote economic growth by creating opportunities for State and local governments and the private sector to collaborate on infrastructure development.

The finance center at EPA will help communities across the country plan for future investments in infrastructure, assist in identifying financing opportunities for resilient drinking water, wastewater, and stormwater. The center will enhance our partnership and collaboration with the U.S. Department of Agriculture on training, technical assistance, and funding, particularly in rural areas. And we are also collaborating with our colleagues at the Departments of Treasury, Housing and Urban Development, and Commerce.

Protecting the Nation's waters remains a top priority for the EPA. We will continue to build upon decades of effort to ensure our waterways are clean, and our drinking water is safe. Water pollution endangers wildlife, compromises the safety and reliability of our drinking water sources and our treatment plants, and threatens the waters where we swim and fish.

Beginning later in this year, and into fiscal year 2016, we will begin implementation of the Clean Water Rule, which will clarify types of waters covered by the Clean Water Act, and will foster more certain and efficient decisions to protect the Nation's waters. And I expect that we may have an opportunity to discuss that more later today.

Supporting our State and tribal partners, the primary implementers of our environmental programs, remains a priority. The overall proposed funding levels for tribes has increased by 8.8 percent over the fiscal year 2015 enacted levels, and we are requesting at least $50 million be made available through the SRF to support tribes.

The President's request also includes increases to key categorical grants that are of significant importance to States, such as a $5.7 million increase to a total of $165 million for the section 319 nonpoint source program, and an increase of $18.3 million to $249 million for our section 106 pollution control grants that the States use to operate their programs.

In addition, we are requesting over $370 million to continue our important regional programs around the country to complement our national programs.

So, thank you, Chairman Gibbs, Ranking Member Napolitano, and members of the subcommittee, for the opportunity to be here today. The President's budget reflects EPA's continuing efforts to improve water quality and public health, in partnership with the States. And I look forward to continuing our work with the subcommittee to ensure clean and safe America for—water for all Americans where we live, work, and play. Thank you.

Mr. GIBBS. Thank you.

Mr. Stanislaus, the floor is yours, and welcome.

Mr. STANISLAUS. Thank you. Good morning, Chairman Gibbs, Ranking Member Napolitano, and members of the subcommittee. I am Mathy Stanislaus, U.S. EPA Assistant Administrator for the Office of Solid Waste and Emergency Response. And thank you for the opportunity to discuss the President's fiscal year 2016 budget for EPA's land cleanup and prevention programs under the subcommittee's jurisdiction.

EPA's land cleanup programs regularly work with communities across America, cleaning up Superfund sites, responding to emergencies, and assisting tribes, States, and local governments in cleaning up and redeveloping Brownfields properties in hundreds of thousands of communities across the country, covering 541,000 sites, and almost 23 million acres.

Our program makes a difference by protecting local communities through the cleanup of contaminated sites, and by responding to hazardous spills and releases; by supporting State and local emergency planners and responders to prepare for spills, releases, and other hazardous incidents; providing grants and tools to local communities to generate economic opportunity and job creation; by supporting the development and beneficial reuse of formerly contaminated properties, particularly in underserved and economically distressed communities; and helping to support new job-generating manufacturing investments in an environmentally responsible way.

The President's fiscal year 2016 budget proposes a nearly $36 million increase for Brownfields programs from the fiscal year 2015-enacted levels. EPA's Brownfields program will use this funding to successfully leverage economic investments. And the Brownfields sites are located in downtowns of America, often the economic engines for communities. And we believe the best place for future economic redevelopment—to take advantage of the exist-

ing assets, existing infrastructure, and to maximize the markets that surround these properties.

On average, EPA's grant programs leverage $18 of every $1 that EPA puts into a grant by leveraging private and public funding. In addition, more than seven jobs are leveraged for every $100,000 in grants. EPA has found that residential property values increase 5 to 12 percent, once a nearby Brownfields property is assessed and cleaned up.

In fiscal year 2014, the Brownfields program was only able to fund 266 of the 823 grant applications, which represents only 30 percent of the grant requests. We believe this increment will enable EPA to fund an additional 140 communities, with each of these dollars leveraging, again, $18 of additional investment, along with the alignment of other Federal and State resources.

Superfund sites are located in more than 1,000 communities across the country. Approximately 49 million people live within 3 miles of a proposed final listed Superfund site. Residents in communities located near Superfund sites are economically distressed from the loss of economic activity at the Superfund sites, as well as the public health consequence. EPA's budget request to the Superfund program represents a $65 million increase from the fiscal year 2015 enacted levels.

Our study shows that early intervention at Superfund sites avoids disease, including reduction of child blood lead levels. Recent studies show that the incidents of birth defects do, in fact, go down by early intervention in the cleanup of Superfund sites.

Superfund sites also create job opportunities. A recent study of 450 Superfund sites shows that cleanup and redevelopment has resulted in over 3,500 businesses located on these sites generating annual sales of about $31 billion, and employing more than 89,000 people who are earning a combined income of $6 million.

The $43.7 million in Superfund increase and Superfund remedial program will enable us to deal with the backlog of Superfund sites, enabling these communities to receive the similar kinds of benefits. And we project up to 10 communities, additional communities, will be funded by this increase in resources.

Lastly, EPA's oil spill program. We are requesting a $4.1 million increase for the oil spill program to help EPA work with State and local responders to expand its prevention and preparedness activities. There are approximately 20,000 oil spills reported every year, and EPA evaluates 13,000 spills. These spills have a tremendous impact on local economies, on local waterways, on drinking water. Every investment in prevention is an avoided damage to local communities.

With that, I will look forward to your questions. Thank you.

Mr. GIBBS. Thank you. I will start the first round of questions.

Mr. Kopocis, on the proposed rule, I noticed Administrator McCarthy was talking to a farm group earlier this week. I think she—I will paraphrase—said that maybe they weren't acknowledging the issue as well, or a better perception, and she doesn't want to call it—I noticed in your testimony you call it the Clean Water Rule.

This is an easy question, it is either yes or no. I know with all the 34 States writing comments in opposition to the rule, and all

kinds of entities, from farm groups to contractors to real estate developers all across the board—just a simple yes or no—has the EPA recently either hired, consulted, or contracted with an outside public relations firm?

Mr. KOPOCIS. No. No, we have not.

Mr. GIBBS. OK. Also I want to follow on here. When the Clean Water Act was passed, my vision of the intent was a partnership with the Feds and the States. I want to hear what your take would be if this rule is implemented, because we had, like I said, 34 States that are in opposition that filed comments. What do you see the role of State EPAs when this new rule is implemented? I see it as such a power grab from the U.S. EPA from the States. But what do you see the responsibility and the roles of the State EPAs? And how do you think the State EPAs have been functioning since the creation of their entities and the Clean Water Act in 1972?

Mr. KOPOCIS. Well, thank you, Chairman Gibbs. I think there is no doubt in anybody's mind that the effectiveness of the States in implementing the Clean Water Act——

Mr. GIBBS. Can you pull your mic just a little closer?

Mr. KOPOCIS. I am sorry. I think there has been no doubt in anybody's mind that the effectiveness of the States in implementing their role under the Federal Clean Water Act has been outstanding. The States implement the NPDES permit program in 46 of the 50 States. They have taken on that responsibility.

Plus, the statute itself folds in many responsibilities for the States, directly. Water quality standards are set by the States to meet the uses that the States themselves set. Plus, the States have a vital role under their authority under section 401 to do water quality standard certifications that apply to all Federal permits that may be granted, whether they are EPA or any Federal permit or license that is out there.

So, States have done a remarkable job of assuming their responsibilities. And, in fact, as the—the Environmental Council of the States is meeting in Washington this week, and I spent part of the last 2 days with them, and acknowledged as much, and told them if they chose to give the program back to us, we simply couldn't do it. We would be way too short on manpower and expertise. And that is one of the reasons that, in today's budget request, I describe that we are increasing the amount of money for section 106 grants, which the States use to implement their programs, and providing more resources for their 319 program, which they use to address nonpoint source programs.

Mr. GIBBS. You know, I think you mentioned everything else they are doing, but how does it affect what— rule implemented——

Mr. KOPOCIS. In terms of the rule, we have had extensive discussions with the States. We did hear, when the rule was first published in March, that the States wished that we had had more conversations. We did consult with them in advance of the rule, going out. And their response was, "We wish you had done more."

So, in response to that, we set up a special process for the States during the public comment period. We engaged with ECOS, the group I just mentioned; ACWA, the Association of Clean Water Administrators, the people that work the programs on the ground; and the Association of State Wetland Managers. We asked each of

those groups to produce five representative States of their choosing to meet with us on a regular basis to go over the rule and how it might possibly intersect with the State programs. The States agreed among themselves, the three groups, five each. They picked 15 different States, so we got a really——

Mr. GIBBS. Were these 15 States part of the 34?

Mr. KOPOCIS. Yes. There were some.

Mr. GIBBS. OK.

Mr. KOPOCIS. And so, we sat down with them. We said we would schedule whatever meetings they wanted. We ended up scheduling four separate meetings of about 2 hours each. And I can say with some sense of satisfaction that the—at the last meeting, which was scheduled for 2 hours, it was a little over an hour, and that meeting ended because, quite frankly, the States have run out of things they wanted to talk with us about.

Since the comment period closed, we have reengaged with that same group of States to talk to them about possible changes that we would make in the rule. We also committed to them—I committed to them as recently as yesterday that, once the rule goes final, that we want—or, actually, before the rule goes final, we want to work with them, so that we can get the rule in the right place, as it goes out to the——

Mr. GIBBS. Let me——

Mr. KOPOCIS [continuing]. Transition period——

Mr. GIBBS [continuing]. Follow up on that part of it, because in our joint hearing with the Senate, I asked Administrator McCarthy—because there is a lot of things that came up in that hearing they said they were going to fix in the final rule. And I asked, "Are you going to put out a supplemental or something that Members of Congress and the public can see before you issue the final rule?" and she said no, they weren't, it wasn't necessary.

Are you anticipating a lot of significant changes before the final rule comes out, and then you are not going to share with us, or the public?

Mr. KOPOCIS. Well, we are anticipating going final with a rule this spring. We are not anticipating another round of public comment. We do believe that we can make some changes to the rule, based on the many comments that we received, either in the 400-plus public meetings that we held, both in DC and around the country—most of which were outside of the DC area—and the 1 million public comments that we received.

Mr. GIBBS. I am—my time has expired, but I just want to ask one quick question on the—just keep going?

[Laughter.]

Mr. GIBBS. I have to be fair to my other Members. On the comments, my understanding, 1 million or so that is—that have comments, and the EPA is saying there is about 19,000 that are substantive. Of the substantive ones, do you know what the ratio breakdown is between pro and con?

Mr. KOPOCIS. Well, actually, sir, I think a better way to characterize that subset of comments is we characterize them as unique comments, in that they are a comment that is not part of a mass-mail campaign, or something like that.

And, obviously, in the overall number of comments, there are a significant number of mass-mailers, both pro and against the rule. But we characterize them as unique comments, in that they are not part of an organized effort.

Mr. GIBBS. Yes, well, the unique comments——

Mr. KOPOCIS. They may or may not——

Mr. GIBBS. What do you see in the unique comments, pro and con, what the ratios are?

Mr. KOPOCIS. Well, and in those, though, they may or may not actually offer substantive comments on the rule. They may simply offer views without going into great detail as how they want the rule to be changed.

Mr. GIBBS. Does the EPA also have a contractor working with you on this, on deciphering and analyzing the comments?

Mr. KOPOCIS. Yes, sir. We do have contract——

Mr. GIBBS. What is the contractor's opinion of what the ratios are, pro or against? What is the flavor, what is the trend?

Mr. KOPOCIS. OK. The contractor works to help process the comments, separate those that are mass-mailers from those that are characterized as unique, to help us understand what are the topics, and which ones—you know, we don't have to read 100,000 of the identical postcards.

Mr. GIBBS. Yes.

Mr. KOPOCIS. But, in terms of the numbers of how those break down, I don't have those. I could get those for you.

Mr. GIBBS. So you are moving—so the EPA is moving forward with the final rule, and you don't know if the comments—are you taking the comments serious, if you don't know——

Mr. KOPOCIS. We are taking the comments extremely seriously, sir. Both agencies, us and the Army Corps of Engineers have devoted significant resources. Both agencies have brought in personnel from their field offices. We brought in people from the regions. The Army Corps brought in people form their district offices to process the comments. We're taking them extremely seriously.

Mr. GIBBS. But I think with 34 States, and I know 22 of those States, and a comment specifically said "Stop the implementation of this rule; let's start over." That would be significant comments, and you're moving forward with the rule. I don't know—if you are, if your actions here—if you are taking them serious. If you have a quarter of the States say "drop this," the 24 or whatever it was—well, that's half the States, isn't it? So that makes me, you know, if you are really paying attention to those comments.

So I'm going to—we're going to have several rounds of questions here today, so I want to turn it over to my ranking member for any questions she may have. Thank you.

Mrs. NAPOLITANO. Thank you, sir. And it would be interesting to find out whether those comments came from cities, from counties, from States, and whether or not—I'm sure that was not part of the mass-mailing, but what were their major concerns on those comments on those periods? And that would be something I'd like to maybe have reported back to this subcommittee, sir.

Mr. KOPOCIS. Surely.

Mrs. NAPOLITANO. Administrator Kopocis, $13 million included in the President's budget to assist communities develop integrated

plans through the direct Technical Assistance Competitive Grants, in my area, Lake County, cities and agencies have been working extensively to comply with the new stormwater permit. If the $13 million request is funded, how could the agency—how would the agency utilize this new funding to assist them in pursuing an integrated approach to permitting, and along with that, you have five communities that received similar technical assistance. I'd like to know where they were, what type of cities they were: urban, suburban, ag, and an update on those efforts as to whether we are able to learn from those in our areas

Mr. KOPOCIS. Thank you very much for that question. Yes indeed, as you know, the agency is a very strong supporter of our integrated planning framework. We have been devoting considerable time and resources to that effort, and we have been getting really positive responses from communities across the country. The fiscal year 2016 request for $13 million would allow us to provide significant resources to work with at least 13 communities, to help them develop integrated plans, so that they can best meet their water—stormwater needs in the best way possible.

We want to help communities understand, "if I only have one dollar to spend, where do I spend it? Where do I spend my second dollar, my third dollar?", and make sure that those priorities are being recognized in how they meet the needs of complying with both the Clean Water and the Safe Drinking Water programs.

Mrs. NAPOLITANO. My understanding is you do—you are working with the Conference of Mayors.

Mr. KOPOCIS. We are working extensively with the Conference of Mayors. In fact, we recently completed an effort where we worked with them over the course of several months to specifically address affordability issues, which of course is at the very heart of the integrated plan.

Mrs. NAPOLITANO. And funded mandate, sir.

Mr. KOPOCIS. Yes sir. Yes, ma'am. So we are working very, very hard with them to make sure that we have a system that works in the communities, that allows them to meet their responsibilities for clean water, to their citizens and to the environment, but at the same time does not impose an undue strain on either the city's budget, the community's budget, or the household budget.

Mrs. NAPOLITANO. Thank you, sir. Have there been specific problems in the implementation of the pesticide general permitting, and has it had any significant adverse impact on pest control operators or agricultural operators? Have they been reported to you, the number, the severity, is it increasing, is it diminishing? Can you report on that?

Mr. KOPOCIS. Thank you again for that question. I can say that we have not been made aware of any issues associated with the pesticide general permit. Nobody has brought an instance to our attention where somebody was not able to apply a pesticide in a timely manner including, because our ruling allows for post-application notification, there have been no instances. We've been getting very good data, and I can actually proudly say that that is one area for EPA where we have no active litigation, either for us or against us, on the pesticide general permit.

Mrs. NAPOLITANO. Thank you, and—that's interesting.

On the Superfund and Brownfields backlog, we're happy to see the support for the reinstitution of the Superfund taxes in the budget. Excise taxes imposed on domestic crude oil and petroleum products through January 1996 and then they stopped. They're used to treat damages caused by release of hazardous substances. Do you have any idea, or can you report to the subcommittee the number—the quantity of the backlog of pending Superfund projects versus the available funding, and along with that, if the tax is not reinstated, do you have adequate funding to address that Superfund backlog, and for the Brownfields program?

Mr. STANISLAUS. I'll take that.

Mrs. NAPOLITANO. I'm sorry. Mr. Stanislaus?

Mr. STANISLAUS. Yes, so we have a backlog of a little over 30 sites and communities—30-plus communities across the country. While some of the increase would address some of that, a handful, up to possibly 10, we project, at least 3, maybe up to 10, even with that——

Mrs. NAPOLITANO. Would you identify those for the subcommittee, so that we know where they're at?

Mr. STANISLAUS. Sure.

Mrs. NAPOLITANO. At least have an idea if any of them are in our areas?

Mr. STANISLAUS. Sure.

Mrs. NAPOLITANO. Thank you. Go ahead, and you can finish.

Mr. STANISLAUS. I thought I answered the question.

Mrs. NAPOLITANO. Does the number—and the amount in dollars?

Mr. STANISLAUS. In terms of the total dollars for the sites?

Mrs. NAPOLITANO. The cleanups, right.

Mr. STANISLAUS. I don't have that available in front of me.

Mrs. NAPOLITANO. Would you mind looking it up, or having somebody report to us——

Mr. STANISLAUS. Sure.

Mrs. NAPOLITANO [continuing]. Because that goes into the "how do we deal with the budget issues" as the need.

Mr. STANISLAUS. OK.

Mrs. NAPOLITANO. Thank you. The required review of Clean Water State Revolving Fund allotments to the States: In section 505 of WRRDA, you were asked to complete a review of the allotment of funds to the States under this revolving fund by December. Can you tell us what the update on that is?

Mr. KOPOCIS. We are on track to meet that deadline. We have been working with the States to see how to best fulfill that responsibility that was given to us in the—in the Water Resources Reform Development Act, but we are on track. We are looking to make sure that we can use the most current data available. The 2012 needs survey is currently at OMB for review, so it is not yet public, but we of course know what's in it, and we're working to make sure that—to see that we can incorporate that as well.

Mrs. NAPOLITANO. Would it be possible to identify for us the—whether this includes tribal and territories?

Mr. STANISLAUS. I'll——

Mrs. NAPOLITANO. The State Revolving Fund?

Mr. KOPOCIS. Yeah. The needs survey that's in the Clean Water Act today, it applies to the States, but it also applies to the terri-

tories and possessions and the District of Columbia. So there is the set-aside in the SRF that is implemented now for tribes was something that was put in—requested by prior administrations and has been carried forward through the appropriations process. So it's not in the allotment formula itself. But I will take that back to the team and talk to them about how it is that we might incorporate tribes, and of course we would want to talk with you all, as authors of the provision and the States as well.

Mrs. NAPOLITANO. Very appreciated, and tell it to the subcommittee, please.

The last question I have, Mr. Kopocis, is the EPA quarters in region 9 are jointly developing a National Drought Resiliency partnership in southern California—the first time I've heard of it. I'd like to—it sounds like a great opportunity to improve the work that southern California is doing on rain capture, on stormwater regs, and recycling, improving water efficiency, and of course conservation. Would you provide a very short summary of what the pilot project is and how others could benefit from this?

Mr. KOPOCIS. I will have to get back to you on that. I can say generally that we are trying our best to support the efforts in any of the areas that have suffered from drought. It's an administrationwide effort, but in particular what EPA can do, and that is to encourage water reuse and recycling and conservation.

Mrs. NAPOLITANO. Well, we're looking at a continuing drought cycle in the West, and certainly we need to look at every single item that we can. And may I hope that you get your appointment some day soon as Assistant Administrator, sir.

Thank you, Mr. Chair.

Mr. KOPOCIS. Thank you.

Mr. GIBBS. OK, I just want to let Members know, I know the chairman and the ranking member went over our time, but we're going to try to hold close to the time, because we're going to do more than one round, so——

Mrs. NAPOLITANO. Are they going to——

Mr. GIBBS. Well, we're going to do more than one round. I just wanted to make you aware of, so there's a chance then we'll have at least two rounds, or maybe more. We're going to be here for awhile.

I recognize now the gentleman from Arkansas, Mr. Crawford, for 5 minutes.

Mr. CRAWFORD. Thank you, Mr. Chairman, Mr. Stanislaus. Gentlemen, first let me thank you for being here. Mr. Stanislaus, as you know, the Water Resources Reform and Development Act was signed into law last year, thanks to the hard work of many of the members of this subcommittee. It didn't require much of the EPA, but section 1049 directed EPA to revise the exemption on farmers under the Spill Prevention, Control, and Countermeasure regulations. Specifically, it exempted farms that have an aggregate aboveground oil storage capacity of 6,000 gallons or less. Now, it's been 8 months since the legislation was signed into law, and yet there is no indication from EPA of their intent to exempt farms below this capacity.

For example, when you look on the EPA Web site, it directs compliance for the same exemption level that was required in 2013. My

question is: why hasn't EPA let farmers know about the exemption level change?

Mr. STANISLAUS. With respect to WRRDA, EPA has in fact moved forward on conducting a study of the risk of oil spills and discharges from farms to waters per the direction of Congress, and per the direction of Congress, once a study is completed, we would move forward on potential adjustments to the thresholds. Parallel to that effort, our regional offices—we're doing an extensive outreach to the ag community and we're open to doing more in terms of the spill prevention requirements, and we also——

Mr. CRAWFORD. So just a sec—the law was—it was signed into law 8 months ago.

Mr. STANISLAUS. Yes.

Mr. CRAWFORD. Now I know that there was a—also there was a requirement for EPA to conduct a study in consultation with USDA regarding the appropriate exemption levels; that allowed for 1 year. We're coming up on 1 year. We're actually 8 months into that. But that didn't mean—that didn't mean that you ignore the fact that the 6,000-gallon threshold was signed into law. So my question is, now you're still giving the impression to farmers that they have to comply at 1,320 gallons when that in fact is not the case. Can you update your Web site to let them know that 6,000 gallons is the threshold?

Mr. STANISLAUS. Sure. I mean, we've been doing outreach, and I'll have my folks take a look at the Web site.

Mr. CRAWFORD. OK, that would be much appreciated, because I don't think the outreach is working at this point. I think they're going to your Web site and seeing that that's somewhat of a problem.

Let me ask you this real quick. Are you familiar with Executive Order 13690? Specifically addressing Federal flood risk management standard?

Mr. STANISLAUS. I can't say I'm intimately familiar with that.

Mr. CRAWFORD. I'm familiar with it, and what that does basically is it has the effect of decertifying every levee in the United States. Eight hundred eighty-one counties affected. Let me give you some details here. It changes the minimum flood elevation to be calculated by "best available science" for climate change, but no one really knows what that means. It enforces flood plain management standards, meaning "all structures must be built above flood elevation, not counting the levee protection." Can you explain how that is going to—how much that is going to cost? And what the effects are going to be in those—in those protected areas?

Mr. STANISLAUS. Yes, actually, I'm not sure that's within my jurisdiction, I'll turn to Ken——

Mr. KOPOCIS. Yeah, I—that's not really within our agency's scope of responsibility. As—we are affected by that Executive order, but in terms of levee certification, that would be more the U.S. Army Corps of Engineers.

Mr. CRAWFORD. Right, but in the context of waters of the U.S., does this not bring you into that loop?

Mr. KOPOCIS. Oh, I'm sorry. In terms of the Clean Water Rule? The scope of the Clean Water Rule is not affected by the certification of a levee or not. The current rule allows for the assertion

of jurisdiction over waters under the concept of adjacent waters, regardless of whether they're separated by a berm, a levee, or some other structure. So they're evaluated as if the manmade structure did not exist.

So that's the current rule, and the proposed rule would carry forward with that same concept.

Mr. CRAWFORD. Well, I think what we're going to see here with this Executive order is it's going to have overwhelming costs and ultimately the taxpayer is going to pay the burden. I hope that you all will familiarize yourself with that Executive order, because I'm sure we're going to have the opportunity to address that, and I feel confident that the EPA will certainly have some oversight in terms of enforcement and authority on that, as—as WOTUS sort of unwinds with this rule that we hope does not go forward, but with that, Mr. Chairman, I yield back.

Mr. GIBBS. Ms. Johnson.

Ms. JOHNSON. Thank you very much, Mr. Chairman. And let me thank our distinguished witnesses for—from the Environmental Protection Agency.

I had the privilege yesterday, in my role as the ranking member of the Committee on Science, Space, and Technology, to discuss the important work that your agency is doing to keep our air clean and our water safe, and the health and well-being of all Americans at the forefront of the national priorities.

In my time here in Congress, I've served as both the ranking member and chairwoman of this committee's Subcommittee on Water Resources and Environment. And during my tenure we worked together and enacted into law, alongside President Bush at the time, the Brownfields Revitalization Act. At the time there were over 500,000 such Brownfields sites nationwide. And these are abandoned of course; underused sites that represent a blight to neighborhoods, pose health and safety threats to our communities and create a drain on economic prosperity.

The city of Dallas, which I represent, was one of the first cities designated as a Brownfields showcase community, and over 35 sites were selected and subsequently redeveloped within the city's jurisdiction. Barely $2 million jumpstarted that initiative in Dallas, and over $370 million in private investment was leveraged to create nearly 3,000 permanent full-time jobs. We built over 1,600 units of housing on these sites—I live in one of them—and brought about a wave of sustained vitality of the city's core. And Mr. Stanislaus, we know that you have just outlined a number of things accomplished and also the benefits of what we have to gain by it, and I want to thank you.

It's clear that Brownfields cleanup and redevelopment are very important to our community and to our economy, and I hope that we can agree to continue to meet the President's budget request for this vital program.

On a separate note, I want to briefly weigh in on the comments made regarding the Clean Water Rule proposed by the EPA. Early this year, EPA Administrator McCarthy came before a joint House and Senate committee on this matter, and I said then, and I'll say again that the science behind the rulemaking is sound. The EPA Office of Research and Development's report on the connectivity of

streams and wetlands to downstream waters clearly states that the scientific literature unequivocally demonstrates that streams, regardless of their size, or frequency of flow, are connected to downstream waters and strongly influence their functions.

The science is clear; the evidence is there, and I hope that we can lay to bed the question of whether or not the science of water connectivity downstream is based on evidence-based science. I think it is, and I think it is sound science. At the root of this debate is the issue of clean water, and I firmly believe that access and preservation to the vital resource is of the utmost importance to our community. I've never met an American who did not want clean water.

And so my question to both of you is, how extensive have the EPA efforts been to make sure to accommodate the concerns of various stakeholders, including our farmers, in the formulation of the Clean Water Rule?

Mr. KOPOCIS. Thank you, Ms. Johnson. Our outreach to stakeholders has been unprecedented for the Office of Water and the Clean Water Rule. As I said, this rule was signed on March 25th. It was posted on our Web site that day. It was posted in the Federal Register on April 21, which began the actual period for public comment. We extended the public comment period twice, for a total of 207 days, to November 14th. We received in excess of 1 million comments.

But perhaps even more importantly, during those 207 days, our agency held over 400 meetings, either in person—most were in person—or on webinars or teleconferences, where we engaged with every stakeholder group that we reached out to, or that reached out to us. We do not believe that there is a single stakeholder group that was not afforded the opportunity to have a dialogue with us, and many of those stakeholder groups had multiple dialogues. Both multiple times in Washington, but also because we held meetings in all 10 of our EPA regions, there were multiple opportunities for stakeholders to participate—to participate in the dialogue and bring their own regional perspective to the discussion. So that's the amount of stakeholder involvement that we've had, and we are continuing to have, stakeholder involvement as I said—not only have we talked with the States since the rule period closed, I have personally talked with Members of Congress, and I've talked to several stakeholder groups as well.

Ms. JOHNSON. Thank you very much, my time has expired.

Mr. GIBBS. Mr. Webster. You're recognized for 5 minutes.

Mr. WEBSTER. Thank you, Mr. Chair. Thank you for having this meeting. My question would be to Mr. Kopocis.

I'm from Florida; we have a lot of water. I'm from central Florida. We've got thousands of lakes. One of the counties I represent, or the three counties I represent is called Lake County, because it's full of lakes; has a big large chain of lakes called the Harris chain, just south—just south of my district office in Orange County, there's another large chain of lakes called the Butler chain, and then there's thousands of other lakes, and they're all connected by channels or canals, or rivers, small rivers, so I guess my question is can you identify the full range of land and home improvements

projects that would be subject to the Clean Water Act under the proposed definition of U.S. waters?

Mr. KOPOCIS. Thank you again for the question, and I cannot specify in particular circumstances in your county, but I can talk about the circumstances that I think you are raising in terms of the existing rule and the proposed rule, and that is how our water's connected with each other, and what role, in particular, do subsurface waters play in connecting waters. And today——

Mr. WEBSTER. By the way, most of our waters are close to—I mean, you do not have to dig very deep in Florida. We're basically a wetland.

Mr. KOPOCIS. Yes, sir.

Mr. WEBSTER. So we're connected.

Mr. KOPOCIS. So, but I think that, I mean, even today, under today's rule and guidance documents that exists, the agencies do look at whether waters are connected through subsurface connections to determine whether there is an effect between a water body and a downstream traditional navigable water. We think that one of the things that we heard throughout this proposal process was are we doing that correctly today; how does the science support that; and how should we look at it going forward.

This concept shows up in evaluating which waters are considered adjacent for purposes of jurisdiction. And adjacent, of course, requires that there be some other traditional navigable water, or the territorial seas to be adjacent to. And so it's not just a matter of taking a water body and drawing a chain from water body to water body to water body to water body. So because the farther out that you get, the more the connection to the downstream water becomes, in Justice Kennedy's word, speculative or insubstantial.

And so we received a lot of comments on this. This is one of the areas where the agency is looking at those comments very carefully to try to understand are there ways to be more transparent and more open about how waters are connected with each other, and what lines do you draw where you say while you may be able to draw a connection—because as in your instance in Florida where water body to water body to water body—at some point it becomes too disconnected and too speculative to comply with the tests the court gave us, or to be supported by the science that our Office of Research and Development developed.

Mr. WEBSTER. Do you know if you considered the tax basis of counties? Let's say this slows growth, it slows construction. One of the three legs of our economic stool is construction—the other is agriculture and the other is tourism—and if there's not a specific list of things that you can or cannot do in certain areas—and I hope that's forthcoming, if it is, I'd like to have it—then even the ad valorem taxes are going to—and we do not have an income tax in Florida, we're a great State to live in, but we do depend on ad valorem taxes for our schools and our county governments, and city governments. And do you know if any of that was considered when you did, like, the economic impact of what might be done by this rule?

Mr. KOPOCIS. Well, that aspect is not part of our economic analysis, I can tell you that. But I do want to make sure that there's a mutual understanding that, of course the Clean Water Act does

not apply to an activity unless that activity involves the pollution of water or the filling of a water.

So if you are in an area and you're looking to develop, and there is no intent to either pollute or discharge and fill a water body, then the Clean Water Act simply does not apply. And even where those activities occur, there are ways to get permits. The Corps issues tens of thousands of permits to fill waters of the U.S. today, and we do not anticipate that that will change under the proposed Clean Water Rule, and also there are tens of thousands of permits that are issued every day—I should not say every day—tens of thousands of permits that exist that allow for discharges of pollutants through the 402 NPDES program, which Florida administers.

So I think that—I want to make sure that people understand what the Clean Water Act is about is controlling pollution or deposition of fill material into waters, but it is not operated as an absolute prohibition because we have thousands of permits in existence to do those very activities today.

Mr. WEBSTER. Thank you very much.

Mr. GIBBS. Ms. Norton, you're recognized for 5 minutes.

Ms. NORTON. Thank you very much. The water system in the United States is inevitably going to be, no matter what you do, is going to be a source of controversy given the multiple waters that are involved. Before I go further, though, I'd like to say that I was pleased to see the President's slight increase $3 million for the Chesapeake Bay. If ever there was an indication that this—one of the great wonders, it touches seven or eight States—needs our Federal support, it's the presence of intersex fish in the Chesapeake Bay.

I also want to indicate my strong support for your work on Brownfields, that's really going to aid parts of our communities where expansion and redevelopment is absolutely dependent upon doing something about what can often be prime land. And we had such prime land here in the District of Columbia. At the southeast waterfront, the navy yard had contaminated that land; it was cleaned up and it's going to be a revenue-producing site here, and that is exactly what's going to happen as you continue your Brownfields work.

Let me ask because this question about the waters of the U.S. keeps coming up and, I assure you, will keep up no matter what you do. Mr. Kopocis, the opponents have, of course, proposed yet a new proposal. In essence it would be another round of public comment and rulemaking. It would in essence start all over again, so I'm trying to see how we can get to the bottom of this, reach some conclusion.

If you were to start all over again, actually it would not be the second time, it would be the third time because the agency has also looked at clarifying the Clean Water Act. The draft Clean Water Act of 2011, as I understand it, was never finalized so if we look at the number of years you've been at work, it's close to 4 years, and I must say a very impressive number of comments, 1 million comments, not to mention all the—the public comments, not to mention all of the stakeholders that you have had contact with.

So I'm trying to see whether what we're looking at is another bite of the same apple, or just throwing the apple out if the oppo-

nents really just do not want the apple to be part of what you do because if it was not there, I'm not sure what you would do.

So I have to ask you: what has been your consultation with the States and, for that matter, with the Congress, and what specifically would be gained by stopping you, blocking you as it were, from finalizing the current proposed rule and, in essence, saying, "Start all over again"?

How would you then proceed? What would be gained by that?

Mr. KOPOCIS. Well, thank you, Ms. Norton, for that question. I think in summary what would be gained is there would be a delay in clarifying the jurisdiction of the Clean Water Act. A subject which people have been asking our agency to do is to clarify the jurisdiction of the Clean Water Act going as far back as when the Supreme Court case came out, the *SWANCC* case, in 2001, and then the more complicated case that came out in 2006, the *Rapanos* case.

The agencies responded. As you correctly said, we responded with guidance in 2003 to respond to *SWANCC*. We responded with guidance in 2008. Those were both part of a public process, and then we proposed guidance again in 2011 which was never finalized, but was again part of a public process.

And throughout this process what we have heard from all interested parties, regardless of whether they support the Clean Water Act or do not support the Clean Water Act, is that the agency should do a rulemaking, and we believe that it is our obligation to fulfill those requests and do this rulemaking.

Further, issuing another rule for proposal would simply delay the ultimate resolution of the——

Ms. NORTON. Would it be redundant to what you have done?

Mr. KOPOCIS. I cannot say that it would be. Well, what I would say is that I do not know what value would be added other than the addition of time. We have, as I said, done extensive conversations in person with over 400 meetings with the public, received their comments.

Ms. NORTON. Would that include the States and State representatives of States themselves who would be affected?

Mr. KOPOCIS. We met with the States extensively. As I said, our last meeting with the States to discuss issues ended early because there was nothing left for us to discuss.

We also engaged our Local Government Advisory Committee and held meetings around the country bringing in local government officials from cities and counties. We held meetings in St. Paul, Minnesota; Atlanta, Georgia; Takoma, Washington; and Worcester, Massachusetts. There we had representatives from Florida, Minnesota, Missouri, Maine, Wisconsin, Montana, Michigan, Texas, Utah, Idaho, New York, Arizona, and Washington.

And so we worked with our communities. That is our Local Government Advisory Committee. They went out to these other cities. They brought in local officials from those regions to further discuss this rule, and we believe that we have received the input.

Quite candidly, I will tell you there is not a lot of new in the way of issues that are being raised. Many of the issues that are being raised are the same ones that have been raised for several years.

Ms. NORTON. I just want to clarify and get your view on one question, lest people think that once your final rule comes out, they have lost all hope particularly here in the Congress of doing anything about it.

Does Congress not have the authority under the Congressional Review Act and the appropriations process to continue to express its dissatisfaction any way it sees fit with whatever final rule you come forward with?

Mr. KOPOCIS. Yes, clearly Congress has that authority.

Ms. NORTON. Thank you very much, Mr. Chairman.

Mr. GIBBS. Mr. Davis.

Mr. DAVIS. Thank you, Mr. Chairman.

First off, if you would relay a message to Administrator McCarthy, telling her thank you for addressing an issue that I brought up during our joint hearing a few weeks ago regarding the Mahomet aquifer in central Illinois. I appreciate the prompt decision on the sole source designation. So thank you for your efforts there.

I do have a question Mr. Kopocis. It is in regards to WOTUS. Will the proposed rule or has there been any discussion regarding the proposed rule for exemptions for water utilities?

I am concerned that when water utilities are going to go fix a water main, you know, just to give an example, fix a main break, are they going to need to get a Federal permit or work through the State IEPA to do so?

Mr. KOPOCIS. I am struggling to come up with a set of circumstances where they would. So I would say the answer is no, but, sir, I cannot think of an instance where they would need a permit under the Clean Water Act to repair that kind of a break.

Mr. DAVIS. OK. Well, obviously this issue brings up many concerns to us, which is why you are here, why we have had so many different hearings on this issue.

One other question to you, Mr. Kopocis. Can you explain why the EPA did not convene the Small Business Advocacy Review Panel in accordance with the requirements of the Small Business Regulatory Enforcement Fairness Act when developing this rule?

Mr. KOPOCIS. Well, thank you for that question. We did as we do with all of our rules do an analysis of our responsibilities under the Regulatory Flexibility Act, and we made a determination that there would be no significant impact on a substantial number of small entities. That is the test that we are held to.

We made that determination jointly with our coregulators at the Army Corps of Engineers, but we did not just take our word for it. We also consulted within the executive branch to determine whether our certification was correct. We reached out to the Office of Management and Budget, and we reached out to the Department of Justice to see if they agreed with our conclusion, and they did.

I do understand that the Small Business Advocate has disagreed with that, but we have made our certification, and it is supported by others in the administration.

Mr. DAVIS. I think you can understand there is a lot of concern from the stakeholders. As a matter of fact, a perfect example of what I think may not be effective outreach is when Administrator McCarthy apologized to farm groups for not consulting them on the interpretive rule that has now since been rescinded.

I think this would have been a perfect opportunity to use the Science Advisory Board with the new agriculture member to have an agriculture focus, too.

Lastly, I have had Deputy Administrator Perciasepe sit in that same chair not too long ago, asked him a question about whether or not this proposed rule would exempt individual septic systems that discharge aboveground because there is language in the proposed rule that says sewage treatment facilities are exempt from this rule. He said at that time that the EPA did not require permits for aboveground septic system discharge units, and frankly, I was surprised by that answer because I had the frequently asked questions from region 5 on how to get a permit in Illinois for these units.

I asked the exact same question of Administrator McCarthy, and I did not get an answer then either. She actually said that was a trick question after Mr. Perciasepe said he was at a loss.

Now, I still have yet to get a response from the EPA to that question. This is the third time I have asked this question about whether or not these units are going to be required to get a permit under the Clean Water Act, and this is the concern that we have, that people will come into rooms like this, they will answer questions and then walk away, wipe their hands off, and check the box that they came here and they took the questions.

I am getting no followup from your agency on this issue. To me it is a simple question.

Mr. KOPOCIS. Well, I will answer it in two ways. First, generally, if there is not a discharge from a pipe or some other discrete conveyance, there is no Clean Water Act permit required.

I do not know the particular circumstances that form your question, but what I will tell you is that the second part of my answer is that you will get followup. I will make sure that my people in the Office of Water or myself personally will contact you or your staff. We will find out the circumstances that give cause to your question, and we will give you an answer.

Mr. DAVIS. Well, I appreciate that. Again, this is the third time, and it was Administrator McCarthy the last time on this issue.

So I am very concerned. I want to know if my constituents in rural areas are going to have to continue to get a permit under the Clean Water Act because the frequently asked questions specifically say they may be subject to a Clean Water Act citation if they don't do this.

And you cannot say in the proposed rule that sewage systems are exempt without including them. I want to know the answer, and I appreciate your time. My time has expired, but thank you.

Mr. KOPOCIS. I will absolutely do that, Mr. Davis. We will get back with you.

Mr. DAVIS. One quick thing. If we do not get a response the next time, I am going to have the staff behind you stand up when I ask that question, and I am going to say they should be fired.

Mr. KOPOCIS. I have some of my colleagues here. I may even have a couple of them watching this if it is being broadcast online. I can assure you you will get an answer.

Mr. DAVIS. Thank you.

Mr. GIBBS. Ms. Esty, 5 minutes.

Ms. ESTY. Thank you, Mr. Chairman.

And I want to thank both of you for joining us here today.

Mr. Stanislaus, in particular I would like to explore with you more about the Brownfields programs. I represent a part of Connecticut where these issues are very important. Currently we have all too many properties that are not productively engaged in the tax rules and contributing to local communities. So it is of great interest to us to understand how we can better get more properties being treated and back into productive play, hiring people, contributing towards economic growth.

You noted in your testimony that since its creation, the Brownfields program has leveraged more than 104,000 jobs and $22.1 billion in cleanup and redevelopment. Can you, again, sort of digest down from an investment perspective what is our return on investment on the taxpayer's dollar when it comes to your program's impact on local communities?

Mr. STANISLAUS. In terms of the direct return on investment, I am going to have to get back to you. So there are various other indications of that. So I noted the land use value increases in my testimony. I noted the one for $18 leveraging.

So we have various kinds of indications. We are actually in the middle of a study of the tax revenue increase based on the land use value increase. So I will get back to you when that study will be finished.

Ms. ESTY. Thank you.

I noticed in your written testimony you cite an example from our district. In 2009, the EPA awarded a job training grant to the Northwest Regional Workforce Investment board in Waterbury, Connecticut, and I want to let you know that that grant made it possible to develop and implement a job training program for unemployed and underemployed individuals in my district, in partnership with Naugatuck Valley Community College.

And the graduates of that program had a very high job placement rate in the environmental field. How do you measure success of the Environmental Workforce Development and Job Training Program?

And, more generally, what are the goals of that program and its impact on jobs in the local community?

And what more can we do in Congress to partner on these initiatives?

Mr. STANISLAUS. So I think you have cited one of the measures, that is, all people being hired at a fair wage, and I think both of these indications have been met at a very high level.

Now, what we have done in the Job Training Program is we have really expanded the certification, expanded the skill set of the program. Now, the program is really focused on individuals that have a barrier to employment, you know, veterans, formerly homeless individuals, building that skill set to be employed.

One of the real important aspects of this multiskilled, multicertification is that every grantee tailors their program around the local market. What we request upfront is partnership with local businesses and the kind of skill sets that the local businesses need. That's one of the reasons I think it's a successful program. A 70-percent hiring rate is a very successful program.

So, I think continued support of that would be great.

Ms. ESTY. Thank you, and I can tell you that those initiatives are very meaningful because, again, they are addressing local workforce needs and getting back into the employment rolls folks like veterans and those who are underemployed in our economy.

I wanted one more quick question for you. I noticed looking at last year's budget that only 32 percent of the Brownfields applications were able to be funded. With the President's request for an additional $30 million, what would that do in terms of the agency's ability to fund the strongest applications?

Mr. STANISLAUS. We project about 140 additional communities will be funded.

Ms. ESTY. Thank you. Again, I can tell you having one of those communities, it would make a meaningful difference, help bring down our unemployment rate and expand job opportunities.

Mr. Kopocis, just briefly I wanted you to expand a little bit on the resiliency initiatives. This is something having survived Super Storm Sandy in the Northeast, having increased frequency of severe weather; can you talk to us a little bit about what the agency is looking to do in this regard?

Mr. KOPOCIS. Thank you very much for that.

Yes, we are looking to work with communities and with the utilities to make sure that we can help them meet their needs as they see them. Our program for climate ready utilities is a tool that is available online that people can use to assess their risk associated with climate change or the droughts, sea level rise or anything else that may be facing them that would threaten their resiliency and sustainability, and then they can put in whatever inputs they want to put in, and then it will help guide them to what are the kinds of actions that you might want to consider.

So it is not a, "OK, if you are threatened, you should do X." It is what works for you, and we have been getting very positive responses from communities. We are continuing to expand that.

We are including a stormwater calculator, for example, for communities so that they can take advantage of it as well.

Ms. ESTY. Thank you.

I will follow up with you off-line because we are looking to do some of this for, you know, greater drainage, different kinds of paving, et cetera, and it sounds like that would be right in your line.

Mr. KOPOCIS. Would love to do it. Thank you.

Ms. ESTY. Thank you very much.

Mr. GIBBS. Mr. Massie.

Mr. MASSIE. Thank you, Mr. Chairman.

Mr. Kopocis—sorry about that.

Mr. KOPOCIS. That is all right. I have had it mispronounced before, sir.

Mr. MASSIE. More than 700 communities have combined sewer systems that have periodically experienced combined sewer overflows, and many of these communities, a few dozen of which are in my district, are dealing with consent decrees from the EPA and enforcement actions.

What are the EPA's plans and schedule for dealing with and resolving many of these enforcement actions?

Mr. KOPOCIS. Well, thank you, sir, for that question. We are working very hard with communities to make sure that we can come up with realistic timetables to address combined sewer overflows. As you know, the combined sewer overflow policy dates back to the mid-1990s where the agency decided how it was going to work best with communities, and Congress enacted it into the Clean Water Act.

Our integrated planning framework is designed in significant part to help communities with combined sewer overflow needs, and one of the things that we have heard is concerns of communities that we have not as an agency been flexible enough with communities and that the integrated planning framework is too often implemented solely through an enforcement action, and are there ways for us to work with communities to do it in a permitting context.

So we are taking a good look at that. Part of the investment that we are requesting for fiscal year 2016 would go toward that, but we are also looking to invest fiscal year 2015 funds to look at are there ways to incorporate the concepts of integrated planning into the permitting process as well so that communities are not forced to go through an enforcement action to get the flexibility they are looking for, but we can do it in a more collaborative way.

Mr. MASSIE. Will the cities that are already locked into consent decrees be able to have their situations reexamined and reopen those discussions to modify the consent decree?

Mr. KOPOCIS. Well, reopening a consent decree is not the easiest thing to do and that is not EPA's sole decision by any means once we are in a consent decree context, and then it also, of course, involved equities of the U.S. Department of Justice as well. So we have to work with them.

But I think that what it does reflect is our willingness to be flexible. To reopen a consent decree, of course, there needs to be some changed circumstances that would cause us to support doing that.

I think that our experience has been while many communities want to avoid being in a consent decree and we understand that, we have been getting very good results from our existing consent decrees, and we have talked with some communities who have come back to us and said they would like to revisit certain elements, particularly those that are putting in place green infrastructure and are getting different results and would like to expand perhaps the use of green infrastructure.

Mr. MASSIE. Well, you know, in our communities that are under the consent decree, they are really struggling to put in that new infrastructure, and what it has done is to throttle growth in certain areas where the consumers and the residents of the area have seen, you know, 20 percent annual rate increases to the point where some people have seen their sewer rates double.

And so the sanitation districts do not have the resources to put in new infrastructure for the additional homes that would be built there, and that is sort of holding back growth in these areas.

So they would really like to see more flexibility in dealing with this consent decree and to see the EPA more as a partner than a prosecutor, which is, I think, how some of these sewer districts see

it, and this in my district has been sort of the mother of all unfunded mandates.

Do you have an idea of what the national cost of complying with these consent decrees has been in combined sewer systems?

Mr. KOPOCIS. I do not have that estimate. I can check and see if we have it, and if we do, we will provide it to you.

Mr. MASSIE. My indication is it can be—I mean, these sound like large numbers—in the billions instead of the millions. Some cities are looking at spending more than $1 billion to comply with this in communities.

You know, everybody wants clean water, but there is a balance to be struck here, and I hope that the EPA will provide more flexibility, and when they do, what can EPA headquarters do?

You know, you have expressed a willingness to have some flexibility with these communities, but we want to make sure regionally that message gets passed down. Are you doing anything to make sure that regionally they get the message across the country that flexibility should be looked into?

Mr. KOPOCIS. Yes. Thank you.

First, I understand the concern that you are expressing, and secondly, we are taking steps to address that, whether it is through our integrated planning framework, making sure that message gets out.

We have been working with our regional offices, but we also meet regularly with our regional administrators and our regional water staff to talk to them about what it is that we are looking for in the way of flexibility. We at headquarters are emphasizing more flexibility and more creativity in how we meet, as you say, our mutual Clean Water Act goals in a way that works for communities.

But we do understand that part of our task at headquarters is to make sure that that word gets out of the DC area and actually gets out into our regional offices.

Mr. MASSIE. Well, hopefully they are watching this hearing today in the regional offices.

Mr. KOPOCIS. Well, I could try sending them a copy.

Mr. MASSIE. Thank you, Mr. Chairman. My time has expired.

Mr. GIBBS. Ms. Edwards.

Ms. EDWARDS. Thank you very much, Mr. Chairman, and to the ranking member as well and to our witnesses today.

I really do want to give a special shout-out to the Federal workers at the EPA because I just think they do a tremendous job protecting our air and our water, and I just want you to know how much we value that and appreciate their hard work.

Under this administration, the agency has actually instituted greenhouse gas reporting programs, issued guidelines essential to stopping and dumping of waste from mountaintop removal and valleys and streams and set stricter standards for vehicle fuel efficiency. It has been an amazingly productive EPA.

And in the current budget request, the Chesapeake Bay is actually seeing a substantial increase in funding from $70 million to an additional $3 million over the fiscal year 2015 request, and I just want you to know how much we welcome that as Marylanders because I think this fragile ecosystem that is so important to the vitality of the States and the region is on the road to recovery, and

that is in large part because of the partnership, true partnership, that we have had with the Federal Government.

One of my concerns today though has to do with the Clean Water State Revolving Fund because I think they are also key to maintaining our Nation's wastewater needs, and so it was kind of disappointing to see that there has been a 23-percent reduction from the fiscal year 2015 enacted level, and let me tell you how those funds work.

So for the States that receive those funds, they actually go into the structures and landscapes and everything else that actually contribute to the health of the Chesapeake Bay, and so, on the one hand, we are increasing the funding for the bay and its restoration but, on the other, we are taking away from the Clean Water State Revolving Fund.

So I would really urge the administration to do some reconsideration here, and I think that we certainly should do that here in the Congress.

I also want to point to another area that has been really important to me as a Member of Congress, and that is green infrastructure. We have heard some discussion about that today. I think it is cost effective. It is efficient, and the demand for green infrastructure grants we heard coming out of the Recovery Act and beyond has been over the top, and so jurisdictions recognize that, too.

So thanks for the 10-percent increase in funding levels there.

I want to get to, if we could, there has been a lot of discussion about the EPA rulemaking and a lot of misconception about that. So in the time remaining, I want to give you through our Deputy Administrator the opportunity to describe the rulemaking process, the numbers of comments that have been received, the changes that have actually been made from the beginning to now the proposed rule based on those comments, and then you know, I think that we have been going through about 200 days of comments, which is sort of unheard of in a rulemaking process, and yet those are the kind of accommodations that the EPA has made because of the concern with this rulemaking.

So I thank you for that, but I want you to take some time and explain to us what the process is, where you are going to go, and the level of attention that you have paid to make sure that this rulemaking finally clears up a decade long process that multiple administrations have been engaged in.

And I will leave you the remainder of my time.

Mr. KOPOCIS. Well, thank you, Ms. Edwards, and in particular thank you for the kind words of EPA.

As many of you know, most of my working career has been at this building or in the Dirksen Building, and when I went to EPA I also never found a more dedicated set of professionals, and they work very hard to serve all of us and keep our waters clean and safe.

The process for doing the Clean Water Rule really has been one of the most extensive both in terms of time and resources for outreach that this agency has ever contemplated. I went through earlier the fact that the agency has been involved through a series of guidance documents in trying to address the Supreme Court cases,

and on those received hundreds of thousands of comments through the public comment period.

We also engaged the public through a series of outreach meetings before this current rule went out, including States and local governments, and also I should have mentioned to Mr. Davis the small business community as well. While we did not think that the Regulatory Flexibility Act applied, we reached out to the small business community regardless.

This rule, as I said, was put out on our public Web site the day it was signed on March 25th. It was out there for review until April 21st when it hit the Federal Register, and that started the clock for the comment period, which we extended twice.

We extended it the first time because there were a lot of appeals. We put it out for 90 days. We extended it for 90 days, and then we wanted people to be able to have an opportunity before the comment period closed to actually look at the recommendations of the Science Advisory Board that were reviewing both our rule and the science that supported our rule.

So we then extended the comment period again so that people would have a full 4 weeks to review the Science Advisory Board before their comments were due on the proposed rule.

During that period of comment, we held over 400 meetings, the majority of which were around the country. We also, as we said, received in excess of 1 million comments. We held specific meetings with stakeholder groups targeting in particular State and local governments because of the unique role that they play, the States as coregulators and the municipalities as partners as well because the bulk of our water quality improvements come from municipalities.

So we reached out to them. Since that time we have continued to reach out to people. We will be reaching out again before the rule goes final so that people can anticipate it. We will also be addressing issues, such as the transition period, grandfathering of existing determinations, how it is that you deal with this transition, what is the opportunity for somebody who seeks a permit to say, "Well, I may have a jurisdictional determination, but I would like to have it reconsidered under the new rule."

So those will be transition questions as well that we plan to undertake.

Ms. EDWARDS. Thanks, and I have greatly overextended my time.

Thank you, Mr. Chairman.

Mr. KOPOCIS. Thank you, Mr. Chairman.

Mr. GIBBS. Mr. Graves.

Mr. GRAVES OF LOUISIANA. Mr. Stanislaus, I hope you are not feeling neglected today; I bet Ken is a great guy to testify with.

Mr. Kopocis, appreciate you being here today.

Louisiana is a somewhat unique State for a number of reasons, and one of which is the extraordinary watershed that, as you know, goes from Montana to the Canadian provinces, to New York, the largest watershed in this Nation, one of the largest in the world.

I really struggle with waters of the U.S. definition or rule when you attempt to apply a national standard, in effect. In reading through the rule, and I have read through the entire thing, and in a previous life having served in the executive branch at the State

level, I could interpret that rule to basically apply to virtually any lands in south Louisiana.

And I had strong concerns about attempting to apply a national standard, and I wonder if you could briefly comment on that.

Mr. KOPOCIS. Well, thank you, Mr. Graves.

And I do not know if it is a breach of protocol, but I have known you for so long I will say congratulations. This is the first time I have seen you in person since your successful election, but congratulations.

I think that you would find that for a State like Louisiana, and as you know, I am very familiar with the State, I think you will see very little change in terms of Clean Water Act jurisdiction. Today in Louisiana, as you know, the Clean Water Act applies obviously to the traditionally navigable waters and also the adjacent wetlands.

I think that the tributary system, our definition is not really different except for the first time we are providing in the rule what is a tributary. We are putting more bounds about what can be considered a tributary and providing less discretion to the regulator as to what would constitute a tributary.

Mr. GRAVES OF LOUISIANA. Just very quickly I am going to interrupt. I know you would hate to miss my second, third and fourth questions.

I just want to highlight very quickly though that the hydrology in the State is very different. Again, as I say, I have read the rule, and I feel very strongly that it could be applied to virtually all the lands in south Louisiana.

The Administrator came before the committee and indicated that it would provide more certainty and insinuated, in my opinion, that cost of compliance would be lower. As you know, the cost of compliance even in your own assessment is higher, and the Small Business Administration raised serious concerns with the cost of compliance that the Corps and EPA have put forth.

I will tell you right now I would be willing to place a bet with you. I would bet you right now. Perhaps I would donate to Sierra Club if you agree to donate to Koch Industries that this rule is going to be thrown out by the Supreme Court. I think that it goes well beyond the bounds of the law, and I will acknowledge to you that I think there probably are some challenges in the law and perhaps Congress has some responsibility to look at that, but can you tell me briefly, because I have other questions that I know you would love to hear, can you tell me briefly where you believe that the EPA's discretion in this case ends?

Where are the sideboards here?

Mr. KOPOCIS. Well, thank you.

And I would take you up on your bet, Mr. Graves, but I think it would be unfair. I think Sierra Club needs the money more than the Koch Industries does.

But I think that there are sideboards. In fact, that is what this whole rule is about, is providing that greater predictability and consistency. One of the things that we know is in a post-*Rapanos* world there have been so many instances where there are case-specific analyses that have to be done. They are done in 38 different

Corps districts without any kind of real instruction as to how it is that these determinations should be made.

And so this rule for the first time as opposed to what we have today, as I mentioned earlier, it is more specific as to what constitutes a tributary for purposes of jurisdiction. It is more specific as to what waters would be considered adjacent for purposes of jurisdiction.

We are proposing to put in place a more transparent system for people, both the regulators and the regulated community, to understand what constitutes a significant nexus to comply with the instructions that the Supreme Court gave us.

Mr. GRAVES OF LOUISIANA. Thank you.

Two quick things. Number one, we met as a result of the NACo Conference with numerous parishes that were in town in the recent weeks. Every single one of the parishes had on their list this—and it wasn't the certainty—it was the lack of certainty that they were concerned about.

And so I want to ask you: will you please work with local governments and work with State governments before you finalize this rule to attempt to provide them more certainty?

Last question very briefly, Mr. Kopocis, I think you are aware that coastal Louisiana has lost 1,900 square miles, including the majority of which would be jurisdictional wetlands. The majority of that is caused by the U.S. Army Corps of Engineers.

Can you explain to me how you are going to hold them accountable under this new rule?

Mr. KOPOCIS. Well, I do not know that there will be a direct applicability for the Corps' responsibility in relation to the lack of sediment deposition that is causing the problems in south Louisiana. I do want to though say that——

Mr. GRAVES OF LOUISIANA. So the private property owners will be treated differently than the Federal Government will under this rule?

Mr. KOPOCIS. No. The Clean Water Act will apply to private property owners or public property owners the same.

Mr. GRAVES OF LOUISIANA. The 1,900 square miles of land lost in south Louisiana is a direct result, a direct result of Federal actions in south Louisiana, historic, ongoing, and will happen in the future, and I just want to ask you, Mr. Kopocis: is the Federal Government going to be treated in the same way in regard to enforcement as private property owners will?

They are causing jurisdictional wetlands lost today.

Mr. KOPOCIS. Well, the Clean Water Act applies to the discharge of pollutants or dredge material. In terms of the actions of the Corps that may be contributing to the erosion that is occurring if it does not involve either of those two actions, the Clean Water Act does not apply to it.

But if I could, Mr. Gibbs, just one thing I wanted to say is that in terms of local governments, we met extensively with local government interests. A lot of them were individual communities, but we also met with NACo, the National League of Cities, and the Conference of Mayors, in particular. We convened them to represent their constituencies, and specifically discussed issues of importance to local governments.

And I can say that what you can anticipate, what they can anticipate seeing in the final rule is that we listened very carefully and particularly to two areas that were common to all of their concerns, and that was how municipal separate storm sewer systems were treated under the Clean Water Act and would this proposed rule affect them, and then the other issue was the construction and maintenance of roadside ditches.

Those were very important issues to them, and we have listened very carefully.

Mr. GRAVES OF LOUISIANA. Thank you, Mr. Chairman.

Thank you, Mr. Kopocis.

Mr. GIBBS. Mr. Huffman.

Mr. HUFFMAN. Thank you, Mr. Chairman, and my thanks to the witnesses for their good work and their testimony.

As you know, California is heading into likely a fourth year of critical drought, and I know you are very familiar with the impacts and the concerns surrounding that. That is why, although I am pleased and supportive with respect to a lot of what is in the budget request, the one thing that stands out is the significant reduction in funding for the SRF Clean Water Program.

It is very critical because West-wide there may be as much as 1 million acre-feet of water that could be brought on line through water recycling, advanced water treatment projects in the near term, in just the next few years. Many of these projects already have authorizations under title 16, a different program with a different agency.

We are having a heck of a hard time supporting them through title 16 because that program has been politicized and essentially ground to a halt by our colleagues across the aisle.

So one of the only ways that they can get Federal support and move forward with critical water recycling solutions to the arid West is through that SRF Clean Water Revolving Fund.

So in a year like this of all times, I have to ask you: is a significant reduction in funding for that program appropriate, and does it leave you enough resources to support the critical need?

Mr. KOPOCIS. Well, thank you for that question, and we are very sensitive to the serious issues being presented by drought out West and in some other areas of the country as well, but most severely and most notably in California.

We had to make some tough choices in putting together the budget. We did hear Congress' request that the budget of the President stop having significant reductions in the requests for SRFs. So in both of the SRFs we requested more than the previous budget.

We made the choice that we would make a greater investment in the Drinking Water SRF than in the Clean Water SRF to reflect the public health needs, to reflect what our larger documented needs are, and also to help work more importantly with small communities who have special needs that cannot be met the same as some of the larger communities.

But we very much take to heart that, and we will continue to support the program, and we are continuing to look for ways to bring additional resources to the table.

I mentioned earlier our Water Resiliency Financing Center. We are looking for ways to be more creative in financing, bring more

money, some private sector money to the table. We also want to serve as a resource for communities to figure out are there more creative ways to meet needs.

For example, sometimes a community will say that they have an issue that they need more drinking water capacity, but what we find is that—I will make up numbers—they are treating 40 million gallons of water a day in their drinking water plant, but they are only treating 20 million gallons a day in their wastewater plant. Well, they do not have a drinking water capacity problem. What they have is a leaking pipe problem because there should be not a one-for-one, but there should be a figured ratio.

So we are very much looking at that.

Mr. HUFFMAN. That is critical work, and I encourage you to continue that, and I am looking forward to working with EPA on all of these things.

There is one other area though where I think your agency could make a tremendous difference relative to the SRF and the vital role that it can play during this drought, and that is a policy guidance that you have had for some time that restricts use of SRF funds for investments actually at houses and businesses that are actually customers of water districts.

So my understanding is that EPA will not allow, for example, the State of California to use these funds to support water districts creating property assessed projects to retrofit water appliances or even to fix leaky sewer laterals, which can, as you know, make a big difference in the operation of wastewater facilities.

There is a very proven track record on the repayment of these things through on-bill financing or property assessed agreements with homeowners and businesses, and in any event these districts would be on the hook for repayment of the loan anyway. It is purely a function of a policy guidance, a rather arbitrary view, in my opinion, view that EPA has had restricting these funds. Now of all times we should be looking at ways to leverage and maximize the value of these funds in the arid West, and I just hope that that is something you might be willing to take a look at.

Mr. KOPOCIS. Well, thank you for that, and of course, in the amendments to the Clean Water SRF that were made in June of 2014 as part of the water resources bill, the eligible uses of the SRF were expanded, and we will be in contact with you to see how we can best incorporate some of the concepts that are included in that, such as conservation, et cetera, and see how those could be worked in a way that addressed the needs that you are raising.

Mr. HUFFMAN. Thank you very much.

Mr. GIBBS. Mr. Babin.

Dr. BABIN. Thank you, Mr. Chairman.

I have a question for Mr. Kopocis. I am the congressional representative of District 36 in southeast Texas, and I served for 15 years on the Lower Neches Valley Authority, several of those years as the president of that river authority, and also I am a dentist by profession, but have been involved in the cattle business. We had a small operation.

And when these proposals came to light initially, I think the greatest concern that we heard of farmers; ranchers; landowners; developers; State, local, municipal governments; officials was that

the proposed waters of the U.S. rule—the fear they had was it was going to be an enormous power grab by the Federal Government.

And we feel that the agencies involved here, including yours, failed to conduct outreach to State and local government. The lack of appropriate consultation was pointed out in comments filed by many State and local officials, plus organizations like mine representing the State and local governments.

If the EPA and the Corps worked with States to develop the proposed rule as you claim, why did the majority, the vast majority of States, write comments in opposition to the rule as proposed and are asking the agencies to withdraw or at least to substantially revise the rule?

Can you explain that please?

Mr. KOPOCIS. Well, thank you for that question. I do not know that I can explain why a particular State or group of States took an action, but what I can say is that we did reach out to State and local governments in advance of the rule. We have had an ongoing dialogue. We did hear very loud and clearly the point that you just made, that the States felt that we did not do enough to reach out and engage with them before the rule went out.

And that was why after the rule went out we set up a series of meetings that addressed not only State but also local governments so that they could participate with us, so that we could hear all of their concerns. We could engage in a dialogue with them as to what kinds of things they were interested in, what areas they thought we should change, and quite candidly, some areas that they thought that they very much appreciated what we were doing.

There has been a longstanding request from State and local entities that the agencies engage in a rulemaking, which we are doing. I think many of the criticisms that we have heard are not so much that we are doing a rulemaking as there are elements of the rule that they want to disagree with, but that is the very purpose of the notice and comment period that we engaged in.

We put a proposal out as a moment in time, and we seek people's comments on it. We welcome those comments. That is how we get a better product, and we think at the end of the day we will have a better product.

Dr. BABIN. Well, listening to someone's comment and then using the term "consultation," which I believe was used, I think that means that folks thought in consultation that what their concerns were were going to be taken into consideration before the rule was finalized. And I am not sure that they feel that way, that they were done that way.

Mr. KOPOCIS. And we understand that and we heard that. We did consult with the States. What we have heard in the meetings when the States have come in and talked with us are two things. One is a general statement of we wish you had done more, and the second one is we wish you had done it perhaps closer to the time that the rule went out.

Because as you may well know, the agencies were working on a guidance document. The agencies then decided that the guidance document was not going to be well received and that, in fact, it really was not going to meet the needs of the American people be-

cause we cannot be as effective in changing how the Clean Water Act is implemented through guidance as we can through the rule.

And, in fact, in the *Rapanos* case, Chief Justice Roberts specifically suggested very strongly that the agencies could really address a lot of these issues if they would do a rulemaking, and so we thought that it was time for us to go ahead and move forward on the rule.

Dr. BABIN. Thank you.

Mr. GIBBS. Mrs. Napolitano.

Dr. BABIN. Thank you, Mr. Chairman.

Mrs. NAPOLITANO. Do you not have any?

Mr. GIBBS. Well, I am going next, but I am giving you an opportunity.

Mrs. NAPOLITANO. Yes, I sure am. I will go for it. Thank you, sir.

There are a couple of things that have come up, and you were talking about the ability for conservation and being able to help communities be able to capture as much water runoff, but also rainwater or anything else.

And I know there was a program, and one of these days I will identify it, that helped some of the communities' berm, concave the medians and put in well plants, and that is a method of conservation, especially in years where you have very, very little rain.

I would love to be able to get some report on where that would be because as we know, this is another method of being able to convince the cities that it is up to everybody to start capturing any water.

The other area would be the USGS. Although it does not come under the jurisdiction of this subcommittee, the recharge for where you have runoff, dry storm runoff they call it, to be able to capture anything that is industrial, commercial, residential, and clean it and then put it back into either the aquifer if we know that the aquifers are capable of receiving.

Somehow we need to have the agencies be able to talk to each other and cooperate in being able to identify additional ways that we can conserve, utilize recharge, utilize recycling, conservation, all of the above.

So I would ask that maybe in the future you might suggest how you are working with other agencies or can work with other agencies to maximize the use of our precious water because there will be no more water, and the cycle of drought will continue according to everybody that we know.

The other question that I have is 4 years back my colleagues unveiled the Budget Control Act and the arbitrary spending cuts in 2013, and even though as we have heard the economy is rebounding, but we have not been able to take off those handcuffs. We are still operating under those illogical spending caps.

What impact has this had on your agency's ability to carry out its mission, one?

And, two, in your opinion, what are some of those programs that have been hardest hit in your agencies?

Mr. KOPOCIS. Thank you very much for that question.

I am going to run through the several items that you raised in there, and I will hopefully get through all of them and answer your question, but I think, first of all, in terms of controlling stormwater

and the effect on groundwater and recharge, there are a couple of different things. Obviously our green infrastructure emphasis is about when rainwater falls capturing it instead of rushing it off to someplace else and allowing it to percolate and operate more naturally as nature intended it to. And that addresses not only a water quantity problem, but it also addresses a water quality problem and has other multiple benefits.

I think also in terms of how we look at recharge issues, we are members of the National Drought Resilience Partnership, and as is the Department of the Interior and the U.S. Geological Survey, but I will make sure that your point gets taken back to them, and we will get back to you in terms of what may be ongoing or what suggestions you may have.

I also would want to make the point that water reuse and recycling activities, we know that they have been long ongoing in the West. We know that there is even a greater interest in that now. As part of our development of the Clean Water Rule, we heard from a lot of western interests who wanted to know "if I have constructed recharge facilities or transportation facilities associated with reuse and recycling and how might those be affected by the Clean Water Rule."

And we want to make sure that we get an answer to that question in a way that allows communities to engage in the kind of recycling and reuse of water which we all know they need to engage in and they want to engage in.

Then in terms of some of the limitations, our agency has been cut back. There is no doubt about it. We are now looking at an agency that is substantially below its funding levels both in terms of the money that we have available to us to share with States, tribes, and localities, but also to do our basic work.

And there are shortcomings in our ability to develop ways to protect human health and the environment, and yet what we find is people continue to ask us for help in protecting health and the environment. I mean good examples that we are all familiar with, a little over a year ago when Charleston, West Virginia, had the spill of MCHM, and I do not know what that stands for, but when the MCHM spilled in their drinking water, they came to EPA and said, "We need to know what are the health standards. Is our water safe to drink?"

We actually did not have a health standard for that particular chemical, but we worked with the State and we worked with the city of Charleston to make sure that the water was safe for the people in Charleston.

Last August when the city of Toledo had harmful algal blooms that resulted in outbreaks of microcystin and cylindrospermopsin, and I had to learn to say that one. It is cylindrospermopsin. The city of Toledo and the State of Ohio said, "EPA, we need your help."

And so we are often the people that everybody comes to, but it is getting harder and harder for us to maintain those kinds of capabilities. We are in the process, for example, on harmful algal blooms of developing health advisories because that was one of the shortcomings. They said, "Do you have an advisory?" And we said no.

There is a World Health Organization advisory, but EPA had not developed one. So we committed resources to developing those advisories in time for this summer's algal bloom season, and we know algal blooms will exist. They existed the year before in 28 States.

And so those are the kinds of things that continuing pressure on our budget causes us to not be able to do in a timely way.

Mrs. NAPOLITANO. That just brings to mind that there are agency issues that can be cooperated that work across because of the fact that, as you have said, you did not have any protocols for that kind of an assist. Well, we need to be able to work across the agencies to make sure that our cities do not have to do multiple permitting or being able to have delays or trying to figure out what is the best way to do things.

So with that, thank you, Mr. Chair, for being so indulgent.

Mr. GIBBS. I will start with Mr. Stanislaus.

Concerning the Brownfields Executive order on the new regulation on flood and raising it 2 to 3 feet, my question is: is that going to eliminate any Federal dollars going to a lot of Brownfields? Because I am thinking a lot of Brownfields are in low lying areas close to rivers.

Have you thought about that or do you have something? Is this Executive order going to eliminate a lot of Brownfields redevelopment?

Mr. STANISLAUS. I am not sure that I can answer that question at this moment. I can get back to you.

Generally, the eligibility for Brownfields grants are going to be preserved, and if a community can demonstrate that they, in fact, have a perceived contaminated property with some opportunity for redevelopment, they are eligible.

Mr. GIBBS. My question is if you cannot get the Brownfields up 2 or 3 feet from the Executive order and there are no Federal dollars that can even go in there to clean up, that is what I am wondering, to redevelop that.

I think that is a concern I wanted to raise because that is a possibility. That might be an issue because I am thinking there are a lot of Brownfields that would be in that category that could be an issue.

Mr. Kopocis, to start off, we talked about in the final rule there is going to be a lot of clarification. I know Administrator McCarthy said that in the joint bicameral hearing we had. My question is: some of these clarifications, are they going to be in the actual rule or are they going to be in the preamble to the rule?

Mr. KOPOCIS. We are anticipating changes to the rule language itself.

Mr. GIBBS. OK. Because you know if you put it in the preamble, it does not really have any standing.

Mr. KOPOCIS. We understand the significance of that, sir.

Mr. GIBBS. OK. We had some discussion and questions from other Members, and you mentioned it in your testimony about the need to clarify types of waters covered under the act and under this rule. Can you be more specific?

We are hearing that it is really questionable, and I am going to give you an opportunity to define water or potential water in detail

and what is not water. That kind of seems a little ridiculous, but under the context of this rule.

Mr. KOPOCIS. Well, the proposal does not include any language to define what is water. We believe that that is fairly well understood as to what constitutes water.

It does come up in——

Mr. GIBBS. What is "a water"?

Mr. KOPOCIS. "A water"?

Mr. GIBBS. Yes.

Mr. KOPOCIS. We are defining different types of waters that we consider to be jurisdictional. The list is the current rule and the proposed rule. A lot of that is the same. It is the traditionally navigable waters, the territorial seas, tributaries, which for the first time we are offering a definition in the regulation itself of what constitutes a tributary, to provide less discretion to the regulator as to what they consider to be a tributary.

Because an important part of that is the distinction between what is a tributary and what is an erosional feature. I have spent a lot of time and the agency has heard a lot from representatives, particularly of the agricultural community, who are very concerned that erosional features in farm fields would suddenly be found to be tributaries and, therefore, jurisdiction——

Mr. GIBBS. Or as ephemerals.

Mr. KOPOCIS. Or as ephemeral streams, although the agencies today do exert jurisdiction over ephemeral streams, but I think that the key piece there is to make sure that we can specify in the rule what constitutes a tributary and what constitutes an erosional feature, recognizing that we do not consider erosional features to be jurisdictional today, and we did not propose that they would be jurisdictional in the proposal either.

We are also looking to add language that better specifies what constitutes an adjacent wetland or water. We think that today the term exists in terms of adjacency, but it does not have as much definition around it.

We proposed to look at concepts such as the flood plain and riparian area. We received a lot of comment that the use of the term "flood plain" was not specifically well defined because in our proposal we suggested that we would look at various sizes of flood plains depending on regional variations.

And the comment that we received is that the commenters would prefer to see us be more definitive. Yes?

Mr. GIBBS. I will stop you there. In our previous bicameral hearing, Administrator McCarthy said a lot of these we will have to look at on a case-by-case basis, and I think that opens up a lot of subjective determinations by your people out there or the Corps people.

I will get a little specific. Grass waterways on farms that only have water in them when it's raining, and obviously the water flows down through the grass waterways into the ditch.

I will use an example on my farm. I have highly arable land. It comes out of the field, goes to the grass waterway, goes down the ravine, gets into the grow ditch and flows into the creek, Lake Fork Creek, and then flows into the Mohican, Muskingum, Ohio and you know the rule.

Obviously, water flows downhill. I'm a little bit concerned the EPA could hide behind the Science Advisory Report. We talked about the significant nexus and all that. If we all know that water flows downhill, and I think there's a lot of ability in discretion for the regulators to come out. Can you categorically say that grass waterways are not waters of the United States? Township road ditches, county road ditches, are not waters of the United States?

Mr. KOPOCIS. Well, I—I can't say definitely across the board. What I can say, because some of the questions that you're asking would involve a possible change in what's in the proposal, and what we might do in a final rule, but what I can say is that you're describing a grass waterway, for example, that you put in to conserve soils, slow down water, reduce the pollutant impacts downstream, that occurred through no particular fault. I mean, that's just what happened.

Mr. GIBBS. It's mother nature.

Mr. KOPOCIS. Yeah. It—yeah, it's mother nature. It rains, and dirt moves. So that was the very situation that Mr. Graves was talking about, that created southeast Louisiana.

Mr. GIBBS. Yeah.

Mr. KOPOCIS. So the—what we are looking at is trying to create a balance so that we can know, is there a need for us to say that a grass waterway is something where there needs to be Clean Water Act jurisdiction, when in fact what it's doing is it's offering, as a conservation measure, the very water quality benefits that we want to encourage. And so putting more regulation on that to discourage that kind of activity, we think would be counterproductive to what our ultimate goals are on water quality.

Your question in terms of ditches along a particular road. I think that we—there was no single topic that I heard more about than ditches. I did not realize that America was fixated on ditches, but I now know that it is. And, but we know——

Mr. GIBBS. Especially out in western Ohio, in Paulding County for example, where I know there's farms out there you can go a mile, and there's less than an inch drop. So ditches are really important for drainage. In my area, the ditches are naturally occurring, because we're in hill country.

Mr. KOPOCIS. Right.

Mr. GIBBS. Appalachia foothills. So ditches are very important. Let's talk about Paulding County, where it's flat. The water runs off the field, into the ditch. It could take nutrients.

Mr. KOPOCIS. Right.

Mr. GIBBS. We have that issue, especially in northwestern Ohio. And of course the State EPA's heavily involved in regulating that water. And, and my concern is we open that up to waters of the United States, and then it opens up the ability for the bureaucrats to come out and say that Farmer A, Farmer B, you have to go out and get permits. So you have to get 404s. And it doesn't help us improve that. My overwhelming concern is when you put so much redtape bureaucracy and make this more difficult, at some point people are just going to throw their hands up. And we can actually go backwards.

Mr. KOPOCIS. Right.

Mr. GIBBS. And I think that's a point we need to remember.

Mr. KOPOCIS. Yes. Thank you again. And I think that we heard that very, very clearly. And we heard that what we were proposing to do in relation to ditches did not meet the needs of what we were trying to accomplish or what, what made sense from a water quality standpoint. So what we're, what we're looking at is to see how we could make changes to the rule to emphasize the ditches that we assert jurisdiction over today. And those are basically two categories of ditches. Those are the ones that are effectively channelized streams. There used to be a stream there, but somebody came in and modified it, straightened it, and you know, and channelized it. And I think people have a really good sense of where those are.

I spent a lot of time, even out on farmers' fields working with them and talking with them, since the rule came out, meeting with them and talking about this. And my sense is that people understand what those are. They know where their channelized streams are. The other ones are ditches that effectively operate as tributaries, that have the characteristics of tributaries. And again, I think people have a pretty good understanding.

What the Clean Water Act does not apply to today, and we're not proposing to have it apply to, are the thousands and thousands of miles of the ditches that you're describing in Ohio. These are ditches that are constructed along roadways. They provide exactly the function that they were designed to do. They take water off of the highway, so that the highway is safe to drive on. But they also maintain the structural integrity of that highway, by keeping that water away from the base and not allowing it to be harmed. The Clean Water Act does not apply to those ditches as jurisdictional waters. We do not look to expand the extent of the Clean Water Act, or apply the Clean Water Act to those waters.

Mr. GIBBS. Is the rule going to really specifically say that? Or is it going to be open-ended enough for discretion or subjective determinations?

Mr. KOPOCIS. We are—it—we are looking at, what are the opportunities for us to change the language in the rule itself to accommodate the kinds of principles that I'm articulating. I'm—I wish I—I realize I'm being a little obtuse.

Mr. GIBBS. Why is the EPA being unwilling to make these revisions and come back to this committee and Members of Congress and the public and the States, and discuss that before they implement the final rule? Why don't they lay their cards out and say, "Here's the revisions we made," and let's have a discussion, and make sure that's happening? Why is there an unwillingness? Your boss, Ms. McCarthy, said, "We're moving ahead." It's not necessary to do that. Why? I don't understand the reason for that.

Mr. KOPOCIS. Well, we—we believe that these issues have been thoroughly vetted. We believe that we, we do——

Mr. GIBBS. Why are you afraid to, before you actually implement it and you think they're vetted, put it out for 60 to 90 days? And let us see it and let us have that input.

Mr. KOPOCIS. Well, we believe that it's time for us to go final with the rule, get it out there, and get it into the public domain, so that we can provide the greater clarity and consistency that we think a final rule can provide.

Mr. GIBBS. Well, I think that's rushing it. There's been so many comments. I think you're also leaving the door wide open for litigation. I think that will be coming—unless you are actually able to make these fixes. Which I don't have a lot of confidence that that will happen.

Mr. KOPOCIS. Well, we're—sir, we're pretty sure that there will be litigation over the rule. We at EPA are, as I said, we took special pride that the pesticide general permit is not subject to litigation. But the—we anticipate there will. But we think that we'll have a very strong rule that will be highly supported by the law. Both the Clean Water Act itself——

Mr. GIBBS. OK. OK.

Mr. KOPOCIS. The Supreme Court and——

Mr. GIBBS. OK. I want to ask, during our bicameral hearing in February this year, Ms. McCarthy discussed how the EPA was still seeking, speaking to outside groups, including municipalities, on how to improve the rule. I want to know what is the process the EPA is following in carrying out this activity? Who exactly is the EPA talking to during this extra-regulatory, post-comment period?

Mr. KOPOCIS. Sir, it's not unusual for the agency to have conversations with interested parties. We do not solicit additional comment during that period. Any conversations that we have with outside parties are docketed so that the public is aware that we had those conversations. But if——

Mr. GIBBS. Can you identify those parties?

Mr. KOPOCIS. Can we identify them?

Mr. GIBBS. Who have you been speaking to?

Mr. KOPOCIS. Yes. We can produce that.

Mr. GIBBS. OK. Appreciate that. Thank you.

Mr. KOPOCIS. Yeah.

Mr. GIBBS. We've heard from numerous stakeholders that the EPA is essentially road-testing this proposed rule and informally implementing the new rule out in the field. Can you describe if, you know, if the EPA has actually begun implementing the rule, to test it? Has that been occurring or not?

Mr. KOPOCIS. I am unaware that that has been occurring. As you know, overwhelmingly, the jurisdictional determinations under the Clean Water Act are made by the Army Corps of Engineers. As far as EPA's action, I am unaware that we are road-testing this rule in any fashion.

Mr. GIBBS. OK. I do have a request, and you have staff back there, so they're ready to take notes on this request. As you said, the EPA has done extensive outreach to the stakeholders regarding this proposed rule. And you said you've had some 400 stakeholder meetings around the country. And I've got some specific requests on—obviously you'll have to get back with me—your staff can—with a written response.

But please identify each of the stakeholder meetings that was held, including the date and location at which they were held. Provide a complete list of the Federal agencies, being the EPA, the Corps, and any other agencies and Federal contractor participants at each stakeholder meeting. Identify all the stakeholders who participated in each stakeholder meeting. Provide all handouts and other presentation materials from each stakeholder meeting. And

provide all transcripts, official notes, assessments, reports, papers, and other records of each stakeholder meeting, for the proceedings and outcomes. And finally, identify the amount of staff time, travel costs and other expenses incurred by the agencies for each of the stakeholder meetings. I'm trying to get a depth.

You're saying that there's been an extensive outreach. And we hear otherwise. We want to see some documentation on that. Earlier in our discussion we talked about the comment period. And the substantive, or you say, unique comments. And I'd like to have documentation of the 19,000 that you think are unique, how many are for or against. And so we'd like to see a breakdown of that. And so we'll know our specificity on the comments.

The Small Business Administration's Office of Advocacy, SBA, recently concluded that the EPA and the Corps have improperly certified the proposed waters of the U.S. rule, under the Regulatory Flexibility Act, because it would have direct significant effects on small entities, and recommended that the agencies withdraw the rule. And that the EPA conduct a Small Business Advocacy review panel before proceeding any further with this rulemaking. Furthermore, the Small Business Administration, along with many governmental and private stakeholders concluded that EPA and the Corps conducted a flawed economic analysis of the proposed rule. The analysis has ignored the impact of the rule. The Clean Water Act's regulatory programs do not adequately evaluate impacts of the proposed rule. What is the EPA's response to the SBA's Office of Advocacy's comments on the proposed rule?

Mr. KOPOCIS. Well, in terms of our, our comments, of course we did discuss the compliance with the Regulatory Flexibility Act, with the Small Business Administration's Office of Advocacy. And this was, we talked about earlier, we did not agree as to whether we needed to convene a panel under SBREFA to review it. We did, however, reach out to the small business community, with the assistance of the Small Business Administration's Office of Advocacy, to put together a panel, before the rule went out. Which it—they were very careful. They said that they did not consider that compliance from their perspective with the Regulatory Flexibility Act, but they did assist us in putting together a panel.

Mr. GIBBS. OK. And where——

Mr. KOPOCIS. Which we——

Mr. GIBBS. Where is the documentation on the responses back and forth from them?

Mr. KOPOCIS. On?

Mr. GIBBS. With the Small Business Advocacy review, do you have documentation of the responses that——

Mr. KOPOCIS. I'll have to check if there was something specifically responding to them.

Mr. GIBBS. OK.

Mr. KOPOCIS. There is an analysis of our certification under the Regulatory Flexibility Act. It's included in the preamble to the proposal. And then, and then we also, after the rule went out, during the period of comment——

Mr. GIBBS. I guess the documentation would be the meetings that were held and discussions.

Mr. KOPOCIS. We'd be able to get you the dates and that.

Mr. GIBBS. Yeah. OK.

Mr. KOPOCIS. Then what, during the public comment period, we then reached out to the Small Business Administration's Office of Advocacy again, and asked them if they would convene another meeting, which they did, under the same circumstances. They made clear that they did not consider that in compliance of their position related to the Regulatory Flexibility Act, but they convened another small business—another meeting of small business interest, which I personally participated in. I don't remember—that's—I'm thinking it was like June or July, but we'll get you the exact date of that meeting. And to the extent we have a list of participants, we will get you that. We'll get you everything we have on that.

Mr. GIBBS. OK.

Mr. KOPOCIS. So we had done that. And then in a lot of the meetings that the 400-plus meetings that you asked about earlier, a significant number of the participants were of course representatives of small businesses as well.

Mr. GIBBS. OK. Kind of changing the subject matter. Can you give me an update on the implementation of the WIFIA program?

Mr. KOPOCIS. Thank you. In the WIFIA program, we began last summer, shortly after Congress enacted the program, a series of stakeholder meetings across the country to hear from people what their thoughts were. In fact, I should say, even before that, when the staff came in and we chatted about it, my reaction was, "We don't have any money to do this, but I can assure you that Congress isn't going to want us to sit around and wait until there's a special appropriation to fund us." So we reached out to stakeholders. We also reached out to the Federal Highway Administration.

Mr. GIBBS. Yeah.

Mr. KOPOCIS. Because of course it's modeled after——

Mr. GIBBS. After TIFIA, right?

Mr. KOPOCIS. Right. So not, you know, not trying to start with a blank sheet of paper. That was my first reaction, based on having been around for TIFIA. I said, "Talk to the Federal Highway Administration. How did they do it? How did they set it up?" So we—we had extensive conversations with them, which were very useful, in how to set that up. We then had available to us, Congress provided us with up to $2.2 million during this fiscal year, to look at standing up that program, and getting it ready. And the—and the budget requests for 2016 asked for another $5 million dollars, so that if it is funded, we will be ready to go.

Mr. GIBBS. Because I really pushed hard for that. When you're talking about drinking water, infrastructure, and wastewater, and complying sewer overflows issues. And we know that there's well over a trillion-dollar cap on costs out there. And you can't charge the ratepayers enough to get there. And I think this is a—if there's an opportunity for public-private partnerships, this area has to be the most optimum place. Because they have a revenue stream coming in from the ratepayers. I think there's a lot of private capital out there that's looking for a relatively safe investment and a decent return. And I think it's safe, because if you look at this SRF default rate, it's, it's you know, almost nonexistent.

Mr. KOPOCIS. Zero.

Mr. GIBBS. I think that's a good program. They can get some private capital in there. It's a win-win for both sides. And the villages and municipalities. And of course the WIFIA program has an aggregation factor. So smaller entities can participate when you aggregate. I think it was $20 million, if I remember.

Mr. KOPOCIS. Projects over is it $20 million or $25 million?

Mr. GIBBS. Yeah.

Mr. KOPOCIS. $20 million?

Mr. GIBBS. Yeah. Twenty million dollars, I think, yeah.

Mr. KOPOCIS. Yeah.

Mr. GIBBS. I'll just encourage you. I think that's a great program. That can really address these issues of where villages, municipalities are struggling to get up there to where they need to be because of growth. And a lot of times it's growth.

Mr. KOPOCIS. And sir, we are working on it, very, very much so, with the resources that Congress gave us and the resources that we've requested. TIFIA program was enacted I think in June. It took them about a year to get regulations out. And they were making their first loan about a year after that. We—we would be hopeful. I can't make a promise. But we can be hopeful, since we're not starting with "How do you do this?" We have a model.

Mr. GIBBS. Yeah.

Mr. KOPOCIS. That we can be ready.

Mr. GIBBS. Well, I think that's a good, good approach. I know it's a little different from TIFIA but, I think, at least it's another integrated planning and permitting initiative, which your predecessor, Ms. Stoner, supported. I think the EPA does support it. I think it's supported out in the country, because they're tied in, I believe, to the 5-year permit cycle, correct?

Mr. KOPOCIS. Yes.

Mr. GIBBS. And some of this, they can't get there, because they don't have the resources, but they have some flexibility. And I just question the EPA says they support it. But in practice, are they really working? And that's—we're hearing some things, you know.

So I guess my comment is, I think there's an opportunity there to give local governments some flexibility and get to the goal everybody wants to get to. But it might take 7 or 8 years, or 10 years. They might want to address an issue that is different than another municipality's. So one-size-fits-all policy coming out of DC. That's constraints and it isn't really—when flexibility's the key word on that. If you just want to comment on the integrated permitting, where we're headed, and where we are making that work.

Mr. KOPOCIS. Well, we are devoting time and resources to integrated planning. We consider it to be something that is a—is going to be a key way for communities to come into compliance with what they all want. And that is to make sure that their drinking water is safe and that the water that, the waters that they fish in, swim in and play in are safe as well. I think that you know, we've—we've devoted resources in our current fiscal year. We've asked for $13 million in fiscal year 2016 to really ramp up our efforts. We particularly want to explore what are the opportunities for us to do this outside of the enforcement context.

We have regular conversations with the—with individual communities, but also with the representative communities. Because I mentioned, like, the Conference of Mayors, for example, who really want to work with us on this. And—and to the extent we have a framework, I'd—I'd like to think that it is really designed—it's a singular framework which has an unlimited number of possibilities for how it is that you develop a framework for meeting those water quality goals. This is something that our Office of Water works very closely with our compliance people in the Office of Enforcement and Compliance Assurance, making sure that we can do this in a way, again, that works for communities. We also work closely with the Department of Justice on this quite—if you were not aware of that. Because of course ultimately if there is an enforcement action, it—while our offices are deeply involved, it's the Department of Justice which is the face of the United States. And so we are also working with them.

Mr. GIBBS. That's true. Let me stop you right there. That's good. Because I remember when I was on the State legislature, we had some issues with the State EPA, and sometimes they'd be turned over to the Attorney General's Office, and they said they couldn't discuss it anymore. And it frustrated me, because we could simply work it out. And of course what happened to the State EPA, in this case, this was years ago, they filed in my rural counties, and the county lease judge threw it out. It gets to how EPA, at the time—so it didn't do them any good, but we can work these things out without going to litigation. And so I think it's good if you can have the Justice Department working in concert. And make them recognize that we're getting there, but we got to be reasonable and pragmatic in how we get there.

Mr. KOPOCIS. Correct. And that's been a key component for us as well, is making sure that all the parties that need to be at the table can be at the table. Make it available for them to bring in what it is that works. And we think one of the hallmarks of the integrated planning framework is, this isn't us telling a community, "This is what we think you ought to do." The starting point for the integrated planning framework is for the community to say, "This is what we think we can accomplish."

Mr. GIBBS. Yeah.

Mr. KOPOCIS. Knowing what their responsibilities are. But then them coming back and saying, "This is what we think we can accomplish in this timeframe."

Mr. GIBBS. So do we have any of that going on, examples that there's been some——

Mr. KOPOCIS. Well, one good example recently is Lima, Ohio. The mayor of Lima, Ohio, who is one of our agency's biggest critics, related to meeting their water quality goals and responsibilities, is now one of our—sings praises, because of the integrated planning framework that we were able to reach with Lima, Ohio.

Mr. GIBBS. OK.

Mr. KOPOCIS. I met with him as part of a Conference of Mayors group, 3 or 4 months ago. And he was extremely positive about the work of our agency. And this was after many years of him being, shall we say, much less than positive about our agency and working with our agency.

Mr. GIBBS. I think he might have actually testified for this committee.

Mr. KOPOCIS. I believe he has.

Mr. GIBBS. Twice.

Mr. KOPOCIS. I think he may have done it before he was happy with us.

Mr. GIBBS. Yeah, I think so. Another question. Regulatory consistency between EPA regents—and I know there was, in 2013 there was Iowa League of Cities received in the Eighth Circuit Court. And this was in regard to the practice of what they call blending. It's partially and fully treated wastewater, inside the treatment plant, to discharge to nearby waters. And then take that further. So there's been other court cases. It might not always be with water. It might be with air. My overall question is, when, I guess in these cases, the EPA lost the case.

Mr. KOPOCIS. Yes, sir.

Mr. GIBBS. OK. Are they applying the court decision only in that Federal District Circuit Court region, or are they applying nationwide?

Mr. KOPOCIS. Right. The *Iowa League of Cities* case we are applying the Eighth Circuit. Outside of the Eighth Circuit, we had made a decision that we would look at the *Iowa League of Cities* case, and on a case-specific basis, as it applies to a particular community.

Mr. GIBBS. And what kind of criteria do you use to make that determination?

Mr. KOPOCIS. We look at—we will look at each of the factual circumstances as they are presented to us. We continue to apply our rules and regulations as they are written. If a community comes to us with a set of facts or circumstances, where the *Iowa League of Cities* case could conceivably be applicable, at least the terms of that case, then we do sit with the community and we evaluate it on that case-specific basis.

Mr. GIBBS. OK. Well, I want to thank you both for coming. You did not get as many questions so I'm sure you're not offended by that. Go ahead.

Mrs. NAPOLITANO. Since my Chair has been very nice in allowing me some time, I just want to thank you. There have been many complaints sometimes in California over EPA, and EPA has been more than generous with their time. Jared up in San Francisco, I've had him before the Councils of Government. They've asked direct questions. And as I was commenting to my colleague that one-on-one works a lot because you're able to express the actual issues that affect our communities, and I know you do not have the staff to do it, but it's very helpful to be able to have the understanding, and as you have gone through your rulemaking is being able to apply some of that minuteness, if you will, to being able to address that not only one area may be affected, but many others may have the same question and are unable to pose it for whatever reason.

So we thank you. You've done a great job in many of the California areas, and we still have some issues, but I really appreciate the job that your staff has done, and EPA continues to be responsive, and we trust that we will continue to safeguard our waters and our air.

Thank you so much to both of you.

Mr. GIBBS. I just want to say in closing, you know we all want to protect the environment and clean water and do what we can, and I think as we had so much discussion on the Clean Water Act, we've come a long ways in four decades, I guess since it was passed or however long it's been now, and we still have challenges out there, and I did have one followup question I just thought.

We were talking about the Toledo drinking water issue. I want to just mention to you, and maybe you want to comment, the Cleveland dredging issue in the port of Cleveland. I do not know if you're aware or not, I've been working very hard to make sure that dredging happens every year because it's a huge economic impact if it doesn't happen. Thousands of jobs are at risk, and through the Army Corps and how the EPA's had a disagreement on that dredge material in Cleveland has been PCB'ed contaminated, and all the years they've been putting it in a CDF-contained landfill and the Corps has determined that they think 80 percent of it is clean enough to open lake disposal. The Ohio EPA says no; they won't give them the 401 water quality to do that.

So we're working through that and we're going to get the dredging done, but it's probably not going to go out in the lake, but the Corps did acknowledge that they would take it 9 miles out to get away from the Cleveland intake. So that acknowledgment alone tells me that there's a problem, OK?

And the fish advisories, they have fish advisories for the PCBs, and the Ohio EPA is concerned that if they put the dredge material out there, there is a good possibility it could raise the advisory from being once a month or once a week consumption to more restrictions.

And I think this is kind of unique, the situation where we have the Ohio EPA, a Republican administration, adamantly opposed to open-lake disposal—and that's what they call it; the Corps calls it open-lake placement—and then we have disagreeing on this issue, and I think it's noticeable to me that the U.S. EPA has not commented on this debate between the two agencies and I do not know if you want to comment, or if you're aware of what's going on in Cleveland.

Mr. KOPOCIS. Well, I am not familiar with the particular circumstances you're describing. I am particularly with the long history and the Great Lakes of the need for CDFs as opposed to open-lake disposal—and that's what I grew up in this committee calling it, it was open-lake disposal—so I am familiar with the serious issues that can be——

Mr. GIBBS. Especially Lake Erie because it's so shallow and so sensitive.

Mr. KOPOCIS. The shallowest lake with so many people that rely on it directly for their drinking water. So I can work with our folks in region 5 with Susan Hedman, our regional administrator, to help get us informed. I do not know the status of it.

Mr. GIBBS. I just want you to know I think we've been working really hard on this. I think we're getting it worked out, but I just thought it was kind of interesting that the U.S. EPA was involved because you made a comment that during the clean water drinking crisis last August that the U.S. EPA got involved. I do not know

the extent. I know the State EPA was actually involved a lot, and one thing the State legislature in Ohio just passed, a bill, that dredge material, especially targeted for Toledo because there's 800,000 cubic yards I think and it's quite a lot—it's nutrient-rich, phosphorus especially that can cause algae—by 2022 will not be allowed. Right now they have no place to do it.

So the challenge for the State of Ohio, the Army Corps, and the EPA for that matter, State for sure and hopefully Federal, is to think outside the box because I think the dredge material can be an asset instead of a liability, but we have to think outside the box.

And now in Cleveland, what's interesting about that, we only have about 10 percent as much as Toledo as PCB, but there is—one of the proposals for working on the plan to solve the problem because they've run out of CDF space, is to take a dryer material and rotate it out and we have a land-issue in Cleveland, they're tearing down all the houses and they got basements to fill, which is in close proximity to the lake there, so that's a possibility that the port of Cleveland's pursuing, and also ODOT has some need for it.

And another thing the port of Cleveland is doing, I have to give them kudos, too, it's called a bed-load interceptor, they put it up far up the Cuyahoga River past the dredge area and try to collect the sediment that comes in. It's kind of one of the new technologies that's going in, and everybody's supportive of it, but we do not know how sure it's going to work. Hopefully it would take 40 percent or more of the dredge—the sediment that's coming in.

I want you to be aware of that because I think we have to sometimes think outside the box and that's why I get frustrated with the EPA. They have a tendency to be more come out with the hammer and not work to solve some problems. And I know in the President's budget he increased the funding for the regulatory side, but for compliance to help solve problems the President's budget decreased that part. So I'm a big soil and water guy and NRCS so I think there's some things we can do.

But I just want to close here, back on the WOTUS, I think it's loud and clear that there's a lot of problems out there maybe you can fix in the final rule. I don't know. I don't know. I don't have a lot of confidence, no disrespect. That happened in the final rule. I think we need to take a pause and go back and look at this with the States in the public forum as I think Congress should really be doing that, and there will be some bills offered here in the near future, both in the Senate and in the House, I'm pretty confident of that. And we want to make sure it's done right and not add a lot of cost to States and local governments.

And we had, in that bicameral hearing in the second panel, representatives from States and local governments, and there's a concern, I'm sure you're hearing that, and we need to, as our elected representatives and as a servant of the public that we need to make sure that we're serving the public in the best way we can, and we can still protect the environment and grow the economy.

So thank you for coming and the meeting is adjourned.

[Whereupon, at 1:05 p.m., the subcommittee was adjourned.]

TESTIMONY OF KENNETH J. KOPOCIS
DEPUTY ASSISTANT ADMINISTRATOR

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

March 18, 2015

Good morning, Chairman Gibbs, Ranking Member Napolitano, and members of the Subcommittee. I am Ken Kopocis, Deputy Assistant Administrator for the Office of Water at the U.S. Environmental Protection Agency (EPA). Thank you for the opportunity to speak about the President's Fiscal Year 2016 budget request for the EPA's National Water Program.

The President's request reflects the EPA's longstanding efforts to protect the nation's water both at the tap and in the environment, and identify new approaches and partnerships to make and sustain improvements in public health and the environment. The requested level of $3.7 billion allows the National Water Program to continue to support communities, improve infrastructure, drive innovation, spur technology, increase sustainability, and strengthen partnerships with states, tribes, and local governments.

One of the EPA's highest priorities is supporting communities in meeting their clean water and drinking water goals. A significant way we do this is through the EPA's Clean Water and Drinking Water State Revolving Funds, or SRFs. These funds provide critical funding to states to improve wastewater and drinking water infrastructure and reduce water pollution and public health threats. The President's FY 2016 budget requests a total of $2.3 billion for the SRFs, $1.116 billion for the Clean Water SRF and $1.186 billion for the Drinking Water SRF.

Additionally, in FY 2016, the agency's budget includes $50 million in technical assistance, training, and

other efforts to enhance the capacity of communities and states to plan and finance drinking water and wastewater infrastructure improvements. The EPA will work with states and communities to promote innovative practices that advance water system and community resiliency and sustainability. These resources will build the technical, managerial, and financial capabilities of systems to promote a healthy and effective network of drinking water and wastewater infrastructure.

The Water Infrastructure Finance and Innovation Act of 2014 (WIFIA) authorizes an innovative financing mechanism for water-related infrastructure of national or regional significance and authorizes the EPA to provide federal credit assistance to eligible entities. WIFIA created a 5- year pilot program for water infrastructure investment to provide low-interest loans to eligible entities for large water and wastewater projects. In FY 2016, the agency's budget includes $5 million to lay the groundwork for a WIFIA program. In addition to the existing State Revolving Fund programs, WIFIA would provide another source of capital to meet the United States' water infrastructure needs.

In January 2015, the agency launched a key component of the Administration's Build America Initiative: the Water Infrastructure and Resiliency Finance Center. Build America is a government-wide effort to increase infrastructure investment and promote economic growth by creating opportunities for state and local governments and the private sector to collaborate on infrastructure development. The center will help communities across the country plan for future public infrastructure investments and assist states in identifying financing opportunities for resilient drinking water, wastewater and stormwater infrastructure. The center will enhance our partnership and collaboration with the U.S. Department of Agriculture on training, technical assistance, and funding opportunities in rural areas.

Protecting the nation's waters remains a top priority for the EPA. We will continue to build upon decades of efforts to ensure our waterways are clean and our drinking water is safe. Water pollution

endangers wildlife, compromises the safety and reliability of our drinking water sources and treatment plants, and threatens the waters where we swim and fish. In FY 2016, we will begin implementation of the Clean Water Rule, which will clarify types of waters covered under the Clean Water Act and foster more certain and efficient business decisions to protect the nation's waters.

Supporting our state and tribal partners, the primary implementers of environmental programs, remains a priority for the EPA. The FY 2016 President's Budget has a number of positive proposals for the tribal programs. The overall proposed funding levels for Tribes has increased by 8.8% over the FY 2015 enacted levels. The 2016 Budget requests at least $50 million in SRF support be dedicated to Tribes. . The President's request also includes increases to key categorical grants to states and tribes, including Nonpoint Source grants, with an increase of $5.7 million, and Pollution Control (Sec. 106) grants, with an increase of $18.3 million over the FY2015 enacted level.

In addition, the EPA is requesting over $370 million to continue efforts to protect and restore important ecosystems through its geographic programs. These targeted programs complement the critical water quality work being done at a national scale. EPA and its federal partners are making steady progress on reducing unexpended balances of Great Lakes Restoration Initiative funding, and will continue and strengthen efforts to further reduce these balances and examine potential ways to increase expenditure rates in future years.

Thank you, Chairman Gibbs, Ranking Member Napolitano, and members of the Subcommittee for this opportunity to discuss the President's FY 2016 budget request for the EPA's National Water Program. The President's budget reflects the EPA's continuing efforts to improve water quality, and public health. We look forward to continuing our work with the Subcommittee to ensure clean and safe water for all Americans.

U.S. Environmental Protection Agency
Responses to Questions for the Record

"The President's Fiscal Year 2016 Budget:
Administration Priorities for the U.S. Environmental Protection Agency"

House Transportation and Infrastructure Committee
Subcommittee on Water Resources and Environment

March 18, 2015

A. Submitted on Behalf of Chairman Gibbs:

Q1 - Can you describe the EPA's activities related to assistance for addressing unsealed or abandoned wells?

The Environmental Protection Agency's Underground Injection Control (UIC) program addresses unsealed and abandoned wells through technical and financial assistance as follows:

- UIC Regulations govern how operators are to properly close injection wells and implement corrective action for wells that have failed. See 40 CFR Parts 144.51(o), 144.55, 146.7 and 146.10.
- During the permitting process, the operator performs an area of review analysis to locate improperly abandoned boreholes or unsealed wells in a prescribed area. These wells have to be properly closed before permit approval.
- Before closure of an injection well, the plugging method is thoroughly vetted with the UIC Director. UIC program personnel inspect the well during and after the plugging operation.
- Permitted injection wells require financial assurance. Financial coverage must be adequate to ensure that the well(s) is adequately plugged and abandoned at the end of its useful life.
- States, tribes and Direct Implementation UIC programs are given federal grant funds (State and Tribal Assistance Grants or STAG) to run their UIC programs, which include monitoring injection well operation and assuring that they are properly plugged and abandoned.
- Other innovative means the EPA employs to address unsealed and abandoned wells include providing enforcement assistance to close wells, as well as identifying and addressing orphaned wells, improperly plugged wells and uncased boreholes.

Q2 - What are EPA's plans for the eligibility of managed aquifer recharge projects under WIFIA?

Managed aquifer recharge projects are eligible for WIFIA financing, in accordance with WRRDA section 5026(6).

Q3 - The EPA's WaterSense Program is recognized by consumers as a "seal of approval" for water treatment equipment that use water in efficient ways. Much like the Energy Star program which rates household appliances for energy efficiency performance, WaterSense evaluates products used in residential and commercial settings for the wise and responsible use of water resources.

A. **Consumers are increasingly being influenced by the acceptance of water use products for efficiency performance into the WaterSense program, yet the program has never been authorized by Congress. Does EPA support Congressional authorization to establish the program? Does EPA support Congressional oversight on EPA's acceptance criteria in the WaterSense program?**

WaterSense currently operates under existing authorities. In carrying out the WaterSense program, the EPA considers the perspectives of a diverse group of stakeholders in the public and private sector. In developing its specifications for WaterSense labeled products, the EPA provides opportunity for public review and comment and welcomes opportunities to work with stakeholders and Congress through these public processes to advance efforts to use water efficiently.

B. **There are millions of people who rely on well water for residential use and it is unlikely many of them will get hooked up to a municipal water system. However, the Subcommittee has been informed that the WaterSense program has been slow to recognize some point of use technologies and water softeners for water efficiency performance. Please explain why the program has chosen not to rate these products.**

In making decisions to develop a specification, the program considers a variety of factors including the opportunity to improve the water efficiency of products over standard products.

C. **Specifically, water softeners were presented to the EPA about 3 years ago for inclusion in the WaterSense program but the agency never finalized the acceptance or justified a rejection. Typically utilizing soft water means less water is consumed in washers and dishwashers, for example. Can you tell us why water softeners have not been accepted by the program?**

The EPA released a notice of intent to develop a specification for water softeners in 2010 (see http://www.epa.gov/watersense/products/watersofteners.html). After the release of the notice, the EPA received a number of comments from stakeholders expressing concerns about the impact of water softener discharges on wastewater treatment and the ability of utilities to meet permit limits for salinity. This is particularly a concern in more arid parts of the country, where it is challenging to meet permit limits even in the absence of additional salt loadings from water softeners. Commenters also noted a number of efforts to develop alternative softening technologies and encouraged the EPA to delay consideration of a specification until such time that those efforts came to fruition. The agency considers the notice of intent as an open action and will review additional information as it is provided to make decisions on how it should move forward. We recently met with staff from the Water Quality Association and expect to meet with them again to learn about new information related to this product category.

Q4 - Without any discernible or objective criteria governing EPA's claimed authority under Section 404(c), EPA's retroactive revocation of a lawfully issued Section 404 permit has destroyed the essential element of permit uniformity. Now that your Agency is expanding its authority over even more waters, what impact do you think EPA's actions will have on investment in U.S. property and natural resource development?

Passage of the Federal Water Pollution Control Act Amendments of 1972 (also known as the Clean Water Act) established a comprehensive program to restore and maintain the chemical, physical, and biological integrity of the Nation's waters. The Clean Water Act provided overall responsibility to the EPA, in partnership with the states, to reduce pollution entering waters of the United States in order to protect their uses as sources of drinking water; habitat for aquatic wildlife; places for swimming, fishing, and recreation; and for other purposes. Under Section 404(c), the Act authorizes the EPA to review activities in waters of the U.S. to determine whether such activities would result in significant and unacceptable adverse effects on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreational areas, and to prohibit, restrict or deny, including withdrawal, of the use of any defined area as a disposal site. The EPA does not view this authority as an opportunity to second guess the Corps' decision making, but rather as an important responsibility to conduct an independent review of projects that have the potential to significantly impact public health, water quality, or the environment, and which the EPA has rarely used to prohibit or withdraw the use of an area. Specifically, the Act states:

> "The Administrator is authorized to prohibit the specification (including the withdrawal of specification) of any defined area as a disposal site, and he is authorized to restrict or deny the use of any defined area for specification (including the withdrawal of specification) as a disposal site, whenever he determines, after notice and opportunity for public hearings, that the discharge of such materials into such area will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreational areas." 33 U.S.C. § 1344(c).

The EPA works constructively with the Corps, the states, and other partners to assist applicants in developing environmentally sound projects in cases where a discharge of dredged or fill material into waters of the U.S. is proposed. The EPA takes very seriously our responsibilities under the Clean Water Act, and believes that prudent and careful use of this authority is an effective provision for encouraging innovation to protect public health and preserving valuable environmental resources and our Nation's economic security. The EPA has used its veto authority sparingly, completing only 13 final decisions, known as Final Determinations, since 1972. To put this in perspective, over the past 43 years, the Corps is estimated to have authorized more than two million activities in waters of the U.S. under the Clean Water Act Section 404 regulatory program.

Q5 - How does EPA's preemptive veto not enmesh the agency in local zoning decisions? What impacts will this have over state, private, and tribal lands throughout the United States?

The Clean Water Act does not regulate land use. The Clean Water Act applies only to activities that have the potential to destroy, degrade or pollute the nation's waters. Activities that do not involve the discharge of pollutants to waters of the United States are not regulated and thus do not require permits

from the Corps or the EPA. It is important to note that forty-six states administer the Section 402 permit program for discharge into jurisdictional waters of pollutants other than dredged or fill material. The EPA will continue to work with landowners, farmers, energy developers, communities, miners, small businesses, and many others across the country to continue to protect and preserve the clean water on which they depend and to make improvements to CWA programs that make them more fair, flexible, and effective.

Q6 - In the case of the proposed Keystone pipeline, the Administration claims to be awaiting an environmental review by the State Department. Yet, the EPA has initiated a veto on a mining project in Alaska before the assessment was completed and they have yet to look at an actual mine plan. How can the Administration cite the need for due process on one hand and then completely ignore it in the other?

In the case of Bristol Bay, the EPA carefully considered available science presented in the multi-year Bristol Bay Watershed Assessment and other available information, including extensive materials provided by the Pebble Limited Partnership. The EPA prepared a conservative analysis of the footprint impacts of the proposed mine. This analysis is based on a scenario much smaller than the mine proposed in the SEC filings from Northern Dynasty Minerals and does not include the impacts from the transportation corridor, pipelines, a large power plant or wastewater treatment facilities. The EPA then decided to proceed under its Clean Water Act Section 404(c) regulations to protect Bristol Bay resources from the adverse environmental effects of mining the Pebble deposit in southwest Alaska.

Q7 - Now that EPA is expanding its authority over even more waters, how do you think EPA's actions will impact the ability of state and local governments to exercise their authority with respect to land use management and planning? How will it impact the ability to construct critical infrastructure that requires 404 permits?

The Clean Water Act does not regulate land use. We believe that state and local governments will continue to exercise their authority as they always have with respect to land-use management and planning.

Q8 - If EPA - who is not the permitting authority in the case of Section 404 - can at any time retroactively veto the duly authorized specification of a disposal site, how can it really be said that CWA Section 404 permits are ever final?

The EPA's 42-year history of judicious use of its Section 404(c) authority has and continues to ensure predictability and certainty for the business community while at the same time providing a critical safeguard for the nation's most valuable and vulnerable water resources. Likewise, the EPA attempts to enforce the Clean Water Act consistent with the best science. Throughout the history of review of the Spruce No. 1 Mine permit, the EPA expressed its concerns about the environmental and water quality impacts associated with the project. After the Section 404 permit was issued in 2007, significant new scientific information emerged about the water quality impacts associated with surface coal mining projects like the Spruce mine. The new scientific information was highly influential in the EPA's decision to invoke its 404(c) authority. Use of Section 404(c) to prohibit one portion of one project

under a permit program that has approved over two million projects in waters of the United States does not represent destruction of the essential element of permit uniformity.

The EPA has only exercised their 404(c) veto authority 13 times out of the millions of Corps authorizations for regulated activities in jurisdictional waters under Section 404 since the enactment of the CWA. Private property owners, including the nation's natural resources development industry, depend on reliable and consistent sources of clean water to operate. The EPA will continue to work with landowners, farmers, energy developers, communities, miners, small businesses, and many others across the country to continue to protect and preserve the clean water on which they depend and to make improvements to CWA programs that make them more fair, flexible, and effective.

Q9 - In light of EPA's actions with respect to the Bristol Bay and Pebble mines, do you think that the regulated community has certainty that they can receive due process to have their projects fairly considered?

The EPA started its review of the Bristol Bay Project in response to requests by Alaskans who were concerned that the largest open pit mining project ever proposed in North America would impact one of the most sensitive environments remaining in the world today. The Bristol Bay Watershed is home to the world's largest remaining sockeye salmon fishery on which thousands of Alaskans depend for jobs and subsistence. Alaskans have certainty that their government is representing their interests to protect their health, their clean water, their jobs, and their economy. The EPA's decision will be made in an open and transparent process that ensures due process for all Alaskans.

Q10 - Studies have shown that even a slight increase in uncertainty causes exponential reduction in capital investments. Now that EPA is expanding its authority over even more waters, how does EPA intend to instill certainty and reliability in the CWA permitting process?

As a general matter, the agencies believe that the rule would more clearly define which waters are covered by the Clean Water Act, and which are not. In doing so, the agencies seek to reduce current uncertainty about whether or not particular water bodies are, or are not, jurisdictional. We believe that predictability, certainty, and consistency will increase under the rule with associated benefits for jobs, the economy, and protection of the nation's clean water.

Q11 - The proposed rule for the first time codifies federal jurisdiction over on-site water management features such as ditches. What mitigation will be required for the filling of a ditch? How will EPA ensure that any permits necessary for moving, cleaning, maintaining, and reclaiming ditches are granted in a timely fashion that does not disrupt industrial operations across the country or force industrial operations into non-compliance with other laws?

The courts have consistently recognized that the statutory term "navigable waters" in the CWA includes ditches. Therefore, the rule does not for the first time bring ditches within the scope of federal jurisdiction. An irrigation and drainage ditch maintenance activity exemption is created in the CWA itself under Section 404, and is further discussed in agency regulations and in agency guidance letters. The rule defines "waters of the U.S." and does not in any way change or address the irrigation and drainage ditch maintenance activity exemption under Section 404 or its implementation.

Q12 - As you have heard from multiple people, the broad overlapping definitions in the rule could bring a number of waters - including waters at industrial sites- under federal jurisdiction despite the intentions of EPA. How do you intend to respond to these legitimate concerns in the final rule?

At the time of the hearing, the agencies were reviewing comments provided to the agencies by states and state associations during the public comment period, which closed on November 14, 2014.

The final rule was published on June 29, 2015. The agencies have included a detailed narrative of intergovernmental concerns raised during the course of the rule's development and a description of the agencies' efforts to address them with the final rule.

Q13 - EPA and the Corps' economic analysis of the proposed rule indicates that the rule will "not have an effect on annual expenditures" associated with development of state water quality standards, monitoring and assessment of water quality, and development of total maximum daily loads. How do you assume that states will be able to expand such costly CWA programs at no expense?

The EPA has carefully considered the potential impacts to all CWA programs in our economic analysis. In the case of water quality standards, states typically develop water quality standards for general categories of waters, which have been and are inclusive of the types of waters that have been jurisdictional. This rule will not change the requirements of state water quality standards that currently make them consistent with the Clean Water Act (e.g., designated uses, criteria to protect those uses, antidegradation policies). If a state believes new or revised water quality standards need to be developed for specific types of waters, that need would exist with or without this rule.

States currently conduct assessments based on all existing and readily available monitoring data. States are required to list waters that are impaired, but have discretion to prioritize this list for TMDL development, which may proceed over a period of several years under existing EPA policy. Most monitoring, assessments, and TMDL development occur in currently jurisdictional water segments.

Q14 - States are required by law to set water quality standards for all waters covered under the Clean Water Act and to take measures to ensure that those standards are met. By adding new waters that must be afforded such protections, how can you assume that there will be no associated costs, and yet millions of dollars in overall environmental benefits?

The economic analysis of the proposed rule reflects the reduction in the historical scope of Clean Water Act jurisdiction that results from Supreme Court decisions in *SWANCC* and *Rapanos*. The rule does not cover any category of water not previously protected under the CWA.

Q15 - What is the status of your Agency's National Environmental Policy Act (NEPA) review for the proposed rule? If your Agency is not performing such an analysis, what is the justification?

Promulgation of U.S. Environmental Protection Agency Clean Water Act regulations are exempt from review under the National Environmental Policy Act. See CWA Section 511. It is the agencies' position that this exemption also applies to circumstances where the EPA and the Army are co-promulgating the identical CWA regulation such as the joint definition of the term "waters of the United States." The

Army, nonetheless, conducted a NEPA review of the Clean Water Rule and prepared an Environmental Assessment to document its review. The Environmental Assessment was completed before the rule was signed by the agencies, and a copy is available on the Army website and is included in the docket for the rule.

Q16 - EPA's economic analysis of the proposed rule indicated that the rule would "be cost neutral or minimal" with respect to Section 402 discharge permits for industrial operations. Given that by EPA's own estimate the rule will expand the current scope of federal jurisdiction, as well as industry's clearly stated concerns that the rule will bring on-site waters under federal oversight, how will this rule be "cost neutral" for industrial operations?

The economic analysis concludes that the rule would not increase permitting for industrial related section 402 pollutant discharges, and therefore, would have only minimal effects on costs associated with these permits. States have been consistent in requiring section 402 permits for industries that discharge to waters like streams, lakes, and rivers. The agencies do not anticipate a significant change in the scope of waters currently covered by state 402 programs as a result of the rule.

Q17 - ANY discharges into newly jurisdictional waters must be made pursuant to an NPDES permit or else they may be considered illegal. How will this not increase the permitting burdens on industry?

The agencies do not anticipate a significant change in the scope of waters currently covered by state 402 programs as a result of the rule. Industrial dischargers are being consistently regulated under state 402 programs now, and we do not expect the rule to expand the number of permits required for this class of dischargers.

Q18 - EPA says that it does not intend to modify or in any way limit any of the current exclusions from CWA jurisdiction, including the waste treatment system exclusion. How will that be described in the final rule?

The agencies' rule retains all existing Clean Water Act exemptions and exclusions, including the waste treatment system exclusion. The language of the existing waste treatment exclusion is not revised by the rule, and the preamble emphasizes that implementation of this language does not change.

Q19 - Now that your Agency is expanding its authority over even more waters, it is clear that a number of activities that currently qualify for general permits will need to obtain more costly and time-consuming individual permits. The Committee is particularly concerned about EPA's defense of its use of its newly claimed 404 retroactive and preemptive veto authority as limited to very "unique" circumstances. However, emboldened by EPA's actions, opponents of projects have petitioned the EPA to use this "rare and unique" power in other states, such as the six Chippewa tribal bands request to EPA to initiate CWA veto proceedings against a mining project in northern Wisconsin. What's to stop future administrations or outside groups from petitioning the EPA to exert its 404 authority? Are you concerned that such petitions could impact state and local project development?

The EPA works constructively with the Corps, the states, and other partners to assist applicants in developing environmentally sound projects in cases where a discharge of dredged or fill material into waters of the U.S. is proposed. The procedures for implementation of Section 404(c) provide for a science based and transparent review of projects, with opportunity for meaningful dialogue among the EPA, the Corps, the permit applicant or project proponent, the state, and the public. Key aspects of the 404(c) review process include an opportunity for discussion between the EPA and the project proponent and opportunities for public involvement.

The EPA has only sparingly exercised their 404(c) veto authority, demonstrated by the fact that the agency has completed 13 Final Determinations since 1972 out of the millions of Corps authorizations for regulated activities in jurisdictional waters under Section 404 since the enactment of the CWA. As these numbers demonstrate, the EPA has worked successfully with the Corps and permit applicants to resolve any concerns without exercising its Section 404(c) authority in all but a very small fraction of cases. We expect this judicious use of 404(c) to continue.

Q20 - The concept of ordinary high water mark is essential to determining the extent of federal CWA jurisdiction under the rule. Your agency recently very quietly released new guidance changing the way the agency assesses ordinary high water marks in the field. Why was this guidance not included in the proposed rule? Why was the regulated public not alerted to the guidance or provided a chance to comment?

The guidance to which this question refers was issued by the U.S. Army Corps of Engineers, not the EPA, and was issued under existing regulations. The manual for identification of ordinary high water mark remains consistent with the definition that has been in Corps regulation for decades, which is the same definition, provided in the rule.

Q21 - What do you think the practical effect on applicants or permit holders would be of having a rule that expands the federal CWA jurisdiction and the required Section 404 permits be subject to EPA's veto even years after permit issuance and even if the permittee is in full compliance with the terms of the permit?

The 43 years of implementing the CWA demonstrates that the EPA has worked successfully with the Corps and permit applicants to resolve concerns without exercising its Section 404(c) authority in all but a very small fraction of cases. Since 1972, the Corps is estimated to have authorized millions of activities in waters of the U.S. under the CWA Section 404 regulatory program.

Q22 - EPA continues to propose new programs like the Urban Waters program and the Resilient Finance Center rather than finding ways to support these goals through their core programs. What is EPA doing to ensure that these programs aren't creating a fragmented approach to water resource protection?

The agency's core water programs (e.g., NPDES permitting and the SRFs) remain and serve as the primary vehicles to address nation-wide environmental issues. Additionally, focused areas of emphasis using the EPA's existing authorities can greatly serve specific identified needs. The EPA will continue to search for and implement new and innovative ways to assist states and communities in addressing

their human health and environmental challenges in manners consistent with existing programs and authorities.

Q23 - In 2013, in the Iowa League of Cities v. EPA case, the 8th Circuit Court of Appeals invalidated certain EPA wet weather policies, including EPA's policy banning the practice of "blending" partially and fully treated wastewater inside a wastewater treatment plant prior to discharge into nearby waters. Why is EPA following the 8th Circuit's ruling (which bars EPA from prohibiting blending) only in those states that are within the 8th Circuit, instead of applying the ruling nationally? Why is EPA claiming that it is under no obligation to adopt as a national policy the 2013 Iowa League of Cities decision?

The Eighth Circuit vacated only the letters at issue in the case. The existing bypass regulation (40 C.F.R. 122.41(m)) was not vacated in the case but was upheld by the D.C. Circuit. Outside of the Eighth Circuit, the EPA will consider both the reasoning of the Eighth Circuit in Iowa League and existing regulations. The EPA will proceed on a case-by-case basis in making decisions regarding issuance of NPDES permits and exercising oversight authorities over state NPDES permits.

Q24 - We understand that EPA is crafting an exemption to its "regional consistency" policy, which requires uniform application of regulatory requirements across all its regions. This exemption would exclude judicial rulings from the consistency policy. Why is EPA excluding judicial rulings from the consistency policy? Is it to allow EPA to limit the scope of adverse court decisions on its rules to only those states within the court's jurisdiction?

The EPA's Office of Water is not drafting a "regional consistency" policy.

B. Submitted on Behalf of Congressman Hunter:

Q1 - Last February, the Subcommittee on Coast Guard and Maritime Transportation held a hearing in which we discussed the implementation of the North American Emission Control Area (ECA). As of January 1, 2015, vessels operating in the ECA must use low sulfur fuel or otherwise limit sulfur emissions. The use of low sulfur fuel imposes less of an economic burden on vessels which operate for only a brief time inside the 200 mile Exclusive Economic Zone limit which serves as the seaward boundary of the ECA. However, vessels which operate on near coastal routes face significantly greater operating costs. EPA granted waivers to companies which are reengaging their vessels to use LNG as fuel, and for vessels which are installing scrubbers.

I followed negotiations between the Coast Guard and the Environmental Protection Agency (EPA) and the industry very closely, and am disappointed that the Coast Guard and EPA did not give small coastal vessels a longer waiver period in order to allow a more orderly and less burdensome transition schedule. The waiver will require these small coastal shippers to dry dock half the fleet this year and half next year. This will substantially injure the industry and its U.S. customers. The short window may force a modal transportation shift that will increase the burden on our roads and bridges and will shift pollution into our neighborhoods. It is ironic that EPA estimated the total pollution load from these ships at zero when they originally looked at the impact of sulfur fuel emissions from ships. It is regrettable that EPA refuses to look at the impact on air pollution from the shift of cargo to other transportation modes, and that it is imposing such a foreshortened waiver period to deal with a level pollution the Agency itself deemed negligible. To clarify the EPA's position, I would appreciate answers to the following questions:

A. Why has the agency refused to look at the total pollution load, including the contributions of the modal transportation shifts, when setting wavier periods?

The North American and U.S. Caribbean Sea ECAs are some of the most important and cost-effective environmental air programs the EPA has put in to place in the past decade and are important parts of our national strategy to provide healthy air quality for our citizens. Without ECA-related emission reductions, ships would account for 48% of PM2.5, 40% of NOx, and 95% of SOx emissions from mobile sources in 2030, making them very significant contributors to national air pollution. The ECA fuel sulfur content requirements and NOx emission standards are expected to annually prevent between 12,000 and 31,000 premature deaths and 1.4 million workdays lost in the United States by 2030. We estimate that the monetized human health and welfare benefits of this program outweigh the costs by a factor of at least 30 to 1. These benefits occur because the standard for non-ECA marine fuel is over two thousand times dirtier (35,000 ppm S) than diesel fuel used by trucks and rail.

The ECA fuel sulfur requirements have been in effect for our ECAs since 2012; the limit was reduced to 1,000 ppm beginning in January 2015. The EPA collaborated with the U.S. Coast Guard on implementation of the requirements, and the transition has been very successful with the vast majority of vessels complying with the requirements. Internationally, the United States has been recognized as having an effective and meaningful compliance program.

The ECA fuel sulfur limits and NOx emission standards are U.S. treaty requirements that apply to all vessels when they operate in any ECA designated by amendment to Annex VI of the International Convention for the Prevention of Pollution from Ships (MARPOL). MARPOL is an international treaty established by the members of the International Maritime Organization (IMO). The ECA requirements as well as amendments designating the North American and U.S. Caribbean Sea ECAs were adopted at IMO following a public process.

MARPOL Annex VI contains no provision for a general waiver for a class or category of ships that operates internationally. The treaty does, however, include a provision that allows a temporary "exemption from specific provisions of the Annex for a ship to conduct trials for the development of ship emission reduction and control technologies." This provision can be used to encourage the development of lower cost compliance strategies and new emission control technologies. A technology development exemption is requested by the ship owner and is voluntary; the installation of the developmental technology is set out by the owner in the request, and there is no requirement in the Annex for vessels to be dry docked at any particular time or even at all. The EPA and the Coast Guard have worked cooperatively with several companies and their flag states toward the development and installation of innovative technologies including different types of exhaust scrubber approaches as well as LNG engine retrofits. These development programs began as early as 2012, and most are expected to be completed by 2016. These programs are already yielding important benefits to the industry and have already accelerated the development of LNG and exhaust scrubber technology; for example, a number of vessel owners are now installing scrubbers on ships without the support of any exemption.

With respect to the potential for modal shift to occur for coastal routes, either as a result of increased ship operating costs or as a result of a ship being in dry dock, it must be the case that there is a feasible, lower-cost, land-based transportation alternative. The EPA's peer-reviewed study of transportation mode shift on the Great Lakes (EPA-420-R-12-005) shows that transportation mode shift can occur only if the sending and receiving facilities can accommodate a land-based alternative (available rail lines or roads), there is a land-based transportation link between the shipping and receiving facilities, and that the land-based transportation is lower cost. The EPA's Great Lakes study confirmed that ECA-adjusted freight rates for ships remain lower than the least-cost alternative, rail, for the routes studied and therefore the ECA is not expected to result in mode shift. Because long-distance rail and truck freight rates elsewhere in the country are not likely to differ substantially from those in the Great Lakes region, we also do not expect the ECA to result in mode shift for coastal marine transportation links.

Finally, it should be noted that smaller US vessels involved in domestic trade are already required to use 15 ppm sulfur, similar to trucks and rail, independent of the ECA. Even without a waiver, coastal vessels that are subject to the ECA fuel sulfur standards (1,000 ppm S) are burning fuel that has 65 times more sulfur than in the diesel fuel used by smaller domestic vessels and land-based applications.

B. Why has the agency refused to provide an economically, and possibly more environmental friendly waiver period, when the agency's own science estimated the air pollution from the vessels involved at zero?

The EPA's scientific analysis[1] that supported the establishment of the North American ECA did include coastal vessels, and the air pollution contribution from such vessels is not zero. With regard to the contribution of coastal ships to U.S. air quality, the high sulfur content of marine diesel fuel used in large ships clearly means that air pollution from these vessels is not zero. The confusion occurs due to the way emissions from self-unloading bulk carriers for deep sea ports were reported in the Regulatory Impact Assessment for our Category 3 marine diesel engine rule. In fact, emissions from coastal ships are included in the "other bulk carrier" ship category. The emissions from the "other bulk carrier" ship category were estimated to be 21,355 tons of NOx, 1,577 tons of PM 2.5, and 16,474 tons of SOx in 2020, which is about 16% of total emissions at deep sea ports.

[1] Regulatory Impact Analysis: Control of Emissions of Air Pollution from Category 3 Marine Diesel Engines, EPA-420-R-09-019, December 2009, available at: http://www.epa.gov/otaq/regs/nonroad/marine/ci/420r09019.pdf. See also Proposal to Designate an Emission Control Area for Nitrogen Oxides, Sulfur Oxides and Particulate Matter: Technical Support Document, EPA-420-R-09-007, April 2009, available at: http://www.epa.gov/otaq/regs/nonroad/marine/ci/420r09007.pdf

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 18, 2015

Good morning Chairman Gibbs, Ranking Member Napolitano, 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 the proposed FY 2016 budget for OSWER programs falling under the Subcommittee's jurisdiction.

EPA works with states, tribes, local communities, and other federal agencies to protect public health and the environment. EPA's land cleanup programs track more than 541,000 sites, almost 23 million acres. Based on our analysis of EPA program and U.S. census data, approximately 156 million people live within 3 miles of a Superfund, Brownfields, or Corrective Action site that received EPA funding - that is 51 percent of the U.S. population. EPA found that the population living within 3 miles of these sites is more likely to be minority, low income, and linguistically isolated, and less likely to have a high school education than the U.S. population as whole.

To help clean up our communities, the President's budget request is proposing investments that clean up contamination and promote economic development and job creation. The Fiscal Year 2016 Budget proposes $187.5 million for OSWER's Brownfields program which represents a nearly $36 million

increase from FY 2015 enacted levels 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 this request are the following categories: (1) $49.5 million in categorical grants awarded directly to the states, tribes, and territories to support their own response programs; (2) $110 million for the brownfields projects account supporting competitive grant competitions including; assessment, revolving loan funds, cleanup, area-wide planning, and environmental workforce and job training grants; and (3) $28 million in other technical assistance, program operations, and sustainable development through OSWER's Environmental Programs and Management (EPM) account.

The EPA's Brownfields program uses its funding to successfully leverage economic investment. On average, nearly $18 is leveraged in private and public funding for every EPA dollar expended. More than 104,000 jobs have been leveraged and $22.1 billion in cleanup and redevelopment leveraged through brownfields project funding since the inception of the Brownfields program. In FY 2016, Brownfields program grantees are projected to assess more than 1,300 properties, clean up more than 120 properties, help create at least 5,000 cleanup and redevelopment jobs, and leverage more than $1.1 billion in cleanup and redevelopment funding. The assessment and cleanup of brownfields properties is essential to community revitalization in economically disadvantaged urban and rural areas. In FY 2014 nearly 55% of the EPA assessment, revolving loan, and cleanup grant (ARC) funding was allocated to small and mid-size communities of 100,000 population or less and of that funding, approximately 25% went to smaller communities of 20,000 population or less.

Examples of brownfields development and reuse include the 54-acre site located on East Xenia Drive in Fairborn, Ohio, which formerly produced cement, an ingredient that was critical to building infrastructure in the region. Today, the property has been reborn as a training venue for emergency first

responders. Funding for site remediation came from an EPA $200,000 Brownfield Cleanup grant, $1 million from Wright State University, and $2.8 million from the Clean Ohio Fund. The cleanup process took about 2 years to complete. Some of the old buildings were demolished and asbestos was removed from inside and outside the remaining buildings. Today, the property is the home office for the National Center for Medical Readiness, along with a tactical training facility. The facility is the first-ever research and training facility focused on the medicine of emergency disaster response.

Another example of beneficial reuse is a former elevated freight railway track in New York City. New York's High Line was made possible in part by the EPA's $200,000 Brownfields Cleanup Grant to the City of New York. Since opening in 2009, the High Line has become New York City's second most visited cultural venue, attracting some four million visitors a year. The EPA's $200,000 Brownfields Cleanup grant funded the remediation of contaminants along the right-of-way, particularly lead paint, associated with the High Line's former use as a rail viaduct. The High Line landscape functions essentially like a green roof; porous pathways contain open joints, so water can drain between planks and water adjacent planting beds, reducing the amount of storm-water than runs off the site into the sewer system. The $200,000 Brownfields Cleanup grant to the City of New York helped leverage 29 Cleanup jobs and $47,567,000 in total leveraged funding.

A further example of development and reuse is the Lincoln Apartments that are the first permanent supportive housing for homeless veterans in Indianapolis, Indiana. Located on the site of a former iron foundry property remediated by the City, the fully furnished apartments will serve 75 formerly homeless veterans. The City of Indianapolis donated the land for this project after addressing environmental problems by utilizing grants from the EPA, the U.S. Department of Housing and Urban Development (HUD) and the State's brownfield program. The development was further supported through a public

and private partnership including the Indiana Housing and Community Development Authority and Great Lakes Capital Fund.

The Brownfields program also provides funds for environmental workforce development and job training. Through a recent grant awarded to the Fortune Society in Queens, New York, 85 unemployed individuals completed training, and of those, 83 were placed in full-time employment in the environmental field The EPA grant funding to the Fortune Society has helped support the placement of trained workers for brownfields assessment and cleanup, leaking underground storage tank removal, stormwater management, Hurricane Sandy response and cleanup, solar installation, and Superfund site cleanup within the Greater New York Metropolitan Area.

Other grants awarded throughout the country include a grant to Northern Arizona University to facilitate the hiring of unemployed Navajo residents with employment in uranium mine tailing cleanup; a grant to Mott Community College in Flint, Michigan to facilitate hiring of graduates to clean up hazardous waste at a former auto manufacturing plant; a grant to Florida State College at Jacksonville where graduates were ultimately employed in the response and cleanup of the BP Oil Spill; and a grant to Northwest Regional Workforce Investment Board in Waterbury, Connecticut which is placing local, unemployed residents at brownfields cleanup projects, including abandoned textile mills. Since 1998, more than 13,700 unemployed and severely under-employed, predominantly low-income individuals from brownfields-affected communities, have been trained through the Environmental Workforce Development and Job Training program, and of those, more than 9,900 have been placed in full-time employment within the environmental field and brownfields revitalization activities, equating to a cumulative 72% placement rate and an average hourly starting wage of $14.17.

Our program also supports Brownfields Area-Wide Planning grants to encourage community-based involvement in brownfields reuse planning and neighborhood revitalization. Using a brownfields area-wide planning approach, a community identifies a specific project area that is affected by a single large or multiple brownfield site(s), and then works with residents and other stakeholders to develop reuse plans and identify opportunities for implementation funding for catalyst, high priority brownfield sites and the surrounding areas. By focusing on economically disadvantaged communities suffering from economic disinvestment, brownfields properties can be cleaned up and redeveloped to help meet the needs for jobs, housing, and infrastructure investments that would help rebuild and revitalize these communities as a whole, as well as identify opportunities to leverage additional public and private investment.

Beginning with a pilot program in FY 2010, the EPA has awarded funding for 43 projects across the country. The EPA continues to support the 23 pilot communities and grantees from 2010 as they seek resources and leverage funds for plan implementation. On Monday, March 9, 2015, we were pleased to announce the selection of 20 new brownfields area-wide planning projects. More than $418 million in federal, state, local, and private investments have been leveraged from the initial 23 Brownfields Area-Wide Planning grantees to help clean, redevelop, and revitalize community brownfields project areas.

The EPA's Targeted Brownfields Assessment program is designed to help states, tribes, and municipalities, particularly those without EPA Brownfields Assessment Grants, minimize the uncertainties of contamination often associated with brownfields. Targeted Brownfields Assessments supplement and work with other efforts under EPA's Brownfields Program to promote the cleanup and redevelopment of brownfields. The EPA will continue to recognize that the nation's wide-ranging small and rural areas can benefit from brownfields funding and technical assistance by emphasizing these

areas through Targeted Brownfields Assessments. The EPA will also provide funding for assessment and cleanup of underground storage tanks and other types of petroleum contamination on brownfields sites.

The FY 2016 budget also requests $1.154 billion for Superfund cleanup efforts across the country, which represents a $65 million increase from FY 2015 enacted levels. The majority of this increase will support the Superfund Removal, Federal Facilities and Remedial programs. A $9.4 million dollar increase to the Superfund Removal program will enable the agency to quickly respond to multiple emergencies and to assist with more resource intensive cleanup actions. Increases totaling $43.7 million to the Superfund Remedial program and our Federal Facilities program will allow the EPA to address the impact of prior year budget reductions. Specifically, the Superfund Remedial increase will enable the agency to begin up to 10 new EPA-lead construction project starts in FY 2016. The EPA will continue its effort to balance the Superfund Remedial pipeline with ongoing projects and new construction 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.

Superfund cleanups help produce demonstrable health benefits. Blood lead monitoring at five Superfund sites (Bunker Hill, Idaho, Joplin, Missouri, Tar Creek, Oklahoma, Omaha, Nebraska, and

Midvale Slag, Utah) have shown a reduction in the average blood lead levels in children following Superfund cleanup and environmental education efforts.

Recent academic research, from the study[1] Superfund Cleanups and Infant Health, demonstrated that investment in Superfund cleanups reduces the incidence of birth defects for those living within 5,000 meters (or 5,468 yards) of a site. Another academic study[2] found that residential property values within three miles of Superfund sites increased 18 to 24 percent when sites were cleaned up and deleted from the National Priorities List. As of the end of fiscal year 2014, 450 of the 850 sites where some type of reuse is occurring indicate that the ongoing operations of approximately 3,470 businesses are generating annual sales of more than $31 billion and employing more than 89,000 people, who are earning a combined income of $6.0 billion.

The Universal Oil Products (Chemical Division) Superfund site in East Rutherford, New Jersey, is an example of how cleanup can lead to beneficial use of a Superfund site. The 75-acre site is a former chemical and solvent recovery facility that now supports several shopping areas and a rail line extension. The rail extension, known as the Sports Line, connects the commuter rail line on site with nearby MetLife Stadium, home of the New York Giants and New York Jets and site of the 2014 Super Bowl. Collaboration among EPA; state agencies, including the state transit authority; the site's potentially responsible party, Honeywell International, and local developers have made the site's cleanup and reuse possible.

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[1] Currie, Janet, Michael Greenstone, and Enrico Moretti. 2012. "Superfund Cleanups and Infant Health." *American Economic Review*, 101(3):435-441

[2] Gamper-Rabindran, Shanti and Christopher Timmins. 2013. "Does cleanup of hazardous waste sites raise housing values? Evidence of spatially localized benefits," Journal of Environmental Economics and Management 65(3): 345360, http://dx.doi.org/10.1016/j.jeem.2012.12.001.

Another example of cleanup and beneficial use is the Sullivan's Ledge Superfund site in New Bedford, Massachusetts, which now supports 13 acres of restored wetlands providing habitat for many wildlife species, including the great blue heron, great egret, red-tail hawk and spotted turtle. In addition, EPA approved the installation of a 1.75-megawatt solar project on the site. Over the course of 20 years, New Bedford will accrue about $2.7 million in energy savings through the purchase of solar net metering credits. The 10-acre system includes more than 5,000 solar panels and recently received a Solar Energy Industries Association and Solar Electric Power Association Project of Distinction Award.

Improper on-site waste handling practices at the 120-acre Reilly Tar & Chemical Corp. Superfund site in Indianapolis, Indiana, led to groundwater and soil contamination. In February 2014, a 10.8 megawatt solar energy generation facility began operations at the site. The facility operator estimates that the facility produces enough electricity to help reduce carbon dioxide equivalent emissions by 13,235 metric tons per year – equal to the amount of annual carbon produced for energy use in more than 1,800 residential homes. The total cost of the project was about $30 million. Of that amount, about $4 to $6 million was invested in the local economy in the form of labor, construction costs and materials. The project created approximately 75 to 100 jobs during construction and will continue to have a positive impact on the economy through ongoing contracts for equipment and labor with local firms.

In addition, the cleanup of the Southside Sanitary Landfill in Indianapolis, Indiana, has been so successful that a beneficial use includes fieldtrips from local schools as part of their science and civics curriculum in order to see firsthand the three "Rs"; Reduce, Reuse and Recycle. The landfill now provides alternative energy production and green space for the community in addition to an operating landfill. Crossroads Greenhouses, one of the largest methane-powered greenhouses in the United States, has pulled more the 2.2 million cubic feet of methane gas each day from the site since 1998. The nearby

Rolls Royce Allison Aircraft Engine Plant has used methane gas from the site's landfill since 1998 and in 1999, a public nine-hole golf course opened on the site.

The budget request will also help support the cleanup and beneficial use of federal facility sites through EPA's Superfund program oversight role. The Superfund budget for federal facility oversight has been particularly challenged with significant decreases in funding. In both FY 2014 and FY 2015 the enacted budgets were respectively 21% and 15% lower than the President's budget requests. These budget reductions have occurred at a time when significant, complex, work remains to be addressed at federal facility sites such as munitions, groundwater, and radiological waste cleanup. The FY 2016 budget request includes a $3.9 million dollar increase to meet EPA's current NPL site oversight obligations. The budget request also includes $1.2 million dollars specifically to support EPA technical assistance to other Federal Agencies and States at non-NPL sites.

In fiscal year 2016, the EPA will continue to place a priority on achieving its goals for two key environmental indicators, Human Exposures Under Control (HEUC) and Groundwater Migration Under Control (GMUC). While continuing to rely on the agency's Enforcement First approach to encourage PRPs to conduct and/or pay for cleanups, the Superfund Remedial program will focus on completing ongoing projects and maximizing the use of site-specific special account resources.

In this regard, the EPA has successfully leveraged scarce appropriated funding through the use of responsible party settlements to establish site-specific special accounts. Through the end of fiscal year 2014, the EPA had collected approximately $5.0 billion (including interest) in more than 1,200 site-specific special accounts. Of this amount, the EPA has disbursed or obligated more than $3.0 billion for site response actions and developed multi-year plans for nearly 100 percent of the remaining funds in

special accounts available to fund response actions. In total, through fiscal year 2014, the EPA has secured more than $39 billion in responsible party commitments for site cleanup and reimbursement of past costs. Of this amount, more than $33 billion is from settlements for cleanup and approximately $6 billion is from settlements for cost recovery.

The EPA will continue to efficiently utilize every dollar and resource available to clean up contaminated sites and to protect human health and the environment. In FY 2014, the EPA obligated approximately $367 million for Superfund Remedial cleanup activities, including funding from the Superfund appropriation, state cost-sharing funding, and potentially responsible party settlement funding for Superfund construction and post-construction projects. The agency will also continue to emphasize cleaning up sites to support site reuse, which reflects the high priority that the EPA places on land revitalization as we protect human health and the environment. In addition, the Superfund Remedial program will continue to conduct optimization activities at all stages of site cleanup. Finally, the EPA will continue to implement the technical and program management improvements recommended in the Superfund Program Review (a comprehensive review of the Remedial program's operations which builds on concepts from the EPA's Integrated Cleanup Initiative) so they are incorporated into the normal business practices of the Superfund program.

The Superfund removal and emergency response program conducted or provided oversight for more than 300 EPA-lead and responsible party removal cleanup actions in FY 2014. Each year, on average, more than 30,000 emergencies are reported in the U.S. Over the past six years, EPA on average, has performed or provided oversight on more than 360 responses a year. The EPA's emergency response program will continue to maintain capability to respond to imminent threats to human health, including incidents of national significance. The 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.

The 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 the EPA regulates. Recognizing the importance that this sector has both to our economy and to our environment, the FY 2016 Budget requests a $4.1 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. Approximately 20,000 oil spills are reported each year to the federal government. The severity of these spill reports varies, and the EPA evaluates as many as 13,000 spills to determine if its assistance is required. On average, one spill of greater than 100,000 gallons occurs every month from EPA-regulated oil storage facilities and the inland oil transportation network. The EPA works closely with the U.S. Coast Guard and generally either manages the oil spill response or oversees response efforts of private parties at approximately 250 to 300 sites per year. The FY 2016 Budget request for OSWER's oil spill prevention, preparedness, and response program is $18.5 million with a total agency oil spill appropriation request of $23.4 million which includes funding for oil spill research and enforcement efforts.

The President's FY 2016 EPA budget request maintains the commitment to protect human health and the environment, while promoting economic development and job creation, and making a visible difference in communities throughout the country.

U.S. Environmental Protection Agency
Responses to Questions for the Record
From the
House Transportation and Infrastructure Committee
March 18, 2015

Chairman Gibbs

Question 1: What is EPA headquarters doing to ensure that remedies selected to clean up sediment sites are nationally consistent and scientifically sound?

Answer: EPA headquarters facilitates two national peer-input groups that provide expert advice on sediment sites. In 1995, the EPA formed the National Remedy Review Board (NRRB) to help control remedy costs and to promote both consistent and cost-effective decisions at Superfund sites, including federal facilities.[1] The NRRB consists of managers and senior technical or policy experts from each EPA region and experts in remedy selection and program implementation from EPA headquarters. After reviewing materials from a region on a forthcoming proposed remedy, the NRRB make advisory recommendations to the region. The NRRB reviews proposed cleanup actions at sites where the preferred remedy exceeds $50 million[2].

In 2002, the EPA issued Office of Solid Waste and Emergency Response Directive 9285.6-08[3], "Principles for Managing Contaminated Sediment Risks at Hazardous Waste Sites," to help EPA site managers make scientifically sound and nationally consistent risk managment decisions at contaminated sediment sites. This memorandum also created the Contaminated Sediments Technical Advisory Group (CSTAG). The CSTAG monitors the progress of and provides advice regarding large, complex, or controversial contaminated sediment Superfund sites. The CSTAG is composed of regional sediment site project managers and scientists and engineers from EPA headquarters, EPA's Office of Research and Development, and the U.S. Army Corps of Engineers.

The memorandum also established a headquarters consultation process to help ensure that regional site managers consider these principles *before* site-specific risk managment decisions are made. The EPA has found that this process helps promote nationally consistent approaches to evaluate, select and implement protective, scientifically sound, and cost-effective remedies. The headquarters Office of Superfund Remediation and Technology Innovation has a regional coordinator and a sediment expert who review every sediment site consultation memo, Proposed Plan, and Record of Decision (ROD) for consistency with the EPA guidances and policies.

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[1] http://www.epa.gov/superfund/programs/nrrb/pdfs/11-28-95.pdf
2http://www.epa.gov/superfund/programs/nrrb/pdfs/NationalRemedyReviewBoardCriteriaRevisionandOperationalChanges.pdf
[3] http://www.epa.gov/superfund/policy/remedy/pdfs/92-85608-s.pdf

Question 2: Why are comments issued by the National Remedy Review Board (NRRB) to the regions being disregarded (or ignored) by the EPA regional offices and not enforced by EPA headquarters?

Answer: At the majority of Superfund sites, the NRRB and CSTAG recommendations are helpful to the EPA regions as they develop cleanup plans. The NRRB and CSTAG are advisory in nature and provide peer review for regions. Regions may choose to implement recommendations based on their understanding of conditions at the site. The EPA headquarters role is to help support national consistency in program decision-making.

Question 2(A): Please describe how EPA headquarters review NRRB and Contaminated Sediments Technical Advisory Group (CSTAG) recommendations?

Answer: As noted above, EPA headquarters representatives sit on the NRRB and CSTAG, and participate in drafting their recommendations. The NRRB sends draft comments to an EPA region for review and considers their input when developing the final recommendations. If issues arise, they are resolved through an established elevation process with both headquarters and regional management. EPA headquarters serves in a consultation role and helps to support national consistency in program decision-making.

Question 2(B): What steps does EPA headquarters take to ensure that headquarters approves of the Region's responses to NRRB/CSTAG comments before they are issued?

Answer: The authority to select remedies is delegated to EPA regions through agency delegation 14-2. EPA headquarters does not review the region's response to the CSTAG recommendations. At most NRRB sites, however, the Chair of the NRRB (and Chair of the CSTAG for responses to joint NRRB/CSTAG recommendations) reviews the draft responses and submits comments back to the region for their consideration.

Question 3: Some of EPA's regions are disregarding the major provisions of the EPA Sediment Guidance at mega (greater than $50 million) sediment sites around the country, which are resulting in legitimate technical and policy disputes and significant delays in implementing the proposed remedies. What steps is EPA headquarters taking to ensure that regions are following the Sediment Guidance?

Answer: When an EPA headquarters regional coordinator or sediment team member identifies a major recommendation that is not being followed, they work with the EPA regional site manager to resolve the issue. If it cannot be resolved at the staff level, the issue is elevated to headquarters and regional management. The EPA has developed documents and memoranda to help align agency program efforts when addressing contaminated sediment sites. The EPA headquarters sediments team also provides training to site managers through a number of forums, including the annual National Remedial Project Manager (NARPM) training conference. After completion of the 2005 Sediment Guidance, the Sediments Team provided 2-day class room trainings at several regional offices in 2007 and 2011.

Question 4: At sediment megasites, remedies often raise significant issues of implementability (one of the nine CERCLA criteria) due to the impacts on bridges and other transportation infrastructure from major dredging projects in urban waterways.
(A): How are regions considering these impacts before issuing RODs?

Answer: The EPA regions consider implementability issues regarding bridges and other transportation concerns when performing the comparative analysis of alternatives in the Superfund site feasibility study. At some sites, the EPA recognizes that implementability can be a significant issue as it relates to cost, time to completion, and community disruptions, and clearly considers it as a balancing criterion in selecting a remedy that is protective in the long-term, minimizes short-term impacts, and is cost-effective.

(B): How does EPA consider impacts on transportation infrastructure in the remedy phase?

Answer: During design and construction, the regions work closely with local communities and local transportation authorities to help ensure that the impacts of dredging and other construction activities minimize traffic disruptions for communities and the transportation sector.